

COMMUNITY DEVELOPMENT AND SUSTAINABILITY DEPARTMENT

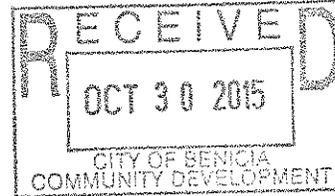
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October 30, 2015

Via Certified Mail and Email

Amy Million, Principal Planner
Community Development Department
250 East L. Street
Benicia, California 94510



Re: Valero Benicia Crude by Rail Project Revised Draft Environment Impact Report

Dear Ms. Million:

Thank you for the opportunity for the City of Davis (Davis) to review the Revised Draft Environmental Impact Report (RDEIR) for the Valero Benicia Crude by Rail Project (Valero Project).

The Project, as described in the RDEIR, proposes daily shipments of 70,000 barrels of crude oil to the Valero Benicia Refinery. (RDEIR at 2-3.) The crude oil tank cars would originate at unidentified sites in North America, would be shipped to the Union Pacific Railroad Roseville Yard, and would be assembled there into two daily 50-car trains to Benicia. (RDEIR at 2-3.)

The California Environmental Quality Act (CEQA) requires lead agencies preparing environmental impact reports, such as Benicia, to inform decision makers and the public about the potential environmental impacts of proposed projects, and to reduce those environmental impacts to the extent feasible.

While we appreciate that the City has revised its Draft EIR to analyze many of the significant environmental issues we raised in our earlier letter, we believe that the City must move forward to mitigate these impacts through feasible mitigation measures. CEQA mandates that an EIR must describe mitigation measures that could, if implemented, minimize significant environmental effects. (CEQA Guidelines §§15126(c), 15126.1(a)). CEQA Guidelines section 15370(b) defines "mitigation" to include "[m]inimizing impacts by limiting the degree or magnitude of the action and its implementation." The RDEIR discloses that the Project will result in significant impacts to the environment associated with train derailments and yet recommends no mitigation to minimize this significant impact.

Davis is committed to ensuring that all feasible measures are taken in order to protect the safety of our community. As you know, the Union Pacific main railroad tracks go through Davis' downtown and then travel west adjacent to the University of California Davis. The tracks curve through Davis, heightening the City's' safety concerns as many of the train accidents that have

occurred over the last several years occurred on curves. We firmly believe that through full compliance with CEQA and by building-in the highest levels of protection before disasters related to train derailments, such as hazardous material releases and explosions, occur we can minimize the potential of having such disasters in the first place.

Based upon our review of the RDEIR, we have concluded that, for reasons detailed below, as well as those contained in the comment letters submitted on the Valero Project DEIR by the Sacramento Area Council of Governments (SACOG) and the County of Yolo, the RDEIR violates CEQA by improperly rejecting feasible mitigation measures that will substantially reduce the significant impacts of the Project and by failing to consider other feasible mitigation measures which will also substantially reduce the significant impacts of the Project. These mitigation measures must be incorporated into the EIR and adopted by the City before it may approve the Project. In order to facilitate the preparation of a EIR that complies with CEQA, Davis submits the following comments.

The EIR Fails to Recommend Implementation of Feasible Mitigation Measures

The RDEIR discloses that the Project will result in significant impacts to the environment associated with train derailments and unloading accidents that lead to hazardous materials spills, fires, and explosions. (RDEIR at 2-108 - Impact 4.7-6) It specifies that these train derailments could result in substantial adverse secondary effects, including to Biological Resources, Cultural Resources, Geology and Soils, and Hydrology and Water Quality. (*Id.*) However, the RDEIR concludes that these significant impacts are unavoidable because any attempt to require the Project applicant to comply with Senate Bill (SB) 861 by complying with the provisions of SB 861's Oil Spill Contingency Plan requirements – compliance which the RDEIR opines would reduce the impact from train derailments to a less than significant level - is preempted by Federal law, as it would “have the effect of managing or governing rail operations.” (RDEIR at 2-113.)

The City's conclusion there is no feasible mitigation to reduce the significant impacts of the Project related to train derailments is wrong in two respects.

First, the State of California has already opined, in pleadings before the Eastern District, Sacramento Division, of the United States District Court, that SB 861 is not preempted by Federal law and the City is in no way obliged to accept the applicant's untested legal arguments to the contrary.

Second, the City has not recommended the implementation of mitigation measures unrelated to compliance with SB 861 (measures already recommended by the City of Davis in its comment letter on the DEIR) which, by themselves, would reduce the Project's significant impacts from train derailment to a less than significant level.

The City Has Improperly Concluded That The Applicant's Compliance With SB 861 Is Preempted

As the City disclosed in Appendix G of the RDEIR, it is the Project applicant, Valero, who has opined that the Interstate Commerce Commission Termination Act (ICCTA) “preempt[s] the

City's ability to mitigate impacts from rail operations." (RDEIR, Appendix G, at G-3.) Valero contends that "[a]ny attempt by the city to condition project approval on requirements [such as compliance with SB 861] would clearly "have the effect of manage or governing rail operations," an action preempted by the ICCTA. (*Id.* at G-7.)

However, as detailed by the Attorney General of California on behalf of the California Office of Spill Prevention and Response, the ICCTA does not preempt SB 861 because it does not regulate rail transportation. (*Association of American Railroads et al. v California Office of Spill Prevention and Response et al.*, Case No 2:14-cv-02354-TLN-CKD, Defendants' Memorandum of Points and Authorities in Opposition to Plaintiffs' Motion for Preliminary Injunction at 18 – 32 [attached as Exhibit A].) The Attorney General explained that the ICCTA "only preempts state laws that regulate rail 'transportation' as defined by statute," and that SB 861 does no such thing. (*Id.*) Moreover, the ICCTA "does not preempt generally applicable, non-discriminatory state laws ... so long as such laws do not directly impede rail transportation," and SB 861's contingency planning and financial certification provisions do not have this effect. (*Id.*)

While it is true that, pursuant to Public Resources Code section 21004 and CEQA Guidelines section 15040, mitigation measures that are beyond the powers conferred by law on lead agencies are legally infeasible and may, therefore, be rejected from further consideration, the City has not made a showing that requiring the Project applicant to comply with State law is illegal. Rather, the RDEIR reflects that the City has chosen to accept the applicant's legal theories on a matter that is very much in active dispute, as evidenced by the judicial filings of the State of California. Indeed, nowhere does the RDEIR disclose that the applicant's position is not settled law, or that the State of California has taken the position that entities, such as the applicant, a legally required to comply with all applicable provisions of SB 861.

Absent the applicant's position that it is not required to comply with SB 861, the City has provided no other basis for rejecting imposition of mitigation measures that the City agrees will reduce the Project's significant impacts related to train derailment. Given, as discussed above, that that applicant's position is not evidence of the legal infeasibility of this mitigation, we request that the City revise the EIR to require, as a condition of approval, that the applicant comply with State law.

The City Has Improperly Failed to Recommend Mitigation That Will Reduce the Project's Significant Impacts

Aside from compliance with SB 861, the RDEIR suggests no other measures which will reduce the significant impacts of the Project related to train derailment. This too is a violation of CEQA, as there are other measures that would reduce this impact. Specifically, as recommended by the City of Davis in its September 8, 2014 comment letter on the DEIR, the City should require that the Project applicant limit all shipments of crude by rail to the Benicia Valero Refinery to only those shipments that have stripped out the most volatile elements, including flammable natural gas liquids (NGLs) before it is loaded into rail cars for shipment.

As disclosed in the RDEIR, the impacts associated with train derailments relate, in great part, to the risk of fires and explosions from crude oil spilling out of derailed trains. (RDEIR, 2-108.)

These fires and explosions are directly related to the applicant's election to transport crude oil that contains volatile elements – even those these elements could be removed from the crude oil prior to Valero's shipment of the oil, via rail, to Benicia. This action is unquestionably beyond claims of preemption by Federal law, as it concerns steps Valero could be required to undertake to reduce the impact of the Project before a single train car moves down a single track.

To the extent that the applicant objects that it does not wish to pay the cost of implementing this mitigation to ensure that the crude oil it transports to the City is less volatile, it is, of course, possible for it to raise a claim of economic infeasibility. However, we note that findings of economic infeasibility must be supported by relevant economic evidence or else an otherwise feasible mitigation measure must be adopted. (*See Uphold Our Heritage v Town of Woodside* (2007) 147 Cal.App.4th 587, 601 [findings of economic infeasibility of alternatives to demolition were not supported by data comparing the cost of building new home with cost of rehabilitating existing historic home on site]; *see also Burger v County of Mendocino* (1975) 45 Cal.App.3d 322 [infeasibility finding based on economic factors cannot be made without estimate of income or expenditures to support conclusion that reduction of motel project or relocation of some units would make project unprofitable].) We do not believe that the applicant can make this finding in light of the fact that removing volatiles is in use in many oil fields in the United States.

In addition, we again request that the City consider and adopt the following feasible mitigation measures, none of which are even arguably preempted by the ICCTA, as they would not have the effect of managing or governing rail operations, including but not limited to the following:

- Advance notification to County and City emergency operations offices of all crude oil shipments going to the Valero facility in order to facilitate more rapid and appropriate public safety responses;
- Support, including full cost funding, for training and outfitting emergency response crews, along the path of all crude oil shipments going to the Valero facility;
- Consideration of the construction of alternate means of oil transport, other than rail, or bypass routes for oil trains and other hazardous and flammable material trains around populated areas, such as Davis and Sacramento for example, such that the risk of explosion in a populated area would be wholly mitigated;
- Require that crude oil shipments not depart from a secure yard or storage area until the shipment can go directly through to the Valero facility without stopping for any significant time (no more than 1 hour, for example) so that the shipments are not left on unsecured sidings within urbanized areas.

As stated in our earlier comment letter, in Davis, the shipments would travel on a Union Pacific rail line with three active sidings of up to 6,500 feet in length that run parallel to Second Street and Interstate 80. These sidings are utilized for storage of rail cars on a regular basis, with rail cars often being stored on these sidings for days or weeks at a time. These sidings are immediately adjacent to multiple businesses and multi-family housing. (See attached map.) City Staff have personally witnessed tanker cars stored on these sidings, though it is impossible to

determine whether the tank cars are full or empty. The DEIR fails to describe whether storage of crude oil cars on this siding is possible, under what circumstances and for what duration. Tank cars sitting on this siding, unattended, would pose a significant hazard to the community, residents, businesses, and interstate transportation (I-80, Amtrak) and commerce should they be the subject of any accident, tampering or other impact on the cars, resulting in a spill or explosion. A mitigation measure precluding storage on sidings is consistent with, and implements, the proposed "just-in-time" delivery that is part of the Project description.

We thank Benicia for this opportunity to comment on the RDEIR and urge it ensure that it adopts the feasible mitigation measures that are readily available to reduce the Project's significant impacts related to train derailment. We believe that it is imperative to require the safe transport of crude oil required for this project in order to safeguard the environment and the people and places that would be impacted by this project.

Respectfully,



Mike Webb, Assistant City Manager

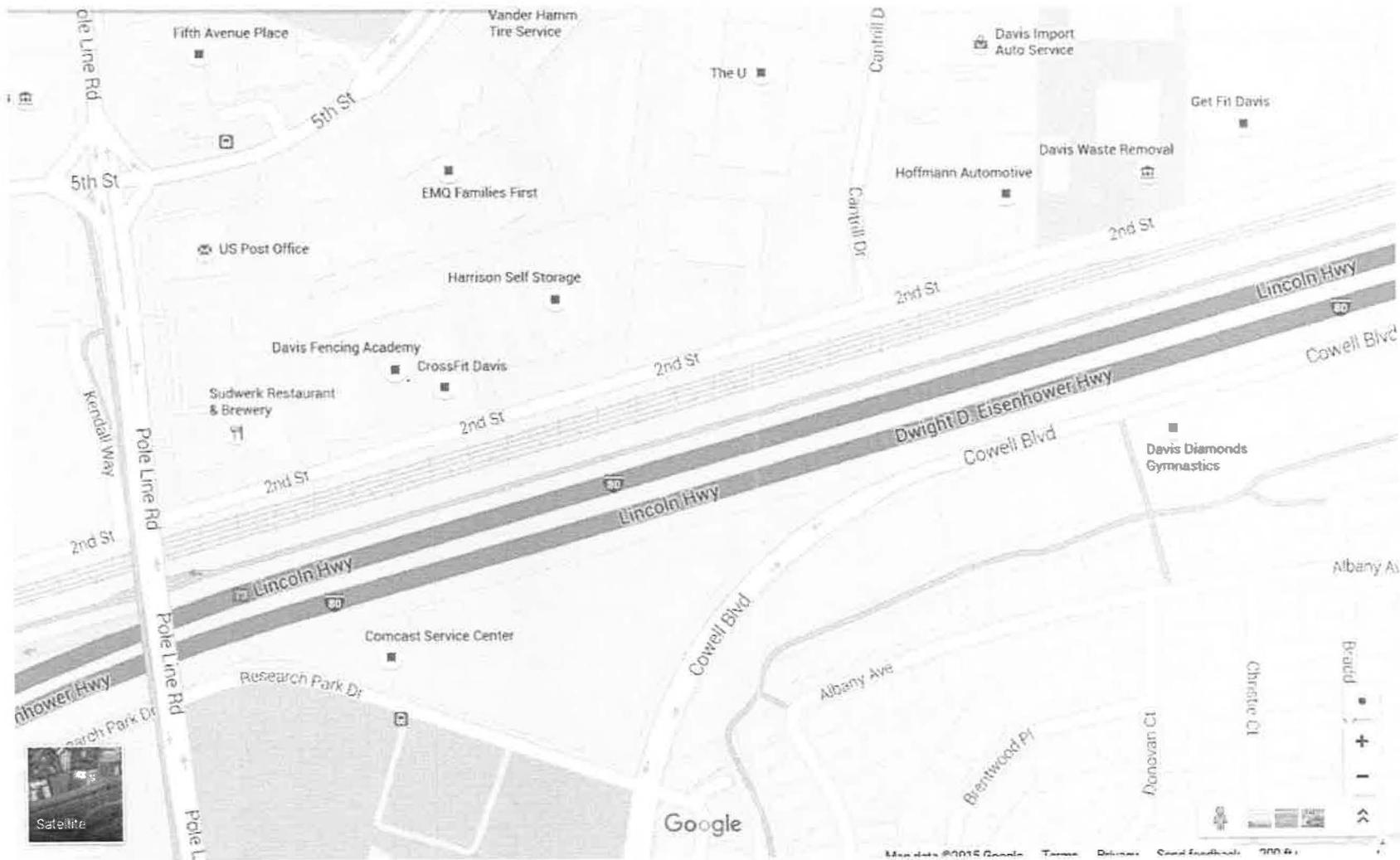
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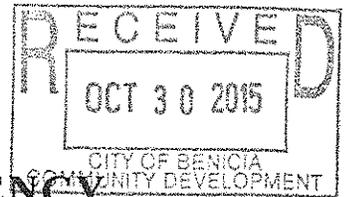
Attach: Map of Businesses and Housing in Vicinity of UPRR Siding Area in Davis

cc: Davis City Council
Harriet Steiner, Davis City Attorney
Kirk Trost, SACOG
Patrick Blacklock, Yolo County Administrator
Congressman John Garamendi

Businesses and Housing in Vicinity of UPRR Siding Area in City of Davis



Source: Google Maps



**COUNTY OF NEVADA
COMMUNITY DEVELOPMENT AGENCY**

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(530) 265-1222 FAX (530) 265-9853 <http://nevadacounty.com>

October 26, 2015

Amy Million, Principal Planner
City of Benicia, Community Development Department
250 East L Street
Benicia, CA 94510

RE: Use Permit Application No. 12PLN-00063 (SCH# 2013052074); Valero Benicia Crude by Rail Project; Applicant: Valero Benicia Refinery.

Dear Ms. Million:

On October 15, 2015, The Town of Truckee Manager, Tony Lashbrook, informed Nevada County Supervisor, Richard Anderson, of the proposed Use Permit application by Valero Benicia Refinery and provided copies of the Environmental Impact Report and Revised DEIR Notice for County review.

As such, Nevada County would like to submit this letter of comment specific to potential off-site impacts associated with crude oil transport by rail through rural routes of Nevada County. Nevada County has several unincorporated primary areas of population that include Kingvale, Soda Springs, Hirshdale and Floriston that are within 2,000 feet from the railroad and as such we have areas of concern that we propose to you for consideration for the Final EIR.

Unincorporated Nevada County consists of small residential populations that are surrounded by wildlife habitats, fresh water lakes and recreational facilities (campgrounds, etc.). These areas are subject to unpredictable weather consisting of severe rain and snow storms which can have significant accumulation which would add to the potential hazards of crude oil transport through rural mountainous areas of the County.

Based upon the findings of the Revised Draft EIR Section 2.3, as addressed by the Town of Truckee response, 96.5% of the Union Pacific rail lines for the Roseville to Nevada route are Class 3 rails which are considered less tolerant to high train speeds and long-haul freight loads. The rail rating compounds the concern that the Draft EIR does not fully address the hazards associated with a potential derailment or release along the service route. Considering the unpredictable weather conditions, high wildland fires with dry lighting potentials that are common to these unincorporated areas of the County; the reality potentials for a derailment or release at a time of crude oil transport are significant.

Union Pacific Railroad's assertion of preemption, the County of Nevada has no guarantee that crude oil trains associated with the aforementioned Use Permit by Valero will be routed to alternative routes during times of inclement weather or wildfires. Additionally, due to the rail line proximity to the populations of Kingvale, Soda Springs, Hirshdale and Floriston a derailment or release would have significant impacts on drinking water, wildlife habitats and recreational facilities.

We respectfully request that our concerns be addressed in the Final EIR to ensure the City of Benicia decision-makers have the best available information before taking action on Valero's requested Use Permit.

Thank you, Ms. Million, for the opportunity to provide comments on the proposed Revised Draft EIR. If you have any questions regarding this letter, please contact Brian Foss, Planning Director, at the Community Development Agency, Planning Division at 530-265-1222 or via e-mail at Brian.Foss@co.nevada.ca.us

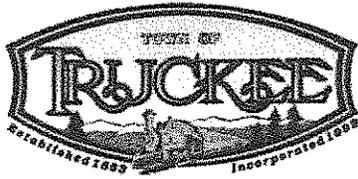
Sincerely,



Steven DeCamp
Director of Community Development Agency
County of Nevada

Enclosures

SD/ai



MEETING DATE: October 13, 2015

TO: Honorable Mayor and Council Members

FROM: Denyelle Nishimori, Planning Manager

SUBJECT: Review and Comment on the Valero Crude Oil by Rail Project Revised Draft Environmental Impact Report

Approved by:  _____
 Tony Lashbrook, Town Manager

RECOMMENDATION: Review and provide feedback on the Revised Draft Environmental Impact Report (Revised DEIR) comment letter prepared by Town staff in response to the City of Benicia Revised DEIR Notice of Availability. Direct Town staff to forward the Revised DEIR comment letter to the City of Benicia before the end of the Revised DEIR public comment period on October 30, 2015.

DISCUSSION:

Background Information

California refineries are in the process of securing permits to build rail terminals to import Canadian tar sands and fracked Bakken crude oils from the Dakotas. Several pending projects, including the Benicia Valero project proposal, intend to use existing Union Pacific rail lines through California including the Capitol Corridor route.

In the last several years there has been a dramatic rise in transport of crude by rail, accompanied by a similar rise in rail accidents, with nearly 100 in 2013 and 141 in 2014(1). More crude oil was spilled

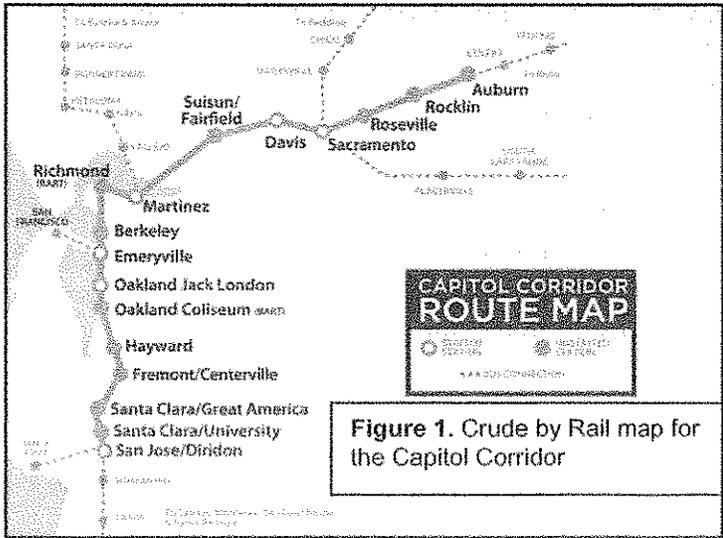


Figure 1. Crude by Rail map for the Capitol Corridor

(1) Data from the Federal Pipeline and Hazardous Materials Safety Administration

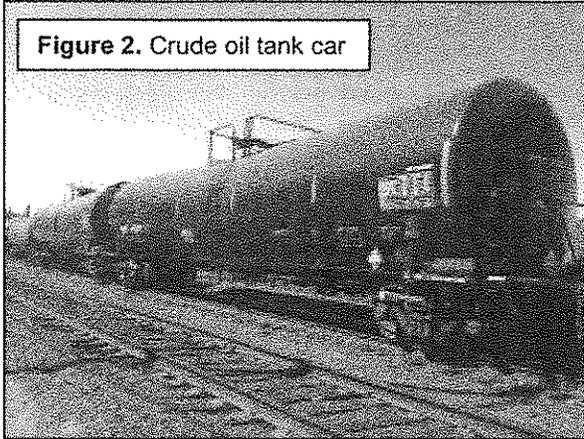


Figure 2. Crude oil tank car

in U.S. rail accidents in 2013 than in the preceding four decades, with more than 1.4 million gallons. In July 2013, 72 tanker cars loaded with 2 million gallons of crude oil derailed in Lac-Mégantic, a small Canadian town, spilling 1.5 million gallons of crude. The resulting fire and explosions burned down 30 buildings, killed 47 people, and caused over \$1 billion in damages (see [Figure 4](#) below). Similar accidents have occurred elsewhere, including in North Dakota, West Virginia and Alabama. In 2014 the U.S. Department of Transportation classified crude oil shipments by rail as an "imminent hazard." Although they have taken steps to try and mitigate some of the risks by

adopting regulations to improve tank car safety and a voluntary agreement to slow crude oil trains in urban areas, these efforts have not had a significant impact on reducing the potential for spills. Given the record of crude-oil rail accidents in recent years, it is likely there could be more catastrophic effects in populated areas and areas with significant environmental resources. For Truckee, the Union Pacific rail line is situated along the Truckee River, adjacent to heavily populated areas such as Downtown and along Schallenberger Ridge above Donner Lake. Our unpredictable weather including the potential for extreme snow conditions and high wildland fire danger add an extra level of risk not present in many other jurisdictions with Union Pacific rail lines. These physical factors combine to create potentially hazardous conditions for any train, but are exasperated with crude oil shipments which are volatile and highly flammable.

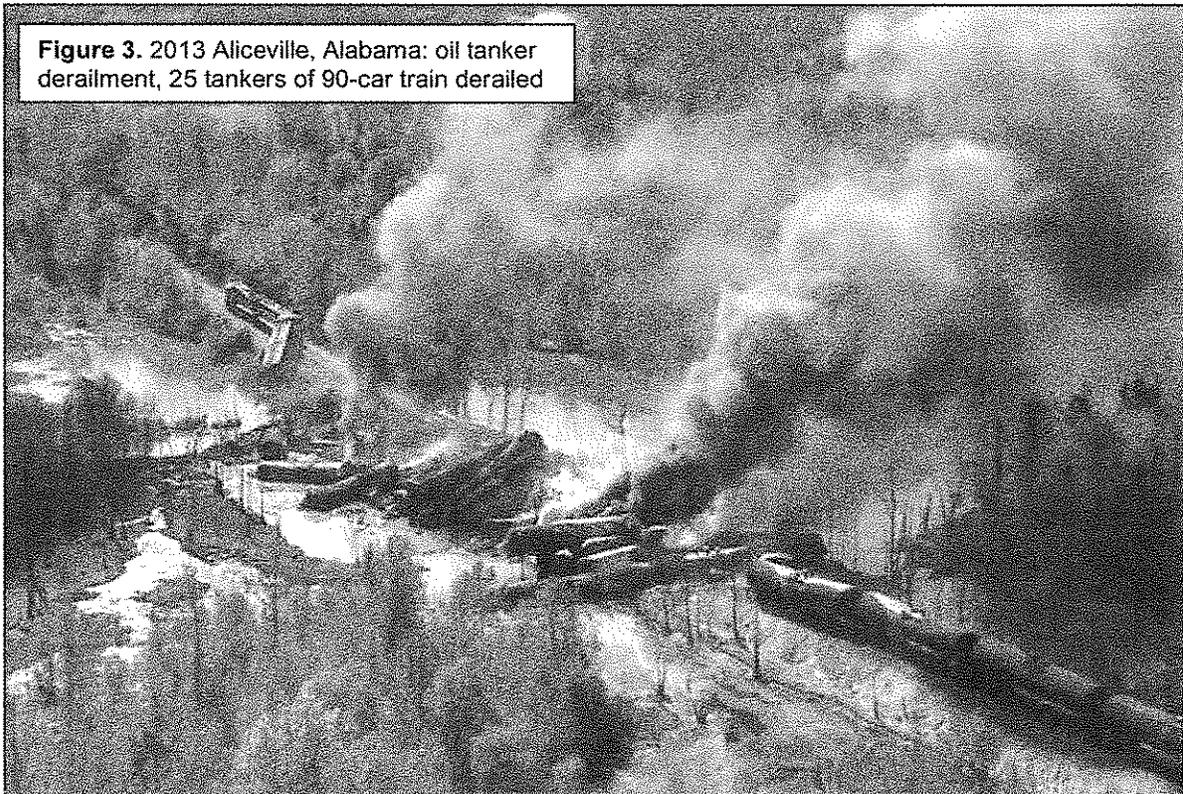


Figure 3. 2013 Aliceville, Alabama: oil tanker derailment, 25 tankers of 90-car train derailed

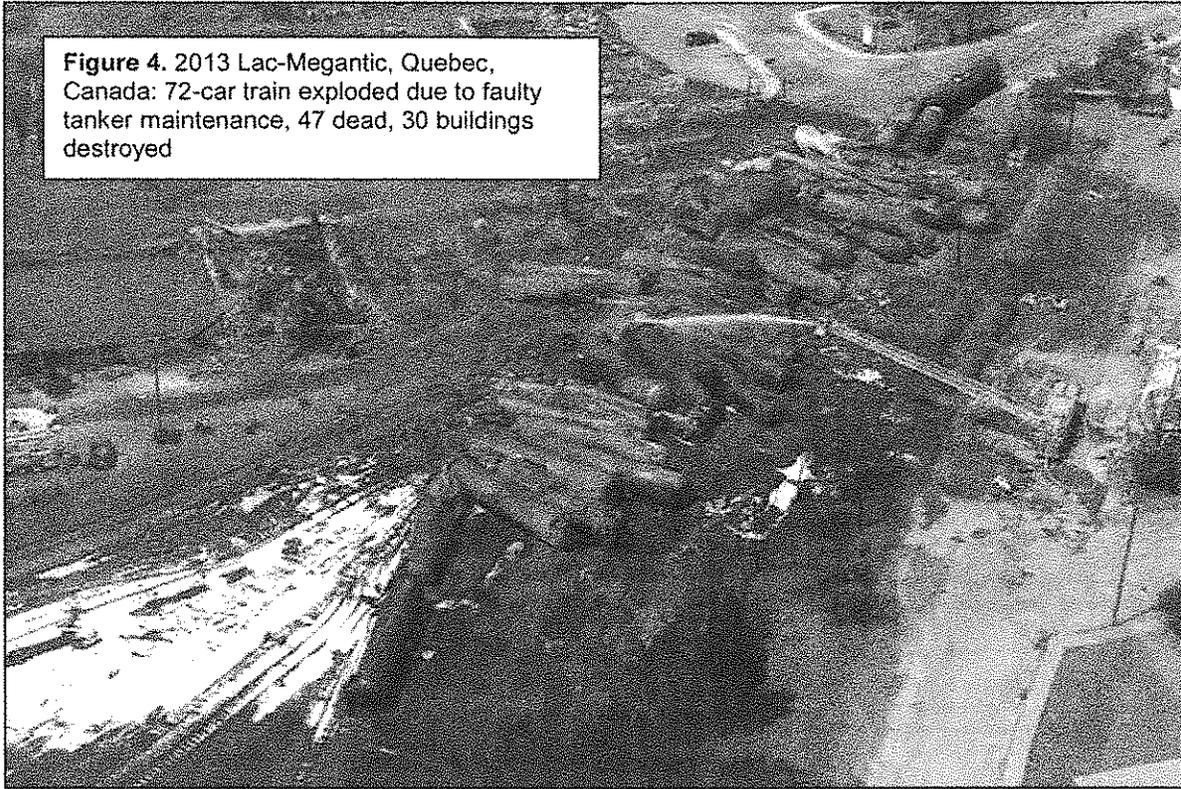


Figure 4. 2013 Lac-Mégantic, Quebec, Canada: 72-car train exploded due to faulty tanker maintenance, 47 dead, 30 buildings destroyed

The Valero Benicia Refinery, located near Interstate 680 and Suisan Bay in the Bay Area, is approximately 330 acres in size and processes approximately 180,000 barrels of crude oil per day. This refinery currently receives its crude oil shipments exclusively from marine vessels through the Port of Benicia (including Alaskan North slope crude oil and oil from outside the U.S.) and by pipeline (primarily San Joaquin Valley crude oil). The refinery operations consists primarily of crude oil conversion into a number of “finished” products including gasoline and diesel fuels, liquefied petroleum gas (LPG), jet fuel and asphalt. Although Valero is permitted to use Union Pacific rail lines for transport of LPG, asphalt, caustic (a strong chemical base used for crude oil cleaning) and other solid materials such as petroleum coke (“pet coke,” a high sulfur-content fuel primarily exported outside the U.S.), they are not currently permitted to import crude oil by railcar. With the fluctuations in the crude oil market and shifting supply resources, Valero is looking to access North American oil, which is primarily transported via rail car.

In December 2012, Valero submitted a Use Permit application to the City of Benicia requesting approval to substitute a portion of their crude oil received by marine vessels to railcar. According to Valero’s project application submittal, their request would not increase the refinery’s total crude oil processing capacity or result in an increase in the production of existing products or byproducts; the request would strictly provide alternative crude oil sources. Valero estimates that rail car transport would reduce marine vessel deliveries by 81%

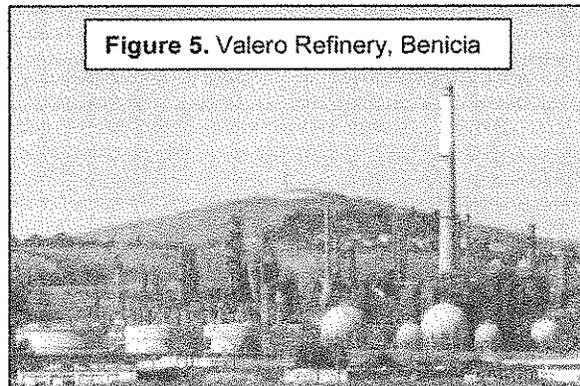


Figure 5. Valero Refinery, Benicia

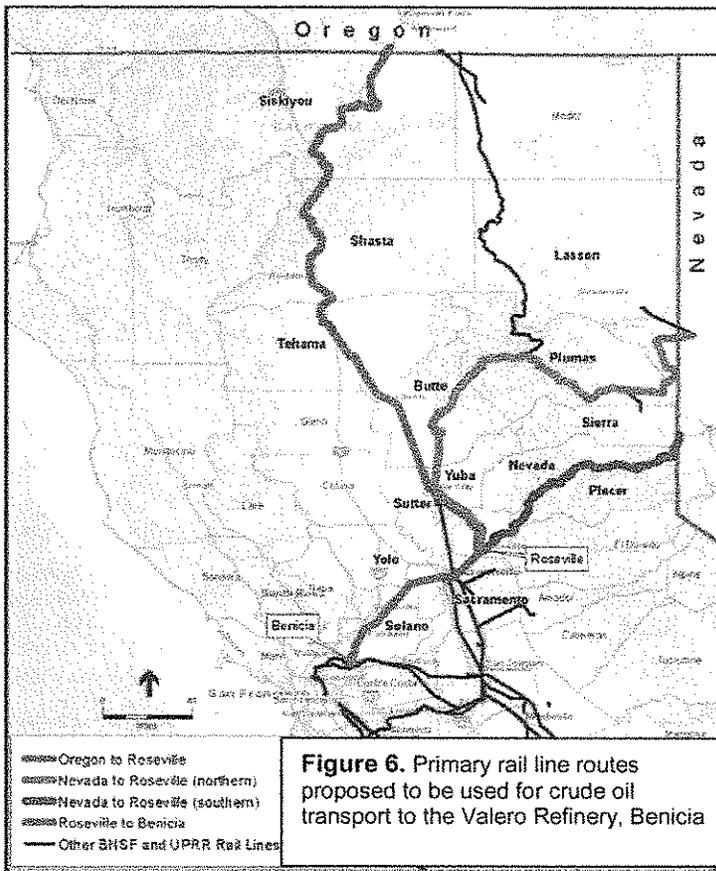


Figure 6. Primary rail line routes proposed to be used for crude oil transport to the Valero Refinery, Benicia

(or up to 70,000 barrels per day and 25,550,000 barrels per year) and that the equivalent volume of crude oil would then be brought to the refinery by rail. To clarify, Valero does not currently have permission to transport crude oil into the Benicia Refinery by rail line, nor does it have the necessary infrastructure, but could if the requested Use Permit is approved. In addition to Use Permit approval, use of railcars to the Benicia refinery for crude oil delivery also requires an “Authority to Construct” permit from the Bay Area Air Quality Management District and a General Construction (Storm Water Pollution Prevention Plan) Permit from the Regional Water Quality Control Board. Valero’s current permitting with the Bay Area Air Quality Management District limits the refinery’s capacity to 180,000 barrels per day; this would not change with the proposed project.

The proposed project generally consists of the following:

- Union Pacific Railroad (UPRR)-operated locomotives would haul up to 100 crude oil cars a day from the UPRR Roseville Rail Yard to the Refinery. A typical railcar is 60-feet long, with a 700 barrel capacity and a maximum estimated load of 211,600 pounds each. Crude oil could come from any source throughout the U.S and/or Canada.
- For each delivery, UPRR-operated locomotives would transport a full 50-rail-car train onto their property via existing Union Pacific rail lines. Two new rail spurs would be built on-site at the refinery with a new 1,500-ft.-long unloading rack capable of offloading two rows of 25 crude oil rail cars.
- To accommodate on-site import of crude oil by rail, other improvements including installation of an approximately 4,000 linear foot, 16-inch diameter above-ground crude oil pipeline; relocation of a groundwater well; construction of a new 20-foot wide service road along the western side of the new unloading rail spur; and installation of three new pumps near the service road.

City staff originally addressed California Environmental Quality Act (CEQA) compliance through preparation of an Initial Study/Mitigated Negative Declaration in May 2013. After receiving substantial public comment, staff determined that preparation of an Environmental Impact Report was required; Valero concurred and a Draft Environmental Impact Report (Draft EIR) was prepared by ESA and released in June 2014. The Draft EIR concludes that there will be less-than-significant impacts or no impacts with the exception of two impacts identified in [Table 1](#) below (see Attachment #6 for a copy of the Draft EIR Summary of Impacts).

Table 1. Valero Draft EIR Significant and Unavoidable Impacts

Environmental Impact	Significance before Mitigation	Mitigation Measure	Significance after Mitigation
Impact 4.1-1b: Operation of the Project would contribute to an existing or projected air quality violation.	Potentially Significant	None Available	Significant and Unavoidable
Impact 4.1-2: The Project could result in a cumulatively considerable new increase in criteria pollutant and ozone precursor emissions.	Potentially Significant	None Available	Significant and Unavoidable

These conclusions were driven in-part by a notion that project impacts are limited to on-site impacts. The majority of Draft EIR comments received by the City of Benicia identified the lack of analysis for off-site impacts including those related to traffic, air quality/greenhouse gas emissions, hazards and public safety from additional railcars/crude-oil-specific railcars.

