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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 13 **COUNTY OF CONTRA COSTA**

14 COMMUNITIES FOR A BETTER
 15 ENVIRONMENT and CENTER FOR
 16 BIOLOGICAL DIVERSITY,

17 Petitioners,

18 v.

19 COUNTY OF CONTRA COSTA; BOARD
 OF SUPERVISORS OF COUNTY OF
 20 CONTRA COSTA; CONTRA COSTA
 COUNTY DEPARTMENT OF
 21 CONSERVATION AND DEVELOPMENT;
 and DOES 1-20,

22 Respondents.

23
 24 PHILLIPS 66, a Texas Corporation, and
 25 DOES 21-40, inclusive,

26 Real Parties in Interest.

Case No. N22-1080

**PETITIONERS' OPENING BRIEF IN
 SUPPORT OF PETITION FOR WRIT OF
 MANDATE**

Date: June 28, 2023
 Time: 9:00 a.m.
 Dept.: 39
 Judge: Hon. Edward G. Weil

[Code Civ. Proc. §§ 1085, 1094.5.; California
 Environmental Quality Act, Pub Res. Code
 §§ 21000 et seq.]

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Glossary of Acronyms

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BAAQMD	Bay Area Air Quality Management District
CEQA	California Environmental Quality Act
EIR	Environmental Impact Report
GHG	Greenhouse Gas
HEFA	Hydrotreating Ester and Fatty Acid
ILUC	Indirect Land Use Change
LCFS	Low Carbon Fuel Standard

1 **INTRODUCTION**

2 For 125 years, the Rodeo Refinery, operated by Real Party in Interest Phillips 66 Company
3 (“Phillips”), has subjected residents of surrounding communities to a steady stream of environmental
4 stressors and safety hazards. These communities endure some of the worst pollution and health
5 impacts in the state. A decades-long decline in crude oil supplies, alongside falling demand by
6 California consumers for petroleum products, offered impacted communities the possibility of a
7 different future as refiners like Phillips, faced with excess capacity, began winding down operations.
8 But rather than engage its neighbors in exploring more environmentally beneficial uses for the Rodeo
9 Refinery site, Phillips elected to repurpose and extend the life of the Refinery to process nearly 30
10 million barrels each year of plant- and animal-based feedstocks into “renewable” transportation fuels,
11 while also expanding the Refinery’s processing of non-crude petroleum products.

12 The conversion, referred to as the “Rodeo Renewed Project” (the “Project”), would make the
13 Rodeo Refinery the single largest producer of renewable fuels *in the world*. Proponents’ branding of
14 the Project’s non-petroleum fuel products as “renewable” masks the very real impacts of this massive
15 operation. The Project not only would extend the Refinery’s longstanding health and safety impacts
16 on local communities; it would introduce additional potentially significant environmental burdens as
17 it soaks up a staggering 1.23 billion gallons of soybean oil and other lipid feedstocks each year.

18 Recognizing the Project’s potential to generate significant environmental impacts,
19 Respondent County of Contra Costa (the “County”) determined that the California Environmental
20 Quality Act, Public Resources Code section 21000 et seq. (“CEQA”), required it to prepare an
21 Environmental Impact Report (“EIR”). The “heart of CEQA,” an EIR is a “document of
22 accountability” that ensures decisionmakers are fully apprised of their actions’ environmental
23 consequences and that empowers the public to understand and “respond accordingly to action with
24 which it disagrees.” *Laurel Heights Improvement Ass’n v. Regents of Univ. of Cal.*, 47 Cal.3d 376,
25 392 (1988) (“*Laurel Heights*”) (quotation omitted). Agencies must thoroughly evaluate and publicly
26 disclose all reasonably foreseeable impacts of a project on the environment, human health, and public
27 safety, and set forth measures to avoid or minimize those impacts. In this way, CEQA ensures that
28 the public and decision-makers are accurately informed about projects that may appear superficially

1 beneficial to the environment but will likely result in profound direct or indirect damage. An agency
2 violates CEQA when it gives a pass to corporations that omit major components of a project and that
3 disguise a project’s environmental impacts. That is exactly what the County has done here.

4 As a threshold matter, the County entirely omitted analysis of the first phase of the Refinery’s
5 conversion – work that has never been assessed in any environmental review. Months before the
6 County began CEQA review of the Project, Phillips started converting the Refinery to process
7 soybean oil into renewable fuel in what Phillips called a “dry run” for the Project. And the company
8 added thousands of feet of pipeline to supply the Refinery with soybean oil. As a consequence, by
9 the time the Project was approved, Phillips had already begun producing renewable fuels at the
10 Refinery and had applied for marketable credits under California’s Low Carbon Fuel Standard based
11 on this production. This first phase of the Refinery conversion accounts for nearly one-fifth of the
12 Project’s total renewable fuels capacity. Nevertheless, the County carved it out of the EIR altogether
13 and declined to analyze its environmental impacts, acting as if these premature changes constituted
14 “business as usual,” even as the regional air district cited Phillips for its unpermitted activities.

15 As to the remainder of the Project it *did* purport to analyze, the County’s review fell far short
16 of CEQA’s requirements. The County failed to identify the types of feedstocks the Project would use
17 or to provide even a rough approximation of their relative quantities, even as the EIR recognized that
18 environmental impacts turn on these Project characteristics. The County disclaimed its obligation to
19 analyze indirect impacts associated with these feedstocks, calling them “speculative” despite a record
20 replete with evidence that the Project’s unprecedented demand for soybean oils and other agricultural
21 products will foreseeably result in deforestation and other land use impacts, particularly when
22 combined with the dozens of other renewable fuels projects like it around the country. And it
23 unlawfully deferred formulating mitigation to address the significant new odors the Project would
24 impose on surrounding communities – odors that the County conceded would make the Project akin
25 to an “animal and/or food processing facility unless properly managed.”

26 CEQA demands more of the County, and surrounding communities deserve better. Because
27 the County has not come close to meeting its obligation to fully inform decisionmakers and the public
28 about the true impacts of the Project in its entirety, the Court should find the EIR legally defective

1 and set aside the approvals that rely on it.

2 **FACTUAL AND PROCEDURAL BACKGROUND**

3 **A. The Rodeo Refinery and Neighboring Impacted Communities**

4 The Rodeo Refinery, owned and operated by Phillips since 2001, sits on 1,100 acres of land in
5 unincorporated Contra Costa County on the shore of San Pablo Bay. AR053658; AR053930.

6 Multiple residential neighborhoods border the property, including Rodeo’s Bay Vista neighborhood
7 at the Refinery’s southwest edge, the town of Tormey on its eastern boundary, and the working-class
8 community of Crockett northeast of the facility. *Id.*; AR000765; AR054115; AR182943. A largely
9 African-American community lives in public housing at the Refinery’s fenceline. AR000870. Sixty
10 multi-unit apartment buildings are located as close as 400 feet from the Refinery’s border.
11 AR000127. Two schools sit less than a mile from the Refinery, and at least one daycare center and
12 several churches and commercial establishments operate nearby. *Id.*

13 For more than a century, the Refinery has subjected residents of these communities to a
14 barrage of environmental stressors. *See* AR053931 (noting continuous operation since 1896). As of
15 2019, the Refinery was processing roughly 115,000 barrels per day (“bpd”) of crude oil into
16 transportation fuels, including liquified petroleum gas, gasoline, jet fuel, and diesel fuel.¹
17 AR053659; AR053726. These operations contribute heavily to local air pollution, compounding
18 other environmental hazards. *See* AR009776. Rodeo is in the top eight percent of census tracts in
19 the state for concentration of hazardous waste facilities and in the top three percent for toxic chemical
20 contamination. AR010514-15. As a result, residents experience near-constant exposure to toxic air
21 contaminants and damaging criteria air pollutants like fine particulate matter. AR053711-12;
22 AR007823. This exposure takes a severe health toll: Rodeo’s asthma rate is worse than 98 percent
23 of state census tracts, its prevalence of low birth weight worse than 92 percent, and cardiovascular
24 impacts worse than 75 percent. AR000871; AR010515. These burdens disproportionately fall upon
25 historically disadvantaged and low-income groups. Sixty-six percent of Rodeo’s residents are people
26 of color, and residents earn a per capita income of just \$34,356. AR000870.

27
28 _____
¹ One barrel is equal to 42 U.S. liquid gallons.

1 On top of the environmental health burdens caused by its permitted operations, the Refinery
2 has accumulated an extensive track record of air quality violations and life-threatening hazards. For
3 instance, in 2010, the Bay Area Air Quality Management District (“BAAQMD”) cited Phillips for
4 multiple emissions violations and for heavy smoke from unplanned flaring at the Refinery.
5 AR060591. In 2011, BAAQMD cited Phillips for three public nuisances for odor pollution. *Id.* The
6 following year, BAAQMD cited Phillips for another public nuisance when the rupture of a sour water
7 tank sent noxious gasses, including hydrogen sulfide, into local neighborhoods. *Id.* And only one
8 month after Phillips settled 87 air quality and public nuisance violations, fumes from a September
9 2016 oil spill at the Refinery’s marine terminal sent 120 people to the hospital, led to a shelter-in-
10 place order for 120,000 residents, and resulted in more than 1,400 odor complaints. *Id.*; AR060599.

11 Recognizing the cumulative impacts on the Refinery’s neighboring communities, the
12 California Environmental Protection Agency ranked the census tracts containing and immediately
13 adjacent to the Refinery in the 80th to 90th percentile statewide for overall vulnerability to pollution.
14 AR053711-12. These rankings designate these communities as “disadvantaged,” meaning that they
15 are “low-income areas that are disproportionately affected by environmental pollution and other
16 hazards that can lead to negative health effects.” AR001661; AR053121. The State uses this
17 designation to identify communities for targeted investments and added environmental protections,
18 including policies aimed at “reduction of pollution exposure” and “improvement of air quality.”
19 AR054199-200; *see also* AR053711-12; AR007824.

20 **B. Shrinking Crude Oil Markets and Refinery Closures**

21 Against this backdrop, dwindling crude oil supplies and a declining West Coast petroleum
22 market signaled the coming closure of the Refinery and relief for its fenceline communities from
23 these heavy pollution burdens. On the supply side, “extraction of in-state oil resources peaked in
24 1986 and has declined by half since then,” inducing California refineries to turn increasingly toward
25 imported foreign crude oil. AR059996. Meanwhile, statewide demand for finished oil products has
26 been declining since 2006, revealing a profound “structural overcapacity” of California oil refineries.
27 AR010649; AR010470. State and federal climate policies contributed to these trends, including a
28 suite of State measures designed to shift the transportation sector toward lower or zero emission

1 vehicles. AR010739-40. As a result, “for the first time in history, refiners supplied a smaller volume
2 of finished petroleum products to the West Coast in the decade ending in 2016 than they did in the
3 decade before.” AR059996. This was before COVID-19 sent the petroleum industry into accelerated
4 decline. The “pandemic initially cut global fuel demand 30% and . . . consumption has not returned
5 to pre-pandemic levels.” AR049370. Over only a few months in 2020, refinery closures shrank U.S.
6 capacity by more than one million bpd. AR010439. Even when fuel demand temporarily rebounded
7 in summer 2021, West Coast refineries continued operating well below capacity. AR010651.

8 The Rodeo Refinery has not been immune to these trends. The Refinery relies on another
9 Phillips-run refinery – the Santa Maria Refinery in San Luis Obispo County – for its semi-refined
10 crude oil supply. AR053729. Operations at the Santa Maria Refinery had been declining for years
11 before the Project was proposed, due, in significant part, to the landlocked facility’s inability to
12 access imported foreign crude oil. AR010432-33. By 2014, the Santa Maria Refinery was running at
13 less than 87 percent capacity. AR059613-14. By 2020, the facility was processing only 25,700 bpd
14 of crude oil, down from 41,635 bpd in 2013. AR053729; AR025622. Operations at the Rodeo
15 Refinery reflect this diminishing supply of semi-refined crude oil feedstocks, with total feedstocks
16 processed at the Refinery declining from 125,400 bpd in 2018 to 103,900 bpd in 2020. AR002256.

17 The result of these trends was that the Rodeo Refinery increasingly lacked both crude
18 feedstocks *and* a market for finished petroleum products. Phillips could have responded to this
19 overcapacity problem by decommissioning the Santa Maria and Rodeo Refineries and opening the
20 land to uses more compatible with the neighboring residential areas. *See* AR009776; AR008032-33;
21 AR007824. Instead, the company elected to repurpose the aging Rodeo Refinery to capitalize on a
22 growing market and regulatory incentives for renewable transportation fuels.²

23 In particular, Phillips determined that it could generate lucrative credits under California’s
24 Low Carbon Fuel Standards (“LCFS”) by devoting Refinery capacity to produce renewable fuels.

