

**PLANNING COMMISSION SPECIAL MEETING
COUNCIL CHAMBERS, RICHMOND CITY HALL**
1401 Marina Way South, Richmond, CA
April 10, 2008
7:00 p.m.

COMMISSION MEMBERS

Virginia Finlay, Chair
Stephen A. Williams
Charles Duncan

Vice Chair Nagarajo Rao
Jeff Lee, Secretary
Vacant

The meeting was called to order by **Chair Finlay** at 7:00 p.m.

Vice Chair Rao led in the Pledge of Allegiance.

ROLL CALL

Present: Chair Finlay, Vice Chair Rao, Secretary Lee and Commissioner Williams and Duncan

Absent: None

INTRODUCTIONS

Staff Present: Janet Harbin, Lamont Thompson, Ellen Garber, Mary Renfro, Richard Mitchell, and Associate City Attorney Carlos Privat

MINUTES – None

- 1. DR/CU/EID/EIR 1101974 – Chevron Energy and Hydrogen Renewal Project at 841 Chevron Way** - The Planning Commission will hold a Public Hearing to receive comments and make a decision on the proposed project's Design Review Permit, Conditional Use Permit, and adequacy and certification of the Environmental Impact Report (including a Draft and Final EIR, with associated Technical Appendices) for the Chevron Energy and Hydrogen Renewal Project, located at 841 Chevron Way in Richmond, California (APN: 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). The applicant proposes to replace the existing Hydrogen Plant, Power Plant, and Reformer, tanks and install new equipment in order to increase the Refinery's ability to produce gasoline that meets California specifications, and use a wider range of crude oil sources than are currently processed. The new equipment would improve Refinery reliability, energy efficiency, meet State and Federal Standards and add environmental controls. Chevron Products Company, owner/applicant. Planner: Lamont Thompson.

Chair Finlay confirmed with Commissioner Duncan that he read every volume, all attachments, correspondence and response letters of the EIR for qualification purposes, as well viewing the video streaming of the March 20, 2008 Commission meeting and reading of the DRB transcripts.

Chair Finlay announced the Commission is very aware of the public's concerns and considerations, noted that at the last public hearing there were 84 speakers who spoke in favor of the application. Of those 84 speakers in favor, 18 left prior to the continuation of the public hearing. There were 48 speakers who had signed up to speak against the application and at the close of the public hearing 12:20 a.m., 29 of those people had left and did not exercise their right to speak. 12 were also signed up who were undecided, 11 of whom left and chose not to speak.

She disclosed she held a meeting with M. Harris from CBE and with Mr. Presupoti from Adams, Broadwell, Joseph & Cardosa. She also attended two Chevron presentations; one at her own neighborhood council meeting and one was a meeting of the government relations committee of the Richmond Chamber of Commerce.

Commissioner Duncan disclosed he held a meeting with Greg Harris and Dr. Henry Clark of CBE. **Commissioner Williams** had no disclosure.

Commissioner Lee disclosed meeting with Greg Harris and two other people of the staff early on in the process and has since spoken with him on the phone and has also met with the consultant to the Chevron on the project and one of their employees, as well.

Vice Chair Rao disclosed speaking with Mr. Harris and three or four associates who represented different organizations in the community, as well as Attorney General Brown in person.

Chair Finlay provided an overview of the procedures for speaker registration and public hearing functions and rebuttal periods, stating at the end of the rebuttal period, she would read into the record a letter from Bruce Baeyart from TRAC. TRAC took a neutral position on the refinery, were not allowed to speak, but sent many emails on the matter. City staff would then present its summation and recommendation, and the Commission would proceed to discuss the issue. The Commission will deliberate to vote to approve, deny, approve in a modified form, postpone, continue the matter, or take the application under advisement. The other option is a re-circulation of part of the EIR which would be in conformance with requirements under CEQA. If the Commission finds it will be unable to complete the meeting by 11 PM a portion of the agenda may continue to a subsequent meeting.

The decisions of the Planning Commission may be appealed within ten days of the decisions by notifying the City Clerk, in writing by April 21, 2008, stating wherein the Planning Commission's decision is in error.

Lamont Thompson gave the staff report.

Mike Guell, General Manager, Chevron Richmond Refinery, said he proudly represents 1,200 employees and over 500 contractors who work at the refinery, said he appreciates the opportunity to provide a response to the comments received during the first Planning Commission meeting, spoke of Chevron's commitment to the local community, its part in Richmond's economic growth and job creation, funding programs, safety operations, protection of the environment, and said the renewal project is part of their on-going commitment to safe, reliable, and efficient operations. He said improvements are expected to create benefits to the City of Richmond and the surrounding community for improved refinery liability, enhanced environmental controls, and a reduction of overall emissions. The renewal project is not an expansion of the existing refinery but a project which will enable the refinery to operate more

efficiently with less down time. The renewal project also provides important social and economic benefits to Richmond including the creation of 1,200 construction jobs and new taxes for schools, police, fire services, libraries, and youth programs.

Chevron has worked with the City of Richmond and the BAAQMD to ensure the project meets or exceeds all state and local regulatory requirements. He acknowledged the receipt of legal and technical information from many people, and he considered the two main questions raised had to do with Chevron's commitment to mitigate greenhouse gases to below baseline and Chevron's willingness to commit to restrictions to crude slate.

Regarding greenhouse gases, AB 32 is not an easy task. And they have worked with the City staff and ESA to develop mitigation measure so there will be no increase in greenhouse gas emissions. Chevron has already agreed to mitigate any and all greenhouse gas emissions below the project baseline. The final EIR included a mitigation measure that specifies how this will be done. A third party expert hired by the City will validate all emissions and an audit will be conducted of potential emission reductions at the refinery. The refinery will submit a plan on how the emission regulations will be achieved given priority to projects in the City of Richmond. At no time can a refinery operate above the baseline prior to providing the mitigations. They understand that the City staff may recommend some additions to the greenhouse gas mitigation this evening and want the opportunity to comment on them. He said the maximum potential emissions are calculated assuming all the refinery processes are operating at full capacity 24 hours a day, 365 days a year with above the baseline.

He said the Planning Commission has the authority to find greenhouse gas increases are significant. Doing so would require Chevron to implement the greenhouse gas mitigations that they have already agreed to and are clearly stated in the Final EIR.

Regarding crude, opponents want to limit the refinery's crude slate for fear Chevron would run heavy crude, dirty crude or the likes of tar sand from Canada. They cannot process this type of crude to limitations of their crude unit and other impacts it would have on their base oil plant, and these are not part of the project. Processing that type of crude would require a significant upgrade of equipment and it would require environmental regulatory permitting. Processing heavy crude would require Chevron to shut down base oil production which they cannot do without impacting one of Chevron's core businesses, and this project allows the refinery to process the changing global crudes while meeting product specifications. He acknowledged the supply of low sulfur crude is dwindling, the project allows them to process crudes that contain higher sulfur without adverse impacts to the environment, and it is clearly stated in the final EIR the crude processed will remain in the range of light to medium gravity.

