

July 10, 2008

BENICIA PLANNING COMMISSION

CITY COUNCIL CHAMBERS

REGULAR MEETING AGENDA

Thursday, July 10 2008

7:00 P.M.

I. OPENING OF MEETING

- A. Pledge of Allegiance
- B. Roll Call of Commissioners
- C. Reference to Fundamental Rights of Public - A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to this meeting room per Section 4.04.030 of the City of Benicia's Open Government Ordinance.

II. AGENDA CHANGES AND DISCUSSION

III. OPPORTUNITY FOR PUBLIC COMMENT

- A. WRITTEN
- B. PUBLIC COMMENT

IV. CONSENT CALENDAR

Consent Calendar items are considered routine and will be enacted, approved or adopted by one motion unless a request for removal for discussion or explanation is received from the Planning Commission or a member of the public by submitting a speaker slip for that item.

*Any Item identified as a Public Hearing has been placed on the Consent Calendar because it has not generated any public interest or dissent. However, if any member of the public wishes to comment on a Public Hearing item, or would like the item placed on the regular agenda, please notify the Community Development Staff either prior to, or at the Planning Commission meeting, prior to the reading of the Consent Calendar.

- A. Approval of Agenda

V. REGULAR AGENDA ITEMS

[A. USE PERMIT FOR VALERO IMPROVEMENT PROJECT \(VIP\) AMENDMENTS](#)

07PLN-32

3400 East Second Street

BRIEF DESCRIPTION OF PROJECT:

Valero Refining Company requests approval of a Use Permit amending the Valero Improvement Project (VIP) Use Permit approved in 2003. The VIP, as approved in 2003, is comprised of a number of project elements that Valero hoped to undertake at the refinery over the ensuing seven years. Only a few of the project elements have been constructed. Valero now wishes to modify portions of the VIP to improve air pollution control, energy efficiency, and flare minimization, and to make other technical modifications to VIP project elements based upon detailed engineering analysis of the project as originally proposed. Valero requests that the December 31, 2009 use permit expiration date be extended to December 31, 2014 to allow for construction of the project as amended.

All information regarding the VIP Project is available on the City's website (<http://www.ci.benicia.ca.us>) under Community Development Department/Current Projects or at the City's Community Development Department.

Recommendation: Approve the Use Permit for the Valero Improvement Project Amendments, based on the findings, and subject to the conditions listed in the proposed resolution.

VI. COMMUNICATIONS FROM STAFF

VII. COMMUNICATIONS FROM COMMISSIONERS

VIII. ADJOURNMENT

Public Participation

The Benicia Planning Commission welcomes public participation.

Pursuant to the Brown Act, each public agency must provide the public with an opportunity to speak on any matter within the subject matter jurisdiction of the agency and which is not on the agency's agenda for that meeting. The Planning Commission allows speakers to speak on non-agendized matters under public comments, and on agendized items at the time the agenda item is addressed at the meeting. Comments are limited to no more than five minutes per speaker. By law, no action may be taken on any item raised during the public comment period although informational answers to questions may be given and matters may be referred to staff for placement on a future agenda of the Planning Commission.

Should you have material you wish to enter into the record, please submit it to the Commission Secretary.

Disabled Access

In compliance with the Americans with Disabilities Act (ADA), if you need special assistance to participate in this meeting, please contact Dan Pincetich, the ADA Coordinator, at (707) 746-4211. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

Meeting Procedures

All items listed on this agenda are for Commission discussion and/or action. In accordance with the Brown Act, each item is listed and includes, where appropriate, further description of the item and/or

a recommended action. The posting of a recommended action does not limit, or necessarily indicate, what action may be taken by the Planning Commission.

The Planning Commission may not begin new public hearing items after 11 p.m. Public hearing items which remain on the agenda may be continued to the next regular meeting of the Commission, or to a special meeting.

Pursuant to Government Code Section 65009; if you challenge a decision of the Planning Commission in court, you may be limited to raising only those issues you or someone else raised at the Public Hearing described in this notice, or in written correspondence delivered to the Planning Commission at, or prior to, the Public Hearing. You may also be limited by the ninety (90) day statute of limitations in which to file and serve a petition for administrative writ of mandate challenging any final City decisions regarding planning or zoning.

Appeals of Planning Commission decisions which are final actions, not recommendations, are considered by the City Council. Appeals must be filed in the Community Development Department in writing, stating the basis of appeal with the appeal fee within 10 business days of the date of action.

Public Records

The agenda packet for this meeting is available at the City Clerk's Office, the Benicia Public Library and the Community Development Department during regular working hours. To the extent feasible, the packet is also available on the City's web page at www.ci.benicia.ca.us under the heading "Agendas and Minutes." Public records related to an open session agenda item that are distributed after the agenda packet is prepared are available before the meeting at the Community Development Department's office located at 250 East L Street, Benicia, or at the meeting held in the City Hall Council Chambers. If you wish to submit written information on an agenda item, please submit to Gina Eleccion, Management Analyst, as soon as possible so that it may be distributed to the Planning Commission.

 [VIP Amendment report.pdf](#)

AGENDA ITEM
PLANNING COMMISSION MEETING: JULY 10, 2008
PUBLIC HEARING ITEMS

DATE : June 30, 2008

TO : Planning Commission

FROM : Charlie Knox, Community Development Director

SUBJECT : **USE PERMIT FOR VALERO IMPROVEMENT PROJECT (VIP) AMENDMENTS**

PROJECT : 07PLN-32
3400 East Second Street

RECOMMENDATION:

Approve the Use Permit for the Valero Improvement Project Amendments, based on the findings, and subject to the conditions listed in the attached resolution.

EXECUTIVE SUMMARY:

Valero Refining Company requests approval of a Use Permit amending the Valero Improvement Project (VIP) Use Permit approved in 2003. The VIP, as approved in 2003, is comprised of a number of project elements that Valero hoped to undertake at the refinery over the ensuing seven years. Only a few of the project elements have been constructed. Valero now wishes to modify portions of the VIP to improve air pollution control, energy efficiency, and flare minimization, and to make other technical modifications to VIP project elements based upon detailed engineering analysis of the project as originally proposed. Valero requests that the December 31, 2009 use permit expiration date be extended to December 31, 2014 to allow for construction of the project as amended.

BUDGET INFORMATION:

Processing of this application has no impact on the City budget. The refinery maintains its own fire department, and the project is not expected to increase demand for City fire and police services. Sales tax revenue to the City from the project is expected to be minimal, but property tax revenues could increase by as much as \$500,000 per year by 2014 when the VIP Amendments are fully implemented.

ENVIRONMENTAL DOCUMENTATION:

The Planning Commission certified an EIR and approved a use permit for the Valero Improvement Project (VIP) on April 28, 2003. When changes in a project are proposed after an

EIR has been certified, the type of environmental documentation required depends upon whether the changes meet certain thresholds having to do with significant environmental effects.

Valero prepared and submitted an Environmental Assessment as part of its application for a use permit for the VIP Amendments. The assessment concluded that the thresholds for requiring a subsequent or supplemental EIR have not been met and that an Addendum to the VIP EIR would be the appropriate California Environmental Quality Act (CEQA) documentation for the VIP Amendments. Based upon an independent peer review of the Environmental Assessment, staff concurs that an Addendum is appropriate.

An EIR Addendum comprised of (1) Valero's Environmental Assessment and (2) the City's independent peer review was prepared and made available for public comment on June 11, 2008. Notices of availability were sent to surrounding property owners, agencies and organizations that received the VIP EIR, persons who commented on the VIP EIR, parties who appealed the Planning Commission's actions on the VIP to the City Council, and the news media. Comments received to date are attached to this report.

Per CEQA Guidelines Sec. 15164(d), the Planning Commission will need to consider the Addendum with the Final VIP EIR prior to making a decision on the use permit for the VIP Amendments.

BACKGROUND:

Applicant/Owner: Todd Lopez/Valero Refining Company-California

General Plan designation/Zoning: General Industrial, IG

Existing use: petroleum refining

Proposed use: petroleum refining

Adjacent zoning and uses:

North: Limited Industrial (IL), vacant

East: General Industrial (IG), industrial park

South: Limited Industrial (IL), vacant, auto storage; Residential (RS)

West: Limited Industrial (IL), vacant

SUMMARY:

Project Description

2003 VIP as Approved

The VIP approved in 2003 is comprised of a number of components or elements that would modify existing refinery equipment and install new equipment to achieve four objectives:

1. Provide ability to process lower grades of raw materials.
2. Provide flexibility to select among raw materials utilized for fuels production, i.e. crude oil instead of gas oil.
3. Optimize operations for efficient production of clean burning fuels.
4. Mitigate project-related impacts to avoid detrimental effects on the community.

Valero proposed to implement the VIP in a series of steps, starting in 2003 and ending in about 2009. If the VIP is fully implemented, components that give Valero the ability to process lower grade raw materials and to select among raw materials will allow the refinery to take better advantage of market availability and pricing. The VIP is designed to allow the refinery to increase its crude oil processing capacity by 25% and increase its output by about 10%. Flexibility is a key aspect of the approved VIP. The refinery desired to have the flexibility to construct or not construct any or all of the project elements or components, depending upon market conditions and other considerations. It must be noted, however, that installation of the components that would allow the refinery to process additional lower grade feedstocks would also require installation of the flue gas scrubber to allow the refinery to continue to meet emission limits set by the Bay Area Air Quality Management District (BAAQMD).

VIP Amendments

The scrubber approved as part of the VIP was planned to treat the exhaust stream from the coker, thereby reducing sulfur dioxide (SO₂) emissions from the main stack to substantially less than pre-VIP levels. The VIP Amendments would change the design of the flue gas scrubber to allow for treatment of the fluid catalytic cracker unit (FCCU) exhaust in addition to that from the coker, resulting in an even greater emission reduction. Other changes proposed as part of the VIP amendments include: replacing two existing pipestill furnaces with new furnaces that can operate at the higher pressures required for the redesigned scrubber; replacement of an existing hydrogen train (H₂U) with a new, more efficient H₂U to produce hydrogen for use in refinery processes; and installation of a second desalter to improve salt removal from refinery feedstocks. The existing employee parking lot would be relocated to accommodate the new equipment. The existing firehouse may also be moved to one of two alternative locations if its current location is determined to be infeasible as a result of final design work. A detailed description of the VIP amendments is included in Section 2 of the Addendum; the Addendum Appendix shows how the project description from the VIP EIR would be modified by the proposed Amendments.

As noted earlier, flexibility to construct or not construct the various project components is a key aspect of the VIP as approved in 2003. Accordingly, the scrubber has not yet been built because VIP components that would have required its construction have not been selected for implementation. In 2005, however, the U.S. Environmental Protection Agency (EPA) issued a Consent Decree that requires Valero to construct the scrubber as now proposed by the end of 2010. Valero continues to plan for flexible implementation of the VIP as amended, but delaying or eliminating the scrubber from the plans is no longer an option.

Project Analysis

Environmental Issues

The Addendum describes the environmental effects of the proposed Amendments and considers them in combination with the effects of the original VIP to determine how the Amended VIP as a whole would affect the environment. Changes that have occurred since VIP approval, such as the City's successful effort to obtain new water supplies, have been factored into the analysis. The overall conclusion of the analysis in the Addendum is that the VIP Amendments will not involve any new significant environmental effects nor will they substantially increase the severity of any previously identified significant effects of the VIP.

The key environmental issues identified in the VIP EIR were air quality and water supply. Emissions of most criteria air pollutants were projected to decrease or to increase by small amounts that would be insignificant under CEQA as a result of the VIP. The EIR analysis utilized CEQA thresholds of significance established by the BAAQMD.

The increase in volatile organic compounds (VOC), however, was projected to be significant under CEQA. Construction of the light ends rail rack arm drains as a mitigation measure served to reduce the impact below the threshold of significance. The light ends rail rack arm drains project installed piping at the light ends rail loading rack. This piping allows light ends (primarily butane and pentane) products to drain from the loading arms, and consequently be recovered, after rail cars have been filled at the rack (Draft VIP EIR, p. 3-64). Although VOC emissions of the VIP would increase further as a result of the VIP Amendments, they would remain below the threshold of significance due to the implementation of the rail rack arm drains mitigation. Emissions of the other criteria pollutants would decrease below levels anticipated in the VIP EIR. Most notably, emissions of SO₂ would decrease by an additional 2,311 tons per year or a total reduction of 6,543 tons per year for the VIP as amended.

The increase in refinery raw water demand was identified as a significant impact in the VIP EIR, and three mitigations were identified:

1. The City would continue its efforts to obtain additional water supplies;
2. The City would pursue projects to generate reclaimed water and Valero would accept reclaimed water for use in its process equipment;
3. In case of a water shortage, as defined in the EIR, Valero would take the steps necessary to reduce water consumption at the refinery by an amount equal to or greater than the amount of raw water being consumed due to implementation of the VIP.

After the EIR was certified, the City was successful in obtaining additional water supplies. As a result, the first mitigation has been implemented and the third mitigation no longer applies by its own terms because the potential for a water shortage as defined in the mitigation has been eliminated. The City Council terminated work on the wastewater reuse project in 2007, making the second mitigation inapplicable at the present time.

The VIP Amendments would result in a small reduction in the VIP raw water demand projected in the EIR. In addition, Valero has recently implemented the Naphtha Reformer Unit catalyst regeneration facility, a non-VIP project that reduced refinery raw water demand by almost half the amount of the projected demand for the VIP. As a result of these changes, the analysis in the Addendum projects that the City would continue to have a substantial surplus water supply after full implementation of the VIP as amended. This would be true even in cases of multiple consecutive dry years.¹

In the period since the VIP EIR was certified, the issue of climate change has gained increasing prominence, and efforts have begun at the state level to limit and regulate greenhouse gas

¹ The project is expected to slightly increase demand for municipal water (by 450 gallons per day) and wastewater flows (by 400 gpd) due to the creation of 30 new full time jobs at the refinery. This increased use is insignificant.

emissions and to establish thresholds of significance for analyzing greenhouse gas emissions under CEQA. Greenhouse gas emissions were not considered in the VIP EIR, but the Addendum discloses that the VIP Amendments would reduce greenhouse gas emissions because of the efficiency of the new H2U that would replace older, higher-emitting equipment currently in use.

