

Staff Report 40

LESSEE:

Tesoro Refining & Marketing Company LLC

PROPOSED ACTION:

Acceptance of a partial Lease Quitclaim Deed and Amendment of General Lease – Industrial Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Carquinez Strait, near the city of Martinez, Contra Costa County.

AUTHORIZED USE:

The continued operation and maintenance of an existing marine terminal wharf (the Avon terminal) in the Carquinez Strait and periodic maintenance dredging; and for Marine Oil Terminal Engineering and Maintenance Standards (MOTEMS) compliance-related renovations.

TERM:

30 years, beginning January 1, 2015

CONSIDERATION:

Parcel #1 and Parcel #2 (marine oil terminal): Initial Base Rent of \$302,263; with an annual Consumer Price Index (CPI) adjustment, provided that the Adjusted Annual Rent will never be lower than the Base Rent then in effect; and the State reserving the right to fix a different Base Rent on the 10th and 20th anniversaries of the lease term, as provided in the lease.

Parcel #3 (osprey nesting site): The public benefit, with the State reserving the right at any time to set a monetary rent should the Commission find such action to be in the State's best interests.

PROPOSED AMENDMENT:

- Expand the authorized uses of the leased lands to include the transfer of renewable fuels and their constituent components (i.e., feedstocks including plant oils and animal fats).
- Authorize installation of electrical heat tracing and insulation of a pipeline and reconfigure pipes and hoses for renewable fuels and feedstocks.
- Replace the existing Exhibit A, Land Description, and Exhibit B, Site and Location Map, with the attached Exhibit A, Land Description, and Exhibit B, Site and Location Map (for reference purposes only), wherein former Lease Parcel #2 is deleted, and former Lease Parcel #3 (osprey nesting site) is now described as Lease Parcel #2.
- Include the attached Exhibit E, Mitigation Monitoring Program.
- Increase the performance deposit to \$2,600,000 at future, scheduled CPI adjustments.
- Construction activities will be performed pursuant to the specific terms identified in the Lease and Lease Amendment, and Lessee shall obtain and submit all necessary permits and authorizations prior to commencing work including requirements pertaining to construction.

All other terms and conditions of the lease to remain in effect without amendment.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503, 8750, and 8755; California Code of Regulations, title 2, sections 2000, 2003, 2300-2571, and title 24, part 2, Chapter 31F.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On March 20, 2015, the Commission authorized certification of a Final Environmental Impact Report and issuance of a General Lease – Industrial Use for the continued operation and maintenance for the existing Avon terminal in the Carquinez Strait, east of the Benicia Bridge. The lease also authorizes periodic maintenance dredging and Marine Oil Terminal Engineering and Maintenance Standards (MOTEMS) compliance-related renovations ([Item C02, March 20, 2015](#)). That lease will expire on December 31, 2044.

In 2017, Tesoro changed its name to Andeavor following its acquisition of Western Refining. Then in 2018, Andeavor entered into a definitive merger agreement with Marathon Petroleum under which Marathon Petroleum acquired all of Andeavor's outstanding shares. The merger closed on October 1, 2018. The Lessee is a wholly owned subsidiary of Marathon Petroleum and has remained the same through each of the mergers and acquisitions. The Lessee is now applying to amend the lease to authorize the transfer of renewable fuels and feedstocks; to install electrical heat tracing and insulation onto an existing pipeline; to reconfigure pipes and hoses for renewable fuels and their constituent components (i.e., feedstocks including plant oils and animal fats); and to remove Lease Parcel 2 (Berth 5) from the lease premises.

The Lessee is proposing the Martinez Renewable Fuels Project (Project) at its existing Martinez Golden Eagle Refinery located on private uplands. The Project would convert the existing refinery from its current production of petroleum-based products derived from fossil fuels to the production of renewable fuels derived from plant-based oils and animal fat feedstocks. The types of renewable fuels that will be produced by the refinery include renewable diesel, propane, and potentially jet fuel. The project would utilize existing infrastructure to transform a previously nonrenewable-only facility into one that can accommodate both renewable and nonrenewable fuels.

The Avon Terminal currently services the refinery as a distribution point for the export, by barge or vessel, of petroleum-based products produced at the refinery. As a part of the larger Project, the Avon Terminal would be converted from distribution uses to primarily receiving uses. The Avon Terminal would primarily receive renewable feedstocks consisting of rendered fats, soybean and corn oil, and other cooking or vegetable oils, excluding palm oil. These feedstocks would be transported from the terminal, via existing pipeline, to the refinery for processing into renewable fuels. Export of these products by vessel or barge will be primarily handled by the Amorco Terminal, under Commission lease 3453 (also before the Commission for amendment).

Under the proposed project, the Avon Terminal is expected to transfer an average of 70,000 barrels per day of renewable feedstocks, gasoline product for distribution, and renewable fuels. The majority of renewable feedstock is expected to be delivered in smaller barges with capacities of 25,000 to 50,000 barrels per vessel, thus resulting in a higher number of smaller marine vessels (around 350 to 400 vessels per year, or seven per week) calling at the Avon and Amorco Terminals. The Avon Terminal is anticipated to receive around four ships per week or 200 vessels annually. Overall, the number of vessel calls at the Avon Terminal is expected to increase compared to past operations of an annual average of 120 vessels.

Partial Quitclaim

The Avon Terminal consists of one active berth, Berth 1A, used for product shipments and feedstock deliveries. The Commission's 2015 lease and MOTEMS renovation project authorization, as analyzed in the associated EIR, included Berth 1 decommissioning, creation of the new operational Berth 1A, and Berth 5 demolition and removal. The Lessee has completed each of those components, with the Berth 5 demolition and removal completed in 2018 within existing Lease Parcel #2. Staff recommends acceptance of a lease quitclaim deed from the Lessee for Lease Parcel #2.

Piping Improvements

The Avon Terminal will require several minor changes, including pipe upgrades to handle the renewable feedstocks and refined products. Part of the existing system of pipes and hoses would be reconfigured to keep the refined products separate from the renewable feedstocks, and to facilitate transmission of the renewable feedstock through receiving pipelines. The renovation work would primarily occur on one pipeline. The pipeline would be equipped with heat tracing, wrapped in insulation, placed in a metal sleeve, and the joints sealed with silicone. The proposed work is required to maintain the renewable feedstock temperature, preventing solidification within the pipeline.

Minor modifications to piping on the wharf would add a small section of new flushing pipe and a new check valve, replace existing valves with blinds, and re-route thermal relief lines to isolate fossil fuel service from renewable service and prevent product cross-contamination. The Project proposes no changes to the wharf structure (berth, pilings, dolphins) and no other new pipelines.

The proposed heat-traced and insulated pipeline is located on a piperack that extends over the water. Scaffolding will be installed on the pipe rack to provide a safe working platform for the over-water work. Material staging and worker parking will be in the main roadway at the wharf entrance and on its access road. A tarp will be secured to the underside of the scaffolding and pipe rack for all work over water and any areas where pipe repairs are required, to catch any falling tools or material. Any tools or material that inadvertently falls onto the ground will be retrieved and an inspection completed before the job is complete and scaffolding removed. Construction will take place during daylight hours over an approximate 12-month period.

Applicability of the Commission's Spill Prevention Program

In July 2021, the Governor signed AB 148, which expanded the definition of "Oil" under the Commission's spill prevention authority to expressly include renewable

fuels that are refined primarily from plant and animal matter, as opposed to crude oil. Of note, the expanded definition of oil does not cover the constituent components (i.e., feedstocks) used to refine renewable fuel, like rendered fats, soybean, corn, or other plant-based oils. The proposed Amendment will expressly authorize the transportation of these feedstocks across the Avon and Amorco terminals and require that the equipment and measures used in their handling be consistent with the Marine Oil Terminal Engineering Maintenance Standards (MOTEMS) (24 CCR, Chapter 31F) and Article 5 through 5.5 of the Commission's spill prevention regulations (2 CCR §§ 2300 et seq.). The goal is to ensure that regulatory safety and inspection requirements are in place to prevent a release of feedstocks into the marine environment.

The number of vessels and barges will increase over the prior amount of vessels and barges calling at the Avon Terminal. However, because the overall operations of the terminal will remain compliant with Commission spill prevention requirements, staff believes that the proposed lease amendment for the proposed Project at the Avon Terminal in the Carquinez Strait will not substantially interfere with the Public Trust needs and values at this location and will have minimal impact on the recreational use of the Carquinez Strait.

CLIMATE CHANGE:

The California Air Resources Control Board administers the Low Carbon Fuel Standard (LCFS) which is designed to decrease the carbon intensity of California's transportation fuel pool and provide an increasing range of low-carbon and renewable alternatives, which reduce petroleum dependency and achieve air quality benefits. The greenhouse gas emissions of renewable fuel, over its lifecycle are generally less than that of crude oil based products making it a lower carbon intensity fuel. Use of renewable fuels is a key element in achieving state and federal climate change goals, including California's recently enacted law declaring it state policy to achieve net zero greenhouse gas emissions as soon as possible, but no later than 2045 and to achieve and maintain net negative greenhouse gas emissions thereafter, and to ensure that by 2045, statewide greenhouse gas emissions are reduced to at least 85 percent below the 1990 levels (AB 1279, Muratsuchi; Chapter 337, Statutes of 2022).

Climate change impacts, including sea level rise, more frequent and intense storm events, and increased flooding and erosion, affect both open coastal areas and inland waterways in California. The leased facilities are located on Castro Cove, in a tidally influenced site that is vulnerable to shallow coastal flooding at current sea levels and will be at higher risk of flood exposure given projected scenarios of sea level rise.

The California Ocean Protection Council updated the *State of California Sea-Level Rise Guidance* in 2018 to provide a synthesis of the best available science on sea level rise projections and rates. Commission staff evaluated the “high emissions,” “medium-high risk aversion” scenario to apply a conservative approach based on both current emission trajectories and the lease location and structures. The San Francisco tide gauge was used for the projected sea level rise scenario for the lease area as listed in Table 1.

Table 1. Projected Sea Level Rise for San Francisco

Year	Projection (feet)
2030	0.8
2040	1.3
2050	1.9
2100	6.9

Source: Table 13, *State of California Sea Level Rise Guidance: 2018 Update*

Note: Projections are with respect to a 1991 to 2009 baseline.

This effect could increase the inundation levels within the lease area. In addition, as stated in *Safeguarding California Plan: 2018 Update* (California Natural Resources Agency 2018), climate change is projected to increase the frequency and severity of natural disasters related to flooding, fire, drought, extreme heat, and storms (especially when coupled with sea level rise). In tidally influenced waterways, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris as well as decreased bank stability and structure. Conversely, climate change-induced droughts could decrease bay levels and flow for extended periods of time.

According to the Digital Coast Sea Level Rise Viewer (National Oceanic and Atmospheric Administration, Office of Coastal Management), the lease area would not suffer from flooding until sea level rise has exceeded approximately 4 feet that would occur after year 2050, which is beyond the term of the proposed sublease.