He stated that in the foreseeable future, the Richmond refinery will not process a crude blend that is considered heavy, and they are currently working with City staff to find a way to alleviate those concerns. He discussed their values in safety, reliability, environmental stewardship, and energy efficiency, said they take their policy in protecting people and the environment seriously, and is committed to the mitigation measures already included in the final EIR.

He said the Planning Commission has the ability to certify the EIR, to find the greenhouse gas emissions significant without recirculating the Final EIR, to impose the recommended mitigation measures, and believed the project will improve the reliability and energy efficiency of the refinery, reduce overall emissions, and make additional fuels available that meet California's stringent environmental standards. The project will also generate revenues for the City of Richmond and create construction jobs for local workers. He respectfully requested voting to

certify the EIR and direct staff to revise and deliver a reasonable, workable, CUP that is supported by the Final EIR.

Vice Chair Rao questioned and confirmed Mr. Guell had not read the document from the Attorney General's Office dated April 10, 2008. **Vice Chair Rao** referred to page two of the document regarding dirty and heavy crude, and said it states nothing in the City's expert analysis appears to support the staff report's claim that the additional environment review and permitting would be required before heavy crude could be used. He said as indicated in previous letters of March 6th and 19th, if this project enables Chevron to use different dirtier crude mix with greater polluting potential, this fact needs to be disclosed in the EIR. Otherwise, the FEIR is legally deficient under CEQA.

Mr. Guell said the crudes run in process after the implementation of the project will be the same types as run today. With respect to the greater polluting potential, they are regulated, controlled, monitored, reported on and all Chevron products have specifications that they need to meet. What this project does is remove the additional sulfur that is coming in with advanced equipment in order to meet those specifications and they can run that additional higher sulfur crude.

Teri Lizarraga said she also did not review the Attorney General's letter, but for the reasonably foreseeable future, there is no intent to process a different crude slate and they have provided information to address some of the technical comments as to why it is not possible to do this. She said she believes they have provided justification to what is already in the Final EIR and are also working with staff to further alleviate those concerns.

Vice Chair Rao said the staff report claims that BAAQMD stated that the SDA would not exceed its currently permitted level. However, the BAAQMD says the pollution will increase if the SDA is operated at its permitted output level, which would increase pollution further. Ms. Lizarraga said they are not planning on running it at the current permitted level. When they look at emissions at the SDA, if you change the through-put in the SDA from 45,000, there is not an impact from an emissions standpoint. They have emission limits on the furnace and the other emissions that would be associate or fugitive type of emissions that are not impacted by the crude rate.

Vice Chair Rao said once the renewal project is completed, it states that Chevron would be able to increase input by at least 6% or so, and he questioned if this would create more pollution in the air. Ms. Lizarraga said the 6% comes from a 6% increase in the California gasoline and basically what that means is instead of making gasoline that goes to other states, they would make California gasoline. So it is not an increase in the throughput of the facility.

Mike Guell agreed there will be some additional output resulting from this project, 10 mega watts of additional power will be created, enough additional hydrogen such that 35% of the hydrogen will be in excess of what will be used and in excess of needs, but this will be exported off site by a third party. He said everyone must keep in perspective that there are elements of this that are over and above just renewing existing capabilities. Specifically the hydrogen is the cause of the additional production of hydrogen, which is the cause of the excess greenhouse gases over base. He said if they did not export hydrogen and make additional hydrogen to sell to other people, they would not have the issue to worry about with additional greenhouse gases.

Dean O'Haire said the 900,000 metric tons is a maximum capacity to emit based on 100% operation of the facility 365 days a year, 24 hours a day and this cannot happen. Therefore, the

actual emission of greenhouse gases is expected to be somewhat less than that. The amount over net would be from production at the hydrogen plant for not only export but probably for some excess capacity that is available as part of the building of that plant that could be used for future use.

Commissioner Duncan said he believed that replacing the old boilers in Power Plant Number One with a modern co-generation plant will decrease the pollution and offset increased pollution from other parts of the project. He questioned how long had it been since the old boilers were first installed and how long has the co-generation technology been available.

Bob Chamberlin said the power plant was originally built in the 1930's; it was expanded in 1947 and consists of 7 boilers, 5 of which operate today. He said he did not know exactly when co-generation technology began, but it is a mature technology that all power plants use for electrical power generation, and is basically a jet engine that turns a turbine that produces electricity with enhanced steam recovery.

Commissioner Lee questioned that even though the plant was old, it would not operate if not safe, and he confirmed that what Chevron was hoping to achieve is a facility that requires less maintenance and more efficient operations.

Commissioner Duncan said in most EIR's there are alternative project scenarios which did not occur in this case and he questioned why this was not explored. **Commissioner Lee** suggested that perhaps the idea of not exporting hydrogen but just making enough hydrogen for Chevron's own use might also diminish potential greenhouse gases.

Ron Vanmusker pointed out that in respect to whether hydrogen plant has an increased capacity rate relative to the current plant, the FEIR shows, and there is really no issue; that all impacts associated will be mitigated as insignificant which is the essential function of CEQA. Regarding the issue of alternative scenarios, the refinery current exists and by its own nature, there is a constraint in the type of alternative one could propose. Most of the equipment is old and they want to upgrade it and make more safe and reliable. He said the Draft EIR does attempt to explore a number of alternatives in relationship to power generation, and CEQA generally deals with alternatives to a project as a whole and not alternatives to small pieces. They looked at wind, solar and others and discovered none could supply the kind of power that would be necessary for a project of this nature. Also, in this case, sulfur has been shown in the FEIR to be mitigated insignificant.

Commissioner Lee said he believed one alternative to not causing an increase in greenhouse gases would simply be to not create excessive hydrogen which would therefore not need to be exported.

Ron Vanmusker acknowledged Commissioner Lee's statement theoretically, but said many projects come before the Commission where the Commission would not choose to cut them in half. If a developer is willing to mitigate traffic down to a less than significant level then it is not a fundamental reason to deny the project.

Commissioner Lee said he still believed reducing hydrogen would be an alternative approach.

Vice Chair Rao questioned if Chevron had a scientist in the corporation who could speak on the matter of whether increasing hydrogen production would increase air pollution.