To complicate the crude oil transport issue, it is Union Pacific Railroad's position (and all rail line operators) that Federal preemption of railroad regulations grants Union Pacific the authority to decide what materials to transport, when/where/how to transport them and by what volume/numbers/types of rail cars. Essentially it is Union Pacific's stance that neither Valero nor the City of Benicia (or any other city) has the authority to dictate or limit train frequency, routes or configuration of shipments selected by Union Pacific.

Many, if not most, of the comments received on the DEIR addressed potential off-site impacts from the operation of trains travelling to and from the Benicia Refinery. Potential off-site impacts from rail operations include the risk of crude oil releases from tank cars, the impact of locomotive emissions on air quality, the impact of noise on biological resources living along the rail corridor, and the impact of rail crossings on traffic. Valero has taken the position that the Interstate Commerce Commission Termination Act ("ICCTA") preempts the City of Benicia's ability to require California Environmental Quality Act (CEQA) review of impacts from the Project, including both impacts from on-site activities, such as construction and operation of the unloading rack, and impacts from off-site rail operations. Valero's position is included in the Draft EIR under Appendix H. The City of Benicia disagrees with Valero in part and agrees in part, concluding the following:

1. The ICCTA does not preempt the application of CEQA to Valero's on-site activities, including construction and operation of the proposed unloading rack and related equipment.

According to the Revised Draft EIR, it is the City of Benicia's position that under prevailing case law, CEQA applies to Valero's proposed on-site unloading rack and related facilities because it would be owned and operated by Valero, not Union Pacific Railroad.

2. The ICCTA does preempt the City's ability to mitigate impacts from rail operations.

According to the Revised Draft EIR, under the ICCTA, the Federal Surface Transportation Board has exclusive jurisdiction to regulate transportation by rail carrier. Due to the Surface Transportation Board's exclusive jurisdiction, state and local governments may not directly regulate railroad operations. Thus, for example, state and location governments may not place limits on emissions from locomotives, limit the amount of time that the trains can block

grade crossings, or require railroads to obtain permits before constructing new or modified tracks and related facilities. The Revised DEIR identifies significant offsite impacts from rail operations in certain areas, including air quality, hazards, biological resources, and greenhouse gas emissions. There are various mitigation measures that might reduce and/or avoid these impacts, such as limiting the number of rail deliveries that Valero may accept per day, requiring Valero to purchase emissions credits to offset locomotive emissions, or requiring Valero to use upgraded tank cars that are not required by federal law. Any attempt by the city to condition project approval on such requirements, however, would be preempted, because the requirements would clearly "have the effect of managing or governing rail operations." Limiting the number of rail deliveries that Valero could accept, for example, would effectively reduce the number of train trips that Union Pacific may operate on its lines. Requiring Valero to purchase emissions credits to offset locomotive emissions would essentially be an indirect way of regulating locomotive emissions. Finally, any attempt to require Valero to use upgraded tank cars that are not required by federal law would infringe on the STB's exclusive jurisdiction to prescribe tank car design standards. All of these mitigation requirements would be preempted.(2)

3. The ICCTA may preempt the City of Benicia's ability to require disclosure of impacts from rail operations under CEQA. There is no case law authority directly on point, however, and the issue is uncertain. The City of Benicia has decided to continue with disclosure of impacts from rail operations unless and until a court, in a binding precedent, clearly rules that the ICCTA preempts the disclosure requirements of CEQA as applied to impacts from rail operations.

CEQA requires lead agencies to identify and disclose a project's potential environmental impacts before approving the project. It is Valero's position that the ICCTA preempts even the disclosure aspect of CEQA as applied to rail operations. In other words, Valero maintains that the City of Benicia is legally prohibited from requiring disclosure of offsite impacts from rail operations, such as locomotive emissions or rail safety impacts, as a condition of project approval – even though CEQA generally requires disclosure of all impacts that would be caused by a project, wherever those impacts may occur. There is no case or State Transportation Board (STB) decision directly on point involving CEQA or any other state or local environmental or land use law. That is, there is no case considering whether a city that clearly has jurisdiction over the construction and operation of onsite unloading facilities must – or indeed may – require disclosure of offsite impacts created by trains traveling to and from the onsite operation. On the one hand, a court might conclude that requiring disclosure of rail impacts as part of a pre-construction permitting process has a direct and impermissible effect on rail operations because the disclosure requirement could delay the project indefinitely. On the other hand, there is an argument to be made that by requiring disclosure of rail impacts, there is only a "remote or incidental" impact on rail operations, such that ICCTA preemption does not apply. For example, requiring disclosure of information about potential rail impacts, in itself, arguable does not have the same impact of operations as mitigation measures that effectively limit the number of trains that Union Pacific can operate.(3)

The City of Benicia has decided that because there have not been any rulings that directly address whether the ICCTA preempts CEQA's disclosure requirement—to the extent that it

2 Valero Crude by Rail Recirculated Draft Environmental Impact Report, Appendix G, page 6.

3 Valero Crude by Rail Recirculated Draft Environmental Impact Report, Appendix G, page 7.

would require disclosure of impacts from rail operations as a conditions of approving Valero's project—the City will continue requiring disclosures.

Revised Draft EIR Findings

In response to substantial public comment on the Draft EIR, including comments from local citizens, other municipalities and governing bodies such as the Sacramento Area Council of Governments (which represents 22 cities and 6 counties), the City of Benicia prepared a Revised Environmental Impact Report (Revised DEIR). The comment period began on August 31, 2015 and ends on October 30, 2015.⁴ The purpose of the revision is to address potential "uprail impacts" or impacts that could occur "uprail" of Roseville, California (i.e.-between a crude oil train's point of origin and the California State border, and from the border to Roseville) as well as to address potential consequences of accidents involving crude oil trains based on new available information.

The Revised Draft EIR concludes that there will be 11 "Significant and Unavoidable" impacts. A summary of these impacts is included in Table 2 below (see Attachment #3 for a copy of the Revised EIR Summary of Impacts).

Table 2. Valero Recirculated Draft EIR Significant and Unavoidable Impacts

Environmental Impact	Significance before Mitigation	Mitigation Measure	Significance after Mitigation
AIR QUALITY			
<u>Impact 4.1-1: The project could conflict with implementation of applicable air quality plans.</u>	<u>Potentially Significant</u>	<u>None Available</u>	<u>Significant and Unavoidable</u>
Impact 4.1-1b (Draft EIR Conclusion): Operation of the Project would contribute to an existing or projected air quality violation.	Potentially Significant	None Available	Significant and Unavoidable
Impact 4.1-2 (Draft EIR Conclusion): The Project could result in a cumulatively considerable new increase in criteria pollutant and ozone precursor emissions.	Potentially Significant	None Available	Significant and Unavoidable
<u>Impact 4.1-5: Operation of the Project could contribute to an existing or projected air quality violation uprail from the Roseville Yard.</u>	<u>Potentially Significant</u>	<u>None Available</u>	<u>Significant and Unavoidable</u>
<u>Impact 4.1-7: The Project could result in cumulatively considerable new increases in ozone precursor emissions in uprail air districts.</u>	<u>Potentially Significant</u>	<u>None Available</u>	<u>Significant and Unavoidable</u>

⁴ The comment period was extended from October 15, 2015 to October 30, 2015 by staff due to several written requests.

Table 2 Continued. Valero *Recirculated* Draft EIR Significant and Unavoidable Impacts

Environmental Impact	Significance before Mitigation	Mitigation Measure	Significance after Mitigation
BIOLOGICAL RESOURCES			
<u>Impact 4.2-10: The Project could have a substantial adverse effect on candidate, sensitive or special-status wildlife species or migratory birds, including injury or mortality resulting from collisions with trains along the North American freight rail lines as a result of increased frequency (high traffic volumes) of railcars.</u>	<u>Potentially Significant</u>	<u>None Available</u>	<u>Significant and Unavoidable</u>
GREENHOUSE GAS EMISSIONS			
Impact 4.6-1: The Project would generate direct and indirect GHG emissions.	<u>Potentially Less than Significant</u>	<u>None Available</u>	<u>Significant and Unavoidable</u>
<u>Impact 4.6-2: The Project would conflict with Executive Order S-3-05 (State of California Greenhouse Gas Emission reduction targets).</u>	<u>Potentially Significant</u>	<u>None Available</u>	<u>Significant and Unavoidable</u>
HAZARDS AND HAZARDOUS MATERIALS			
Impact 4.7-2: The Project could pose significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment.	<u>Potentially Less than Significant</u>	<u>None-required available</u>	<u>Less than Significant and Unavoidable</u>
<u>Impact 4.7-6: Train derailments and unloading accidents that lead to hazardous materials spills, fires and explosions could result in substantial adverse secondary effects, including to Biological Resources, Cultural Resources, Geological and Soils, and Hydrology and Water Quality.</u>	<u>Potentially Significant</u>	<u>None Available</u>	<u>Significant and Unavoidable</u>
<u>Impact 4.7-89: Operation of the Project could expose people or structures to significant risk, injury or loss from wildland fires.</u>	<u>Potentially Less than Significant</u>	<u>None-required available</u>	<u>Less than Significant and Unavoidable</u>

Truckee-Specific Crude Oil by Rail Issues

Crude oil by rail transport through Truckee along Union Pacific Rail lines is a possibility regardless of whether or not the City of Benicia approves Valero's requested Use Permit; Union Pacific decides

what to transport, when, how much etc. Based on staff's research of Union Pacific's crude oil transport routes, crude oil is already passing through Truckee from Reno, NV to Roseville, CA. As previously mentioned, it is Union Pacific Railroad's position that neither states nor local jurisdictions have the authority to impose any rules/requirements/mitigations that would have the affect of "managing or governing" railroad operations nor do they have the ability to regulate the frequency of train traffic or the materials being transported. Truckee is located along the Capitol Corridor, one of three primary routes to Roseville, CA where trains would then proceed onward to Benicia. As part of the Revised Draft EIR, a "Petroleum Crude Oil Unit Train Transportation Risk Analysis" was prepared(5). A summary of the results in provided in Table 3 below.

Table 3. Summary of Results for Baseline Car-Non-Jacketed CPC-1232 Tank Car

50-Tank Car Train Configuration				
	Benicia to Roseville	Roseville to Oregon via Dorris	Roseville to Nevada via Truckee	Roseville to Nevada via Portola
Train derailment rate (per million train-miles)	0.35	0.28	0.79	0.32
Conditional probability of release	0.52	0.56	0.48	0.56
100-Tank Car Train Configuration				
Train derailment rate (per million train-miles)	0.69	0.56	1.58	0.63
Conditional probability of release	0.60	0.65	0.56	0.64

According to the study, rail track is classified into six categories (Class 1 – 6) with Class 6 having the most stringent track tolerances/standards and maintenance schedules allowing for higher track speed limits and a lower probability of a train derailment. With the advent of higher speed trains additional classifications have been defined for Classes 7 and 8. Mainline tracks are generally Class 4 or 5 and typically have lower accident rates per million miles. Class 6 track is used for high speed trains up to 110 mph, and is found in the Northeast Corridor between Washington D.C. and New York. Class 4 track is the dominant class for mainline track used in passenger and long-haul freight service. The Class of a track determines the maximum speed that freight and passenger trains can travel. Higher class tracks have higher allowable speeds.

For the route from the Roseville Yard to the Benicia Refinery, 80.8% of the track is Class 4 and 5. For the route from Roseville to Oregon via Dorris (Dunsmuir), 98.1% of the track is Class 4 and 5. For the route from Roseville to Nevada via Portola (Feather River Canyon) 100% of the track is Class 4 and 5. For the route from Roseville to Nevada via Truckee only 3.5% of the track is Class 4 and 5, with the remaining track Class 3. Based on the report findings, it is twice as likely that there would be a crude oil rail car derailment in Truckee than along any of the other "uprail" routes that would likely be used by Valero. The report findings conclude that there would not, however, be any

5 Revised Draft EIR, Attachment 1

greater risk of release along the Capitol Corridor route (i.e.-crude oil spilled from a detailed tanker) than along any of the other potential routes.

Equally concerning to Truckee is the potential clean-up costs in the event of an oil tanker derailment. Most of the previous spills mentioned in this staff report have ended in litigation. Because most oil tank cars are leased, and not owned by railroads, the railroad can dispute liability. The tank owners can also dispute liability given they were not in control of the crude oil at the time of derailment or spill. In addition, although most railroad companies have liability insurance, the insurance is not likely to cover the total cost of a catastrophic event. Most typically either the local jurisdiction or the state pays the cost with the hope of filing a claim for reimbursement. Other factors to consider include:

- Local emergency responders may not be adequately trained to deal with the highly flammable and explosive nature of crude oil, particularly Bakken crude oil (North Dakota).
- Although Union Pacific maintains "spill response contracts" with various companies throughout their rail network across California, Truckee's difficult terrain would slow response; any transport during inclement weather would exacerbate the impact including potential water and soil contamination, wildland fire (high wind days), etc.
- Crude oil transport would occur in highly populated areas including Downtown Truckee where evacuation could be difficult depending on a spill/derailment location.
- Any spill or derailment in Truckee would have an impact on a major water body given Union Pacific mainline track locations (i.e.-Truckee River, Donner Creek, Donner Lake).

SUMMARY: The Valero Crude by Rail project is the first opportunity for Truckee to comment on a project, that if approved, would be able to transport crude oil through Truckee on its way to Benicia, CA. Union Pacific currently transports crude oil along the Capitol Corridor to other refineries, but information regarding the amount is limited. Several other local California jurisdictions that would be affected by Valero's proposal (Roseville, Davis, Sacramento Area Council of Governments of behalf of their constituents, etc.) have expressed concern about potential risks associated with crude oil transport.

It is staff's opinion that the Revised Draft EIR prepared by the City of Benicia is robust and discloses many potential health and safety risks not previously addressed in the Draft EIR. With the unknown applicability of the California Environmental Quality Act (CEQA) to Union Pacific activities, the City of Benicia chose a conservative approach to disclose as much information as possible. Given the high quality of information provided and the fact that Union Pacific can freely transport crude oil through Truckee without any restrictions, staff recommends that the Council direct staff to submit a focused Valero Crude Oil by Rail Project Recirculated Draft EIR Comment Letter. Staff also recommends providing an additional comment letter to the City of Benicia Planning Commissioners and Councilmembers at the time of project hearing to further reinforce Truckee's concerns about increased crude oil transport by rail through Truckee.

FISCAL IMPACT: Planning staff has spent approximately 25 hours reviewing the project history, CEQA documents and preparing the October 13, 2015 staff report/Revised Draft EIR comment letter. If the Town Council chooses to submit additional comments on the Use Permit application, depending on the scope and nature of these comments, staff would likely spend an additional 25-30 hours preparing comments. Attendance at a public hearing(s) would involve additional staff time and travel expenses.

PUBLIC COMMUNICATIONS: Notice regarding the Valero Crude by Rail Project Recirculated Draft EIR was provided with the Town Council agenda.

ATTACHMENTS

1. Draft Valero Crude by Rail Project Revised Draft Environmental Impact Report Comment Letter prepared by Planning Staff
2. Revised Draft Environmental Impact Report Executive Summary
3. Revised Draft Environmental Impact Report Table ES-2: Summary of Impacts and Mitigation Measures for the Valero Crude by Rail Project
4. Link to Revised Draft Environmental Impact Report dated August 2015
http://www.ci.benicia.ca.us/vertical/Sites/%7B3436CBED-6A58-4FEF-BFDF-5F9331215932%7D/uploads/Valero_Benicia_Crude_by_Rail_RDEIR_Complete_Version.pdf
5. Draft Environmental Impact Report Executive Summary
6. Draft EIR Table 2-1: Summary of Impacts and Mitigation Measures for the Valero Benicia Crude by Rail Project
7. Link to Draft Environmental Impact Report dated June 2014
<http://www.ci.benicia.ca.us/vertical/Sites/%7B3436CBED-6A58-4FEF-BFDF-5F9331215932%7D/uploads/Valero-Benicia-DEIR-CD.pdf>
8. Link to Valero Crude by Rail Project Draft and Revised Draft Environmental Impact Report Public Comment List
http://www.ci.benicia.ca.us/index.asp?Type=B_BASIC&SEC={FDE9A332-542E-44C1-BBD0-A94C288675FD}

Town Council

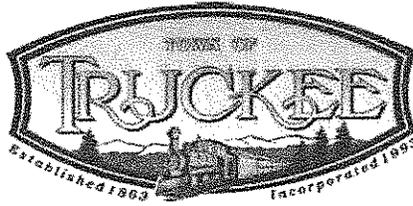
Alicia Barr, Mayor

Joan deRyk Jones, Vice Mayor

Carolyn Wallace Dee, Council Member

Patrick Flora, Council Member

Morgan Goodwin, Council Member



Department Heads

Tony Lashbrook, Town Manager

Andy Morris, Town Attorney

Adam McGill, Chief of Police

John McLaughlin, Community Development Director

Kim Szczurek, Administrative Services Director

Judy Price, Town Clerk

Alex Terrazas, Assistant Town Manager

Daniel Wilkins, Public Works Director/Town Engineer

October 13, 2015

Amy Million, Principal Planner
City of Benicia, Community Development Department
250 East L Street
Benicia, CA 94510

RE: Use Permit Application No. 12PLN-00063 (SCH# 2013052074); Valero Benicia Crude by Rail Project; Applicant: Valero Benicia Refinery.

Dear Ms. Million:

Thank you for the opportunity to review and comment on the Valero Crude by Rail Project Revised Draft Environmental Impact Report dated August 2015. Prior to receiving the Revised Draft Environmental Impact Report (Revised DEIR) Notice of Availability on September 4, 2015, the Town of Truckee had not received notification of the proposed Use Permit application submittal, Draft Environmental Impact Report (DEIR) Notice of Availability, Draft Environmental Impact Report or any other notification. It is our understanding that this lack of notification to some affected cities was likely due to the initial project focus toward on-site impacts. We appreciate the City of Benicia's willingness to discuss and analyze potential off-site impacts associated with crude oil transport by rail through "upline" routes including along the Capitol Corridor. We also appreciate the thorough analysis included in the Revised Draft EIR specific to safety, hazards and air quality. However, the Town has some additional areas of concern we believe should be address in the Final EIR.

The Town of Truckee is a small historic mountain town community of approximately 16,800 people at an elevation range of 5,540 feet to nearly 7,500 feet. Truckee is in the eastern part of Nevada County, approximately 12 miles north of Lake Tahoe, 30 miles west of Reno, Nevada and 100 miles northeast of Sacramento. The Truckee River flows through the eastern half of our community, including Downtown and parallels or is crossed by several sections of Union Pacific Railroad tracks. In addition, Truckee is home to Donner Lake, a freshwater lake located between Interstate 80 and Schallenberger Ridge. Union Pacific rail lines cross Schallenberger Ridge less than ½ mile upslope from Donner Lake.

According to Revised Draft EIR Section 2.3, for the route from Roseville to Nevada via Truckee, 96.5% of the Union Pacific rail lines are classified as Class 3. Class 3 track is stated as being less tolerant to high train speeds and is used less than Class 4 or higher tracks for long-haul freight service. The portion of the Capitol Corridor route that crosses the Sierra Nevada—particularly from Verdi, Nevada through Truckee, CA to Auburn CA is prone to highly unpredictable weather

Tahoe/Truckee



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Animal Services/Vehicle Abatement: 530-582-7830 / Fax: 530-582-7889 / email: animalservices@townoftruckee.com

Police Department: 530-550-2328 / Fax: 530-550-2326 / email: policedepartment@townoftruckee.com

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including sever snow and hail storms with significant accumulation. In fact, this region often receives more snow than any other location in the U.S. Neither the Draft EIR nor the Revised EIR discuss the potential hazards of crude oil transport in high mountain, volatile/unpredictable, weather conditions. We believe that the risk assumptions and conclusions made, including the reliance on the "Petroleum Crude Oil Unit Train Transportation Risk Analysis: Benicia Project" dated July 15, 2015, fail to provide full disclosure of safety, hazard and water quality impacts associated with derailment and/or release in high mountain conditions. Based on our experience with floods, wildland fires, avalanches, snow and hail storms, it is highly likely that one or more of these events would happen at a time of crude oil transport by rail through Truckee. With Union Pacific Railroad's assertion of preemption, The Town of Truckee has no guarantee that crude oil trains associated with the requested Use Permit by Valero will be routed to alternative routes even during times of known inclement weather.

Any derailment or release in Truckee—due to existing rail line proximity to the Truckee River and Donner Lake—would have significant impacts to drinking water, wildlife habitat and recreational facilities with unknown mitigation measures. In addition, due to Truckee's high wildland fire potential—including the potential for dry lighting—potential impacts are likely to stretch beyond Truckee to Lake Tahoe, a major economic generator and significant natural landmark for the State of California. We respectfully request that our concerns be addressed in the Final EIR to ensure the City of Benicia decision-makers have the best available information before taking action on Valero's requested Use Permit.

Again, we thank you for the opportunity to provide comments on the proposed Revised Draft EIR. If you have any questions regarding this letter, please contact Denyelle Nishimori, Planning Manager, at the Community Development Department, Planning Division at 530-582-2934 or by e-mail at dnishimori@townoftruckee.com.

Sincerely,

Alicia Barr
Mayor, Town of Truckee

CHAPTER 2

Revisions to the Draft EIR

This chapter presents the City's revisions to the DEIR relating to impacts that could occur uprail of Roseville, California (i.e., between a crude oil train's point of origin and the California State border, and from the border to Roseville) and a supplemental quantitative evaluation of potential consequences of upsets or accidents. Direct, indirect, and cumulative effects of uprail impacts assume normal operating conditions and are analyzed on a resource-by-resource basis. Potential indirect effects (sometimes called "secondary effects") that could occur as a consequence of a train car-related upset or accident (including, but not limited to, potential secondary impacts to Biological Resources, Cultural Resources, Geology and Soils, and Hydrology and Water Quality) are analyzed in Revised DEIR Section 4.7, *Hazards and Hazardous Materials*. New text added to the DEIR is shown as underlined text. Text that has been deleted from the DEIR is shown as ~~strikethrough~~ text. Introductory, explanatory, and contextual material is provided in *italics* to assist the reader. Italicized text does not denote a change to the DEIR. This Revised DEIR proposes no revisions to subjects, sections, or portions of the DEIR other than as noted below in ~~strikethrough~~ and underlined text.

2.1 DEIR Executive Summary

The DEIR's Executive Summary (p. ES-1 et seq.) includes Section ES-1, Introduction (p. ES-1); Section ES-2, Project Objectives (p. ES-1 et seq.); Section ES-3, Project Setting and Location (p. ES-2 et seq.); Section ES-4, Project Description (p. ES-3 et seq.); Section ES-5, Alternatives (p. ES-4 et seq.); Section ES-6, Environmentally Superior Alternative (p. ES-7); Section ES-7, Areas of Controversy and Issues to be Resolved (p. ES-7 et seq.); and Section ES-8, Summary of Impacts (p. ES-6 et seq.). The DEIR's Executive Summary has been further developed and refined to clarify the geographic scope of the whole of the Project as extending between the various potential North American points of origin of Project-related crude oil and the Refinery; to clarify the temporal context of the Project in terms of the rapidly evolving regulatory regime that governs the transport of crude by rail; and to reflect conclusions reached in the Revised DEIR regarding the potential uprail effects of transporting Project-related crude by rail.

The Executive Summary, as set forth below in this Revised DEIR, replaces the DEIR Executive Summary in its entirety.

2.1.1 DEIR ES-1, Introduction

This Environmental Impact Report (EIR) is an informational document that does three things: discloses to the public and to decision-makers the environmental effects of the Crude by Rail project (Project) proposed by Valero at the oil refinery it owns and operates in Benicia, California (Refinery); lists ways that potential significant effects of the Project might be minimized; and identifies and analyzed alternatives to the Project.

Valero filed a Land Use Application with the City of Benicia Community Development Department's Planning Division (the City) in December 2012 seeking Use Permit authorization for the Refinery to receive a proportion of its existing crude oil deliveries by railcar, i.e., up to 70,000 barrels¹ per day of North American crude (ERM, 2012). The amount of crude oil delivered by railcar would be offset by a corresponding decrease in crude oil delivered by marine vessels (ERM, 2012). The Project would not increase the Refinery's total crude oil throughput or result in an increase in the production of existing products or byproducts. The City is the CEQA lead agency.

This Executive Summary includes the following sections:

- Introduction (ES-1)
- Project Objectives (ES-2)
- Project Setting and Location (ES-3)
- Project Description (ES-4)
- Alternatives (ES-5)
- Environmentally Superior Alternative (ES-6)
- Areas of Controversy and Issues to be Resolved (ES-7)
- Summary of Impacts (ES-8)

This EIR assesses the direct, indirect, and cumulative environmental impacts that could occur as a result of the construction, operation, and maintenance of the Project and alternatives to the Project. Based on this analysis, this EIR preliminarily identifies Alternative 1 – Limiting Project to One 50-Car Train Delivery per Day as the Environmentally Superior Alternative.

2.1.2 DEIR ES-2, Project Objectives

The Refinery converts crude oil into finished products, including gasoline, jet fuel, liquefied petroleum gas, heating oil, fuel oil, asphalt, petroleum coke, and sulfur. Valero has proposed the Project for the purpose of receiving a larger proportion of its crude oil by railcar, up to 70,000 barrels per day of North American crude (ERM, 2012, ERM, 2013). The Project has the following objectives:

1. Allow for the delivery of up to 70,000 barrels per day of North American-sourced crude oil by rail.
2. Replace marine vessel delivery with rail delivery of up to 70,000 barrels per day of crude oil.

¹ One barrel is equivalent to 42 gallons of crude oil.

3. Mitigate project-related impacts.
4. Implement the Project without changing existing Refinery process equipment or Refinery process operations, other than operation of the Project components.
5. Continue to meet requirements of existing rules and regulations pertaining to oil refining including the State of California Global Warming Solutions Act of 2006 (AB 32).

2.1.3 DEIR ES-3, Project Setting and Location

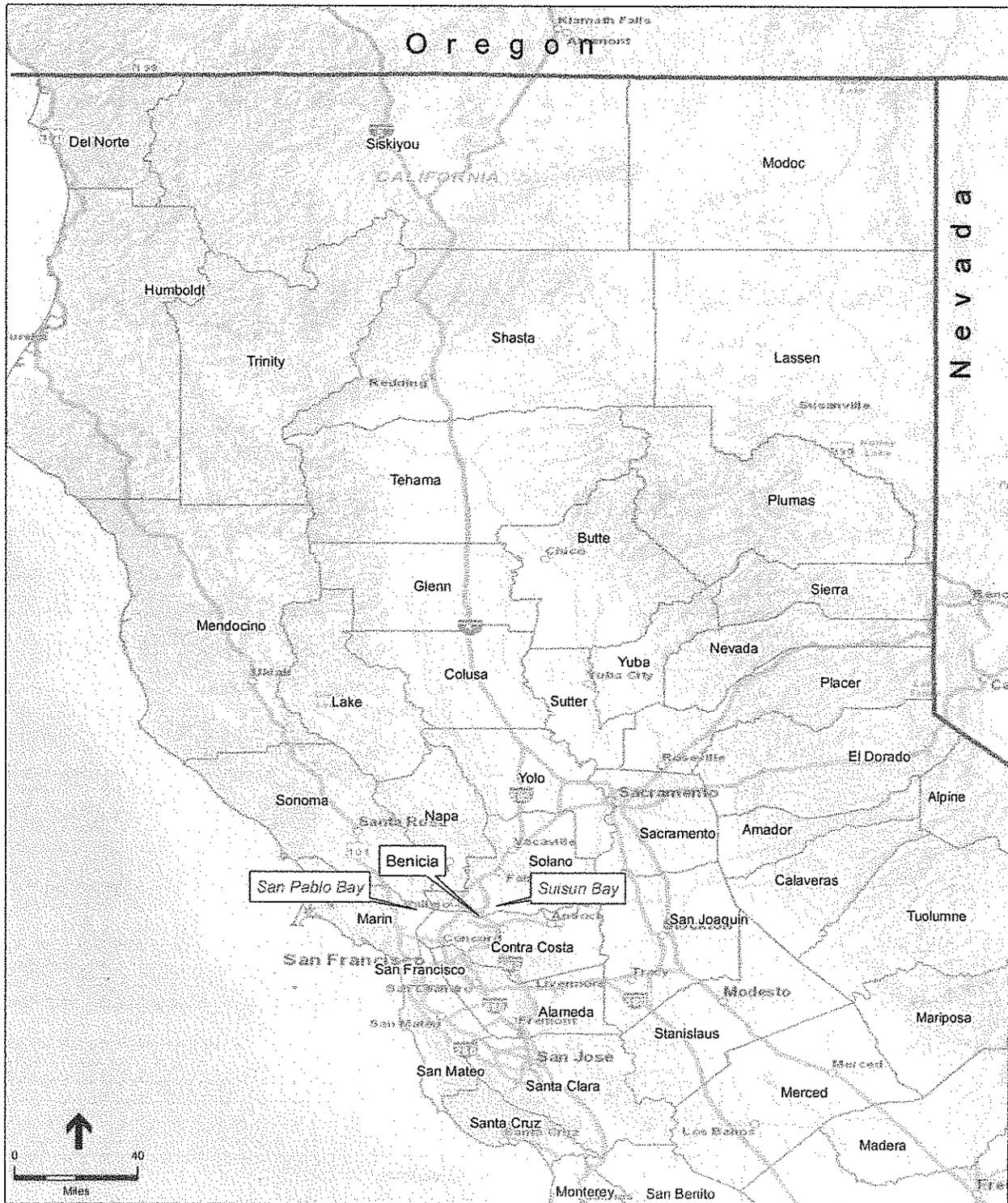
The Refinery is located at 3400 East Second Street, an industrial area in the eastern portion of the City of Benicia, in Solano County. The Refinery lies in a general north-south orientation near and west of Interstate 680. The Refinery is located along the northern edge of the Suisun Bay below a low range of coastal hills. See Figure ES-1, *Regional Location*. To the west of East Second Street is open space, and the closest residential areas are approximately 3,000 feet to the south and west of the Refinery, and approximately 2,100 feet to the northwest. Refinery operations occupy approximately 330 acres of Valero's 880 acre property.

The Refinery dock is located on the Carquinez Strait between the Benicia-Martinez Bridge and the Port of Benicia wharf. The Refinery's marine terminal and pipeline to the Refinery provide access for receiving and shipping bulk cargoes (including crude) by marine vessel. The existing Union Pacific Railroad (UPRR) rail line provides rail access for the Refinery and for the Benicia Industrial Park, which is located east and north of the Refinery. See Figure ES-2, *Valero Refinery Boundary*. Presently, the Refinery uses tank cars to receive chemicals used in refining and to ship refined products from the Refinery.

The Project site is located in the northeastern portion of the Refinery property, between the eastern side of the lower tank farm and the fence adjacent to Sulphur Springs Creek. See Figure ES-3, *Site Plan*. Existing facilities within the Project site include siding track and a liquid spill containment area (including an associated containment berm).

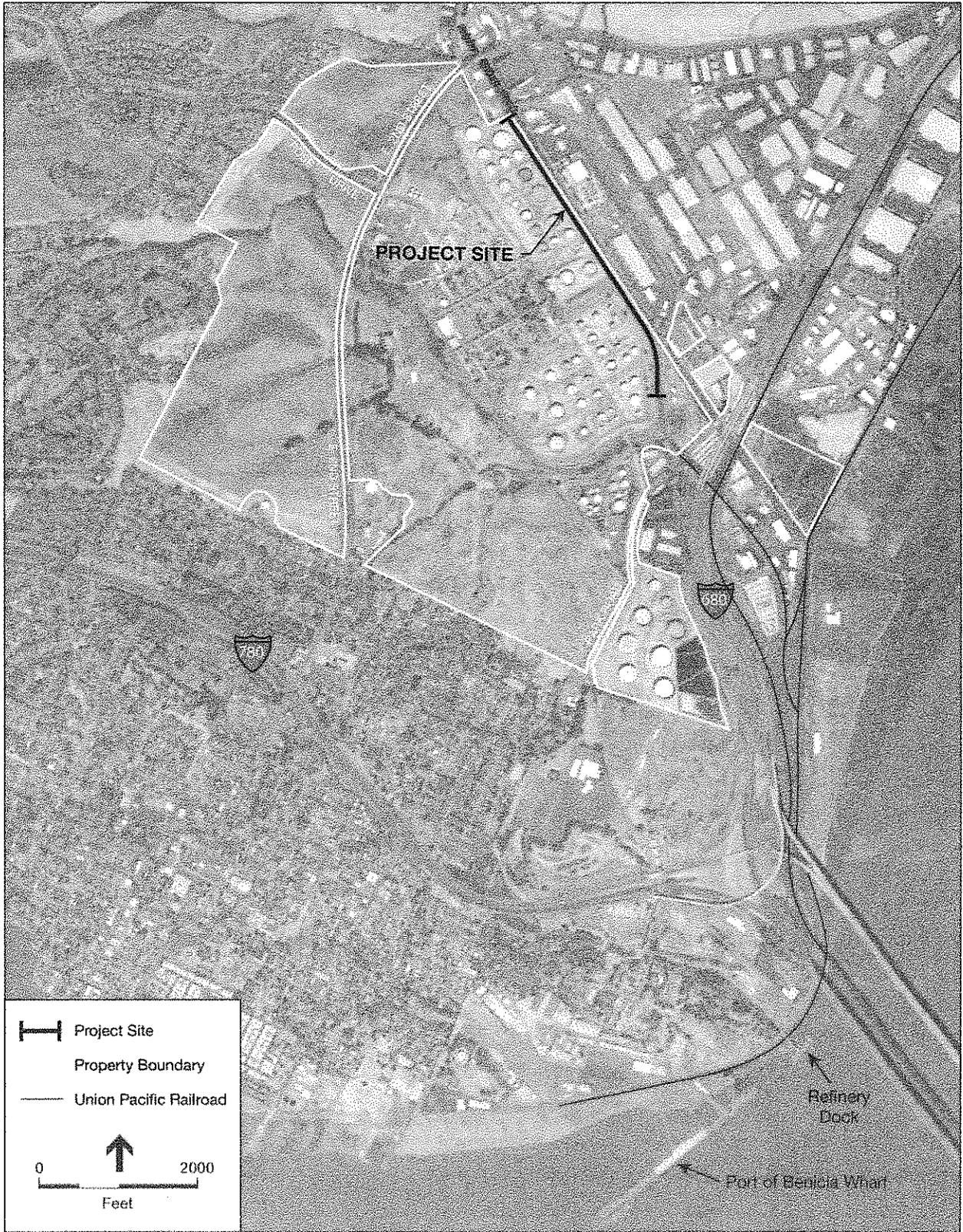
2.1.4 DEIR ES-4, Project Description

Valero proposes to install, operate, and maintain new equipment, pipelines, and associated infrastructure as well as new and realigned segments of existing railroad track within the Refinery boundary to allow the Refinery to receive a portion of its crude oil feedstock deliveries by tank car. More specifically, the Project would allow Valero to accept up to 100 tank cars of crude oil a day in two 50-car trains. The trains would enter the Refinery on an existing rail spur that crosses Park Road. Crude oil unloaded from the tank cars would be pumped to an existing storage tank in the Refinery via a new crude offloading pipeline. The amount of crude oil delivered by railcar would offset the amount of crude oil delivered by marine vessels. See generally ERM, 2012, ERM, 2013, Valero, 2013a, and Valero, 2013b.