Regular monitoring and maintenance may reduce the likelihood of severe structural degradation of the facilities. In addition, MOTEMS has requirements related to addressing sea level rise.

ENVIRONMENTAL JUSTICE:

Staff reviewed environmental justice data that indicated high pollution burdens to the surrounding communities. These burdens may result in impacts to health such as asthma and cardiovascular disease. In addition, the same data showed groundwater threats. As part of an environmental justice outreach and

engagement effort, staff sent letters on April 29, 2021, to environmental justice organizations in Contra Costa County, providing notification of the proposed lease amendment and requesting input. The letters included a brief description of the project and conveyed a desire to learn from the perspectives of the local community. In June 2021, staff met with a group from the Contra Costa Resources Conservation District, East Bay Parks, and Contra Costa County Department of Public Works. The group expressed interest in having terrestrial public access to the Point Edith Wildlife Area, adjacent to the Avon terminal, through the private road owned by the Applicant.

In the 1980's, the County of Contra Costa vacated the segment of Waterfront Road crossing the parcel. In the 1990's, a long-term access agreement was entered into between the County of Contra Costa and the Lessee's predecessor allowing the public to access the Point Edith Wildlife Area using Waterfront Road.

As a result of events that took place on September 11, 2001, the Maritime Transportation Security Act of 2002 (MTSA) was implemented throughout the nation. The MTSA required the Lessee to increase their security measures related to public access through the refinery, federally designated as critical infrastructure. Pursuant to the MTSA requirement, continuing to allow the public to access the Point Edith Wildlife Area using Waterfront Road was no longer feasible. Additionally, access to Waterfront Road is controlled by the Transportation Worker Identification Credential (also known as TWIC), required by the MTSA for workers who need access to secure areas of the nation's maritime facilities. The National Transportation Security Administration conducts a security threat assessment (background check) to determine a person's eligibility and issues the credential. Since 2008, access to the area has been by boat only.

Waterfront Road, past the Lessee's upland property, is surrounded by wetlands on both sides. The California Department of Fish and Wildlife (CDFW) manages the Point Edith Wildlife Area. Given access limitations due to the refinery, low lying wetlands and inadequate road shoulder spacing for parking, CDFW has no current plans for constructing parking or additional access through the wildlife area.

While staff does not believe that future terrestrial access can be addressed under the terms of the proposed amendment, staff will continue to have discussions with stakeholders and CDFW to explore options, including potential use of Kapiloff Land Bank Funds, if feasible, to facilitate future terrestrial public access.

CONCLUSION:

For all the reasons above, staff believes approval of the proposed amendment will not substantially interfere with the public rights to navigation, fishing, and

commerce; or substantially interfere with Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the proposed amendment is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. The lessee has no right to a new lease or to renewal of any previous lease.
2. The action is consistent with the "Meeting Evolving Public Trust Needs," Prioritizing Social, Economic, and Environmental Justice," and "Leading Climate Activism" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
3. Acceptance of a lease quitclaim deed is not a project as defined by the California Environmental Quality Act (CEQA) because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

4. An Environmental Impact Report (EIR), State Clearinghouse No. 2021020289, was prepared for this project by Contra Costa County and certified on May 3, 2022. As part of its project approval, the Contra Costa County made a Statement of Facts and Findings and adopted a Mitigation Monitoring and Reporting Program.

Staff has reviewed these documents and prepared an independent Mitigation Monitoring Program (MMP) (attached, Exhibit C) that incorporates Contra Costa County's document. Staff recommends adoption of Exhibit C by the Commission.

Staff also prepared Findings made in conformance with the State CEQA Guidelines (Cal. Code Regs., tit. 14, §§ 15091, 15096) contained in the attached Exhibit D.

5. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon staff's consultation with the

persons nominating such lands and through the CEQA review process, it is staff's opinion that the project, as proposed, is consistent with its use classification.

APPROVALS OBTAINED:

U.S. Army Corps of Engineers
San Francisco Bay Regional Water Quality Control Board
San Francisco Bay Conservation and Development Commission
Contra Costa County

APPROVALS REQUIRED:

Bay Area Air Quality Management District

EXHIBITS:

- A. Land Description
- B. Site and Location Map
- C. Mitigation Monitoring Program
- D. CEQA Findings

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that an EIR, State Clearinghouse No. 2021020289, was prepared for this project by Contra Costa County and certified on May 3, 2022, and that the Commission has reviewed and considered the information contained therein.

Adopt the Mitigation Monitoring Program, as contained in the attached Exhibit C.

Adopt the Findings, made in conformance with California Code of Regulations, title 14, sections 15091 and 15096, subdivision (h), as contained in the attached Exhibit D.

Determine that the project, as approved, will not have a significant effect on the environment.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the acceptance of a lease quitclaim deed and proposed amendment of lease for authorizing transfer of renewable fuels and feedstocks across the lease, installation of electrical heat tracing and insulation of a pipeline, and reconfiguring pipes and hoses for renewable feedstocks and renewable fuels would not substantially impair the public rights to navigation and fishing; or substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; and is in the best interests of the State.

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

1. Authorize acceptance of a partial lease quitclaim deed, effective December 8, 2022, of Lease Parcel #2, issued to Lessee.
2. Authorize amendment of Lease No. PRC 3454, a General Lease – Industrial Use, effective October 25, 2022; to expand the authorized uses of the leased lands to include transfer of renewable fuels and their constituent components (i.e., feedstocks including plant oils and animal fats; to install electrical heat tracing and insulation for a pipeline and reconfigure pipes and hoses for renewable feedstocks and renewable fuels; replace the existing Exhibit A, Land Description, and Exhibit B, Site and Location Map, with the attached Exhibit A, Land Description, and Exhibit B, Site and Location Map (for reference purposes only); include the attached Exhibit E, Mitigation Monitoring Program, and to increase the performance deposit to \$2,600,000 at future scheduled CPI adjustments; all other terms and conditions of the lease will remain in effect without amendment.

EXHIBIT A

PRC 3454

LAND DESCRIPTION

Two (2) parcels of tide and submerged land, whether filled or unfilled in the bed of Suisun Bay, Contra Costa County, California, more particularly described as follows:

PARCEL 1 (Main Facilities)

BEGINNING at a point from which a brass cap stamped "California State Lands Commission – LANDS ENDS – 1947" being an NGS Monument (PID JT2023) having CCS83, Zone 3 coordinates North(y)=2206332.03 feet, East(x)=6105166.32 feet bears South 41°30'43" East 559.77 feet; thence along the following fourteen (14) courses:

- 1) South 72°06'25" West 104.12 feet;
- 2) North 34°04'15" West 1530.50 feet;
- 3) South 57°05'42" West 30.01 feet;
- 4) North 34°04'15" West 285.73 feet;
- 5) South 70°30'45" West 497.49 feet to hereafter referred to "Point A";
- 6) North 19°29'15" West 330.00 feet;
- 7) North 70°30'45" East 1160.00 feet;
- 8) South 19°29'15" East 330.00 feet;
- 9) South 70°30'45" West 400.00 feet;
- 10) South 19°29'15" East 51.29 feet;
- 11) South 70°03'17" West 93.99 feet;
- 12) South 34°04'15" East 231.74 feet;
- 13) South 55°55'45" West 20.00 feet;
- 14) South 34°04'15" East 1521.31 feet to the POINT OF BEGINNING.

PARCEL 2 (Osprey Nesting Site)

A circular parcel having a radius of 50 feet whose center bears South 20°05'01" East 1162.27 feet from the above described "Point A".

EXCEPTING THEREFROM any validly patented tidelands.

BASIS OF BEARING is CCS83, Zone3 (Epoch 1991.35).

END OF DESCRIPTION

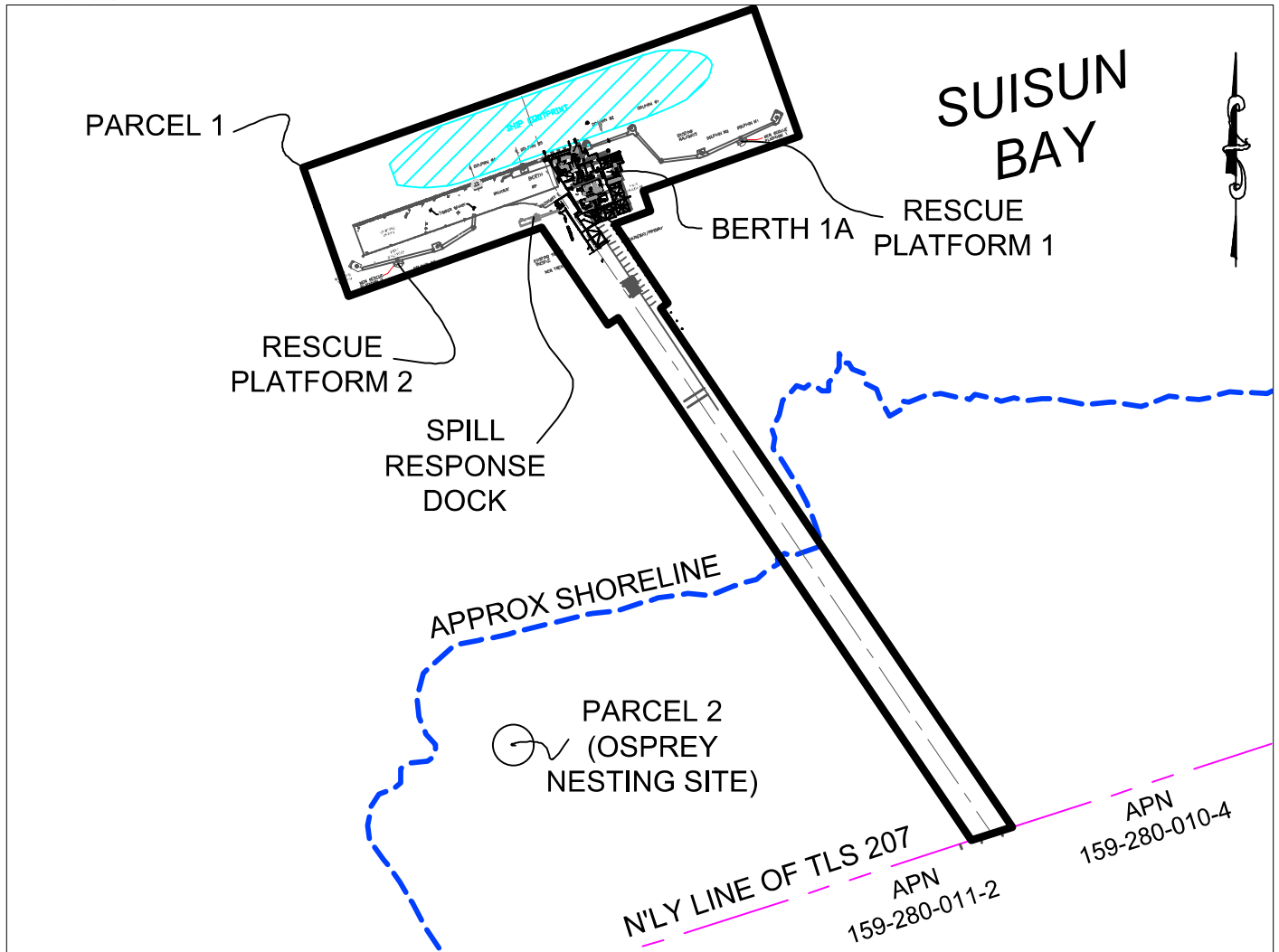
This description is based on applicant provided plans for the removal, remodel, and addition of facilities covering the above 2 parcels. This description is to be updated, as needed, once final as-built plans are submitted.