Ms. Lizarraga said the EIR considers the maximum potential in terms of greenhouse gas emissions, criteria emissions, and what it considers is that the hydrogen plant would be operating at its maximum full capacity, which as they have been stating, is not going to be achieved on a sustained basis for all the plants 24/7, 365 days a year. Therefore, the criteria emissions have all been incorporated into the Final EIR, they still have an overall reduction in emissions and what they are saying is they are going to operate at or below baseline at all times.

Commissioner Williams said there have been numerous references made to the fact that Chevron is not going to be operating at full capacity other than during routine service and maintenance. He questioned what was in place to stop Chevron from operating at full capacity, knowing that their ability and capacity is much greater.

Ms. Lizarraga said when putting together their business plans and long-range operating plans, they do try to get them at a high operational factor, but the facility is complex, what happens at one plant could have an impact at another plant but they simply cannot operate at 100% 365 days a year. Mr. O'Haire said they are trying to convey that they cannot operate that way. Nevertheless, what CEQA requires is that they still consider that and mitigate up to as it they did.

Chair Finlay asked for opponents to speak for ten minutes in their rebuttal.

Dr. Henry Clark introduced speakers:

Adrian Block urged the Commission to re-circulate the EIR. After analyzing and imposing mitigation measures for the significant impacts from the refinery's increased capacity to process high-polluting, low-quality oil, in the alternative, she asked that the Commission impose a crude cap that would ensure the capacity is not illegally increased without proper CEQA review. She said as three experts have shown, this project will increase the capacity for dirty oil refining at Chevron. This could cause mercury, selenium, sulfur flare gas, and greenhouse gas releases increasing 5-50 times in magnitude. In addition to other risks and hazards, these impacts have never been discussed, analyzed, or mitigated in the EIR. Environmental justice communities and the public at large have a right to know and have a right to be free from these grave impacts, and this is what CEQA provides—information—the opportunity to comment and participate in the permitting process and at hearings and substance relief, as well, and mitigation measures that shown to actually lesson or avoid significant impacts. She said Chevron says that there is no nexus between a crude cap and this project; that it would be illegal to impose such a condition. But it would be un-cautionable in the face of evidence supported by numerous experts but particularly given the disparate impacts that this project would have on low-income communities, and communities of color. It would allow the refinery the option of increasing emissions 50-fold without any analysis and without requiring any mitigation. A cap would ensure the truth of what Chevron claims.

She said Chevron also claims that there is no new information that has been presented with regard to greenhouse gases and therefore, there is no need to recalculate on that issue. But new information was presented. The daft CUP now includes a plan to make a plan to mitigate greenhouse gases, but this plan was not presented in the EIR. And, actually under CEQA formulation of mitigation measures should not be deferred to some future time. In this sense the EIR is just outright inadequate and should be re-circulated for this reason. She said a very similar situation was presented in a case called San Joaquin raptor that was published last year; where the project proponent argued that the project did not include mitigation measures or that

it did include mitigation measures but that there was a specific goal as is here, but where further selection of mitigation measures were promised in the future. The court found that is was inadequate for the purposes of CEQA. The deferral thwarts public participation and found it false to ensure that the impacts will actually be mitigated in the real world.

She believed re-circulation is required so that the public has the opportunity to review and comment on the mitigation measures and to ensure that the mitigation measures do not themselves have significant impacts that need to be mitigated. She therefore urged the Commission to require re-circulation of the EIR to analyze and mitigate the projects impacts for the increased capacity for refining dirty crude and for the greenhouse gas emissions that were not associated with this capacity increase to be mitigated, or to cap Chevron's crude slate.

Greg Karras said this project will expand refinery capacity for dirty oil refining. This would increase air, water, toxic, and climate pollution more then any measure in the EIR would control. A cap limiting the quality of incoming oil to where it is now can prevent severe impacts from this. He said he has reviewed the new evidence and it supports their position as he has written to the Commission. He believed there are claims that are unsupported by evidence; the base oil claim Chevron came up with that was first heard on March 20th and again heard today is not supported by a shred of data in the FEIR or the DEIR. He asked the Commission to see for themselves and said they will find it is not mentioned. The Commission owes it to themselves to ensure they find this out before crediting the claim. Now, the problem is too big to hide behind a hundred pages of last minute papers.

Mr. Karras said the record is completely clear that independent exerts from CBE, the Attorney General, the Air District and now the City's consultant agrees this project will expand in capacity for heavier, more contaminated oil. This will increase pollution and the EIR fails to evaluate or address those impacts. The company has also said repeatedly that it is not changing its oil quality, but it will not agree to a cap on that to ensure our environmental health is protected.

Jessica Montiel said the process failed the public and failed in environmental justice, said notices were not mailed out for the March 20th meeting but were mailed out for this meeting once the public comment was closed. The community was also located out of the Chambers and left in the cold. Translation was only available inside of the Chambers while the Spanish speaking and low-income community was outside, no one had access to restrooms and never at any point should the community's input be an after-thought, and she asked that the Commission cap the crude slate and re-circulate the EIR.

Tom Sustak said he is simply asking the Commission to make the decision not to poison everyone over the next 50-100 years.

Dr Henry Clark said he has been telling this Commission and the City that it needs to check the laws on environmental justice, said he has distributed information around about environmental justice to staff for the Commission, which was not received in the packet, he believed environmental justice was being lost in Richmond and quoted from Government Code Section 65040.1; environmental justice means fair treatment of people of all races, cultures, and incomes with respect to the development, adoption implementation and enforcement of environmental justice laws regulations and policies. He believed communities of color are disproportionably impacted, have been discriminated against, and if the Commission goes forward and approves this project without addressing the environmental justice issues and concerns and reducing the negative impact to zero net increase then the Commission is not consistent with the spirit of the law that says all people should be treated fairly.

Vice Chair Rao asked Dr. Clark to elaborate on what it is he would put into the EIR if he had the option to do so. Dr. Clark said Chevron has a plan to reduce greenhouse gases to zero net increase, which is uncertain and not verifiable. Also, he has not heard anything about reducing VOC's to zero increase, which is needed. Until then, the project does not meet the conditions of the spirit of the law or environmental justice.

Greg Harris said one of the things that Chevron just said again that is a problem is that even if you kept the crude slate, for the mitigation packages it allows offsets to happen outside the community. There are combustion emissions and also co-pollutants. VOC's are one but there are a lot of others. These are the pollutions that impact the community disproportionately and that is environmental racism, and this is a very specific example of what is wrong with greenhouse gas mitigations.

Vice Chair Rao said he understands that CBE is a part of a study of indoor air pollution in the City of Richmond and he asked for any significant findings that Mr. Harris would like to bring forth to the Commission.

Greg Harris introduced Marlene Quint, a consultant with CBE, and he said she has worked on the study even more directly than he has.