Flaring at the refinery has been an issue of longstanding concern in Benicia. Over the years the refinery has worked to reduce instances of flaring without compromising the safety function of the flares. The Addendum shows that the VIP Amendments would result in further reduction in flaring by increasing the internal consumption of refinery fuel gas, thereby reducing potential instances when the refinery produces more fuel gas than it can consume and must flare excess fuel gas.

Zoning Ordinance Requirements

The IG district requires a Use Permit for oil and gas refining. The Valero refinery was constructed prior to the adoption of that requirement and, therefore, the existing refinery is a legal nonconforming use. The nonconforming use regulations require a Use Permit for "alteration" or "expansion," as defined, of a legal nonconforming use. The VIP Amendments constitute an "alteration" of the existing use, in accordance with Benicia Municipal Code Section 17.98.070, because the project cost, estimated at \$925 million, exceeds \$20 million in 1994 dollars adjusted for inflation.

Since it will be constructed within the existing developed area of the refinery, the project will meet setback, lot coverage and landscaping requirements in the Zoning Ordinance. If the firehouse is relocated, it will be housed in another existing building or in a new building, depending on the location selected. If relocated the firehouse will be subject to height restrictions and other requirements of the City's Industrial Design Guidelines as part of the design review approval process. The refinery currently exceeds the parking requirements of the Zoning Ordinance and has ample parking to accommodate both permanent employees and contractors. The existing employee parking lot is proposed to be relocated as part of the VIP Amendments with no reduction in the number of parking spaces. The existing parking was deemed sufficient to accommodate up to 20 new permanent workers as part of the VIP, and the addition of up to 30 more permanent workers as part of the VIP amendments will not change that determination. The new parking structure will also be subject to design review requirements.

Conditions of Approval

Planning Commission Resolution No. 03-5 approving the original VIP use permit is attached to this report for reference. Some changes and additions to the original conditions of approval are needed and appropriate for the VIP Amendments. The proposed changes are discussed below.

Condition 11 of the original VIP use permit requires the refinery to paint the new equipment consistent with the long-established green and gold refinery color scheme. Valero has requested a limited variation from the requirement in the case of the proposed scrubber that will be made of stainless steel. According to Valero's experts the stainless steel cannot be painted because the paint cannot be made to properly adhere to the metal. Therefore, Valero proposes to leave the scrubber itself in its natural dull grey color. There will be a scaffold-like structure partially

surrounding the scrubber that Valero does propose to paint in accord with the approved color scheme. (See illustrations attached to this report.) Staff recommends modifying the painting requirement as it applies to the scrubber because there does not appear to be an acceptable alternative. The changed condition has been included in the attached proposed resolution.

As discussed in Section 3 of the Addendum, in order to ensure that Valero adheres to its own suggested limit of 6 tons per year for fugitive emissions of precursor organic compounds (POC; also known as volatile organic compounds), a condition has been added to the proposed resolution limiting as-built fugitive POC emissions of the amended VIP to no more than 6 tons per year.

Condition 5 of the VIP use permit incorporates all of the EIR mitigation measures as conditions of approval. No new mitigations were determined to be necessary to provide for the VIP Amendments. Therefore, this condition should be retained in its current form.

The June 6, 2003 Settlement Agreement resolving the appeal of the VIP use permit is currently enforced as part of the use permit conditions. It would be appropriate at this time to explicitly incorporate the agreement into the use permit conditions. Consequently, this provision has been added to the attached proposed resolution.

Valero included in its use permit application a request to modify or eliminate six conditions of the original VIP use permit. The changes requested by Valero are shown below, followed by staff's recommendation in response:

- *Condition 1 – Amend list of documents referenced to include the Use Permit Amendment Application, application updates, and attached documents, relevant correspondence and other supporting documents as may be developed.*

Condition 1 limits the use permit approval to the project as described in the application and associated relevant documents in the project files. Condition 1 should be updated as suggested by Valero and the appropriate changes are shown in the attached resolution.

- *Condition 9 – Change end date of Use Permit to December 31, 2014.*

Condition 9 does not actually establish an end date for the use permit; that is done in Condition 22. Condition 9 sets out an orderly process for coordination of VIP construction approvals between Valero and the City. The condition states in part, “construction of the components is expected to occur at various times between approval of the use permit and the end of 2009.” If the Planning Commission extends the end date of the use permit to 2014, as requested by Valero, the anticipated construction end date in Condition 9 should be changed as requested. This change has been incorporated in the attached resolution.

- *Condition 13 – Delete this requirement. Valero has satisfied this permit condition. Consistent with the Settlement Agreement dated June 6, 2003, the City, Valero, and city residents have worked jointly through the People Using Resources Efficiently (PURE)*

committee to develop a wastewater reuse project that could potentially supply up to 2 million gallons per day of recycled water from the City's wastewater treatment plant for use in the Benicia Refinery's cooling tower make-up water. However, current cost projections for the project exceed the economic feasibility provisions of the Settlement Agreement. The Benicia City Council agreed on June 5, 2007 to terminate further work on the wastewater reuse project (the PURE Project) once the Preliminary Design Review document is prepared by Valero.

Condition 13 requires Valero to "continue to participate in the planning and development of the City's wastewater reuse project, consistent with its commitment to that project dated October 11, 2002." The requirement is inapplicable at the present time but it is not known whether the City Council might reactivate the wastewater reuse project at a future date. Staff does not recommend deleting the condition but does recommend a modification. Provision 5 of the June 4, 2003 Settlement Agreement clarifies the limits and extent of Valero's 2002 commitment of support for the wastewater reuse project. Staff recommends that a reference to the applicable provisions of the Settlement Agreement be added to Condition 13. Appropriate language is included in the attached resolution.

- *Condition 14a – Reword to read, "Valero shall not operate the sulfur plant expansion until the FCCU/CKR Scrubber is installed and operational."*

The condition now requires that "Valero shall **construct and** operate the main stack scrubber **at the same time** [emphasis added] that the sulfur plant expansion is constructed." The proposed change would allow Valero to construct, but not operate, the sulfur plant expansion before completing the scrubber. The sulfur plant expansion is necessary to allow Valero to process increased amounts of lower grade crude. Under the current VIP use permit Valero has the option not to construct the scrubber, so the intent of Condition 14a was to help ensure that the scrubber would be constructed, and that it would be constructed in a timely manner to prevent any increase in air pollutant emissions. The EPA consent decree has now eliminated the concern that Valero could choose not to build the scrubber. In addition, the BAAQMD permit for the VIP restricts throughput at the sulfur plant to current levels until adequate controls are in place to prevent any increase in emissions. Under the current circumstances, Valero's request for a change in the language of the condition is reasonable and would allow the refinery to plan for efficient construction of the VIP. The requested change has been incorporated into the attached resolution.

- *Condition 19 – Change to say "The reports shall be submitted until the year 2015."*

Condition 19 requires Valero to submit annual use permit compliance reports until the year 2010. Valero's requested change is appropriate and consistent with the request to extend the permit deadline to 2014. The change has been incorporated in the resolution.

- *Condition 22 – Change the use permit expiration date to December 31, 2014.*

The current use permit termination date is December 31, 2009. It would not be possible to complete construction of the scrubber by that time and it is reasonable to anticipate that construction of other VIP improvements would take even longer. Staff concludes that the request is reasonable and has included it in the attached resolution.

Findings

The Zoning Ordinance requires that certain findings must be made in order to approve a use permit. Detailed findings together with factual support for those findings are included in the proposed attached resolution.

CEQA requires that the Planning Commission consider the Addendum with the Final EIR prior to making a decision on the project. Appropriate CEQA findings have also been included in the proposed resolution.

Conclusion

Valero has requested approval of a Use Permit amending the VIP that was approved by the Planning Commission in 2003 to allow for improved air pollution control and to change other elements of the VIP based upon detailed engineering analysis of the original project. Valero has requested several changes in the original conditions of approval, including extension of the time limit to allow for construction of the amended project. The environmental analysis shows that the VIP Amendments will not involve any new significant impacts or a substantial increase in the severity of significant effects identified in the VIP EIR. Approval of the VIP Amendments will allow Valero to construct an improved version of the VIP flue gas scrubber to comply with EPA requirements with a resulting reduction in air pollutant emissions.

Staff recommends approval of the requested Use Permit with appropriate amendments to the VIP conditions, including most of the changed conditions requested by Valero. If the Planning Commission denies the request for a use permit for the VIP Amendments, Valero will be able to continue VIP construction in compliance with the 2003 VIP use permit, but will not be able to initiate new construction under that permit after December 31, 2009.

FURTHER ACTION:

The Planning Commission's action will be final unless appealed to the City Council within ten business days.

Attachments:

- Draft Resolution with Mitigation Monitoring Program and Settlement Agreement
- Project Plans **
- Illustrations – Color Scheme for Proposed Scrubber
- Planning Commission Resolution No. 03-5 Approving a Use Permit for the VIP

** If viewing online, this attachment is available to view in the Community Development Department or in the Benicia Public Library in the July 10, 2008 Planning Commission packet.

DRAFT RESOLUTION

RESOLUTION NO. 08-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA APPROVING A USE PERMIT FOR AMENDMENTS TO THE VALERO IMPROVEMENT PROJECT (07PLN-00032)

WHEREAS, on April 28, 2003, the City of Benicia Planning Commission certified an Environmental Impact Report (EIR) and approved a conditional Use Permit for the Valero Improvement Project (Application PLN 2002-00022) to be carried out at the Valero Benicia Refinery; and

WHEREAS, Valero Refining Company – California has submitted Application 07PLN-00032 requesting Use Permit approval for amendments to the Valero Improvement Project (VIP) that was approved in 2003; and

WHEREAS, an Addendum to the VIP EIR disclosing the environmental effects of the VIP Amendments was prepared and has been made available for public comment since June 11, 2008; and

WHEREAS, the Planning Commission has considered the Addendum with the Final EIR for the VIP; and

WHEREAS, the Planning Commission at a regular meeting on July 10, 2008, considered and discussed the Addendum, the staff report and the proposed Use Permit with conditions of approval for the VIP Amendments, and conducted a public hearing to receive testimony from members of the public regarding the documentation and the proposed Use Permit;

NOW, THEREFORE, BE IT RESOLVED THAT the Planning Commission of the City of Benicia makes the following findings based on the application for the Valero Improvement Project Amendments, the staff report, the Addendum to the Final EIR for the VIP together with the Final EIR itself, and information presented at the public hearing on July 10, 2008:

- 1) The Addendum to the VIP EIR is appropriate under the California Environmental Quality Act (CEQA) to address the environmental effects of the VIP Amendments because:
 - a) Neither the VIP Amendments themselves, nor changes in circumstances under which they would be undertaken, would result in the involvement of new significant effects or a substantial increase in severity of previously identified significant effects; and
 - b) No new information not known at the time of the EIR shows significant effects not discussed in the EIR or that significant effects identified in the EIR would be substantially more severe as a result of the VIP Amendments; and
 - c) No mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project.

- 2) That the proposed location of the use is in accord with the objectives of the City of Benicia Zoning Ordinance set forth as Title 17 of the Municipal Code, and the purposes of the district in which the site is located.

Section 17.04.030 of the Zoning Ordinance sets forth nine specific overall purposes of the Ordinance as follows:

17.04.030 Purposes

- A. “ Provide a precise guide for the physical development of the city in order to:
1. Preserve the character and quality of residential neighborhoods,
 2. Foster convenient, harmonious, and workable relationships among land uses, and
 3. Achieve progressively the arrangement of land uses described in the general plan;
- B. Promote the economic stability of existing land uses that are consistent with the general plan and protect them from intrusions by inharmonious or harmful land uses;
- C. Prevent excessive population densities and overcrowding of land or buildings;
- D. Ensure the provision of adequate open space for light, air, and fire safety;
- E. Permit the development of office, commercial, industrial, and related land uses that are consistent with the general plan, in order to strengthen the city's economic base;
- F. Conserve and enhance the city's architectural and cultural resources;
- G. Conserve and enhance key visual features of Benicia's setting, including the shoreline and undeveloped hillsides and ridgelines, consistent with the general plan;
- H. Require the provision of adequate off-street parking and loading facilities, and promote a safe, effective traffic circulation system; and
- I. Ensure that service demands of new development will not exceed the capacities of existing streets, utilities, or public services.”

The VIP Amendments would be consistent with Purpose A because they would be located entirely within the existing refinery where their location could not create a new conflict with other land uses; and because the Addendum shows that the project would not have, or contribute to, significant environmental effects on other land uses.

The VIP Amendments would be consistent with Purpose B because the existence of the refinery in its location is consistent with its General Plan designation, and the project would promote the economic stability of the refinery.

The VIP Amendments would add no more than 30 new employees to the 20 required for the VIP and thus would not cause or make a significant contribution to excessive population densities, consistent with Purpose C.

The VIP Amendments would not affect existing open space nor would they interfere with future open space plans of the City; therefore the project would be consistent with Purpose D.

The project would be consistent with Purpose E because the refinery is an industrial use that is consistent with the General Plan and the VIP Amendments would improve the City's economic base by facilitating an increase in the refinery's output and helping it to remain competitive in the marketplace.

The project would have no effect on the City's architectural and cultural resources and, therefore it would be consistent with Purpose F.

The VIP Amendments would not have a new substantial adverse effect on views of the shoreline and undeveloped hillsides and ridgelines and, therefore it would be consistent with Purpose G.

The refinery's existing parking and the replacement parking proposed in the VIP Amendments are substantially in excess of Zoning Ordinance requirements and the short-term effects of construction traffic would be mitigated by measures provided in the VIP EIR and the Mitigation Monitoring and Reporting Program. Therefore, the project would be consistent with Purpose H.