25
26 ² The term “renewable fuels” as used in the EIR and replicated herein refers to the diesel, propane,
27 naphtha, and potentially aviation fuels that the Project will produce, and which are derived
28 exclusively from biomass (non-fossil) feedstocks with high lipid (fatty acid or oil) content.
AR002315. Renewable fuels are a subset of “biofuels” – a term which broadly encompasses
“hydrocarbons derived from biomass and burned for energy.” AR010522.

1 AR054014. The LCFS is a market-based regulatory program administered by the California Air
2 Resources Board (“Air Resources Board” or “Board”) to encourage production of transportation fuels
3 with lower carbon intensity. *Id.* The LCFS program assigns carbon intensity scores to fuel types
4 based on their lifecycle greenhouse gas emissions. *Id.* Fuels with a carbon intensity score below a
5 State-prescribed benchmark generate credits, while those above generate deficits. AR053999. All
6 providers of transportation fuels in California, including Phillips, must meet LCFS carbon-intensity
7 goals, either by purchasing credits or by producing lower-carbon fuels. AR053947; AR054014.
8 Generating credits by producing renewable fuels provides companies like Phillips with marketable
9 assets while also enabling them to continue processing carbon-intensive, petroleum-based fuels.

10 **C. Phillips’ Multi-Phase “Renewable Fuels” Project**

11 Phillips implemented the Rodeo Refinery conversion in two phases, the first of which is
12 already completed and operating. In this *first* phase, which Phillips called “the Unit 250 Renewable
13 Diesel Project,” Phillips converted one of the Refinery’s diesel hydrotreaters – labeled “Unit 250” –
14 to enable it to process renewable feedstocks. AR103087. Also as part of the Unit 250 Renewable
15 Diesel Project, Phillips added thousands of feet of pipeline and related facilities to provide Unit 250
16 with a supply of soybean oil and other renewable feedstocks, dubbing this component the “Nustar
17 Selby Soybean Project.” AR103086. *Second*, Phillips initiated the permitting process for the Rodeo
18 Renewed Project, which would terminate the Refinery’s remaining crude oil refining and expand its
19 processing of renewable feedstocks, as well as its processing of non-crude petroleum products. The
20 objective of both phases of the Refinery conversion is to repurpose existing equipment to implement
21 a Hydrotreating Esters and Fatty Acids (“HEFA”) technology that removes oxygen from vegetable
22 oils and animal fats to produce hydrocarbon fuels. AR002288; AR103087; AR053730-31.

23 **1. The Unit 250 Renewable Diesel Project**

24 Hydrotreaters like Unit 250 are used to purify partially treated fuel by removing undesirable
25 components like hydrogen sulfide, sulfur, and nitrogen compounds to produce refined fuel streams
26 for blending into final products. *See* AR053727. Since 2005, Phillips had used Unit 250 to purify
27 exclusively petroleum-based feedstocks. AR053654; AR000932. Beginning in June 2020, Phillips
28 modified Unit 250 equipment and undertook other construction activities at the Refinery – including

1 adding and replacing pumps, building a new product air cooler, and installing and modifying
2 pipelines – to allow Unit 250 to receive pre-treated renewable feedstocks, process those feedstocks
3 into renewable diesel, and route the renewable diesel to storage tanks.³ AR000932; AR103087.
4 Phillips initially estimated that the converted Unit 250 would produce 9,000 bpd of renewable diesel
5 products, but later boosted its estimates to 12,000 bpd of renewable fuels. *Compare* AR103087 and
6 AR103096 *with* AR053654. Unit 250’s capacity represents 18 percent of the Rodeo Renewed
7 Project’s renewable fuels capacity. AR053654.

8 As it converted Unit 250, Phillips also sought building permits from the County to install new
9 pipeline and support infrastructure to transport soybean oil and other renewable feedstocks to the
10 Refinery from the nearby Nustar Selby (“Nustar”) rail terminal, owned by Shore Terminals LLC.
11 AR103084-86. Referring to this new construction as the “Nustar Selby Soybean Project,” the scope
12 of work described installing 2,300 feet of pipeline, which Phillips would own and operate, as well as
13 new metering, four new pumps, a new building for power upgrades, and related equipment at the
14 Nustar terminal including 33 offload headers to accommodate soybean oil.⁴ *Id.*; *see also* AR007752.
15 These modifications would allow the rail terminal to receive around 45,000 bpd of renewable
16 feedstock, which would be delivered through the new pipeline to Unit 250 and to “existing tankage”
17 at the Refinery. AR103096; AR103084-85. In September 2020, the County issued permits for the
18 Nustar Selby Soybean Project without conducting environmental review. AR103083-85.

19 Phillips did not initially seek any permits or approvals for the Unit 250 conversion itself, and
20 the activities proceeded without environmental review. AR103095; AR002303; Request for Judicial
21 Notice (“RJN”), Declaration of Connie Cho (“Cho Decl.”) at Ex. A. It was only after BAAQMD
22 issued a Notice of Violation to Phillips in March 2022 for illegally converting Unit 250 without
23 permits for construction or operation that Phillips belatedly submitted applications to the District for
24

25 ³ Although the Unit 250 Renewable Diesel Project scope document stated that Unit 250 would
26 produce only renewable diesel, subsequent submittals by Phillips for LCFS credit pathways confirm
27 that Phillips is also using the Unit to produce renewable naphtha and gasoline. AR103087;
AR026060; RJN, Cho Decl. at Ex. D.

28 ⁴ Permit submittals stated that the pipeline would be 2,300-feet long, but site maps and County emails
describe the pipeline as 2,500 feet in length. *Compare* AR103086 *with* AR103088 and AR103096.

1 a permit for Unit 250’s “alteration” and to process renewable feedstocks at Unit 250. *Id.* at Exs. A-B
2 (describing needed permits) & Ex. C (confirming Unit 250 “is considered altered”). By then,
3 however, the converted Unit 250 was already operating, producing renewable diesel and naphtha
4 fuels from pretreated soybean oil piped from the Nustar rail terminal. AR026059 (confirming that
5 “Phillips 66 began producing renewable diesel fuel at its Rodeo Refinery in April 2021”); AR026060
6 (describing operation of pipeline from Nustar). Indeed, by December 2021, Phillips had applied to
7 the Air Resources Board for LCFS credit-generation pathways for the Refinery based on Unit 250’s
8 processing of soybean and canola oils. AR026054-72.

9 2. **The Rodeo Renewed Project**

10 In August 2020, Phillips launched the second phase of the Refinery conversion when it
11 submitted the Rodeo Renewed Project application to the County. AR061344; AR061449. In lieu of
12 refining crude oil, Phillips proposed to process up to 80,000 bpd of any of a broad range of food-crop
13 and animal-based feedstocks into renewable diesel, renewable fuel gas, naphtha, and other
14 components for fuel blending. AR053729; *see* AR002315. In addition to soybean and canola oil (the
15 same feedstocks already being processed at Unit 250), Phillips “anticipate[s]” that Project inputs
16 “would include, but not [be] limited to” used cooking oil; fats, oil, and greases; tallow (animal fat);
17 inedible corn oil; other vegetable-based oils; “and/or emerging and other next-generation feedstocks.”
18 AR053733. At the same time, the Refinery would *expand* its processing of non-crude petroleum
19 feedstocks from 10,000 bpd as of 2019 to 38,000 bpd, which would be converted into 40,000 bpd of
20 petroleum products. AR053654. Overall, the Project would increase total Refinery output from a
21 baseline of 121,000 bpd to 132,000 bpd, consisting of 67,000 bpd of renewable fuels (12,000 bpd of
22 which would come from Unit 250) and 25,000 bpd of treated renewable feedstocks, plus 40,000 bpd
23 of petroleum products. *Id.* (Table ES-1); AR007997. The Project would make the Rodeo Refinery
24 the largest refinery of renewable feedstocks *in the world*. AR013435; AR022610; AR022617.

25 Phillips would make significant modifications to the Rodeo Refinery to make all this possible,
26 with demolition and construction activities taking nearly two years to complete. AR053739-40.
27 Changes to the Refinery would include converting refinery tanks to store renewable feedstocks and
28 adding a new “pre treatment unit” for renewable feedstocks. AR061357. Renewable feedstocks

1 processed in the pre-treatment unit would either be further processed into transportation fuels onsite
2 (including at Unit 250) or exported via Phillips’ marine terminal for finishing elsewhere. AR002303;
3 AR053654; AR053734 (depicting Rodeo Renewed Project flows). In addition to changes at the
4 Rodeo Refinery, Phillips would decommission the pipeline that had supplied the Refinery with Santa
5 Maria’s semi-refined crude and would demolish the Santa Maria Refinery. AR053725; AR061440.
6 The Project would also significantly increase the Refinery’s marine, rail, and truck traffic: The
7 number of railcars would increase by 240 percent, the number of annual vessel calls would increase
8 by 150 percent, and truck traffic would increase by 52 percent. AR007998.

9 **D. Environmental Consequences of Surging Renewable Fuels Production**

10 Though the Rodeo Renewed Project is exceptional in its scale, Phillips is only one of many oil
11 producers in California and around the world aiming to convert aging or decommissioned crude
12 refineries to process renewable feedstocks. On the same day it approved the Rodeo Renewed Project,
13 the County Board of Supervisors approved a similar project by the Marathon Corporation to convert
14 its shuttered crude oil refinery in nearby Martinez – only 12 miles from the Rodeo Refinery – to
15 process renewable feedstocks using identical HEFA technology. AR000806; AR010482; AR010490.
16 The Martinez Refinery Renewable Fuels Project (“Martinez project”) would be the second largest
17 renewable fuels refinery in the world, behind only the Rodeo Renewed Project. AR059342. As of
18 December 2021, at least eighteen refinery projects to process agricultural and/or animal-based
19 feedstocks into transportation fuels were under construction or consideration nationwide. AR010492.

20 These projects, together with numerous existing facilities that produce biodiesel and
21 “sustainable” aviation fuel, compete for the same feedstock pool, generating significant new
22 pressures on supplies of oil crops and animal fats.⁵ See AR012538; AR010493-96. As of 2021, the
23 domestic supply of lipid feedstocks available for renewable fuel processing (in addition to other uses)
24 was roughly 372,000 bpd. AR010492. The Rodeo Renewed Project alone would consume the
25 equivalent of about 22 percent of this supply. *Id.* Together with the Martinez project’s feedstock
26

27 ⁵ Biodiesel is a type of biofuel derived from vegetable oil and animals fats. AR012169. Unlike
28 renewable diesel, it typically must be blended with petroleum-based fuels to be used by combustion
engines. AR012172-73.

1 demand of 48,000 bpd, the two facilities would consume the equivalent of *one-third* of this domestic
2 supply. AR024387; AR059342. Operating simultaneously, the eighteen proposed U.S. renewable
3 fuel projects would nearly *triple* domestic renewable fuels refining capacity from 235,298 bpd to
4 692,950 bpd – significantly outstripping domestic lipid feedstock supplies. AR010492-96; *see also*
5 AR012538 (projecting that biofuel soybean oil demand will outstrip supply by 2023); AR012371.

6 Meeting this expansive demand for oil crops means that undeveloped lands must be brought
7 into agricultural production; this type of land conversion has significant environmental and social
8 consequences. *See* AR078323. Authorities including the Air Resources Board acknowledge that
9 biofuel production induces indirect land use change (widely referred to as “ILUC”) when an
10 “increase in the demand for a crop-based biofuel begins to drive up prices for the necessary feedstock
11 crop.” AR011597. Rising prices “cause[] farmers to devote a larger proportion of their cultivated
12 acreage to that feedstock crop,” to intensify production on existing acreage, and to convert land in
13 “non-agricultural uses to fuel crop production.” AR011597-98. As farmers shift to growing more
14 biofuel feedstocks, prices for displaced crops go up, inducing a vicious cycle of further land
15 conversion. *Id.*; AR010539; AR010446. In this way, increased biofuel production can drive
16 deforestation together with a range of other ILUC impacts, including “irreversible” loss of
17 biodiversity, “long-term” soil erosion, and “water quality deterioration.” AR078324; AR078272.
18 Land use conversion also results in increased greenhouse gas (“GHG”) emissions as forests are
19 burned, soil organic carbon stocks destroyed, and land cover cleared to grow biofuel feedstocks.
20 AR011598. And because the oil crops demanded by refineries are relied on for a range of uses,
21 including global food supplies, rising food crop prices together with crop displacement can
22 exacerbate food insecurity and hunger. AR012392.

23 The precise extent of ILUC impacts varies by feedstock. *See* AR078198. Palm oil is a
24 particularly intensive driver of deforestation, as is soybean oil (which customers often substitute with
25 palm oil when soy prices rise). AR011621; AR017210-12. Feedstocks derived from waste products
26 like used cooking oils, on the other hand, have lesser – though not necessarily insignificant – ILUC
27 impacts. AR011598. Depending on the feedstock, ILUC impacts may “limit[] – or even reverse[] –
28 the climate benefits” of using food-based biofuels. AR017213.