SOURCE: ESA

Benicia Valero CTR. 2021.15.01
 Figure ES-1
 Regional Location



SOURCE: Google Earth; ERM

Benicia Valero CBR - 202115.01

Figure ES-2
Valero Refinery Boundary

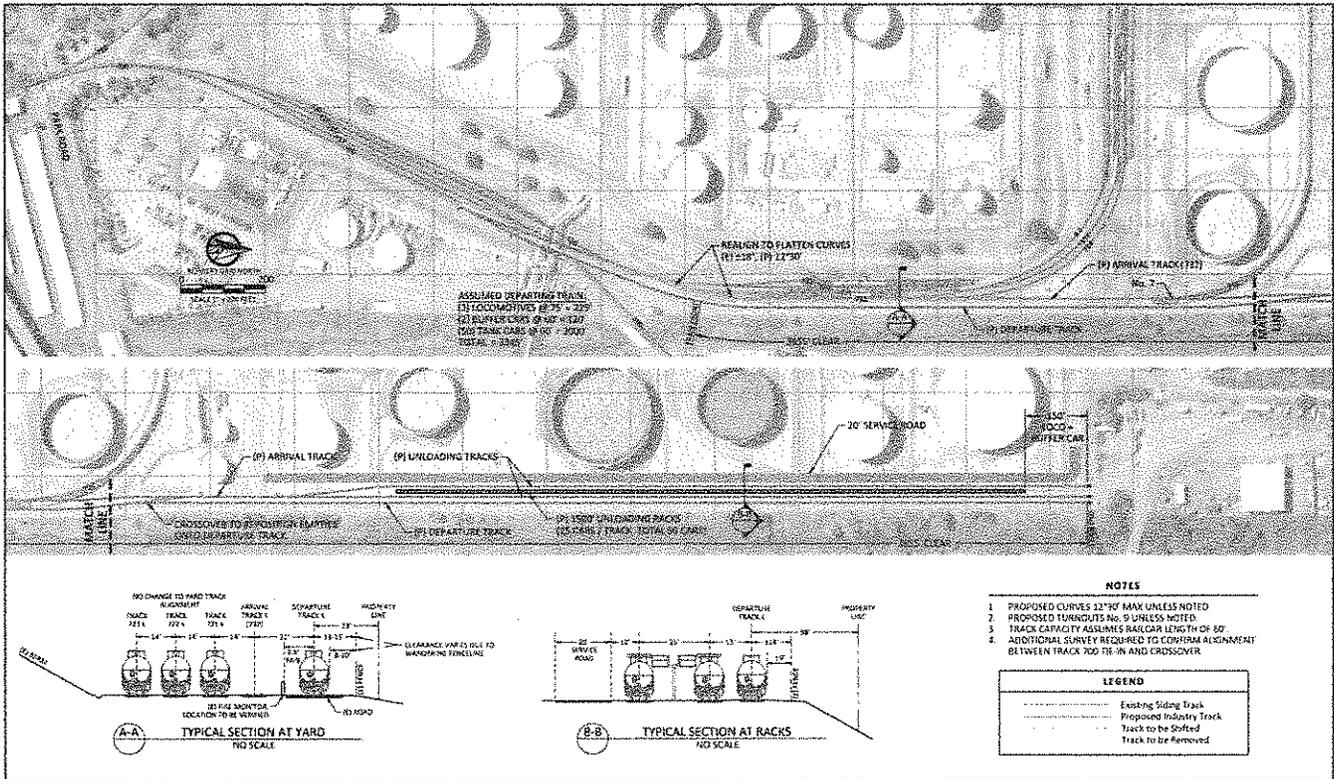
Key components of the Project are shown in Figure ES-3, *Site Plan*, and include:

- Installation of a new offloading rack capable of offloading two parallel rows of 25 crude oil rail cars (50 total cars per train). The rail unloading rack and track would be located on the west side of Sulphur Springs Creek.
- Removal of approximately 1,800 feet of the existing earthen liquid spill containment berm for the tanks abutting the tank car unloading facilities and constructing a new concrete berm approximately 12 feet west of the existing berm.
- Installation of one new 20-foot service road to be located adjacent to the western side of the proposed unloading rail spurs.
- Installation of approximately 4,000 feet of new 16-inch diameter aboveground crude oil pipeline and associated components and infrastructure to be installed between the proposed offloading racks and existing crude supply piping.
- Installation of approximately 8,880 track-feet of new track on Refinery property, including: 614 track-feet approaching the proposed unloading area, two offloading rail spurs (the western side of the unloading rack would include 2,216 track-feet; the eastern side of the unloading rack would include 2,275 track-feet), a parallel engine runaround track (2,262 track-feet), and a departure track on Refinery property to allow receipt of rail cars at the proposed offloading racks. The rail spurs and parallel engine runaround track would be constructed between the east side of the lower tank farm and Sulphur Springs Creek.
- Realignment of approximately 3,560 track-feet currently located on Refinery property.
- Relocation of an existing firewater pipeline, compressor station, and existing underground infrastructure to accommodate the new rail tracks.
- Relocation of existing groundwater monitoring wells from along Avenue "A" to a location between Sulphur Springs Creek and the proposed offloading rack.

The Project would not increase the amount of crude oil or the amounts of petroleum products that could be processed at the Refinery. The Project would not involve any changes to existing Refinery operations or process equipment, other than those summarized above and described in more detail in Chapter 3, *Project Description*. The Project would require no change to the Bay Area Air Quality Management District (BAAQMD) operating permit regarding the Refinery's crude oil processing rate and would not result in any change to the emissions limits set forth in the Refinery's current BAAQMD permits. See DEIR Section 1.10, *Permits and Approvals*, regarding the authorizations expected to be necessary in addition to a Use Permit from the City before the Project could proceed.

If the Project is approved as proposed, up to 70,000 barrels of crude oil would arrive at the Refinery each day by rail. The UPRR would transport the crude oil from a variety of potential North American sources to UPRR's J.R. Davis Yard in Roseville, California (the "Roseville Yard") in unit trains²

² Unit trains carry just one commodity, such as grain or crude oil. All of the cars in a unit train are shipped together from the same origin to the same destination.



SOURCE: Valero

Benicia Valero CBR . 2021115.01

Figure ES-3
 Site Plan

using existing rail lines. Unit trains would consist of 50 or up to 100 tank cars (Valero, 2013c). 100-tank car trains would be transported with four locomotives and two buffer cars;³ 50-tank car trains would be transported with two locomotives and two buffer cars. Two 50-car trains would be dispatched from the Roseville Yard to the Refinery each day. UPRR would own and operate the locomotive engines. Valero would own or lease the tank cars. Valero proposes to use non-jacketed Casualty Prevention Circular (CPC)-1232-compliant tank cars. See DEIR Section 3.4.1.3, *Tank Cars*, for more information.

2.1.5 DEIR ES-5, Alternatives

This EIR considers one No Project Alternative and three project alternatives. Each is summarized below.

2.1.5.1 No Project Alternative

Under the No Project alternative, the Project would not be constructed, which would prevent crude oil from being transported to the Refinery via tank car and have no effect on the Refinery's existing ability to process crude oil received via other existing, approved mechanisms such as by marine vessel or pipeline. The Refinery's existing facilities at the site of the proposed unloading racks and spurs would remain. Air emissions (both criteria pollutants and greenhouse gases) from marine vessels that transport crude oil into the Bay Area Air Basin would remain unchanged, because there would be no reduction in marine vessel trips to the Refinery. Valero would not be able to achieve most of its Project objectives.

2.1.5.2 Alternative 1: Limiting Project to One 50-Car Train Delivery per Day

Under this alternative the Project would operate with a 50% reduction in the proposed number of train deliveries to the Refinery per day. Deliveries would be limited to a maximum of one⁴ 50-car train each day, containing a daily total of 35,000 barrels. This single train would be delivered during nighttime hours (between 8:00 p.m. and 5:00 a.m.) and once emptied, would depart the Refinery during nighttime hours and be returned to its origination point. All other aspects of this alternative would be the same as the Project. This alternative would not allow Valero to fully achieve the primary Project objectives 1 and 2, but would still fulfill Project objectives 3 through 5.

Any limitation on the volume of product shipped or the frequency, route, or configuration of such shipments is preempted under federal law. See Revised DEIR Appendix G. See also Valero's statement regarding preemption in Revised DEIR Appendix H. Thus, Alternative 1 is legally infeasible.

³ Railroads use "buffer" cars primarily to comply with U.S. Department of Transportation (USDOT) regulations regarding separation of occupied equipment (i.e., locomotives) from hazardous materials cars. Buffer cars provide no transportation function.

⁴ This means that one 50-car train would be delivered for unloading each day and after unloading the 50-car train would return to its origination point.

2.1.5.3 Alternative 2: Two 50-Car Trains Delivered during Nighttime Hours

Under this alternative, the Project would be required to schedule all Park Road train crossings during nighttime hours only (between 8:00 p.m. and 6:00 a.m.). As described in the DEIR, this could be accomplished through either a single 100-car train or sequencing two 50-car trains such that they are delivered and subsequently depart only during nighttime hours; however, it since has been determined that Valero cannot accept 100-cars at a time due to the constraints placed by UPRR and insufficient on-site capacity at the Refinery to handle 100 cars at once. All other aspects of this alternative would be the same as the Project. This alternative would allow Valero to achieve most of its Project objectives.

Any limitation on the timing of deliveries by train (independent of whether such trains would consist of 50 or 100 cars) is preempted under federal law. See Revised DEIR Appendix G. Thus, Alternative 2 is legally infeasible.

2.1.5.4 Alternative 3: Offsite Unloading Terminal

This alternative would consist of a separate, offsite facility where crude oil could be shipped by either marine vessel or rail, and then transferred to the Refinery by a new pipeline or truck. There are two variations to this alternative: 1) an offsite terminal would be developed and operated by Valero, and 2) an offsite terminal would be independently developed and operated by a third party.

The construction of new or modification of existing infrastructure could be required to receive crude oil at the offsite facility, transfer it to the Refinery, and/or integrate the new delivery method into the Refinery's existing infrastructure. Once a location and other necessary details about the offsite facility have been identified, subsequent site-specific CEQA review would be required for the facility and the pipeline or other method of conveyance necessary to receive it within the Refinery. This alternative would meet all objectives of the Project.

2.1.6 DEIR ES-6, Environmentally Superior Alternative

CEQA Guidelines Section 15126.6(e)(2) requires an EIR to identify an environmentally superior alternative. If the environmentally superior alternative is the No Project Alternative, the EIR also must identify an environmentally superior alternative from among the other alternatives. In general, the environmentally superior alternative is defined as that alternative with the least adverse impacts to the Project area and its surrounding environment. A comparison of potential impacts of the Project and alternatives is provided in Table ES-1, *Proposed Project v. Alternatives: Summary of Environmental Impact Conclusions*.

**TABLE ES-1
PROPOSED PROJECT VS. ALTERNATIVES
SUMMARY OF ENVIRONMENTAL IMPACT CONCLUSIONS**

Resource Area	Proposed Project	Limiting Project to One 50-Car Train Delivery per Day (Alternative 1)	Two 50-Car Trains Delivered during Nighttime Hours (Alternative 2)	Offsite Unloading Terminal (Alternative 3)	No Project Alternative
Air Quality	Impacts to air quality would be significant and unavoidable because the Project would contribute to an existing or projected air quality violation and result in a cumulatively considerable increase in ozone precursor emissions. No Preference.	Impacts to air quality would be greater than the Project because the decrease in emissions associated with 50% reduction in train trips would not offset marine vessel emissions. Not Preferred.	Impacts to air quality would be the same as the Project. No Preference.	Impacts to air quality would likely be similar to the Project as emissions from train trips would be similar. No Preference.	Although criteria pollutant emissions would be greater than the Project, overall impacts to air quality would be less than the Project because significant and unavoidable impacts associated with train trips would not occur. Most Preferred.
Biological Resources	Impacts to biological resources would be less than significant or less than significant with mitigation, but could have secondary effects due to train derailment. No Preference.	Impacts to biological resources would be less than the Project due to reduced potential for a train derailment. Slight Preference.	Impacts to biological resources would slightly greater than the Project due to increased noise effects during nighttime hours. Least Preference.	Impacts to biological resources would likely be greater than the Project due to construction of additional Project infrastructure. Not Preferred.	Impacts to biological resources would be less than the Project because no construction would occur and no crude oil would be delivered by train. Most Preferred.
Cultural Resources	The Project would have no impact to cultural resources, but could have secondary effects due to train derailment. No Preference.	Impacts to cultural resources would be less than the Project due to reduced potential for train derailment. Slight Preference.	Impacts to cultural resources would be the same as the Project. No Preference.	Impacts to cultural resources would be the same as the Project. No Preference.	Secondary effects to cultural resources would be less than the Project because no crude oil would be delivered by train. Most Preferred.
Energy Conservation	Impacts to energy conservation would be less than significant or less than significant with mitigation. No Preference.	Impacts to energy conservation would be less due to the 50% reduction in train trips. Most Preferred.	Impacts to energy conservation would be the same as the Project. No Preference.	Impacts to energy conservation would likely be similar to the Project, depending on the distance between the terminal and Refinery. No Preference.	Although transport of crude by rail is less efficient than by marine vessel, the distances travelled by marine vessel may result in greater energy use. No Preference.

**TABLE ES-1 (Continued)
PROPOSED PROJECT VS. ALTERNATIVES
SUMMARY OF ENVIRONMENTAL IMPACT CONCLUSIONS**

Resource Area	Proposed Project	Limiting Project to One 50-Car Train Delivery per Day (Alternative 1)	Two 50-Car Trains Delivered during Nighttime Hours (Alternative 2)	Offsite Unloading Terminal (Alternative 3)	No Project Alternative
Geology and Soils	Impacts to geology and soils would be less than significant or less than significant with mitigation, but could have secondary effects from a seismic event resulting in a derailment and subsequent adverse effects to people and structures. No Preference.	Impacts to geology and soils would be less than the Project due to reduced potential for a train derailment. Slight Preference.	Impacts to geology and soils would be the same as the Project. No Preference.	Impacts to geology and soils would be the same as the Project. No Preference.	Impacts to geology and soils would be less than the Project because no construction would occur and no crude oil would be delivered by train. Most Preferred.
Greenhouse Gas Emissions	Impacts to greenhouse gas emissions would be significant and unavoidable because the Project would generate significant levels of GHG and conflict with plans adopted for reducing GHG emissions. No Preference.	Impacts to greenhouse gas emissions would be greater than the Project because the decrease in emissions associated with 50% reduction in train trips would not offset marine vessel emissions. Not Preferred.	Impacts to greenhouse gas emissions would be the same as the Project. No Preference.	Impacts to greenhouse gas emissions would likely be similar to the Project, as emissions from train trips would be similar. No Preference.	Impacts to greenhouse gas emissions would be greater than the Project because there would be no reduction associated with elimination of up to 82% of annual marine vessel trips. Least Preferred.
Hazards and Hazardous Materials	Most impacts regarding hazards would be less than significant or less than significant with mitigation. Potential train derailment would result in significant and unavoidable adverse effects to people and secondary effects to biological, cultural, and hydrological resources, and geology. No Preference.	Impacts regarding hazards would be less than the Project due to reduced potential for a train derailment. Slight Preference.	Impacts regarding hazards would be the same as the Project. No Preference.	Impacts regarding hazards would be the same as the Project. No Preference.	Impacts regarding hazards would be less than the project because no crude oil would be delivered by train. Most Preferred.
Hydrology and Water Quality	Impacts to hydrology would be less than significant or less than significant with mitigation, but could have secondary effects due to train derailment. No Preference.	Impacts to hydrology would be less than the Project due to reduced potential for a train derailment. Slight Preference.	Impacts to hydrology would be the same as the Project. No Preference.	Impacts to hydrology would likely be greater than the Project due to construction of additional Project infrastructure. Not Preferred.	Impacts to hydrology would be less than the Project because no construction would occur and no crude oil would be delivered by train. Most Preferred.

**TABLE ES-1 (Continued)
PROPOSED PROJECT VS. ALTERNATIVES
SUMMARY OF ENVIRONMENTAL IMPACT CONCLUSIONS**

Resource Area	Proposed Project	Limiting Project to One 50-Car Train Delivery per Day (Alternative 1)	Two 50-Car Trains Delivered during Nighttime Hours (Alternative 2)	Offsite Unloading Terminal (Alternative 3)	No Project Alternative
Land Use and Planning	Impacts to land use and planning would be less than significant. No Preference.	Impacts to land use and planning would be the same as the Project. No Preference.	Impacts to land use and planning would be the same as the Project. No Preference.	Impacts to land use and planning would be the same as the Project. No Preference.	Impacts to land use and planning would be the same as the Project. No Preference.
Noise	Impacts to noise would be less than significant. No Preference.	Impacts to noise would be less than the Project due to the 50% reduction in train trips. Slight Preference.	Impacts to noise would be greater than the Project due to increased train movement during nighttime hours. Least Preferred.	Impacts to noise could be greater than the Project, depending on the terminal location. Not Preferred.	Impacts to noise would be less than the Project because no construction would occur and no crude oil would be delivered by train. Most Preferred.
Transportation and Traffic	Impacts to transportation and traffic would be less than significant or less than significant with mitigation. No Preference.	Impacts to transportation and traffic would be less than the Project due to the 50% reduction in train trips and subsequent reduction in train crossings at Park Road. Slight Preference.	Impacts to transportation and traffic would be less than the Project because fewer vehicles would be affected by train crossings at Park Road. Slight Preference.	Impacts to transportation and traffic could be less than the Project, depending on the terminal location. No Preference.	Impacts to transportation and traffic would be less than the Project because no crude would be delivered by train. Most Preferred.

As explained in DEIR Section 6.4.2, Alternative 1 (reducing the Project to single 50-car train per day) is environmentally superior to the Project in a few respects. Alternative 1 would reduce the emission of criteria pollutants, toxic air emissions, and greenhouse gases from trains as compared with the Project, and avoid the Project's significant NO_x impact in the Sacramento Metropolitan Air Quality Management District (Sacramento Metro AQMD). As under the Project, Alternative 1 would have a significant NO_x impact within the Yolo-Solano, Tehama County, Butte County, Siskiyou County, Shasta County, Lassen County, Northern Sierra, Feather River, and Placer County air districts. Significant impacts to biological resources and hazards (including secondary effects related to biological resources, cultural resources, geology and soils, and hydrology) would be reduced compared to the Project because 50% fewer trains would deliver crude oil to the Refinery. This would reduce the probability that derailment of a Project-related train could occur. The potential adverse effects resulting from a subsequent spill and/or fire would remain significant. However, for the reasons described above, this alternative is legally infeasible because of federal preemption. See Revised DEIR Appendix G. Alternative 1 would also reduce the impacts of train crossings on traffic. Since the Project would not have a significant effect on traffic, however, Alternative 1 would not avoid any significant traffic effects.

The Project, however, is environmentally superior to Alternative 1 with respect to overall air quality. Alternative 1 would result in greater emissions of criteria pollutants, toxic air emissions, and greenhouse gases than the Project overall, because the decrease in emissions associated with a 50% reduction in train trips would not offset emissions of these same pollutants from marine vessels.

2.1.7 DEIR ES-7, Areas of Controversy and Issues to be Resolved

Areas of controversy known to lead agencies, including issues raised by agencies and the public, must be identified in the Executive Summary of an EIR (CEQA Guidelines §15123). Areas of controversy known to the City about this Project include the topics listed below. See also, for example, the Scoping Report provided as DEIR Appendix B.

- The geographic area of study considered for impact analysis of the Project and potential indirect impacts of the Project.
- The source of the Project's crude feedstocks, potential changes in the quality of the feedstocks, and potential impact on Refinery operations and/or emissions.
- Relationships between the Valero Improvement Project, a previous project at the Refinery, and the Project.
- Railroad hazardous material operational safety and tank car specification information.
- Cumulative impacts of the Project and other similar refinery or oil terminal projects within the State of California.

Issues to be resolved, including a choice among alternatives, and whether and how to mitigate potential significant impacts, also must be identified in an Executive Summary (CEQA

Guidelines §15123). The main issue to be resolved in this EIR is which among the alternatives would meet most of the basic Project objectives with the least environmental impact. Balancing sometimes competing environmental values can be challenging because it rests on assumptions of relative value. Decision-makers may elect to balance relative values of environmental resources and, thereby, resolve the issues considered in this EIR with a different conclusion than the one summarized in Section ES-6 and discussed in Section 6.4.4, *Environmentally Superior Alternative*.

2.1.8 DEIR ES-8, Summary of Impacts

2.1.8.1 Resource Areas Evaluated

This section summarizes the potential impacts of the Project or alternatives. The affected environment and the potential direct and indirect effects of the Project are described and evaluated in Chapter 4 of this EIR for the resource areas listed below. Other CEQA considerations, including the cumulative impact analysis, are in Chapter 5, and the alternatives analysis is in Chapter 6. Chapter 4 is organized into the following 11 environmental resource or issue areas:

- | | |
|-------------------------------------|--|
| <u>4.1 Air Quality</u> | <u>4.7 Hazards and Hazardous Materials</u> |
| <u>4.2 Biological Resources</u> | <u>4.8 Hydrology and Water Quality</u> |
| <u>4.3 Cultural Resources</u> | <u>4.9 Land Use and Planning</u> |
| <u>4.4 Energy Conservation</u> | <u>4.10 Noise</u> |
| <u>4.5 Geology and Soils</u> | <u>4.11 Transportation and Traffic</u> |
| <u>4.6 Greenhouse Gas Emissions</u> | |

A detailed analysis of each environmental topic, each potential impact and the mitigation measure(s) needed, if any, is contained in Chapter 4.

2.1.8.2 Summary of Impacts

Table ES-2, *Summary of Impacts and Mitigation Measures for the Valero Benicia Crude by Rail Project*, summarizes the impacts of the Project for each of the resource areas assessed in this EIR. As noted above, detailed analyses of direct and indirect effects are described in DEIR Chapter 4, *Environmental Setting, Impacts, and Mitigation Measures*; cumulative effects are analyzed and described in DEIR Section 5.4, *Cumulative Impacts*. No impacts were identified for:

- Cultural Resources

Where potentially significant impacts are identified, mitigation measures are proposed that could, if implemented, avoid or reduce the severity of the impact below established thresholds. Impacts were found to be less than significant or less than significant with mitigation implemented for:

- | | |
|--------------------------------------|-------------------------------------|
| • <u>Energy Conservation</u> | • <u>Land Use and Planning</u> |
| • <u>Geology and Soils</u> | • <u>Noise</u> |
| • <u>Hydrology and Water Quality</u> | • <u>Transportation and Traffic</u> |

Implementing the Project would result in significant and unavoidable impacts for:

- Air Quality
- Biological Resources
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials

Table ES-2 provides an overview of each impact identified in this Revised DEIR.

2.2 DEIR Chapter 1, Introduction

DEIR Chapter 1 (p. 1-1 et seq.), Introduction, includes Section 1.1, Purpose of this Document (p. 1-1); Section 1.2, Project Overview (p. 1-1 et seq.); Section 1.3, Project Background (p. 1-2 et seq.); Section 1.4, Key Areas of Environmental Concern (p. 1-3 et seq.); Section 1.5, Public Comment on the Draft EIR (p. 1-4); Section 1.6, Areas of Controversy (p. 1-4); Section 1.7, Confidential Business Information (p. 1-4 et seq.); Section 1.8, Organization of the Document (p. 1-6 et seq.); Section 1.9, Use of this Document by Agencies (p. 1-7); and Section 1.10, Permits and Approvals (p. 1-7). No changes to DEIR Chapter 1 are proposed except (as noted below) to Section 1.5 to reflect the existence of this Revised DEIR. Sections where no revisions are proposed are not repeated in this Revised DEIR.

2.2.1 DEIR Section 1.5, Public Comment on the DEIR and Revised DEIR Draft EIR

~~The Draft EIR was is being circulated to state and local agencies and interested individuals for their who may wish to review and comments on the report. Written comments may be submitted to the City of Benicia during an initial the 45-day public review period that began on June 17, 2014 and concluded on August 1, 2014. The City of Benicia Planning Commission decided at its July 10, 2014 public meeting to extend the public review period by 45 days to September 15, 2014. Written comments on the this Draft EIR were will be accepted via regular mail, fax, and e-mail and at a public meetings that were held before the City Planning Commission on July 10, August 14, and September 11, 2014 will be noticed under separate cover.~~

The Revised DEIR is being circulated to government agencies and members of the public for a 45-day public review period that will begin as of the date a notice of its availability is filed with the State Clearinghouse. Notice also will be sent to the distribution list that the City has established for the Project and the document itself will be posted on the City's website. Written comments may be submitted to the City of Benicia during this period via regular mail, fax, and e-mail and at one or more public meetings that will be noticed under separate cover.

All comments received will be addressed in a Response to Comments document, which, together with the this Draft EIR and Revised DEIR, will constitute the Final EIR for the Project.

**TABLE ES-2
SUMMARY OF IMPACTS AND MITIGATION MEASURES FOR THE VALERO BENICIA CRUDE BY RAIL PROJECT**

Environmental Impact	Significance before Mitigation	Mitigation Measures	Significance after Mitigation
Air Quality			
<u>Impact 4.1-1: The Project could conflict with implementation of applicable air quality plans.</u>	<u>Potentially Significant</u>	<u>None available</u>	<u>Significant and Unavoidable</u>
<u>Impact 4.1-5: Operation of the Project could contribute to an existing or projected air quality violation uprail from the Roseville Yard.</u>	<u>Potentially Significant</u>	<u>None available</u>	<u>Significant and Unavoidable</u>
<u>Impact 4.1-6: The Project could expose sensitive receptors uprail from the Roseville Yard to substantial pollutant concentrations associated with locomotive emissions.</u>	<u>Less than Significant</u>	<u>None required</u>	<u>Less than Significant</u>
<u>Impact 4.1-7: The Project could result in cumulatively considerable net increases in ozone precursor emissions in uprail air districts.</u>	<u>Potentially Significant</u>	<u>None available</u>	<u>Significant and Unavoidable</u>
<u>Impact 4.1-8: The Project could generate objectionable odors affecting a substantial number of people along uprail routes</u>	<u>Less than Significant</u>	<u>None required</u>	<u>Less than Significant</u>
Biological Resources			
<u>Impact 4.2-10: The Project could have a substantial adverse effect on candidate, sensitive or special-status wildlife species or migratory birds, including injury or mortality resulting from collisions with trains along the North American freight rail lines as a result of increased frequency (high traffic volumes) of railcars.</u>	<u>Potentially Significant</u>	<u>None available</u>	<u>Significant and Unavoidable</u>
Energy Conservation			
<u>Impact 4.4-1a: Operation of the Project would result in the consumption of diesel fuel but the necessary amount would not be considered significant.</u>	<u>Less than Significant</u>	<u>None required</u>	<u>Less than Significant</u>
<u>Impact 4.4-1b: The Project could increase local or regional energy demand to move crude oil between the point(s) of origination and the Roseville Yard, but would not require additional energy supply capacity.</u>	<u>Less than Significant</u>	<u>None required</u>	<u>Less than Significant</u>

TABLE ES-2 (Continued)
SUMMARY OF IMPACTS AND MITIGATION MEASURES FOR THE VALERO BENICIA CRUDE BY RAIL PROJECT

Environmental Impact	Significance before Mitigation	Mitigation Measures	Significance after Mitigation
Greenhouse Gas Emissions			
Impact 4.6-1: The Project would generate direct and indirect GHG emissions.	<u>Potentially Less than Significant</u>	<u>None available</u>	<u>Significant and Unavoidable</u>
Impact 4.6-2: The Project would conflict with Executive Order S-3-05.	<u>Potentially Significant</u>	<u>None available</u>	<u>Significant and Unavoidable</u>
Hazards and Hazardous Materials			
Impact 4.7-2: The Project could pose significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment.	<u>Potentially Less than Significant</u>	<u>None required available</u>	<u>Less than Significant and Unavoidable</u>
Impact 4.7-6: Train derailments and unloading accidents that lead to hazardous materials spills, fires, and explosions could result in substantial adverse secondary effects, including to Biological Resources, Cultural Resources, Geology and Soils, and Hydrology and Water Quality.	<u>Potentially Significant</u>	<u>None available</u>	<u>Significant and Unavoidable</u>
Impact 4.7-89: Operation of the Project could expose people or structures to significant risk, injury, or loss from wildland fires.	<u>Potentially Less than Significant</u>	<u>None required available</u>	<u>Less than Significant and Unavoidable</u>
Noise			
Impact 4.10-1a: Operation of the Project could result in exposure of persons to noise levels in uprail communities, but such levels would not exceed applicable standards.	<u>Less than Significant</u>	<u>None required</u>	<u>Less than Significant</u>
Impact 4.10-2a: The transportation of Project-related crude uprail from the Roseville Yard would result in the generation of ground borne vibration or ground borne noise, but this vibration or noise would not be excessive.	<u>No Impact</u>	<u>None required</u>	<u>No Impact</u>

TABLE ES-2 (Continued)
SUMMARY OF IMPACTS AND MITIGATION MEASURES FOR THE VALERO BENICIA CRUDE BY RAIL PROJECT

Environmental Impact	Significance before Mitigation	Mitigation Measures	Significance after Mitigation
Noise (cont.)			
<u>Impact 4.10-3a: The transportation of Project-related crude uprail from the Roseville Yard would result in an increase of the frequency of noise events in the vicinity of the train tracks above the frequency of such events existing without the project, but addition of one train per day would cause neither a substantial nor a permanent increase in ambient noise levels.</u>	<u>Less than Significant</u>	<u>None required</u>	<u>Less than Significant</u>
<u>Impact 4.10-4a: Operation of the Project would not result in a substantial temporary or periodic increase in ambient noise levels.</u>	<u>Less than Significant</u>	<u>None required</u>	<u>Less than Significant</u>
<u>Impact 4.10-5: Project-related transport of crude via the existing freight rail network would not expose people working within an airport land use plan area or within 2 miles of a public airport, public use airport, or a private airstrip to excessive noise levels.</u>	<u>Less than Significant</u>	<u>None required</u>	<u>Less than Significant</u>
Transportation and Traffic			
<u>Impact 4.11-6: The Project would not cause a substantial increase in average vehicle delay at train crossings uprail from Roseville.</u>	<u>Less than Significant</u>	<u>None required</u>	<u>Less than Significant</u>
<u>Impact 4.11-7: The Project would not decrease the performance of passenger trains.</u>	<u>Less than Significant</u>	<u>None required</u>	<u>Less than Significant</u>

EXECUTIVE SUMMARY

ES-1 Introduction

This Environmental Impact Report (EIR) is an informational document that discloses to the public and to decision-makers the environmental effects of the proposed Valero Benicia Refinery's Crude by Rail project (Project). This Executive Summary includes the following sections:

- Introduction (ES-1)
- Project Objectives (ES-2)
- Project Setting and Location (ES-3)
- Project Description (ES-4)
- Alternatives (ES-5)
- Environmentally Superior Alternative (ES-6)
- Areas of Controversy and Issues to be Resolved (ES-7)
- Summary of Impacts (ES-8)

A comparative summary of the impacts of the Project and the alternatives to the Project is provided in Table 2-1, in Chapter 2. The EIR assesses the direct, indirect, and cumulative environmental impacts that could occur as a result of constructing, operating, and maintaining the Project. These analyses are based upon information submitted by Valero in its application for a Use Permit to the City of Benicia for the Project. This EIR is an informational document that, in itself, does not determine whether the Project should be approved, but informs local officials in the planning and decision-making process.

ES-2 Project Objectives

The Valero Benicia Refinery (Refinery) converts crude oil into finished products, including gasoline, jet fuel, liquefied petroleum gas, heating oil, fuel oil, asphalt, petroleum coke, and sulfur. The Project would provide an alternate means of delivering crude oil feedstock to the Refinery. The Project has the following objectives:

1. Allow for the delivery of up to 70,000 barrels per day of North American-sourced crude oil by rail.
2. Replace marine vessel delivery with rail delivery of up to 70,000 barrels per day of crude oil.

3. Mitigate project-related impacts.
4. Implement the Project without changing existing Refinery process equipment or Refinery process operations, other than operation of the Project components.
5. Continue to meet requirements of existing rules and regulations pertaining to oil refining including the State of California Global Warming Solutions Act of 2006 (AB 32).

ES-3 Project Setting and Location

The Refinery is located at 3400 East Second Street, an industrial area in the eastern portion of the City of Benicia, in Solano County. The Refinery lies in a general north-south orientation near and west of Interstate 680. The Refinery is located along the northern edge of the Suisun Bay below a low range of coastal hills. To the west of East Second Street is open space, and the closest residential areas are approximately 3,000 feet to the south and west of the Refinery, and approximately 2,100 feet to the northwest of the Project site. Refinery operations occupy approximately 330 acres of the 880 acre Valero property.

The Refinery dock is located on the Carquinez Strait between the Benicia-Martinez Bridge and the Port of Benicia wharf. The Refinery's marine terminal and pipeline to the Refinery provide access for receiving and shipping bulk cargoes by marine vessel. The existing Union Pacific Railroad (UPRR) rail line provides rail access for the Refinery and for the Benicia Industrial Park. The Benicia Industrial Park is located east and north of the Refinery. Presently, the Refinery uses tank cars to receive chemicals used in refining and to ship refined products from the Refinery.

A new tank car unloading rack capable of unloading two parallel rows of tank cars (one on each side) and transferring crude oil to the Refinery would be installed as part of the Project in the northeastern portion of the main Refinery property, between the eastern side of the lower tank farm and the fence adjacent to Sulphur Springs Creek.

The new tank car unloading facilities would include a liquid spill containment sump with the capacity to contain the contents of at least one tank car. In addition, the existing liquid spill containment for tanks abutting the tank car unloading facilities would be modified to allow installation of the unloading facilities. Part of the existing containment berm for the tank field would be removed and a new concrete berm would be constructed approximately 12 feet west of the existing earthen berm.

The Project would install approximately 8,880 track-feet of new track on Refinery property. Three new track turnouts and one crossover would be installed. The Project would also realign approximately 3,560 track-feet located on Refinery property.

New rail spurs and parallel storage and departure spur would be constructed between the eastern side of the lower tank farm and the western side of the fence along Sulphur Springs Creek.

Ancillary facilities affected by the Project would include crude oil offloading pumps and pipeline and associated infrastructure, spill containment structures, a firewater pipeline, groundwater wells, and a service road.

ES-4 Project Description

Overview

The purpose of the Project is to install new equipment, pipelines, and infrastructure to allow the Refinery to receive a portion of its crude oil feedstock deliveries by tank car.

The Project would allow Valero to accept up to 100 tank cars of crude oil a day in two 50-car trains. The trains would enter the Refinery on an existing rail spur that crosses Park Road. The crude oil unloaded from the tank cars would be pumped to the existing crude oil storage tanks in the Refinery via a new crude offloading pipeline, connected to existing piping located within the Refinery. Valero would ask UPRR to schedule Valero's trains so that none of them cross Park Road during the commute hours of 6:00 AM to 9:00 AM and 4:00 PM to 6:00 PM. Valero would operate the Project components 24 hours per day, 7 days per week, and 365 days per year.

Based on Valero's plans, the crude oil delivered by rail would displace up to 70,000 barrels per day of the crude oil that is presently delivered by marine vessels. Crude oil delivered to the Refinery by tank car would not displace crude oil delivered to the Refinery by pipeline.

The crude oil to arrive by tank car would originate at sites in North America and be shipped by UPRR. UPRR would transport tank cars on existing rail lines from sources in North America to Roseville, California, where the cars would be assembled into a train for shipment into the Refinery. Valero would own or lease the tank cars that would be used to transport crude oil from Roseville to Benicia. Under regulations adopted by the Pipeline and Hazardous Materials Safety Administration (PHMSA), crude oil shipped by rail must be shipped in tank cars built to the "DOT-111" specification. In 2011, the Association of American Railroads voluntarily imposed more stringent standards on the design of DOT-111 tank cars. Tank cars that meet these new standards are generally known by the number "1232," and are referred to herein as "1232 Tank cars." All DOT-111 tank cars ordered after October 1, 2011 must meet the standards for 1232 Tank cars. DOT-111 tank cars ordered before 2011 that do not meet the standards for 1232 Tank cars are commonly known as "legacy" DOT-111 tank cars. Valero has committed that, when the PHMSA regulations call for use of a DOT-111 car, Valero would use 1232 Tank cars rather than legacy DOT-111 cars. See Section 3.4.1.3, in the *Project Description* for further discussion of tank cars. UPRR owns and operates the locomotives that would be used to transport the tank cars from Roseville to Benicia.

The Project would not involve any changes to the existing Refinery operations or process equipment, other than the construction and operation of the Project components. The Project would not increase the amount of crude oil that can be processed at the refinery, or the amounts of petroleum products that can be produced. The Project does not propose any change to the Bay

Area Air Quality Management District (BAAQMD) operating permit regarding the Refinery's crude oil processing rate. The Project does not propose changes to the emissions limits in the current BAAQMD permits, although the Project does require approval of an Authority to Construct from the BAAQMD.

Project Components

The Project would consist of the following primary components:

- Installation of a single tank car unloading rack capable of offloading two parallel rows of 25 crude oil railcars.
- Construction of two parallel, offloading rail spurs to access the tank car unloading rack along with a parallel departure track to store tank cars in preparation for departure, for a total of 8,880 track-feet of new track on Refinery property.
- Installation of approximately 4,000 feet of 16-inch diameter crude oil pipeline and associated components and infrastructure between the offloading rack to the existing crude supply piping.
- Replacement and relocation of approximately 1,800 feet of tank farm dikes.
- Relocation of an existing firewater pipeline, compressor station, and underground infrastructure.
- Relocation of groundwater wells along Avenue "A."
- Construction of a service road adjacent to the proposed unloading rack.