The VIP Amendments would not have service demands that exceed the capacities of existing streets, utilities or public services. No other potentially significant effects on City services are projected and, therefore, the project would be consistent with Purpose I.

Section 17.32.010 of the Zoning Ordinance sets forth the following specific purposes of industrial district regulations:

17.32.010 Specific Purposes

1. "Provide appropriately located areas consistent with the general plan for a broad range of manufacturing and service uses;
2. Strengthen the city's economic base, and provide employment opportunities close to home for residents of the city and surrounding communities;
3. Provide a suitable environment for various types of industrial uses, and protect them from the adverse impacts of inharmonious uses;
4. Reserve areas for port terminals and water-related industry;
5. Ensure that the appearance and effects of industrial uses are compatible with the character of the area in which they are located;
6. Minimize the impact of industrial uses on adjacent residential districts;
7. Ensure the provision of adequate off-street parking and loading facilities."

The VIP as amended would be consistent with Purposes 1 and 3 because it would consist of changes and improvements to an existing industrial use in an existing industrial district. The project would be constructed within the existing refinery footprint, and

would not cause or contribute to any significant environmental impacts on other land uses. Therefore, the amended VIP would be consistent with Purposes 5 and 6. As stated under Purpose E above, the project would strengthen the City's economic base. The VIP Amendments would also provide 30 permanent jobs in addition to the 20 to be provided by the VIP, thereby establishing consistency with Purpose 2. The VIP Amendments would not affect land use in a Water-Related Industrial zoning district and thus would be consistent with Purpose 4. As stated under Purpose H above, the VIP Amendments will ensure the provision of sufficient parking to accommodate the use, consistent with Purpose 7.

Section 17.32.010 also contains the following statement of purpose for the IG (General Industrial) district:

"To provide sites for the full range of manufacturing, industrial processing, general service, and distribution uses deemed suitable for location in Benicia; and to protect Benicia's general industrial areas, to the extent feasible, from disruption and competition for space from unrelated retail and commercial uses that could more appropriately be located elsewhere in the city. Performance standards will minimize potential environmental impacts".

The refinery, as a use that manufactures products (fuels) by processing raw materials (crude oil and gas oil), is consistent with the purpose of the IG district and the VIP Amendments, which would support the refinery's ability to fulfill that purpose, would also be consistent with the purpose. The amended VIP, as conditioned, would meet performance standards set forth in Section 17.70.240 of the Zoning Ordinance to ensure that development projects conform with all applicable air and water quality regulations and do not create hazards or problems related to noise, glare, hazardous materials, heat and humidity or electromagnetic interference.

- 3) That the proposed location of the conditional use and the proposed conditions under which it would be operated or maintained would be consistent with the General Plan and will not be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the neighborhood of the use, nor detrimental to the properties or improvements in the vicinity or to the general welfare of the city for the following reasons:

The Addendum analysis, together with the VIP EIR and the conditions of approval set forth herein and discussed in the staff report, show that the VIP Amendments, as conditioned, would be consistent with all applicable goals and policies of the General Plan. The VIP Amendments would not be detrimental to public health, safety, and welfare because the Amendments would not cause any significant environmental impacts nor would they cause any significant impacts identified in the VIP EIR to be substantially more severe. In addition, the proposed scrubber would enhance consistency with Finding 2 by reducing air emissions below current levels and below levels projected in the VIP EIR.

4) That the proposed conditional use will comply with the provisions of the Zoning Ordinance, including any specific condition required for the proposed conditional use in the district in which it would be located, based on the following:

As shown by Findings 2) and 3), and the discussion in the staff report, the VIP Amendments would comply with the provisions of the Zoning Ordinance. There are no specific conditions required for oil and gas refining in the IG district except that a use permit is required.

BE IT FURTHER RESOLVED THAT the Benicia Planning Commission hereby amends the VIP use permit conditions of approval as shown below and approves the proposed use permit for the Valero Improvement Project Amendments subject to the conditions shown.

- 1) The scope of approval is limited to the amended Valero Improvement Project as described in the Use Permit Application PLN 2002-00022 as modified by Use Permit Application 07PLN-00032, submitted by Valero to the City of Benicia and including the following documents:
 - a) Application for City of Benicia Use Permit, dated March 20, 2002;
 - b) Noise Assessment, prepared by Illingworth & Rodkin, Inc., May 30, 2002;
 - c) Public Safety Analysis, prepared by URS Corporation, June 28, 2002;
 - d) Air Emission Calculations: Baseline and Project Emissions, prepared by URS Corporation, dated June 30, 2002;
 - e) Assessment of Visible Steam Plume Formation, prepared by URS Corporation, dated June 2002;
 - f) Visual Simulations with accompanying text and process block diagrams, prepared by Environmental Vision and URS Corporation;
 - g) Geotechnical and Geologic Assessment, prepared by URS Corporation, dated May 2002;
 - h) Health Risk Assessment, prepared by URS Corporation, June 30, 2002;
 - i) Response to VIP Review of Application for Completeness, prepared by URS Corporation, dated August 8, 2002;
 - j) Letter from URS Corporation to BAAQMD, dated August 6, 2002, supplementing the application for Authority to Construct/Permit to Operate with regard to ship emissions;
 - k) Letter from Sam Hammonds at Valero dated July 23, 2002, amending the use permit application to add the hydrocracker maximization project and pressure swing adsorption of hydrogen and the cat feed hydrotreater guard reactor installation;
 - l) Letter from Sam Hammonds at Valero dated September 27, 2002, providing additional information regarding project sequencing and schedule;
 - m) Letter from Sam Hammonds at Valero, dated October 21, 2002, amending the use permit application to limit the circumstances under which the refinery would operate without the main stack scrubber;

- n) Final Environmental Impact Report for the Valero Improvement Project, dated March 2003, consisting of the Draft EIR dated October 2002 and the Response to Comments dated March 2003.
- o) Response to the Valero Improvement Project Review of Application for Completeness, prepared by URS Corporation, dated May 28, 2002.
- p) Letter from Sam Hammonds at Valero, dated October 24, 2002, detailing additional water consumption forecast due to VIP.
- q) Application for City of Benicia Use Permit for the Valero Improvement Project Amendments, dated February 28, 2008, updating Use Permit Application No. 07PLN2002-00022 submitted on April 25, 2007 and updated on October 5, 2007.
- r) Valero's Response to March 2008 Data Requests from ESA
- s) Valero Improvement Project, Addendum to VIP EIR, June 2008.

Any substantial changes in the project as described in the above documents shall require a Use Permit amendment with associated CEQA review in order to proceed.

- 2) This approval is based in part on the assumption that conditions of approval imposed by the BAAQMD on the amended VIP will continue to reflect established District policies and procedures, and conditions imposed by the District on the original VIP, to prevent any net increase in overall refinery. A change in the amended VIP, or in the BAAQMD conditions of approval for the VIP, such that project facilities would result in such a net emission increase shall require a use permit amendment with associated CEQA review.
- 3) Valero shall provide the City with copies of any application to the BAAQMD for a new Authority to Construct or any amendment to an existing Authority to Construct for any part of the amended VIP, so that the City may evaluate the proposals for consistency with the scope of the use permit approval and the VIP EIR analysis. The documents shall be provided at no cost to the City.
- 4) Valero shall provide the City with copies of its emissions reports to the Bay Area Air Quality Management District whenever such reports are requested by the City to evaluate whether the VIP is being constructed or operated consistent with Condition 1. Reasons for such a request may include, but are not limited to, approval by the BAAQMD of a new or amended Authority to Construct for any part of the amended VIP. The documents shall be provided at no cost to the City.
- 5) All of the mitigation measures set forth in the Final EIR are hereby incorporated by reference and included as conditions of approval of the use permit. The Mitigation Monitoring and Reporting Program, adopted by the Planning Commission on April 28, 2003, and attached hereto as Exhibit A, is hereby incorporated and included as a condition of the use permit approval to ensure that the mitigation measures identified in the EIR are complied with during project implementation.

- 6) The Valero Improvement Project as amended shall adhere to all applicable ordinances, plans, and specifications of the City of Benicia.
- 7) Any significant alteration of the approved plans shall be requested in writing and approved as consistent with the Use Permit by the Community Development Department prior to changes being made in the field.
- 8) Valero shall apply for separate building and grading permits for each major component or group of components of the amended Valero Improvement Project, as determined necessary by the City.
- 9) The amended Valero Improvement Project is comprised of a number of individual components; construction of the components is expected to occur at various times between approval of the use permit and the end of 2014; and some components may not be constructed, depending upon the needs of the refinery. To ensure that the City is able to properly evaluate the plans for each phase of construction, Valero shall notify the Community Development Department at least six months in advance of the planned construction of any major component or group of components, and shall work with the City to develop a mutually acceptable schedule for submission and review of plans and required documentation in advance of construction. Submittals shall contain sufficient information to verify that they are within the scope of approval set forth in Condition 1. Submittals may be reviewed by the compliance monitors provided for in Condition 20, and/or by other plan review experts, as determined necessary by the City. Reasonable costs of expert review shall be paid by Valero.
- 10) Prior to the issuance of a building or grading permit for any portion of the amended Valero Improvement Project, the applicant shall document to the City of Benicia that it has obtained necessary permits and approvals from reviewing agencies, including but not limited to Authority to Construct from the Bay Area Air Quality Management District, and approval of wastewater treatment plant modifications, if required, from the Regional Water Quality Control Board.
- 11) All equipment installed as part of the amended Valero Improvement Project shall be painted to blend with the refinery's overall color scheme with the exception of stainless steel components of the fluid catalytic cracker unit/coker scrubber, which may be left in their natural color. Any paint colors other than the existing green and gold shall be submitted to the Community Development Department in advance for approval.
- 12) The design of proposed exterior lighting fixtures, and drawings showing the plans for installation shall comply with requirements of Zoning Ordinance Section 17.70.240 D.2, and shall be submitted to the Community Development Director or designee in advance for approval.

- 13) Valero shall continue to participate in the planning and development of the City's wastewater reuse project, consistent with its commitment to that project dated October 11, 2002, and signed by the Refinery Vice President and General Manager, as modified by the June 4, 2003, Settlement Agreement signed by the refinery Vice President and General Manager.
- 14a) Valero shall not operate the sulfur plant expansion until the fluid catalytic cracker unit/coker scrubber is installed and operational.
- 14b) Notwithstanding any Bay Area Air Quality Management District permit conditions that may allow higher crude rates without such restriction, the refinery shall not operate more than a total of 1,096 consecutive or non-consecutive days at crude rates above 135,000 barrels per day and/or with the third air blower in operation without installing and operating the scrubber. If the scrubber is not completed and operating by the deadline, the refinery shall not process more than 135,000 barrels of crude per day, and shall deactivate the third air blower, if operating, until such time as the scrubber is in operation.
- 15) Valero shall provide the City with copies of its Anti-Degradation Report and, when requested, monthly self-monitoring reports when those reports are submitted to the Regional Water Quality Control Board. The documents shall be provided at no cost to the City.
- 16) Valero shall submit Stormwater Pollution Prevention Plans to the City of Benicia when required under the City's Grading Ordinance for any component or group of components of the amended Valero Improvement Project. If wastewater treatment plant improvements are to be constructed in a 100-year flood zone, Valero shall comply with the City of Benicia Floodplain Management Policy in designing the improvements and shall document such compliance when it applies for associated building and grading permits.
- 17) Valero shall notify the Public Works Department and shall meet with designated representatives of the Police and Public Works Departments in advance of construction and monthly during construction to coordinate issues related to construction traffic and determine what traffic control measures need to be implemented by Valero.
- 18) Valero shall submit semi-annual construction progress reports to the Community Development Department during all phases of project construction.
- 19) Valero shall submit annual reports no later than 60 days following December 31 of each year documenting compliance with the conditions of approval, the June 4, 2003 Settlement Agreement, and the Mitigation Monitoring and Reporting Program. The annual reports shall contain supporting information from other regulatory agencies as applicable. For each condition and mitigation measure, the report shall identify the status of compliance with the measure, the procedures or

standards used to judge the compliance, times and dates of the monitoring and whether further action is required. The reports shall be submitted until the year 2015. If at that time the applicant has completed all mitigation measures and complied with the conditions of approval, no further reports shall be necessary. The Community Development Director shall notify Valero in writing when the reports shall no longer be required.

- 20) The Community Development Department will retain expert consultants to assist the City in monitoring Valero's compliance with the conditions of the use permit. The consultants' scope of work shall be discussed with Valero in advance but, at a minimum, the scope shall include advising the City with respect to technical aspects of the project that are outside the expertise of City staff. All costs of compliance monitoring shall be paid by Valero. Monitoring costs shall not exceed \$70,000 unless changing circumstances dictate a need for additional funding. In that case, the City and Valero shall discuss and determine any additional amount needed by mutual agreement.
- 21) Valero shall record the conditions of approval of this use permit with the Solano County Recorder in a form that is satisfactory to the City of Benicia. The use permit shall not be in full force and effect until Valero provides evidence to the City that the required recordation has been accomplished.
- 22) This use permit shall expire two years from the approval date unless activated by the commencement of construction of one or more components of the amended Valero Improvement Project. The use permit shall be vested with respect to each component when a building permit has been issued and construction of that component has been diligently pursued. The use permit shall expire on December 31, 2014, with respect to any components of the amended Valero Improvement Project for which construction has not commenced.
- 23) The June 4, 2003 Settlement Agreement settling the appeal of the VIP use permit approval is hereby incorporated by reference and included as a condition of approval.
- 24) As-built fugitive POC emissions of the VIP as amended shall not exceed 6 tons per year. Valero shall provide documentation of compliance with this condition at the same time that the information is provided to the BAAQMD.
- 25) The applicant shall defend, indemnify, and hold harmless the City of Benicia and its agents, officers, and employees from any claim, action, or proceeding against the City of Benicia, or its agents, officers, or employees to attack, set aside, void or annul any approval of the Planning Commission, City Council, Community Development Director, or any other employee, department, committee, or agency of the City concerning the environmental review, use permit approval, or other actions, permits and approvals for the Valero Improvement Project; provided, however, that the applicant's duty to so defend, indemnify, and hold harmless shall

be subject to the City's promptly notifying the applicant or permittee of any said claim, action, or proceeding and the City's full cooperation in the applicant's defense of said claims, actions, or proceedings. This duty to indemnify includes any damages awarded against the City, if any, the cost of suit, attorney's fees, and other costs and expenses incurred in connection with such claim, action or proceeding and whether incurred by Valero, the City and/or the parties initiating or bringing such claim, action, or proceeding.