1 **E. Certification of the Environmental Impact Report Despite Community Concerns**

2 In response to Phillips’ application, the County determined that CEQA required it to prepare
3 an EIR for the Rodeo Renewed Project. AR053631. The “key to environmental protection under
4 CEQA,” *No Oil, Inc. v. City of Los Angeles*, 13 Cal.3d 68, 75 (1974), an EIR must provide a detailed
5 analysis of a project’s direct, indirect, and cumulative impacts on the environment and set forth
6 mitigation measures and alternatives to minimize or avoid potentially significant impacts, CEQA
7 Guidelines §§ 15126.2, 15126.4.⁶ The County issued a Notice of Preparation of the EIR on
8 December 21, 2020 and released the Draft EIR in October 2021. AR054263; AR053631.

9 The EIR did not include the Unit 250 Renewable Diesel Project in the Project scope and thus
10 did not analyze environmental impacts of this first Refinery conversion phase. AR000931-33;
11 AR053660. Despite this exclusion, the EIR identified myriad adverse impacts of the Project on the
12 local environment – including impacts to air quality, odor, biological resources, geology and soils,
13 hazardous materials, water quality, and transportation and traffic. AR053691-95; *see* AR007823 (Air
14 Resources Board comment letter observing that Project “will continue to contribute to the exposure
15 of nearby communities to elevated levels of air pollution”); AR053827 (conceding that unless
16 properly managed,” Project operations would produce “odors similar to an animal and/or food
17 processing facility”). Even with mitigation, the EIR identified “significant and unavoidable” impacts
18 to air quality from intensified rail transport of feedstocks, and to marine biological resources and
19 surface water quality from potentially hazardous marine vessel spills. AR000020-21; AR054207.

20 The County received 86 comment letters and over 1,600 form letters on the EIR, supported by
21 an extensive record of expert reports, peer-reviewed studies, and crop and refinery data. AR000906.
22 Many of these comments, including those by Petitioners, called attention to ways in which the EIR
23 hid, downplayed, or simply ignored entire categories of environmental impacts. *See, e.g.,*
24 AR009775-83; AR010408-10. Commenters took issue with the EIR’s refusal to disclose the Unit
25

26 ⁶ “CEQA Guidelines” refer to the implementing regulations promulgated by the Secretary of the
27 Natural Resources Agency and codified at title 14, section 15000 *et seq.* of the California Code of
28 Regulations. Courts “afford great weight to the Guidelines except when a provision is clearly
unauthorized or erroneous.” *Union of Med. Marijuana Patients, Inc. v. City of San Diego*, 7 Cal.5th
1171, 1184 (2019).

1 250 Renewable Diesel Project as part of the Rodeo Renewed Project or to analyze its associated
2 impacts. AR010420-23. They challenged the EIR’s refusal to identify the Project’s particular
3 feedstocks or to estimate their relative amounts. AR010427-28. Commenters questioned the EIR’s
4 insistence that the Project’s ILUC impacts could not be analyzed to any meaningful degree (*id.*;
5 AR009778), despite an extensive record of scientific literature showing that the unprecedented
6 agricultural feedstock demand created by the Project and refinery conversions like it would
7 foreseeably induce millions of acres of land conversion. *See, e.g.*, AR010448-52; AR009780-81.
8 And commenters documented serious concerns with unmitigated impacts on local communities. In
9 particular, Petitioners took issue with Mitigation Measure AQ-4, which punted developing mitigation
10 for significant odor impacts to a future planning process. AR010477-78; *see also* AR007858-59.

11 Brushing these concerns aside, on March 30, 2022 the County Planning Commission voted to
12 approve a land use permit for the Project. AR000125; AR000134. Petitioners appealed to the
13 County Board of Supervisors. AR000135; AR000230-39. On May 3, 2022, the Board denied the
14 appeal, approved the Project, and certified the EIR. AR000806-09. The County filed a Notice of
15 Determination on May 9, 2022 (AR000001), and Petitioners timely filed their verified petition for
16 writ of mandate on June 7, 2022.

17 STANDARD OF REVIEW

18 CEQA is a “comprehensive scheme to provide long-term protection to the environment.”
19 *Mountain Lion Found. v. Fish & Game Comm’n*, 16 Cal.4th 105, 112 (1997). Toward this end, the
20 statute is to be “interpreted in such manner as to afford the fullest possible protection to the
21 environment within the reasonable scope of the statutory language.” *Bozung v. Local Agency*
22 *Formation Comm’n*, 13 Cal.3d 263, 274 (1975). An agency violates CEQA when it prejudicially
23 abuses its discretion, which occurs when it “has not proceeded in a manner required by law *or* if the
24 determination or decision is not supported by substantial evidence.” Cal. Pub. Res. Code § 21168.5
25 (emphasis added). Because errors of law and fact “differ[] significantly,” the reviewing court “must
26 adjust its scrutiny to the nature of the alleged defect.” *Vineyard Area Citizens for Responsible*
27 *Growth, Inc. v. City of Rancho Cordova*, 40 Cal.4th 412, 435 (2007).

1 Courts review errors of law de novo. *Sierra Club v. County of Fresno*, 6 Cal.5th 502, 512
2 (2018) (“*Sierra Club*”). In so doing, courts “scrupulously enforce all legislatively mandated CEQA
3 requirements.” *Vineyard Area Citizens*, 40 Cal.4th at 435. The de novo standard broadly applies
4 when an agency fails to “employ[] the correct procedures” and to mixed questions of law and fact
5 that “require[] a determination whether statutory criteria were satisfied.” *Sierra Club*, 6 Cal.5th at
6 512, 516. Courts also determine de novo whether an EIR discloses information sufficient to “apprise
7 all interested parties of the true scope of the project for intelligent weighing of the environmental
8 consequences of the project.” *Cmtys. for a Better Env’t v. City of Richmond*, 184 Cal.App.4th 70, 82-
9 83 (2010) (“*CBE v. Richmond*”) (quoting *Riverwatch v. Olivenhain Mun. Water Dist.*, 170
10 Cal.App.4th 1186, 1201 (2009)). If an EIR “omits material necessary to informed decisionmaking,”
11 the “error is prejudicial” and “harmless error” analysis does not apply. *Sierra Club*, 6 Cal.5th at 515.

12 By contrast, courts review the record to determine whether it “contains substantial evidence to
13 support the County’s factual determinations” only when factual issues predominate. *Vineyard Area
14 Citizens*, 40 Cal.4th at 427, 435. “Substantial evidence” includes “facts, reasonable assumptions
15 predicated upon facts, and expert opinion supports by facts” but not “[a]rgument, speculation, [or]
16 unsubstantiated opinion or narrative.” CEQA Guidelines § 15384. Courts carefully “scrutinize the
17 record” and set project approvals aside if an agency decision is not grounded in substantial evidence.
18 *Laurel Heights*, 47 Cal.3d at 408.

19 ARGUMENT

20 I. The EIR Unlawfully Piecemeals the First Phase of Refinery Conversion

21 The description of the project is an “indispensable element” of an EIR.
22 *Stopthemillenniumhollywood.com v. City of Los Angeles*, 39 Cal.App.5th 1, 16 (2019) (“*Stop the
23 Millennium*”). Failure to provide a complete and accurate description of the project “impairs the
24 public’s right and ability to participate in the environmental review process.” *Washoe Meadows
25 Cmty. v. Dep’t of Parks & Recreation*, 17 Cal.App.5th 277, 288 (2017). This is because “[o]nly
26 through an accurate view of the project may the affected outsiders and the public decision-makers
27 balance the proposal’s benefit against its environmental costs, consider mitigation measures, assess
28 the advantage of terminating the proposal . . . [and] weigh other alternatives in the balance.” *Ctr. for*

1 *Sierra Nevada Conservation v. County of El Dorado*, 202 Cal.App.4th 1156, 1171 (2012) (quoting
2 *County of Inyo v. City of Los Angeles*, 71 Cal.App.3d 185, 192-193 (1977)). The EIR’s description of
3 the Rodeo Renewed Project falls well short of these mandates, in multiple respects.

4 In a particularly glaring omission, the EIR carved out the first phase of Refinery conversion
5 from the Project scope altogether and thereby evaded its environmental review. This first phase
6 included: converting and operating Unit 250 to process up to 12,000 bpd of soybean oil feedstock
7 into renewable fuel; modifying the Nustar rail terminal to allow it to receive renewable feedstocks
8 and pipe them to the Refinery; installing at least 2,300 feet of pipeline to transport soybean oil and
9 other renewable feedstocks from the rail terminal to the Refinery; and building new infrastructure to
10 support the transport and processing of renewable feedstocks at the Refinery. *See Factual*
11 *Background*, Section C, *supra*. These activities allowed Phillips to achieve the Rodeo Renewed
12 Project’s key objectives: to maximize renewable fuels processing at the Refinery and maintain pre-
13 Project throughput levels without crude oil. AR053730; AR053660; AR053741. But despite the
14 clear connection between this first conversion phase and the Rodeo Renewed Project, the County
15 disclaimed any obligation to review the actions together in the EIR.

16 Segmenting a closely related set of activities in this way is a clear violation of CEQA. CEQA
17 prohibits piecemealing a single project into distinct pieces, thereby “avoid[ing] the responsibility of
18 considering the environmental impacts of the project as a whole.” *Orinda Ass’n v. Bd. of*
19 *Supervisors*, 182 Cal.App.3d 1156, 1171 (1985). This prohibition ensures that “environmental
20 considerations do not become submerged by chopping a large project into many little ones – each
21 with a minimal potential impact on the environment – which cumulatively may have disastrous
22 consequences.” *Laurel Heights*, 47 Cal.3d at 396 (quoting *Bozung*, 13 Cal.3d at 283-84). Whether
23 an agency has engaged in piecemealing presents a question of law reviewed independently by the
24 court, without deference to the agency. *Tuolumne Cnty. Citizens for Responsible Growth, Inc. v. City*
25 *of Sonora*, 155 Cal.App.4th 1214, 1224-25 (2007). Because the County’s failure to disclose and
26 analyze the entire Refinery conversion project precluded informed decision-making, CEQA dictates
27 that the EIR be set aside and remanded for full review and disclosure of the Project and its
28

1 environmental impacts. *See Sierra Club*, 5 Cal.5th at 515 (errors of law that obfuscate public
2 understanding of project are per se prejudicial).

3 **A. The Unit 250 Renewable Diesel Project and the Rodeo Renewed Project must be**
4 **reviewed as a single project under CEQA.**

5 Under CEQA, the term “‘project’ means the whole of an action.” *POET, LLC v. State Air*
6 *Res. Bd.*, 12 Cal.App.5th 52, 73 (2017) (“*POET II*”) (quoting CEQA Guidelines § 15378(a)). This
7 “broad interpretation of ‘project’ . . . is designed to provide the fullest possible protection of the
8 environment within the reasonable scope of CEQA’s statutory language.” *Id.* If an activity is part of
9 the “whole of an action,” the refusal to disclose and evaluate it in the EIR constitutes illegal
10 piecemealing in violation of CEQA. *Id.* at 76.

11 Courts have developed a liberal test for evaluating when multiple “acts are part of the whole”:
12 Activities are part of the same project when they are “related to each other.” *Id.* at 74 (quoting
13 *Tuolumne*, 155 Cal. App. 4th at 1225); *see County of Ventura v. City of Moorpark*, 24 Cal.App.5th
14 377, 385 (2018) (same); *Plan for Arcadia, Inc. v. Arcadia City Council*, 42 Cal.App.3d 712, 726
15 (1974) (shopping center, parking lot, and adjacent road widening were “related to each other” and
16 thus “a single project”). “[T]here are different ways actions can be related” for purposes of this test.
17 *POET II*, 12 Cal.App.5th at 74. A sufficient relationship exists when activities are “among the
18 ‘various steps which taken together obtain an objective’” or when they are “part of a coordinated
19 endeavor.” *Tuolumne*, 155 Cal.App.4th at 1226 (citing *Ass’n for a Cleaner Env’t v. Yosemite Cmty.*
20 *Coll. Dist.*, 116 Cal.App.4th 629, 639 (2004)). It exists when one activity “legally compels or
21 practically presumes” another. *Banning Ranch Conservancy v. City of Newport Beach*, 211
22 Cal.App.4th 1209, 1223 (2012). And it exists when activities are “related in 1) time, 2) physical
23 location, and 3) the entity undertaking the action [sic].” *Tuolumne*, 155 Cal.App.4th at 1227.
24 Viewed through any of these lenses, the Unit 250 Renewable Diesel Project and the Rodeo Renewed
25 Project are closely related and must be analyzed as a single action.