The Refinery proposes to begin construction in 2014 and to commence operations in late-2014 or early 2015. Construction is expected to take approximately 25 weeks. The Project would require twenty additional employees or contractors.

ES-5 Alternatives

No Project Alternative

Under the No Project alternative, the Project would not be constructed, which would prevent crude oil from being transported to the Refinery via tank car. The Refinery's existing facilities at the site of the proposed unloading racks and spurs would remain and the Refinery would continue to use marine vessels to import crude oil. The amount of California crude oil delivered to the Refinery by pipeline would remain unchanged. Air emissions (both criteria pollutants and greenhouse gases) from marine vessels that transport crude oil would remain unchanged, because there would be no reduction in marine vessel trips.

Compared to the Project, the No Project alternative would result in higher emissions of criteria pollutants and greenhouse gases within California. Global greenhouse gas emissions would be higher with the No Project alternative than with the Project. The No Project alternative would have no impact to the Sacramento Air Quality Management District or the Yolo-Solano Air Quality Management District. Valero would not be able to achieve most of its Project objectives.

Reduced-Project Alternatives

A reduced-project alternative considers components of the Project that could potentially be eliminated or reduced from the full Project scope. Two reduced-project alternatives are analyzed in the EIR:

Alternative 1: Limiting Project to One 50-Car Train Delivery per Day

Under this alternative the Project would operate with a 50% reduction in the proposed number of train deliveries to the Refinery per day. Deliveries would be limited to a maximum of one¹ 50-car train each day, containing a daily total of 35,000 barrels. This single train would be delivered during nighttime hours (between 8:00 p.m. and 5:00 a.m.) and once emptied, would depart the Refinery during nighttime hours and be returned to its origination point. All other aspects of this alternative would be the same as the Project.

For most of the environmental topics, this alternative would have essentially the same impacts as the Project. For Air Quality and Greenhouse Gas emissions, this alternative would reduce air emissions from trains but would result in smaller reductions in air emissions from marine vessels. Although most emissions from both the Project and this alternative would not exceed any levels of significance, both would still result in a significant offsite impact for NO_x, while overall emissions reductions for this alternative would be less than for the Project. This alternative may lessen the likelihood of potential impacts to local traffic at Park Road in Benicia's Industrial Park area during peak traffic times. There is a larger window for achieving a scheduled Park Road train crossing within the longer off-peak nighttime hours. This alternative would not allow Valero to fully achieve the primary Project objectives 1 and 2, but would still fulfill Project objectives 3 through 5.

UPRR has taken the position that any limitation on the volume of product shipped or the frequency, route, or configuration of such shipments is clearly preempted under federal law. UPRR has summarized its position in a statement set forth in Appendix L. Thus, Alternative 1 may be legally infeasible.

Alternative 2: Two 50-Car Trains Delivered during Nighttime Hours

Under this alternative the Project would be required to schedule all Park Road train crossings during nighttime hours only (between 8:00 p.m. and 6:00 a.m.). This could be accomplished

¹ This means that one 50-car train would be delivered for unloading each day and after unloading the 50-car train would return to its origination point.

through either a single 100-car train or sequencing two 50-car trains such that they are delivered and subsequently depart only during nighttime hours. All other aspects of this alternative would be the same as the Project.

As with the single 50-car alternative describe above, for most environmental topics, this alternative would have essentially the same impacts as the Project.

The exception to this would be the increased potential for local noise effects. The Project's nighttime noise impacts at the Refinery would be less than significant. Under this alternative, while the noise levels from train movements would be the same, if all trains were brought in and depart during nighttime the potential noise duration would be greater than that of the Project. As under the 50-car reduced-project alternative, this alternative would lessen potential impacts to local traffic by restricting the time of day when the trains are scheduled to arrive and depart. However, some tank car deliveries could extend beyond its scheduled delivery window into peak traffic times as compared to one nighttime and one day time delivery. This alternative would still allow Valero to achieve most of its Project objectives.

Alternative 3: Offsite Unloading Terminal

This alternative would consist of a separate, offsite facility where crude oil could be shipped by either marine vessel or rail, and then transferred to the Refinery presumably by a new pipeline. There are two variations to this alternative: 1) offsite terminal would be developed and operated by Valero, and 2) offsite terminal would be independently developed and operated by a third party. Most of the impacts identified for the Project would occur at a Valero-owned offsite terminal, although through thoughtful siting, potential impacts to local traffic flow could likely be reduced. Locating the unloading racks at a new facility outside the Refinery would involve greater construction impacts for the facility itself than would occur if the unloading racks were within the Valero Refinery.

Under the third-party operator variant, new or existing infrastructure could be developed to receive crude oil and transfer it to Valero via new pipeline. In this case it is likely that new CEQA review would be required for the offsite facility, and the pipeline to Valero would have to be considered within this analysis as a direct impact of the project.

There are many unknowns under this alternative, including whether this would be a new facility or an existing one, and how far away this facility would be from the Refinery. The requirement for a new pipeline from this offsite facility alone would include substantive environmental impacts from all construction activities (e.g., air quality, greenhouse gas emissions, noise, biological and cultural resources), which could exceed those of construction of the Project. Either variant of this alternative would simply add the impacts of the new pipeline construction and operation to the impacts of a tank car unloading facility, but at a different location. Thus, this alternative's overall impacts would be at least somewhat greater than those of the Project. Although this alternative would meet all objectives of the Project and could reduce the impacts to

the local Refinery / Benicia area, many of these same impacts would be simply transferred to another location.

ES-6 Environmentally Superior Alternative

CEQA Guidelines Section 15126.6(e)(2) requires an EIR to identify an environmentally superior alternative. If the environmentally superior alternative is the No Project Alternative, the EIR also must identify an environmentally superior alternative from among the other alternatives. In general, the environmentally superior alternative is defined as that alternative with the least adverse impacts to the Project area and its surrounding environment.

As explained in Section 6.4.2, Alternative 1 (reducing the Project to single 50-car train per day) is environmentally superior to the Project in a few respects. Alternative 1 would reduce the emission of criteria pollutants, toxic air emissions, and greenhouse gases from trains as compared with the Project, and avoid the Project's significant NOx impact in the Sacramento Metro AQMD. However, for the reasons described above, this alternative may be legally infeasible because of federal preemption. Alternative 1 would also reduce the impacts of train crossings on traffic. Since the Project would not have a significant effect on traffic, however, Alternative 1 would not avoid any significant traffic effect.

The Project, however, is environmentally superior to Alternative 1 with respect to overall air quality. Alternative 1 would result in greater emissions of criteria pollutants, toxic air emissions, and greenhouse gases than the Project overall, because Alternative 1 involves 50% more emissions of these same pollutants from marine vessels.

ES-7 Areas of Controversy and Issues to be Resolved

Areas of controversy known to lead agencies, including issues raised by agencies and the public, must be identified in the Executive Summary of an EIR (CEQA Guidelines Section 15123). The scoping phase of the EIR, conducted between August 9, 2013 and September 13, 2013, identified the following key areas of concern for consideration in the EIR:

- Properties and parameters of crude oil to be transported and refined;
- Relationship of the Project to the Valero Improvement Project;
- Effects of train operations on local streets and I-680;
- Construction, operation, and transportation-related effects on air quality;
- Potential effects on biological resources in Sulphur Springs Creek and the Suisun Marsh;
- Potential hazardous materials releases resulting from an accident;
- Emergency response procedures and responsibility during an accident;
- Range of potential effects from extraction of crude oil at its source through its transportation to the Refinery.

Issues to be resolved, including a choice among alternatives, and whether and how to mitigate potential significant impacts, also must be identified in an Executive Summary (CEQA Guidelines Section 15123). The main issue to be resolved in this EIR is which among the alternatives would meet most of the basic Project objectives with the least environmental impact. Balancing sometimes competing environmental values can be challenging because it rests on assumptions of relative value.

Decision-makers may elect to balance relative values of environmental resources and, thereby, resolve the issues considered in this EIR with a different conclusion than the one summarized in Section ES-6 and discussed in Section 6.4.4, *Environmentally Superior Alternative*.

ES-8 Summary of Impacts

Resource Areas Evaluated

This section summarizes the potential impacts resulting from implementation of the Project or alternatives. The affected environment and the potential direct and indirect effects of the Project are described and evaluated in Chapter 4 of this EIR for the resource areas listed below. Other CEQA considerations, including the cumulative impact analysis, are in Chapter 5, and the alternatives analysis is in Chapter 6. Chapter 4 is organized into the following 11 environmental resource or issue areas:

- | | |
|------------------------------|-------------------------------------|
| 4.1 Air Quality | 4.7 Hazards and Hazardous Materials |
| 4.2 Biological Resources | 4.8 Hydrology and Water Quality |
| 4.3 Cultural Resources | 4.9 Land Use and Planning |
| 4.4 Energy Conservation | 4.10 Noise |
| 4.5 Geology and Soils | 4.11 Transportation and Traffic |
| 4.6 Greenhouse Gas Emissions | |

A detailed analysis of each environmental topic, each potential impact and the mitigation measure(s) needed, if any, is contained in Chapter 4.

Summary of Impacts

Implementing the Project could result in the potential for impacts to occur to the resources listed above. The Project would result in no impact or less-than-significant impacts to 10 of these 11 environmental resource or issue areas. The Project would result in significant and unavoidable impacts to Air Quality. Where significant impacts are identified, feasible mitigation measures are proposed that would reduce each of these potential impacts to a less-than-significant level.

A summary table (Table 2-1 in Chapter 2) provides an overview of each impact of the Project and the mitigation measure needed, if any, to reduce the impact to a less-than-significant level, for each of the resource areas assessed in this EIR.

**TABLE 2-1
SUMMARY OF IMPACTS AND MITIGATION MEASURES FOR THE VALERO BENICIA CRUDE BY RAIL PROJECT**

Environmental Impact	Significance before Mitigation	Mitigation Measures	Significance after Mitigation
Air Quality			
Impact 4.1-1a: Construction of the Project would contribute to an existing or projected air quality violation.	Potentially Significant	<p>Mitigation Measure 4.1-1: Implement BAAQMD Basic Mitigation Measures. Valero and/or its construction contractors shall comply with the following applicable BAAQMD basic control measures during Project construction:</p> <ul style="list-style-type: none"> • All exposed dirt non-work surfaces (e.g., parking areas, staging areas, soil piles, and graded areas, and unpaved access roads) shall be watered two times a day. • All haul trucks transporting soil, sand, or other loose material off-site shall be covered. • All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited. • All vehicle speeds on unpaved roads shall be limited to 15 mph. • Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes (as required by the California Airborne Toxics Control Measure Title 13, Section 2485 of California of Regulations). Clear signage shall be provided for construction workers at all access points. • All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation. • A publicly visible sign with the telephone number and person to contact at the City of Benicia regarding dust complaints shall be posted throughout construction. Valero and/or contractor shall respond and take corrective action within 48 hours of notification by the City. The BAAQMD's phone number shall also be visible to ensure compliance with applicable regulations. 	Less than Significant
Impact 4.1-1b: Operation of the Project would contribute to an existing or projected air quality violation.	Potentially Significant	None available.	Significant and Unavoidable
Impact 4.1-2: The Project could result in a cumulatively considerable net increase in criteria pollutant and ozone precursor emissions.	Potentially Significant	None available.	Significant and Unavoidable
Impact 4.1-3: The Project could expose sensitive receptors to substantial pollutant concentrations.	Less than Significant	None required	Less than Significant
Impact 4.1-4: The Project could generate objectionable odors affecting a substantial number of people.	Less than Significant	None required	Less than Significant

TABLE 2-1 (continued)
SUMMARY OF IMPACTS AND MITIGATION MEASURES FOR THE VALERO BENICIA CRUDE BY RAIL PROJECT

Environmental Impact	Significance before Mitigation	Mitigation Measures	Significance after Mitigation
Biological Resources			
Impact 4.2-1: The Project could have a substantial adverse effect on nesting birds in the Sulphur Springs Creek riparian corridor.	Potentially Significant	Mitigation Measure 4.2-1: Project construction activities should avoid the nesting season of February 15 through August 31, if feasible. If seasonal avoidance is not possible then no sooner than 30 days prior to the start of any Project activity a biologist experienced in conducting nesting bird surveys shall survey the Project area and all accessible areas within 500 feet. If nesting birds are identified, the biologist shall implement a suitable protective buffer around the nest and no activities shall occur within this buffered area. Typical buffers are 250 feet for songbirds and 500 feet for raptors, but may be increased or decreased according to site-specific, Project-specific, activity-specific considerations such as visual barriers between the nest and the activity, decibel levels associated with the activity, and the species of nesting bird and its tolerance of the activity. Construction activities that are conducted within a reduced buffer shall be conducted in the presence of a qualified full-time biological monitor.	Less than Significant
Impact 4.2-2: The Project could have a substantial adverse effect on the Sulphur Springs Creek riparian corridor.	Potentially Significant	Implement Mitigation Measure 4.8-1	Less than Significant
Impact 4.2-3: The Project could have a substantial adverse effect on federally protected wetlands.	Potentially Significant	Implement Mitigation Measure 4.8-1	Less than Significant
Impact 4.2-4: The Project could interfere with wildlife movement in the Sulphur Spring Creek riparian corridor	Less than Significant	None required	Less than Significant
Impact 4.2-5: The Project may not be in conformance with applicable habitat conservation plans.	No impact	None required	No impact
Impact 4.2-6: The Project could have a substantial adverse effect on special-status wildlife species in the Suisun Marsh disturbed by an increased frequency (high traffic volumes) of tank cars through the marsh.	Less than Significant	None required	Less than Significant
Impact 4.2-7: In the event of a train accident that involves a relatively large amount of oil spilled from one or more tank cars, the Project could have a substantial adverse effect on special-status natural communities and special-status species, including those present in the Suisun Marsh.	Less than Significant	None required	Less than Significant

TABLE 2-1 (continued)
SUMMARY OF IMPACTS AND MITIGATION MEASURES FOR THE VALERO BENICIA CRUDE BY RAIL PROJECT

Environmental Impact	Significance before Mitigation	Mitigation Measures	Significance after Mitigation
Biological Resources (cont.)			
Impact 4.2-8: The Project could have a substantial adverse effect on federally protected wetlands.	Less than Significant	None required	Less than Significant
Impact 4.2-9: The Project may not be in conformance with applicable habitat conservation plans.	Less than Significant	None required	Less than Significant
Cultural Resources			
No impacts			
Energy Conservation			
Impact 4.4-1: Construction and operation and maintenance of the Project would result in consumption of energy and could cause adverse effect on local and regional energy supplies or requirements.	Potentially Significant	Implement Mitigation Measure 4.1-1	Less than Significant
Impact 4.4-2: Transportation energy usage for the Project could result in wasteful or unnecessary consumption of energy.	Less than Significant	None required	Less than Significant
Geology and Soils			
Impact 4.5-1: The Project would not expose people or structures to potential adverse effects involving rupture of a known earthquake fault.	Less than Significant	None required	Less than Significant
Impact 4.5-2: The Project would not expose people or structures to potential adverse effects involving strong seismic ground shaking.	Less than Significant	None required	Less than Significant
Impact 4.5-3: The Project would not expose people or structures to potential adverse effects involving seismic-related ground failure, including liquefaction	Potentially Significant	Mitigation Measure 4.5-1: Consistent with the geotechnical investigations and deformation analysis conducted to evaluate the potential for liquefaction hazards, the Valero Benicia Refinery shall incorporate into the final project design all recommendations to overcome lateral displacement, horizontal ground separation, and vertical settlement as provided by the licensed geotechnical engineer. Specifically, the Valero Benicia Refinery, in its design of the railroad project element located in areas identified as underlain by liquefiable or problematic	Less than Significant

TABLE 2-1 (continued)
SUMMARY OF IMPACTS AND MITIGATION MEASURES FOR THE VALERO BENICIA CRUDE BY RAIL PROJECT

Environmental Impact	Significance before Mitigation	Mitigation Measures	Significance after Mitigation
Geology and Soils (cont.)			
Impact 4.5-3 (cont.)		soils, shall design for total seismic lateral displacements of 8 inches to 39 inches. Railroad ties and slabs shall be analyzed to evaluate the effect of up to a 6 inch wide horizontal ground separation and all recommendations to overcome such horizontal ground separation provided by the licensed geotechnical engineer incorporate into the final project design. A differential settlement of 2 inches across the gage width shall be analyzed to evaluate rail car tipping potential and all recommendations provided by the licensed geotechnical engineer incorporate into the final project design. All geotechnical design shall comply with seismic design requirements of CBC. Mitigation Measure 4.5-2: Valero Benicia Refinery shall include into its current track inspection program, regular and, in the event of a seismic incident with potential for track damage, post-earthquake inspections of the proposed track sections to ensure compliance with Federal Railroad Administration (FRA) track safety standards. Additionally, in the event of an incident with potential for track damage, such as an earthquake and associated secondary ground failure (such as liquefaction or lateral spreading) track inspection shall occur after the occurrence and before the operation of any train over that track.	
Impact 4.5-4: The Project would not expose people or structures to potential adverse effects involving landslides.	Less than Significant	None required	Less than Significant
Impact 4.5-5: The Project would not result in substantial soil erosion or loss of topsoil.	Less than Significant	None required	Less than Significant
Impact 4.5-6: The Project would not be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in liquefaction.	Less than Significant	None required	Less than Significant
Impact 4.5-7: The Project would be located on expansive soil.	Less than Significant	None required	Less than Significant
Greenhouse Gas Emissions			
Impact 4.6-1: The Project would generate direct and indirect GHG emissions.	Less than Significant	None required	Less than Significant
Hazards and Hazardous Materials			
Impact 4.7-1: The Project could pose a significant hazard to the public or environment during operation of the Project or routine transport or disposal of hazardous materials.	Less than Significant	None required	Less than Significant

**TABLE 2-1 (continued)
SUMMARY OF IMPACTS AND MITIGATION MEASURES FOR THE VALERO BENICIA CRUDE BY RAIL PROJECT**

Environmental Impact	Significance before Mitigation	Mitigation Measures	Significance after Mitigation
Impact 4.7-2: The Project could pose significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment.	Less than Significant	None required	Less than Significant
Impact 4.7-3: The Project could create a hazard to the public or environment through reasonably foreseeable upset or accident conditions during train maneuver at the rail unloading facility.	Less than Significant	None required	Less than Significant
Impact 4.7-4: The Project could create a hazard to the public or the environment through reasonably foreseeable upset or accident conditions during the line hookup and crude oil transfer from a tank car at the unloading facility.	Less than Significant	None required	Less than Significant
Impact 4.7-5: The Project could create a hazard to the public or the environment through reasonably foreseeable upset or accident conditions due to corrosion of process related equipment handling crude oil.	Less than Significant	None required	Less than Significant
Impact 4.7-6: Operation of the Project could emit hazardous emissions or handle hazardous or acutely hazardous materials, substances or waste within one-quarter mile of an existing or proposed school.	Less than Significant	None required	Less than Significant
Impact 4.7-7: The Project could impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan.	Potentially Significant	Implement Mitigation Measure 4.11-4	Less than Significant
Impact 4.7-8: Operation of the Project could expose people or structures to significant risk, injury, or loss from wildland fires.	Less than Significant	None required	Less than Significant

TABLE 2-1 (continued)
SUMMARY OF IMPACTS AND MITIGATION MEASURES FOR THE VALERO BENICIA CRUDE BY RAIL PROJECT

Environmental Impact	Significance before Mitigation	Mitigation Measures	Significance after Mitigation
Hydrology and Water Quality			
Impact 4.8-1: The Project would not violate any water quality standards or otherwise substantially degrade water quality.	Potentially Significant	Mitigation Measure 4.8-1: The Applicant and/or its contractor shall prepare and implement a storm water management plan (SWMP) for construction of the Project. The Project is covered under the Applicant's National Pollutant Discharge Elimination System (NPDES) permit and storm water pollution prevention plan (SWPPP). A notice of intent (NOI) application and notice of termination (NOT) application are not required. Implementation of the SWMP shall start with the commencement of construction and continue through the completion of the Project. The SWMP shall identify pollutant sources (such as sediment) that may affect the quality of storm water discharge and implement best management practices (BMPs) consistent with the California Stormwater Quality Association's BMP Handbook for Construction to reduce pollutants in storm water. The Applicant or the construction contractor shall install erosion and storm water control measures on the construction site such as installation of a silt fence and other BMPs, particularly at locations close to storm drains and water bodies. The BMPs shall also include practices for proper handling of chemicals such as avoiding fueling at the construction site and overtopping during fueling and installing spill containment pans.	Less than Significant
Impact 4.8-2: The Project could require withdrawal of groundwater or result in a substantial increase in impervious surface area within the Refinery.	Less than Significant	None required	Less than Significant
Impact 4.8-3: The Project could alter streams or the existing drainage within the Refinery.	Less than Significant	None required	Less than Significant
Impact 4.8-4: The Project could substantially change runoff flow rates or increase the potential for flooding.	Less than Significant	None required	Less than Significant
Impact 4.8-5: The Project could increase storm water runoff.	Less than Significant	None required	Less than Significant
Impact 4.8-6: The Project could place structures within a 100-year flood hazard areas at risk.	Less than Significant	None required	Less than Significant
Impact 4.8-7: The Project could place people or structures within inundation areas for flooding.	Less than Significant	None required	Less than Significant
Land Use and Planning			
Impact 4.9-1: The Project would not physically divide an established community.	Less than Significant	None required	Less than Significant
Impact 4.9-2: The Project would be in conformance with applicable regional or local plans and policies adopted for the purpose of avoiding or mitigating environmental effects.	Less than Significant	None required	Less than Significant

TABLE 2-1 (continued)
SUMMARY OF IMPACTS AND MITIGATION MEASURES FOR THE VALERO BENICIA CRUDE BY RAIL PROJECT

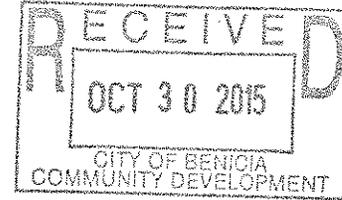
Environmental Impact	Significance before Mitigation	Mitigation Measures	Significance after Mitigation
Noise			
Impact 4.10-1: Operation and maintenance of the Project could result in exposure of persons to noise levels in excess of standards established by the City of Benicia.	Less than Significant	None required	Less than Significant
Impact 4.10-2: The Project would result in the generation of ground borne vibration.	Less than Significant	None required	Less than Significant
Impact 4.10-3: Operation of the Project could result in exposure of persons to a permanent increase in ambient noise levels.	Less than Significant	None required	Less than Significant
Impact 4.10-4: Construction of the Project would not result in a substantial temporary or periodic increase in ambient noise levels.	Less than Significant	None required	Less than Significant
Transportation and Traffic			
Impact 4.11-1: The Project would not cause intersection operations to degrade to worse than LOS D, would not cause a substantial increase in traffic volumes at intersections already operating at LOS F with the Project, would not cause a substantial increase in average vehicle delay at train crossings, and would not cause an increase in the queue length caused by trains crossing Park Road that substantially impedes other traffic (such as traffic on the I-580 mainline, or at an adjacent upstream intersection wherein traffic not destined over the Park Road crossing is unable to continue along the travel way).	Less than Significant	None required	Less than Significant
Impact 4.11-2: The Project would not conflict with the Solano County Congestion Management Program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways.	Less than Significant	None required	Less than Significant

TABLE 2-1 (continued)
SUMMARY OF IMPACTS AND MITIGATION MEASURES FOR THE VALERO BENICIA CRUDE BY RAIL PROJECT

Environmental Impact	Significance before Mitigation	Mitigation Measures	Significance after Mitigation
Transportation and Traffic (cont.)			
Impact 4.11-3: The Project would not substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment), or due to the proposed increased frequency/length of train crossings.	Less than Significant	None required	Less than Significant
Impact 4.11-4: The Project would not result in inadequate emergency access.	Potentially Significant	<p>Mitigation Measure 4.11-4:</p> <ul style="list-style-type: none"> Coordinate with the City of Benicia Fire Department to finalize the City of Benicia Fire Department/Valero Benicia Refinery Fire Department Operation Aid Agreement ("Agreement") to be implemented in the event an emergency occurs during a Project train crossing. The "Agreement" shall provide methods of adequately informing the Fire Department of the expected train crossing schedule and alternate routes to access the Park Road and Bayshore Road industrial areas during the event that a train crosses Park Road. In order to inform Benicia Dispatch of a train crossing during an emergency, Valero shall provide, install, and maintain camera(s) at specified location(s) determined by the City, with coordination from Valero. The camera shall meet the City's standards and have a real-time connection to Benicia Dispatch. The camera connection will signal to Benicia Dispatch that emergency responders shall use East 2nd Street as the identified alternative route to the Park Road and Bayshore Road industrial areas. East 2nd Street was identified for its direct access to area and the Opticom system in place at all signalized intersections. The camera must be installed and operational prior to commencement of the Project or certificate of occupancy. In order to minimize potential impacts associated with utilizing the alternative route, Valero shall provide the necessary devices for the City's emergency response vehicles that are not equipped for the Opticom system. The emergency response vehicles identified to receive a device shall be those without the necessary device as of the date the "Agreement" is executed. Valero shall be responsible for the maintenance of the camera during the life of the Project. Utilize the Refinery's existing onsite emergency response team to assist with responding to off-site emergencies within the Park Road and Bayshore Road industrial areas as requested by the City of Benicia Fire Department under the existing mutual aid agreement, if an emergency occurs during the event of a train crossing on Park Road. The procedures for the occurrence of this support by the Valero Refinery Fire personnel are outlined in the proposed Benicia Fire-Valero Fire Operational Aid Agreement. 	Less than Significant
Transportation and Traffic (cont.)			
Impact 4.11-5: The Project would not conflict with adopted policies, plans or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities.	Less than Significant	None required	Less than Significant

October 30, 2015

Amy Million, Principal Planner
Community Development Department
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Benicia, CA 94510
SENT VIA E-MAIL: amillion@ci.benicia.ca.us



RE: Valero Crude by Rail Project, Recirculated Draft Environmental Impact Report (RDEIR)

Ms. Million,

The Placer County Air Pollution Control District (PCAPCD) has reviewed the RDEIR and revised air quality analyses prepared for the Valero Crude by Rail Project (Project). The PCAPCD provides the following comments on the RDEIR for consideration.

Incomplete Analysis for Project-related Operational Emissions Occurring in Placer County and Northern California

The PCAPCD appreciates the City's consideration of our previous comments to analyze operational emissions resulting from the Project-related locomotive trips for transport of the crude oil delivered from north and east of the County boundary line to the Roseville Railyard. Table 4.1-14 of the RDEIR indicates that for this part of the delivery, the Project would emit an additional 527.4 lbs/day into the Placer County and will therefore result in a significant and unavoidable impact for air quality in the PCAPCD's region. The total combined emissions provided in Tables 4.1-12, 13, and 14, indicate that as much as 692 pounds (lbs) of ozone precursor emissions per day would be added into the PCAPCD's air basins, well above the PCAPCD's significant threshold of 82 lbs/day. The RDEIR however, falls short of any commitments to mitigate this impact or to analyze the feasibility of the described measures. As previously stated, Placer County is designated as nonattainment for the federal and state ozone standards^{1,2}. Without the necessary mitigation and commitments from the project proponents, the Project will result in a substantial contribution of ozone precursors in Placer County and the region and will undermine the PCAPCD's efforts to reach attainment of the State and Federal Standards.

Additionally, on page 2-38, the RDEIR incorrectly states that the PCAPCD's off-site mitigation program would exclude any trigger for payment which could be met by UPRR's operation and therefore would not apply to the Project. The PCAPCD disagrees. There are various options which would allow the project applicant (not UPRR) to mitigate the Project's emissions by payment into the program, such as through a Memorandum of Understanding or other binding agreement enforceable by the courts. The PCAPCD recognizes that the City of Benicia may lack the ability to regulate the existing operations at the Roseville Railyard, but the preemption does not preclude the applicant's and the City's responsibility to identify feasible mitigation to reduce the Project's significant impact on air quality.

Reconciliation of the No Project Alternative Conclusion

The PCAPCD's previous comment does not appear to have been addressed in the RDEIR.

Section 6.4.1 of the DEIR states that the No Project Alternative would emit higher GHG emissions

1 Area designation map for federal ozone standards http://www.arb.ca.gov/degis/adm/2013/fed_o3.pdf

2 Area designation map for state ozone standards http://www.arb.ca.gov/degis/adm/2013/state_o3.pdf

October 30, 2015
Page 2 of 2

compared to the Project³. However, in Section 4.6, the DEIR indicates that the Project's Operational Emissions in California would have higher GHG emissions compared to the baseline emissions analysis⁴. The District recommends the DEIR reconcile the conflicting conclusions.

The PCAPCD appreciates the opportunity to comment on the DEIR prepared for the Valero Crude Oil Project. We would like to request future notification on the progress relating to the Project and request written responses to all comments contained herein prior to the certification of the Final Environmental Impact Report.

If there are any questions regarding the comments made within, please do not hesitate to contact me at 530.745.2333 or agreen@placer.ca.gov.

Best Regards,



Angel Green
Associate Planner
Planning & Monitoring Section

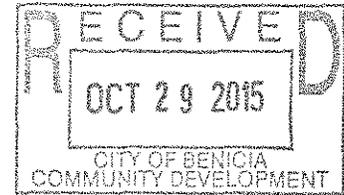
cc: Yushuo Chang, Planning & Monitoring Section Supervisor

³ DEIR Section 6.4.1 No project Alternative discussion page 6-6

⁴ DEIR Section 4.6 Table 4.6-5 PROJECT ANNUAL NET GHG EMISSIONS GENERATED WITHIN CALIFORNIA



BENICIA INDUSTRIAL PARK ASSOCIATION
A COMMITTEE OF THE BENICIA CHAMBER OF COMMERCE
601 First Street, Suite 100, Benicia CA 94510
707-745-2120 / Fax 707-745-2275
www.beniciaipa.org / email: beniciachamber@aol.com



TO: Benicia Planning Commissioners, Mayor and City Council Members
FROM: Jasmin Powell, President, Benicia Industrial Park Association (BIPA)
DATE: October 28, 2015
RE: Support Valero Crude By Rail Project

The Benicia Industrial Park is a vital economic segment of the city of Benicia. The Benicia Industrial Park is the largest Industrial Park in Solano County. It comprises over 600 businesses with varied focus including warehousing, manufacturing, transportation and oil refining. Any business owner will tell you that in order to succeed, you must constantly strive to increase revenue and decrease costs, without affecting the quality of your product or risking the safety of your people. This is exactly what Valero, Benicia's largest business, is trying to do with their proposed Crude by Rail project.

The Benicia Industrial Park Association is in favor of this project based on the following:

This is a logistical change from ship to rail.

Valero currently brings in its crude oil via ship from all over the world. The project would allow Valero the ability to bring in domestic crude oil from the U.S. via railcar.

Valero, like all businesses, needs to find ways to remain competitive.

It is crucial that Valero be allowed to access new sources of crude oil and be allowed to transport the crude by rail, ensuring that Benicia's largest employer will remain competitive with nearby refineries.

Valero's refining process is not changing.

The kinds of crude Valero processes, which are under stringent environmental and air quality requirements, will not change. It will not affect refinery operations, alter the refinery's crude feedstock profile or change the amount of crude coming into the city. It will maintain current compliance with Bay Area Air Quality Management District permit levels and could actually reduce air emissions in the local air basin.

Valero has an outstanding safety record.

Valero has such a high safety history and safety standards, that Valero has earned the Cal/OSHA VPP Star Site designation. There are only two refineries in the state that hold this designation. The other is also a Valero refinery located in Southern California. This is proof that Valero goes above and beyond when it comes to setting and maintaining a safe work environment for the company and employees. This commitment is further demonstrated by their commitment to use only improved design railcars and not the legacy DOT 111 cars. Valero has proven that safety is of the utmost importance to them and to our community.

Federal Rail Safety is improving.

Federal regulators and railroad companies recently agreed to a number of new safety measures for crude transport, including increasing track inspections, implementing new, more advanced braking

systems, using a new rail traffic routing technology to better determine the most safe and secure routes, and implementing new speed reduction protocols, among others. Agreements such as this are an important step for quick action that will ensure the railways continue to transport both people and goods in the safest way possible.

Valero's complete cooperation

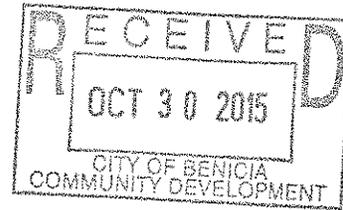
Valero initially submitted its Land Use Permit in December of 2012. Since that time, Valero has cooperated fully and openly with the City and community of Benicia. The City released its Draft Environmental Impact Report (DEIR) in June of 2014. The California Environmental Quality Act (CEQA) requires this document to consider many factors, including air quality, hazards/safety and transportation/traffic, among others. This DEIR is available for anyone to access and is the best source of factual information with regard to this project and its potential impacts on our local community and the surrounding area.

This is an infrastructure project that will install rail tracks and an unloading rack on Valero's property with the capability to safely replace marine delivery of crude with rail delivery. The Valero Benicia Refinery is a vital part of our local economy and the largest contributor to Benicia's General Fund. The Benicia Industrial Park Association supports this project.

VIA EMAIL

amillion@ci.benicia.ca.us

October 30, 2015



Amy Million, Principal Planner
Community Development Department
City of Benicia
250 East L Street
Benicia, CA 94510

Re: Benicians for a Safe and Healthy Community (BSHC)
Response to Valero Crude By Rail Project
Revised Draft Environmental Impact Report (RDEIR)

Dear Ms. Million,

Attached for submission is BSHC's Response to the RDEIR.

Again, BSHC would like to extend our thanks for your continued professionalism and diligence managing the CEQA process. We recognize the level of effort the process demands from both you and our City's Staff.

As a courtesy, would you kindly respond to this email to confirm receipt?

Respectfully,

A handwritten signature in cursive script, appearing to read "Marilyn J. Bardet". The signature is written in black ink and is positioned above the printed name.

Marilyn J. Bardet

On behalf of BSHC

**BENICIANS FOR A SAFE AND HEALTHY COMMUNITY RESPONSE
TO
REVISED DRAFT ENVIRONMENTAL IMPACT REPORT
FOR VALERO BENICIA CRUDE BY RAIL PROJECT
DATED AUGUST 2015
(SCH# 2013052074, USE PERMIT APPLICATION 12PLM-00063)
Dated: October 30, 2015**

Benicians For a Safe and Healthy Community (“**BSHC**”) respectfully submit this Response dated October 30, 2015 to the Revised Draft Environmental Impact Report For Valero Benicia Crude By Rail Project (“**Revised Response**”). Unless defined otherwise hereunder, capitalized terms and/acronyms used herein that are defined in the Draft Environmental Impact Report (“**DEIR**”) and/or the Revised Draft Environmental Impact Report (“**RDEIR**”) will have the meaning given to such terms in the DEIR or RDEIR as applicable. The Revised Response includes this written response together with all prior oral and written comments to the RDEIR and DEIR provided by BSHS to date. Follow-up consultation with BSHC and the City of Benicia’s formal response to BSHC should be directed to Marilyn J. Bardet.

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SECTION 1: OVERVIEW

The RDEIR prepared by the City of Benicia as Lead Agency explicitly focuses on potential conditions and potential impacts of the Project on ‘uprail’ communities’ sensitive landscape, biota, wildlife and their habitats. Serious inadequacies in the DEIR were raised by citizens (Benicia residents as well as residents in the State of California), government, agencies and municipalities (California Attorney General Kamala Harris, California Public Utilities Commission, Sacramento Area Council of Governments, the City of Davis) as well as respected environmental organizations (Sierra Club, Natural Resources Defense Council, Communities for a Better Environment and Forest Ethics). Comments received on the DEIR were highly critical of the DEIR’s limited Project Description, its analyses and evaluation of local and ‘uprail’ impacts related to train operations and rail safety, and lack of specific characterization of unconventional crude oil to be accessed by the Project, and lack of discussion of specific effects of processing those oils (Bakken oil or tar sands dilbits) at the Valero Benicia Refinery, among others.