In the event Valero is required to defend the City, the City shall retain the right to (a) approve the counsel to defend the City, (b) approve all significant decisions concerning the manner in which the defense is conducted, and (c) approve all settlements, which approval shall not be unreasonably withheld. The City shall have the right not to participate in said defense, except the City shall cooperate with the applicant in the defense of said claim, action or proceeding.

* * * * *

On motion of Commissioner _____, seconded by Commissioner _____, the above Resolution was adopted by the Planning Commission of the City of Benicia at a regular meeting of said Commission held on July 10, 2008 by the following vote:

Ayes:
Noes:
Absent:

Charlie Knox
Planning Commission Secretary

MITIGATION MONITORING AND REPORTING PROGRAM

FOR VALERO REFINING COMPANY'S LAND USE APPLICATION FOR THE VALERO IMPROVEMENT PROJECT (VIP)

Introduction

This document describes the mitigation monitoring and reporting program (MMRP) for ensuring the effective implementation of the mitigation measures required for City of Benicia approval of a Use Permit for Valero Benicia Refinery's Valero Improvement Project (VIP).

City of Benicia

When a lead agency approves findings pursuant to §21081.6 upon completion of a certified EIR it is required to adopt a reporting and monitoring program. The purpose of the reporting and monitoring program is to ensure that measures adopted to mitigate or avoid significant environmental impacts are implemented. A mitigation monitoring and reporting program does not need to be included with the EIR as at times the findings which trigger the program are made after considering the Final EIR. Note that mitigation measures are enforced through permit conditions, agreements, or other measures. The reporting and monitoring program will not only direct the implementation of mitigation measures by the applicant, but also facilitate the monitoring, compliance and reporting activities of the City and any monitors it may designate.

Project Background

The VIP proposes a series of modifications and additions to the refinery. The project would modify existing and install new refining equipment. All units would be located within the refinery boundaries, generally placed among similar existing equipment. When operating, the VIP would add fewer than 20 new regular employees at the refinery. The VIP would implement a series of modifications and additions that are focused on four objectives.

1. Provide ability to process lower grades of raw materials¹.
2. Provide flexibility to substitute raw materials – crude oil instead of gas oil.
3. Optimize operations for efficient production of clean burning fuels.
4. Mitigate project-related impacts to avoid detrimental effects on the community.

The VIP would modify and install typical refining equipment -- piping, heat exchangers, instrumentation, catalytic reactors, fractionation equipment, pumps, compressors, furnaces, tanks,

¹ As used in this document, the term "raw materials" is defined as crude oil and gas oil feedstocks.

and their associated facilities. These changes would include installation of new facilities as well as minor changes to existing facilities. The components of the project include the following:

- Pipestill modifications to increase crude oil processing capacity by approximately 25%
- Fluid Catalytic Cracker Unit Feed Flexibility modifications to process different feeds
- Coker Unit modifications to process additional feed
- Increased refinery capacity to remove and recover sulfur
- Flue Gas Scrubber to reduce emissions from the main stack
- Additional hydrogen production to support hydrofining and hydrocracking
- Hydrofining optimization changes
- Modifications to maximize hydrocracking, alkylation, and reforming capacity
- Adding a Guard Reactor to the Hydrotreater
- Modifications to optimize fractionation processes
- New and modified existing combustion sources
- Use of additional water
- Modifications to the wastewater treatment facility
- Added support facilities and infrastructure
- Added new crude tankage
- Import and export changes

Valero would implement the project in a series of steps, starting in 2003 and, if all components are built, construction would be completed in about 2009. The result would be that the refinery would be able to continue to efficiently produce clean burning fuels in the California market and would remain economically competitive into the future.

The Environmental Impact Report for the VIP found that the resulting actions would have potentially significant impacts in the areas of:

- Air Quality
- Biological Resources
- Cultural Resources
- Geology and Soils
- Noise
- Transportation and Traffic
- Utilities and Service Systems

In addition, no mitigation measures were identified for the following areas as all potential project impacts were determined to be either no impact or less than significant:

- Aesthetics, Visual Quality, Light and Glare
- Energy
- Public Health
- Public Safety
- Hydrology and Water Quality
- Land Use, Plans and Policies
- Public Services

Based on the Initial Study prepared for the VIP and comments received during scoping, the City determined that the VIP will not result in impacts to:

- Agriculture Resources

- Mineral Resources
- Population and Housing
- Recreation

Accordingly, those topics were not studied further in the EIR.

Roles and Responsibilities

As the lead agency under CEQA, the City of Benicia will be responsible for ensuring full compliance with the provisions of this monitoring program and has primary responsibility for implementation of the monitoring program. The City of Benicia has the authority to halt any activity associated with the construction and operation of the VIP if the activity is determined to be a deviation from the approved project or the adopted mitigation measures. The City of Benicia will act as the mitigation monitor and will designate to Valero how to contact the monitor.

Mitigation Monitoring and Reporting Program

The table attached presents a compilation of the mitigation measures in the Environmental Impact Report together with the required monitoring and reporting actions, effectiveness criteria, and timing.

Mitigation Monitoring Table

Impact	Mitigation Measure	Monitoring/Reporting Action	Effectiveness Criteria	Timing	Non-Compliance Sanction
<p>AIR QUALITY</p> <p>4.2-1: Construction activities associated with project construction would generate short-term emissions of criteria pollutants, including suspended and inhalable particulate matter and equipment exhaust emissions.</p>	<p>4.2-1a: During construction, Valero shall require the construction contractor to implement the following dust control procedures to maintain project construction-related impacts at acceptable levels.</p> <p>1) Water all active construction areas at least twice daily. Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour. Reclaimed water should be used whenever possible.</p> <p>2) Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer).</p> <p>3) Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.</p> <p>4) Sweep all paved access roads, parking areas and staging areas at construction sites daily. Sweep City streets (with water sweepers using reclaimed water if possible) at the end of each day if visible soil material is carried onto adjacent paved public roads.</p> <p>5) If construction activities for any project component or group of components undergoing simultaneous construction will occur on a construction site greater than four acres in area, Valero shall require the</p>	<p>Reporting action: Valero shall submit documentation to the mitigation monitor that the dust control procedures are specified in construction contracts.</p> <p>Monitoring action: Field inspections during construction by the mitigation monitor.</p>	<p>Receipt by the mitigation monitor of the described documentation.</p> <p>Verification by the mitigation monitor that the prescribed procedures are being followed.</p>	<p>At the time of each building permit submittal for VIP construction.</p>	<p>Withhold building permit.</p> <p>Stop work order.</p>

Impact	Mitigation Measure	Monitoring/Reporting Action	Effectiveness Criteria	Timing	Non-Compliance Sanction
	<p>construction contractor to implement the following enhanced dust control procedure:</p> <p>Hydroseed or apply (non-toxic) soil stabilizer to inactive construction areas (previously graded areas inactive for ten days or more).</p> <p>Enclose, cover, water twice daily or apply (non-toxic) soil binders to exposed stockpiles (dirt, sand, etc.)</p> <p>Limit traffic speeds on unpaved roads to 15 mph.</p> <p>Install sandbags or other erosion control measures to prevent silt runoff to public roadways.</p> <p>Replant vegetation in disturbed areas as quickly as possible.</p>				
	<p>4.2-1b: To mitigate impact of construction equipment exhaust emissions, the project sponsor shall require its construction contractors to comply with the following requirements:</p> <p>Construction equipment shall be properly tuned and maintained in accordance with manufacturers' specifications.</p> <p>Best management construction practices shall be used to avoid unnecessary emissions (e.g., trucks and vehicles in loading and unloading queues would turn their engines off when not in use).</p> <p>Any stationary motor sources (such as generators and compressors) located within 100 feet of any residence shall be equipped with a supplementary exhaust pollution control system as required by the BAAQMD and CARB. In such cases, the project sponsor shall require construction contractors to mitigate diesel emission by measures such as the use of catalyzed</p>	<p>Reporting action: Valero shall submit documentation to the mitigation monitor that the described emission control measures are specified in construction contracts.</p> <p>Monitoring action: Field inspections during construction by the mitigation monitor.</p>	<p>Receipt by the mitigation monitor of the described documentation.</p> <p>Verification by the mitigation monitor that the prescribed procedures are being followed.</p>	<p>At least 10 days prior to start of construction of VIP elements.</p>	<p>Withhold building permit.</p> <p>Stop work order.</p>

Impact	Mitigation Measure	Monitoring/Reporting Action	Effectiveness Criteria	Timing	Non-Compliance Sanction
4.2-2: Operational activities associated with the implementation of the proposed project could lead to increase in regional air pollutant emissions into the air basin.	diesel particulate filters, use of ultra-low sulfur diesel fuel, and/or use of EPA and CARB 1996 certified diesel engines. 4.2-2: As a condition of approval of the use permit for the VIP, Valero must implement the Light Ends Rail Rack Arm Drains project.	Reporting action: Valero will provide the City with a copy of its BAAQMD permit to operate or a comparable document to indicate that the Light Ends Rail Rack Arm Drains project has been implemented.	Receipt by the mitigation monitor of the described documentation.	Prior to the operation of VIP elements.	Use permit revocation.
BIOLOGICAL RESOURCES					
4.3-1: Potential disturbance of western pond turtle and California red-legged frog could occur during construction at the Tank Farm retention pond site.	4.3-1: Unless protocol surveys during the period May 1 through November 1 establish that the retention ponds are not occupied by either species, the modification of any Tank Farm retention pond shall be preceded by a period of at least six months during which the pond is drained and minimal water allowed to collect in the basin. If such pond drying is not possible, the project shall adhere to the following mitigation protocols: At least 45 days prior to working at the site, Valero shall notify City and a City-designated biologist to ensure that no work occurs without appropriate pre-construction surveys 48 hours before work begins. Notification shall be in writing and clearly define proposed construction schedule such that pre-construction surveys can be completed. The City-designated biologist shall be present at all times during construction at the ponds, and as required during construction near non-sensitive areas, as an on-site monitor to detect frogs or pond turtles which may enter the area of	Reporting action: Valero will notify the City which mitigation option it intends to implement. Option 1: Prepare Survey - Prepare protocol surveys during the period May 1 through November 1 to establish presence (or non-presence) of either specie. Option 2: No Survey - Drying the pond and maintaining in a dry state for six months. Note that a gradual drying of the ponds over a period of approximately two weeks will allow resident animals to depart under conditions not dissimilar from natural ephemeral water bodies.	Receipt and approval by the City of a protocol survey by a City biologist. If the presence of either specie is established. A City biologist will perform construction monitoring. City biologist to confirm pond drying activities upon notification of start from Valero and at end of six month period.	Prior to each applicable building permit approval. During the period 1 May through 1 November. Notification to City at least six months prior to construction.	Withhold building permit. Withhold building permit/stop work order.

Impact	Mitigation Measure	Monitoring/Reporting Action	Effectiveness Criteria	Timing	Non-Compliance Sanction
	<p>disturbance.</p> <p>If a California red-legged frog is identified in the project construction zone during pre-construction surveys or construction, no work in the immediate area can begin (or ongoing construction shall be halted) until the USFWS Sacramento Field Office is contacted and concurs that the project will not result in harm or harassment to the species. Western pond turtles may be relocated to suitable habitat by the City-designated biologist.</p>				
<p>4.3-2: Potential disturbance of special status and protected native birds (e.g., tricolored blackbird and Suisun song sparrow) during the breeding season could occur at the Tank Farm retention ponds.</p>	<p>4.3-2: Construction at the Tank Farm shall be limited to the non-breeding season for most birds, <i>i.e.</i>, all work shall occur September through February.</p> <p>Alternatively, if construction must occur during the breeding season, all vegetation that could be used for nesting shall be removed during the September through February period preceding construction.</p>	<p>Reporting action: Valero will notify the City if it intends to limit construction to the non-breeding season.</p> <p>Reporting action: Valero will notify the City if it intends to clear vegetation.</p>	<p>Receipt of notification by the City.</p> <p>Receipt of notification 15 days prior to clearance and verification by City biologist that all nesting vegetation is cleared.</p>	<p>15 days prior to construction.</p> <p>Notification and verification must be made between September and February.</p>	<p>Stop work order.</p> <p>Stop work order.</p>
CULTURAL RESOURCES					