Marlene Quint said the study examines both indoor and outdoor air in these communities, she sent the Planning Commission a preliminary result packet, said the Solid Spring Institute, CBE, Brown University, and UC Berkeley conducted the study. We had preliminary results of the study and we did share these with the public at a Richmond community meeting. What the study essentially found was that emissions from the Chevron refinery contributes to chemical levels found in both indoor and outdoor air in the Atchison Neighborhood Village community. This conclusion is based on the fact that Chevron is the only petroleum refinery near the Richmond community. Atchison Village is literally across the street from the Chevron Refinery facilities. Over half of the Richmond homes had fine particulate matter levels that exceeded California air quality standards. People spend 80% of their time indoors and indoor air quality is not regulated. They also collected this data in the summer, which is a low particulate matter season so the data is very likely under-estimating the particulate matter levels for this community. The data shows a cumulative impact of Chevron emissions when you combine that with other emissions from both industry and indoor generated chemical exposures. Any national pollution increases will combine and accumulate with current pollution levels.

Ms. Quint said the most important thing to remember about this is that whether the chemicals were generated outdoors, there are some chemicals generated indoors, but chemicals that were generated outdoors particularly in high amounts would cause a larger accumulation of these chemicals indoors. So the levels were higher indoors. Across the board indoor levels were higher even when the chemicals were generated predominantly from an outdoor source. She also mentioned a chemical called Vanadium, which is known as an oil refinery emission, which is found in much higher levels in Richmond and this is not included in the EIR. The reason this is of concern is Vanadium can be very toxic to wildlife. Excessive exposure to Vanadium compounds may affect the digestive system, the eyes, liver, skin, throat, and the unborn child, and may cause cancer. Regulations need to take into account the existing pollution burdens especially in the already overburden communities like Richmond.

Chair Finlay asked and confirmed with Ms. Quint that she did not provide a copy of her report to Chevron, and asked that this be done.

Vice Chair Rao said, knowing that the studies have been conducted; he asked Ms. Quint if she believed the hydrogen renewal project should move forward and what type of impact it might have. Ms. Quint said she did not have the capacity to answer the question. **Vice Chair Rao** said it seemed to him there are two issues with the crude to be processed; the concern about heavier, dirtier crude introduced into the processing stream in the future; and a stated intent to increase crude of the same general variety of what is being used now but with twice the sulfur content.

Commissioner Lee said he believed the question is making the distinction between the gravity of the crude, how much it weighs, and the potential that there is a completely undisclosed and actual plan to increase capacity for higher gravity crude, which he believes has now been proven. The EIR has said there will be some increase but there is a question of whether that has been underestimated.

Mr. Karras said the BAAQMD is the group that would monitor this if that increased sulfur content would have any impacts on the environment. He said he wished there were only two, but in the proposed feed stock quality condition there are a number of different parameters or characteristics of crude oil which all in different ways cause different types of pollution problems. They also interact together. It takes more refining to make gasoline out of the same amount of that kind of oil that additional processing intensity also increases pollution. Yet in a different way. So, when a question is asked about sulfur and there is a limitation in the Bay Area Air Quality permit and there are some in certain processes but these are only really for sulfur and not other chemicals, the Air District should look at all potential impacts. There might be more selenium. He said they found a correlation that there is a statistically and highly significant association between sulfur and selenium for every single piece of crude data that is in the record. This is opposite of what Chevron is saying but it is the truth. So, one question is that, depending upon which crude it is, there could be a lot more selenium in it. This is a water pollution problem that the Regional Water Board has dealt with rather than the Air District. The larger point is that there are multiple pollution problems created by this increase and you cannot find crude that has just one characteristic. They vary but they tend to go together. As a scientist, there are thousands of chemicals that are affected by this. A very small fraction of those are monitors and tracked by any one agency. So from the scientific standpoint, even if you pick 10, 20, or 50 pollutants from dirtier crude, you are only taking a sample and not looking at every one of them, and he can honestly answer that no one agency deals with all of them now and it is very unlikely in the future anyone is going to.

Vice Chair Rao questioned if the City of Richmond has a role he feels should be included in the monitoring. Mr. Karras said he has been interacting with a lot of different people in a lot of different government agencies and the community and Chevron, although not nearly as much as he would like. He said they are still not talking to them about this, but the fact is that the City is the lead agency. It has the responsibility and accountability for the decision. The Attorney General and the City staff met and discussed the crude slate cap. As a non-lawyer, what he hears is that there is land use authority the City has. Without being a lawyer, he said he could say that the City is the lead agency and the Commission has the responsibility to make the decision.

Vice Chair Rao questioned whether Mr. Karras believed that producing additional hydrogen in the plant meant additional emissions and GGE's in the air.

Mr. Karras said to some extent, the higher purity hydrogen from replacing this very old system with a new modern one means that Chevron does not have to use as much hydrogen to

process the same amount of crude oil. One of the reasons why we know that the real project is an expansion of dirtier oil refining is that they would not need even as much hydrogen as they are using now if they were not changing their crude slate. They need it to hydro treat and they need it to hydrocrack. The hydrocracking uses much more of it than the hydrotreating. He said that is why we were compelled to point out that the EIR calls one of the units that are expanding a hydro-treater when in fact, it also does hydrocracking, which causes more pollution and uses more hydrogen. Refining dirtier oil is the only plausible use for the foreseeable future and if not here, then it will be done at another refinery, and they are all interlocked and need hydrogen. He said the Commission should ask why they need more and what is going to happen at the next refinery if it is made there. It's going to cause every type of pollution either directly or indirectly from the crude oil switch because that is what it is used for.

Commissioner Duncan said Mr. Karras said that dirty oil refining would increase the pollution, but then replacing Chevron's old equipment would decrease it. He questioned whether or not getting rid of the old equipment would take care of the potential increase from the dirtier oil refining. Mr. Karras said no, when doing true tinkering with the facility, you are changing out one process for another; you are not changing the fundamental nature of what the material that's being processed is. Typically the debate is about percentage increases. Here, we are talking about actual cases here in the Bay Area with selenium for example, with mercury and crude slates and flaring and the differences are factors; 5, 10 and even more than 10 times the difference. Secondly, the typical removal efficiencies are in percentage ranges. At best you might be able to get another 50% to 80% out of a stream that's already, as Chevron pointed out, partially controlled through the end of pipe treatment. But Chevron will not get it all and the equipment will be overwhelmed, and that's particularly important for greenhouse gases here, as well. There's evidence in the record from UC Berkley and UC Davis researchers that we put in where they said if it does go to these partially pre-processed tar sands, you won't know they're coming and the Air District won't either because they are partially pre-processed elsewhere before they get here.