The RDEIR’s discussions and evaluations of ‘uprail’ impacts, though more amplified, continue to hinge on constrained, overly generalized or narrowly focused and/or conflicting information, unsubstantiated claims, assumptions and/or speculation. In the aggregate, these failures limit the public’s and decision makers’ ability to fairly judge the Project’s full scope and the variety of specific environmental conditions, places and resources within California and beyond that the Project puts at considerable risk of serious, even fatal harm, resulting from “significant and unavoidable” impacts.

The City’s legal conclusion that certain mitigations may not be implemented pursuant to Federal Preemption erroneously and seriously limits the disclosures, scope and analysis of the Project. The City’s errors might be explained by the difficulties confronting local decision makers when confronted with complex issues impacting the entire State of California and the nation; but the City’s errors cannot be ignored nor excused. Any mistakes and missteps made by the City as currently reflected in the inadequacies of the DEIR and RDEIR will impact not only the citizens of Benicia but also the tens of thousands of people beyond its borders who must also rely on the judgment of the City’s leaders.

The City’s unquestioning acceptance of Valero’s incorrect legal argument regarding complete federal preemption of regulations of rail shipments inevitably leads to a fatally flawed analysis of the Project. All aspects of the RDEIR are truncated by the preposterous initial conclusion that Valero’s Project is actually a railroad project. This premise leads to dishonestly and misstated objectives, a categorical rejection of any reasonable alternatives and an analysis as empty as an eggshell sucked dry by a weasel. The result is not simply a failure to fully review the significant environmental impacts of the Project; it is a failure to conduct any meaningful review at all.

Egregiously, the RDEIR ignores public comments on the inadequacies of the DEIR to sections on local impacts to the Benicia community, the Benicia Industrial Park and surrounding environs. This dismissiveness notably advantages the Applicant’s defense of the Project as proposed, e.g. “as is,” at the expense of the protection of the Benicia community’s health and safety and environmental protections and largely ignores the substantial, devastating and

significant impacts of the Project on ‘uprail’, neighboring communities and environmentally sensitive areas.

In this Revised Response, BSHC will highlight some of the significant inadequacies of the RDEIR and its failure to meet minimum CEQA requirements.

End Section 1

SECTION 2: RESPONSE TO APPENDIX G (PREEMPTION OF CEQA BY THE ICCTA) AND APPENDIX H (VALERO BENICIA REFINERY STATEMENT RE: PREEMPTION)

2.1 It is imperative to examine the opinions and positions promulgated in Appendix G and Appendix H of the RDEIR. The conclusions drawn from the Appendices' statements drive the scope, content and analysis provided in the RDEIR. To the extent the statements are flawed, inaccurate and/or in error, the RDEIR is equally flawed, inaccurate and in error.

Valero and UPRR espouse an extreme, all-encompassing position that Interstate Commerce Termination Act ("ICCTA") preempts the City's authority to require a CEQA review of Project impacts inclusive of on-site and off-site activities. Basically, Valero's position serves to invalidate CEQA *in toto* and neuters the State of California's and its public's rights to invoke the State's primary environmental review regulations and process.

The City takes a more moderate but equally flawed position that ICCTA preempts the City's authority with respect to mitigation of impacts from rail operations. This position is in no way less egregious since the primary significant impacts related to the Project stem from rail as the new proposed transportation alternative. This unduly broad interpretation and literal application of ICCTA's jurisdiction is in error and serves to ignore the State's (and by extension the City's) rightful authority under and pursuant to its regulations.

The RDEIR concedes that Valero cannot enforce the promises it made pursuant to the DEIR regarding the manner in which it hopes the railroad will behave if it delivers toxic crude oil to Valero in car trainloads. In fact, a considerable portion of the revisions in the RDEIR are devoted to Valero's concession that it could not guarantee nor legally enforce any limitations on the hours or method of delivery under the control of UPRR. These statements are primarily correct.

However, Valero/UPRR make the astonishing contention that the City cannot require mitigation that has any impact, tangential or otherwise, on the money collected by the railroad for crude oil deliveries and the City has erroneously concurred with this position. The City has accepted the argument that a railroad's right to profit permits no interference by any form of mitigation.

Accordingly, the RDEIR pretends that UPRR is the *de facto* applicant. The RDEIR does this by claiming that mitigation is "legally infeasible" because any limitation on Valero's plan to order 100 car train loads of toxic crude oil would be an impermissible limitation on the railroad's business of delivering freight. The foregoing statement is in error.

In order to address the issue as it relates to CEQA, BSHC will (i) examine the cases cited by the parties as supportive of their positions and why such cases are not analogous to the Project and (ii) point to the flaws of logic in the parties', with emphasis on the City's, overall flawed analysis and conclusions.

2.2. Cases cited in support of preemption are not analogous fact scenarios, wrongly applied and CEQA is applicable to the Project

When the City of Benicia reviews any proposal to allow a massive increase in the size of local petro-chemical heavy industry, its first duty is to safeguard the health and safety of its residents. No one can dispute this legal duty; and no one should ignore the concomitant moral duty that extends to neighboring communities. Accordingly, the City has the legal authority under CEQA to carefully review (and ultimately to impose) the reasonable mitigation measures and conditions proposed in the public comments submitted in response to the DEIR and RDEIR. This is the primary purpose of CEQA; and it is a heavy responsibility borne by the City. The quality of life in Benicia and impacted communities is at stake.

However the City has apparently accepted Valero's misstatements and concluded that it is powerless to impose any mitigation or condition whatsoever. At best, this is failure to understand the law, at worst it is a derogation of the City's responsibility to its citizens and neighboring communities.

The City states that "The DEIR and/or the RDEIR identifies significant off-site impacts from rail operations in certain areas, including air quality, hazards, biological resources, and greenhouse gas emissions. There are various mitigation measures that might reduce and/or avoid these impacts, such as limiting the number of rail deliveries that Valero might accept per day..."¹

However, the conclusion that follows is that the City has no power to impose any of the mitigating conditions that the City has identified to reduce the environmental impact of the project in order to safeguard the City's residents. The City says it can do nothing at all to lessen the undisputed impacts on health and safety because it would be "legally infeasible". The City's regrettable and awkwardly stated conclusion is simply wrong as a matter of law.

From the outset Valero pretends that its Project is actually a UPRR ("the railroad") project. It has done so to prevent scrutiny of the most dangerous aspects of the Project by hiding behind the federal preemption of rail commerce. In the DEIR, Valero claimed it could control the manner of delivery of 100 car trainloads of volatile and toxic crude oil. It was forced to admit this is not true because Valero's ability to control the railroad is limited by federal law. Thus the RDEIR concedes that Valero cannot enforce the promises it made regarding the manner in which the railroad will behave.

However Valero has not given up on its misplaced reliance on federal preemption law and now makes the astonishing new contention that the City is powerless to require any mitigation or condition that might indirectly impact the money collected by the railroad for these massive crude deliveries. Have we reached the point where local health and safety conditions cannot be imposed on the refinery located in Benicia because national railroad profits might be reduced? Valero pretends that this is a railroad project simply to avoid the mitigating conditions identified by the City: "There are various mitigation measures that might reduce and/or avoid these [health and safety] impacts."²

¹ RDEIR at G-6

² RDEIR at G-6 and G-7

The RDEIR imagines that the railroad is the *de facto* applicant by asserting that mitigation is prohibited because any limitation on Valero's plan to order train loads of toxic crude oil would be a "legally infeasible" limitation on the railroad's business of delivering freight. The City has accepted Valero's pretense that any and all mitigation is "legally infeasible" because the railroad's right to deliver any amount of crude oil is protected by federal law. In other words, federal law gives the railroad the right to bring into Benicia whatever can be loaded on a train. It is ludicrous to argue that federal preemption of rail regulation gives Valero the right to ship unlimited amounts of crude oil into Benicia simply because it comes by rail.

This is not only wrong as a matter of the law but so logically flawed that it leads to the absurd conclusion that the city cannot impose any mitigating conditions on the project (*including even the alternative of refusing to permit the Project*) because Valero's Project is completely immune from oversight under the federal preemption of regulation enjoyed by the railroad. The Project being reviewed is Valero's Project, not a railroad's. Valero seeks the permit, not the railroad.

Valero also persists with the fiction that noise and traffic impacts will be mitigated by the same promises regarding railroad operation that Valero was forced to admit it cannot enforce. The City's discussion of the RDEIR's Project Alternative #2 (which would include mitigation by nighttime deliveries) accepts without question the unsupported presumption on the basis of "prior experience" that Valero can require the railroad to deliver train cars during nighttime hours. Nonsense.

According to the City's analysis, Project Alternative #1 would also immediately mitigate the "worst impacts" of the project by reducing the daily deliveries of toxic crude oil by half. Both the DEIR and the RDEIR make it clear that the railroad is willing and able to deliver trains of 50 cars, rather than 100 cars, on a daily basis. Assuming that is true, the 50-car train alternative would satisfy most of objectives of the Project while greatly reducing its dangerous aspects. However the alternative is barely discussed by the City because it accepted Valero's fiction that the refinery is part of a railroad.

Once again, the City's analysis of alternatives accepts Valero's distorted view of the law and concludes that Benicia is legally prohibited from requiring Valero to reduce the number of tank cars it orders. According to the RDEIR any condition that would reduce the number of tank cars the railroad could deliver would be an "improper limitation on the railroad". The flaw in this logic is obvious. Valero is the applicant, not the railroad.

Safety and health conditions imposed by the City upon Valero's Project, such as permitting smaller trains, would not limit the railroad. The railroad's operation would be untouched except for delivering fewer tank cars to the refinery each day. Even so, the RDEIR concludes that "limiting the number of rail deliveries that Valero could accept, for example, would effectively reduce the number of train trips that Union Pacific may operate on its lines." However, the mitigating condition of delivering a single 50-car-train per day would be a limitation imposed on Valero, not the railroad. Valero controls how much toxic crude it orders to be shipped by the railroad; and the City can condition its approval of the project to impose limits on those deliveries in order to mitigate threats to the health and safety of Benicia's residents. The City could refuse to permit the entire Project for the same reasons.

The faulty logic that the City can impose no mitigation indirectly affecting the railroad leads to the absurd conclusion that there can be *no limitation* on the number of train cars brought to the refinery. The same logic would require the City to allow deliveries of 400 tank cars per day, based only upon the fantasy that federal preemption gives the railroad the absolute right to deliver any amount of toxic materials by rail completely free of local regulation. It does not take a law degree to see that this conclusion cannot be correct.

Valero thus continues to rely on its relationship with the railroad to avoid mitigation of the most dangerous aspects of its Project. Valero acts as though the railroad is the one applying for the Project permit (see Appendix H pages H-3 to H-14). And, not surprisingly, the railroad's comment in support of Valero's Project participates in the masquerade. The railroad's attorney cites only cases carefully chosen from among those where railroads themselves – and not customers such as Valero --were directly subjected to regulation. The railroad's support of Valero does not list a single case where the impact of the customer's project was directly at issue. There they go again: the project is Valero's; and Valero is not a railroad

Accordingly, the cases cited by Valero/UPRR (and apparently not carefully read by the City) demand close examination. The facts in these cases are not analogous to the facts present by this Project. The decisions in those cases do not prevent the City from requiring mitigation of health and safety impacts caused by the Project.

All of the authorities cited in the letters from the attorneys for Valero and Union Pacific involved attempt to directly regulate railroads. See, for example, the common law, negligence, tort, nuisance and “pre-clearance” cases and the federal Surface Transportation Board (“STB”) decisions cited by Valero's attorneys in Appendix H. In those cases the railroads were named parties in the lawsuits; and the issues involved efforts to directly regulate rail operations. None of those authorities involved the sort of reasonable mitigation discussed here: where a *customer* of a railroad is required to meet conditions imposed upon the processing of toxic materials in a densely populated residential area.

For examples of citation involving railroads and not their customers see:

- *Norfolk Southern Railway v. City of Alexandria*, 608 F. 3d 150 (4th circuit 2010) [where the city could not regulate deliveries to an ethanol facility *owned and operated by the railway*];
- *Friends of the Eel River v. North Coast Railroad authority*, 230 Cal App.4th 85 (2014) [where the railroad was upgrading its *own* tracks];
- *City of Encinitas v. North San Diego County Transit Development Board* (2002) WL34681621 [where the city attempted to require the *railway* to build a new track];
- *Green Mountain Railroad Corp v. Vermont* 404 F. 3rd 638, 643 (2nd Cir. 2005) [where the railroad wanted to build a transloading facility *on its own property*];
- *City of Auburn v. U.S. Government* 154 F. 3rd 1025, 1031 (9th Circuit 1998) [where the railroad wanted to reopen an unused *rail line it owned*];

The point is that all these cases involved efforts to directly regulate the actual operation or construction of rail lines. This important distinction of the identity of the entity being regulated is directly discussed in the leading California appellate opinion published last year.

In the case of *Town of Atherton v. California High-Speed Rail Authority* (228 Cal App. 4th 314, July 24, 2014) the California Attorney General conceded, and the Court of Appeal agreed, that state or local regulation of matters directly regulated by the STB, such as "construction, operation, and abandonment of rail lines, etc." were not subject to CEQA.³

However, the *Town of Atherton* opinion reiterated that state and local agencies do have authority over activities indirectly involving railroads. The Court of Appeal stated: "Case law demonstrates that the ICCTA *does not preempt all state and local regulations*" and "the circuits appear generally, for example, to find preemption of environmental regulations, or similar exercises of police powers relating to public health or safety, only when the state regulations are either discriminatory or unduly burdensome." (citing *Fayus Enters. v. BNSF Ry.* (D.C.Cir.2010) 602 F.3d 444, 451).

The *Town of Atherton* opinion also stated "It therefore appears that states and towns may exercise traditional police powers over the development of railroad property, at least to the extent that the regulations protect public health and safety, are settled and defined, can be obeyed with reasonable certainty, entail no extended or open-ended delays, and can be approved (or rejected) without the exercise of discretion on subjective questions. Electrical, plumbing and fire codes, *direct environmental regulations enacted for the protection of the public health and safety*, and other generally applicable, non-discriminatory regulations and permit requirements would seem to withstand preemption. [Citation.]" (citing *Green Mountain R.R. Corp. v. Vermont* (2nd Cir.2005) 404 F.3d 638, 643).

The Court of Appeal concluded that to the extent that such regulations "...can be approved or rejected without the exercise of discretion on subjective questions... *direct environmental regulations enacted for the protection of the public health and safety, and other generally applicable, non-discriminatory regulations and permit requirements would seem to withstand preemption*". (The foregoing quotations are from *Town of Atherton*, supra, 228 Cal App. 4th 314, at page 331; emphasis added).

The Court of Appeal also rejected the argument made here by Valero and distinguished the potential, indirect, economic impact upon the railroad by pointing to the identity of the permit applicant: "We need not, however, wade further into these weeds. Assuming without deciding that the ICCTA preempts CEQA as to the HST [high-speed train], at least one exception to preemption applies here. The applicability stems from the *nature* of the project at issue here. We are not faced with a private railroad company seeking to construct a rail line without having to comply with state regulations. Rather, it is the state that is constructing the rail line, financed by

³ The City's analysis of the application of CEQA in Appendix G correctly rejected Valero's argument that the ICCTA preempts even the disclosure of rail impacts under CEQA. This was a correct interpretation of the law.

bonds which were approved by the state's electorate..." (*Town of Atherton, supra* at page 334 emphasis added).

This Project is not an effort to directly regulate UPRR's operations during the transportation of commodities:

- There is no suggestion that the City might attempt to regulate the manner in which UPRR builds or maintains tracks along its right-of-way;
- The purpose of the Project is not the construction of UPRR rail but rather the construction of the refinery's crude 'off loading' rack;
- The crude oil 'off loading' rack is owned by Valero and Project construction will be built by Valero entirely on Valero's property;
- Absent the 'off loading' rack, and the construction by Valero of two additional new rail spurs on Refinery property for assembling arriving and departing trains, no rail adjustment would be needed; and neither the DEIR nor the RDEIR proposes any requirement directed at railroad's right-of-way or operations;
- Indeed, if the Project was a railroad project (which it is not), and the applicant was a railroad, the project would be subject to the National Environmental Policy Act (NEPA) – the federal equivalent to CEQA. Clearly, the Project is not subject to federal environmental review and NEPA has not been invoked.

The conclusion is clear: the city of Benicia can impose "direct environmental regulations enacted for the protection of the public health and safety," and other "non-discriminatory," conditions (such as noise abatement and traffic regulations) even though such limitations may have the indirect effect of reducing the number of trains that the railroad can deliver to a customer.

The City can deny Valero's application for a permit outright or it can impose conditions on Valero's permit to limit the number of tank cars Valero can process in a single day. The City should do so in order to preserve the safety and environment of the city without imposing any direct limitation or "pre-clearance" requirement on the railroad. Any impact on the railroad is indirect. If Valero orders fewer tank cars (or no tank cars) to be delivered because of safety and health conditions imposed by the City, the railroad may deliver fewer tank cars, but it will not because the City has placed any limitation on the railroad itself.

Accordingly, the City's analysis was utterly wrong because of its characterization of the nature of the Project. The City incorrectly assumed that Valero stands in the shoes of a railroad when it comes to preemption by federal authority. Not so.

The City's analysis ignores the legal authorities that have concluded that regulation of transloading facilities, owned and operated by private parties, have only a remote and incidental effect on rail operations. (See, *Florida East Coast Railway Co. V. City of West Palm Beach*, 266 F. 3rd 1324, 1339 (11th Cir. 2001); *Cities of Auburn and Kent*, Petition for Declaratory Order, Burlington N.R.R.Co. 2 STB 330 (1997).

Indeed, the City also fails to acknowledge that in certain circumstances, local agencies can enforce environmental laws (such as water quality regulations) against railroads directly where

they discharge earth and waste from construction projects into water bodies. See, *United States v. Saint Mary's Railway*, 989 F. Supp. 2nd 1357 (S.D. GA. 2013).

The City also misreads or ignores the leading California Court of Appeal opinion in *Town of Atherton*. There was no private party ordering toxic materials delivered by rail in that case; and CEQA was applied differently in that case because the State of California is building a railroad. The *Town of Atherton* reasoning supports "direct environmental regulations enacted for the protection of the public health and safety," and other "non-discriminatory," conditions (such as noise abatement and traffic regulations) even though such limitations may have indirect effects on a railroad.

There is no uncertainty in the law that might excuse the City's incorrect legal analysis and timid response to the acknowledged threats posed by Valero's Project to the health and safety of Benicia's residents. Federal preemption does not apply to Valero's project. To protect the health and safety of Benicia's citizens, the law permits the imposition of mitigating conditions on Valero's Project, including limitations on the daily amount of toxic crude oil that Valero can process, without impinging on the railroad's operations. Indeed the law permits Benicia to reject Valero's application entirely. The City's duty to protect its citizens and neighbors requires nothing less.

2.3. Logic and Common Sense Approach

Legal precedence aside, the application of logic and common sense may be applied to the issue of the authority of the City to mitigate. It may be 'legally infeasible' to mitigate a significant environmental impact by imposing a restriction directly on UPRR operations (e.g., restrict rail speed, length of trains, etc.) or any railroad's operations but it is not 'legally infeasible' to mitigate a significant environmental impact by imposing a restriction directly upon the Applicant (Valero) and the Project where the Applicant has control. It is absolutely within the authority of the Lead Agency (in addition to a No Project Alternative) to limit the amount of crude processed (ordered from the applicable vendor) that will be transported via rail (the maximum number of tank cars containing oil to be processed at the Refinery) to the Refinery. It is flawed logic and backward reasoning to imply that a railroad solely dictates and determines the quantities or type of commodities its customers order or process in a customer's business operations. In fact, it is the customer's business which dictates the need for transportation of products, via rail or any other mode.

This trend of the law is clear: federal preemption does not apply to Valero's Project; and for sound safety and environmental reasons, the City can impose mitigating conditions on Valero's Project including, but not limited to, imposing limitations on the daily amount of toxic crude oil that may be delivered to Benicia, without impinging on the railroad's operations. Additionally, the City also has the right to deny the Project in the entirety without impinging on the railroad's operations. This alternative, the No Project Alternative, can't impinge on railroad operations because the Applicant will have no relationship, contractual or otherwise with any railroad for the conveyance of any crude slated for the proposed Project. If the Project is not permitted (for any reason), there is no ability or mechanism to interfere with any rail operations. To put it in other words, the No Project Alternative does not interfere with rail operations because no

commodity is subject to rail transportation and alternatively any Project alternative that reduces or otherwise sets the Applicant's order at any specific level of crude does not interfere with rail operations because the railroad is still free to operate the transport of the materials in compliance with the regulations imposed upon it.

For purposes of illustration, assume a canning facility requests a permit to build additional manufacturing facilities for the purpose of increasing the production of its tomato canning business. If approved by the applicable city, the permit would include an additional four (4) ton daily capacity of product to be processed and such product would be transported by rail. Post CEQA review the city determined that mitigation was necessitated to address a significant impact and such mitigation resulted in limiting the processing capacity to an additional two (2) tons daily. Therefore the canning facility's subsequent contract with the railroad was tailored for the rail transport of tomatoes not to exceed the manufacturing capability of two (2) tons daily. The consequences of the decision may impact the railroad's potential (not entitlement) to increased revenues but it is proper and not subject to preemption. The mitigation's only effect on the mode of transport is the quantity of product shipped and does not impinge on the railroad's ability to perform its operations – operations in place during the transport of the tomatoes. The applicable railroad will not tell the manufacturer that it needs four (4) tons of tomatoes to process daily and therefore should order that amount or risk being in violation of the ICCTA rule prohibiting managing rail transportation. Rail transportation is driven by the needs of its customers, not vice versa. It is also reasonable that the same manufacturer may have determined during or post CEQA review that it preferred transport via truck and this too would not have been preempted by ICCTA. The choice of preferred mode of transport is retained by the manufacturer (subject to the city's approval of the permit).

The railroad does not manage or dictate the needs of the manufacturer nor the contractual arrangements between a vendor and purchaser. The railroad has no ability or responsibility to determine a company's business needs for product by type or quantity. By extension, UPRR does not have the right to dictate to the Refinery the types and amounts of crude it may process and ultimately order. UPRR may only transport the quantities "in-play" in compliance with certain federal and other regulations while the cargo is in its jurisdiction if and when it is contracted to do so. Valero is not compelled to utilize the railroad for transportation and has other modes of transport to utilize. It is an egregious error to allow UPRR or any railroad to act as determiner of economic priorities and preferences of any North American businesses. UPRR is in the rail transportation business and no other.

Additionally, if you extrapolate the City's position that the City may not mitigate because monetary denial equates to interference with rail operations, then the City must also conclude that it may not deny the Project's full, 'as-is' approval due to the monetary impact to the railroad. However, the City has failed to identify the No Project Alternative as 'legally infeasible' thereby creating another error in the RDEIR of, at minimum, an inconsistency in its own analysis. BSHC reiterates that potential economic gain and/or loss to a railroad is not a determiner in this RDEIR. Denial or reduction in any form and the secondary consequence of monetary impacts to a railroad does not interfere with rail operations. Railroads are not entitled to the benefit of the transportation of any commodity if such commodity is first not lawfully permitted. The City has every right to deny or impose mitigations on the Project. Potential monetary loss or gain to the

railroad is not an interference with its operations any more than Valero's choice of transporting crude via pipeline or shipping (and such potential loss of money to the railroad due to use of an alternate mode of transportation) is not an interference with railroad operations.

2.4. Summary

While the opinions espoused by UPRR and Valero are concerning, the opinion that is most problematic to the RDEIR is the City's. The City's opinion that ICCTA preempts the City's authority to mitigate impacts from a railroad's operations, as the City defines 'operations' is in error. This error permeates throughout the RDEIR including, but not limited to, the characterization of the Project Alternatives and restraints on mitigation. The City's adoption of its *opinion* to the exclusion of all other possible outcomes on the issue, results in a RDEIR which ignores disclosures and mitigations and delivers a truncated analysis of the Project. This error creates a fatal flaw under CEQA and this RDEIR should again be revised. Absent a revision of this RDEIR, the City's decision makers may be unduly compelled to accept the opinion of its counsel "as-is" and be prohibited from imposing lawful mitigations or making decisions regarding the RDEIR and the Project generally. This is an egregious outcome for the City and the viability of the RDEIR under CEQA.

- Valero is the Applicant, not the railroad.
- The Project, which is general construction and construction of an 'off loading' rack, is on Valero property and is subject to CEQA.
- The Project is not a UPRR construction project on UPRR property and is not subject to NEPA.
- The Project (permit) is under the jurisdiction of the City in the entirety.
- Valero determines (subject to the permit) the types and quantities of crude for processing and the method of delivery (mode of transportation), not the railroad. This decision lies with Valero and is within Valero's control.
- Merely because Valero has the means of constructing a 'off loading' rack to accept up to 100 car load of crude daily, does not mean that any railroad has an immediate entitlement to transport up to 100 car loads (or any number of carloads) of crude daily for Valero.
- Preemption does not extend to the Project as long as any mitigation does not countermand or modify the railroads ability to operate in compliance with its regulation AFTER it enters into a lawful contract for such transportation. The preemption does not exist nor extend to a need not realized. The commodity may only be lawfully transported if first permitted. Absent a permit, a lawful contract for the transportation of crudes may not be raised.
- A railroad may only transport a commodity at the request of a particular business. While a railroad may have the ability to transport a commodity, that ability does not equate to the right of the railroad to transport such commodity absent a business' lawful request.
- To the extent Valero does not request (for any reason) the transportation by rail of any commodity, the railroad is not entitled to such transport arrangement and its operations are not unlawfully impacted.
- Any adopted mitigations under the control of Valero are mitigations on Valero, not the railroad.

- If the City denies the permit (the No Project Alternative), rail operations under federal jurisdiction are not impacted since the absence of the need for rail transportation does not interfere with rail operations not in play.
- If the City mitigates the quantity of crudes permissible for ‘off loading’ by Valero, rail operations under federal jurisdiction are not impacted since any rail operations in play will be managed by the railroad pursuant to applicable federal and other regulations.
- **The City’s over reliance on its *opinion*, creates a RDEIR deficit in adequate disclosures of impacts (direct and indirect), scope of Project alternatives available, and generally taints the RDEIR in support of such opinion thereby ignoring a review that should be inclusive of discussions and disclosures of legitimate alternate positions.**

End Section 2

SECTION 3: RDEIR FUNDAMENTAL FLAWS: DECEPTIONS, OMISSIONS AND FAILURES TO DISCLOSE AND ADDRESS KEY FACTORS AND ISSUES PERTAINING TO PROJECT OBJECTIVES, PROJECT ALTERNATIVES AND REFINERY PROCESSING OPERATIONS

3.1 OVERVIEW: INHERENT FLAWS OF PROJECT OBJECTIVES AND ALTERNATIVES

CEQA requires that a project description contain objectives that are clearly written and include the underlying fundamental purposes of the project (Guidelines § 15124(b)). To the extent the objectives do not meet these requirements, are unclear and do not disclose the fundamental purpose of the project, the ensuing alternatives will be fundamentally flawed.

OBJECTIVES OVERVIEW

THE FIVE (5) PROJECT OBJECTIVES RESTATED IN THE RDEIR⁴ ARE INHERENTLY AND FATALLY FLAWED BECAUSE THEY DO NOT REVEAL NOR ADDRESS THE TRUE FUNDAMENTAL PURPOSE OF THE PROJECT.

As narrowly defined in the RDEIR, the Project Objectives support a “crude-by-rail” Project wherein the purpose is limited to the exclusive access of North American sourced crude oil by rail. However, this narrow interpretation obscures the true fundamental purpose which is to obtain available crude oil from U.S. domestic, Canadian and other sources for transportation, *by any means*, to the Refinery. The narrow interpretation limits the disclosure and discussion of other feasible ‘non-rail’ delivery options, obscuring the fact that any low grade, price-advantaged, domestic or foreign-sourced crude that would fit the Refinery’s processing requirements could be accessed by the Refinery by other means of transportation. Absent the objectives’ full disclosure of the true fundamental purposes of the Project – obtain price advantaged crude oil – other available modes of transporting price advantaged crude oil to the Refinery are ignored.

⁴ RDEIR Section 2.1.2 entitled ‘DEIR ES-2, Project Objectives’, pp. 2-2 to 2-3.

Valero's primary purpose is reflected in the key objective identified in the Valero Improvement Project ("VIP"),⁵ which is to exercise the ability to access low grade price-advantaged crude oil, including, but not limited to, North American-sourced oil. This means that Valero would seek to have those crudes delivered to the Refinery by whatever modes of transport are available at a favorable price.

Valero could conceivably receive deliveries of North America-sourced oil from ships, marine vessels, barges, pipeline *and* rail, in any combination thereof. This reasonably foreseeable probability must be discussed in the RDEIR. In fact, Valero management has verbally revealed that the Refinery has already received deliveries of Bakken oil "by barge" and that they have processed Bakken and "proved" it safe. [Statements made at public hearings on the DEIR and at the workshop on the Project held by Valero in 2014]. If this is indeed the case, the RDEIR fails to identify such barge deliveries and avoids revealing their source, the quantities of Bakken acquired by barge, as well as the total volume of crude a barge can hold at one time.

By not disclosing and reasonably addressing *alternative* delivery means, the stated Project Objectives deceptively suggest that the Refinery considers rail transport the *only* means of accessing North American sourced oil, and also, that the Refinery would be *solely relying on rail alone to exclusively* acquire domestic and/or Canadian oil. If indeed this is the case, the RDEIR must substantiate that commitment to rail and provide findings representing the basis of such a choice.

The goal for the Valero Benicia Refinery is suggested in comments made by Valero Corp. spokesman, Bill Day, as reported in the San Antonio Business Journal⁶:

"San Antonio-based Valero Energy Corp. is expected to have its fifth refinery capable of processing nothing but North American crude by the end of the year. . . He [Bill Day] also noted that a proposed rail terminal at the company's Benicia refinery in California would enable Valero to offset foreign crude brought in by ship with North American crude brought in by rail."

Neither the RDEIR nor DEIR defines the Project's duration or "life span". By such lack of disclosure the RDEIR disguises the "flexibility" built into the Project: there is no guarantee that ship deliveries of crude oil would be supplanted at the level described by the Project Description into an indefinite future. On the contrary: in the near future, Valero could opt to have North American-sourced crude delivered by ship from the Port of Vancouver, WA, which would mean

⁵ VIP Project Objective 1, 2002 VIP DEIR: "Provide ability to process lower grades of raw materials." [SCH#2002042122: VIP DEIR, Section 3.2.1 Project Objectives, p. 3-3].

⁶ Sergio Chapa, "Valero will soon have fifth refinery processing 100 percent North American Crude" Eagle Ford Shale Insight (blog), *San Antonio Business Journal*, Sep 10, 2015, <http://www.bizjournals.com/sanantonio/blog/eagle-ford-shale-insight/2015/09/valero-refineries-processing-north-american-crude.html>.

that the RDEIR's claims for significant GHG reductions would no longer hold. Additionally, absent a defined Project duration, we must assume the Project's duration is in perpetuity. This means that the RDEIR should address the reasonable and feasible possibility that, at any time in the indefinite future, under anticipated federal legislation, the Refinery could potentially export to foreign buyers crude oil acquired from domestic and Canadian sources. The export option needs to be discussed as a potential outcome of the Project over the long term and evaluated for its potential environmental impacts.

As the RDEIR admits, the longer the duration of rail transport of crude oil to the Refinery, the probability increases of rail accidents occurring that may cause harm to people, places and sensitive environments. Over time, the threat of risk increases, especially if Project rail operations are affected by changing environmental conditions ascribed to climate effects, such as predicted by the state's Bay Conservation and Development Commission ("BCDC").

BCDC's map of the Benicia shoreline, which includes the industrial park/marsh area and 100 year flood zone, is not included in the RDEIR or DEIR, yet the map shows predicted effects of sea level rise by mid-century, thus within a 25 year lifespan of the Project. The so-called "one hundred year" flood conditions on the River and Strait could occur more frequently, with maximum tides and rainfall potentially affecting not only rail operations and train safety, but maintenance of mainline tracks and spurs. An example locally would be extreme flooding events in low-lying marsh areas and in the Benicia Industrial Park during winter months with high tides on the Carquinez Strait coupled with torrential rains. UPRR tracks could be submerged with damage to track bedding and rail alignments.

Where the international price of a barrel of oil is predicted to remain at relative "lows" ranging up from \$45 per barrel, foreign and North American-sourced oils become price-competitive. Therefore, the cost of delivery will likely become a key economic consideration determining the source of crude purchases. These economic variables expand the range of possibilities and alternatives that must be considered in order for the public and decision makers to understand, by contrast, what has been disguised and limited by the RDEIR's stated Project Objectives.

The RDEIR's inflates the significance of the claim that the Project would provide significant GHG reductions owing to the elimination of ship trips. The RDEIR avoids stating whether those estimated GHG reductions that are claimed to result from up to 82% fewer ship deliveries would continue into the indefinite future. However, Project's GHG reductions are "guestimates" at best, dependent on assumptions based on dubiously averaged *longer* distances traveled by ships, such as to Latin America, compared to *shorter* distances of domestic mainline rail routes that could serve the Project.

Calculations of GHG reductions are a moving target: reductions cannot be considered real and permanent environmental benefits of the Project since North American-sourced oil could become accessible by big or small marine vessels that may travel *far shorter distances from West Coast* ports or by barge from even closer inland ports, such as the Port of Stockton. [See further discussion below in Project Alternatives] These options render any claim for current estimates for rail’s “GHG advantage” questionable and unsupported.

The RDEIR admits there would be “significant and unavoidable” impacts ‘uprail’. [see CEQA topics addressing Air Quality, Biological Resources, GHG emissions, and Hazards & Hazardous Materials] Certainly the RDEIR’s claim for a GHG reduction benefit cannot outweigh all other foreseeable, adverse, ‘significant and unavoidable’ impacts that would result from the transport of crude oil by rail from inception (California border and beyond) to the Refinery. [For a detailed examination of such impacts, see Riverkeeper article cited below]⁷

At Benicia planning commission hearings in 2014 and 2015 regarding the DEIR/RDEIR, Valero representatives championed their support for the Project by offering the opinion that accessing and processing domestic oil would “help get us off dependence on foreign oil.” [paraphrase]. This assertion contradicts one of Valero’s Project goals, namely, to access Canadian (foreign) crude. Thus the statement serves Valero’s political agenda, but it is a false characterization of the Project and has nothing to do with CEQA evaluations of the Project’s sum of extraordinary risks and environmental costs directly associated to rail delivery and indirectly to processing of Project-accessed oil.

The deceptions in the RDEIR continue. Through dissembling and misdirection, the RDEIR fails to identify the primary purpose of the Project which is Valero’s desire to obtain “flexibility” for Refinery operations, which is the over-arching goal inherent in the Valero Improvement Project. [VIP DEIR, FCCU Feedstock Flexibility, p. 3-28] By disguising the Project’s true purpose, the public’s and City decision makers’ ability to fully examine the Project and its environmental impacts is seriously hindered. A “narrowed goal” equates to a “narrowed CEQA examination”. A “narrowed” Project Objective(s) results in the imposition of artificial limitations on Project Alternatives, the breadth and scope of the analysis, identification of impacts, and all findings. By limiting the Project to the import and processing of unconventional, carbon-intense, domestic and Canadian oils obtained via transport by rail, the RDEIR fails to identify and evaluate the full range of options that would and must be explored when the primary purpose of the Project is examined – “to obtain maximum flexibility for the Refinery”. The concept of “flexibility” extends not only to the types and sources of crudes but to the multiple modes of available transportation options and the movement of such crudes after the initial delivery (processed or unprocessed).

⁷ Riverkeeper, “Crude Oil Transportation: A Timeline of Failure”, Riverkeeper, Inc. website, <http://www.riverkeeper.org/campaigns/river-ecology/crude-oil-transport/crude-oil-transportation-a-timeline-of-failure/>, accessed October 15, 2015.

For example, the Applicant’s desire to enhance Refinery’s operational “flexibility” could include a unstated, future goal to export domestic crudes. Congress is currently considering lifting the ban on the export of US-sourced crude oil. The lifting of such a ban would obviously enhance the profit-making aims of US refineries and oil suppliers and introduce increased “flexibility” in refineries’ operations. Not surprisingly, the Project is framed in such a way that it would *not* prohibit nor foreclose on the this option - to export accessed domestic crudes - despite Valero’s claim that supplying the Refinery with domestic-sourced feedstocks would serve to reduce dependence on foreign oil. The RDEIR must address this foreseeable possibility and Valero’s capacity to export North American-sourced oil. This omitted topic is crucial to understanding the unstated full *potential* scope of the Project and its impacts *over the Project’s life-span*.