Impact	Mitigation Measure	Monitoring/Reporting Action	Effectiveness Criteria	Timing	Non-Compliance Sanction
<p>4.4-1: Construction of the refinery modifications may cause substantial adverse changes to the significance of currently unknown cultural resources.</p>	<p>4.4-1: Pursuant to CEQA Guidelines 15064.5 (f), "provisions for historical or unique archaeological resources accidentally discovered during construction" shall be instituted. Therefore, in the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and Valero shall consult with a qualified archaeologist or paleontologist to assess the significance of the find. If any find is determined to be significant, representatives of Valero and the qualified archaeologist and/or paleontologist shall meet to determine the appropriate avoidance measures or other appropriate mitigation. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and a report prepared by the qualified archaeologist according to current professional standards.</p>	<p>Reporting action: Valero shall provide the mitigation program with the proposed instructions to contractors and name(s) and statement of qualifications of its designated cultural resources specialist(s) who will be responsible for implementation of all project-related cultural resources mitigation measures.</p>	<p>City mitigation monitor approval of Valero's proposed archaeological mitigation monitoring program and any subsequent implementation reports.</p> <p>The statement of qualifications must be sufficient to substantiate that the specialist(s) meets the Secretary of the Interior's proposed Historic Preservation Qualification Standards as published in the Federal Register (United States Department of the Interior 1997).</p>	<p>At the time of each building permit submittal for VIP construction.</p> <p>At least 10 days prior to the start of any project-related earth disturbing activity, Valero shall confirm in writing to the mitigation monitor that the approved designated cultural resources specialist will be available at the start of the project and is prepared to implement the mitigation measures.</p>	<p>Stop work order.</p>
GEOLOGY AND SOILS					
<p>4.6-1: In the event of a major earthquake in the region, seismic ground shaking could potentially injure persons at the project site due to structural damage or structural failure. Ground shaking could potentially expose persons and property to seismic-related hazards, including localized liquefaction,</p>	<p>4.6-1a: Seismic design consistent with current professional engineering and industry standards shall be used in construction for resistance to strong ground shaking, especially for lateral forces. The implementation of the seismic design criteria as required by the California Building Code will reduce the potential for structural failure, major structural damage, and loss of life, and reduce the primary effects of ground shaking on structures and infrastructures to generally acceptable level. At a minimum,</p>	<p>Reporting action: Valero will submit documentation, including construction plans and specifications to the City. Results of any site-specific geologic studies and associated recommendations should be included in the submittal. Submittals shall specify sources of design standards. These sources should include but are not limited</p>	<p>Review and approval of plans, specifications and documentation by Community Development Department.</p>	<p>At the time of each building permit submittal for VIP construction.</p>	<p>Withhold building permit.</p>

Impact	Mitigation Measure	Monitoring/Reporting Action	Effectiveness Criteria	Timing	Non-Compliance Sanction
related ground failure and seismically-induced settlement.	<p>the California Building Code requirements or a more stringent building code shall be followed during design and construction of all elements of the Valero Improvement Project. Additional requirements recommended by the project California Certified Engineering Geologist or Geotechnical Engineer, based on site-specific studies and specific project requirements, shall be followed and become part of the project specifications.</p>	<p>to the California Building Code, the Uniform Building Code, and construction standards of the American Petroleum Institute, if stricter than the codes.</p> <p>Any specific recommendations in geological reports will be included in the submittal and incorporated in the design.</p>			
	<p>4.6-1b: Appropriate grading and design, in accordance with the California Building Code requirements or a more stringent standard, shall be used to reduce the secondary effects of ground shaking on structures and infrastructure. Subsurface site conditions shall be investigated for all project facilities to identify poor foundation materials that may be susceptible to the effects of liquefaction, lateral spreading, and differential settlement. Poor foundation materials shall be removed prior to construction or be subjected to ground improvement techniques. In addition, deep pile foundations shall be driven through the poor foundation soils and into more competent materials.</p>	<p>Reporting action: For any project requiring grading, Valero will submit a grading plan and soils study to the City for review.</p>	See 4.6-1a.	See 4.6-1a.	See 4.6-1a
	<p>4.6-1c: Structural fill placed during the construction of the Valero Improvement Project shall be designed to reduce fill settlement with keyways and subsurface drainage, and adequately compacted (i.e., Minimum 90 percent compaction as defined by American Society for Testing and Materials (ASTM D1557)).</p>	See 4.6-1a.	See 4.6-1a.	See 4.6-1a.	See 4.6-1a

Impact	Mitigation Measure	Monitoring/ Reporting Action	Effectiveness Criteria	Timing	Non-Compliance Sanction
	4.6-1d: All structural foundations, above-ground utilities, and underground utilities shall be designed to accommodate estimated settlement without failure, especially across transitions between fills and cuts. 4.6-1e: Final design of the proposed improvements shall be made in conjunction with a design-level geotechnical investigation submitted to the City of Benicia for review prior to issuing any grading or construction permits. Implement 4.6-1a through 4.6-1e.	See 4.6-1a. Reporting action: Valero will submit a design-level geotechnical investigation to the City for review. Implement 4.6-1a through 4.6-1e.	See 4.6-1a. Receipt of the geotechnical investigation by the City and approval of the investigation by the City Implement 4.6-1a through 4.6-1e.	See 4.6-1a. See 4.6-1a. See 4.6-1a.	See 4.6-1a. See 4.6-1a. See 4.6-1a
4.6-2: Proposed foundation construction could be subjected to the geologic hazards related to expansive soils and natural settlement. 4.6-3: Construction of additional tanks or treatment units in the crude storage tank area and/or wastewater treatment plant area could potentially adversely affect the stability of slopes along the retention pond perimeter berms.	4.6-3: To reduce potential slope instability hazards related to static and dynamic forces in the retention pond areas, a slope stability analysis of the retention pond perimeter berms shall be conducted by a licensed professional engineer. All recommendations shall be used in the design and construction of the tanks and submitted to the City of Benicia for review.	Reporting action: Valero will submit all plans and the required engineer's study containing recommendations for additional tanks and treatment units, prepared and signed by a registered civil or geotechnical engineer, to the City for review and approval.	Receipt and approval by the City of plans and Engineer's study and recommendations.	Prior to the start of construction.	See 4.6-1a
NOISE					
4.11-1: Construction activities would intermittently and temporarily generate noise levels above existing ambient levels in the project vicinity over the duration of the construction period.	4.11-1: Over the duration of pile driving activities, Valero shall require the construction contractor to implement the following mitigation measures: To reduce the potential for noise impacts from pile driving, alternate methods of driving shall be used, if feasible. Alternate measures may include pre-drilling of piles, the use of more than one pile driver to lessen the total time required for driving	Monitoring action: Valero will implement and follow construction noise mitigation measures and the mitigation monitor shall ensure compliance with the measures during pile driving. Reporting action: Valero	Receipt of construction plans or copies of construction contracts showing mitigation wording. Receipt of a letter	During pile driving activities, contractors will be required to limit noisy construction activity to the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday or as specified by the City of	Withhold building permit. Stop work order.

Impact	Mitigation Measure	Monitoring/Reporting Action	Effectiveness Criteria	Timing	Non-Compliance Sanction
	<p>piles, and other measures. Pile driving activities shall be limited to daytime hours between 7 a.m. and 7 p.m., on weekdays. Pile driving shall be prohibited during weekends, state and federal holidays. Valero shall also designate a construction complaint manager for the project for the duration of the construction activities.</p>	<p>will designate a construction complaint manager for the project for the duration of the construction activities.</p>	<p>designating the construction complaint manager and contact information. Valero shall report any complaints and any correction measures taken to the mitigation monitor.</p>	<p>Benicia.</p>	
TRANSPORTATION / TRAFFIC					
<p>4.13-1: The proposed construction phase of the VIP would result in a potentially significant impact to the a.m. peak hour operations of I-680 northbound off-ramp/Bayshore Road in the 2004 plus project scenario.</p>	<p>4.13-1: Since this significant impact would be temporary and only occur for a period of approximately 45 days, there are several measures that can be applied to improve intersection levels of service at the I-680 northbound off-ramp / Bayshore Boulevard intersection without the installation or construction of additional transportation facilities (e.g., lane widening, traffic signal installation, etc.). These measures include, at a minimum: Provision of traffic control personnel at impacted intersection during the peak hours. For this intersection, the refinery and the City of Benicia will be required to apply for a Caltrans Encroachment Permit, since "manual" traffic control will occur within the State right-of-way. An evaluation of manual traffic control was conducted assuming the intersection as a "fixed time" signalized intersection. The signal would simulate a traffic control officer controlling vehicle flow at the intersection during the a.m. peak hour. If the traffic control officer were to allow the</p>	<p>Reporting action: Valero shall submit all state road encroachment permits required for impacted intersections and report effectiveness to City at regular meetings or as directed by the City.</p>	<p>Valero shall obtain and comply with state road encroachment permits. Attendance by a Valero representative at regular traffic meetings between Valero staff and City staff at times designated by the City.</p>	<p>Prior to commencing construction activities and during construction as required.</p>	<p>Stop work order.</p>

Impact	Mitigation Measure	Monitoring/Reporting Action	Effectiveness Criteria	Timing	Non-Compliance Sanction
	<p>off-ramp traffic to enter the intersection unimpeded for 60 seconds, the level of service at the intersection would be LOS B (11.0 seconds of delay). The forecast queue length would almost be reduced in half from 625 feet to 340 feet (or 14 vehicles).</p> <p>Although not required, the following additional measures would provide for further improvements to the study area intersection delays:</p> <ul style="list-style-type: none"> • Stagger work hours and shifts of construction personnel during the a.m. and p.m. peak commute periods. • Use alternative and additional gate access locations to disperse traffic from the I-680 northbound off-ramp/Bayshore Road intersection. • Attendance at monthly traffic meetings between Valero staff and City staff (police, traffic engineer, and public works department) to review and implement the traffic controls listed above. 	<p>Valero to take additional listed measures if determined necessary by the City.</p>	<p>Verification by the mitigation monitor that Valero is implementing the specific aspects of the specific alternate measure as directed by the City.</p>	<p>At times designated by the City.</p>	
<p>4.13-2: The proposed construction phase of the VIP would result in a contribution of construction traffic volumes to one of the I-680 ramp junctions which are already forecast to operate at LOS F in the baseline (i.e., without project) condition. However, when the 2004 baseline and 2004 plus project ramp volumes are</p>	<p>Implement 4-13-1.</p>	<p>Implement 4-13-1.</p>	<p>Implement 4-13-1.</p>	<p>Implement 4-13-1.</p>	<p>Stop work order.</p>

Impact	Mitigation Measure	Monitoring/Reporting Action	Effectiveness Criteria	Timing	Non-Compliance Sanction
<p>compared at the impacted ramps, the project's contribution would be nominal.</p>					
UTILITIES AND SERVICE SYSTEMS					
<p>4.14-1: The Valero Improvement Project would increase demand for raw, untreated water from the City of Benicia in excess of the baseline refinery demand anticipated in the UWMP. In the future, the City's overall water demand may exceed available supplies from current sources in dry years. This impact would be significant. This impact could be altered to be less than significant if the City were to obtain additional water supplies or if the City were able to implement planned future water supply programs and projects. Some of these measures are beyond City control and some are within the control of the City and Valero.</p>	<p>4.14-1a: The City will continue to move forward with obtaining the future water supplies as identified in the Water Study, the UWMP, and the 1996 Water System Master Plan.</p>	<p>Monitoring action: Mitigation monitor shall communicate monthly with the Public Works Department to ascertain progress.</p>	<p>Delivery of agreement for additional water signed by all involved parties.</p>	<p>Best efforts by the City. Timing is not entirely within City and Valero's control.</p>	<p>NA</p>
	<p>4.14-1b. The City of Benicia and Valero will continue to implement General Plan Program 2.36.A to pursue reuse of reclaimed wastewater where feasible, and the Valero Refinery will accept and use reclaimed water from a City reclamation project.</p>	<p>Monitoring action: Mitigation monitor to communicate monthly with the Public Works Department. as above.</p>	<p>Completion of project construction and notification to the City of acceptance and use of reclaimed water from the City reclamation project by Valero.</p>	<p>Best efforts as discussed in 4.14-1a above, on the part of Valero and the City.</p>	<p>Revoke use permit.</p>
	<p>4.14-1c: Drought Contingency. If a "water shortage" (as defined below) occurs, then Valero shall take the steps necessary to reduce water consumption at the refinery by an amount equal to or greater than the amount of raw water that</p>	<p>Reporting action: When notified by the City that a water shortage exists for any given year, Valero will provide prompt documentation to the City</p>	<p>Valero will notify the City as the steps are implemented and will provide an annual report at the end of the year, verifying the</p>	<p>When a water shortage occurs, as defined by this mitigation measure.</p>	<p>Revoke use permit.</p>

Impact	Mitigation Measure	Monitoring/Reporting Action	Effectiveness Criteria	Timing	Non-Compliance Sanction
	<p>is being consumed due to implementation of the VIP during the period of the water shortage. This reduction shall be in addition to any amount of reduction required by Condition WATER RES-2, approved by the California Energy Commission on October 31, 2001, for the Valero Cogeneration Project. Upon notification that a water shortage exists for any given year, Valero shall provide prompt documentation to the City of: the amount of water expected to be consumed by the VIP during the year of the shortage; a description of the steps planned to reduce consumption; the amounts to be saved by the steps; and the timing of implementation. Valero shall notify the City as the steps are implemented and will provide an annual report at the end of the year, verifying the amounts of water saved by the steps taken.</p> <p>For purposes of this mitigation, "water shortage" means that all of the following conditions have occurred:</p> <ol style="list-style-type: none"> a. The City is unable to secure, pursuant to Supplemental Water Rights Application 30681, rights to the amount of water projected to accommodate City demand for the year of the water shortage, as shown in Table 4.14-3 of the VIP EIR, plus the amount of water needed for the VIP; b. The City is unable to secure other water entitlements to the amount of water projected to accommodate City demand for the year of the water shortage, as shown in Table 4.14-3 of the VIP EIR, plus the amount of 	<p>of: the amount of water expected to be consumed by the VIP during the year of the shortage; a description of the steps planned to reduce consumption; the amounts to be saved by the steps; and the timing of implementation.</p>	<p>amounts of water saved by the steps taken.</p>		

Impact	Mitigation Measure	Monitoring/Reporting Action	Effectiveness Criteria	Timing	Non-Compliance Sanction
	<p>water needed for the VIP;</p> <p>c. Valero has not secured a separate water entitlement, valid for the year of the water shortage, adequate for the amount of water needed for the VIP;</p> <p>d. The City has not implemented the wastewater reuse project; and</p> <p>e. The City has announced a water alert, as defined by Benicia Municipal Code Title 13, Chapter 13.35, section 13.35.060(B), and has ordered implementation of conservation stage two pursuant to the City Code.</p>				
<p>4.14-5a: The Valero Improvement project, together with the Cogeneration Project and other refinery projects would increase demand for raw, untreated water from the City of Benicia in excess of the baseline refinery demand anticipated in the UWMP. Together with other future, non-refinery projects, the VIP would make a significant contribution to the cumulative shortfall in City water supply in dry years.</p>	<p>Implement 4.14-1a through e.</p>	<p>Implement 4.14-1a through e.</p>	<p>Implement 4.14-1a through e.</p>	<p>Implement 4.14-1a through e.</p>	<p>Revoke use permit.</p>

ORIGINAL

SETTLEMENT AGREEMENT

This agreement is entered into as of June 4, 2003.