Prepared 6/21/2022 by the California State Lands Commission Boundary Unit



NO SCALE

SITE



Avon Wharf, Carquinez Strait & Suisun Bay near Martinez

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

EXHIBIT B

PRC 3454

TESORO AVON MOT
APN 159-280-010-4,-011-2
GENERAL LEASE -
INDUSTRIAL USE
CONTRA COSTA COUNTY



MJF 6/21/2022

EXHIBIT C
CALIFORNIA STATE LANDS COMMISSION
MITIGATION MONITORING PROGRAM
MARTINEZ REFINERY RENEWABLE FUELS PROJECT
(A2989, State Clearinghouse No. 2021020289)

The California State Lands Commission (Commission or CSLC) is a responsible agency under the California Environmental Quality Act (CEQA) for the Martinez Refinery Renewable Fuels Project (Project) at the Avon Marine Oil Terminal. The CEQA lead agency for the Project is Contra Costa County (County).

In conjunction with approval of this Project, the Commission adopts this Mitigation Monitoring Program (MMP) for the implementation of mitigation measures for the portion(s) of the Project located on State lands. The purpose of a MMP is to impose feasible measures to avoid or substantially reduce the significant environmental impacts from a project identified in an Environmental Impact Report (EIR) or a Mitigated Negative Declaration (MND). State CEQA Guidelines¹ section 15097, subdivision (a), states in part:

In order to ensure that the mitigation measures and project revisions identified in the EIR or negative declaration are implemented, the public agency shall adopt a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects. A public agency may delegate reporting or monitoring responsibilities to another public agency or to a private entity which accepts the delegation; however, until mitigation measures have been completed the lead agency remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with the program.

The lead agency certified an EIR, State Clearinghouse No. 2021020289, adopted a Mitigation Monitoring and Reporting Program (MMRP) for the whole of the Project (see Exhibit C, Attachment C-1), and remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with its program. The Commission's action and authority as a responsible agency apply only to the mitigation measures listed in Table C-1 below. The full text of each mitigation measure, as set forth in the MMRP prepared by the CEQA lead agency and provided in Attachment C-1, is incorporated by reference in this Exhibit C.

¹ The State CEQA Guidelines are found at California Code of Regulations, title 14, section 15000 et seq.

Table C-1. Project Impacts and Applicable Mitigation Measures

Potential Impact	Mitigation Measure (MM)²
Biological Resources Impact BIO-1. Cause substantial temporary impacts to special-status species due to renovation activity.	MM BIO-1a. General Work Site Best Management Practices. MM BIO-1b. Spill and Accidental Discharge Prevention. MM BIO -1c. Emergency Spill and Containment Plan. MM BIO -1d. Storm Water Pollution Prevention Plan (SWPP). MM BIO -1e. In-water Work Restrictions. MM BIO -1f. Nearshore Habitat Disturbance Minimization. MM BIO -1g. Demarcation of Work Limits. MM BIO -1h. Weed Spread Prevention. MM BIO -1i. Preconstruction Focused Soft-Bird's Beak Surveys. MM BIO -1j. Preconstruction Nesting Bird Surveys. MM BIO -1k. California Ridgway's Rail and California Black Rail Surveys.
Biological Resources Impact BIO-2. Disturbance or Loss of Sensitive Natural Communities or State and Federally Protected Wetlands.	MM BIO-1a. General Work Site Best Management Practices. MM BIO -1b. Spill and Accidental Discharge Prevention. MM BIO -1c. Emergency Spill and Containment Plan. MM BIO -1g. Demarcation of Work Limits. MM BIO -1h. Weed Spread Prevention.
Biological Resources Impact BIO-3. Interfere with Wildlife Migratory Corridors or Nursery Sites.	MM BIO-1a. General Work Site Best Management Practices. MM BIO -1b. Spill and Accidental Discharge Prevention. MM BIO -1c. Emergency Spill and Containment Plan. MM BIO -1e. In-water Work Restrictions. MM BIO -1g. Demarcation of Work Limits. MM BIO -1h. Weed Spread Prevention.

² See Attachment C-1 for the full text of each MM taken from the MMRP prepared by the CEQA lead agency.

	MM BIO -1j. Preconstruction Nesting Bird Surveys. MM BIO -1k. California Ridgway's Rail and California Black Rail Surveys.
Biological Resources Impact BIO-7. Cause injury or behavioral interruptions to aquatic species as a result of noise from increased number of vessels.	MM BIO-7a. Vessel Strike Minimization. MM BIO-7b. Sturgeon Action Funding.
Impact BIO-8. Cause significant adverse impacts to the San Francisco Bay Estuary and associated biota as a result of spills.	MM BIO -1b. Spill and Accidental Discharge Prevention. MM BIO -1c. Emergency Spill and Containment Plan. MM HAZ-1.
Biological Resources Impact BIO-9: Introduce invasive nonindigenous aquatic species to the San Francisco Bay Estuary.	MM BIO-9a. Invasive Species Action Funding.
Impact HAZ-1: Create a hazard to the public or the environment through the routine transport, use, and/or disposal of hazardous materials.	MM HAZ-1.
Impact HWQ-1: Consequences of a large spills could result in significant residual impacts.	MM BIO -1b. Spill and Accidental Discharge Prevention. MM BIO -1c. Emergency Spill and Containment Plan. MM HAZ-1.

ATTACHMENT C-1

**MITIGATION MONITORING AND REPORTING PROGRAM ADOPTED BY
CONTRA COSTA COUNTY FOR THE MARTINEZ REFINERY RENEWABLE FUELS PROJECT**

Martinez Refinery Renewable Fuels Project Mitigation Monitoring and Reporting Program

As the lead agency under the California Environmental Quality Act (CEQA), the Contra Costa County (County) is required to adopt a program for reporting or monitoring regarding the implementation of mitigation measures for the Martinez Refinery Renewable Fuels Project (Project), if it is approved, to ensure that the adopted mitigation measures are implemented as defined in this Environmental Impact Report (EIR). This lead agency responsibility originates in Public Resources Code section 21081.6, subdivision (a) (Findings), and the State Guidelines for Implementing CEQA sections 15091, subdivision (d) (Findings) and 15097 (Mitigation Monitoring or Reporting).

1. MONITORING AUTHORITY

The purpose of a Mitigation Monitoring and Reporting Program (MMRP) is to ensure that measures adopted to mitigate or avoid significant impacts are implemented. An MMRP can be a working guide to facilitate not only the implementation of mitigation measures by the Project Applicant, but also the monitoring, compliance, and reporting activities of the County and any monitors it may designate.

The County may delegate duties and responsibilities for monitoring to other environmental monitors or consultants as deemed necessary, and some monitoring responsibilities may be assumed by responsible agencies, such as the Bay Area Air Quality Management District. The County or its designee(s), however, would ensure that each person delegated any duties or responsibilities is qualified to monitor compliance.

Any mitigation measure study or plan that requires the approval of the County must allow adequate review time. Other agencies and jurisdictions may require additional review time. It is the responsibility of the Applicant to ensure that appropriate agency reviews and approvals are obtained.

The County or its designee would also ensure that any deviation from the procedures identified under the monitoring program is approved by the County. Any deviation and its correction shall be reported immediately to the County or its designee by the Applicant.

2. ENFORCEMENT RESPONSIBILITY

The County, as the lead agency, is responsible for enforcing the procedures adopted for monitoring.

3. MITIGATION COMPLIANCE RESPONSIBILITY

Marathon Petroleum Corporation (Marathon or Applicant) is responsible for successfully implementing all the mitigation measures in the MMRP, and shall ensure that these requirements are met by all of its contractors and field personnel. Standards for successful mitigation are implicit in mitigation measures that include such requirements as obtaining permits or avoiding a specific impact entirely. Other mitigation measures include detailed success criteria. Additional mitigation success thresholds may be established by applicable agencies with jurisdiction through the permit process and through the review and approval of plans required for implementation of mitigation measures.

4. MITIGATION MONITORING AND REPORTING TABLE

The MMRP describes implementation and monitoring responsibilities, timing, implementation and reporting schedules, and implementation mechanisms or tools for each mitigation measure identified in the EIR, as described below. The table lists the following information, by column:

- Mitigation Measure: Provides the full text of the measure from the Final EIR.
- Monitoring/Reporting Action: Identifies the action to be taken by the Applicant.
- Mitigation Timing: Implementation of mitigation measures may occur before, during, or after construction or during operation, etc.
- Responsible Entity: Identifies the entities that will be responsible for directly implementing the mitigation measures, reporting, and monitoring.
- Compliance Verification: Identifies how compliance will be verified.

Table 1. Martinez Renewable Fuels Program Mitigation Monitoring and Reporting Program

MITIGATION MEASURE	TIMING	MONITORING/ REPORTING ACTION	RESPONSIBLE ENTITY	COMPLIANCE VERIFICATION
3.3 AIR QUALITY				
<p>Mitigation Measure AQ-1a: Implement BAAQMD Basic Construction Measures <u>and Additional Best Practices</u>.</p> <p>The permittee shall implement the following <u>Basic Construction Measures</u> measures during construction of the Project:</p> <ul style="list-style-type: none"> • All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas and unpaved access roads) shall be watered two times per day. • All haul trucks transporting soil, sand or other loose material off-site shall be covered. • All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited. • All vehicle speeds on unpaved roads shall be limited to 15 miles per hour. • All roadways, driveways and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used. • Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Clear signage shall be provided for construction workers at all access points. • All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation. • Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations. <p><u>The permittee shall implement the following Additional Best Practices measures during construction of the Project:</u></p> <ul style="list-style-type: none"> • <u>All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe.</u> • <u>All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph.</u> • <u>Wind breaks (e.g., trees, fences) shall be installed on the windward side(s) of actively disturbed areas of construction. Wind breaks should have at maximum 50 percent air porosity.</u> • <u>Vegetative ground cover (e.g., fast-germinating native grass seed) shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.</u> • <u>The simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time shall be limited. Activities shall be phased to reduce the amount of disturbed surfaces at any one time.</u> • <u>All trucks and equipment, including tires, shall be washed off prior to leaving the site.</u> 	Construction	Implement Basic Construction Measures	DCD	Verify implementation and compliance with Basic Construction Measures.