26 Here, the objectives of the Unit 250 Renewable Diesel Project are not merely related to the
27 objectives of the Rodeo Renewed Project; they are the same. *See POET II*, 12 Cal.App.5th at 75
28 (when activities “share the same overall objective,” they “clearly are related to one another”). An

1 overarching objective of the Rodeo Renewed Project is to “[c]onvert the Rodeo Refinery to a
2 renewable transportation fuels production facility” by “[c]onvert[ing] existing equipment and
3 infrastructure to produce transportation fuels from non-hazardous renewable feedstocks.”
4 AR053730; *see* AR061364 (Project application). In similar language, the Unit 250 Renewable Diesel
5 Project scope sets forth its objectives to make “modifications to existing equipment” to allow Unit
6 250 to “produce renewable diesel” from “pretreated renewable feedstocks, such as vegetable oils.”
7 AR103087; *see also* AR103086 (new equipment at Nustar rail terminal will be dedicated to
8 transporting renewable feedstocks); AR103085 (stating that pipeline will “carry[] soybean oil and
9 other renewable feedstocks”). And both phases of the Refinery conversion aim to generate renewable
10 transportation fuels to “[p]rovide a mechanism for compliance with . . . the state LCFS.” AR053731
11 (Rodeo Renewed Project objectives); *see* AR026056 (LCFS pathway application for the Refinery
12 based on Unit 250 production); RJN, Cho Decl. at Ex. D (subsequent LCFS pathway application).

13 The record also shows that the Rodeo Renewed Project relies on the Unit 250 Renewable
14 Diesel Project to meet its overall objectives. *See Tuolumne*, 155 Cal.App.4th at 1226 (explaining that
15 “[o]ne way to evaluate which acts are part of a project is to examine how closely related the acts are
16 to the overall objective of the project”). Key objectives of the Rodeo Renewed Project are to
17 “maximize production of renewable fuels” at the Refinery and “maintain the facility’s current
18 capacity” of 120,000 bpd without processing crude oil. AR053730; AR053660. But for Unit 250’s
19 renewable diesel output and the installation of pipeline to access the new feedstocks, Phillips could
20 not meet these dual targets. *See San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus*, 27
21 Cal.App.4th 713, 732 (construction of sewer pipeline illegally piecemealed from housing project as
22 “the ‘total project’ includes both the housing and the sewer project necessary to serve it”). Indeed,
23 the EIR attributes nearly one-fifth of the post-Project Refinery’s total renewable fuels output to Unit
24 250, factoring Unit 250’s 12,000 bpd capacity into the Project’s 67,000 bpd of renewable fuels
25 capacity. AR053654; AR053659-60. Illustrating the centrality of throughput levels to the Project’s
26 purpose, the County rejected the environmentally superior “Reduced Project Alternative” because it
27 would have a capacity of only 102,000 bpd and thus fall short of the Project’s objectives. AR053660.
28 Because the Rodeo Renewed Project relies on the Unit 250 Renewable Diesel Project to meet its

1 objectives, and thus “practically presumes [its] completion,” the activities are one project. *Banning*
2 *Ranch*, 211 Cal.App.4th at 1223; *see Tuolumne*, 155 Cal.App.4th at 1231 (road realignment part of
3 home improvement center project where center “cannot be completed and opened legally without the
4 completion of the road realignment”); *Nelson v. County of Kern*, 190 Cal.App.4th 252, 272 (2010)
5 (EIR for reclamation plan should have included mining operations that necessitated it); CEQA
6 Guidelines § 15165 (“Where an individual project is a necessary precedent for action on a larger
7 project, or commits the lead agency to a larger project, with significant environmental effect, an EIR
8 must address itself to the scope of the larger project.”).

9 The Court of Appeal’s decision in *Santiago County Water District v. County of Orange*, 118
10 Cal.App.3d 818 (1981), is instructive. There, a proposed sand and gravel mining operation would
11 require installation of new water delivery facilities because existing infrastructure could not deliver
12 water in the amounts needed to satisfy the project’s objectives. *Id.* at 829. In holding that the EIR’s
13 project description fell short by failing to include the needed water delivery infrastructure, the court
14 explained that excluding these facilities frustrated the EIR’s “informational purpose” and meant that
15 “important ramifications of the proposed project remained hidden from view at the time the project
16 was being discussed and approved.” *Id.* at 830. Like the new water delivery facilities in *Santiago*
17 *County*, the Rodeo Renewed Project relies on Unit 250’s renewable fuels output to meet its
18 objectives; severing it from the Project scope similarly renders the EIR legally defective.

19 Even if the Project did not strictly depend on the Unit 250 Renewable Diesel Project to meet
20 its objectives, it is still clear that Phillips closely coordinated the two phases, making them a single
21 project for purposes of CEQA. *See Tuolumne*, 155 Cal.App.4th at 1228 (considering “whether the
22 act is part of a coordinated endeavor”). This was precisely the case in *Orinda*. The proponent in
23 *Orinda* proposed to construct a mixed-use development, and then separately applied for and received
24 a demolition permit to remove historical buildings in the project site while CEQA review was
25 pending. 182 Cal.App.3d at 1160, 1171. The Court of Appeal held that the demolition was
26 improperly piecemealed from the development project because the demolition was clearly not “an
27 end in itself, but [] part of [the] larger proposed Project.” *Id.* at 1172. Likewise here, the Unit 250
28 Renewable Diesel Project was a “phase of the overall Project” to convert the Rodeo Refinery to

1 produce renewable fuels and therefore “subject to the same CEQA review as the rest of the Project.”
2 *Id.* at 117; *see also Whitman v. Bd. of Supervisors*, 88 Cal.App.3d 397, 415 (1979) (construction of
3 pipeline improperly severed from EIR for proposed oil and gas well where pipeline was “part of [the
4 applicant’s] overall plan for the project”). Indeed, Phillips itself referred to the Unit 250 Renewable
5 Diesel Project phase as a “dry run” for the Rodeo Renewed Project. AR001757.

6 Furthermore, three key factors courts use to identify a “sufficiently close” relationship
7 between project components – time, physical location, and project proponent – all point here to the
8 need for “a single review.” *Tuolumne*, 155 Cal.App.4th at 1226-27.

9 First, as to timing, the Unit 250 Renewable Diesel Project and Rodeo Renewed Project were
10 initiated concurrently, and (except for BAAQMD permitting) the Unit 250 phase was completed
11 while the Rodeo Renewed Project approvals were still pending. In June 2020, Phillips began
12 converting Unit 250 and, together with Shore Terminals, submitted three building permit applications
13 to allow the Nustar rail terminal to receive renewable feedstocks and construct a pipeline and related
14 infrastructure to transport the feedstocks to the Refinery. AR000932; AR103083-86. Just two
15 months later, Phillips submitted its Rodeo Renewed Project application to the County. AR061344.
16 And just one month after that, the County issued the Nustar pipeline building permits. AR103083-
17 85. While the Rodeo Renewed Project application and its environmental review were pending,
18 Phillips completed the Unit 250 Renewable Diesel Project construction activities, began piping
19 renewable feedstock from Nustar to the Refinery and using Unit 250 to produce renewable diesel,
20 and applied to the Air Resources Board for pathways to obtain LCFS credits based on Unit 250’s
21 renewable fuel output.⁷ AR026056 (noting Unit 250 began producing renewable diesel in April
22 2021); AR053631 (Rodeo Renewed Project EIR circulated October 2021); AR026054 (December
23 2021 LCFS Fuel Pathway Report based on Unit 250 production). Just a month before the County
24 certified the Final EIR and approved the Rodeo Renewed Project, BAAQMD issued a Notice of
25 Violation for Phillips’ unpermitted construction and operation of Unit 250, necessitating Phillips’
26

27 ⁷ Although Unit 250 did not begin processing renewable feedstocks until April 2021, the County in
28 its August 2020 Rodeo Renewed Project Application described Unit 250 as already capable of
“produc[ing] low sulfur diesel from renewable feedstocks.” AR061361.

1 submittal of permit applications. *See* AR000004 (Rodeo Renewed Project land use permit approved
2 May 3, 2022); RJN, Cho Decl. at Ex. B (March 30, 2022 Notice of Violation).

3 Second, the projects share the same physical location. Unit 250 is located *within* the Rodeo
4 Refinery, where the “main components of the [Rodeo Renewed] Project would take place.”
5 AR053709; AR053723 (listing Unit 250 as an “existing major process unit” in the Rodeo Refinery).
6 Likewise, the new pipeline supplying Unit 250 with renewable feedstocks directly connects to the
7 Refinery and traverses Phillips’ property. AR103084. Construction activities related to the pipeline
8 installation took place within the Refinery (AR103088), on Phillips’ property to the north (*id.*), and at
9 the adjacent Nustar rail terminal (AR105053; AR103085). *See Tuolumne*, 155 Cal.App.4th at 1227
10 (finding that activities were related in location because they were “next to one another”).

11 Third, the projects share the same proponent: Phillips. *See* AR053729 (describing Phillips as
12 Rodeo Renewed Project proponent); AR002302 (Phillips undertook the Unit 250 conversion);
13 AR103084-87 (showing Phillips as applicant for two of the three building permits, and as entity that
14 would “own and operate” the 2,300-foot pipeline and support facilities). The combination of these
15 “various connections . . . compel[s]” the conclusion that the two facility conversion phases “are
16 related acts that constitute a CEQA project.” *Tuolumne*, 155 Cal. App.4th at 1227.

17 **B. The County’s efforts to justify severing the Unit 250 Renewable Diesel Project fail.**

18 In response to comments on the Draft EIR and Petitioners’ administrative appeal, the County
19 offered a slew of rationalizations for segmenting the Unit 250 Renewable Diesel Project from the
20 Rodeo Renewed Project. None is availing.

21 First, the County asserted that the Unit 250 conversion was a wholly “independent project”
22 that was not “part of or operationally related to the [Rodeo Renewed] Project.” AR000931-32; *see*
23 *also* AR002302. The record shows otherwise. The Final EIR concedes that “from time to time,
24 treated renewable feedstocks from the proposed [pre-treatment unit] may be used as an alternative
25 source of feedstock for Unit 250.” AR002303. That is, renewable feedstock treated by new Project
26 facilities will be fed to Unit 250 for further processing. AR053734. And renewable naphtha
27 produced by Unit 250 as a co-product of its renewable diesel production will be fed to additional
28 Refinery units converted under the Rodeo Renewed Project for further processing. *Id.*; AR053737.

1 The Project Flow Diagram for the Rodeo Renewed Project clearly illustrates this operational
2 entanglement of the projects.⁸ AR053734.

3 In any event, case law forecloses Phillips’ position that just because the Unit 250 Renewable
4 Diesel Project could *theoretically* operate without the remaining facility conversion, it must be a
5 standalone project. See AR002302 (asserting that Unit 250 “will continue” to process renewable
6 feedstocks “whether the Rodeo Renewed Project becomes operational or not”). In *Tuolumne*, the
7 project proponent argued that a road realignment was properly excluded from a home improvement
8 center project’s EIR because the activities could be “implemented independently of each other.” 155
9 Cal.App.4th at 1229. The court disagreed, clarifying that “theoretical independence” does not defeat
10 a piecemealing claim; what matters is “what is actually happening.” *Id.*; *see id.* at 1228 (rejecting
11 “position that a CEQA project excludes an activity *that actually will be undertaken* if the need for
12 that activity was not fully attributable to the project” as a “far too narrow standard”); *Banning Ranch*,
13 211 Cal.App.4th at 1223 n.7 (when “implementation would be sufficiently interdependent in practice,
14 even if theoretically separable . . . a piecemealing challenge would be well founded”). As in
15 *Tuolumne*, any theoretical “independence was brought to an end” (155 Cal.App.4th at 1231) when the
16 Rodeo Renewed Project factored Unit 250’s 12,000 bpd renewable diesel output into its throughput
17 levels. AR053654; AR053731.⁹

18 Next, the County asserted that converting Unit 250 was not a new activity at all, but rather a
19 continuation of business as usual “consistent with typical operational, maintenance, and turnaround
20 activities for equipment used at the Rodeo Refinery.” AR002303; *see* AR000931 (describing Unit

22 ⁸ Phillips’ 2021 LCFS pathways application also confirms that the converted Unit 250 already
23 integrates with other Refinery processes. AR026060 (chart showing that renewable naphtha
24 produced by Unit 250 as a co-product of its processing of soybean and canola oil into renewable
25 diesel is fed to the Refinery’s gasoline complex for further processing); AR026067 (renewable
26 naphtha from Unit 250 “eventually is part of the blended gasoline produced by the refinery”).

27 ⁹ The County also attempted to distance the Unit 250 conversion by noting that the modified unit
28 could process either pretreated renewable feedstock or petroleum. AR000932; AR002302. But the
Project will terminate Unit 250’s operational flexibility by ending the importation of crude oil.
AR053653; *see* AR061361 (explaining that Unit 250 “can produce low sulfur diesel from renewable
feedstocks or feed from the Crude Units”). The EIR thus makes clear that once the Project is
operational, Unit 250 will process *only* pretreated renewable feedstock. AR053731. Indeed, every
alternative considered in the EIR assumes Unit 250 will process solely renewables. AR053653-61.