1. Background. The following organizations and representatives of organizations have filed appeals of the April 28, 2003 decisions by the City of Benicia Planning Commission to certify an Environmental Impact Report, adopt a Mitigation Monitoring and Reporting Program, and approve a use permit and related conditions and findings for the Valero Improvement Project (collectively "April 28, 2003 Planning Commission Decisions"): the Good Neighbor Steering Committee; the Solano County Green Party; the Sierra Club, Solano Chapter; Dana Dean; Doug MacDonald; and Jerri Curry (collectively "Appellants").
2. Purpose of Agreement. Valero Refining Company—California ("Valero") enters into this Agreement in good faith for the purpose of settling the disputes between Valero and the Appellants relating to the Valero Improvement Project, including Valero's desire to obtain the issuance of any necessary approvals and entitlements for the Valero Improvement Project.
3. Definitions. For the purpose of this agreement, the Valero Improvement Project ("VIP") is defined as that project permitted by the Benicia Planning Commission on April 28, 2003 and incorporating the amendments herein. The project does not include any subsequent environmental review.
4. Conditions. Valero agrees to be bound by the provisions of Paragraphs 5 through 7 below, subject to the following conditions:
 - (a) No later than 6:30 p.m. on June 4, 2003, all Appellants withdraw, in writing, their appeals of the April 28, 2003 Planning Commission Decisions;
 - (b) The City of Benicia accepts all Appellants' withdrawal of their appeals of the April 28, 2003 Planning Commission Decisions, and the April 28, 2003 Planning Commission Decisions become final decisions without further action by the City of Benicia Planning Commission or City Council;
 - (c) No person or entity appeals or otherwise challenges the April 28, 2003 Planning Commission Decisions or the City of Benicia's acceptance of the withdrawals of Appellants' appeals of the April 28, 2003 Planning Commission Decisions;
 - (d) Upon request by Valero, the Good Neighbor Steering Committee supports, in writing and in person, the approval and construction of the VIP. Support includes testifying on behalf of the VIP before the appropriate regulatory bodies. Approval for the purposes of this Agreement means City, BAAQMD, and RWQCB approvals necessary to build the VIP; and
 - (e) The Appellants do not object to, challenge, or appeal the approval or construction of the VIP. Approval for the purposes of this Agreement means City, BAAQMD, and RWQCB approvals necessary to build and operate the VIP.
5. Commitment to Water Reuse Project. Condition 13 of the Use Permit for the Valero Improvement Project, approved by the City of Benicia Planning Commission on April 28, 2002, ("Condition 13") provides "Valero shall continue to participate in the planning and development of the City's wastewater reuse project, consistent with its commitment to that project dated

October 11, 2002, and signed by the Refinery Vice President and General Manager.” Valero’s October 11, 2002 Commitment of Support for Water Reuse at the Valero Benicia Refinery (“Commitment of Support”) states in part “Valero’s commitment of support will continue as long as the reuse project continues to be economically, regulatorily, and technically feasible.” For purposes of the City of Benicia’s interpretation and enforcement of Condition 13, Valero agrees “economically feasible,” as used by Valero in its Commitment of Support shall be defined to reflect approximately \$15 million of financial support for the water reuse project so long as Valero is anticipated to receive, as agreed by Valero and the City, at least 1 million gallons of useable water per day from the water reuse project. The obligation to contribute to the water reuse project shall not be interpreted to require Valero to contribute more than the actual cost of the water reuse project. For example, should the water reuse project receive grants which reduce the cost of the project, or if other factors result in a project cost less than \$15 million, Valero shall only be obligated to contribute the actual cost even if the cost is less than \$15 million.

6. Air Quality Monitoring. Valero will take the following actions in order to enhance available air quality monitoring data:

- (a) For an initial one-year period and to provide a comparison of the suitability of the two systems to monitor air quality and to provide data relevant to the Benicia Community and the Valero Refinery, Valero will support an SB 25 monitoring station as described herein.
 - (i) Upon CARB/BAAQMD approval, Valero shall assist in the location of an SB25 monitoring station in the City of Benicia. Assistance includes providing (1) financial support of up to \$30,000, if requested by CARB/BAAQMD, for a site assessment study to determine the appropriate location for the monitoring equipment, and (2) meteorological data consistent with air quality monitoring needs, as determined by CARB/BAAQMD. If CARB/BAAQMD requires additional meteorological data that is not available from existing sources, Valero agrees to install additional equipment, at a cost of up to \$15,000.00, to provide the required data.
 - (ii) If an additional open path air monitoring system such as CEREX is procured by the Good Neighbor Steering Committee and if approved by CARB/BAAQMD, the additional system shall be co-located based upon CARB/BAAQMD’s initial site assessment or other further recommendation of CARB/BAAQMD. The cost of the additional system shall be borne by the City and/or the Good Neighbor Steering Committee. The City may use any excess funds from the site assessment study or the meteorological equipment discussed in paragraph 6(a)(i) above to fund its share of the additional monitoring system.
- (b) At the end of the one-year period, the data from the two systems shall be reviewed by BAAQMD, Valero, the City and the Good Neighbor Steering Committee. BAAQMD, Valero, the City and the Good Neighbor Steering Committee shall meet and discuss the results. BAAQMD will determine if additional monitoring is required.

7. Main Stack Scrubber. Condition 14a of the Use Permit for the Valero Improvement Project, approved by the City of Benicia Planning Commission on April 28, 2002, ("Condition 14a") provides: "Valero shall construct and operate the main stack scrubber at the same time that the sulfur plant expansion is constructed." For purposes of the City of Benicia's interpretation and enforcement of Condition 14a, Valero agrees "sulfur plant expansion," shall be defined to include the new Pipestill Furnace described in section 3.4.3.5 of the Draft Environmental Impact Report for the Valero Improvement Project.

8. No Third Party Rights. Upon execution by Valero, this agreement shall be provided to the City of Benicia. The City of Benicia is the beneficiary of this agreement; and this agreement is enforceable only by the City of Benicia. This agreement is not intended to, and shall not, create any rights in favor of any persons or entities other than the City of Benicia.

9. Enforcement. In enforcing Conditions 13 and 14a, as those conditions have been defined in this agreement, the City shall have available to it all of the remedies that it normally has to enforce a condition of a use permit, including but not limited to, issuance of a stop work order.

10. Warranty of Authority. The signatory to this agreement hereby represents and warrants that he/she is duly authorized to execute this agreement on behalf of Valero Refining Company-California and to bind Valero to the terms of this agreement.

VALERO REFINING COMPANY – CALIFORNIA



W. H. Buckalew

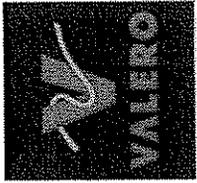
Vice President and General Manager

PROJECT PLANS

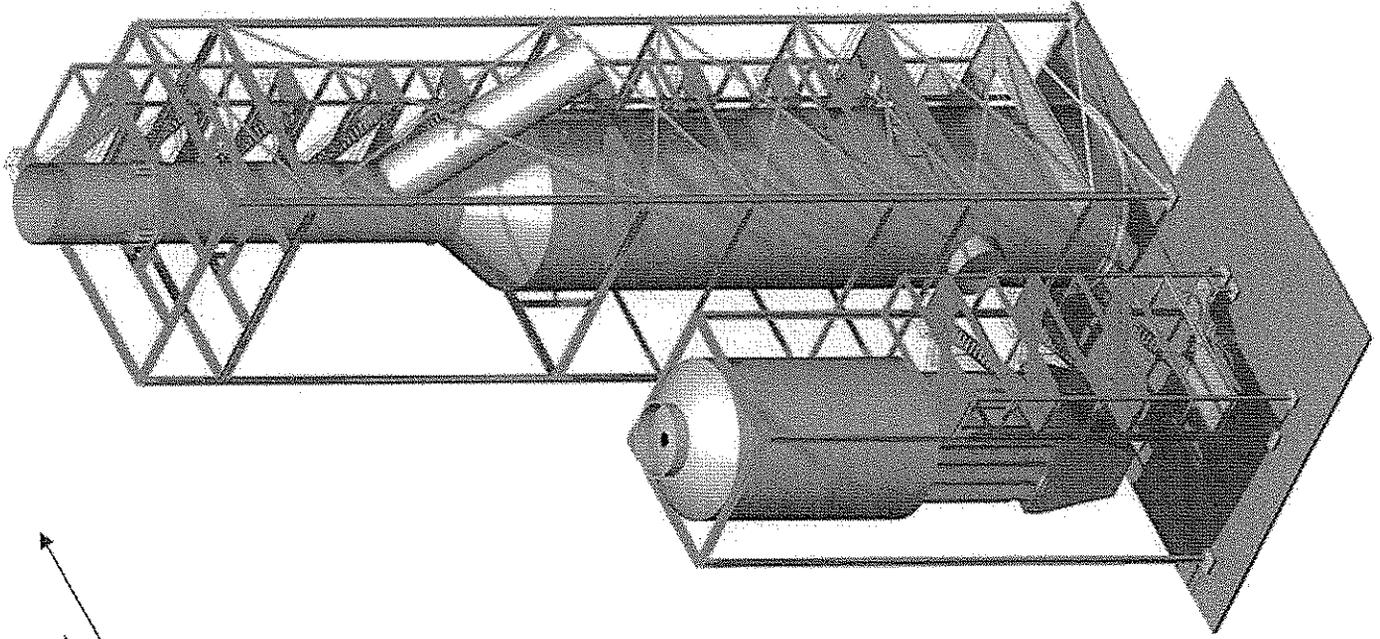
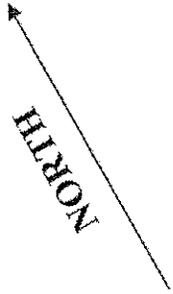
(** If viewing online, this attachment is available to view in the Community Development Department or in the Benicia Public Library in the July 10, 2008 Planning Commission packet.)

ILLUSTRATIONS

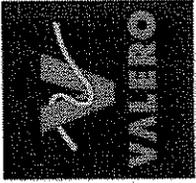
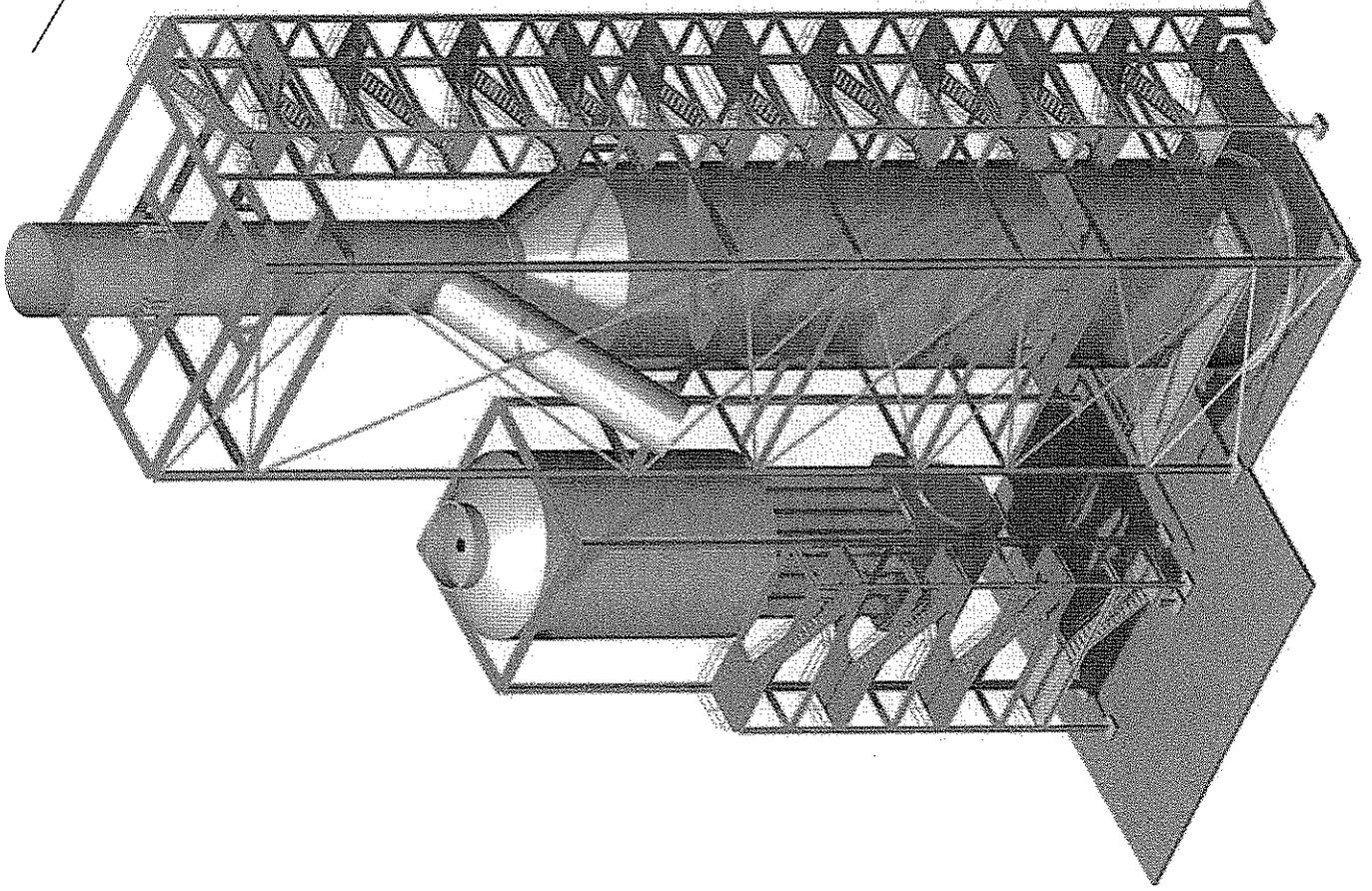
Color Scheme for Proposed Fluid Catalytic Cracker Unit/Coker Scrubber



