

RESOLUTION NO. 13-13

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RICHMOND SETTING ASIDE CITY COUNCIL RESOLUTIONS NO. 93-08 AND NO. 94-08 AND ANY PERMITS, AUTHORIZATIONS, AND APPROVALS FOR THE CHEVRON ENERGY AND HYDROGEN RENEWAL PROJECT AND OTHERWISE COMPLYING WITH THE WRIT OF MANDATE ISSUED IN *CBE, ET AL. v. CITY OF RICHMOND ET AL.*, CASE NO. N08-1429, CONTRA COSTA COUNTY SUPERIOR COURT

WHEREAS, on or about April 6, 2005, Chevron Products Company submitted an application to the City of Richmond for permits for the Chevron Energy and Hydrogen Renewal Project (the “Project”) at the Chevron Richmond Refinery;

WHEREAS, on or about July 17, 2008, the Richmond City Council certified that the final EIR for the Project had been completed in compliance with the California Environmental Quality Act (“CEQA”);

WHEREAS, on or about July 17, 2008, by a 5-to-4 vote, the permits for the Project (Conditional Use Permit Number 1101974 and Design Review Permit Number 11004423) were approved by the City Council in Resolutions Nos. 93-08 and 94-08, subject to certain conditions addressing Project construction and operation, including conditions regarding air quality, greenhouse gas emissions, refinery gases, and water quality;

WHEREAS, on or about September 4, 2008, a petition for writ of mandate and a complaint for injunctive relief were filed in the Superior Court in and for the State of California, Contra Costa County (the “Superior Court”), seeking to set aside the City Council’s certification of the EIR and approval of the Project Permits (*Communities for a Better Environment, et al., v. City of Richmond, et al.*, Case No. N08-1429);

WHEREAS, on or about July 2009, the Superior Court entered judgment granting the writ and setting aside the Project’s EIR, invalidating all Project permits, and suspending all Project-related construction activities;

WHEREAS, on April 26, 2010, in *Communities for a Better Environment et al. v. City of Richmond*, 184 Cal. App. 4th 70 (Apr. 26, 2010), the California Court of Appeal reversed judgment and instructed the Superior Court to enter judgment granting in part and denying in part the petition for writ of mandate (“2010 Court of Appeal Decision”);

WHEREAS, on or about March 14, 2011, the Superior Court issued a peremptory writ of mandate in compliance with the 2010 Court of Appeal Decision ordering that the City of Richmond: 1) Set aside the City Council’s Resolution No. 93-08, under which the City Council upheld its Planning Commission’s certification of the EIR and adopted findings and a mitigation monitoring and reporting program for the Chevron Energy and Hydrogen Renewal Project; 2) Set aside the City Council’s Resolution No. 94-08, under which the City Council upheld its Planning Commission’s approval of Conditional Use Permit Number 1101974 and Design Review Permit Number 1104423 for the Chevron Energy and Hydrogen Renewal Project; 3) Set aside any additional permits, authorizations, and any and all other approvals for Chevron’s Energy and Hydrogen Renewal Project; 4) Take no action in reliance on the EIR and Conditional Use Permit until it has reconsidered its approval of the Environmental Impact Report, brought it into compliance with the requirements of CEQA, and made it consistent with the 2010 Court of Appeal Decision; and 5) return the writ within 24 months of its issuance;

WHEREAS, the City of Richmond has taken no action in reliance on the EIR and Conditional Use Permit, or any other permits, authorizations, or approvals for the Project since July 1, 2009;

WHEREAS, the City of Richmond must file a return to the writ of mandate no later than March 14, 2013 showing that it has complied with the order of the Superior Court;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RICHMOND:

1. City Council Resolution No. 93-08, under which the City Council upheld its Planning Commission's certification of the EIR and adopted findings and a mitigation monitoring and reporting program for the Chevron Energy and Hydrogen Renewal Project, is hereby set aside in its entirety;
2. City Council Resolution No. 94-08, under which the City Council upheld its Planning Commission's approval of Conditional Use Permit Number 1101974 and Design Review Permit Number 1104423 for the Chevron Energy and Hydrogen Renewal Project, is hereby set aside in its entirety;
3. Any additional permits, authorizations, and any and all other approvals for Chevron's Energy and Hydrogen Renewal Project, are hereby set aside in their entirety;
4. Since July 1, 2009, the City has not taken and shall continue not to take any action in reliance on the EIR and Conditional Use Permit, or any other permits, authorizations, or approvals for the Project until the City has reconsidered its approval of the Environmental Impact Report, brought it into compliance with the requirements of CEQA, made it consistent with the 2010 Court of Appeal Decision, and issued a new and valid Conditional Use Permit for the Project; and
5. The City Attorneys' office is hereby directed to file a return to the writ of mandate to the Superior Court no later than March 14, 2013.

I certify that the foregoing resolution was passed and adopted by the Council of the City of Richmond at a regular meeting thereof held on February 19, 2013, by the following vote:

AYES: Councilmembers Bates, Beckles, Butt, Myrick, Rogers, Vice Mayor Boozé, and Mayor McLaughlin.
NOES: None.
ABSTENTIONS: None.
ABSENT: None.

DIANE HOLMES
CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:

GAYLE MCLAUGHLIN
Mayor

Approved as to form:

BRUCE GOODMILLER
City Attorney

State of California }
County of Contra Costa } : ss.
City of Richmond }

I certify that the foregoing is a true copy of Resolution No. 13-13, finally passed and adopted by the City Council of the City of Richmond at a regular meeting held on February 19, 2013.