MITIGATION MEASURE	TIMING	MONITORING/ REPORTING ACTION	RESPONSIBLE ENTITY	COMPLIANCE VERIFICATION
<ul style="list-style-type: none"> • <u>Site accesses to a distance of 100 feet from the paved road shall be treated with a 6 to 12 inch compacted layer of wood chips, mulch, or gravel.</u> • <u>Sandbags or other erosion control measures shall be installed to prevent silt runoff to public roadways from sites with a slope greater than one percent.</u> • <u>Only Tier 4 engines shall be used when practicable for construction equipment and zero-emission equipment as available.</u> 				
<p>Minimization and Measure AQ-1b Implement best management practices for construction activities. The following air emissions reduction BMPs shall be implemented to the maximum extent practicable by the applicant and construction contractors. The following measures shall be included as recommended practices incorporated into all construction contracts related to the Project:</p> <ul style="list-style-type: none"> • Provide the necessary infrastructure to support the zero and near-zero emission technology vehicles and equipment that will be operating on-site. Necessary infrastructure may include the physical (e.g., needed footprint), energy, and fueling infrastructure for construction equipment, on-site vehicles, and medium-heavy and heavy-heavy duty trucks. • Portable equipment used during construction should be powered by electricity from the grid or onsite renewable sources, instead of diesel-powered generators. • All off-road diesel-powered equipment used during construction shall be equipped with Tier 4 or cleaner engines, except for specialized construction equipment in which Tier 4 engines are not available. In place of Tier 4 engines, off-road equipment can incorporate retrofits such that emission reductions achieved equal or exceed that of a Tier 4 engine. • All off-road equipment with a power rating below 19 kilowatts (e.g., plate compactors, pressure washers), used during project construction shall be battery powered. • All heavy-duty trucks entering the construction site, during the grading and building construction phases shall be model year 2014 or later, to the maximum extent practicable. All heavy-duty haul trucks shall also meet CARB's lowest optional low-NOx standard starting in the year 2022, to the maximum extent practicable. 	Construction	Implement BMPs	DCD	Verify implementation and compliance with BMPS
<p>Mitigation Measure AQ-2: <u>During the construction phase of the Project, the operational Odor Management Plan (OMP) shall be developed and implemented upon commissioning of the renewable fuels processes, intended to become an integrated part of daily operations at the Facility and other sites, so as to prevent any objectionable offsite odors and effect diligent identification and remediation of any potential objectionable odors generated by the facility and associated sites. The plan shall outline equipment that is in place and procedures that facility personnel shall use to address odor issues, facility wide. The OMP shall include continuous evaluation of the overall system performance, identification of trends to provide an opportunity for improvements to the plan, and updating the odor management and control strategies, as necessary. This plan shall be retained at the facility for County or other government agency inspection upon request. The following practices shall be included in the OMP to reduce the potential of objectionable odors from the</u></p>	<p>During construction</p> <p>Upon commissioning of the renewable fuels process</p>	<p>Prepare Odor Management Plan</p> <p>Implement Odor Management Plan</p>	<p>DCD; BAAQMD</p> <p>DCD; BAAQMD</p>	<p>Review and approve plan</p> <p>Verify plan implementation</p>

MITIGATION MEASURE	TIMING	MONITORING/ REPORTING ACTION	RESPONSIBLE ENTITY	COMPLIANCE VERIFICATION
<p><u>storage of renewable feedstocks, operation of the wastewater treatment plant, and any other odor generating activity:</u></p> <ul style="list-style-type: none"> • <u>Develop operating procedures to inspect and evaluate the effectiveness of odor control equipment and operation of the wastewater treatment plant.</u> • <u>Inspections to be conducted on a semi-annual basis.</u> • <u>If there are fewer than an average of five confirmed complaints per year during the first 3 years of operation, then the inspection frequency can be reduced to an annual basis.</u> • <u>If there are more than five confirmed complaints in any single year, then the application shall develop additional mitigation strategies in consultation with the BAAQMD.</u> • <u>In the event that odor complaints are reported, the permittee shall immediately take action to prevent repeat complaints. The permittee shall also develop and implement remedial odor mitigation strategies in consultation with the BAAQMD and County.</u> • <u>Prepare an annual evaluation report of the overall system performance, identifying any trends to provide an opportunity for improvements to the plan, and updates to the odor management and control strategies, as necessary. The report shall be provided to the BAAQMD and County for review and approval.</u> <p>During construction phase of the Project, the operational Odor Management Plan (OMP) shall be developed and implemented upon commissioning of the renewable fuels processes, intended to become an integrated part of daily operations at the Facility and other sites, so as to prevent any objectionable offsite odors and effect diligent identification and remediation of any potential objectionable odors generated by the facility and associated sites. The plan shall outline equipment that is in place and procedures that facility personnel shall use to address odor issues, facility wide. The OMP shall include continuous evaluation of the overall system performance, identifying any trends to provide an opportunity for improvements to the plan, and updating the odor management and control strategies, as necessary. This plan shall be retained at the facility for County or other government agency inspection upon request.</p> <p>The following practices shall be included in the OMP to reduce the potential of objectionable odors from the storage of renewable feedstocks, operation of the wastewater treatment plant, and any other odor generating activity:</p> <ul style="list-style-type: none"> • <u>Develop operating procedures to inspect and evaluate the effectiveness of odor control equipment and operation of the wastewater treatment plant.</u> • <u>Inspections conducted on a semi-annual basis.</u> • <u>If there are fewer than an average of five confirmed complaints per year during the first 3 years of operation, then the inspection frequency can be reduced to an annual basis.</u> • <u>If there are more than five complaints in any single year, then the application shall develop additional mitigation strategies in consultation with the BAAQMD.</u> <p>The Odor Management Plan shall be submitted to the Department of Conservation and Development for review and approval prior to commissioning of the renewable fuels process.</p>	Ongoing during operations	Inspect equipment and prepare annual report	DCD; BAAQMD	Review and approve annual report

MITIGATION MEASURE	TIMING	MONITORING/ REPORTING ACTION	RESPONSIBLE ENTITY	COMPLIANCE VERIFICATION
3.4 BIOLOGICAL RESOURCES				
<p>Mitigation Measure BIO-1a: General Work Site Best Management Practices. The following measures shall be included on all plans and employed by Marathon and its contractors to avoid and minimize impacts to water quality and other beneficial characteristics of wetlands at the Project Site:</p> <ul style="list-style-type: none"> • <u>All renovation personnel shall receive environmental awareness training provided by a County-approved qualified biologist. The training shall provide information about special-status species potentially occurring in the Project area, measures being implemented to avoid impacts to the species, and procedures to follow should a listed species be encountered during routine activities. Training shall be conducted to assure understanding by both Spanish and English speakers. Training materials and the qualified biologist's resume shall be submitted to County staff for approval 2 weeks prior to program initiation.</u> • No debris, soil, silt, sand, cement, concrete or washings thereof, or other construction-related materials or wastes, oil or petroleum products, or other organic or earthen material shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into marshes or open water/ditches adjacent to the work areas. • All personnel and their equipment shall be required to stay within the designated construction area to perform job-related tasks and shall not be allowed to enter wetlands, drainages and habitat of listed species. • Pets shall not be allowed in or near the construction area. • Firearms shall not be allowed in or near the construction area, except for armed Marathon security officers who may periodically patrol work sites. No intentional killing or injury of wildlife shall be permitted. • The construction site shall be maintained in a clean condition. All trash (e.g., food scraps, cans, bottles, containers, wrappers, cigarette butts and other discarded items) shall be placed in closed containers and properly disposed off-Site. • After construction is completed, final cleanup shall include removal of all stakes, temporary fencing, flagging and other refuse generated by construction. Vegetation shall not be removed or disturbed in the cleanup process. 	Prior to construction	Environmental awareness training	DCD	Review and approve training materials
	During construction	Implement General Work Site Best Management Practices	DCD	Verify implementation and compliance
<p>Mitigation Measure BIO-1b: Spill and Accidental Discharge Prevention. The following measures shall be included on all plans and employed by Marathon and its contractors. Marathon and its contractors shall be responsible for structure operations in a manner that minimizes the risk of spills or the accidental discharge of fuels or hazardous materials. Marathon and its contractors shall, at a minimum, ensure that:</p> <ul style="list-style-type: none"> • All employees handling fuels and other hazardous materials are properly trained. • All equipment is in good operating order and inspected regularly. • Hazardous materials, including chemicals, fuels and lubricating oils, shall not be stored within 200 feet of a wetland or water body. This applies to storage of these materials and does not apply to normal operation or use of equipment in these areas. • If refueling is needed on-Site, it will occur at least 100 feet from a surface water feature, and in a designated refueling area with secondary containment/plastic sheeting and a spill containment kit. 	Design	Include measures on plans	DCD	Verify measure included on plans
	Construction	Implement Spill and Accidental Discharge Prevention Measures	DCD Verify	implementation of measures

MITIGATION MEASURE	TIMING	MONITORING/ REPORTING ACTION	RESPONSIBLE ENTITY	COMPLIANCE VERIFICATION
Mitigation Measure BIO-1c: Emergency Spill and Containment Plan. The following measures shall be included on all plans and employed by Marathon and its contractors. In the event of an accidental spill, the Facility Oil Spill Contingency Plan shall be implemented. Site-specific provisions shall be listed on the Safe Work Permit and included within the job plan maintained on-Site. At a minimum, Marathon and its contractors shall: <ul style="list-style-type: none"> • Ensure that each construction crew (including clean-up crews) has sufficient supplies of absorbent and barrier materials on-Site to allow the rapid containment and recovery of spilled materials, and that each construction crew knows the procedure for reporting spills. • Ensure that each construction crew has sufficient tools and material on Site to stop leaks. • Know the contact names and telephone numbers for all Marathon Martinez Refinery contacts and local, state and federal agencies (including, if necessary, the U.S. Coast Guard and the National Response Center) that might need to be notified in the event of a spill. • Follow the requirements of those agencies in cleaning up the spill, excavating and disposing soils or other materials contaminated by a spill, and collecting and disposing waste generated during spill cleanup. 	Design	Include measures on plans; Emergency Spill and Containment Plan	DCD	Verify measure included on plans; Review and approve Safe Work Permit; Review and approve Emergency Spill and Containment Plan
	Construction	Implement plan	DCD	Verify plan implementation and compliance
Mitigation Measure BIO-1d: Stormwater Pollution Prevention Plan (SWPPP). The Project shall adhere to and implement the requirements of the respective existing SWPPP for the Marathon Martinez Refinery, Avon Marine Terminal and Amorcio Marine Terminal during Project construction. Applicable measures in each SWPPP shall be incorporated into the construction plans by a qualified specialist and implemented prior to construction	Design	SWPPP	SFRWQB	Review and approve SWPPP
	Design	Include applicable measures on construction plans	DCD	Verify measures included on construction plans
	Construction	Implement measures	DCD; SFRWQB	Verify implementation and compliance
Mitigation Measure BIO-1e: In-water Work Restrictions. The following work restrictions shall be included on all plans that include in-water work, and employed by Marathon and its contractors: <ul style="list-style-type: none"> • To the extent feasible, in-water work shall be performed between 30 minutes after sunrise and 30 minutes before sunset. • In-water work activity shall only occur during the work window specified by the NMFS and CDFW for avoidance of potential impacts to fish species in this region of the San Francisco Bay Estuary, August 1 to November 30. If in-water work outside this time period is required, the work window may be adjusted through coordination with the CDFW, NMFS and USFWS. 	Construction In-Water Work	Implement work restrictions	DCD	Verify compliance
			DCD; CDFW; NMFS; USFWS	Coordinate work window adjustments
Mitigation Measure BIO-1f: Nearshore Habitat Disturbance Minimization. The following measures shall be employed by Marathon and its contractors. The measures shall be included as recommended practices incorporated into all construction contracts related to the Project. The number of round trips made by barges during construction shall be limited to the extent feasible. Barge and support vessels shall transit through the shallows at a no-wake-producing speed to minimize disturbance to bottom sediments. Anchoring shall be minimized to the extent possible.	Construction	Minimize nearshore habitat disturbance	DCD	Review construction contracts Verify implementation and compliance