Mr. Karras said in the Saudi Gulf, Chevron is working on UFC crude, in Venezuela with Conneco Philips with extra heavy and in Canada, which was mentioned earlier, which could cause the worst impacts of global warming in the west coast. He said he absolutely wants the old equipment replaced, said 80 years is about 40 years too long, and if Chevron has presented clear, compelling evidence that there are major reductions to be gained from replacing this old equipment, this would be an example of the kind of environmental justices that Dr. Clark needs to be listened to about. He believes it is not appropriate to allow Chevron to take credit for those reductions now when they should have done it along time ago without acknowledging that and that, he believed is an environmental injustice.

Chair Finlay read a letter in part into the record received on April 9, 2008 from TRAC which was distributed to all Planning Commissions, CBE and Chevron:

“(TRAC) rebuts Chevron's contention that its energy and hydrogen renewal project has nothing to do with the San Francisco Bay Area Trail; that the Commission has the authority, duty and precedent to condition approval of this project as recommended by the DRB to require Chevron to provide an easement and help pay for design and construction of the plans San Francisco Bay Trail segment on its property adjacent to the south side of I-580. Chevron has stubbornly refused to cooperate in implementing the July 2001 feasibility study of Bay Trail routes to Point San Pablo Peninsula which it co-funded with the City of Richmond. This is the City's opportunity to sweep away this Chevron roadblock to completing the Bay Trail between Point Richmond and the existing

trail under the Richmond/San Rafael Bridge to Point Molate. This Chevron project included huge tanks on the south side of the I-580 corridor on land designated for recreation by the General Plan and for general community regional recreation by the Zoning Ordinance. These 80-120 foot diameter and 40 to 50 foot high tanks would be adjacent to the preferred Bay Trail route identified in the 2001 feasibility study, thus creating adverse visual and recreational impacts. TRAC's attorney, Stephen C. Vulcar, pointed out in his March 22nd letter to you; "It is settled law that the City has broad authority under its General Plan and Zoning Ordinance to impose conditions on developments that are reasonably calculated to reduce its adverse environmental impacts." The General Plan clearly and strongly states the City will require all new commercial, industrial and residential developments to provide public access where a local or regional trail, e.g., the Bay Trail is planned. Hence, the Bay Trail conditions recommended by the DRB are necessary to support findings 1 and 12 of Resolution 80-03 regarding consistency with the General Plan. The Planning Commission has required construction and maintenance of the Bay Trail as a condition of approval for other projects as an example the public services 3-mile trail around West County Landfill and Toll Brothers Sea Cliff Estates, 1.1 mile of bay trail along both Sea Cliff Drive and Brick Yard Cove Road. Hence, there is ample precedence for requiring Chevron to build and maintain 6/10 of a mile of trail on its property adjacent to the south side of the I-580 corridor between Marine Street and the Caltrans parking lot, east of the toll plaza. The only security problem is Chevron's refusal to modify its facilities security plan to accommodate the Bay Trail. The Bay Trail already passes under pipelines and through processing and oil storage areas of the Conneco Philips refinery in Rodeo and the Shell refinery in Martinez. For additional perspective please bare in mind that the propose trail route is adjacent to I-580 where an average of about 80,000 cars and trucks pass by daily and where trucks routinely park in the wide area east of the toll plaza near Chevron's tanks and pipe lines. Please adopt the DRB's attached three conditions regarding Chevron to provide an easement and help design and build this Bay Trail segment which will be unduly expensive due to constraints imposed by Chevron's facilities. Sincerely Bruce Beyaert TRAC Chair."

Chair Finlay requested staff's summation.

Mr. Thompson referred to a goldenrod piece of paper with two options; staff is recommending Option one which is to move that the Planning Commission direct staff to 1) amend the discussion of greenhouse gas emissions in the EIR to indicate that the impact would be significant prior to mitigation and less that significant with implementation of the identified mitigation measures; 2) make such clarifications, amplifications and insignificant modifications as necessary to finalize the EIR including but not limited to revising the greenhouse gas mitigation measures shown in the proposed changes to greenhouse mitigation measures dated 4-10-08; and 3) continue to work with or work on the conditions of approval in order to provide the Planning Commission with recommended conditions to address the crude slate issue and other issues raised in the public comments. Further, move that this matter be brought back to the Planning Commission on the day determined by the Commission.

He said Option two is almost identical, with the exception that one of the directions would be to re-calculate the discussion in the EIR regarding greenhouse gas emissions for a period of 45 days.

He said Chevron has expressed some concerns about being able to identify the greenhouse gas mitigation on their site. In the proposed blue/green colored sheet in front of the Commission

there is a mitigation measure 4.35E. Staff has proposed a specific number that at least 446,000 metric tons per year of greenhouse gas mitigation be taken on the Chevron refinery property. The City would like to work with Chevron to identify specific language and specific performance measures and at this time, staff would like to continue working on its condition and mitigations and he turned the discussion over to Ellen Garber of Shute, Mihaly and Weinberger, the City's attorney.

Ellen Garber said as they testified on March 20th and reported in the EIR, the City has been taking the lead of the air quality experts, or the Bay Area Air Quality Management District, in this emerging area of regulation. In 2006 when the City was preparing the EIR, the Air District advised at that time at the very inception of AB32 that the City not come to a significant conclusion about greenhouse gasses because there were no standards at that time that had been developed by the air quality professionals. Now, time has passed, proposals have started to be made, many professional groups have studied the issue, and right about the time the final EIR was issued in January of 2008, the California Air Pollution Control Officer's Association called CAPCO issued a white paper on this very subject. That white paper advises that lead agencies, cities and counties can make significance determinations and in fact, should make have significant determinations with regard to greenhouse gases even if there are not numerical thresholds adopted by those entities.

She said the Attorney General has sent several letters to the City on this issue and has pointed out as well that the City may determine that the 898,000 metric tons per year is significant based upon certain benchmarks that the Attorney General suggested, some of which are the State's early action measures and some of which are as small as 100,000 tons per year and other measures. She said staff believes that now the correct course of action would be to make a significance determination which would also assist in putting some teeth into the City's mitigation measures.

So the question now before the Commission is making the determination at this time, changing the determination from speculative in the Draft EIR to significant in the Final EIR and does that require recirculation of the EIR? The legal standard would be, as this significant new information that is the legal standard from the CEQA guidelines, Section 15088.5 and specifically, is this change in determination evidence of a new significant impact? She said this is an open legal issue. Since Chevron met with the Commission the last meeting in March they have done a lot of legal research. They have looked at and considered legal opinions submitted by all sides; Chevron, CBE, others, and the Attorney General has not weighed in on this issue. There is no case law on this precise issue. She said they do disagree with Chevron's attorney on that issue. We think it is an open issue. So, on March 20th re-circulation is always the most conservative path in the absence of information. Nevertheless they have been struggling among staff and consultants about what we would re-circulate as a matter of common sense on this greenhouse gas issues. It is hard to see for us how much would be gained by recirculating the greenhouse gas analysis in the EIR.