The RDEIR concludes that the longer the duration of rail transport of crude oil to the Refinery, the higher the probability of the occurrence of rail accidents (an increase of accidents that cause harm to people, places and sensitive environments). What the RDEIR does not address is the long-term effects of climate changes (e.g. drought conditions which will exacerbate wildfire and flooding events) and the cumulative impacts associated with such climate changes in relationship to rail accidents over time. For example, flooding in low-lying areas where UPRR tracks run may result in increased derailments/accidents. Additionally, rail accidents which trigger a fire may result increased fire damage due to the flammability of the land caused by the drought. The RDEIR failure to specifically address the Project’s lifespan contributes to its failure to examine long term and cumulative impacts.

The RDEIR does not characterize the maximum flexibility Valero intends to achieve for accessing North American-sourced crude oil. The effect of this omission and lack of disclosure disguises the fact that at any time in the near future rail deliveries could be displaced, and Valero could increase ship deliveries that would defeat the one assumed environmental “benefit” of the Project, the reduction of GHG emissions from marine diesel engines. There is no guarantee that ship deliveries of crude oil would be supplanted at the level described by the Project Description into an indefinite future. On the contrary, if, for example, Valero opts to have North American-sourced crude delivered by ship from west coast ports, the RDEIR’s claims for significant GHG reductions would no longer hold.

The RDEIR and Valero pose crude-by-rail’s alleged ‘environmental benefits’ of reduced GHG emissions and reduced dependence on foreign oil. But these ‘benefits’ are red herrings – false claims that are not supported by evidence. The document’s claims for GHG reductions relevant to global warming must be evaluated and weighed against Valero’s request for procurement and processing of the most carbon-intensive crudes in the world: the crudes’ contribution to global warming includes their extraordinary energy and water-consuming extraction methods, intensive

processing requirements for energy and resources (hydrogen) and the resultant additional increases in GHG processing-related emissions.

Owing to misguided opinions on the scope and breadth of Preemption, the RDEIR omits identification and discussion of numerous “significant and avoidable” impacts. Thus, and by default, the RDEIR improperly characterizes the Project as a railroad project of UPRR – a Project that reaches far beyond the Refinery to the Midwest, Northwest and Canada. As such, the proposed Project benefits UPRR’s and Valero’s corporate revenues, provides Valero with “flexibility” but subjects the public and the environment to consequences not examined in the documentation.

ALTERNATIVES OVERVIEW

THE INHERENT FLAWS THAT AFFECT PROJECT OBJECTIVES SIMILARLY RENDER THE RDEIR’S PROPOSED PROJECT ALTERNATIVES⁸ SERIOUSLY FLAWED, DEFICIENT AND DECEPTIVE.

Due to the narrowed nature of the Project Objectives, the RDEIR does not propose Project Alternatives that analyze alternative modes of transport (e.g. by ship, marine vessel, barge, pipeline or any combination thereof) which could feasibly meet Valero’s *primary* goal of flexibility and be more protective of human life, wildlife and the environment.

For example: A Project Alternative should be developed around feasible delivery options by ship or marine vessel that may be available from West Coast port terminals as well as inland port terminals, such as the Port of Stockton CA. Alternatives should include discussion of combining delivery options, such as marine vessel and pipeline.

At the time the Valero CBR Project application was submitted to the City of Benicia in December 2012, plans were being developed for a rail terminal to be built at the Port of Vancouver, Washington⁹ (at the mouth of the Columbia River just north of Portland Oregon). The existence of the Washington project has long been known by the public and industry (refineries, railroads, etc.) has been in the making for a considerable time and, therefore, should have been identified and discussed in the RDEIR. Additionally, it should have been proposed as

⁸ RDEIR 2.1.5, DEIR ES-5, Alternatives, pp. 2-8 to 2-9

⁹ Todd Coleman, “Coleman: Partnerships, community input shape port’s Terminal 1 project,” *The Columbian*, 27 Sept. 2015, The Columbian website, <http://www.columbian.com/news/2015/sep/27/coleman-partnerships-community-input-shape-ports-terminal-1-project/>

a Project Alternative. The Port's "Terminal 1 Waterfront Project" is currently under environmental review. The purpose of that proposed new "US Rail" terminal to be served by BNSF railroad is to provide for rail delivery of domestic and Canadian oil to the port and the subsequent transfer to ships that would travel a *short distance* down the coast for deliveries to Bay Area and Southern California's refineries.

A further omission in the RDEIR is the possibility of various transfers, from ships to pipelines, for regular Project-related deliveries of crude to the Valero Benicia Refinery – deliveries that could involve other regionally-based, already existing or proposed oil terminals and other refineries' and pipeline companies' infrastructure.

Additionally, the analysis of the existing Project Alternatives in the RDEIR is irreparably flawed. By defaulting to the City of Benicia's interpretation of Preemption, the RDEIR eliminates the Project Alternatives it so casually provides by arguing their "legal infeasibility," despite whatever "preferences" are noted for them in RDEIR Table ES-1. Thus, defaulting to the City's opinion on Preemption, the RDEIR presumes that the City lacks any authority to enforce a Project Alternative it might choose as preferable to the Project "as is."

Despite obvious environmental benefits of the No Project Alternative, the RDEIR opines that the No Project Alternative could *not* reasonably be the Environmentally Superior Alternative because it would not reduce GHG. Based solely on one criterion (GHG), the RDEIR thereby leaps to citing the Project itself as the Environmentally Superior Alternative. First, the analysis supporting the conclusion that rail produces less GHG is suspect. But even if one accepts the flawed conclusion of the GHG analysis, the weighting of this one criterion as the most important criterion in that determination is logically deficit, misdirected, unscientific and unsubstantiated. Most importantly, it fatally taints the presentation and analysis of Project Alternatives in the RDEIR.

This Section 3 will examine more specifically the inherent problems in the Project Objectives and how the Project Alternatives analyzed by the RDEIR are consequently flawed. Project-related Refinery processing operations will be discussed with respect to flaws inherent in the Objectives. In the aggregate, the flaws challenge the veracity of the RDEIR and demonstrate the lack of any necessity for a "rail project" at all.

THE PROJECT OBJECTIVES

3.2 PROJECT OBJECTIVE #1.

Project Objective 1 states: “Allow for the delivery of up to 70,000 barrels per day of North American-sourced crude oil by rail.”¹⁰

Drop the last two words – “by rail” – and the real goal, which Objective 1 does not state, is made clear: to acquire North American-sourced crude oil. The deception has profound implications for claims made throughout the DEIR and RDEIR, and thus calls into question the validity of the entire environmental review.

Rail delivery is the *means to an end* and the mode of transport is *secondary* to Valero’s primary goal which is to acquire North American-sourced crude oil. Yet, the RDEIR presents rail delivery as though it were the *primary* Project Objective, as if rail were the *only* delivery option. This is not made explicit and is not discussed, and therefore, all that follows from the deception discredits the environmental analyses.

Given the number and potential severity of adverse effects that would foreseeably result from rail delivery of crude oil, a very basic, unaddressed issue hangs over both DEIR and RDEIR Project Objectives and the Project Description: consideration and analyses of *alternative*, feasible means of delivery by ship, marine vessel, barge or pipeline (or a combination of those options). Available non-rail delivery options, now or in the future, would accommodate Valero’s unstated goal of acquiring North American-sourced crude oil, provide Valero with flexibility, and avoid the serious risks and “significant and unavoidable” impacts that the use of rail poses. By way of example, the RDEIR [see Project Alternatives 3-(7)] fails to acknowledge and address the new rail terminal proposed at the Port of Vancouver, WA¹¹ which would allow for the delivery of North American-sourced crude oils from the port’s terminal to the Refinery via marine vessel. This information was available well before the RDEIR release.

As discussed in BSHC’s Response to the DEIR, the VIP paved the way for the Refinery to import and process as much as 60% of low grade, heavy, sour (high sulfur) feedstock. [VIP DEIR 3.4.2 Feedstock Changes, pp.3-20]. The DEIR further remarks that heavy sour crudes are “the least expensive.” [DEIR 3.3.1.1., pp. 3-8] This statement supports the profit-making aim of acquiring

¹⁰ RDEIR 2.1.2 DEIR ES-2, Project Objectives, p. 2-2

¹¹ Port of Vancouver USA, “Ribbon Cutting Celebrates new Port Of Vancouver USA Rail Entrance”, Port of Vancouver USA website, <http://www.portvanusa.com/news-releases/port-of-vancouver-usa-cuts-ribbon-on-new-rail-entrance/>, Accessed August 13, 2015.

any number of price-advantaged low grade heavy sour crudes available around the world, including heavy, sulfur- and metals laden synthetic oils derived from Canada's tar sands bitumen. However, given the current economic outlook for the trending low price of a barrel of oil, which is predicted to stay low for the indefinite future, there is no particular price advantage attached to acquiring North American-sourced oil. To maintain competitiveness, the Refinery can meet the basic goal of processing low cost, low quality crudes without immediate urgency or specific need to access Canadian or other domestic crudes by rail.

Canada tar sands' diluted bitumen, an unconventional, very heavy sour, toxic metals-laden synthetically manufactured crude oil, or for that matter, *any other conventional heavy, sour low grade crude extracted from anywhere else in the world*, would meet the Project's primary goal, with the caveat that crudes considered for purchase *and* delivery would be selected in large part by economic factors presumably reflecting competitive price advantages.

In addition to availability of a transport means for delivering crude to the Refinery, one of the key factors in determining a mode of transport must be the relative costs of that transport/delivery of the likely crudes to be purchased, e.g., the costs of rail versus any other means of accessing "lower grade" crude *whether that crude comes from domestic or international sources*. The RDEIR's Project Description explains the relative importance of "price" as a key factor in decision-making:

"Refiners select particular crudes based on a number of factors, including the unique configuration of each refinery, the quality of the crude and the price of each crude, the market demand for specific products, the market price of specific products, and the specifications of the product to be produced." [DEIR 3.3.1.1 *Types of Crude Oil*, pp. 3-8]

Presumably, the transportation costs of delivering Project-accessed domestic and Canadian oils could be a key factor in Valero's choice of rail. However, there is no discussion in the RDEIR or DEIR that makes explicit how the cost of rail delivery may compare to costs for other transportation means of delivery (barges, marine vessels or ships coming from inland ports or coastal ports). As a result, the public and decision makers must assume how the cost factor for transport has supported the determination that the Proposed Project would be a "rail project" exclusively over any other feasible, available transport options that would avoid the severe risks and impacts posed to communities and environs associated with rail delivery.

Thus, by avoiding a full discussion of delivery alternatives, the RDEIR deceptively suggests that rail would be the *only* means of transport to acquire North American sourced oil into the indefinite future. This hides the fact that at any time in the near future, the Refinery could elect to receive deliveries of domestic or Canadian oil by ship or marine vessel as soon as those options are available, which could be much sooner than later.[see discussion on Washington Port]

Additionally, since there is no apparent reason for the Refinery to limit the selection of heavy sour crudes to those sourced in Canada (or US), any other cost-competitive heavy sour crude available from international sources may still be acquired by ship, as is the case currently and historically.

The RDEIR's apparent support for rail hinges on its speculative claim for a single environmental benefit - the GHG reductions achieved by eliminating diesel emissions from ships traveling long distances from either the Mideast or Latin America. However, the RDEIR's calculations for GHG are based on limited evaluation of single sources of GHG and variable estimates of comparative distances traveled. The RDEIR admits that locomotive diesel emissions actually *exceed* ship engine-generated emissions calculated per mile. The only way the RDEIR can demonstrate significant reductions in GHG is to compare distances traveled by rail and ship, the latter producing comparatively more emissions because of the duration of trips and the greater distances ships are said to travel from international sources of crude. However this comparison is suspect and noted in the RDEIR's discussion of table 4.1-15 [Locomotive and Marine Vessel Emissions Factors Comparison for 1,000,000 Barrels Delivered Per 1,000 Miles Traveled] as follows:

“As Table 4.1-15 shows, locomotives generate more emissions than marine vessels per mile, per 1,000,000 barrels of crude oil delivered each year, of ROG, NO_x, CO, PM₁₀, and PM_{2.5}. The reverse is true for SO_x. Even with these emission factors, there is no way to estimate with any certainty the net effect of the Project on areas outside of California because the length of locomotive or marine vessel trips cannot be predicted with reasonable accuracy.” [RDEIR 2.6.2, DEIR Section 4.1.6, Uprail Impacts and Mitigation Measures, p. 2-36]

The calculations may not be trusted because they fail to account for the annual number of ship trips traveled to each Latin American crude source. For example, Mexico, which represents a shorter distance for ship trips, is not mentioned. The RDEIR does not reveal actual volumes or types of oil that ships transport to the Refinery from a particular source and at what frequency. GHG emissions are not included among those “emission factors” cited in Table 4.1-15, yet locomotive and ship diesel emissions obviously produce GHG emissions that impact global warming. Singling out GHG emissions from the discussion of “emissions factors” related to ship transport distances is not scientifically honest especially considering the out-sized claim for the Project's GHG reductions as an environmental benefit derived from eliminating 82% of ship deliveries.

With regard to diesel emissions' effects on human health: there would be a potentially cumulative effect on public health of diesel emissions from locomotive engines passing through or near urban communities and residential areas. Contrarily, this could not be said of diesel emissions from ships' engines, whether those ships travel through open ocean or 30 miles off-shore. Local and regional air pollution resulting from train locomotives would impact human health where people live and work in the vicinity of mainline rail routes serving the Project.

In any case, although reducing Project-related GHG emissions for sake of climate protection is of paramount concern, the RDEIR does not discuss the potential *additional* GHG emissions that would be produced during the processing of Project-accessed unconventional Canadian or domestic oils. “Externalities” that must be accounted for include the carbon-intensive extraction methods that represent sky-high carbon footprints (fracking shale rock and strip mining tar sands, both consuming huge amounts of water and energy). The RDEIR fails to disclose the chemical makeup of those “low grade” Canadian and domestic-sourced oils and their carbon intensity totaled from extraction, transport and processing.

3.3 PROJECT OBJECTIVE #2.

Project Objective 2 states: “Replace marine vessel delivery with rail delivery of up to 70,000 barrels per day of crude oil.”¹²

Both Project Objectives 1 and 2 state the volume of oil to be delivered daily by rail. That volume is also very close to the feedstock capacity of the FCCU [VIP DEIR, 3.4.3.2., FCCU Feed Flexibility, pp.3-28]. That figure also represents one half of the amount of crude oil permitted to be processed at the Refinery daily, an amount not to exceed the annual average of 165,000 bpd, with maximum throughput allowed on any given day at 180,000 bpd.) [VIP DEIR, *Proposed Changes – Schedule*. pp 3-27].

However, neither the RDEIR nor DEIR reveal the ACTUAL total amount of crude oil processed on average on any given day, e.g., a figure for current baseline production rate or “throughput,” calculated by averaging production rates achieved over the most recently reported three year period. This omission represents a major failure to disclose pertinent baseline information essential to the Project Description and hinders the public’s and decision makers’ ability to fairly judge the Project’s full scope with regard to the actual volume of crude the Project would import daily. In 2015, BAAQMD released statistics supplied by Applied Development Economics¹³ that account for Bay Area refineries’ earnings profiles. These included figures for Bay Area Refineries’ current baseline production rates, “Effective Barrels of Crude Per Day.” The Valero Refinery is listed as having a production rate of 114,443 bpd – a throughput that is close to 30% below their permitted daily average level of 165,000 bpd.

¹² RDEIR 2.1.2 DEIR ES-2, Project Objectives, p. 2-2

¹³ Bay Area Air Quality Management District, “Socio-Economic Analysis of Proposed Regulation 12, Rule 15: Petroleum Refining Emissions Tracking And Regulation 12, Rule 16: Petroleum Refining Emissions Limits And Risk Thresholds”, Table 7, p.13, prepared by Applied Development Economics, released 9 Oct 2015, Bay Area Air Quality Management District website, <http://www.baaqmd.gov/~media/files/planning-and-research/rules-and-regs/workshops/2015/100915/socioreport-pdf.pdf?la=en>

The RDEIR's omission of such production data is a serious flaw. Without providing current baseline throughput, the document's claims for "no net emissions" resulting from processing Project-related carbon-intensive, unconventional crudes cannot be fairly evaluated. This subject remains untouched by the RDEIR.

Because the RDEIR does not reveal Valero's current baseline throughput, it is impossible for the public and decision makers to ascertain if the 70,000 bpd called for by Project Objective 2 is actually an *extra* supply, e.g. an excess daily volume delivered but not required for either daily production or for maintenance of backup reserve feedstock supply for given number of weeks or months (presumably, a constant volume stored in the case of crude supply disruption). Objective 2 provides for "flexibility" in the volume of crude delivered, but the RDEIR does not characterize its purposes. Given BAAQMD's figure for Valero's throughput rate, the excess volume that the Project allows would be "up to 25,557 bpd."

With reference to crude storage capacity, only a single sentence in the RDEIR is devoted to this important topic: "two storage tanks" would be used to receive crude from the Project's rail offloading terminal. There is no description of the tanks and/or their capacity.¹⁴ If more crude is imported on an annual basis than would be processed or needed to maintain a reserve supply, the RDEIR must discuss and explain (i) this possibility as it relates to crude storage capacity, and (ii) the necessity for the Project to import the quantities "up to 70,000 bpd" of domestic and/or Canadian sourced oil *relative to the life of the Project into the future*. The RDEIR does not disclose the volume capacity for varying sizes of ships and marine vessels that currently serve Refinery deliveries of crude oil hold. This is important in the event that "flexibility" is invoked by Valero and rail deliveries of Project-related crudes are suspended and replaced with ship or marine vessel deliveries. If this happens, would such volumes brought by ship, on whatever regular basis, accommodate the Project-related crude storage tanks referenced?

3.4 PROJECT OBJECTIVE #3.

Project Objective 3 states: "*mitigate Project-related impacts.*"¹⁵

There is no serious discussion of mitigations in the RDEIR because the City has wrongfully accepted Valero's and UPRR's assumption of the scope and breadth of federal Preemption. This controversy between what CEQA requires and what Preemption governs, affects not only the RDEIR's analyses of impacts but also the RDEIR's evaluation of Project Alternatives. This

¹⁴ The VIP DEIR states: "Valero proposes to install one or two additional floating roof crude tanks (with capacity of up to 900,000 barrels for one, or 650,000 barrels each for two) within the Crude Oil Field tankage area." [VIP DEIR, 3.4.3.15 Additional Crude Tankage, pp 3-51].

¹⁵ RDEIR 2.1.2 DEIR ES-2, Project Objectives, p. 2-3

controversy is mentioned in RDEIR section 2.1.7, DEIR ES-7, “Areas of Controversy and Issues to be Resolved” but offers no path to resolution.

Project Objective 3 is, therefore, neutered, unable to be “met” since mitigations suggested are said to be “legally infeasible,” owing to lack of local enforcement authority.

The City of Benicia does have authority to mitigate a foreseeable risk and/or impact associated directly or indirectly to on-site Project rail operations that would remain under the control of Valero on Valero’s private property. As such, the RDEIR needs to be fully revised to address mitigations available for the Project. As such, the RDIER needs to be fully revised to address all areas of the document that were ignored due to the acceptance of the erroneous Preemption opinion.

For example, the RDEIR fails to provide a diagram and discuss the layout of the proposed two new rail spurs to be added to facilitate Project trains’ arrivals and departures. A feasible mitigation could be proposed that would require a different track layout – “looped” rail spurs rather than linear spurs, an option that could conceivably minimize risks during train movements and switching operations on Refinery property, especially in the case of arrival/departure delays or other operational problems on site. This mitigation may be installed on Valero property (not on UPRR right-of-way). If creating “looped” side spurs is not possible because of space limitations, the RDEIR should discuss the problem as part of the analysis.

The RDEIR assumes that there is no problem or potential impact associated with the location of the rail offloading terminal. On the contrary, the proposed site for the rail terminal, squeezed right adjacent to the Refinery’s eastern perimeter, is actually sandwiched between Sulphur Springs Creek and the tank farm for storing crude oil and other flammable products. The RDEIR does not discuss potential domino effects that could occur during a “worst case” event that could foreseeably arise owing to the proposed location of the rail terminal.

Locating the rail offloading racks on Refinery property represents an INTENSIFICATION OF RISK TO THE REFINERY ITSELF, to the Benicia Industrial Park, the immediate environs, including roadways and vital infrastructure, and to the community at large from catastrophic rail accidents at the Refinery or in the Benicia Industrial Park involving “High Hazard Flammable Trains” carrying Bakken oil. “Worst Case” events are not characterized or evaluated. The consequences of such an event occurring at the rail terminal involving very large crude spills, fire, explosion and ignition of airborne flammable gases known as a BLEVE must be discussed.

- The RDEIR cites the consequences of a 30,000 gallon spill of crude oil causing a Project-related pool fire on site at the Refinery to be significant, but 30,000 gallons

cannot serve as a benchmark for significance of risk and potential threat posed by a worst case event. Considering that on a daily basis, 70,000 barrels of crude oil would be delivered and this equates to approx. 2,940,000 gallons¹⁶, 30,000 gallons appears to be a *de minimis* volume for consideration. Additionally, worst case events should not be limited to “spills”, since any number of other accidents/errors may result in more severe consequences to life and the environment. Given the severity of an event such as an explosion, coupled with the Project’s proximity to other flammable materials whereby a BLEVE could occur (especially on or near the Refinery premises), a serious examination of a worst case scenario must include a scenario of ‘domino effects’.

- The RDEIR is primarily silent regarding risks associated with the off-loading processes and operations on Refinery property. This is a 7x24 operation subject to human error as well as equipment failures. The proximity of this operation to other “flammable” sources (e.g. storage tanks, above ground pipelines) is not revealed. Emissions from this equipment and operations as well as BLEVE, should be examined fully and disclosed. Additionally, records and studies available for similar operations (e.g. rate/type/frequency of equipment failure and/or human errors that result in accidents) should be made available.

- The probability of a catastrophic derailment occurring within Benicia city limits, in the industrial park or at the Refinery that could involve fiery explosions of Bakken oil as happened in the US and Canada since 2012 is dismissed as “low”.

- Figure 4.7-8 “Worst Case Facility Thermal Radiation Hazard” presents a segmented aerial view of the park, focused on the immediate area around the rail offloading terminal. The *limited area* of impacts diagrammed cannot be accurate in a “worst case” thermal radiation event or BLEVE event.

- Risk of fiery explosion is claimed by Valero to be “manageable” but the consequences for emergency responders at sites of major oil fires – such as occurred at the Chevron Richmond Refinery in 2012 and at the number of catastrophic rail derailments, fires and explosions that have occurred since the Lac Megantic Quebec disaster – point to “unmanaged” circumstances in which such gigantic oil fires are left to burn out for as long as 3 or 4 days.

One major or catastrophic rail related accident in or close to Benicia would change public perception of Benicia as a “great place to live” or “great place to locate a business.” The City’s reputation and economic base would be foreseeably affected for decades. The impacts to the Benicia Industrial Park from an accident would be enormously damaging to the viability of the

¹⁶ Conversion is 1 barrel: 42 gallons

park as Benicia’s “economic engine” unless the park be given over to Valero’s purposes, a definite case of “Local Undesirable Land Use (“LULU”) [See further discussion in BSHC DEIR Response]. In fact, the City’s economic base may be foreseeably damaged absent any accidental occurrence. If the public views the transport of crude by rail into Benicia as a threat to public safety and health (which is more than reasonable given the identified, significant environmental impacts of the Project) the mere existence of the risk is enough to cause economic impacts to the City – depressed residential and commercial property values impacting city revenues and services. By way of example, will the introduction of crude by rail into Benicia result in an additional “disclosure” required in the sale of real (commercial and residential) property (in addition to disclosure of proximity of a Refinery)?

The Project’s potential long-range *negative* impact on the economic well-being of the City of Benicia is not discussed. This is a gross oversight, related to Land Use and Planning or Urban Decay and Blight – the “LULU” effect. This is exacerbated since the Project has a life span ‘in-perpetuity’.

3.5 PROJECT OBJECTIVE #4.

Project Objective 4 states: “*implement the Project without changing existing Refinery processing equipment or Refinery process operations, other than operation of Project components.*”¹⁷

Project Objective 4 actually supports Valero’s PRIMARY goal of acquiring domestic and/or Canadian oil, and so could presumably be met *whether or not delivery were to be accomplished by rail or any other transport means*. According to Valero’s own statements supported by the DEIR and RDEIR, both highly flammable, “light, tight” Bakken oil from North Dakota shale fields and heaviest, sour, metals-laden tar sands dilbits – synthetic crudes produced from bitumen mined in Alberta, Canada – could be safely “blended” and processed at the Refinery *as currently configured*. However, this claim avoids acknowledgement of the clearly dangerous, foreseeable impact of increased emissions, including PM2.5 and other toxic gases affecting local air quality and therefore public health. The RDEIR does not identify with any specificity other risks and hazards associated with processing those particular unconventional crudes intended to be accessed by the Project. [see Phyllis Fox Report, DEIR 2014]. Despite the fact that processing tar sands dilbits in more significant quantities over time could require more hydrogen than what is currently available at the Refinery, Valero asserts that the new hydrogen unit (previously planned and permitted under VIP) is no longer necessary. The RDEIR fails to discuss the potential need for more hydrogen now or *at any time in the future* even if it is foreseeable that the daily throughput “blend” would consist of a greater percentage of tar sands feedstock. The document

¹⁷ RDEIR 2.1.2 DEIR ES-2, Project Objectives, p. 2-3

fails to identify the maximum percentage of tar sands feedstock the Refinery's FCCU could handle given the current hydrogen supply.

Processing Bakken oil also presents particular hazards because of its flammability – its chemical character is closer to a gasoline than conventional “light sweet” crude. Its high evaporation rate could portend more fugitive emissions during offloading and processing as well as when stored in tanks. [Phyllis Fox Report, 2014 DEIR]. The RDEIR avoids or minimizes specific discussion of “crude characteristics” but rather relies on generalities about how Bakken and tar sands oils could “fit” into the daily feedstock blend with no problem, thus repeating the avoidances of the DEIR.

3.6 PROJECT OBJECTIVE #5.

Project Objective 5 states: “Continue to meet requirements of existing rules and regulations pertaining to oil refining including the State of California Global Warming Solutions Act of 2006 (AB32).”¹⁸

This Objective suggests that Valero is in the habit of breaking the law and has now made up its corporate mind to comply with the law as a positive “good.” Although this is an exaggeration, it makes the point clear: Project Objective 5 is not a true “objective”. Rather, it is a requirement of state law, which Valero must obey or be penalized. The Bay Area Air Quality Management District (“BAAQMD”) as an arm of CAL-EPA’s Air Resources Board, regulates stationary and mobile sources of toxic air emissions for the Bay Area region. Refineries must comply with BAAQMD regulations. However, the RDEIR does not discuss the changing regulatory framework governing refinery emissions (as expressed in BAAQMD’s draft Regulation 12, Rules 15 and 16, expected to be adopted in 2016) which would change “existing” requirements with “new” requirements to include more stringent local air monitoring, health impact analysis and reporting, and reductions of toxic emissions. Therefore, Project Objective 5’s inclusion of the word “existing” as it relates to regulatory compliance signals what the RDEIR fails to discuss. The RDEIR fails to discuss the ongoing and changing requirements of federal, state and regional regulations and such changes as related to a Project that extends ‘in perpetuity’.

Further, Objective 5 appears to have been included to support the RDEIR’s claim that the Project would contribute to climate protection goals of AB32 by eliminating GHG emissions resulting from ship deliveries of crude oil, thus to hinge the Project’s ‘environmental benefit’ on GHG reductions alone. But GHG emissions for Project + Refinery Processing were not calculated. The whole idea of isolating one (limited) source of GHG as a way of “proving” overall GHG reduction benefits of the Project is fallacious if meant to be scientific, thus evidence-based.

¹⁸ RDEIR 2.1.2 DEIR ES-2, Project Objectives, p. 2-3

THE PROJECT ALTERNATIVES

3.7 PROJECT ALTERNATIVE #1.

Project Alternative 1 – Limiting Project to One 50-car Train Delivery per Day¹⁹

The RDEIR argues that this Alternative would be ‘legally infeasible’, relying on the City of Benicia’s opinion on Preemption, which would give UPRR control over the volume of commodities delivered by rail, such that significantly reducing the daily volume of oil proposed to be delivered to the Refinery would not be allowed. By accepting this opinion, Alternative 1 is rejected in favor of the Proposed Project, despite acknowledging Alternative 1’s environmental benefits: reduction by ½ of locomotive diesel engines’ toxic air pollutants including GHG, and potentially reducing other rail safety risks by eliminating one 50-car unit train delivery per day, with volume of crude “on board” limited to up to 35,000 barrels, with single train arriving and departing at night after peak traffic hours.

The claim that Project Alternative 1 is ‘environmentally superior’ with regard to Air Quality is fallacious since the RDEIR does not analyze the contribution of fugitive emissions and emissions produced by idling trains in its calculations and models for acute and cumulative air emissions (e.g., diesel emissions producing PM2.5 and TAC emissions).

3.8 PROJECT ALTERNATIVE #2.

Project Alternative 2 – Two 50-car Trains Delivered During Night Time Hours²⁰

The RDEIR’s snapshot summary analysis of Alternative 2 in Table ES-1 basically rejects the proposal of two night-time rail deliveries on the basis of Preemption (UPRR controls train scheduling). The fact that offloading one train is estimated by the RDEIR to take approximately 8 hours (which figure assumes there would be no delays, problems or malfunctions) makes clear that Alternative 2 was inappropriately proposed in the first place because of the operational impossibility it represents.

3.9 PROJECT ALTERNATIVE #3.

Project Alternative 3 - Offsite Unloading Terminal²¹

The RDEIR’s proposal for offsite terminal assumes that there would be little preference for such a location, whether in terms of environmental impacts or other concerns. The DEIR reviewed

¹⁹ RDEIR 2.1.5.2, p. 2-8

²⁰ RDEIR 2.1.5.3, p. 2-9; Table ES-1, pp. 2-10 to 2-12

²¹ RDEIR 2.1.5.4, p. 2-9; Table ES-1, pp. 2-10 to 2-12

other possible alternative locations within the Benicia Industrial Park, (in the vicinity of Valero’s port area and on Amports property), but those sites were determined to have too little space to accommodate rail offloading racks that could serve a 50-car train at one time, with arrival and departure rail spurs for assembling trains. That left the DEIR and RDEIR to support the Proposed Project’s location on the sliver of land on Refinery Property, sandwiched between the tank farm and Sulphur Springs Creek – hardly an “optimal” location for a 24/7 rail terminal to deliver crude oil, considering the severity of environmental risks, hazards and impacts cited in the RDEIR and those additional concerns raised within these comments and comments previously submitted by BSHC on the DEIR as well as others representing similar concerns raised by local residents.

Because no other off-site location was found that would serve Valero’s commitment to a rail project, no other Project Alternative was proposed or explored that would consider delivering Valero’s choice of crudes to the Refinery by other “off site” port terminals owned by other corporate or municipal entities, such as the Port of Stockton. Alternatives that would propose other off-site methods of bringing crude to the Refinery, such as pipeline connections were also not proposed or explored.

3.10 THE NO PROJECT ALTERNATIVE.

The No Project Alternative and the Environmentally Superior Alternative²²

The No Project Alternative is obviously feasible, viable, and the most environmentally-friendly choice overall and would NOT prevent Valero from fulfilling its primary goal of accessing price-advantaged, low grade crude oil on the open market, whether from domestic, Canadian or “foreign” sources. For all the flaws cited herein found to discredit the Project Objectives, there is NO reason to reject the No Project Alternative. The NO Project Alternative is said to be least preferred with regard to GHG emissions. However, this statement relies upon and assumes the accuracy of reporting marine vessel emissions and ignores real-time choices made on the routing of all trains, all routes in CA and outside of CA. The RDEIR’s argument against it is based on a speculative, unsupported and isolated review of GHG emissions reductions claimed for the Project. By such shenanigans, the RDEIR concludes that the No Project Alternative should not be considered preferable.

In Table ES-1, the Project is compared to suggested Alternatives for “preference” related to CEQA Resource Areas. The only Alternative that is favorably compared to the Project itself in terms of “preferences” is the “No Project Alternative,” which lists (8) “most preferred” aspects, (2) “no preference,” and only (1) “least preferred” aspect. The RDEIR’s final recommendation,

²² RDEIR 2.1.5.1, p. 2-8; RDEIR 2.1.6, p. 2-9; RDEIR Table ES-1, pp. 2-10 to 2-12.

that the Project itself represents the “Environmentally Superior Alternative,” hinges *solely* on the Project’s alleged benefit of gaining significant reductions of Greenhouse Gas Emissions, in contrast to the “No Project Alternative,” which is described as not reducing GHG, because, as Table ES-1 states: “*Greenhouse gas emissions would be greater than the Project because there would be no reduction associated with elimination of up to 82% of marine vessel trips.*” Yet, the calculations for GHG reductions from marine diesel engines and locomotives are at best speculative: the RDEIR provides no calculation for TOTAL Project-related GHG emissions from all sources, inclusive of *increases in Refinery processing operations’ contributions to increases in GHG* that would likely be owing to processing dirtier tar sands and more volatile Bakken oil that would likely be accessed by the Project.

For those reasons and other similar reasons, the logic that Table ES-1 presents results in a mostly irrelevant evaluation of Alternatives, because by elimination, the choice of Alternatives is reduced to selecting “The Proposed Project” or “No Project.” By such methods, the RDEIR deceptively determines that “The Project” represents the Environmentally Superior Alternative, and thereby preemptively advocates that the Project must be permitted.

If more “preferences” were factored into the analysis of the various alternatives, the “No Project Alternative” would clearly be considered environmentally superior. This outcome is well disguised by the analyses’ dependence on the one, singular, alleged “benefit” of the Project: Greenhouse Gas Emissions reductions. However, GHG calculations are dependent upon speculation, assumptions, and interpretation of the scope of federal Preemption’s authority. The RDEIR concludes that the proposed Project represents the Environmentally Superior Alternative “*with respect to overall air quality*” [2.1.6, DEIR ES-6, Environmentally Superior Project, p. 2-13]. Considering that the RDEIR presents conflicting data pointing to “significant and unavoidable” emissions impacts to Air Quality ‘uprail’, and certainly, also to Air Quality in Benicia, it appears that the RDEIR recommends that the proposed Project is in the best interests of the City of Benicia and our community, (e.g. ‘good for Benicia’ – as per Planning Commission hearing presentations for the DEIR and RDEIR).

The RDEIR’s two-pronged argument against the No Project Alternative claims that (a) Project objectives cannot be met, and (b) GHG reductions would not be achieved if rail deliveries are not substituted for ship deliveries. On the contrary, as previously noted discussed:

- The RDEIR and the DEIR fail to disclose key information regarding “alternative options” for delivery of North American-sourced crude oil to the Refinery. The No Project Alternative **does not** preclude Valero from accessing North American-sourced crude oil – since Valero has stated that the Refinery has already received Bakken crude by barge, albeit, the source and volume is undisclosed.
- The RDEIR’s claim for the Project’s singular benefit of GHG reductions is highly selective and is not weighed against all other significant risks posed by rail delivery of crude oil and the

potential significant impacts that would result. Claims for GHG reductions are not contextualized: the Valero Refinery GHG emissions + Project GHG emissions from *all sources related to the Project*, (fugitive emissions, idling locomotives, represent an overall *increase* in GHG emissions contributing to global warming. (See above).

In the event that the No Project Alternative meets the criteria to be deemed the Environmentally Superior Alternative, CEQA requires that another Alternative be considered for that designation. However, since the RDEIR rejects all the other Alternatives, the proposed Project becomes the Environmentally Superior Alternative by the process of elimination. This outcome is patently absurd and a “set up” for supporting the Proposed Project’s approval. The RDEIR’s recommendation does not reflect the purpose of an independent environmental analysis, given the magnitude of the rail Project’s foreseeable consequences for Benicia and all ‘uprail’ communities and environs.

End Section 3

SECTION 4: FAILURE TO CHARACTERIZE CRUDE SLATE CHANGES AND EFFECTS OF PROCESSING UNCONVENTIONAL OIL

The RDEIR fails to disclose and fully characterize the effects of prospective “crude slate changes,” which are cited by the RDEIR as an “Area of Controversy” that remains unresolved.