MITIGATION MEASURE	TIMING	MONITORING/ REPORTING ACTION	RESPONSIBLE ENTITY	COMPLIANCE VERIFICATION
Mitigation Measure BIO-1g: Demarcation of Limits of Work. Marathon and its contractors shall clearly demarcate the limits of work in the field. All Project-related activity shall be confined to the designated work areas; no entry into adjacent areas shall be allowed by Project personnel. Upon Project completion, material used to mark the work boundary shall be removed.	Construction	Designate work areas	DCD	Verify implementation of measure
Mitigation Measure BIO-1h: Weed Spread Prevention. Marathon and its contractors shall implement measures to ensure that boots, clothing, vehicles and equipment are free of soils and plant parts prior to entering work areas.	Construction	Prevent weeds	DCD	Verify implementation of measure
Mitigation Measure BIO-1i: Preconstruction Focused Soft-Bird's Beak Surveys. Focused surveys for soft-bird's beak shall be conducted by a qualified biologist each year during the appropriate blooming period (June 1 through September 30) prior to construction to confirm its absence. Locations of rare plants in proposed construction areas will be recorded using a GPS unit and flagged for avoidance. A qualified biologist shall monitor construction activities occurring in the vicinity of the flagged plants to ensure that no direct or indirect impacts occur.	June 1 through September 30 prior to construction	Focused surveys and report	DCD	Review and approve report
Mitigation Measure BIO-1j: Preconstruction Nesting Bird Surveys. No more than 5 days prior to construction during the nesting bird season (February 1 through September 15), a qualified biologist shall conduct a survey for nesting birds. If work within an area lapses for more than 14 days during the nesting season, the survey shall be repeated. The survey shall encompass all work areas and those areas within a buffer of 250 feet for passerines, 500 feet for small raptors, and 1,000 feet for large raptors. Where accessible, the location of active nests will be recorded using a handheld global-positioning system unit. Should an active nest be discovered, a biological monitor will be required on-Site during construction activities that could cause disturbance of the nest. The biologist may allow work to continue if they determine that the work activity is not likely to cause nest disturbance. The biological monitor shall have the authority to stop work should a nesting bird display signs of agitation. The qualified biologist conducting the nesting surveys should prepare a report that provides details about the nesting outcome and the removal of buffers. This report should be submitted to the County's Department of Conservation and Development for review and approval prior to the time that buffers are removed.	Prior to construction Construction	Preconstruction survey and report(s)	DCD	Review and approve report(s)
Mitigation Measure BIO-1k: California Ridgway's Rail and California Black Rail Surveys. Prior to construction occurring during the rail nesting season (February 1 through August 31) within 700 feet of suitable rail habitat, surveys shall be conducted for California Ridgway's rail and California black rail in accordance with the USFWS Survey protocol for California Ridgway's rail. Surveys should be initiated between January 15 and February 1. For each survey station, four surveys are to be conducted. Surveys should be spaced at least two weeks apart and should cover the time period from the date of the first survey through the end of March or mid-April. If California Ridgway's or California black rails are detected during the survey, no work within 700 feet of the rail calling centers (identified via compass bearing and distance estimate during surveys) shall occur between February 1 and August 31, unless otherwise approved by USFWS and CDFW.	Prior to construction	Focused surveys and report	DCD	Review and approve report
Mitigation Measure BIO-2: Implement Mitigation Measure BIO-1a, Mitigation Measure BIO-1b, Mitigation Measure BIO-1c, Mitigation Measure BIO-1g and Mitigation Measure BIO-1h.	See Mitigation Measure BIO-1a, Mitigation Measure BIO-1b, Mitigation Measure BIO-1c, Mitigation Measure BIO-1g and Mitigation Measure BIO-1h.			
Mitigation Measure BIO-3: Implement Mitigation Measure BIO-1a, Mitigation Measure BIO-1b, Mitigation Measure BIO-1c, Mitigation Measure BIO-1e, Mitigation Measure BIO-1g, Mitigation Measure BIO-1h, Mitigation Measure BIO-1j and Mitigation Measure BIO-1k	See Mitigation Measure BIO-1a, Mitigation Measure BIO-1b, Mitigation Measure BIO-1c, Mitigation Measure BIO-1g and Mitigation Measure BIO-1h.			

MITIGATION MEASURE	TIMING	MONITORING/ REPORTING ACTION	RESPONSIBLE ENTITY	COMPLIANCE VERIFICATION
Mitigation Measure BIO-7a: Vessel Strike Minimization. The following mitigation measure shall be implemented during all on-going business operations and shall be included as part of contractual agreement language to ensure that contract vessels are informed of all on-going operational responsibilities. Marathon shall update pre-arrival document materials and instructions sent to tank vessels agents/operators scheduled to arrive at the Marine Terminal with the following information and requests: <ul style="list-style-type: none"> Available outreach materials regarding the Blue Whales and Blue Skies incentive program. Whale strike outreach materials and collision reporting from NOAA. Request extra vigilance by ship crews upon entering the traffic separation scheme shipping lanes approaching San Francisco Bay and departing San Francisco Bay to aid in detection and avoidance of ship strike collisions with whales. Inform all vessel traffic of vessels 300 gross registered tons or larger to reduce speeds to 10-knots when transiting within the designated Vessel Speed Reduction zones. Request compliance to the maximum extent feasible (based on vessel safety) with the 10-knot speed reduction zone. Understand and agree that decisions concerning safe navigation and maneuvering of participating vessels remain entirely with ship masters and crew. Encourage participation in the Blue Whales and Blue Skies incentive program. 	Construction, ongoing during operations	Include measure in contracts Provide information and requests	DCD	Confirm measure included in contracts Review information and request materials
Mitigation Measure BIO-7b: Sturgeon Action Funding. Marathon Refining and Marketing Company, LLC (Marathon) shall conduct and support the following activities to further the understanding of vessel strike vulnerability of sturgeon in San Francisco, San Pablo, and Suisun Bays and the Carquinez Strait. The support shall be based on criteria that establish Marathon's commensurate share taking into account the increase in vessel calls to the Avon and Amorc Marine Oil Terminals. Support shall include coordination with CDFW and Research Sturgeon to ensure appropriate messaging on information flyers suitable for display at bait and tackle shops, boat rentals, fuel docks, fishing piers, ferry stations, dockside businesses, etc. to briefly introduce interesting facts about the sturgeon and research being conducted to learn more about its requirements and how the public's observations can inform strategies being developed to improve fisheries habitat within the estuary.	Operation	Sturgeon Action Funding	DCD; CDFW	Confirm funding provided
Mitigation Measure BIO-9a: Marathon Refining and Marketing Company, LLC (Marathon) shall continue to participate and assist in funding ongoing and future actions related to nonindigenous aquatic species (NAS) as described in Mitigation Measure BIO-9B of the Tesoro Avon Marine Oil Terminal Lease Consideration Project Final Environmental Impact Report (FEIR) and Mitigation Measure BIO-7b of the Amorc Marine Terminal FEIR. The level of funding shall be revisited through a cooperative effort between California State Lands Commission staff, the DWR, CDFW, and Marathon, and shall be based on criteria that establish Marathon's commensurate share NAS actions costs taking into account the increase in vessel calls to the Avon and Amorc Marine Oil Terminals.	Operation	NAS funding	DCD; CSLC	Confirm funding provided
3.5 CULTURAL AND TRIBAL RESOURCES				
Mitigation Measure CR-1: Discovery of Unknown Cultural or Archaeological Resources. The following Mitigation Measures shall be implemented during project related ground disturbance, and shall be included on all construction plans: All construction personnel, including operators of equipment involved in grading, or trenching activities will be advised of the need to immediately stop work if they observe any indications of the presence of an	Prior to any ground disturbance and throughout construction	Upon find of prehistoric or historic-period archaeological resources	DCD; Tribal representative, if required	Confirm suspension of work upon find and resource determination; Approve avoidance