The purpose of recirculation is public disclosure. It is premised on the existence of significant new information which is a term defined in the guidelines. That same guideline 15088.5 states, "New information added to an EIR is not significant unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon the substantial adverse environmental effect of the project." Looking at the EIR and what was in the draft it disclosed the outer envelope of the impact, which was 898,000 metric tons per year. What the Final EIR did was clarify that the City does not consider the expected capacity which was another figure given in the draft which showed the decrease to be useful in the purposes of analyzing the

environmental impacts of the proposed project. So the final EIR is sticking with the 898,000 metric tons per year figure even though Chevron testifies that the figure is not likely or possible. Therefore, the City believes that the draft EIR disclosed the full maximum potential. The Final EIR has been available since January 25th 2008 for public review. There's been a great deal of public comment and testimony since that time and this is the framing as the Commission requested of the staff recommendation but certainly it is with the discretion of the Commission to decide which course of action to take.

Vice Chair Rao said staff has remarked that they want to continue to work out specific conditions with Chevron, and he asked Ms. Garber to speak more about this.

Ms. Garber said the Final EIR includes greenhouse gas mitigation measures which have a performance standard of no net increase in greenhouse gases. It requires Chevron to submit a plan to the satisfaction and approval of the City for making those reductions. The version in the Final EIR sets priorities and makes the highest priority on the Chevron Richmond Refinery property, the second within the City of Richmond, the third in the Bay Area Air Quality District, and the fourth within the State of California. The Attorney General asked us to consider making those priorities into hard, quantifiable benchmarks. She said they forwarded a proposal to the City today which would have half the amount of the metric tons of the reductions taken on the refinery property. And, it is her understanding that Chevron having just seen it today would like to discuss it further.

Vice Chair Rao said there are two options and he questioned if the Commission was bound to only the two options. Ms. Garber said the Commission either needs to certify the EIR or amend the EIR or re-circulate; something should be done with the EIR. However, the Commission does not have to function within those two options. He confirmed with Ms. Garber that the mitigation measure in the Final EIR was proposed for the Commission to consider. This new proposal that the Commission has today is a response to a request by the Attorney General's office. The Commission does not have to accept that request, but Chevron requested to work with staff if the Commission decides to change from the Final EIR. But, the Commission is free to adopt either version.

Commissioner Duncan says CBE's attorney Adrian Block, said mitigation measures should not be deferred to the future and in looking at the mitigation measures having to do with greenhouse gases he finds a number of them talk about things that will be done in the future as promises such as notifying the Planning Department six months in advanced the time that GE emissions from hydrogen production are anticipated to exceed 921,000 tons of CO2 per year, the expert hired pursuant to the mitigation measure shall recommend a method for determining when this report must be made, and it goes on to say under 4.35E no later than one year after the approval of the conditional use permit Chevron shall submit to the city for approval a plan for achieving complete reduction of up to the maximum exposed estimated project GHG emission increase over the baseline. What we're hearing is that this presumes that the plant is built and they're proposing future mitigations by way of studies that are unspecific at the moment. In other words as Adrian Block is saying, mitigation measures should not be deferred to the future. In this case we're going to build the plant and then we are going to study it.

Ms. Garber said actually there is a well-defined body of law on the issue of what constitutes deferred mitigation starting with the Sacramento Old Cities case from quite a few years ago. Deferred mitigation does not include these sorts of measures. These measures include what the law requires, which is performance standard, no net increase, and steps to get there. She said she believes that deferred mitigation is mitigation that would be written later on by the staff and

by the consultants. In this case the mitigation was written here and doesn't allow Chevron to exceed to make a net increase in emissions.

Commissioner Duncan said therefore, we are saying that we have a target, but how that is accomplished happens later. **Chair Finlay** said in some cases it cannot be accomplished until we actually do have whatever it is in place and running and then make the determination.

Vice Chair Rao questioned then, who is the "we" in this situation. Ms. Garber said in this case the City will hire an independent expert that works for the City, but the costs are paid for by Chevron who will assist in preparation of a plan that is subject to approval only by the City to take reductions to achieve net zero greenhouse gas emissions. She said it would be similar to an increased traffic level of service; after monitoring it and find it is exceeded, a traffic signal is installed. **Vice Chair Rao** questioned if the City made a negotiation on hiring the expert already with Chevron and **Chair Finlay** noted this is in the conditions of approval.

Ms. Garber said the mitigation measure requires this because all mitigation measures must become conditions of approval.

Commissioner Duncan said the General Plan requires reduced emissions and AB32 requires reduced emissions to 1990 levels, and he questioned how this applies to the Chevron refinery if we are talking about reducing to zero net emissions. Ms. Garber said there are some air quality experts in the audience, but we do not know exactly how this will work because the State first must establish a baseline and determine what the 1990 levels were. One of the conditions of approval proposed would require Chevron to comply with AB32 and to start rolling back emissions, which is something that is our right now as outside of CEQA; because CEQA only requires mitigation to less than significant.

Chair Finlay said AB32 says that we're back to 1990 by 2020 so we have time to create the baseline studies. She said some of the work Chevron has provided has shown where the VOC's have continued to reduce, so although it would be State law, it may not be stringent enough or we may be able to surpass that by the time we actually get there and she noted there is a condition that requires a baseline study.

Vice Chair Rao confirmed that staff agreed with Chair Finlay's comments.

Chair Finlay thanked everyone and said the Commission will try to make a determination as to whether to continue the hearing, choose to exercise option one or two, the Commissions can reject the EIR, and she did not want to close the public hearing and what she would like to do is to continue to work on conditions of approval. She polled each Commissioner to determine if there is a condition they would want added.

Commissioner Lee said he gets the impression from communications earlier that Ms. Garber believes there aren't any other issues with the EIR document that would have any cause for re-circulation other than what the Commission has discussed with the greenhouse gases. Ms. Garber said this is correct. There have been a number of issues raised about new information added to the EIR on lots of different topics such as the new VOC domes for instance. Re-circulation would require a new significant impact in the VOC domes as an example were added to eliminate a significant impact. So that as a matter of law doesn't require recirculation. There has been a lot of testimony and information submitted about crude slate issue and that would require the Commission to determine, which it has the discretion to do, which experts that it finds to be credible, which experts it finds to have relied on substantial evidence to base their

conclusions. It's not impossible for the Commission to believe that this might be a recirculation issue but that's another likely area.

Commissioner Duncan said his primary issue is the cap on the crude slate; we need to find a mechanism by determining precisely what that cap is. In my experience, the more precision you have in mitigation measures and in the EIR, the better off we all are. He said he did not know exactly how to do that but believes that staff, in cooperation with Chevron and perhaps CBE, would work together to establish that.