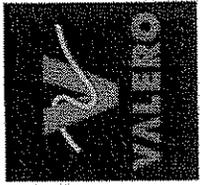
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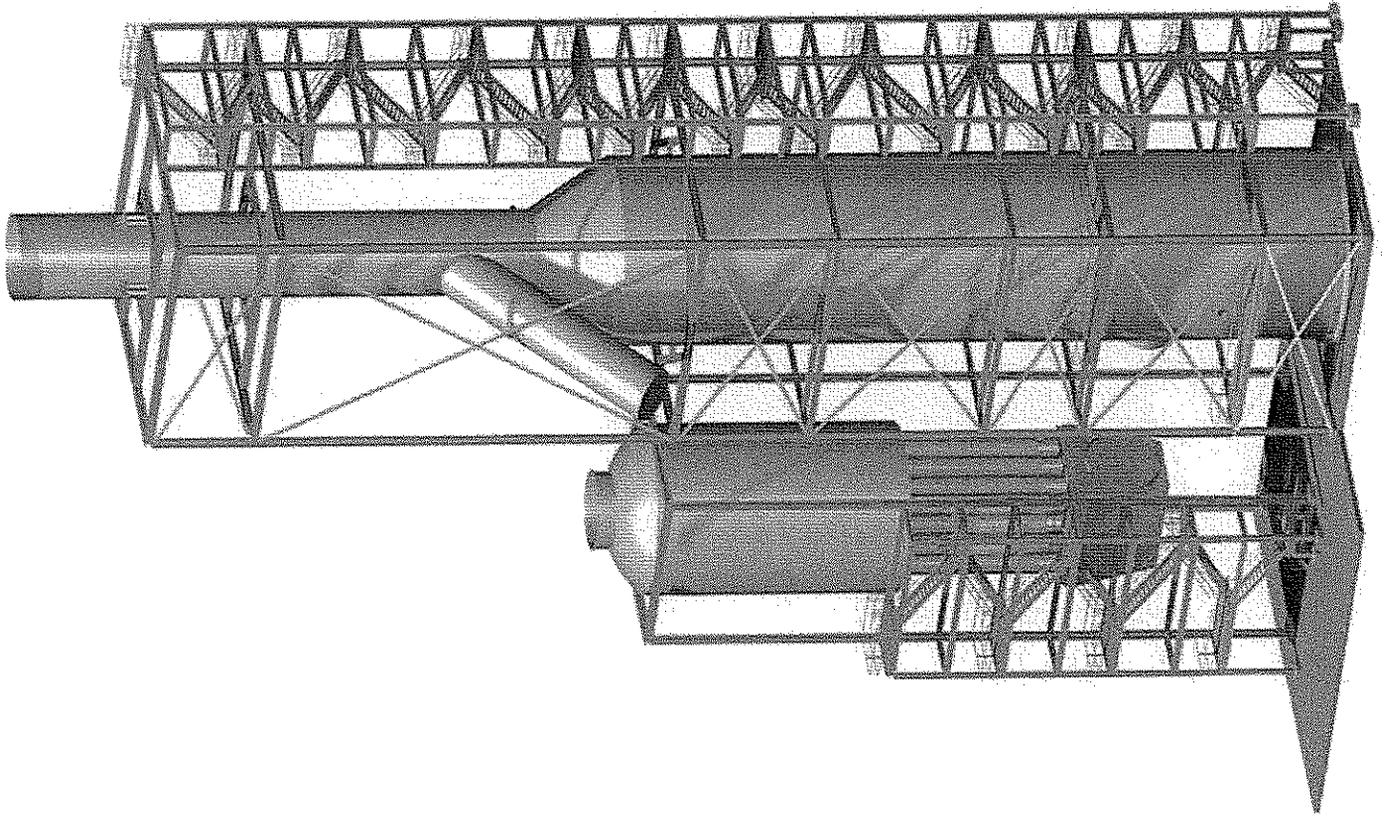
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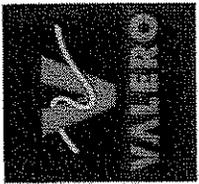


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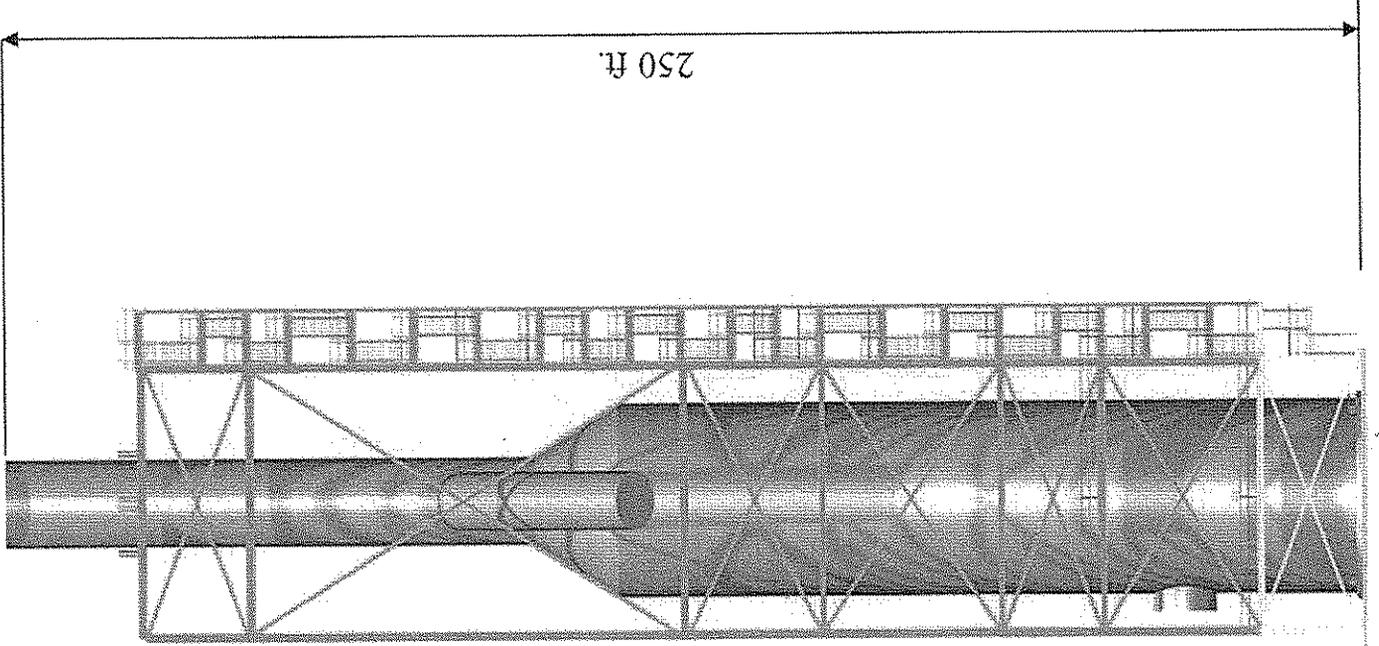
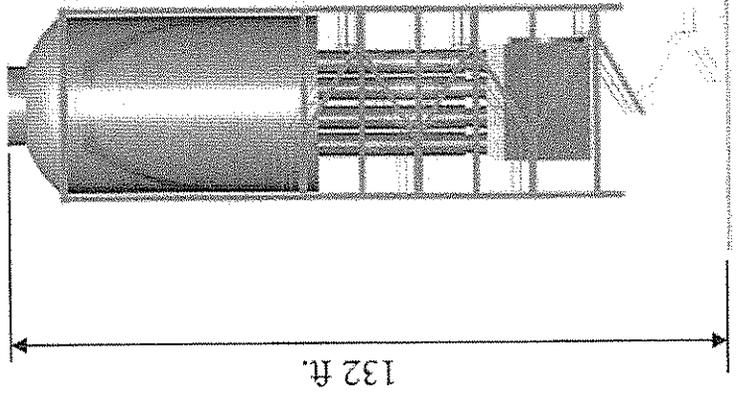
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**ELEVATION
LOOKING WEST**



**PLANNING COMMISSION RESOLUTION
NO. 03-5 APPROVING VIP USE PERMIT**

RESOLUTION NO. 03-5

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA
APPROVING A USE PERMIT FOR THE VALERO IMPROVEMENT PROJECT
(PLN2002-00022)**

WHEREAS, the Valero Refining Company – California has submitted a Use Permit application for the Valero Improvement Project (VIP) which would modify existing refinery equipment and install new equipment to allow the refinery to process lower grades of raw materials (crude oil and gas oil) and to increase overall production by about 10%; and the project is proposed to be carried out in phases between 2003 and 2009; and

WHEREAS, the Planning Commission held a public hearing on April 28, 2003, at which it considered and discussed the Final EIR, the Mitigation Monitoring and Reporting Program, the staff report, and the proposed use permit with conditions of approval for the Valero Improvement Project, and heard testimony from members of the public regarding the documents and the proposed use permit; and,

WHEREAS, the Planning Commission certified the Final EIR, adopted CEQA findings and adopted the Mitigation Monitoring and Reporting Program for the Valero Improvement Project on April 28, 2003;

NOW, THEREFORE, the Planning Commission of the City of Benicia hereby resolves as follows:

SECTION 1. That the Planning Commission makes the following findings based on the Valero Improvement Project application, the staff report, the Final EIR and related documents, and information presented at the public hearing on April 28, 2003:

1. That the proposed location of the use is in accord with the objectives of the City of Benicia Zoning Ordinance set forth as Title 17 of the Municipal Code, and the purposes of the district in which the site is located.

Section 17.04.030 of the Zoning Ordinance sets forth nine specific overall purposes of the Ordinance as follows:

"A. Provide a precise guide for the physical development of the city in order to:

1. Preserve the character and quality of residential neighborhoods,
2. Foster convenient, harmonious, and workable relationships among land uses,
and
3. Achieve progressively the arrangement of land uses described in the general plan;

B. Promote the economic stability of existing land uses that are consistent with the

- general plan and protect them from intrusions by inharmonious or harmful land uses;
- C. Prevent excessive population densities and overcrowding of land or buildings;
 - D. Ensure the provision of adequate open space for light, air, and fire safety;
 - E. Permit the development of office, commercial, industrial, and related land uses that are consistent with the general plan, in order to strengthen the city's economic base;
 - F. Conserve and enhance the city's architectural and cultural resources;
 - G. Conserve and enhance key visual features of Benicia's setting, including the shoreline and undeveloped hillsides and ridgelines, consistent with the general plan;
 - H. Require the provision of adequate off-street parking and loading facilities, and promote a safe, effective traffic circulation system;
 - I. Ensure that service demands of new development will not exceed the capacities of existing streets, utilities, or public services".

The VIP would be consistent with Purpose A because it would be located entirely within the existing refinery where its location could not create a new conflict with other land uses; and because the EIR shows that the project, as mitigated, would not have significant environmental effects on other land uses. The VIP would be consistent with Purpose B because the existence of the refinery in its location is consistent with its General Plan designation, and the VIP would promote the economic stability of the refinery. The VIP would require no more than 20 new employees and thus would not cause or make a significant contribution to excessive population densities, consistent with Purpose C. The VIP would not affect existing open space nor would it interfere with future open space plans of the City; therefore the project would be consistent with Purpose D. The project would be consistent with Purpose E because the refinery is an industrial use that is consistent with the General Plan and the VIP would improve the City's economic base by increasing the refinery's output and helping it to remain competitive in the marketplace. The project would have no effect on the City's architectural and cultural resources and, therefore it would be consistent with Purpose F. The VIP would not have a new substantial adverse effect on views of the shoreline and undeveloped hillsides and ridgelines and, therefore it would be consistent with Purpose G. The refinery's existing parking is substantially in excess of Zoning Ordinance requirements and the short-term effects of construction traffic would be mitigated by measures provided in the EIR and the Mitigation Monitoring and Reporting Program. Therefore, the project would be consistent with Purpose H. The VIP would not have service demands that exceed the capacities of existing streets, utilities or public services. The potentially significant effects on streets and water supply would be mitigated by measures provided in the EIR and the Mitigation Monitoring and Reporting Program. No other potentially significant effects on City services are projected and, therefore, the project would be consistent with Purpose I.

Section 17.32.010 of the Zoning Ordinance sets forth the following specific purposes of industrial district regulations:

1. Provide appropriately located areas consistent with the general plan for a broad range of manufacturing and service uses;
2. Strengthen the city's economic base, and provide employment opportunities close to home for residents of the city and surrounding communities;
3. Provide a suitable environment for various types of industrial uses, and protect them from the adverse impacts of inharmonious uses;
4. Reserve areas for port terminals and water-related industry;
5. Ensure that the appearance and effects of industrial uses are compatible with the character of the area in which they are located;
6. Minimize the impact of industrial uses on adjacent residential districts;
7. Ensure the provision of adequate off-street parking and loading facilities.

The VIP would be consistent with Purposes 1 and 3 because it would consist of changes and improvements to an existing industrial use in an existing industrial district. The project would be constructed within the existing refinery footprint, and would, as mitigated, not have any significant environmental impacts on other land uses. Therefore, the VIP would be consistent with Purposes 5 and 6. As stated under Purpose E above, the refinery would strengthen the City's economic base. It would also provide an estimated 200 short-term construction jobs and up to 20 permanent jobs, thereby establishing consistency with Purpose 2. The project would add ship traffic over an existing wharf in a Water-Related Industrial zoning district, consistent with Purpose 4. As stated under Purpose H above, the refinery has sufficient parking to accommodate the use, consistent with Purpose 7.