1 250 as an “existing piece of equipment” that was merely “updated”). The record of major alterations
2 to Unit 250, together with pipeline installations to supply it with feedstocks, show otherwise.
3 AR103087 (Unit 250 conversion included construction and replacement of pumps, construction of a
4 new product air cooler, and installation of pipeline within Refinery to route feedstock and processed
5 fuels); AR103083-88 (installation of 2,300 feet of Phillips-owned pipeline to Nustar rail terminal).

6 The County also attempted to excuse the piecemealing of the Unit 250 Renewable Diesel
7 Project by asserting that Unit 250 could process renewable fuels under its existing BAAQMD air
8 permit. AR002303-04. This claim proved untrue; shortly before the County approved the Rodeo
9 Renewed Project, BAAQMD cited Phillips for exceeding the scope of its existing permit by
10 converting and operating Unit 250 to process renewable feedstocks. RJN, Cho. Decl. at Exs. A-B.
11 Only then did Phillips apply to BAAQMD for a Permit to Operate the altered Unit 250. *Id* at Ex. C.

12 Finally, the County attempted to excuse its exclusion of the Unit 250 Renewable Diesel
13 Project by depicting its environmental impacts as negligible. AR000933. But the County admittedly
14 considered at most the “difference in air emissions between Unit 250’s processing of petroleum-
15 based feedstocks and renewable feedstocks.” *Id*. It ignored every other impact of the Unit 250
16 Renewable Diesel Project beyond this change in emissions, including construction impacts from Unit
17 250’s conversion, operational impacts from processing of renewables beyond those to air quality, and
18 all manner of impacts from installing and operating the 2,300-foot pipeline.¹⁰ At the end of the day,
19 neither the County nor any agency has done the requisite environmental review of the Unit 250
20 Renewable Diesel Project in its entirety. The County’s attempt to evade disclosure by downplaying
21 the impacts of the severed activities is exactly what the piecemealing doctrine guards against:
22 “chopping a large project into many little ones – each with a minimal potential impact on the
23 environment.” *Laurel Heights*, 47 Cal.3d at 390 (quoting *Bozung*, 13 Cal.3d at 263-64).

24
25
26 ¹⁰ Even the County’s conclusion that air quality impacts from Unit 250’s processing of renewable
27 feedstocks would be comparable to its processing of crude is questionable: BAAQMD’s air quality
28 analysis for the converted Unit 250 (conducted by the District after finding that Phillips illegally
converted the equipment) identified an increase of eight lbs/day in fugitive emissions from the
converted Unit 250. RJN, Cho Decl. at Ex. C.

1 Even if the County’s exclusion of the Unit 250 Renewable Diesel Project did not amount to
2 piecemealing, CEQA would still require that the EIR consider the cumulative contributions of that
3 phase to the Project’s environmental impacts. *See CBE v. Richmond*, 184 Cal.App.4th at 99 (noting
4 in rejecting piecemealing claim that, although pipeline was not the same project as refinery upgrade,
5 “pipeline’s cumulative contribution to the Project’s environmental impacts was included in the
6 EIR”); CEQA Guidelines § 15165 (“Where one project is one of several similar projects of a public
7 agency, but is not deemed a part of a larger undertaking or a larger project, the agency . . . shall in
8 either case comment upon the cumulative effect.”). But the EIR never mentioned the Unit 250
9 Renewable Diesel Project in its cumulative impacts analysis. AR054245-55. This omission alone
10 renders the EIR legally defective as it means that the “severity and significance” of the Rodeo
11 Renewed Project’s cumulative impacts are not “reflected adequately” in the EIR. *Golden Door*
12 *Props., LLC v. County of San Diego*, 50 Cal.App.5th 467, 527 (citation omitted).

13 **II. The EIR’s Project Description Violates CEQA Because It Fails to Disclose the**
14 **Project’s Feedstock Mix and Disclaims the Project’s Heavy Reliance on Soybean Oil**

15 The EIR’s project description falls short in a second crucial respect: It fails to disclose the
16 Project’s feedstock mix, thereby precluding an adequate analysis of associated environmental
17 impacts. With a capacity of 80,000 bpd, the Project would be the world’s largest renewable fuel
18 producer, consuming an astonishing 29.2 million barrels of renewable feedstocks each year.
19 AR013435; AR022610; AR022617. Yet the EIR neither specifies which feedstocks the Project will
20 use nor provides any estimate of their relative amounts. Instead, the EIR unhelpfully states that “the
21 anticipated renewable feedstocks processed at the facility would include, but not [be] limited to,”
22 used cooking oil, fats, oils, and grease, tallow (animal fat), inedible corn oil, canola oil, soybean oil,
23 “[o]ther vegetable-based oils, and/or [e]merging and other next-generation feedstocks.” AR053733.
24 Beyond describing an unbounded range of possible feedstocks, the EIR implies that the Project is
25 equally likely to rely on *any* of them, without disclosing that some feedstocks (like soybean oil) are
26 far more likely to be used, and in significantly greater quantities, than others. *See id.*; AR053735
27 (“[I]t is not feasible to predict with any degree of certainty the source locations and the specific types
28 of renewable feedstocks or combinations of feedstocks that would be processed . . .”).

1 The EIR’s failure to provide a complete, accurate, and stable description of the Project’s
2 feedstock mix – a core component of the Project’s operations and a primary driver of its
3 environmental impacts – is clear legal error. *See* CEQA Guidelines § 15124(c) (project description
4 must include a “general description of the project’s technical, economic, and environmental
5 characteristics”); *Citizens for a Sustainable Treasure Island v. City and County of San Francisco*, 227
6 Cal.App.4th 1036, 1053-54 & n. 7 (2014) (confirming that EIR’s project description must identify
7 features necessary to assess environmental impacts); *Stop the Millennium*, 39 Cal.App.5th at 15
8 (whether project description complies with CEQA’s requirements is reviewed *de novo*). There is no
9 dispute that accurately assessing the Project’s potential environmental impacts depends on knowing
10 the mix of feedstocks. *See, e.g.*, AR019520-21 (soy- and other crop-based biofuels particularly likely
11 to induce deforestation and conversion of lands to agricultural production); AR025354 (“Emissions
12 from HEFA [processing] . . . vary considerably depending on the feedstock.”); AR000471
13 (“Differences in project processing impacts . . . are caused by differences in the chemistries and
14 processing characteristics among feeds[tocks]”); AR002625 (noting that certain feedstocks, like
15 brown grease, are particularly “malodorous”). Without “an accurate and complete” description of
16 this key element of the Project, there can be no “intelligent evaluation of the potential environmental
17 impacts of the agency’s action” nor consideration of necessary and appropriate mitigation for those
18 impacts. *Ctr. for Sierra Nevada Conservation*, 202 Cal.App.4th at 1171.

19 Given the integral connection between feedstock inputs and Project impacts, Petitioners asked
20 that the County “use available information” to provide a reasonable estimate of the Project’s
21 anticipated feedstock mix, even if it was not possible to “specify an exact quantity of each feedstock
22 that will be used into the future.” AR000262. For instance, Petitioners submitted evidence that a
23 large proportion of the Project’s feedstocks would likely be soybean oil. AR000279 (citing recent
24 evidence of high soy demand in biodiesel production – a similar technique to the Project’s HEFA
25 process – including data from the U.S. Energy Information Administration showing that nearly 60
26 percent of biodiesel produced from 2018 to 2020 was from soy, compared to just three percent from
27 tallow). Petitioners also submitted recent data showing that used waste oils “have come nowhere
28 near meeting current biodiesel feedstock demand,” rebutting the EIR’s claim that the Project could

1 use predominantly waste oils rather than crop-based feedstocks. AR010445; AR000733-34. The
2 County ignored this and other evidence that could have facilitated an estimation of the Project’s
3 likely feedstock mix.

4 Though it does not disclose them, the EIR *does* appear to make certain assumptions about the
5 Project’s anticipated feedstock mix. In particular, when pressed on the Project’s hydrogen usage, the
6 County in the Final EIR insisted that the existing hydrogen production capacity of the Refinery’s
7 Hydrogen Plant and the third-party Air Liquide facility (which also supplies the Refinery with
8 hydrogen) would be sufficient to convert 80,000 bpd of renewable feedstocks into 67,000 bpd of
9 fuels. AR002291. To arrive at this conclusion, the County estimated that the “hydrogen usage per
10 barrel [of refined fuel] will be approximately 2,100 [standard cubic feet],” even though it
11 acknowledged that “hydrogen demand . . . *depend[s] on the renewable feed.*” *Id.* (emphasis added)
12 (explaining that hydrogen demand “depends largely on the number of unsaturated bonds in the
13 molecule” of the particular feedstock). In other words, the County appeared to use a specific
14 feedstock mix to estimate the Project’s hydrogen needs. But whatever assumptions about the
15 Project’s feedstock mix the County used to determine its hydrogen usage were not stated in the EIR’s
16 project description or its discussion of ILUC impacts.

17 Compounding these problems, when pressed on the proportion of agricultural feedstocks the
18 Project would use, the County disclaimed that the Project would use meaningful amounts of soybean
19 oil (AR002279), a renewable fuel feedstock with one of the highest ILUC impacts.¹¹ *See, e.g.,*
20 AR023910 (land conversion, carbon emissions, deforestation, and biodiversity loss concerns “are
21 particularly strong in the case of . . . soy oil”). In so doing, the County rendered its feedstock
22 description not only incomplete but also inaccurate: The administrative record is replete with
23 evidence that the Project would use substantial and quantifiable amounts of soybean oil based on Unit
24

25
26 ¹¹ Although the EIR cited to April 2021 Air Resources Board data allegedly showing that “the
27 majority of feedstocks used for renewable fuels in California beginning in at least 2013 have been
28 waste-oil feedstocks – used cooking oil (UCO) and tallow” (AR002279; AR015056), more recent
Board data show that, as the biofuels market has grown, demand for soy oil as a feedstock has
steadily increased, in contrast to tallow. AR050291 (Board feedstock data from April 2022).

1 250 operations alone, plus the tens of thousands of barrels per day of additional soybean oil piped to
2 the Refinery from the Nustar rail terminal. *See, e.g.*, AR103083-86 (Nustar Selby Soybean Project
3 will transport soybean oil to the Refinery for processing); AR103096 (“Nustar will unload around
4 45,000 [barrels] per day of soybean oil.”)¹²; AR000931-32 (Unit 250 enables Phillips to process
5 soybean oil); AR026060 (“Soybean oil, sourced from the U.S. Midwest, is railed to the adjacent
6 NuStar Selby facility and then moved by pipeline to the Rodeo refinery.”).

7 Indeed, Phillips submitted successive applications to the Air Resources Board for LCFS credit
8 pathways for the Refinery’s processing of soybean oil, indicating that Phillips knew the Refinery
9 would continue processing large amounts of soy into the future. These included a December 2021
10 application by Phillips for three feedstock pathways for the Refinery’s renewable diesel production –
11 two pathways for soybean oil (including one for soybean oil “received via rail from the U.S.
12 Midwest” (AR026056)) and one for canola oil. AR026054-72. And in a subsequent application
13 posted for comment in December 2022, Phillips requested approval of these same pathways for the
14 co-production of renewable gasoline. RJN, Cho Decl. at Ex. D. Yet the County failed to include any
15 of this important information about the Project’s intended usage of soybean and canola oils, or the
16 geographic source of the oils, in the project description. AR053731-32 (mentioning Unit 250’s
17 renewable diesel capacity, but not its use of soybean oil feedstocks).

18 Where a refinery project proponent refuses to disclose the post-project refinery’s likely
19 feedstock mix in the project description, “the EIR fails as an informational document.” *CBE v.*
20 *Richmond*, 184 Cal.App.4th at 89. In *CBE v. Richmond*, the EIR for a refinery project stated only
21 that the project aimed to improve the refinery’s ability to process a more varied mix of crude oil
22 types, without disclosing that the project would enable the refinery to process lower quality, heavier
23 crude oil feedstocks. *Id.* at 80-81 (crude oil was “the basic feedstock for the Refinery”). Contrary to
24 the EIR’s “steadfast[] den[ial]” that the project would increase the refinery’s ability to process
25

26 ¹² The Final EIR suggested that soybean oil transported to the Refinery via pipeline from the Nustar
27 rail terminal would only serve Unit 250. AR002304. But record evidence suggests otherwise. The
28 45,000 bpd capacity of this pipeline is far beyond Unit 250’s 12,000 bpd capacity. *See* AR103096.
And permit submittals specify that the pipeline is intended to carry renewable feedstock to “existing
tankage” at the Refinery in addition to supplying Unit 250. AR103087; *see* AR103096 (same).