Commissioner Lee said I think this is addressed as Item 3 in option one in item 4 in option two which basically states they are going to continue to work on that issue.

Commissioner Williams echoed the same comment of Commissioner Lee.

Chair Finlay said if further suggestions are thought about by the Commissioners, they could email those questions or conditions for consideration to staff.

Vice Chair Rao asked Ms. Garber to comment on the Attorney General's letter, second page, the last paragraph, and Ms. Garber said she did not read the letter, but reviewed the paragraph.

Chair Finlay questioned if Attorneys Privat or Renfro had any comment on the letter. Attorney Privat said he did not read the letter, but did see it today and said Vice Chair Rao was referring to a footnote.

Vice Chair Rao said the last paragraph states in part that, the staff report claims that BAAQMD stated that the SDA would not exceed its currently permitted level. He said it is not clear what the significance of this statement is since the BAAQMD says that pollution will increase if the SDA's operated as its permitted throughput and it stands to reason that operating the SDA beyond its currently permitted level would increase pollution even more.

Brian Bateman, Director of Engineering, BAAQMD, said their understanding in terms of the SDA unit is that it is currently operating below its capacity and significantly below it. He said he was not sure specifically where the statements were referring to came from. Perhaps that's the context that since they are running below the capacity the permitted capacity now, an increase up to that level would be an increase relative to current emission levels. Chevron has not made any impressions to them that they are going to request an increase in the currently permitted level from that unit at least at this point.

Vice Chair Rao said specifics regarding the environmental justice that was brought up, the issues looking into the safety of citizens is very important. I don't think that is brought up. Health and safety issues are continuing to have an impact on the Bhopal situation, and he did not see an organization or association that would overlook the health and welfare of the citizens of Richmond.

Chair Finlay said as she remembers, there are many conditions that set up ongoing monitoring plans, the City chooses the consultants, Chevron pays for them, and then we make sure that all of the monitoring is in fact done to the standards that we set forth or the standards of the other regulatory agencies. Certainly the Water Quality Board is still in effect, as well as the BAAQMD.

Vice Chair Rao believed it would be good to have an independent Richmond organization representing the people of Richmond. **Chair Finlay** believed this was the role of the City Council, and Mr. Thompson said with a CUP, the City can bring up the matter before a public hearing body if there is a belief there is a violation of the CUP.

Vice Chair Rao also asked for the San Francisco Bay Trail issue to be included as part of the EIR; that Chevron proceed to complete this. Mr. Thompson said this is something legal counsel would need to weigh in on this. Ms. Garber said she has not read the latest letter and wanted the opportunity to review the additional points not yet reviewed.

Chair Finlay said she understands the concept of precedence but it would do a whole lot of community-building if Chevron could agree to TRAC's request. She felt it would be a very good step in public relations to rethink their legal stance on this.

Commissioner Lee questioned whether the trail request is a part of the CUP, and **Chair Finlay** said it was not part of the conditions proposed by the DRB, but legal council did not find the position defensible and it was not included as a condition of the CUP. Mr. Thompson said staff had some concerns about requiring Chevron to pay for the construction of the trail and basically asked for them to define the trail location and set up the boundaries of the trail across the property, which would be an easement across Chevron property. He said staff's recommendation as a condition is for Chevron to fund this.

Vice Chair Rao questioned whether there was some information where he read Chevron requested closing the trail and not make it available for public use.

Bruce Beyaert said there is an existing trail under the bridge which was built by CalTrans and it is still open. The issue is closing the gap to get from the Point Richmond neighborhood to that existing CalTrans trail under the bridge. So, Chevron's cooperation is needed in terms of an easement and assistance with funding to close that trail gap based on a study that was done seven years ago. He said for 6-7 years, Chevron has not been willing to cooperate with the City, ABAG or TRAC in finding a way to proceed to close that gap. Recently, with this approval pending before the City, Chevron is now talking with the City and ABAG about that, so there cooperating now in terms of talk with this issue pending.

Commissioner Lee agreed with Mr. Beyaert's assertion regarding the trail, and clarified with Mr. Beyaert that he believed this is a CUP and EIR issue. He said Mr. Beyaert's letter talks about Condition H2 which is indicative of a conditional use issue and should be addressed in the EIR. Mr. Beyaert said he was not sure; their attorney is not present tonight, but he believes Condition H2 would deal with an easement and that is a good condition which TRAC supports. But beyond that, the DRB has recommended that Chevron be required to pay half the cost of designing this trail gap and to pay for the cost of building the 6/10 of a mile of section trail. TRAC is asking that those conditions be added to the easement condition H2 that is already before the Commission. He confirmed it is actually a condition of the CUP and not a mitigation measure.

Attorney Renfro said TRAC has not raised the Bay Trail as necessary mitigation measure to the best of her knowledge. Neither TRAC nor any other bay trail advocates have raised Bay trail issues in relation to the EIR but more as conditions of project approval, which is a separate study.

Mr. Beyaert said they actually have raised it in terms of impact. In fact, the April 9th letter does this and relates to the recreational and visual impacts of the tanks on the trail.

Vice Chair Rao questioned what sort of historical record Mr. Beyaert felt he had in asking the applicant to do this project, and Mr. Beyaert said as he stated in the April 9th letter this Commission has set very good precedence of following the General Plan's clear statement that conditions new projects astride the bay trail route shall be required to provide the bay trail. In the case of the West County Landfill project which the Commission approved, a condition required them to build and maintain a three mile loop of the bay trail. In addition, Toll Brothers was required to build 1.1 mile of bay trail and most of that is being maintained by the HOA. So there is excellent precedence that the Commission and City Council have complied with this provision of the General Plan.

Commissioner Duncan reiterated **Chair Finlay's** support as well, and read an excerpt from the General Plan. He said he hoped Chevron would do the right thing, believed it is a short segment which will go a long way toward community-building.

Chair Finlay confirmed that there are a total of 18 tanks; 8 new and 10 replacement storage tanks. One of the conditions was to do these in stages. One of the conditions to mitigate the VOC's substantially was the installation of two domes for two of the larger tanks. Then, she remembers a third one was replaced, but she learned that all were going to be covered and did not remember seeing this anywhere.

Mr. Thompson said this is not quite accurate; what Chevron proposed was two domes and some reductions to firing rate on similar furnaces to reduce the VOC down to a less than significant level, which took them below a 15 ton number. Then, what staff has done is added an additional condition that they look for other ways to reduce VOC's to zero by placing domes on other tanks. Staff suggested that they first start looking at specific tanks to try and bring the number to zero.