Section 17.32.010 also contains the following statement of purpose for the IG (General Industrial) district:

"To provide sites for the full range of manufacturing, industrial processing, general service, and distribution uses deemed suitable for location in Benicia; and to protect Benicia's general industrial areas, to the extent feasible, from disruption and competition for space from unrelated retail and commercial uses that could more appropriately be located elsewhere in the city. Performance standards will minimize potential environmental impacts".

The refinery, as a use that manufactures products (fuels) by processing raw materials (crude oil and gas oil), is consistent with the purpose of the IG district and the VIP, which would enhance the refinery's ability to fulfill that purpose, would also be consistent with the purpose. The VIP, as mitigated and conditioned, would meet performance standards set forth in Section 17.70.240 of the Zoning Ordinance to ensure that development projects conform with all applicable air and water quality regulations and do not create hazards or problems related to noise, glare, hazardous materials, heat and humidity or electromagnetic interference.

Section 17.32.010 includes the following statement of purpose for the IW (Water-Related Industrial) district:

"To protect site [sic] for port-priority uses and to provide opportunities for water-related industry and marine services supporting the Port of Benicia. Performance standards will minimize potentially adverse environmental impacts".

The VIP would increase shipping at the port, consistent with the stated purpose.

2. That the proposed location of the conditional use and the proposed conditions under which it would be operated or maintained would be consistent with the General Plan and will not be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the neighborhood of the use, nor detrimental to the properties or improvements in the vicinity or to the general welfare of the city for the following reasons:

The EIR analysis, together with the conditions of approval set forth herein and discussed in the staff report, show that the VIP, as mitigated and conditioned, would be consistent with all applicable goals and policies of the General Plan. The VIP would not be detrimental to public health, safety, and welfare because the impacts of the project that might affect those impact areas would be mitigated by measures that are incorporated into the project or that are required by the conditions of approval. In addition, if constructed, the proposed main stack scrubber would enhance consistency with Finding 2 by reducing air emissions below current levels. Further enhancement may be provided by Bay Area Air Quality Management District conditions of approval which are expected to establish new emission caps on ship emissions and on main stack emissions. If and when the main stack components are installed, the main stack emission cap would be lowered, to reflect the emission reduction provided by the scrubber.

Although the VIP will use a substantial amount of water, that impact will be mitigated to a less than significant level by mitigation measures included in the Final EIR. Valero's additional documented commitment to participate in the wastewater reuse project, as reinforced by Use Permit Condition 13, would completely offset the water use of the VIP, as well as reducing a part of the refinery's current water use, thereby helping to implement Program 2.36.A of the General Plan and adding to the consistency of the project with Finding 2 by enhancing the public health, safety, and welfare if the wastewater reuse project is approved and constructed.

3. That the proposed conditional use will comply with the provisions of the Zoning Ordinance, including any specific condition required for the proposed conditional use in the district in which it would be located, based on the following:

As shown by Findings 1 and 2, and the discussion in the staff report, the VIP, as mitigated, would comply with the provisions of the Zoning Ordinance. There are no specific conditions required for oil and gas refining in the IG district except that a use permit is required.

BE IT FURTHER RESOLVED, that the Planning Commission of the City of Benicia hereby approves the proposed use permit for the Valero Improvement Project, subject to the following conditions:

1. The scope of approval is limited to the Valero Improvement Project as described in the

Use Permit Application (PLN 2002-00022), submitted by Valero to the City of Benicia and including the following documents:

- a. Application for City of Benicia Use Permit, dated March 20, 2002;
- b. Noise Assessment, prepared by Illingworth & Rodkin, Inc., dated May 30, 2002;
- c. Public Safety Analysis, prepared by URS Corporation, dated June 28, 2002;
- d. Air Emission Calculations: Baseline and Project Emissions, prepared by URS Corporation, dated June 30, 2002;
- e. Assessment of Visible Steam Plume Formation, prepared by URS Corporation, dated June 2002;
- f. Visual Simulations with accompanying text and process block diagrams, prepared by Environmental Vision and URS Corporation;
- g. Geotechnical and Geologic Assessment, prepared by URS Corporation, dated May 2002;
- h. Health Risk Assessment, prepared by URS Corporation, dated June 30, 2002;
- i. Response to VIP Review of Application for Completeness, prepared by URS Corporation, dated August 8, 2002;
- j. Letter from URS Corporation to BAAQMD, dated August 6, 2002, supplementing the application for Authority to Construct/Permit to Operate with regard to ship emissions;
- k. Letter from Sam Hammonds at Valero dated July 23, 2002, amending the use permit application to add the hydrocracker maximization project and pressure swing adsorption of hydrogen and the cat feed hydrotreater guard reactor installation;
- l. Letter from Sam Hammonds at Valero dated September 27, 2002, providing additional information regarding project sequencing and schedule;
- m. Letter from Sam Hammonds at Valero, dated October 21, 2002, amending the use permit application to limit the circumstances under which the refinery would operate without the main stack scrubber;
- n. Final Environmental Impact Report for the Valero Improvement Project, dated March 2003, consisting of the Draft EIR dated October 2002 and the Response to Comments dated March 2003.
- o. Response to the Valero Improvement Project Review of Application for Completeness, prepared by URS Corporation, dated May 28, 2002.
- p. Letter from Sam Hammonds at Valero, dated October 24, 2002, detailing additional water consumption forecast due to VIP.

Any substantial changes in the project as described in the above documents shall require a Use Permit amendment with associated CEQA review in order to proceed.

2. This approval is based in part on representations of the applicant, consistent with conditions of approval expected to be imposed by the BAAQMD, that there will be no net increase in overall refinery emissions as a result of the VIP. The BAAQMD proposed conditions include emission limitations, based on the three-year baseline emissions reported to the BAAQMD by Valero for purposes of this project, to insure there will be no net increase in emissions as a result of the VIP. A change in the project ,

or in the proposed BAAQMD conditions of approval, such that project facilities would result in such a net emission increase shall require a use permit amendment with associated CEQA review.

3. Valero shall provide the City with copies of any application to the BAAQMD for a new Authority to Construct or any amendment to an existing Authority to Construct for any part of the VIP, so that the City may evaluate the proposals for consistency with the scope of the use permit approval and the VIP EIR analysis. The documents shall be provided at no cost to the City.
4. Valero shall provide the City with copies of its emissions reports to the Bay Area Air Quality Management District whenever such reports are requested by the City to evaluate whether the VIP is being constructed or operated consistent with Condition 1. Reasons for such a request may include, but are not limited to, approval by the BAAQMD of a new or amended Authority to Construct for any part of the VIP. The documents shall be provided at no cost to the City.
5. All of the mitigation measures set forth in the Final EIR are hereby incorporated by reference and included as conditions of approval of the use permit. The Mitigation Monitoring and Reporting Program, adopted by the Planning Commission on April 28, 2003, and attached hereto as Exhibit A, is hereby incorporated and included as a condition of the use permit approval to ensure that the mitigation measures identified in the EIR are complied with during project implementation.
6. The Valero Improvement Project shall adhere to all applicable ordinances, plans, and specifications of the City of Benicia.
7. Any significant alteration of the approved plans shall be requested in writing and approved by the Community Development Department prior to changes being made in the field.
8. Valero shall apply for separate building and grading permits for each major component or group of components of the Valero Improvement Project, as determined necessary by the City.
9. The Valero Improvement Project is comprised of a number of individual components; construction of the components is expected to occur at various times between approval of the use permit and the end of 2009; and some components may not be constructed, depending upon the needs of the refinery. To ensure that the City is able to properly evaluate the plans for each phase of construction, Valero shall notify the Community Development Department at least six months in advance of the planned construction of any major component or group of components, and shall work with the City to develop a mutually acceptable schedule for submission and review of plans and required documentation in advance of construction. Submittals shall contain sufficient information to verify that they are within the scope of approval set forth in Condition 1.

Submittals may be reviewed by the compliance monitors provided for in Condition 20, and/or by other plan review experts, as determined necessary by the City. Reasonable costs of expert review shall be paid by Valero.

10. Prior to the issuance of a building or grading permit for any portion of the Valero Improvement Project, the applicant shall document to the City of Benicia that it has obtained necessary permits and approvals from reviewing agencies, including but not limited to Authority to Construct from the Bay Area Air Quality Management District, and approval of wastewater treatment plant modifications, if required, from the Regional Water Quality Control Board.
11. All equipment installed as part of the Valero Improvement Project shall be painted to blend with the refinery's overall color scheme. Any paint colors other than the existing green and gold shall be submitted to the Community Development Department in advance for approval.
12. The design of proposed exterior lighting fixtures, and drawings showing the plans for installation shall comply with requirements of Zoning Ordinance Section 17.70.240 D.2, and shall be submitted to the Community Development Director or designee in advance for approval.
13. Valero shall continue to participate in the planning and development of the City's wastewater reuse project, consistent with its commitment to that project dated October 11, 2002, and signed by the Refinery Vice President and General Manager.
- 14a. Valero shall construct and operate the main stack scrubber at the same time that the sulfur plant expansion is constructed.
- 14b. Notwithstanding any Bay Area Air Quality Management District permit conditions that may allow higher crude rates without such restriction, the refinery shall not operate more than a total of 1,096 consecutive or non-consecutive days at crude rates above 135,000 barrels per day and/or with the third air blower in operation without installing and operating the scrubber. If the scrubber is not completed and operating by the deadline, the refinery shall not process more than 135,000 barrels of crude per day, and shall deactivate the third air blower, if operating, until such time as the scrubber is in operation.
15. Valero shall provide the City with copies of its Anti-Degradation Report and, when requested, monthly self-monitoring reports when those reports are submitted to the Regional Water Quality Control Board. The documents shall be provided at no cost to the City.
16. Valero shall submit Stormwater Pollution Prevention Plans to the City of Benicia when required under the City's Grading Ordinance for any component or group of components of the Valero Improvement Project. If wastewater treatment plant

improvements are to be constructed in a 100-year flood zone, Valero shall comply with the City of Benicia Floodplain Management Policy in designing the improvements and shall document such compliance when it applies for associated building and grading permits.

17. Valero shall notify the Public Works Department and shall meet with designated representatives of the Police and Public Works Departments in advance of construction and monthly during construction to coordinate issues related to construction traffic and determine what traffic control measures need to be implemented by Valero.
18. Valero shall submit semi-annual construction progress reports to the Community Development Department during all phases of project construction.
19. Valero shall submit annual reports no later than 60 days following December 31 of each year documenting compliance with the conditions of approval and the Mitigation Monitoring and Reporting Program. The annual reports shall contain supporting information from other regulatory agencies as applicable. For each condition and mitigation measure, the report shall identify the status of compliance with the measure, the procedures or standards used to judge the compliance, times and dates of the monitoring and whether further action is required. The reports shall be submitted until the year 2010. If at that time the applicant has completed all mitigation measures and complied with the conditions of approval, no further reports shall be necessary. The Community Development Director shall notify Valero in writing when the reports shall no longer be required.
20. The Community Development Department will retain expert consultants to assist the City in monitoring Valero's compliance with the conditions of the use permit. The consultants' scope of work shall be discussed with Valero in advance but, at a minimum, the scope shall include advising the City with respect to technical aspects of the project that are outside the expertise of City staff. All costs of compliance monitoring shall be paid by Valero. Monitoring costs shall not exceed \$70,000 unless changing circumstances dictate a need for additional funding. In that case, the City and Valero shall discuss and determine any additional amount needed by mutual agreement.
21. Valero shall record the conditions of approval of this use permit with the Solano County Recorder in a form that is satisfactory to the City of Benicia. The use permit shall not be in full force and effect until Valero provides evidence to the City that the required recordation has been accomplished.
22. This use permit shall expire two years from the approval date unless activated by the commencement of construction of one or more components of the Valero Improvement Project. The use permit shall be vested with respect to each component when a building permit has been issued and construction of that component has been diligently pursued. The use permit shall expire on December 31, 2009, with respect to any components of the Valero Improvement Project for which construction has not

commenced.

23. The applicant shall defend, indemnify, and hold harmless the City of Benicia and its agents, officers, and employees from any claim, action, or proceeding against the City of Benicia, or its agents, officers, or employees to attack, set aside, void or annul any approval of the Planning Commission, City Council, Community Development Director, or any other employee, department, committee, or agency of the City concerning the environmental review, use permit approval, or other actions, permits and approvals for the Valero Improvement Project; provided, however, that the applicant's duty to so defend, indemnify, and hold harmless shall be subject to the City's promptly notifying the applicant or permittee of any said claim, action, or proceeding and the City's full cooperation in the applicant's defense of said claims, actions, or proceedings. This duty to indemnify includes any damages awarded against the City, if any, the cost of suit, attorney's fees, and other costs and expenses incurred in connection with such claim, action or proceeding and whether incurred by Valero, the City and/or the parties initiating or bringing such claim, action, or proceeding.

In the event Valero is required to defend the City, the City shall retain the right to (a) approve the counsel to defend the City, (b) approve all significant decisions concerning the manner in which the defense is conducted, and (c) approve all settlements, which approval shall not be unreasonably withheld. The City shall have the right not to participate in said defense, except the City shall cooperate with the applicant in the defense of said claim, action or proceeding.

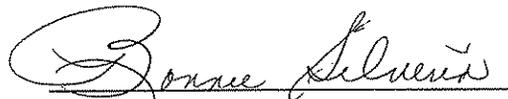
The foregoing motion was made by Commissioner Lobdell, seconded by Commissioner Railsback, and carried by the following vote at a special meeting of the Commission on April 28, 2003:

Ayes: Commissioners Lobdell, Martinez, Railsback, and Chair Silveria

Noes: Vice Chair Schwartzman

Absent: Commissioners Askham and Kalian

Abstain: None


Bonnie Silveria, Chair


Colette Meunier, Secretary