Such effects as *increased* emissions can reasonably be expected to occur, according to refinery experts who submitted comments on the DEIR (Phyllis Fox, Phd., and Communities for a Better Environment). Those comments amplify, in specific detail, why the RDEIR’s discussion of crude slate changes cannot be accepted.

The RDEIR’s claim that there would be “no net emissions” resulting from processing future feedstock blends that would contain Project-accessed unconventional crude oils is fallacious, though its deceptions are difficult to discern.

The RDEIR fails to disclose basic information necessary to evaluate whether there would potentially be net emissions *increases* that would likely result from processing Canadian tar sands’ derived synthetic oils and/or Bakken oil.

According to refinery experts’ comments submitted on the DEIR, tar sands oils and Bakken oil have specific chemical characteristics that can significantly add to risks of corrosion, fire and explosions associated to Refinery processing operations, and also, add to health risks associated to acute and chronic exposures to increases in toxic emissions resulting from processing North American-sourced oils, especially Canadian tar sands bitumen-derived synthetic oils or fracked Bakken oil from North Dakota.

The RDEIR fails to disclose:

- (1) the specific array of chemical characteristics of the various tar sands oils, and characteristics of Bakken oil; and
- (2) the actual current average baseline throughput rate, (averaged over three previous years, 2012 – 2014).

The fallacy of the “no net emissions” claim contrived by the RDEIR can be unraveled as follows:

The RDEIR echoes Valero’s word that currently existing emissions reported resulting from *current* processing of *conventional* feedstock blends would be similar to emissions levels resulting from *future* feedstock blends containing any number of types of Project-accessed Canadian synthetic tar sands oils, and/or very light Bakken oils. This is asserted as if it were true that conventional feedstock oils currently being processed are “similar” in character to existing future feedstock oils that would likely be accessed by the Project. For example, the RDEIR uses terms such as “sweet Alaska-like” to compare Bakken oil to conventional medium sweet crude from Prudhoe Bay. However, such comparisons of feedstock are based solely on two criteria for contrasting types of oil, (however extreme the contrast derived might be between heaviest crude

oil and “lightest”): the API Specific Gravity (density) of the oil, and its relative sulfur content. This comparison avoids accounting of the distinct chemical differences known to contribute to the signatures, besides density and sulfur content, of tar sands and Bakken oils.

If the additional and necessary information about “other” crude characteristics were supplied by the RDEIR, differing conclusions can be arrived at with more scientific evidence regarding Valero’s claim that “no net emissions” would result from *increasing the percentages* of tar sands or Bakken oils to be processed in future blends.

As previously commented upon [BSHC RESPONSE to DEIR, p 76], the RDEIR fails to provide a figure for *current average baseline throughput rate* (averaged over three previous years, 2011 - 2013), the other necessary fact without which it is impossible to claim “no net emissions” resulting from processing tar sands or Bakken oils.

The Refinery’s *current* average production rate must be compared to the maximum daily average production rate that was set by the construction permit granted in 2002 for VIP by the Bay Area Air Quality Management District (BAAQMD): the maximum daily average production rate, based on annually averaged figures, cannot exceed 165,000 bpd.

Regarding emissions levels permitted: the maximum permitted emissions levels for certain chemicals (gases, metals, etc.) that must be reported by law to BAAQMD are tied to the maximum permitted production level of 165,000 bpd. But if production rates have fallen, as reported by BAAQMD²³ the RDEIR’s projected future emissions levels would be in error.

In the case of the RDEIR’s assessment of projected estimates for future emissions that would result from processing differently constituted throughput blends, if the current rate of production is actually well below the maximum *permitted* production level, the expressed ratio of emissions emitted as related to production level would be expected to reveal that change, e.g., emissions reported should be expected to be lower proportionally in relation to the maximum emission levels permitted.

The RDEIR cleverly hides its deception: it compares projected emissions that would result from processing differently constituted throughput blends, if the current rate of production is actually well below the maximum permitted production level, the expressed ratio of emissions reported as related to production level would be expected to reveal that change, e.g., emissions reported should be expected to be lower proportionally in relation to the maximum emission levels permitted.

The RDEIR cleverly hides its deception: it compares projected future emissions levels that could result from processing future blends containing increasing amounts of tar sands and/or Bakken oils by relating those emissions estimates to the *maximum* permitted production rate of 165,000 bpd. By this devious method, assuming a continuing and trending drop in actual production rates, future increases in emissions can be hidden. Thus, measured against the *maximum* permitted emission levels, future projected emissions levels can appear to be lower.

²³ Bay Area Air Quality Management District, *op.cit.*

Thus the RDEIR's calculations, based on very limited information and non-disclosure of the current baseline production rate, allows for deceit that would create the impression that there would be no adverse effects from processing a changed crude slate containing increasing volumes of Project-accessed tar sands and/or Bakken oils.

However, the BAAQMD's recently reported current throughput baseline for the Valero Benicia Refinery is 114,443 bpd, close to 30% lower than the Refinery's permitted level. Decision makers should be able to reason that the Refinery should be able to report an equivalent drop in future estimates for emissions levels should the trend hold for lower production rates as might be predicted.

End Section 4

SECTION 5: RDEIR FLAWS, DECEPTIONS, DEFICIENCIES, OMISSIONS AND FAILURES TO ADDRESS DISCUSS AND/OR DISCLOSE KEY FACTORS AND CONDITIONS PERTAINING TO FORESEEABLE IMPACTS OF THE PROPOSED RAIL PROJECT AND PROJECT-RELATED REFINERY PROCESSING OPERATIONS

5.1 OVERVIEW

The flaws and limitations of the Project Objectives are reflected in the limitations of the Project Description and impact analysis. The primary focus of RDEIR revisions is on ‘uprail’ impacts that were not properly evaluated. Of the “significant and unavoidable” impacts described, analysis devolves into questionable rehearsals of their significance. The RDEIR charade goes on with posed mitigations that are then summarily rejected as “infeasible” *a priori* under federal Preemption.

The Project, narrowly defined by Project Objectives 1 & 2 as a “rail project,” would not, therefore, be “managed” by the Project Applicant, but by Union Pacific Railroad Co., *off-site of the Refinery* – therefore *anywhere* from the Refinery fenceline onto rail spurs crossing the Park Road intersection in the Benicia Industrial Park, and all along mainline rail routes to the crude source.

The RDEIR suggests that the City of Benicia’s decision makers are without any viable authority to mitigate foreseeably significant Project-related and risks, direct and indirect risks, that may occur within the City of Benicia and ‘uprail’. Yet, by seeming sleight-of-hand, the RDEIR conjures the Proposed Project as the “Environmentally Superior Alternative.”

On the contrary, should decision makers agree with the RDEIR’s determination, the City of Benicia would be rendered simultaneously impotent and unconscionably irresponsible. To call the Crude By Rail Project “environmentally superior” represents a breach of the purposes of CEQA to inform and enable the public and decision makers to fairly evaluate and judge the true scope of the Proposed Project and its adverse impacts.

The RDEIR fails to disclose basic information pertinent to the number and severity of risks and harm posed to people, places, businesses, vital resources, public assets, sensitive landscape/habitat and the climate. Impact analysis relies on speculation and minimizes direct and indirect, potentially domino-like “significant” consequences of running daily “High Hazard” trains of 100+ tank cars loaded with Bakken oil or tar sands that travel more than 1,500 miles to the UPRR Roseville Rail Yard and on to the Refinery.

FATAL FLAW: THE RDEIR'S FAILURE TO IDENTIFY PROLONGED DROUGHT IN CALIFORNIA AND WESTERN STATES AS A POTENTIAL FACTOR AND ENVIRONMENTAL CONDITION POTENTIALLY AFFECTING PROJECT RAIL OPERATIONS IN BENICIA AND UPRAIL OVER TIME – PERTAINING TO IMPACT ANALYSIS

The RDEIR fails to present information of great concern to the state on prolonged drought conditions, climatic variables, uncertainties and contingencies predicted for California and the west generally – conditions which affect water supplies (watersheds, aquifers, reservoirs, lakes, rivers and streams), and affecting snow and rainfall patterns. These changing conditions are considered by scientists to be possible evidence of global warming and climate change. An example of such effects: predicted increases in winter/spring flooding events in low-lying areas, such as marsh areas in Benicia and ‘uprail’ in Solano and ‘uprail’ counties along the Sacramento River and its floodplains.

Examples of RDEIR failures to disclose drought as a condition affecting impact analyses:

- Figures 1-1, 1-2, 1-3, 1-4 and ES-1, show mainline rail routes that could be used by Project-related High Hazard Flammable Trains carrying Bakken oil from North Dakota and/or tar sands dilbits from Alberta, Canada. Of the five maps, only two are topographical, but at a scale that makes detailing of landscape features in close proximity to rail routes undistinguishable if at all. The other three maps basically show rail lines, but with no landscape features shown, and few cities or smaller communities identified. (No maps provided show water resources, forested areas and grassland areas prone to fire along rail routes). Those features are only generally referenced, without specificity [see RDEIR section 2.13.1 DEIR Section 4.8.6, Uprail Impacts and Mitigation Measures, (p. 2-125)];
- Dramatic increase of fire hazards along UPRR mainline routes into California and other carriers’ routes in the Northwest and Midwest that would likely be used for Project-related High Hazard Flammable Trains.
- The impact of major oil spills involving more than 30,000 gallons on waterways (lakes, reservoirs, rivers) that are sources of drinking water supplies in California;
- The near impossibility of cleaning up sticky, viscous tar-like bitumen (primary constituent of tar sands dilbits) from river bottoms, marshes, lakes, etc.
- In Chapter 2.12, DEIR Section 4.8, Hydrology and Water Quality, and in DEIR Appendix G - Valero Emergency Procedures Manual, Sections 203 & 206 and DEIR Appendix H - UPRR Hazardous Material Response Plan, there is no account of water supply availability constraints in the era of prolonged drought for grass fire fighting and fire suppression along UPRR mainline routes nor along rail spurs in the Benicia Industrial Park.
- There is no discussion regarding the "fire water" supply stored by Valero, whether more would be needed to be stored on site with respect to potential fire hazard dangers posed by the

Project trains, offloading procedures, etc, in the vicinity of the grassland that is part of the southwestern buffer zone area within the Refinery and near the tank farm, and part of the adjacent riparian corridor of Sulphur Springs Creek. [See RDEIR Table 5-1, Potential Projects for Cumulative Effects Evaluation: requirement of recent Chevron Refinery permit to construct a new “fire water tank” to improve on site emergency response fire-fighting capability in response to the massive 2012 Chevron Refinery fire.]

- The state’s recently released (March 2015) report, *Updated Gap Analysis for Rail in California* is not included in the RDEIR Appendices, yet the detailed report discusses emergency response capabilities throughout the state and specific problem locations with regard to response performance and the manpower, equipment and materials available for fighting fire and oil spill response, which is especially problematic along rural rail routes in California.
- The RDEIR’s discussion of rail-related impacts to Biological Resources does not account for the effect of prolonged drought on biota and creatures, many of which may be “on the move” in search for food supply and water – migrations that may increase owing to climate change effects.

5.2 EXAMPLES OF FURTHER FAILURES

5.2.1 **Regarding potential threats to the Benicia Industrial Park:** The RDEIR does not include a detailed map of the Benicia Industrial Park in its entirety. Such a map (or maps), as requested in previous comments on the DEIR, must precisely and *clearly* show and identify: UPRR mainline tracks that run through the marsh paralleling Goodyear Rd; locations of all business properties within the park; locations of all rail spurs in the park; location of rail switching operations on Refinery property and UPRR off-site switching locations; marsh and riparian areas including the length of Sulphur Springs Creek; designated flood zones and seismic faults.

5.2.2 If an emergency evacuation plan produced by the City of Benicia exists – a plan that would be implemented in the event of a massive Refinery fire related directly or indirectly to the rail Project, that plan should have been included in the RDEIR’s Appendix. If no such plan exists, a plan must be prepared and provided to the public. Valero’s and the City of Benicia’s fire departments may coordinate responses during an emergency, as cited by the RDEIR, but if an emergency evacuation plan is not widely known or made available to the public, an actual evacuation under the conditions of a “worst case” emergency owing to a Refinery-related operation such as the CBR Project could become chaotic. An official evacuation plan must be included as part of the Final Draft EIR for public review.

5.2.3 The RDEIR provides a new map, Figure 4.7-8 “Worst Case Facility Thermal Radiation Hazards” presenting a segmented close-up aerial view focused on the immediate area around the rail-offloading terminal proposed to be located on Refinery property just west of East Channel

Rd. The RDEIR does not describe the potential consequences within a ½ to 1 mile “blast zone” area. The alleged limited area of impacts diagrammed must be re-evaluated. The map shows “worst case” radiating circles that are meant to define the limits of the effects from radiating heat from a significant oil fire at the terminal, whether from spill (“pool fire”), pipeline or tank car rupture. Brief analysis of effects of possible ignition of escaping vapor cloud from offloading procedures is offered in Appendix F. The RDEIR claims that the likelihood of a larger BLEVE event is very low, and the damage or injury in the immediate area caused by a “worst case” fire at the rail unloading terminal would be “less” compared to a scenario where the same fire occurred in a residential area. This is a false comparison that minimizes the devastating immediate primary impacts and cumulative secondary impacts of such a disaster, especially one bordering the Refinery’s crude oil tank farm and other area businesses in the immediate vicinity out to a one mile radius of the Refinery, which would include a wider swath of the community including the Arsenal Village (artists’ work/live quarters) and the Port of Benicia. The RDEIR does not evaluate the toxic emissions released by such an incident that would potentially affect many residents and people living and working within a mile or more of the Refinery and would add to the already significant emissions coming from the Refinery’s processing block. “Down wind” cumulative consequences of a BLEVE event originating at the rail terminal are not identified or discussed in relation to survival of the industrial park and surrounding community. Additionally, the cumulative consequences of an accident which produces a ‘domino effect’ (e.g. an explosion exacerbated by ignition of nearby other flammable sources such as the pipelines, crude storage tanks, BLEVE event) is not examined and no analysis of commercial or residential property damage (Industrial Park, rail and bus infrastructure) nor loss of life (human and wildlife) nor urban blight is provided. Such a domino event would have consequences for Benicia long term and potentially impact the economic viability of the City for decades.

5.2.4 RDEIR [p. 2-113/2-114] does not identify the specific, local cultural and historical resources in Benicia within the Arsenal Historic District - boundaries that may lie within a ½ radius of UPRR rail spurs that would be used by Project trains. Those assets, which may be impacted indirectly by a major rail accident involving fire and explosion, are highly valued properties of the City and could suffer extensive irreparable (expensive to repair) damage: Benicia Historical Museum; Powder Magazines; Clock Tower; Commanding Officer’s Quarters, as well as other privately owned historical mansions and homes on Jefferson Street in National Register District C dating from the Civil War era. [see Arsenal Conservation Plan]. The RDEIR concludes impacts to Cultural Resources, both ‘uprail’ and in Benicia would be significant.

5.2.5 There is no discussion of potential impacts within the Port area: people living and working in the “Arsenal Village” (the artists’ work/live buildings along Tyler and Jackson Sts. located in close proximity to the Port of Benicia and Valero’s port) and how this area could be indirectly impacted (e.g. by acute exposure to highly toxic smoke billowing from a Bakken oil fire caused by ruptured CP-1232 tank cars from an accident or derailment which occurs during a

switching operation involving a Project train “backing up” toward the Benicia Bridge - a transferring from the UPRR mainline onto the rail spur entering the Industrial Park.)

5.2.6 The RDEIR gives only briefest attention to local impacts affecting the Benicia community and the Benicia Industrial Park under what are deemed “normal” or “routine” Project rail operations. The RDEIR does not provide criteria for qualifying what is meant by “normal” and “routine” operations. The Project Description presents idealized conditions for train scheduling: no malfunctions at the rail offloading racks, no human error, no delays). However, the RDEIR admits there can be no guarantee under Preemption that an “ideal” schedule would be adhered to by UPRR *on a daily basis*. Reliance on UPRR’s claim of “on time” performance for passenger trains cannot be fairly applied to performance levels for High-Hazard Flammable Unit Trains. Unit trains carrying these substances are subject to different regulatory policies for safe operations which take precedence over time tables associated with any schedules.²⁴

5.2.7 The traffic study has not been re-evaluated. The study supports conclusions that traffic impacts would be “less than significant” at the industrial park’s crucial rail crossing intersection of Park Road. Conditions under which Project train arrivals and departures could prevent access to businesses along Bayshore Rd. for a prolonged period are not identified. The traffic study further minimizes and normalizes extended traffic delays at Park Rd that would be owing to Project trains entering or leaving the Refinery. Conclusions drawn from suspect data collected renders traffic impacts “less than significant” at Park Rd, by citing the poor “LOS” status of that key intersection. *Improvement* of LOS should be required, not used as an excuse for minimizing effects of train movements on traffic flow.

5.2.8 The RDEIR does not discuss the possible effects of idling trains. Idling occurs en route ‘uprail’ or during switching operations in the Benicia Industrial Park and/or within the Refinery itself during train arrivals and departures. Idling could effect “on time” scheduling, calculations of diesel locomotive emissions and fuel consumption, and could effectively increase the concentration of fugitive emissions from tank cars. Things go wrong. Unexpected train delays ‘uprail’ may have adverse domino effects on Project operations from UP’s Roseville Rail Yard to Benicia. Idling trains might have to be sidelined, with foreseeable consequences, including inconvenience to local businesses. Trains idling mean more unaccounted for PM 2.5 and GHG emissions.

²⁴ UPRR may receive monetary and/or like incentives from Amtrak and other passenger rail entities for passenger trains’ priority over freight cargos to achieve on-time service. No such monetary incentive is discussed or contemplated under the RDEIR for similar incentives to be provided by Valero to UPRR. Therefore, the comparison of passenger train schedules to Valero’s crude oil deliveries is not applicable and any comparison of UPRR’s timeliness extended to crude oil freight is falsely applied.

5.2.9 The consequences to the Industrial Park in the case of a serious derailment that results in explosion and fire are not discussed with respect to economic damage, aka the short- and long-term viability of the park. CEQA allows that “urban blight” can be considered an indirect impact caused by significant damage or destruction of an area. However, since the RDEIR claims that the likelihood of an extreme Project-related disaster happening is low, the reasonably foreseeable indirect consequences of such an event on the viability of the park as the City of Benicia’s “economic engine” is an avoided topic. Whether the possibility of such an event is “low,” the topic of blight (commercial and residential property devaluation) should be analyzed as a long-term potential consequence of Project operations.

5.2.10 The RDEIR’s discussion of effects of noise on biological resources was not supported by scientific research. As RDEIR Table 4.7-1 “Rail Incidents - Initiating and Contributing Causes” points out, there can be numbers of reasons why rail operations and train movements are anything but “ideal” with regard to noise impacts’ effects on people and wildlife. The RDEIR does not provide description of the horrendously loud and abrupt noise produced by squealing rails when trains stop and start at slow speeds during switching operations, (especially during winter when hot train wheels travel on very cold rails) and/or during coupling and uncoupling tank cars during train assembly operations. The RDEIR assumes that everyone, including wild life, would adapt to what is purported to be a “modest” daily increase in noise disturbance, (dependent on wind speed and distance from tracks) whether occurring during the day or night time. However, no research is cited to support such speculation. Further, the RDEIR does not address noise of the Project on a cumulative basis. For example, the cumulative effects of the existing train noise from Martinez coupled with the train noise for the Project.

5.2.11 The RDEIR admits that other rail companies and mainline rail routes, other than those owned and maintained by UPRR, could be involved in carrying crude to UPRR’s Roseville Rail Yard. There is no analysis of that possibility or how a different rail company could affect the RDEIR’s referenced “normal Project operations.” The document does not identify those “other” RR companies that might manage Project-related trains from the Northwest, Midwest or North Dakota, headed for California and UPRR’s Roseville Rail Yard. The RDEIR fails to characterize the quality of trackage leading from crude sources into California. These omissions – and so many others like them related to rail safety – are inexcusable, given the variability of track maintenance, the poor condition of RR-owned bridges, “at grade” rail crossings, a 5-year US-DOT delay (lobbied for by RR companies) in implementing requirements for “positive train control,” and the lack of preparedness for extreme emergencies. Dismissal of BNSF as a viable rail carrier for the Project (now or in the future) also results in no examination of those alternate routes. If such an alternate route was examined and presented as a viable Project Alternative, the public would have the opportunity to understand if such an alternative might result in less significant impacts and risks for the Project (e.g., better trackage, less train miles, less exposure to environmentally sensitive areas or populated areas).

5.2.12 The RDEIR fails to discuss the State’s response to the risks posed by “High Hazard Flammable Trains” traveling rail routes into and within California. The “Updated Gap Analysis for Rail in California,” published in March, 2015, identifies the gaps for emergency preparedness for handling catastrophic rail accidents involving flammable liquids. The RDEIR only references the Report, but there is no indication that it was actually used to analyze and evaluate the potential severity of rail accidents in the absence of adequate emergency response.

5.2.13 Emergency Response capability is no substitute for preventive measures to avoid accidents. Explosive Bakken fires cannot be “put out,” regardless of the best intentions and expert training of fire/emergency response teams. Over the last three years, fifteen catastrophic rail accidents have occurred since the fatal disaster at Lac Megantic Quebec, when a Bakken-loaded train derailed and exploded, destroying the town center and environs – leaving 38 buildings destroyed, 47 people dead, 1.6 million gallons of crude oil spilled into the ground and Chaudière River. The derailment at Lynchburg, VA in April 2014, provides a case in point: a unit train traveling on tracks by the James River derailed causing CP-1232 tank cars to collide, puncture and rupture resulting in a massive spill and fiery explosion of Bakken oil with tank cars on fire falling into the river. The fire was reported to have taken four days to burn out and 1,000+ people were forced to evacuate the area.

- The RDEIR attempts to suggest that Union Pacific’s established emergency response protocols would be adequate to deal with any ‘uprail’ train accident—whether a catastrophic derailment involving explosion and fire in rural or urban environments, and/or crude oil spill in a city neighborhood, a river or marsh. Since 2013, disastrous accidents involving ruptured tank cars carrying Bakken oil have caused enormous fires that emergency responders have had to let burn out over many hours, even days, calling for evacuations. In Casselton, North Dakota, one mile from a catastrophic derailment and conflagration on Dec 30th, 2013, when ruptured tank cars full of Bakken oil ignited in fiery explosions, spilling 400,000 gallons of oil, plumes of toxic smoke could be seen for miles. The RDEIR does not discuss the environmental impacts of letting such fires burn out, nor identify the types and quantities of emissions that would potentially be released during such a catastrophic event that would affect people living within 1/2 to 1 mile from such a fire.

These catastrophic accidents are reminders that “worst case rail accidents *will continue to happen.*”

- The RDEIR re-considered the likelihood of the frequency of such disastrous events, but concluded the probability of an occurrence to be very low. For example: Table 4.7-6 [RDEIR p. 2-93] “Probability of Crude Oil Release from Project Trains” says that the rate of occurrence of a 30,000 gallon release of crude oil into the environment would be “One release every 38 to 80 years.” It only takes ONE TRAIN ACCIDENT to have disastrous

primary and secondary effects. Such accidents could happen any time, at the rail offloading racks on Valero property or ‘uprail’ all the way to the crude source.

- From the RDEIR’s statistical analysis of the “low” probability of such events occurring within 38 years, it cannot be concluded that a “worst case” rail accident couldn’t happen tomorrow involving much more than 30,000 gallons of oil spilled (the amount used in RDEIR probability calculations for major spill event.) A “worst case” event could not be represented by 30,000 gallons, when 1.6 million gallons of Bakken oil were reported in 2012 to have spilled and caught fire that resulted in the near total fatal destruction of the town center and environs of Lac Megantic, Quebec.

5.2.14 The National Transportation Safety Board (“NTSB”) released results of their year-long forensic investigation of the Lynchburg VA derailment. The NTSB investigation revealed the culprit to be broken trackage²⁵ – broken rails. The RDEIR does not mention the NTSB investigation nor its conclusion.

5.2.15 The RDEIR does not disclose the causes or provide the current status of the investigations and preliminary reports of the other 15 catastrophic rail derailments involving Bakken or tar sands that have occurred since the Lac Megantic disaster in 2012.

5.2.16 Human error is often the cause of accidents (e.g. Lac Megantic derailment). However the RDEIR provides no discussion of aspects of the Project that are most vulnerable to human error and consequences. For example, the crude off-loading procedures at the Refinery require significant human effort. This labor intensive operation lends itself to accidents and errors caused by human (non-machinery) errors. The operation involves a small crew of four (4) Refinery employees to safely hook up valve couplings according to stringent procedures outlined in Federal Railroad Administration’s Reference Manual, Pamphlet 34 – Recommended Methods for the Safe Loading and Unloading of Non-Pressure (General Service) and Pressure Tank Cars. The valves under the 50 tank car carriages must be connected to piping that moves the oil uphill to storage tanks. The RDEIR does not identify the valve safety check procedures as a requirement for the Project offloading operations. Leaks of fugitive emissions and actual crude spills from these transfer operations are foreseeable consequences of a dangerous and repetitious operation with men working full eight hour shifts. Additional statistics and information on the variables and risk of this operation are needed.

²⁵ National Transportation Safety Board, “MTSB Accident ID DCA14FR008” public release date August 20, 2015, NTSB Docket Management System website, <http://dms.nts.gov/pubdms/search/hitlist.cfm?docketID=57646&CurrentPage=1&EndRow=15&StartRow=1&order=1&sort=0&TXTSEARCHT=>

5.2.17 In March 2015, US DOT released its newly minted rail safety regulations. The RDEIR's discussion of the new requirements avoids discussion of controversy surrounding the new regulation's perceived inadequacies. For example, most recently, railroad companies' lobbying efforts may delay implementation by five years of a new requirement for "positive train control." This information is essential for evaluating the risks and impacts of the Project.

5.2.18 The alleged safety of the CP-1232 tank cars pledged by Valero to be purchased and/or leased for the Project cannot be guaranteed safe. CP-1232s were proven vulnerable to puncture even when tank cars are moving at relatively slow speeds through urban areas, as occurred at Lynchburg VA. Improved tank cars, "DOT-117s" are not expected to be available for years. The RDEIR must characterize the risk inherent in Valero's commitment to use CP-1232s for the life of the Project.

5.2.19 The RDEIR's Table 4.7-3, "Local Safety Hazard Sites in California," lists all the mainline rail routes in California, the track lengths in miles and the number of derailments that have occurred on each route between the years 2009 and 2013. The 3 UPRR-owned northern routes that the RDEIR says Valero's High Hazard Flammable Trains would most likely take to get from the California border to UP's Roseville Rail Yard have had a total of 9 derailments from 2009 to 2013. The RDEIR admits that UPRR's "southern route" might also be used. That route from Nevada, through Bakersfield to Roseville, has had 10 derailments in the same period. There is no record mentioned about what happened on these four (4) UPRR routes in 2014 and 2015. Other accidents besides derailments may have occurred that have not been reported. The RDEIR does not say. This means the public is not adequately informed of the scope of potential risks that these rail routes pose, considering that an increased number of High Hazard Flammable Trains will be traveling on them.

5.2.20 UPRR's mainline routes into California are only generally and vaguely described by a few place names. Figure 1-3, Uprail Routes, [p. 1-4] offers a very faint topographical map showing UPRR mainline routes and other BNSF and UPRR routes. The map is schematic, without showing landscape features, special places, etc. Minimizing description and characterization of potential hazards and risks, the RDEIR fails to provide basic information that affects the public's ability to fairly assess claims regarding potential impacts and the severity of threat posed by High Hazard Flammable Trains passing through vast stretches of rural, scenic California and urban centers. One of the three UPRR mainline routes follows I-5 from the California border, past Shasta and Dunsmuir; the second threads through the Feather River Canyon, following State Route 70, and the third follows I-80, from Reno to Truckee then over Donner Pass to Auburn, thus following I-80 into Roseville. (The names "Donner Summit" or "Donner Pass," which are so well known as landmark sites, are not used in the document, but should be. Not doing so is a deceptive means of avoiding reminders of the precious and beloved alpine surroundings of Donner Lake, of the Donner Party historical site, the Truckee River and South Fork of the Yuba River. The RDEIR fails to show and identify particular landscape

features and urban and rural population centers the trains would pass through, nor describe the specific hazards – such as 100-yr old bridges, snow tunnels, sharp curves – along each route, where those hazards are located, and the severity of risk posed by those conditions. Left unidentified: local and regional sensitive ecologies along northern and southern rail routes including watersheds and waterways, forests, rivers, lakes, marshes, streams and creeks – all habitat for wildlife.. The map shows UPRR’s southern route into California through Bakersfield to Roseville, but provides no description of that route, no landscape features that would be put at risk or conditions, etc., that would possibly affect rail safety.

5.2.21 The RDEIR does not provide maps that would show environmental features and conditions existing along rail routes owned by UPRR or other rail companies that may be used to serve Valero Project-related trains, outside California, e.g. US and international mainline rail routes that run respectively from various Midwestern sources of fracked oil, and from Alberta, Canada’s tar sands – those that connect to UPRR rail routes in California. This topic is subject of much concern and controversy particularly concerning the high risk for fire and spills along treacherous rail routes into California.

5.2.22 Limited discussion of potential severity of hazards along all possible mainline rail routes into California: Table 4.7-9 lists 100 school sites located within ¼ of three UPRR mainline rail routes. However, no school sites are listed for the “southern route. There is no table listing either state parks or regional parks or historical resources along UPRR routes or along the southern route. NRDC and Forest Ethics have cited a 1/2 mile radial distance as being a danger “blast zone” requiring evacuation in the case of a foreseeable “worst case” explosion and fire of a “High Hazard Flammable Train” that could occur within ½ mile of residential neighborhoods, businesses, school sites, parks, recreation areas or cultural or historical assets. The direct and indirect consequences of such an event are not assessed, for example impacts to air quality in the immediate vicinity from toxic, drifting plumes of smoke from a devastating oil fire resulting from a Valero Project train accident or derailment.

5.2.23 The RDEIR only mentions the “southern route” from Nevada into Bakersfield as a possible route for Project trains, but does not characterize features of that route, nor the specifics about communities from Bakersfield to Roseville and whether they would possibly be considered “High Threat Urban Areas.” With a nod to the southern route, the RDEIR references the SLO County Revised DEIR on the Phillips 66 Rail Spur Extension Project but doesn’t include the pertinent text in the RDEIR Appendix.

5.2.24 RDEIR [page 2-113/114] fails to mention local cultural resources in Benicia within the Arsenal Historic District boundaries that are highly valued properties of the City, and could be damaged (Benicia Historical Museum; Powder Magazines; Clock Tower; Commandant’s Residence or Commanding Officer’s Quarters) Also, other historical mansions and homes on

Jefferson Street in National Register District C dating from the Civil War era. [Arsenal Conservation Plan].

5.2.25 Germane to evaluation of regional emergency preparedness is the “*Updated Gap Analysis for Rail in California*,” a report released by the state in March 2015. The RDEIR references but does not discuss the Gap Analysis findings regarding the risks posed by high “Hazard Hazard Flammable Trains” traveling mainline rail routes in California. The report is only referenced in the RDEIR²⁶ but should have been included in the RDEIR’s Appendices. The Gap Analysis report includes a map of all rail routes and evaluates the response times and capabilities of local, regional and state fire/rescue agencies. The RDEIR’s discussions that reference the Gap Analysis are not adequate, since the danger zones of four actual rail routes that are likely to be used are not described, nor are the particular hazards each route poses. On the contrary, the RDEIR seems to suggest that emergency response would be able to handle a major rail disaster involving High Hazard Flammable Trains in High Hazard areas, such as the City of Sacramento. The City of Davis, with the University of California campus is similarly threatened.

Quote From Gap Analysis, page 3:

“An existing gap that is of particular concern to this Analysis is the lack of qualified Haz-Mat Teams where trains travel through rural California. It is in these areas that the State must focus on enhancing its emergency hazardous materials response capabilities, including: response times, response equipment, responder training (both new and refresher), and the commitment of additional resources. Adding to this challenge, of the State’s approximately 56,000 firefighters, roughly 32%, or nearly 14,000 are volunteers, many of whom are based in these rural areas of the State. Equipping, training, and sustaining these resources are critical to a comprehensive hazardous materials response and recovery capability.”

Quote from Gap Analysis Report, Risk Assessment, page 4:

“High-hazard areas for derailments are primarily located in the mountains, with at least one such site along every rail route into and/or through California. Some high-hazard areas are also located in more urban areas, such as in the San Bernardino-Riverside and San Luis Obispo regions. Overall, these high-hazard areas represent only an estimated 2% of track, yet these areas are where 18% of the derailments have occurred. The high-hazard areas do not reflect the locations of other types of rail accidents (e.g., collisions). Therefore, while the highlighted areas are important, they are not the only sites where

²⁶ Governor’s Office of Emergency Services, State of California, “Updated Gap Analysis for Rail in California”, March 13, 2015, Cal OES website, http://www.caloes.ca.gov/FireRescueSite/Documents/Updated_Gap_Analysis_for_Rail_in_California-20150313.

accidents may occur. In fact, 82% of derailments occurred in a wide range of other locations.”

After so many crude train derailments involving catastrophic explosive oil fires, it is well documented that such fires while fulminating cannot be suppressed by foam or other chemical agent. They are left to burn out over as many as three to four days, with black plumes of toxic smoke full of carbon PM2.5, VOCs, heavy metals and other contaminants, persisting, drifting and spreading across the immediate environs and over a region for as many days. The RDEIR does not discuss these consequences, and others that fly in the face of claims that such oil fires can be “managed”—a euphemistic dodge of bald facts that Valero’s and the City of Benicia’s fire departments can’t seem to publicly admit.

5.2.26 Example of unresolved and conflicting information involving “safe routing” of High Hazard Flammable Trains [HHFTs] (required under the new US-DOT rule of May 2015) and claims for GHG reductions, calculations of diesel fuel consumption and emissions for all rail routes potentially involved:

- Of the 3 UPRR mainline routes from the CA border to Roseville’s UP rail hub, the Donner Pass route is the shortest distance – approx. half the distance of the Shasta/Dunsmuir route from Oregon, or the Feather River Canyon route from Nevada.
- Trains taking the Donner Pass route would burn less diesel, emit less GHG and other toxic emissions.
- However, the new DOT rule on Safe Routing requires that the safest route be chosen based on a minimum of 27 criteria—criteria that the RDEIR does not fully disclose.
- The RDEIR states that the Donner Pass route only has 3.5% of Class 4 or 5 trackage, compared with 80% for Feather River route and 100% for Shasta/Dunsmuir route.
- The RDEIR reveals a conflict: to reduce GHG and limit diesel fuel consumption and emissions, trains would take the shortest route, which is Donner Pass. But the safest route can’t be the shortest, given the lack of Class 4 & 5 trackage on the Donner Summit route. The “trade off” situation posed is not evaluated.
- It has to be presumed that economic considerations would also be a factor in determining UPRR’s routing choice for HHFTs. There is no discussion of “railroad company economics” in relation to US DOT rail safety policy.
- Only general statements are made about the severity of potential risks. There is no discussion of the reasonably foreseeable *secondary* effects from spills, fires, etc. that could impact particular landscapes along the three UPRR mainline routes cited. (As previously mentioned, the southern route from Bakersfield up to Roseville is not characterized.)

5.2.27 Regarding claims for GHG reductions and estimates of diesel fuel saved and also ‘uprail’ risks: Further compromising or confounding any sense made in the analyses of ‘Uprail’ impacts,

an Important *qualifying* Statement is made in RDEIR [page 2-95] regarding Quantitative Risk Assessment Results: “As discussed in Revised DEIR Section 1, it is possible that Project-related crude could be transported to the Refinery by any of the North American freight’s railroad tracks shown in Figure 1-1. Therefore, the routes used by UPRR to transport crude from source locations to the California border cannot be determined with certainty. . .” Given the number of unknowns implicitly floated by this statement, increasing numbers of variables vis a vis the distances of RR miles possible to be traveled, the number of tank cars (e.g. whether a 100+ car unit train carrying crude or a manifest freight train with 20 crude-loaded tank cars) all calculations for locomotive GHG reductions and diesel fuel “savings” are speculative at best. Further, given the statement, the extent of potential risk to people and the environment, sensitive receptors, institutions, etc. is gravely underestimated and over generalized.