Chair Finlay said this is an area she wanted explored further. She said the other thing discussed regarding emissions and reductions start at the refinery, then Richmond, and then Contra Costa County and she asked not to include the State of California as fourth. Mr. Thompson said staff can make this change. The third was the BAAQMD, which is the nine county areas. **Chair Finlay** said she was just trying to mitigate as much as possible close to home or where our air quality might impinge further on because of the way the winds blow and not solve the problems in San Bernardino.

Mr. Thompson said Chevron was concerned; they felt that greenhouse gas emissions was a global issue. They wanted to keep their options open because of cost efficiency; they wanted to go to an area where they would get the biggest bang for their buck. Staff basically asked them to keep it in Richmond because it was more verifiable and it would benefit the community with the secondary benefits from addressing greenhouse gas emissions. So, we compromised on the State of California due to the AB 32 requirement.

Chair Finlay said another item of concern is the concept of the purchase of offset credits, stating she would like to know if it is possible for Chevron to surrender the right to purchase or to sell offsets, as she believed it is more important for Chevron to resolve the issues at the refinery themselves then to spend money mitigating their effects.

Mr. Thompson said staff put that condition in because we did not want Chevron coming back at a later day and say they addressed the greenhouse gas emissions, we did some of these emissions with their furnace, and now we want to use these credits. So we wanted to ensure they were permanent and that is why staff asked they surrender that credit.

Chair Finlay said lastly, there was a condition where the whole concept of the urban forest was frighteningly vague. There was no mention of dollars, how many trees, how long, and maybe it is just expected that the length is for the life of the construction project. But she did not feel there was enough specificity and asked staff to look for these types of examples in the conditions so everyone knows exactly what to expect.

The other thing she was concerned with is she does not know enough about the actual equipment to know how new equipment should be phased in, how it is coordinated, in which years will certain things be installed, and suggested there must be a Gant chart somewhere that explains all of this. She also asked that staff review every single condition based on the ability to defend the conditions in a courtroom. She received a 24-page letter from Pillsbury Winthrop Shaw and Pitman which to her was the basis of a legal challenge of almost everything the Commission has done and she wanted to go on the record indicating the importance of it because if we get into one I want to try and win it.

Vice Chair Rao says Chevron and the City both are talking about benefits to the City and to the citizens, and he read SCIU's 1021 letter into the record, which indicated that on behalf of more than 350 members, their Richmond Chapter opposes the renewal project as proposed, they ask to re-circulate the flawed EIR, they are worried about the impact of more greenhouse gases, VOC's, more mercury and toxins, and asked to protect people's health as the first priority.

ACTION: It was M/S (Lee/Williams) to continue the public hearing; unanimously approved.
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Attorney Privat reminded the Chair that the Commission will have to set a date certain for the next meeting.

Commissioners and staff discussed available Chamber dates, turn-around time for a re-circulation versus option one, and Mr. Thompson said staff would send out the document for 45 days, depending upon comments received, it would take time and staff would then publicly notice the date at that time. He said they could put forth a notice for re-circulation within a few days. It would require 45 days for comment and **Chair Finlay** suggested a continuation of 45 days, then 10-days for notice of a meeting, and so it would be about 3.5 months.

For option one, staff would need to work with Chevron and CBE, and Mr. Thompson suggested May 22, 2008. Attorney Privat said legal counsel would be prepared to move forward at that time with mitigation measures and conditions of approval.

Chair Finlay suggested public comment be sent in a timely manner. She confirmed with **Vice Chair Rao** that if the Commission re-circulates or changes conditions, she would allow public comment, but only on items in front of the Commission and not on the entire EIR. She believed conditions would still be open for comment as well.

Commissioner Lee said he is impressed with Planning and legal staff in terms of their efforts to incrementally converge on workable conditions. To that extent, he was feeling it was worth giving them another thirty days to continue to hone that process and work toward giving the Commission that finalized document in thirty days and without calling for re-circulation now. It does not mean the Commission has approved it; it just means we have given another thirty days to come closer to resolving some of the issues brought up.

Vice Chair Rao said he would feel comfortable going with option two for all the reasons and discussions that took place tonight. There are so many unanswered questions on issues that need to be answered. **Commissioner Duncan** agreed with option two due to full public disclosure and provide the public to comment on changes to the mitigations and conditions and he believed the changes to the mitigations are sufficient enough to warrant re-circulation.

Commissioner Williams said he believed the Commission is on the right track and if Commissioner Lee was able to put his suggestion into the form of a motion, he would second the motion.

Chair Finlay said there are two Commissioners who are tending towards option one and two that tend towards option two.

MOTION: It was M/S (Lee/Williams) to adopt Option one as recommended by staff; to move the Planning Commission direct staff to 1) amend the discussion of greenhouse gas 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; 2) make such clarifications, amplifications and insignificant modifications as necessary to finalize the EIR including but not limited to revising the greenhouse gas mitigation measures as shown in proposed changes to greenhouse gas mitigation measures 4-10-08 and 3) continue to work on the conditions of approval in order to provide the Planning Commission with recommended conditions to address the crude slate issue and other issues raised in public comments; and further move that this matter be brought back to the Planning Commission on May 22, 2008.

DISCUSSION: After the motion was made, **Chair Finlay** asked that rather than have another mid-month meeting, to move the meeting to June 5th normally scheduled date and hold this as the only item on the agenda. Commissioners discussed their availability for June 5, 2008 and asked Commissioner Lee to amend his motion to continue the public hearing to June 5, 2008.

Mr. Thompson said one of the things staff suggested was that regarding mitigation measure 4.35E that this number be taken out of that mitigation at this time and let staff work on the details of it. He questioned if this could be considered or simply stay with the current motion. **Chair Finlay** suggested staff do whatever they feel is in their best interests to work with the changes.

ACTION: It was M/S (Lee/Duncan) to adopt Option one as recommended by staff; to move the Planning Commission direct staff to 1) amend the discussion of greenhouse gas 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; 2) make such clarifications, amplifications and insignificant modifications as necessary to finalize the EIR including but not limited to revising the greenhouse gas mitigation measures as shown in proposed changes to greenhouse gas mitigation measures 4-10-08 and 3) continue to work on the conditions of approval in order to provide the Planning Commission with recommended conditions to address

issues raised in public comments; and further move that this matter be brought back to the Planning Commission on June 5, 2008. Vote: (3-2) Ayes: Duncan, Rao, and Lee. Noes: Williams and Finlay.

Chair Finlay stated the Commission will be hearing Option One on June 5, 2008 and thanked everyone for their patience and participation.

COMMISSION BUSINESS

2. Reports of Officers, Commissioners and Staff - None

Public Forum - None

Adjournment

The meeting was adjourned at 9:30 p.m.