MITIGATION MEASURE	TIMING	MONITORING/ REPORTING ACTION	RESPONSIBLE ENTITY	COMPLIANCE VERIFICATION
<p>unanticipated cultural resource discovery (e.g. wood, stone, foundations, and other structural remains; debris-filled wells or privies; deposits of wood, glass, ceramics). If deposits of prehistoric or historical archaeological materials are encountered during ground disturbance activities, all work within 50 feet of the discovery shall be redirected and a qualified archaeologist, certified by the Society for California Archaeology (SCA) and/or the Society of Professional Archaeology (SOPA), shall be contacted to evaluate the finds and, if necessary, develop appropriate treatment measures in consultation with the County and other appropriate agencies. If the cultural resource is also a tribal cultural resource (TCR) the representative (or consulting) tribe(s) will also require notification and opportunity to consult on the findings.</p> <p>If the deposits are not eligible, avoidance is not necessary. If eligible, deposits will need to be avoided by impacts or such impacts must be mitigated. Upon completion of the archaeological assessment, a report should be prepared documenting the methods, results, and recommendations. The report should be submitted to the Northwest Information Center and appropriate Contra Costa County agencies.</p> <p>Should human remains be uncovered during grading, trenching, or other on-site excavation(s), earthwork within 30 yards of these materials shall be stopped until the County coroner has had an opportunity to evaluate the significance of the human remains and determine the proper treatment and disposition of the remains. Pursuant to California Health and Safety Code Section 7050.5, if the coroner determines the remains may those of a Native American, the coroner is responsible for contacting the Native American Heritage Commission (NAHC) by telephone within 24 hours. Pursuant to California Public Resources Code Section 5097.98, the NAHC will then determine a Most Likely Descendant (MLD) tribe and contact them. The MLD tribe has 48 hours from the time they are given access to the site to make recommendations to the land owner for treatment and disposition of the ancestor's remains. The land owner shall follow the requirements of Public Resources Code Section 5097.98 for the remains.</p> <p>In the event the Project design changes, and ground disturbance is anticipated beyond the Area of Potential Effect, as it is currently defined by the Cultural Resources Inventory Reports, further surveys shall be conducted in those new areas to assess the presence of cultural resources. Any newly discovered or previously recorded sites within the additional survey areas shall be recorded (or updated) on appropriate Department of Parks and Recreation (DPR) 523-series forms. If avoidance of these cultural resources is not feasible then an evaluation and/or data recovery program shall be drafted and implemented.</p>				or other applicable measures.
3.7 GEOLOGY AND SOILS				
<p>Mitigation Measure GEO-2: Submittal of Final Geotechnical Evaluation Report. Prior to issuance of a grading or building permit for the equipment changes associated with the Project, the Applicant shall submit a final geotechnical evaluation report prepared by a licensed engineer, for approval by the Department of Conservation and Development, Peer Review Geologist, along with payment for the peer review fee. The report shall specify final recommendations for seismically and structurally sound installation of new structures, equipment and foundations in accordance with the California Building Code standards in effect at the time the permit application is submitted. Construction drawings submitted with the building permit application shall include appropriate detail to demonstrate compliance of the Project with the standards of the applicable California Building Code.</p>	Prior to issuance of grading or building permit	Prepare and submit to the County a Final Geotechnical Evaluation Report	DCD; County Peer Reviewing Engineering Geologist or Geotechnical Engineer	Review of Final Geotechnical Evaluation Report
<p>Mitigation Measure GEO-6: Implement Mitigation Measure GEO-2.</p>	See Mitigation Measure GEO-2.			
<p>Mitigation Measure GEO-7: Implement Mitigation Measure GEO-2.</p>	See Mitigation Measure GEO-2.			

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EXHIBIT D – MARTINEZ REFINERY RENEWABLE FUELS PROJECT
CALIFORNIA STATE LANDS COMMISSION
STATEMENT OF FINDINGS AND
STATEMENT OF OVERRIDING CONSIDERATIONS

1.0 INTRODUCTION

The California State Lands Commission (Commission), acting as a responsible agency under the California Environmental Quality Act (CEQA), makes these findings and this Statement of Overriding Considerations to comply with CEQA as part of its discretionary approval to authorize an amendment of General Lease – Industrial Use, to Tesoro Refining & Marketing Company LLC, for use of sovereign land associated with the proposed Martinez Refinery Renewable Fuels Project (Project) at the Avon Marine Oil Terminal (MOT). (See generally Pub. Resources Code, § 21069; State CEQA Guidelines¹, § 15381.) The Commission has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The Commission also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions. (Pub. Resources Code, §§ 6301, 6306, 6009, subd. (c).) All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the common law Public Trust.

The Commission is a responsible agency under CEQA for the Project because the Commission must amend a lease for the Project to go forward and because Contra Costa County (County), as the CEQA lead agency, has the principal responsibility for approving the Project and has completed its environmental review under CEQA. The County analyzed the environmental impacts associated with the Project in a Final Environmental Impact Report (EIR) (State Clearinghouse [SCH] No. 2021020289) and in May 2022, certified the EIR and adopted a Mitigation Monitoring and Reporting Program (MMRP) and Findings, and a Statement of Overriding Considerations.

¹ CEQA is codified in Public Resources Code section 21000 et seq. The State CEQA Guidelines are found in California Code of Regulations, title 14, section 15000 et seq.

The Project within Commission jurisdiction involves the following:

- Reconfigure part of the system of pipes and hoses at Avon Wharf to keep the finished petroleum products separate from the renewable feedstocks and to facilitate transmission of the renewable feedstock through receiving pipelines. This renovation work would primarily occur on the Avon MOT's 26 Line pipeline, which extends from offshore on the east side of the paved access road and wharf, to an aboveground pipe rack on the east side of a pedestrian walkway onshore. The 26 Line would be equipped with heat tracing, wrapped in insulation, and then placed in a metal sleeve, the joints of which would be sealed with silicone, all of which is intended to keep the feedstock in a transmissible liquid state. While the offshore work on the 26 Line would occur over water, no in-water work is proposed as part of the Project
- Expand the authorized uses of the leased lands to include the transfer of renewable fuels and their constituent components (i.e., feedstocks including plant oils and animal fats).

The County determined that the Project could have significant environmental effects on the following environmental resources:

- Air Quality
- Biological Resources
- Cultural and Tribal Resources
- Geology and Soils
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials
- Hydrology and Water Quality

Of the seven resources areas noted above, Project components within the Commission's jurisdiction could have significant environmental effects on three of the resource areas, as follows:

- Biological Resources
- Hazards and Hazardous Materials
- Hydrology and Water Quality

In certifying the Final EIR and approving the Project, the County imposed various mitigation measures for Project-related significant effects on the environment as conditions of Project approval and concluded that Project-related impacts would be substantially lessened with implementation of these mitigation measures. However, even with the integration of all feasible mitigation, the County concluded in the EIR that some of the identified impacts would remain significant. As a result, the County adopted a Statement of Overriding Considerations to support its approval of the Project despite the significant and

unavoidable impacts. The County determined that, after mitigation, the Project may still have significant impacts on Biological Resources, Hazards and Hazardous Materials, and Hydrology and Water Quality. Because these significant impacts may occur on lands under the jurisdiction of the Commission, the Commission also adopts the Statement of Overriding Considerations set forth in this Exhibit as part of its approval.

As a responsible agency, the Commission complies with CEQA by considering the EIR and reaching its own conclusions on whether, how, and with what conditions to approve a project. In doing so, the Commission may require changes in a project to lessen or avoid the effects, either direct or indirect, of that part of the project which the Commission will be called on to carry out or approve. In order to ensure the identified mitigation measures and/or Project revisions are implemented, the Commission adopts the Mitigation Monitoring Program (MMP) as set forth in Exhibit C as part of its Project approval.

2.0 ADMINISTRATIVE RECORD OF PROCEEDINGS AND CUSTODIAN OF THE RECORD

These Findings are supported by substantial evidence contained in the EIR and other relevant information provided to the Commission or existing in its files, all of which is contained in the administrative record. The administrative record is located at the California State Lands Commission, 100 Howe Avenue, Suite 100-South, Sacramento, CA 95825. The custodian for the administrative record is the California State Lands Commission Division of Environmental Planning and Management.

3.0 FINDINGS

The Commission's role as a responsible agency affects the scope of, but not the obligation to adopt, findings required by CEQA. Findings are required under CEQA by each "public agency" that approves a project for which an EIR has been certified that identifies one or more significant impacts on the environment (Pub. Resources Code, § 21081, subd. (a); State CEQA Guidelines, § 15091, subd. (a).) Because the EIR certified by the County for the Project identifies potentially significant impacts that fall within the scope of the Commission's approval, the Commission makes the Findings set forth below as a responsible agency under CEQA. (State CEQA Guidelines, § 15096, subd. (h); *Riverwatch v. Olivenhain Mun. Water Dist.* (2009) 170 Cal.App.4th 1186, 1202, 1207.

While the Commission must consider the environmental impacts of the Project as set forth in the EIR, the Commission's obligation to mitigate or avoid the direct or indirect environmental impacts of the Project is limited to those parts which it decides to carry out, finance, or approve (Pub. Resources Code, § 21002.1,

subd. (d); State CEQA Guidelines, §§ 15041, subd. (b), 15096, subds. (f)-(g).) Accordingly, because the Commission's exercise of discretion involves only issuing an Amendment of General Lease – Industrial Use for this Project, the Commission is responsible for considering only the environmental impacts related to lands or resources subject to the Commission's jurisdiction. With respect to all other impacts associated with implementation of the Project, the Commission is bound by the legal presumption that the EIR fully complies with CEQA.

The Commission has reviewed and considered the information contained in the Project EIR. All significant adverse impacts of the Project identified in the EIR relating to the Commission's approval of an Amendment of General Lease – Industrial Use, which would allow the continued operation and maintenance of an existing marine terminal wharf (the Amorco Terminal) in the Carquinez Strait; and two crossings at Pacheco Creek for various pipelines and a telephone cable, are included herein and organized according to the resource affected.

These Findings, which reflect the independent judgment of the Commission, are intended to comply with CEQA's mandate that no public agency shall approve or carry out a project for which an EIR has been certified that identifies one or more significant environmental effects unless the agency makes written findings for each of those significant effects. Possible findings on each significant effect are:

- (1) Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.
- (2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the Commission. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
- (3) Specific economic, legal, social, technological or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the Final EIR.²

A discussion of supporting facts follows each Finding.

² See Public Resources Code section 21081, subdivision (a) and State CEQA Guidelines section 15091, subdivision (a).

- Whenever Finding (1) occurs, the mitigation measures that lessen the significant environmental impact are identified in the facts supporting the Finding.
- Whenever Finding (2) occurs, the agencies with jurisdiction are specified. These agencies, within their respective spheres of influence, have the responsibility to adopt, implement, and enforce the mitigation discussed.
- Wherever Finding (3) is made, the Commission has determined that, even after implementation of all feasible mitigation measures and consideration of feasible alternatives, the identified impact will exceed the significance criteria set forth in the EIR. Furthermore, to the extent that potentially feasible measures have been alleged or proposed, the Findings explain why certain economic, legal, social, technological or other considerations render such possibilities infeasible. The significant and unavoidable impacts requiring Finding (3) are identified in the Final EIR, discussed in the Responses to Comments, and explained below. Having done everything it can to avoid and substantially lessen these effects consistent with its legal authority and CEQA, the Commission finds in these instances that overriding economic, legal, social, and other benefits of the approved Project outweigh the resulting significant and unavoidable impacts. The Statement of Overriding Considerations adopted as part of this exhibit applies to all such unavoidable impacts as required by CEQA. (Pub. Resources Code, § 21081, subd. (b); State CEQA Guidelines, §§ 15092 and 15093.)

The mitigation measures are briefly described in these Findings; more detail on the mitigation measures is included in the Final EIR.

A. SUMMARY OF FINDINGS

Based on public scoping, the proposed Project will have No Impact on the following environmental issue areas:

- Agriculture and Forestry
- Mineral Resources
- Population and Housing
- Recreation
- Wildfire

The EIR subsequently identified the following impacts as Less Than Significant:

- Aesthetics
- Air Quality
- Biological Resources (partial)
- Cultural Resources

- Tribal Cultural Resources
- Energy
- Geology and Soils
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials (partial)
- Hydrology and Water Quality
- Land Use
- Noise
- Public Services
- Transportation
- Utilities and Service Systems

For the remaining potentially significant effects, the Findings are organized by significant impacts within the EIR issue areas as presented below.