1 heavier crude, the project proponent’s filings with the Security and Exchange Commission identified
2 that the project would enable the refinery to process heavier crude. *Id.* at 82-83. Phillips’ LCFS
3 applications similarly reveal that the Refinery has concrete plans to process a significant and
4 quantifiable amount of soybean oil, despite the EIR’s contention that the Project’s feedstock mix is
5 unknown. As in *CBE v. Richmond*, the EIR’s failure to disclose the Project’s likely feedstock mix
6 obscures the Project’s potentially “serious environmental consequences.” *Id.* at 82.

7 The County also deflected Petitioners’ repeated requests that it provide a reasonable and
8 accurate estimate of the Project’s likely feedstock mix by asserting that “feedstock selection will be
9 market-driven.” AR002279; *see, e.g.*, AR010427-28 (public comments requesting estimation of
10 feedstock mix the Project will use); AR001758 (public comments at Project approval hearing
11 requesting same). But, as the court reasoned in *Stop the Millennium*, “uncertainty about market
12 conditions . . . is an insufficient ground for [an] ambiguous and blurred Project Description.” 39
13 Cal.App.5th at 14; *see id.* at 19 (identifying no “practical impediments as to why Millennium could
14 not have provided an accurate, stable, and finite description of what it intended to build”). The
15 County had ample information from which to estimate feedstock mix – the Refinery’s existing piping
16 and processing of tens of thousands of barrels per day of soybean oil among them. It simply declined
17 to do so. The EIR’s refusal to make a good faith effort to quantify the Project’s potential feedstock
18 types precludes “a full understanding of the [Project’s] environmental consequences,” and the EIR
19 thus “failed its informational purpose under CEQA.” *CBE v. Richmond*, 184 Cal.App.4th at 80, 89.

20 **III. The EIR Failed to Analyze the Project’s Foreseeable ILUC Impacts, Both on Their**
21 **Own and Cumulatively with Similar Renewable Fuels Projects**

22 CEQA requires that an EIR analyze all “reasonably foreseeable indirect physical changes in
23 the environment which may be caused by the project.” CEQA Guidelines § 15064(d)(2). An indirect
24 physical change – defined as a project impact that occurs “later in time or farther removed in distance
25 than a direct effect” (*id.* § 15358(a)(2)) – *must* be considered if it is “reasonably foreseeable.” *Id.*
26 § 15064(d)(3). Reasonably foreseeable indirect impacts include land use changes well beyond the
27 project site, if the project “is capable, at least in theory, of causing” them. *Union of Med. Marijuana*
28 *Patients*, 7 Cal.5th at 1197 (citing CEQA Guidelines § 15064(d)(3)); *see also Cnty. Sanitation Dist.*

1 *No. 2 v. County of Kern*, 127 Cal.App.4th 1544, 1587, 1591 (2005) (considering reasonably
2 foreseeable indirect environmental impacts beyond project site); CEQA Guidelines § 15358(a)(2)
3 (reasonably foreseeable indirect impacts may include “effects related to induced changes in the
4 pattern of land use . . . and related effects on . . . natural systems, including ecosystems”).

5 Evaluating a project’s impacts necessarily requires forecasting. The agency “must use its best
6 efforts to find out and disclose all that it reasonably can” (CEQA Guidelines § 15144), and it must
7 conduct a “thorough investigation” before concluding that an impact is too speculative to evaluate
8 (*id.* § 15145). See *Napa Citizens for Honest Gov. v. Napa Cnty. Bd. of Supervisors*, 91 Cal.App.4th
9 342, 373 (2001) (EIR could not simply label as “speculative” the possibility that water supply for
10 proposed project was insufficient; rather, it must analyze “environmental consequences of tapping
11 [other] resources”); *L.A. Unified Sch. Dist. v. City of Los Angeles*, 58 Cal.App.4th 1019, 1027-28
12 (1997) (rejecting claim that noise impacts would be speculative where agency’s plans to construct a
13 sound barrier indicated that “sufficiently reliable data was available to permit [] meaningful”
14 disclosure). Even if a sophisticated technical analysis of a particular impact is not feasible, courts
15 require “some reasonable, albeit less exacting, analysis” of the impact. *Citizens to Pres. the Ojai v.*
16 *County of Ventura*, 176 Cal.App.3d 421, 432 (1985) (“*Ojai*”). Accordingly, the existence of
17 uncertainty does not erase the County’s obligation to meaningfully analyze indirect impacts.

18 Here, despite the substantial evidence in the record that the Project would have potentially
19 significant indirect impacts on forest lands, biological resources, and climate, the County claimed that
20 all these ILUC impacts were “too speculative for evaluation.” AR002281. Exacerbating this failure,
21 the County refused to analyze the Project’s cumulative contribution to land use changes when
22 considered together with the dozens of other planned or operating renewable fuels projects in the
23 United States, all of which demand similar agricultural feedstocks. This was so despite record
24 evidence of methods that would have reliably estimated this and other renewable fuels projects’
25 reasonably foreseeable ILUC impacts. The EIR’s wholesale refusal to evaluate ILUC impacts
26 magnified its failures as an informational document and further prevented informed decision-making,
27 in violation of CEQA. See *Sierra Club*, 6 Cal.5th at 515 (omission from EIR of “material necessary
28 to informed decisionmaking” is per se “prejudicial”); *Berkeley Keep Jets Over the Bay Comm. v. Bd.*

1 of *Port Comm'rs*, 91 Cal.App.4th 1344, 1370-71 (2001) (“*Berkeley*”) (EIR’s omission of
2 “information of vital interest to decisionmakers” “goes beyond a disagreement of qualified experts”).

3 **A. Large-scale production of fuels from agricultural feedstocks foreseeably causes**
4 **significant climate and non-climate land use impacts.**

5 Substantial evidence in the record establishes that increased demand for renewable fuel
6 feedstocks causes significant ILUC impacts. *See, e.g.*, AR023905 (expanding production of biofuel
7 “can be expected to lead to land use changes including deforestation”). As described above, ILUC
8 impacts include significant adverse GHG and non-climate environmental effects. *See* Factual
9 Background, Section D, *supra*. Increased consumption of oil crops can lead to more land clearing,
10 resulting in destruction of carbon sinks. AR059292 (“Consuming millions of metric tons of
11 additional vegetable oil could cause tens of thousands of hectares of deforestation.”); AR019315
12 (land “conversions release carbon sequestered in soils and vegetation”). Non-climate impacts of land
13 use changes include loss of biodiversity, disruption of migratory routes caused by clearing land, harm
14 to species from increased pesticide and nutrient use, soil erosion, water quality degradation, and other
15 ecological damage. *See* AR021903; AR019550; AR019521. The impacts are generally considered
16 indirect because “even if the specific plantations supplying biofuel facilities have not been expanded
17 at the expense of forests or grasslands, somewhere in the system such expansion is inevitable” unless
18 the demand for certain crop-based feedstocks is reduced or eliminated. AR023910. The extent of a
19 facility’s ILUC impacts depends on the type and amount of feedstocks it processes, as certain
20 feedstocks (like soybean oil) have a greater ILUC impact. AR023911.

21 Although ILUC impacts may manifest in different ways, they all stem from the land use
22 change, including deforestation, that predictably results from increasing demand for renewable
23 feedstocks. *See* AR019521. Under CEQA, agencies must analyze a project’s likelihood to “[r]esult
24 in the loss of forest land or conversion of forest land to non-forest use[.]” CEQA Guidelines app. G,
25 § II(d) (Agriculture and Forestry Resources). They also must analyze whether it is reasonably
26 foreseeable that the project would indirectly “[g]enerate [GHG] emissions . . . that may have a
27 significant impact on the environment,” among other indirect environmental impacts caused by land
28 use change. *Id.* § VIII(a) (Greenhouse Gases Emissions).

1 The Air Resources Board emphasized renewable fuels’ significant ILUC impacts in the
2 Environmental Assessment for its 2018 Amendments to the LCFS. The LCFS program calls for a
3 reduction in the carbon intensity of transportation fuels sold for use in California. AR019437. A
4 fuel’s carbon intensity score reflects its lifecycle carbon emissions, including emissions from its
5 production, distribution, and consumption. *Id.* In amending the LCFS in 2018 to increase carbon
6 intensity reduction targets, the Board recognized that the new carbon intensity scores were a double-
7 edged sword for ILUC impacts. AR019439; AR019442. On the one hand, fuels derived from crops
8 that displace sensitive lands (such as forests) would receive a higher revised carbon intensity score
9 and thus have a lower value in the LCFS credit market, potentially reducing their ILUC impacts.
10 AR019521. On the other hand, the LCFS amendments could drive land use change by “increas[ing]
11 demand for and cultivation of certain fuel-based agricultural feedstocks that could displace food-
12 based production on agricultural land currently used for row crops, orchards, and grazing.”
13 AR019493. On balance, the Environmental Assessment identified a range of “potentially significant”
14 adverse ILUC impacts stemming from these demand pressures, including to agricultural and forest
15 resources, biological species and their habitats, soil and geologic resources, and water quality.
16 AR019494; AR019521-22; AR019531-32; AR019546-47.

17 Such adverse ILUC impacts “could be reduced to a less-than-significant level by land use
18 and/or permitting agency conditions of approval” and by “mitigation measures prescribed by local,
19 State, federal, or other land use or permitting agencies . . . with approval authority over the particular
20 development projects.” AR019494; *see also, e.g.*, AR019522. But because the LCFS is a “market-
21 driven” program that does not confer such land use or permitting authority on the Air Resources
22 Board, the Board concluded that the adverse ILUC impacts would be “unavoidable.” AR019493-94;
23 *see also* AR019521-22; AR019531-32; AR019546-47.¹³

24
25 _____
26 ¹³ Although the Environmental Assessment for the 2018 LCFS Amendments concluded that the
27 amendments *overall* would have a beneficial indirect impact on *GHG* emissions (AR019535), this
28 finding does not extend to individual renewable fuels projects. Nor do LCFS credits that an
individual refinery may obtain by generating lower-carbon fuels reflect the significance of its indirect
GHG impacts under CEQA. *See* AR019449. As the Board made clear, the lead agency must
evaluate those impacts as part of project-level review. AR019445; *see* CEQA Guidelines § 15064.4.

1 **B. The EIR’s claims that the Project’s ILUC impacts are too “speculative” to analyze**
2 **are contrary to the facts and the law.**

3 Despite the foregoing evidence, the County disclaimed any obligation to evaluate the
4 Project’s ILUC impacts on the grounds that the impacts are “speculative and unable to be quantified.”
5 AR002275. In addition to arguing that analyzing ILUC impacts would require knowing the Project’s
6 feedstock mix (AR002286), the County claimed that the Environmental Assessment for the 2018
7 LCFS Amendments shows these impacts are too uncertain to evaluate (AR002280-81; AR002283),
8 and that there are too many uncertain “inflection points” between the Project and its ultimate ILUC
9 impacts (AR002285). It then concluded that these uncertainties mean that “it is unknowable whether
10 the Project’s feedstock demands will have an adverse environmental impact at all.” AR002275. The
11 County’s wholesale refusal to study this issue is a clear violation of CEQA. *See WildEarth*
12 *Guardians v. Zinke*, 368 F.Supp.3d 41, 75 (D.D.C. 2019) (Agency is “not entitled to simply throw up
13 its hands and ascribe any effort at quantification to ‘a crystal ball inquiry.’”) (quoting *Scientists’ Inst.*
14 *for Pub. Info., Inc. v. Atomic Energy Comm’n*, 481 F.2d 1079, 1092 (D.C. Cir. 1973)).¹⁴

15 Substantial evidence in the record shows that the County, like the Air Resources Board, could
16 have reached a significance determination about the Project’s reasonably foreseeable ILUC impacts,
17 despite uncertainty about their precise magnitude. After acknowledging some uncertainty
18 (AR019485; AR019494), the Board determined that the land use change caused by the LCFS
19 amendments would result in potentially significant impacts because the amendments could, like this
20 Project, “lead to an increase in the production of certain agricultural feedstocks to produce low-
21 carbon biofuels.” AR019494; *see also, e.g.*, AR019521-22. Notably, the Board did not find that
22 these impacts were too speculative to reach a significance determination. *See CEQA Guidelines*
23 § 15145 (“If, after thorough investigation, a lead agency finds that a particular impact is too
24 speculative for evaluation, the agency should note its conclusion and terminate discussion of the
25

26 ¹⁴ California courts have consistently found that National Environmental Policy Act (“NEPA”) cases
27 provide persuasive authority for interpreting parallel provisions of CEQA. *Wildlife Alive v.*
28 *Chickering*, 18 Cal.3d 190, 201 (1976). NEPA’s definition of “indirect impacts” is virtually identical
to CEQA’s: Under NEPA, indirect impacts are “caused by the action and are later in time or farther
removed in distance, but are still reasonably foreseeable.” 40 C.F.R. § 1508.8(b).