B. POTENTIALLY SIGNIFICANT IMPACTS

The impacts within the Commission's jurisdiction identified in Table D-1 were determined in the Final EIR to be potentially significant absent mitigation. After application of mitigation, however, several impacts were determined to be less than significant (LTSM). For the full text of each mitigation measure (MM), please refer to Exhibit C, Attachment C-1.

However, even with the integration of all feasible mitigation, the County concluded in the EIR that the other identified potentially significant impacts will remain significant. Table D-1 identifies those impacts that the County determined would be, after mitigation, significant and unavoidable (SU).

Table D-1 – Significant Impacts by Issue Area

Environmental Issue Area	Impact Nos. (LTSM)	Impact Nos. (SU)
Biological Resources	BIO-1, BIO-2, BIO-3, and BIO-7	BIO-8 and BIO-9
Hazards and Hazardous Materials		HAZ-1
Hydrology and Water Quality		HWQ-1

As a result, the Commission adopts the Statement of Overriding Considerations set forth as part of this Exhibit to support its approval of the Project despite the significant and unavoidable impacts.

C. IMPACTS REDUCED TO LESS THAN SIGNIFICANT LEVELS WITH MITIGATION

The impacts identified below were determined in the Final EIR to be potentially significant absent mitigation; however, the impacts were determined to be less than significant with mitigation (LTSM).

1. BIOLOGICAL RESOURCES

CEQA FINDING NO. BIO-1

Impact: **Impact BIO-1. Cause substantial temporary impacts to special-status species due to renovation activity.**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project have the potential to result in direct or indirect impacts to special-status species. As detailed in the EIR, implementing MMs BIO-1a, BIO-1b, BIO-1c, BIO-1d, BIO-1e, BIO-1f, BIO-1g, BIO-1h, BIO-1i, BIO-1j, and BIO-1-k will reduce the Project's potential impacts on special-status species to a less than significant level.

- **MM BIO-1a.** General Work Site Best Management Practices.
- **MM BIO-1b.** Spill and Accidental Discharge Prevention.
- **MM BIO -1c.** Emergency Spill and Containment Plan.
- **MM BIO -1d.** Storm Water Pollution Prevention Plan (SWPP).
- **MM BIO -1e.** In-water Work Restrictions.
- **MM BIO -1f.** Nearshore Habitat Disturbance Minimization.
- **MM BIO -1g.** Demarcation of Work Limits.
- **MM BIO -1h.** Weed Spread Prevention.
- **MM BIO -1i.** Preconstruction Focused Soft-Bird's Beak Surveys.
- **MM BIO -1j.** Preconstruction Nesting Bird Surveys.
- **MM BIO -1k.** California Ridgway's Rail and California Black Rail Surveys.

Implementation of MMs BIO-1a, BIO-1b, BIO-1b, BIO-1d, BIO-1e, BIO-1f, BIO-1g, BIO-1h, BIO-1i, BIO-1j, and BIO-1-k has been incorporated into the Project to reduce this impact to a less than significant level.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

CEQA FINDING NO. BIO-2

Impact: **Impact BIO-2. Disturbance or Loss of Sensitive Natural Communities or State and Federally Protected Wetlands.**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project have the potential to result in disturbance or loss of sensitive natural communities or State and Federally protected wetlands. As detailed in the EIR, implementing MMs BIO-1a, BIO-1b, BIO-1c, BIO-1g, and BIO-1h will reduce the Project's potential impacts to sensitive natural communities or State and Federally protected wetlands to a less than significant level.

- **MM BIO-1a.** General Work Site Best Management Practices.
- **MM BIO-1b.** Spill and Accidental Discharge Prevention.
- **MM BIO -1c.** Emergency Spill and Containment Plan.
- **MM BIO -1g.** Demarcation of Work Limits.
- **MM BIO -1h.** Weed Spread Prevention.

Implementation of MMs BIO-1a, BIO-1b, BIO-1c, BIO-1g, and BIO-1h has been incorporated into the Project to reduce this impact to a less than significant level.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

CEQA FINDING NO. BIO-3

Impact: **Impact BIO-3. Interfere with Wildlife Migratory Corridors or Nursery Sites.**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project have the potential to interfere with wildlife migratory corridors or nursery sites. As detailed in the EIR, implementing MMs BIO-1a, BIO-1b, BIO-1b, BIO-1e, BIO-1g, BIO-1h, BIO-1j, and BIO-1-k will reduce the Project's potential impacts on wildlife migratory corridors or nursery sites to a less than significant level.

- **MM BIO-1a.** General Work Site Best Management Practices.
- **MM BIO-1b.** Spill and Accidental Discharge Prevention.
- **MM BIO -1c.** Emergency Spill and Containment Plan.
- **MM BIO -1e.** In-water Work Restrictions.
- **MM BIO -1g.** Demarcation of Work Limits.
- **MM BIO -1h.** Weed Spread Prevention.
- **MM BIO -1j.** Preconstruction Nesting Bird Surveys.
- **MM BIO -1k.** California Ridgway's Rail and California Black Rail Surveys.

Implementation of MMs BIO-1a, BIO-1b, BIO-1b, BIO-1e, BIO-1g, BIO-1h, BIO-1j, and BIO-1-k has been incorporated into the Project to reduce this impact to a less than significant level.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

CEQA FINDING NO. BIO-7

Impact: **Impact BIO-7. Cause injury or behavioral interruptions to aquatic species as a result of noise from increased number of vessels.**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project have the potential to cause injury or behavioral interruptions to aquatic species as a result of noise from increased number of vessels. As detailed in the EIR, implementing MMs BIO-7a and BIO-7b will reduce the Project's potential impacts on aquatic species to a less than significant level.

- **MM BIO-7a.** Vessel Strike Minimization.
- **MM BIO-7b.** Sturgeon Action Funding.

Implementation of MMs BIO-7a and BIO-7b has been incorporated into the Project to reduce this impact to a less than significant level.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

D. SIGNIFICANT AND UNAVOIDABLE IMPACTS

The following impacts were determined in the Final EIR to be significant and unavoidable. The Statement of Overriding Considerations adopted as part of this exhibit applies to all such unavoidable impacts as required by CEQA. (Pub. Resources Code, § 21081, subd. (b); State CEQA Guidelines, §§ 15092 and 15093.)

1. BIOLOGICAL RESOURCES

CEQA FINDING NO. BIO-8

Impact: **Impact BIO-8. Cause significant adverse impacts to the San Francisco Bay Estuary and associated biota as a result of spills**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

- (3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project have the potential to cause significant adverse impacts to the San Francisco Bay Estuary and associated biota as a result of spills.

Implementation of MMs BIO-1b, BIO-1c, and HAZ-1 has been incorporated into the Project and would reduce the severity of Impact BIO-8, although not necessarily to a less than significant level.

MM BIO-1b. Spill and Accidental Discharge Prevention.

MM BIO -1c. Emergency Spill and Containment Plan.

MM HAZ-1: Comply with mitigation measures as outlined in the Operational Safety/Risk of Accident sections of the EIRs for both the Tesoro Amorco Marine Oil Terminal Lease Consideration Project FEIR Amorco and Tesoro Avon Marine Oil Terminal Lease Consideration Project FEIR Avon MOTs.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. This impact is considered significant and unavoidable.

CEQA FINDING NO. BIO-9

Impact: **Impact BIO-9. Introduce invasive nonindigenous aquatic species to the San Francisco Bay Estuary**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

- (3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project have the potential to result in introduction of invasive nonindigenous aquatic species to the San Francisco Bay Estuary.

Implementation of MM BIO-9a has been incorporated into the Project and would reduce the severity of Impact BIO-9, although not necessarily to a less than significant level.

MM BIO-9a: Invasive Species Action Funding.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. This impact is considered significant and unavoidable.

2. HAZARDS AND HAZARDOUS MATERIALS

CEQA FINDING NO. HAZ-1

Impact: **Impact HAZ-1. Create a hazard to the public or the environment through the routine transport, use, and/or disposal of hazardous materials**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project that have the potential to create a hazard to the public or the environment through the routine transport, use, and/or disposal of hazardous materials.

Implementation of MM HAZ-1 has been incorporated into the Project and would reduce the severity of Impact HAZ-1, although not necessarily to a less than significant level.

MM HAZ-1: Comply with mitigation measures as outlined in the Operational Safety/Risk of Accident sections of the EIRs for both the Tesoro Amorco

Marine Oil Terminal Lease Consideration Project FEIR Amorco and Tesoro
Avon Marine Oil Terminal Lease Consideration Project FEIR Avon MOTs.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. This impact is considered significant and unavoidable.

3. HYDROLOGY AND WATER QUALITY

CEQA FINDING NO. HWQ-1

Impact: **Impact HWQ-1: Consequences of a large spills could result in significant residual impacts.**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project have the potential to create a large spill resulting in impacts to water quality through the routine transport, use, and/or disposal of hazardous materials.

Implementation of MMs BIO-1b, BIO-1c, and HAZ-1 have been incorporated into the Project and would reduce the severity of Impact HWQ-1, although not necessarily to a less than significant level.

- **MM BIO-1b.** Spill and Accidental Discharge Prevention.
- **MM BIO-1c.** Emergency Spill and Containment Plan.
- **MM HAZ-1.** Comply with mitigation measures as outlined in the Operational Safety/Risk of Accident sections of the EIRs for both the Tesoro Amorco Marine Oil Terminal Lease Consideration Project FEIR Amorco and Tesoro Avon Marine Oil Terminal Lease Consideration Project FEIR Avon MOTs.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. This impact is considered significant and unavoidable.

E. FINDINGS ON ALTERNATIVES

As explained in *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 1000:

When it comes time to decide on project approval, the public agency's decisionmaking body evaluates whether the alternatives [analyzed in the EIR] are actually feasible.... At this final stage of project approval, the agency considers whether '[s]pecific economic, legal, social, technological, or other considerations...make infeasible the mitigation measures or alternatives identified in the environmental impact report.' Broader considerations of policy thus come into play when the decisionmaking body is considering actual feasibility than when the EIR preparer is assessing potential feasibility of the alternatives [citations omitted].

The three alternatives analyzed in the EIR represent a reasonable range of potentially feasible alternatives that could reduce one or more significant impacts of the Project. These alternatives include:

- 1) No Project Alternative;
- 2) Reduced Renewable Feedstock Throughput Alternative; and
- 3) Green Hydrogen Alternative.

As presented in the EIR, the alternatives were described and compared with each other and with the proposed Project.