1 impact.”). To the contrary, the Board stated throughout the Environmental Assessment for the LCFS
2 amendments that its analysis did *not* engage in speculation. *See, e.g.*, AR019445 (addressing
3 environmental impacts only “to the extent they are reasonably foreseeable and do not require
4 speculation”). As the Board suggested, environmental analysis for any specific renewable fuels
5 project should be more detailed, not less, than for the LCFS program broadly. *See id.* (recognizing
6 that development projects undertaken in response to LCFS program “would undergo required project
7 level environmental review”).

8 Indeed, evidence in the record shows that the County could have used well-established
9 models to estimate the Project’s ILUC impacts. The Board has repeatedly performed such an
10 analysis for the LCFS and its amendments, starting in 2009 when “the tools for estimating land use
11 change were few and relatively new.” AR019315 (2015 LCFS Staff Report App. I: Detailed
12 Analysis for Indirect Land Use Change). Since then, the “number of tools and analyses available has
13 grown considerably.” AR023955. In refusing to apply an analysis in the EIR similar to the Board’s,
14 the County asserted that using “[a]n equivalent type of investigation” would not be “consistent with
15 the CEQA Guidelines’ specification that EIR adequacy is tethered to the scale of the project.”
16 AR002283. But it made no effort to establish why this Project – the largest renewable fuels facility
17 in the world (AR013435; AR022610; AR022617) – is any less susceptible to a determination of
18 reasonably foreseeable ILUC impacts than the LCFS amendments.

19 The County also asserted that that it was not “reasonably feasible” for the County to
20 “construct models of regional, national, or global feedstock, land, and food markets.”¹⁵ AR002282.
21 But estimating the Project’s reasonably foreseeable ILUC impacts would not require building a
22 model from scratch. Phillips *itself* has relied on existing calculators that estimate the GHG emissions
23 attributed to a particular renewable fuel’s ILUC impacts. *See* AR026056 (LCFS Fuel Pathway
24 Report, Renewable Diesel, prepared for the Rodeo Refinery); RJN, Cho Decl. at Ex. D.

25 Even if the County preferred not to replicate the Board’s land use change model, it could have
26

27 ¹⁵ Relatedly, the County claims that the ratio of the Project’s feedstock demand to the total global
28 feedstock supplies makes the Project’s ILUC impacts impossible to estimate. *See* AR002285. But
the County does not explain why this ratio would inhibit forecasting impacts.

1 relied on the Board’s analysis to provide some reasonable estimate of the Project’s likely ILUC
2 impacts. *See Ojai*, 176 Cal.App.3d at 432 (even if a sophisticated technical analysis of an impact is
3 not possible, courts require “some reasonable, albeit less exacting, analysis” of the impact). By way
4 of example, Petitioners demonstrated that such an estimate is feasible by extrapolating from the
5 Board’s 2015 analysis of the LCFS program’s ILUC impacts. AR000284. The Board analyzed a
6 hypothetical “shock” scenario in which an additional 0.81 billion gallons per year of soy biodiesel
7 were produced annually, resulting in over two million being acres converted to cropland. AR019322-
8 23; AR000284. Based on this analysis, Petitioners calculated that if the Project’s 1.23 billion gallons
9 of annual feedstock demand were all soybean oil, then the Project alone would result in the
10 conversion of three million acres of land – roughly the size of the state of Connecticut.¹⁶ AR000284.
11 The EIR dismissed this estimate as an “extrapolation[] from highly unpredictable inputs,” but it then
12 failed to make any efforts of its own to quantify the Project’s potential ILUC impacts. AR002285. If
13 the County disagreed with Petitioners’ illustrative scenario involving 100 percent soybean oil
14 feedstock, it could have, for example, analyzed various representative feedstock scenarios to give the
15 public and decisionmakers a sense of the range of feedstock-related impacts the Project could cause.
16 *See, e.g., Planning & Conservation League v. Castaic Lake Water Agency*, 180 Cal.App.4th 210,
17 223, 253 (2009) (EIR’s analysis of three possible water supply scenarios for a project, where actual
18 water availability was uncertain, showed the agency had “use[d] its best efforts to find out and
19 disclose all that it reasonably c[ould]”) (quoting CEQA Guidelines § 15144). Yet the County refused
20 to take this or any other approach to arrive at a reasonable estimate of ILUC impacts.

21 The Court of Appeal’s decision in *Berkeley* disposes of the County’s efforts to use the
22 challenges of modeling ILUC impacts as an excuse to avoid analyzing them altogether. In *Berkeley*,
23 the lead agency maintained that a project’s public health impacts were speculative because there was
24 no accepted scientific method for evaluating the risk. 91 Cal.App.4th at 1367-68. The court
25 disagreed: “The fact that a single methodology does not currently exist that would provide the
26 [agency] with a precise, or ‘universally accepted,’ quantification” of the risk did not excuse the

27 _____
28 ¹⁶ Petitioners’ calculation required simple arithmetic: (1.23 bill. gallons * 2 mill. acres) / 0.8112 bill. gallons = 3.03 mill. acres.

1 agency from assessing that risk. *Id.* at 1370. Instead, “it require[d] the [agency] to do the necessary
2 work to educate itself about the different methodologies that *are* available.” *Id.* Likewise here, the
3 EIR concluded that ILUC impacts were “speculative” because, in the County’s view, they are too
4 difficult to model. *See, e.g.*, AR002285; AR002281-83. As in *Berkeley*, the County violated CEQA
5 by failing to make a “reasonably conscientious effort” to find out and disclose what it could about the
6 Project’s likely ILUC impacts. 91 Cal.App.4th at 1370 (citing CEQA Guidelines § 15144 on lead
7 agency obligation to use best efforts to forecast reasonably discoverable impacts).

8 Finally, to justify its refusal to consider ILUC impacts, the EIR asserts that “uncertainties
9 preclude determination of the Project’s *exact* feedstocks, their sources, and their availability.”
10 AR002285 (emphasis added). To the extent the County claims it cannot estimate ILUC impacts
11 because the Project’s “exact” feedstock mix is uncertain or unknown, this is a problem of its own
12 making. *See* Section II, *supra* (explaining that CEQA requires reasonably certain description of
13 feedstock inputs to allow for informed analysis of impacts). Regardless, Petitioners have never
14 sought exactitude, just the requisite forecasts or estimates to inform the public and decisionmakers
15 about this major category of indirect impacts. *See Sierra Club*, 6 Cal.5th at 522 (“[S]cientific
16 certainty is not the standard [I]f it is not scientifically possible to do more than has already been
17 done . . . the EIR itself must explain why, in a manner reasonably calculated to inform the public of
18 the scope of *what is and is not yet known* about the Project’s impacts.”) (emphasis added); *Sierra*
19 *Club v. Fed. Energy Regul. Comm’n*, 867 F.3d 1357, 1374 (D.C. Cir. 2017) (Environmental analysis
20 “necessarily involves some ‘reasonable forecasting,’ and [] agencies may sometimes need to make
21 educated assumptions about an uncertain future.”). In short, the existence of some uncertainty is
22 inevitable, but it does not entitle the agency to avoid analysis of indirect impacts altogether.

23 **C. The EIR makes no attempt to address cumulative ILUC impacts.**

24 The County’s refusal to analyze the Project’s reasonably foreseeable ILUC impacts resulted
25 in a further procedural error under CEQA: the failure to conduct any analysis of the Project’s
26 incremental contribution to *cumulative* ILUC impacts caused by past, present, and proposed
27 renewable fuels projects. AR002275 (claiming that, “[I]ike the Project’s own individual feedstock-
28 related impacts, the contribution to cumulative impacts of the Project’s feedstock use is also

1 speculative and unable to be quantified”). But it is reasonably foreseeable – indeed, quite likely –
2 that the Project plus other such projects in various stages of planning and construction will together
3 substantially increase demand for agricultural feedstocks as they compete for the same limited crops,
4 resulting in potentially significant ILUC impacts exceeding those from the Project alone. *See, e.g.,*
5 AR010490-91; AR000731 (“If all of the announced capacity identified by U.S. [Energy Information
6 Administration] [] were to come online . . . and operate at 100% of capacity, total feedstock
7 consumption for renewable diesel would increase by 17 million metric tons, a factor of 10 by
8 2024.”); AR013049 (citing industry data that “U.S. soybean oil demand could outstrip U.S.
9 production by up to 8 billion pounds annually if half the proposed new renewable diesel capacity is
10 constructed”).

11 Declining even to contemplate this cumulative effect despite its well-documented likelihood,
12 the EIR failed to include in its cumulative impacts analysis nearly twenty other renewable fuels
13 projects around the country that were under construction or consideration, as well as over eighty
14 biofuel and biodiesel facilities already in operation. AR010491-96; *see also, e.g.,* AR000727
15 (January 2022 report identifying 20 renewable diesel projects throughout U.S.). Instead, the EIR
16 limited its “cumulative” impacts analysis to only six projects within a three-mile radius of the Rodeo
17 and Santa Maria Refineries, all located in Contra Costa and San Luis Obispo Counties. AR054245-
18 47. Except for the nearby Martinez Refinery Renewable Fuels Project (AR054245-47), none of the
19 listed projects is remotely “related” to the Project, and none except the Martinez project could
20 possibly have cumulative ILUC impacts. *See* AR000323 (listed projects included a “waterfront park,
21 a mixed-used building, and a water purification project”); CEQA Guidelines § 15130(a)(1) (EIR must
22 discuss project’s cumulative impacts, consisting of impacts created by the combination of the project
23 with “other projects causing related impacts”); *id.* at § 15355 (defining “cumulative impacts”).

24 The EIR’s failure to even mention, let alone address, the potentially significant cumulative
25 ILUC impact from other renewable fuel projects leaves a gaping hole in the CEQA analysis. *See*
26 *Kings Cnty. Farm Bureau v. City of Hanford*, 221 Cal.App.3d 692, 722-24 (1990) (cogeneration plant
27 EIR’s cumulative impact analysis inadequate because it omitted over 80 other similar plants
28 throughout California’s Central Valley). Indeed, as the size of this Project and the nearby Martinez

1 project illustrate, even *two* such renewable fuel projects' ILUC impacts could be deemed
2 cumulatively significant had the County conducted the requisite analysis. Together, the two projects
3 would consume the equivalent of one-third of the 382,000 bpd domestic supply of lipid feedstocks.
4 *See* Factual Background, Section D, *supra*; *see also, e.g.*, AR000284 (concluding that Rodeo
5 Renewed Project "could use up to 39 percent of total domestic [soybean oil] production") (citing U.S.
6 Department of Agriculture data in record at AR033171); AR000324 (concluding that Martinez
7 project "could consume up to 24 percent of the nation's total production of soybean oil for all uses").

8 Combined with the County's refusal to analyze the Project's reasonably foreseeable ILUC
9 impacts, the exclusion of the many other renewable fuels projects from the EIR's analysis "prevented
10 the severity and significance of the cumulative impacts from being accurately reflected." *Bakersfield*
11 *Citizens for Local Control v. City of Bakersfield*, 124 Cal.App.4th 1184, 1215 (2004); *see also San*
12 *Joaquin Raptor/Wildlife Rescue Ctr.*, 27 Cal.App.4th at 741 (finding EIR's cumulative impacts
13 analysis "inadequate as a matter of law" where "other development projects are neither listed nor
14 adequately discussed"). At the very least, the County had to provide "a reasonable explanation for
15 the geographic limitation used" in the cumulative impacts analysis that resulted in the omission of the
16 renewable fuels projects, so that the public, decisionmakers, and the courts could ascertain whether
17 the missing information could have revealed a more severe impact. CEQA Guidelines § 15130(b)(3);
18 *see Kings County Farm Bureau*, 221 Cal.App.3d at 723-24. The County failed to do so here.

19 Even if the County had attempted such an explanation, it could not overcome the illogic of
20 creating such a narrow geographic limitation for its cumulative ILUC impacts analysis. The rush of
21 similar renewable fuels projects across the state and nation, each demanding tens of thousands of
22 barrels of feedstock every day, will very likely precipitate significant shifts in agricultural practices
23 and attendant ecological impacts. For this reason, as Petitioners explained, "confining the analysis
24 entirely to local projects does not make sense with respect to project impacts that are regional [],
25 statewide [], or national and international," such as climate and ILUC impacts. AR000323. The
26 County's geographically cribbed cumulative ILUC impacts analysis constitutes a clear abuse of
27 discretion. *Golden Door Props.*, 50 Cal.App.5th at 528.