Under State CEQA Guidelines section 15126.6, subdivision (e)(2), if the No Project Alternative is identified as the environmentally superior alternative, the EIR must also identify an environmentally superior alternative among the other alternatives. Based on the analysis contained in the EIR, there is no clear environmentally superior alternative to the proposed Project that is capable of achieving the Project objective. No one alternative would eliminate the significant and adverse impacts of the proposed Project.

The County independently reviewed and considered the information on alternatives provided in the EIR and in the record. The EIR reflects the County's independent judgment as to alternatives. The County found that the Project provides the best balance between the Project goals and objectives and the Project's benefits. The three CEQA alternatives proposed and evaluated in the EIR were rejected as being infeasible for the following reasons provided in the County's Findings Regarding Alternatives (incorporated herein by reference).

- 1) Alternative 1 – No Project Alternative

This alternative would not achieve most of the objectives of the proposed

project, with the exception of maintaining quality jobs. Moreover, the No Project Alternative would result in the same impacts to aesthetics, biological resources, hazards and hazardous materials, hydrology and water quality, land use and planning, noise, and public services as the proposed Renewable Fuels Project and would result in more severe impacts to air quality, energy use, greenhouse gas emissions, transportation, and utilities and service systems than the proposed Renewable Fuels Project.

- 2) **Alternative 2 – Reduced Renewable Feedstock Throughput Alternative**
By limiting renewable feedstock throughput, this alternative would generate fewer jobs, would result in a lower volume of renewable fuels being produced and brought to market to support the State's renewable energy goals, and would not achieve the Project objectives as well as the proposed project.
- 3) **Alternative 3 – Green Hydrogen Alternative**
While the Green Hydrogen alternative would meet many project objectives, this alternative would not meet the project objective of repurposing and reusing existing Refinery infrastructure. Instead, it would require installation of a new hydrogen plant and renewable energy source(s), such as wind turbines or photovoltaic panels, as a power source for the new hydrogen plant. The County has assumed, for purposes of evaluating this alternative, that the renewable energy source would be solar because wind farms are limited to the County's easternmost areas under General Plan policy (Policy 8-49). Because this alternative would require construction of a renewable energy source on-site, the developed footprint of the Site could increase with installation of solar panels on currently undeveloped lands at the Site. The need for a renewable energy source such as solar means that the Green Hydrogen alternative may have greater impacts on aesthetics, biological resources, and cultural and tribal resources than the proposed Project. A photovoltaic array of sufficient size to provide electricity to a new green hydrogen plant could create a new source of light and glare along the Site's marshes or shoreline. This expansion of infrastructure into largely natural areas outside of the Refinery equipment area would change the existing industrial appearance of the property and could interfere with views of Mt. Diablo from the shoreline, in conflict with County General Plan Goal 9-F and Policy 9-25. Further, among the alternatives evaluated in the EIR, the Green Hydrogen alternative would result in the greatest long-term impacts to biological resources as a result of modifying the natural environment to develop several hundred acres undeveloped acres for use as a photovoltaic array. Finally, the installation of renewable energy infrastructure on currently undeveloped land required by the Green Hydrogen alternative has the potential to disturb unknown historic

archaeological and cultural resources.

Based upon the objectives identified in the Final EIR and the detailed mitigation measures imposed upon the Project, the Commission has determined that the Project should be approved, subject to such mitigation measures (Exhibit C, Mitigation Monitoring Program), and that any remaining unmitigated environmental impacts attributable to the Project are outweighed by the following specific economic, fiscal, social, environmental, land use, and other overriding considerations.

4.0 STATEMENT OF OVERRIDING CONSIDERATIONS

A. INTRODUCTION

This section addresses the Commission's obligations under Public Resources Code section 21081, subdivisions (a)(3) and (b). (See also State CEQA Guidelines, §§ 15091, subd. (a)(3), 15093.) Under these provisions, CEQA requires the Commission to balance, as applicable, the economic, legal, social, technological, or other benefits, including regionwide or statewide environmental benefits, of the Lease approval related to the Martinez Renewable Fuels Project against the backdrop of the Project's unavoidable significant environmental impacts. For purposes of CEQA, if the specific economic, legal, social, technological, or other benefits of a proposed project outweigh the unavoidable significant environmental effects, those effects may be considered acceptable and the decision-making agency may approve the underlying project. (State CEQA Guidelines § 15092, subd. (b)(2)(B).) CEQA, in this respect, does not prohibit the Commission from approving the Lease even if the Project activities as authorized under the Lease may cause significant and unavoidable environmental effects.

This Statement of Overriding Considerations presents a list of (1) the specific significant effects on the environment attributable to the approved Project that cannot feasibly be mitigated to below a level of significance, (2) benefits derived from the approved Project, and (3) specific reasons for approving the Project.

Although the County and Commission have imposed mitigation measures to reduce impacts, impacts remain that are considered significant after application of all feasible mitigation. Significant impacts of the approved Project fall under three resource areas: Biological Resources, Hazards and Hazardous Materials, and Hydrology and Water Quality (see Table D-2). These impacts are specifically identified and discussed in more detail in the Commission's CEQA Findings and in County's Final EIR. While the Commission has required all feasible

mitigation measures, these impacts remain significant for purposes of adopting this Statement of Overriding Considerations.

Table D-2 – Significant and Unavoidable Impacts Identified for the Approved Project

Impact	Impact Description
Biological Resources	
Impact BIO-8. Cause significant adverse impacts to the San Francisco Bay Estuary and associated biota as a result of spills	<p>Adverse impacts to special status species, protected habitats, and migratory corridors and nursery sites for native species as a result of a major spill would remain significant and unavoidable. Marathon would be required to update the Refinery's Facility Response Plan (FRP) and Spill Prevention, Control, and Countermeasure Plan (SPCC) to demonstrate preparedness to respond to vegetable oil and animal fat spills. However, there are limitations to thorough containment and cleanup of a major oil spill. As was determined in the Avon and Amorco EIRs certified by the Commission, even with specific procedures to protect sensitive biological resources in the Project vicinity, adverse impacts to special status species, protected habitats, and migratory corridors and nursery sites for native species as a result of a major spill would remain significant and unavoidable. The EIR imposes mitigation measures BIO-1b, BIO-1c, and HAZ-1, which require updates and implementation of spill response plans, but discloses that those measures would be unlikely to mitigate the project's impact to a less-than-significant level, and impacts would be significant and unavoidable.</p>
Impact BIO-9. Introduce invasive nonindigenous aquatic species to the San Francisco Bay Estuary	<p>The proposed Martinez Renewable Fuels Project would result in significant unavoidable adverse impact to special status species, protected habitats, and migratory corridors and nursery sites for native species from introducing new nonindigenous aquatic species via ballast water and vessel biofouling to the San Francisco Bay Estuary waters. The EIR imposes mitigation measure BIO-9a but discloses that those measures would be unlikely to mitigate the project's impact to a less than-significant level, and impacts would be significant and unavoidable. There are no other feasible mitigation measures that are available to offset this significant impact. Therefore, the impact remains significant and unavoidable.</p>

Impact	Impact Description
Hazards and Hazardous Materials	
Impact HAZ-1. Create a hazard to the public or the environment through the routine transport, use, and/or disposal of hazardous materials.	The proposed Martinez Renewable Fuels Project would result in significant unavoidable numbers of increased vessel calls, which would increase the potential for corresponding accidental releases of renewable fuel or feedstocks. The EIR imposes mitigation measure HAZ-1, which require updates and implementation of spill response plans, but discloses that those measures would be unlikely to mitigate the project's impact to a less-than-significant level, and impacts would be significant and unavoidable. There are no other feasible mitigation measures that are available to offset this significant impact. Therefore, the impact remains significant and unavoidable.
Hydrology and Water Quality	
Impact HWQ-1: Consequences of a large spills could result in significant residual impacts	Though the probability of a serious spill would be minimized to the extent feasible with mitigation measures, a large spill could still occur and result in impacts on water quality that would be significant and unavoidable. The EIR imposes mitigation measures BIO-1b, BIO-1c, and HAZ-1, which require updates and implementation of spill response plans, but discloses that those measures would be unlikely to mitigate the project's impact to a less-than-significant level, and impacts would be significant and unavoidable.

B. BALANCING OF BENEFITS AND RISKS ASSOCIATED WITH LEASE APPROVAL

State CEQA Guidelines section 15093, subdivision (a) requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve the project.

C. COMMISSION ADOPTION OF STATEMENT OF OVERRIDING CONSIDERATIONS

As noted above, under Public Resources Code section 21081, subdivisions (a)(3) and (b) and State CEQA Guidelines section 15093, subdivision (a), the decision-making agency is required to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or state-wide

environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve a project.

For purposes of CEQA, if these benefits outweigh the unavoidable significant environmental effects of a proposed project, the decision-making agency may approve the underlying project. CEQA, in this respect, does not prohibit the Commission from approving the Project, even if the activities authorized by that approval may cause significant and unavoidable environmental effects. This balancing is particularly difficult given the significant and unavoidable impacts on the resources discussed in the EIR and these Findings. Nevertheless, the Commission finds, as set forth below, that the benefits anticipated by implementing the Project outweigh and override the expected significant effects.

The Commission has balanced the benefits of the Project against the significant unavoidable impacts that will remain after approval of the lease associated with the Approved Project and with implementation of all feasible mitigation in the EIR that is adopted as enforceable conditions of the Commission's approval of the Project. Based on all available information, the Commission finds that the benefits of the approved Project outweigh the significant and unavoidable adverse environmental effects, and considers such effects acceptable. The Commission adopts and makes this Statement of Overriding Considerations with respect to the impacts identified in the EIR and these Findings that cannot be reduced to a less than significant level. Each benefit set forth above or described below constitutes an overriding consideration warranting approval of the project, independent of the other benefits, despite each and every significant unavoidable impact.

D. CONCLUSION

The Commission has considered the Final EIR and all of the environmental impacts described therein including those that cannot be mitigated to a less than significant level and those that may affect Public Trust uses of State sovereign land. Based on the foregoing and pursuant to Public Resources Code section 21081 and State CEQA Guidelines sections 15096 subdivision (h) and 15093, the Commission has considered the fiscal, economic, legal, social, environmental, and public health and safety benefits of the Project and has balanced them against the Project's significant and unavoidable and unmitigated adverse environmental impacts and, based upon substantial evidence in the record, has determined that the benefits of the Project outweigh the adverse environmental effects. The Commission finds that the remaining significant unavoidable impacts of the Project are acceptable in light of these benefits. Such benefits outweigh such significant and unavoidable

impacts of the Project and provide the substantive and legal basis for this Statement of Overriding Considerations.

The Commission finds that to the extent that any impacts identified in the Final EIR remain unmitigated, mitigation measures have been required to the extent feasible, although the impacts could not be reduced to a less than significant level.

Based on the above discussion, the Commission finds that the benefits of the Project outweigh the significant unavoidable impacts that could remain after mitigation is applied and considers such impacts acceptable.