28

1 **IV. The County Unlawfully Deferred Formulating Mitigation of Significant Odor**
2 **Impacts**

3 In addition to failing to disclose entire categories of environmental impacts, the EIR falls
4 short in ensuring mitigation of potentially significant odor impacts it *has* identified. *See Sierra Club*
5 *v. State Bd. of Forestry*, 7 Cal.4th 1215, 1233 (1994) (CEQA compels agencies “first to identify the
6 [significant] environmental effects of projects, and then to mitigate those adverse effects”); *Citizens*
7 *of Goleta Valley v. Bd. of Supervisors*, 52 Cal.3d 533, 564 (1990) (mitigation measures are the “core
8 of an EIR”) (citing Cal. Pub. Res. Code § 21002.1(g)). In particular, processing renewable
9 feedstocks could emit “organic-based odorous gases” that would make the Refinery smell “similar to
10 an animal and/or food processing facility unless properly managed.” AR053827. The EIR concludes
11 that these odors could exceed the threshold of significance “[f]requently and for a substantial
12 duration, creat[ing] or expos[ing] sensitive receptors to substantial objectionable odors affecting a
13 substantial number of people.” AR053800. But rather than setting forth specific mitigation measures
14 to control the odors, the EIR punts to a future planning process that would not be subject to public
15 scrutiny. Specifically, the EIR relies on Mitigation Measure AQ-4 to minimize odors (AR053828),
16 but that measure merely requires Phillips to “develop and implement an Odor Management Plan
17 (OMP)” at some point in the future, “prior to operation of the Project” (AR003141).

18 By “leav[ing] the reader in the dark” about how Project odors will be mitigated, the County
19 committed a “basic error[] under CEQA.” *San Joaquin Raptor Rescue Ctr. v. County of Merced*, 149
20 Cal.App.4th 645, 670 (2007) (“*San Joaquin Raptor*”). CEQA requires that the details of mitigation
21 be set forth in the EIR itself. CEQA Guidelines § 15126.4(a)(1). That is, “[f]ormulation of
22 mitigation measures shall not be deferred until some future time.” *Id.* at § 15126.4(a)(1)(B).
23 CEQA’s mandate that agencies timely formulate the specifics of mitigation avoids outcomes in which
24 “[t]he success or failure of mitigation efforts . . . may largely depend upon management plans that . . .
25 have not been subject to analysis and review within the EIR.” *CBE v. Richmond*, 184 Cal.App.4th at
26 92 (quoting *San Joaquin Raptor*, 149 Cal.App.4th at 670). CEQA allows exceptions to this rule only
27 if: (1) the agency shows that it is “impractical or infeasible to include those details during the
28 project’s environmental review” and (2) the agency meets enumerated safeguards that ensure the

1 mitigation will actually be formulated and that it will be effective in minimizing impacts. CEQA
2 Guidelines § 15126.4(a)(1)(B). “Impermissible deferral of mitigation measures occurs when an EIR
3 puts off analysis or orders a report without either setting standards or demonstrating how the impact
4 can be mitigated in the manner described in the EIR.” *Pres. Wild Santee v. City of Santee*, 210
5 Cal.App.4th 260, 281-81 (2012) (citation omitted).

6 Here, the County admitted that it deferred formulating the specifics of odor mitigation to a
7 future OMP, but insisted it did so in compliance with section 15126.4(a)(1)(B). AR000921-23. It
8 was wrong. The County made no effort to show that it could not develop an OMP in time to include
9 it in the EIR, nor did it set forth performance standards to ensure that an OMP developed after the
10 EIR would be effective. Because timely formulation of mitigation measures is a “procedural
11 requirement of CEQA,” the County’s improper deferral renders the EIR defective as a matter of law.
12 *POET, LLC v. State Air Res. Bd.*, 218 Cal.App.4th 681, 739 (2013) (“*POET I*”); *see also Pres. Wild*
13 *Santee*, 210 Cal.App.4th at 281 (EIR informationally defective in failing to show that timely
14 formulation of mitigation was impractical or infeasible); *Sierra Club*, 6 Cal.5th at 515 (EIR’s
15 informational adequacy reviewed de novo).

16 **A. The County failed to show that including the specifics of odor mitigation in the EIR**
17 **was impractical or infeasible.**

18 The County may only lawfully defer the specifics of odor mitigation if it was “impractical or
19 infeasible” to formulate these details during environmental review. CEQA Guidelines
20 § 15126.4(a)(1)(B); *see Cleveland Nat. Forest*, 17 Cal.App.5th at 442-43 (deferral may be allowed
21 where “practical considerations *prohibit* devising such measures early in the planning process”)
22 (emphasis added) (citation omitted). The County must provide this justification for deferral in the
23 EIR itself. *See San Joaquin Raptor*, 149 Cal.App.4th at 671 (deferral improper when “no reason or
24 basis is provided in the EIR for the deferral”); *Pres. Wild Santee*, 210 Cal.App.4th at 281 (deferral
25 improper when “EIR does not state . . . why specifying performance standards or providing
26 guidelines . . . was impractical or infeasible at the time the EIR was certified”).

27 The County provided no such justification in the EIR. Neither the EIR’s discussion of the
28 need for odor mitigation nor Mitigation Measure AQ-4 explains why timely development of the

1 OMP, or of some other effective approach to mitigation, was impractical or infeasible. AR053827-
2 29; *see Cleveland Nat. Forest*, 17 Cal.App.5th at 443 (holding deferral unlawful where record
3 evidence did not support agency’s contention that “no other mitigation [was] feasible at the program
4 level of environment review”). Even after Petitioners (AR010477-78) and BAAQMD (AR002317-
5 18) noted this deficiency in their comments on the Draft EIR, the County still failed to include the
6 required explanation when discussing odor mitigation in the Final EIR (AR003119-20). Instead, the
7 County offered only a conclusory eleventh-hour statement in a staff report prepared on Petitioners’
8 administrative appeal that, “[i]f developed too early, the [OMP] would not be effective.” AR000922.

9 In addition to coming too late, the County’s explanation does far too little to justify deferral.
10 In cases where courts have allowed deferred mitigation, the record was clear that factors outside the
11 agency and applicant’s control prevented timely formulation. *See e.g., Rialto Citizens for*
12 *Responsible Growth v. City of Rialto*, 208 Cal.App.4th 899, 941-42 (2012) (timely formulation of
13 mitigation for project’s impacts on endangered species impractical where no endangered species had
14 been found on the site but had “potential” to occur); *Defend the Bay v. City of Irvine*, 119
15 Cal.App.4th 1261, 1274, 1276 (2004) (allowing deferral where specific details of mitigation
16 measures hinged on finding certain species onsite and on consultation with state and federal
17 agencies); *Citizens for a Sustainable Treasure Island*, 227 Cal.App.4th at 1058-59 (formulating
18 details of hazardous waste mitigation plan was impractical where agency could not “possibly know”
19 which sites would require remediation until Navy finished its initial cleanup). Here, the County
20 offered no explanation at all as to why an OMP “would not be effective” if formulated prior to
21 Project approval. AR000922. Nor did it explain what new information would need to arise or what
22 events would need to occur before an effective OMP could be developed.

23 In any event, the County’s assertion that an OMP could not practically or feasibly be
24 developed during the environmental review process is undercut by the fact that Phillips had evidently
25 developed a draft OMP before Project approval. AR002322 (“Phillips 66 has prepared a draft OMP
26 which is currently being reviewed by the County.”); *see* AR183007-14 (Phillips’s draft OMP, labeled
27 “Odor Prevention and Management Plan”). The County simply neglected to evaluate whether this
28 OMP was adequate mitigation and to disclose the OMP to the public. If the County intended that the

1 draft OMP be used for mitigation, it was required to recirculate the Final EIR with the OMP to allow
2 the public to review and comment on its measures. *See* CEQA Guidelines § 15088.5(a) (requiring
3 the lead agency to recirculate the EIR for public review and comment when “significant new
4 information” is added after release of the draft); *CBE v. Richmond*, 184 Cal.App.4th at 95 (proper
5 solution to agency’s belated acquisition of information relevant to mitigation was “to defer approval
6 of the Project until proposed mitigation measures were fully developed, clearly defined, and made
7 available to the public and interested agencies for review and comment”).

8 **B. The County failed to adopt specific, objective performance standards to ensure that**
9 **eventual odor mitigation measures would be effective.**

10 Even if the County had shown that it was infeasible or impractical to formulate odor
11 mitigation as part of the EIR, CEQA would only allow it to postpone developing the specifics of this
12 mitigation if the County had: “(1) commit[ted] itself to the mitigation, (2) adopt[ed] specific
13 performance standards the mitigation will achieve, and (3) identif[ied] the type(s) of potential
14 action(s) that can feasibly achieve that performance standard and that will [be] considered, analyzed,
15 and potentially incorporated in the mitigation measure.” CEQA Guidelines § 15126.4(a)(1)(B). An
16 agency violates CEQA by failing to commit to “specific and mandatory performance standards to
17 ensure that the measure[], as implemented, will be effective.” *CBE v. Richmond*, 184 Cal.App.4th at
18 94; *see POET I*, 218 Cal.App.4th at 739 (same). A performance standard must provide an objective
19 and, ideally, quantitative yardstick to evaluate the efficacy of mitigation and verify that impacts have
20 been reduced to insignificance. *See Rialto Citizens*, 208 Cal.App.4th at 946 (performance criteria
21 required maintaining five plant species on the project site for three to five years in the event twenty or
22 more plants of any of the species were found prior to grading); *Laurel Heights*, 47 Cal.3d at 418
23 (performance standards required nighttime noise be kept below specified level); *Endangered Habitats*
24 *League, Inc. v. County Of Orange*, 131 Cal.App.4th 777, 794 (2005) (performance standard required
25 preserving displaced habitat at a ratio of two to one).

26 Nothing in Mitigation Measure AQ-4 comes close to a specific, objective performance
27 standard. After Petitioners and BAAQMD urged the County to correct its “reliance on a not-yet-
28 developed odor management plan” (AR010477; AR007858-59), the County amended Mitigation

1 Measure AQ-4 to require that the OMP be an “‘evergreen’ document that provides continuous
2 evaluation of the overall systems performance” and updating of odor controls, and that it “include
3 guidance for the proactive identification and documentation of odors” (AR003120). These vague
4 parameters for what must be in an eventual OMP are not objective performance criteria to evaluate its
5 success or failure as mitigation. *See San Joaquin Raptor*, 149 Cal.App.4th at 669-70 (concluding that
6 mitigation measure providing “such options as periodic mowing, rotational grazing, and weed
7 abatement” failed to inform reader “what specific criteria or performance standard will be met”). At
8 best, Mitigation Measure AQ-4 provides a generalized goal of reducing odor by stating that the OMP
9 will “effect diligent identification and remediation of any potential odors generated by the Facility.”
10 AR003120. But generalized goals are not performance standards. *See POET I*, 218 Cal.App.4th at
11 739 (rejecting “generalized goal” of “no increase in NOx”); *CBE v. Richmond*, 184 Cal.App.4th at 93
12 (rejecting “generalized goal of no net increase in emissions”); *San Joaquin Raptor*, 149 Cal.App.4th
13 at 670 (rejecting “generalized goal of maintaining the integrity of” a habitat).

14 Unable to point to a performance standard in the EIR, the County instead asserted, in response
15 to Petitioners’ administrative appeal, that Mitigation Measure AQ-4 uses “the number of odor
16 complaints” as a performance standard. AR000922. It does not. Mitigation Measure AQ-4’s only
17 reference to complaints is its statement that “all odor complaints received by the facility shall be
18 investigated as soon as is practical.” *Id.* It does not set forth any numeric complaint threshold to
19 evaluate efficacy, or show that a threshold based on public complaints would be adequate if it had.

20 In sum, the County knew the Project could result in odors that would be a nuisance to nearby
21 community members but failed to assure that the County would do anything about them. The Project
22 approvals must be set aside and the County required to disclose and analyze the effectiveness of the
23 OMP – or whatever mitigation strategy the County adopts – in the EIR itself.

24 CONCLUSION


25 For the foregoing reasons, Petitioners respectfully request that the Court issue a peremptory
26 writ of mandate declaring that the EIR is inconsistent with CEQA, setting aside the County’s land use
27 approvals for the Project, and enjoining implementation of the Project unless and until the County
28 prepares an EIR that fully complies with CEQA.

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DATED: February 17, 2023

Respectfully submitted,

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1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF SANTA CLARA**

3 At the time of service, I was over 18 years of age and not a party to this action. I am
4 employed in the County of Santa Clara, State of California. My business address is Crown
5 Quadrangle, 559 Nathan Abbott Way, Stanford, CA 94305-8610.

6 On February 17, 2023, I served true copies of the following document(s) described as
7 **Petitioners' Opening Brief in Support of Petition for Writ of Mandate** on the interested
8 parties in this action as follows:

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17 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the
18 document(s) to be sent from e-mail address anamv@stanford.edu to the persons at the e-mail
19 addresses listed in the Service List. I did not receive, within a reasonable time after the
20 transmission, any electronic message or other indication that the transmission was unsuccessful.

21 I declare under penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct.

23 Executed on February 17, 2023, at Stanford, California.

24 
25 _____
26 Ana Villanueva
27
28