5.2.28 Responsible decision makers must be informed of the full scope of consequences to regional environments and the climate caused unconventional means of extracting domestic and Canadian oils: fracking shale in North Dakota, Texas and other Midwestern states, and strip-mining by the mega-industrial network of mining operations spread over 125,000 square miles of tar sands deposits. The “tar sands” underlie what had been pristine boreal forest—a forest now virtually gone, replaced with vast toxic waste ponds of highly contaminated slurry water from the water- and energy-intensive extraction of bitumen. The cumulative effects of these mining operations can no longer be termed “externalities” in evaluating impacts related to climate change and global warming. The RDEIR would have the reader believe in the apparent benefit of accessing domestic crude sources, as Valero claims, that would eliminate dependence on foreign oil. The unprecedented environmental disaster that arises from the rush to exploit North Dakota’s Bakken fields or Alberta Canada’s tar sands, is the impact on climate of the accelerating rise of Greenhouse Gases in the upper atmosphere from the combustion of fossil fuels. The decimation of boreal forest in Alberta represents a loss of carbon-sequestering potential. The RDEIR’s claims for GHG reductions do not factor the enormous energy consumption required to extract one barrel of either Bakken or tar sands, nor the enormous environmental destruction contributing to global warming effects. GHGs should be accounted from the crude source to crude processing. The RDEIR fails to characterize the continuing horrendously destructive environmental conditions that are encouraged and supported by the Valero Crude By Rail Project.

End Section 5

SECTION 6: THE LEAD AGENCY ERRED IN ITS INSTRUCTIONS REGARDING REVIEWERS' LIMITATIONS OF COMMENTS TO THE RDEIR.

It is proper for the Lead Agency to request that reviewers limit the scope of their comments to the revised portion(s) of the RDEIR (Guidelines §§ 15088.5(f)(2)). However, in this instance, the Lead Agency's wording of such an instruction in the RDEIR is flawed and may be reasonably interpreted by the public to be more restrictive than allowed or intended. The text at issue from the RDEIR²⁷ is as follows:

Pursuant to CEQA Guidelines Section 15088.5(f)(2), anyone wishing to submit written comments on the Revised DEIR should limit those comments to the revised portions shown in Chapter 2 of this Revised DEIR. New text that has been added is shown as underlined text. Text that has been deleted is shown as ~~strikethrough~~ text.

The first sentence is the instruction of limitation of comments to revised portions of the RDEIR only. The immediately following two sentences define the revised portions (the subject of the instruction) as the underlined/stricken text. It is reasonable to assume, therefore, that the instruction means that comments to the RDEIR are restricted to the underlined/stricken text only.

To express in another manner:

If reviewers' comments are limited to the revised portions of the RDEIR, and
If the revised portions of the RDEIR are underlined text and strikethrough text, then
Reviewers' comments are limited to the underlined text and strikethrough text.

The unfortunate proximity of the sentences misleads the public into believing that they are prohibited from commenting on the changes (revised portions) as related to the totality of the whole. In fact, the revised portions must be analyzed in the context of the text in the entirety. To provide an instruction limiting the public's comments to the underlined/stricken portions of the RDEIR is in error.

End Section 6

²⁷ RDEIR Section 1.2 entitled 'Recirculation and Public Comment', page 1-15.

SECTION 7: REQUEST FOR INFORMATION AND QUESTIONS

General

1. Statistics and other information are not included in the RDEIR (or, DEIR) regarding human error and/or other factors (e.g. mechanical failures) contributing to accidents or near accidents related to off-loading racks and their operations that have occurred at refineries or in other industries that utilize off-loading racks. Additionally, the RDEIR (and, DEIR) does not provide a specific, detailed description of the operations, the operational risks, and preventative/safety measures to be implemented by the Refinery to reduce such risks. Please provide the following for the off-loading racks:

- a) Detailed description of the operational components of the process inclusive of a the identification of critical 'points' in the process where risks are highest for mechanical or human failures,
- b) Identification and descriptions of operational risks in the process and the possible outcomes (results) of failures for each risk identified. For such results, please indicate the outcomes as they impact Refinery personnel and property as well as humans, wildlife and property outside Refinery property,
- c) Safety and other preventative measures and protocol to be implemented to reduce identified risks,
- d) Safety and other measures available to respond to any risks and their effects,
- e) Historical/statistical information on past mechanical, human or other factors that have resulted in or contributed to accidents and/or near accidents and the ensuing impacts and results of those events, and
- f) Minimum occupational experience, education and other criteria that will be required for individuals hired to work in the off-loading rack area by job description.

2. Please describe how the Refinery (or other applicable emergency responders) would respond to a fire ball explosion or BLEVE event (as applicable to the location) in the following places and explain the similar and different ways each location would be handled. For each location, please identify the primary responsible responding party.

- a) At the Refinery,
- b) On UPRR mainline within Benicia but outside the Refinery's perimeters,
- c) On UPRR trackage within populated areas of California,
- d) On UPRR trackage in rural areas,
- e) On UPRR trackage in environmentally sensitive areas, and
- f) For all events (a thru e above), please identify the party primarily liable for damages incurred.

3. For an area within a one (1) mile radius (foreseeable Blast Zone Radius) of the Refinery as well as UPRR trackage proposed for the delivery of crudes, please provide the following:

- a) A list of all public and private schools, and
- b) A list of all facilities housing or serving minors, such as: day care centers, dance/music/karate studios, etc.

4. Provide a comprehensive list of:
 - a) ALL businesses in the Benicia Industrial Park within a one (1) mile Blast Zone Radius of the UPRR mainline and the Benicia Valero Refinery, and
 - b) The population (number of people) in the Industrial Park on a normal, business day/night. Please include in this estimate the number of users of the Bus Hub as well as other non-employee persons (visitors/clients) for the period.
5. Considering the unpredictable timing of train delivery of the applicable tank cars coupled with the limitations on the number of tank cars that may be off-loaded in any period:
 - a) Where will UPRR side the surplus tank cars until they may be accommodated by the off-loading racks? Please be specific and provide maps.
 - b) What potential effects will the tank cars retained in these siding areas (inclusive of the additional time and movement to again move such sided cars to the off-loading rack area) have on the traffic patterns in the Industrial Park and/or any other area within Benicia?
 - c) What is the proximity of such sided tank cars to pipelines, storage tanks, and business? Please provide approximate distances.
6. The Benicia Industrial Park Bus Hub is slated to commence construction in January of 2016. With relationship to construction related to the Project and proposed UPRR tank car deliveries, please address the following:
 - a) Please describe any 'issues' such as delays, interference, traffic complications, etc. if the Bus Hub construction and Project construction and/or tank car deliveries overlap in timing,
 - b) Post construction, if the Project creates traffic delays, derailments or accidents in or around the Benicia Industrial Park which interferes with or blocks ingress/egress to the Bus Hub or Bus Hub routes, what alternate plans or routes are contemplated?
 - c) Is the Benicia Bus Hub within a one (1) mile radius (Blast Zone Radius) of the Refinery and/or UPRR trackage utilized for tank car deliveries?
 - d) What emergency plans are in place for the evacuation and general safety of the Benicia Bus Hub in the event of an accident or other impacts related to the Project?
7. Describe the concussive force of a BLEVE and worst case scenarios for such an event. In particular, please include a description of a BLEVE event's impact on other potentially flammable or hazardous sources such as above ground pipelines, tanks on Refinery property, rail tank cars in and around the perimeters of the BLEVE source (e.g. sided cars with crude or other flammable or hazardous contents) which may create a domino effect. Describe the ensuing potential damage to commercial and residential properties (inclusive of Industrial Park and Bus Hub infrastructures) public roads, bridges and highways.
8. Are there any imminent plans for installing domes on storage tanks to limit fugitive emission gases from storage tank lids? *If yes*, what is the timeline for installation, what is the number and type of tanks effected, what dependencies are in play that would need to be addressed prior to commencement of the domes' installation? *If no*, please explain?
9. Other than the installation of domes, what mitigations are available for fugitive fumes produced from storage tanks that provide equal or better emission's protection?

10. Provide a comparison and analysis of crude delivery by rail vs. barge transport. The analysis should address GHG emissions' differentials with mileage required for each port option, fugitive emissions, foreseeable environmental and biological impacts, and safety considerations for each method of delivery.

11. The RDEIR was deficit in providing maps and adequate descriptions of various areas of the Project and/or adjacent areas. Please provide the following to remedy and include in the Final DEIR:

- a) A map of the whole Industrial Park,
- b) A topographical map of the off-loading rack area,
- c) A detailed location map and description of the tank farm, off-loading rack and other refinery areas with distances accurately described between each area,

12. A list of all businesses (including work/live interests) within a one (1) mile radius of the off-loading rack and/or UPRR trackage in the Industrial Park. For business identified, have these businesses been individually notified (e.g. provided written notice) of their proximity to a potential blast zone radius and/or new hazardous exposures? If yes, how were they notified? In no, when and how will the City be notifying them?

Regarding local Air Quality impacts and Health Risks posed by the CBR Project + Refinery:

13. Do Health Risk Assessments cover greenhouse gases, particulate matter or any of the pollutants that are not "Toxic Air Contaminants" (TACs)? What key pollutants are not covered by HRAs?

14. What are the risks reported for Bay Area refineries through HRAs? (We understand that the Air District has the data, but has not provided it.)

15. Have HRAs triggered any mitigations imposed by BAAQMD on the Valero Benicia Refinery?

16. If current risk levels were adjusted by a factor of 3 (as may be expected with updated BAAQMD guidelines) would any mitigation be triggered? Based on current information, is it unlikely that mitigation would be required even if the threshold was lowered from the current 100 per million cancer risk to 20 million?

17. If mitigation requirements are triggered, how long would Valero Refinery have to implement them, and could emission credits be used? Could mitigation take years to implement? If so how many, and could off-site improvements or the use of credits count as required mitigation's "implementation"?

18. Do HRAs cover PM2.5 emissions risks to the local community – risks that would be expected to increase, adding Project-related emissions impacts + Refinery processing emissions impacts?

19. Is there an updated risk threshold for lead that would account for the many serious health impacts known to occur at much lower blood lead levels? (Lead is one of the metals cited as a constituent of tar sands, although the RDEIR and DEIR do not identify the full chemical signatures of tar sands oils, nor characterize their health effects.)

20. How will incremental changes in crude slates owing to Project-imported unconventional crude oil (e.g. changing and likely increasing percentages of feedstocks such as tar sands or Bakken oil) affect emissions accounting and reporting from a public health standpoint?

21. Please provide a “multi-exposure pathway” risk assessment that would account for Project + Refinery incremental increases in chronic health risks of exposures to toxic air emissions + particulates associated to dust, (including petcoke dust), black carbon soot, etc., VOCs, TACs, and other Refinery processing emissions (PAHs, PM2.5), and accounting for indirect impacts, via contamination of locally grown food and Lake Herman backup water supply.

22. Please provide health data on Benicia residents’ hospitalizations for cancer and non-cancer illnesses (including asthma and other respiratory diseases, neurological conditions, etc.) over last decade since the Valero Improvement Project was permitted in 2002. To our knowledge, this data, available from Solano County Health Dept.—the data to be retrieved being identified by a single zip code for Benicia, has never been collated and delivered as a Community Health Study Report for the City of Benicia. This should be a requirement of the RDEIR, considering the intensification of risk posed to public health represented by the CBR Project + Refinery impacts.

Regarding concerns for rail safety:

23. The RDEIR does not provide a CBR routing risk assessment pursuant to 40CFR Section 172.280 as directed by the new DOT final rule on High Hazard Flammable Trains. <https://www.law.cornell.edu/cfr/text/49/172.820>. Twenty-seven (27) criteria were cited in the RDEIR for determining “safest route,” but only one criterion was actually mentioned. Please provide routing risk assessment and list all 27 criteria that DOT’s new rule requires be used to determine “safest routes” for HHFTs.

24. Please provide characterization of all mainline rail routes that could be used within or beyond California by Valero crude trains. Please characterize class of track, maintenance, number of rail accidents occurring since 2012 along each mainline route listed.

25. What are the other railroad companies that UPRR may elect to contract to operate Valero trains? What is each company’s performance record vis a vis rail accidents, derailments, operation of crude unit trains, etc.? What policies or contracts govern such use of “other” RR companies that could serve the Valero CBR Project?

26. Please provide UPRR’s Hazardous Materials Emergency Response Plan.

27. There is no discussion in the RDEIR regarding security measures that may be required for permitting the CBR Project under federal law. Please identify those measures that would presumably reflect requirements or recommendations of Homeland Security, and generally characterize the immediate local vulnerabilities the CBR Project exposes to terrorism. If this information is considered confidential, please explain by what agency and law.

28. The RDEIR does not provide characterization of effects of “worst case” rail disasters involving crude oil that go beyond generalities. Please provide account of primary, secondary and indirect effects of massive oil fires, explosions, BLEVE events that are reasonably foreseeable if such events occur at the rail offloading terminal on-site of the Refinery, or in the vicinity along UPRR mainline tracks or side spurs within Benicia city limits.

29. Please provide findings from official investigations of causes of the 16 reported catastrophic rail accidents (derailments or other) that have involved spills, fires and explosions of Bakken oil or tar sands that have occurred since 2012, inclusive of Lac Megantic disaster.

30. Please provide analysis and evaluation of DOT's new rail safety Rule – what it requires now and in the future. Please identify “gaps”: e.g., what the Rule does not do, what delays are expected for implementing new requirements, etc.

31. Regarding rail offloading procedures and operations at the proposed rail terminal on Refinery property: Please provide the Federal Railroad Administration's reference manual Pamphlet 34 – Recommended Methods for the Safe Loading and Unloading of Non-Pressure (General Service) and Pressure Tank Cars and describe in detail the safe practices the manual calls for with respect to the RDEIR's description of offloading procedures as related to control of valve pressure and valve checks that must occur before opening up flows of oil into pipes to be attached. Please provide information about any and all type failures during the procedure. Also, please account for any accidents that have occurred at existing CBR terminals in the US involving valve checks and other malfunctions that have been investigated with findings of human error and/or equipment malfunction. Provide account of the effects of such operational accidents and their extent: spills, fires, explosions, etc.

32. Please provide evidence that school districts whose school sites are listed in the RDEIR [Table 4.7-9] as being located with ¼ mile of UPRR mainline rail routes were notified of the proposed Valero CBR Project.

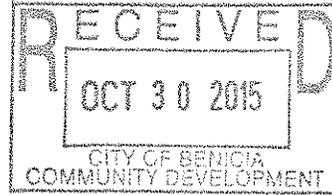
33. Please provide updated information regarding consideration of the impact zone of ½ - 1 mile for catastrophic rail accidents (such as Lynchburg VA derailment, fire and explosion, and requiring evacuation, as well as Casselton ND evacuation following rail collision, derailment and catastrophic fireball); include discussion of re-evaluations of school evacuation plans to increase the radius of impact zone out to 1 mile along UPRR mainline rail routes. Also please provide the names and locations of schools not listed in Table 4.7-9 that are sited within ¼ mile of the “southern” rail route from Bakersfield that could be used by Project trains.

34. What is the possibility that Bakken-loaded tank cars destined for the Valero Benicia Refinery could be part of a manifest freight train assembled that would travel to the Roseville Rail Yard? If this is an operational possibility, please provide information about possible risks associated to this transport scenario, whereby freight trains stop to pick up other products, etc. Would there be possibility that a manifest train that included LPG tank cars could also include Bakken-loaded tank cars into its assembly?

End Section 7

October 30, 2015

Via email and FedEx (with references) to
Amy Million, Principal Planner
Community Development Department
250 East L Street
Benicia, CA 94510
amillion@ci.benicia.ca.us



Re: The City of Benicia's Revised Draft Environmental Impact Report
for the Valero Benicia Crude-by-Rail Project

Dear Ms. Million,

On behalf of the undersigned groups, we submit the following comments on the City of Benicia's Revised Draft Environmental Impact Report (Revised Draft EIR) for the Valero Benicia Crude-by-Rail Project (the Project). The Project, if approved, would allow the Valero refinery to receive up to 70,000 barrels per day of crude oil by train, causing significant and irreversible impacts on communities and the environment.

The City released a Draft EIR for public comment in June 2014. After receiving numerous comments pointing out the deficiencies in the Draft EIR, the City recirculated the Revised Draft EIR in August 2015. Although the Revised Draft EIR discloses new significant environmental impacts, it still fails to address many of the comments we previously submitted. Accordingly, we incorporate our prior comments on the Draft EIR by reference. As described below, the Revised Draft EIR does not meet the requirements of the California Environmental Quality Act (CEQA) because it fails to properly analyze, disclose, and mitigate the Project's significant environmental impacts.

I. The Revised Draft EIR fails to accurately state the Project's objectives and baseline.

In the Revised Draft EIR the City continues to claim, without support, that there will be no net increase in throughput (and thus no increase in air pollution and other negative impacts) because the Project does not increase the refinery's air permit limits. (Revised Draft EIR at 2-6, 2-20.) Under CEQA, the baseline consists of "the physical environmental conditions in the vicinity of the project, as they exist at the time . . . environmental analysis is commenced." (14 Cal. Code Regs. ("Guidelines") § 15125(a).) In other words, the baseline is the actual physical conditions that exist at the site—not hypothetically permitted conditions. (*Communities for a Better Env't v. S. Coast Air*

Quality Mgmt. Dist. (2010) 48 Cal.4th 310, 315.) Therefore, the City cannot use the hypothetically permitted throughput levels as the baseline and must instead disclose the actual throughput.

The City also continues to claim that the Project will reduce marine imports, Revised Draft EIR at 2-3, 2-13, 2-19, 2-20, but that is unlikely for two reasons. First, because there is no evidence that the refinery is currently operating at capacity, the Project could simply increase the total amount of crude that Valero refines. Rail imports would be additional to marine imports, rather than replacing them. And even if the refinery were operating at capacity, the Project would not reduce marine imports if the crude imported by rail replaces crude currently imported by pipeline. The Revised Draft EIR asserts that the Project's crude will not replace crude imported by pipeline, but it provides no reasoning or facts to support that assertion. (*Id.* at 2-19.) In short, there is no binding commitment from Valero that the refinery will reduce marine imports proportional to rail imports. In the absence of such a commitment, the refinery could continue to receive marine imports *and* add rail imports.

II. The Revised Draft EIR fails to disclose the type of crude oil that will be transported by rail to the Valero refinery.

The Revised Draft EIR is fatally flawed because it does not identify the type of crude oil that the Project will enable Valero to import by rail and refine. (*See* Revised Draft EIR at 2-23.) This nondisclosure violates CEQA and cripples the analysis of environmental impacts. In *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, the First District Court of Appeal specifically rejected an EIR for a refinery project that failed to disclose detailed information about the crude slate that a refinery was already processing compared to the crude slate it would process if the project under consideration were approved. (*Id.* at 88-89 [finding that “the EIR fails as an informational document because the EIR’s project description is inconsistent and obscure as to whether the Project enables the Refinery to process heavier crude”].) As the court noted, if “a project proponent can pick and choose who sees pertinent data . . . then a stake is driven into the ‘heart of CEQA’ by preventing the information necessary for an informed decision from reaching the decisionmakers and the public.” (*Id.* at 88.)

As we explained in our prior comments, the City’s analysis rests primarily on its claim that Valero will blend crude imports to stay within “the yellow box in Figure 3-8” of the Draft EIR, which demarcates the ranges of sulfur content and API gravity permitted under Valero’s BAAQMD permit. (Draft EIR at 3-13 to 3-14.) But the analysis notes that the blends Valero has refined over the last three years “is much narrower” than

what the permit allows. (Draft EIR at 3-14.) This might, as the City suggests, imply practical limits on Valero's refining capability, but more realistically, it demonstrates that the BAAQMD permit leaves significant wiggle room for Valero to alter the crude blends it refines going forward.

Consequently, there are several unanswered questions with regard to this Project. Will importing tar sands, oil shale, and other "heavier" crudes require Valero to shift the distribution of blends it refines to a different region of the yellow box? Will the distribution of blends expand, or narrow even further? More significantly, what impacts to the environment will result when a shift occurs, even if the blends stay within the yellow box? For example, shifting toward the highest allowable mass fraction of sulfur content would increase sulfur dioxide emissions. Will this result in impacts to air and water quality close to the refinery? The Revised Draft EIR fails to address these questions and does not allow for a proper consideration of the potential impacts.

Furthermore, the BAAQMD permit does not speak to crude characteristics beyond density and sulfur. Crude oil constituents vary greatly, including differences in the content of coke, asphalt, asphaltenes, resins, copper, iron, mercury, nickel, lead, titanium, vanadium, residue nitrogen, and volatile organic compounds (VOCs).¹ Each of these compounds could have serious negative impacts on air quality. These compounds could also affect water quality, as effluent discharge, air pollution fallout, or in the event of accidental release.² Mercury is illustrative. The San Francisco Bay already experiences high levels of mercury pollution, including from local refineries' air emissions, which ultimately deposit into water systems and biomagnify through food chain systems.³ Crude oils can vary in their mercury content by many orders of magnitude,^{4,5} meaning

¹ United States Geological Survey, *Heavy Oil and Natural Bitumen Resources in Geological Basins of the World*, Open File-Report 2007-1084 (2007), available at: <http://pubs.usgs.gov/of/2007/1084/OF2007-1084v1.pdf>.

² Helen Wake, *Oil refineries: a review of their ecological impacts on the aquatic environment*, 62 *Estuarine, Coastal, and Shelf Science* at 131-40 (2005)

³ Sigi Ocker, *The Legacy of Mercury Pollution in California's Bay Area*, EcoWatch (2014), available at: <http://ecowatch.com/2014/03/21/mercury-pollution-california-bay-area>.

⁴ *Heavy Oil and Natural Bitumen Resources*, supra note 1, at 14

⁵ Environmental Resources Management, *Bay Area Petroleum Refinery Mercury Air Emissions, Deposition, and Fate* (June 2009) at A-3 (finding average mercury concentrations in crude at Bay Area refineries ranged from 1.52 to 14.69 ppb), available at:

changes to the crude Valero refines could have far-reaching impacts on regional water pollution. These crude characteristics are also vitally important to know when assessing the risk and impacts of spills, explosions, and clean up resulting from accidents along the rail line.

Even incremental fluctuations in the chemical composition and quality of the crude slate refined at the Refinery could cause significant, and currently un-assessed, environmental impacts. For instance, the *City of Richmond* case addressed the Richmond's failure to study the impacts of a one percent increase in sulfur in the Chevron Richmond Refinery's crude slate. (*City of Richmond*, 184 Cal.App.4th at 77.) Two years later, a pipeline ruptured at the refinery, sending 15,000 local community members to nearby hospitals. The United States Chemical Safety Board determined that a 0.8 percent increase in the amount of sulfur in Chevron's crude blend was the root cause of the accelerated pipe corrosion.

The Revised Draft EIR simply ignores this variability in crude oil and accordant variability in risk, essentially assuming that all crudes are created equal. Rather than disclosing or discussing the highly varied chemical makeup of crude, the different constituent pollutants' effects on the environment, and the effectiveness of control measures like the refinery's SWPPP and BAAQMD permit, the City's analysis simply "call[s] for blind faith in vague subjective characterizations." (*City of Richmond*, 184 Cal.App.4th at 85.) This violates CEQA as a matter of law.

III. The Revised Draft EIR improperly limits the geographic scope of the impacts analysis.

The Revised Draft EIR limits the geographic scope of its analysis of up-rail impacts to three northern/northeastern UPRR rail routes between the Roseville Yard and the California border (e.g., Oregon to Roseville, Nevada to Roseville (northern), Nevada to Roseville (southern)): "[t]he DEIR and this Revised DEIR assume . . . that all Project-related crude would be routed through Roseville using any or all of three routes along the existing UPRR rail system to the north and northeast of Roseville." (Revised Draft EIR at 2-24.)

However, the Revised Draft EIR itself acknowledges that Project-related crude could reach Roseville from other rail routes, such as two UPRR rail routes in southern

http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/TMDLs/sfbayme/rcury/Hg_Air_Dep_SFB_Refineries%20_WSPA.pdf.

California that run between the Roseville Yard and the state border⁶: “it is possible that Project-related crude oil could reach the refinery through Roseville using routes from southern California.” (Revised Draft EIR at 2-24, fn. 6; *see also* Figure 1-2 for Union Pacific Crude Network routes in southern California.) The Revised Draft EIR also states that Project-related crude might enter the state “via any of the North American freight railroad tracks, which are shown in Figure 1-1” due to track-sharing agreements, although “it is more likely that UPRR’s existing crude network would be used to transport Project-related crude” because “the UPRR rail line already provides rail access for the Refinery and because Refinery personnel have indicated that UPRR would serve the Project.” (Revised Draft EIR at 2-24.)

Moreover, the Project could import crude oil by rail from New Mexico, Texas, Utah, Colorado, and Wyoming. As evident in Figure 1-2, crude oil from New Mexico and Texas is likely to be brought in on the southern UPRR rail routes not analyzed by the Revised Draft EIR, and crude oil from Utah, Colorado, and Wyoming could also come in through those southern routes. As stated by the Revised Draft EIR, New Mexico and Texas are likely sources of crude: “[t]ank cars carrying crude oil for the Project will arrive at the Roseville Yard from a variety of potential North American crude oil sources including, but not limited to, locations in Texas, North Dakota, Oklahoma, New Mexico, or Canada.” (Revised Draft EIR at 2-21.) Indeed, New Mexico, Wyoming, and Utah have provided a large percentage of the crude-by-rail imports to California in recent years.⁷ According to the California Energy Commission, since 2009, the highest volumes of crude oil imports by rail into California have come (in order of volume) from Canada, North Dakota, New Mexico, Wyoming, and Utah, followed by Colorado, Washington, and other states, as illustrated in the table below.

⁶ One southern UPRR crude route enters California near Primm, NV, and another southern route enters California near Yuma, AZ; both routes continue north through the Central Valley (through Bakersfield, Fresno, Merced, Stockton, Sacramento) to the Roseville Yard.

⁷ California Energy Commission. 2015. Crude Imports by Rail. *Available at* http://energyalmanac.ca.gov/petroleum/statistics/2015_crude_by_rail.html

Crude Imports By Rail to California, expressed in barrels

	2009	2010	2011	2012	2013	2014	2015 to date	Total
Canada			155,296	193,569	3,472,049	1,520,288		5,341,202
North Dakota	3,353	496,886	1,112,665	704,207	1,348,682	1,191,758		4,857,551
New Mexico				153,318	411,725	1,159,712	849,104	2,573,859
Wyoming					441,398	694,101	677,972	1,813,471
Utah						933,632	176,965	1,110,597
Colorado	30,983				500,708	146,889		678,580
Washington	11,155							11,155
Others			94,070	37,331	122,211	90,699		344,311
Total	45,491	496,886	1,362,031	1,088,425	6,296,773	5,737,079	1,704,041	

Source: California Energy Commission,

http://energyalmanac.ca.gov/petroleum/statistics/2015_crude_by_rail.html

The likelihood that Project oil trains will use southern routes in California is further confirmed by an analysis of PHMSA records on accidents involving trains carrying petroleum crude oil in recent years. The PHMSA database indicates that crude oil originating from New Mexico, Texas, Utah, and Wyoming enters California on southern routes, including UPRR routes passing through the UPRR railyard in Bloomington, California.⁸

Because the use of other rail routes in addition to the three outlined northern routes is foreseeable, the EIR must analyze all potential rail routes between the state boundary and the Roseville Yard, including the two southern routes described above. The Revised

⁸ Pipeline and Hazardous Materials Safety Administration. 2015. Office of Hazardous Materials Safety, database at <https://hazmatonline.phmsa.dot.gov/IncidentReportsSearch/Welcome.aspx>.

Draft EIR must also analyze impacts along rail routes coming into California from Canada, North Dakota, New Mexico, Wyoming, Utah, Colorado, and Washington, at minimum, since these are foreseeable crude oil sources for the Project. Because there are few crude network rail routes coming from those states (see Figure 1-2), analysis of impacts along those rail routes is entirely feasible.

IV. The Revised Draft EIR improperly omits any discussion of the disproportionate impact of the Project on low-income communities of color.

In 2012, the California Attorney General's office released a report entitled "Environmental Justice at the Local and Regional Level – Legal Background."⁹ The report states that existing law imposes obligations on local governments to evaluate environmental justice impacts when approving specific projects and planning for future development. It also clarifies the need for transparency in statements of overriding consideration, especially in the context of disclosing environmental justice concerns with a proposed project, which must be stated "plainly."

The Revised Draft EIR fails to meet this legal mandate in two distinct respects. First, because the Revised Draft EIR does not divulge that the Project will enable the refinery to switch to a lower quality oil feedstock, it fails to assess the increased pollution from refining dirtier oil, including the increased emissions of criteria and toxic pollutants. Second, in finding the impact of the risk of a crude oil train derailment to be significant and unavoidable, Revised Draft EIR at 2-90, the revised analysis still underestimates that impact by omitting any discussion of the disproportionate impact this hazard poses to low-income communities of color.

A recent report, "Crude Injustice on the Rails," evaluates the disparate risk from oil trains in California.¹⁰ The report compares the "blast zone" (the one-mile evacuation area that the US DOT recommends in the case of an oil train derailment, spill, or fire) with US census block data representing populations meeting one or more of the following criteria: low-income; people of color; and/or from linguistically isolated households. The

⁹ Environmental Justice at the Local and Regional Level, Legal Background, June 2012, May 2012, *available at* http://oag.ca.gov/sites/all/files/agweb/pdfs/environment/ej_fact_sheet_final_050712.pdf.

¹⁰ Crude Injustice on the Rails, Communities for a Better Environment and ForestEthics, June 2015, *available at* <http://www.forestethics.org/sites/forestethics.huang.radicaldesigns.org/files/Crude-Injustice-on-the-Rails.pdf>.

results show that the transport of crude oil by rail presents a clearly disproportionate impact: Californians of color are more likely to live in the oil train blast zone. Eighty percent of the 5.5 million Californians with homes in the blast zone live in environmental justice communities. The following table from the report illustrates this data for the ten largest cities that could be traversed by oil trains:

Percentage of people in the oil train blast zone that live in environmental justice communities in the ten largest California cities on oil train routes:			
Los Angeles	82%	San Jose	91%
Fresno	85%	Sacramento	89%
Long Beach	85%	Oakland	92%
Bakersfield	77%	Stockton	94%
Fremont	100%	San Bernardino	100%

Irrespective of which of the rail routes the Project will ultimately use, approval of this Project will have disparate impacts on communities of color.

Title VI of the 1964 Civil Rights Act prevents federal funds from being used to encourage racial discrimination. For instance, in 2010, the Federal Transportation Administration withheld \$70 million in funding from the Bay Area Rapid Transit agency for the agency’s failure to take into account the impact of its airport connector expansion on low-income people of color. Moreover, California Government Code section 11135 also targets discrimination in any local government program that receives funding or financial assistance from the state. If the state-funding agency determines that the local government has violated the statute by using state funds in an activity that creates a racially discriminatory impact, Government Code section 11137 authorizes that state agency to “curtail” state funding in whole or in part to the local agency.

The City of Benicia and its Community Development Department are recipients of state and federal funds.¹¹ Approval of this Project will create and add to the disproportionate impact that communities of color already face from industrial

¹¹ See, e.g., City of Benicia, Chapter 3-Department Level Budgets FY 2015-2017, available at http://www.ci.benicia.ca.us/vertical/sites/%7B3436CBED-6A58-4FEF-BFDF-5F9331215932%7D/uploads/Chapter_3_-_Department_Level_Budgets.pdf.

infrastructure, pollution, and hazards. Failure to adequately address those impacts, in particular by omitting them from the discussion and balancing of significant and unavoidable impacts, violates CEQA and federal and state civil rights statutes.

V. The Revised Draft EIR's analysis of alternatives is inadequate and violates CEQA.

The Revised Draft EIR's analysis of alternatives is wholly inadequate and belies the City's inconsistent position about its own authority to set limits on the Project's scope. The Revised Draft EIR lays out what amount to straw man alternatives that it summarily rejects as legally infeasible. In reality, the alternatives presented are not infeasible, because the City is authorized to limit the Project's scope, meaning the Revised Draft EIR should have given them meaningful consideration. And if the alternatives actually are infeasible, as the City claims, then the Revised Draft EIR violates CEQA as a matter of law by failing to consider a reasonable range of alternatives. Either way, the analysis fails.

As proposed, the Project would allow crude shipments in unit trains "of 50 or up to 100 tank cars," and "[t]wo 50-car trains would be dispatched from the Roseville Yard to the Refinery each day." (Revised Draft EIR at 2-8.) Alternative 1 would limit shipments to one 50-car train per day, and the No Project Alternative would allow no shipments at all. (*Ibid.*) The Revised Draft EIR does not claim that the City is preempted from precluding all rail shipments through selecting the No Project Alternative. Why, then, is it preempted from limiting shipments to one 50-car train per day through adopting Alternative 1? Or, to take the logic in the other direction, if the City is preempted from limiting shipments to one 50-car train per day, why can it approve a project limited to two 50-car shipments per day, rather than having to allow unlimited shipments, whenever and however often Valero wishes? Clearly, the City has authority to limit or condition the Project's scope, and it cannot use preemption doctrine to arbitrarily bind its own hands in support of a desired outcome. Federal railroad law does not, as the City suggests, allow the project to move forward only as precisely proposed, and the Revised Draft EIR should meaningfully consider other options.

Moreover, the Revised Draft EIR violates CEQA even if the City is correct that Alternatives 1 and 2 are legally infeasible. An EIR must consider alternatives that are feasible and that accomplish the basic objectives of the project. (Guidelines § 15126.6.) According to the Revised Draft EIR, the No Project Alternative does not accomplish the primary goals of the project, and Alternatives 1 and 2 are both legally infeasible. (Revised Draft EIR at 2-8 – 2-9.) Thus, by its own conclusions on the matter, the City

offers as workable alternatives only the proposed Project and Alternative 3, an offsite unloading terminal that would simply shift some of the Project's onsite impacts elsewhere. Presenting these two options falls far short of the "reasonable range of alternatives" that CEQA requires. (*Citizens of Goleta Valley v. Bd. of Supervisors*, (1990) 52 Cal. 3d 553, 566.)

The City cannot have it both ways. Offering alternatives and then dismissing them as infeasible does not meet CEQA's requirement to consider feasible alternatives.

VI. The Revised Draft EIR fails to properly mitigate the Project's up-rail air quality impacts.

The Revised Draft EIR focuses solely on the air quality impacts of the Project's trains in up-rail communities. Although the document admits that the Project will cause significant air quality impacts in all counties crossed by trains, Revised Draft EIR at 2-27, it nonetheless concludes that no mitigation is available, *id.* at 2-38.

If an EIR concludes that a project will have a significant impact, CEQA requires the lead agency to adopt all feasible mitigation measures or alternatives that reduce that impact to a level of insignificance. (Pub. Res. Code § 21081, 21002.) Mitigation is especially important here because all of the counties the Project's trains will cross, except Siskiyou County, are in non-attainment for at least one criteria air pollutant. (*Id.* at 2-40.) Contrary to the City's claims, there are many feasible mitigation measures available for the Project. Most notably, as explained above, the City could reduce the Project's impacts by limiting the number of rail cars that can be unloaded per day or otherwise reducing the capacity of the Project. Valero is not a rail carrier as defined by federal law, and the City is not preempted from regulating Valero's actions.

The City also raises, but summarily dismisses, the possibility of requiring contributions to off-site mitigation fee programs in up-rail communities. (Revised Draft EIR at 2-38 to 2-39.) Such payments could fund emissions reductions in the affected communities, thus reducing the impact of the Project. (*See Save our Peninsula Comm. v. Monterey Cnty. Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 140 ["Fee-based infrastructure mitigation programs have been found to be adequate mitigation measures under CEQA."].) The Revised Draft EIR claims that such measures are not feasible because they are preempted. (*Id.* at 2-39.) But requiring *Valero*, which is not a rail carrier, to contribute to a mitigation fund in no way regulates or manages rail operations.

The Revised Draft EIR also notes that existing mitigation fund requirements in Placer County and Sacramento County might not be triggered by the Project. (*Id.* at 2-

38.) But that is beside the point—there is nothing prohibiting the *City* from requiring these measures as a condition of the project. The mitigation measure is clearly outside the scope of what federal law preempts, and the City should require it for all communities in which there will be significant air quality impacts.

VII. The Revised Draft EIR fails to properly analyze, disclose, and mitigate the Project’s greenhouse gas impacts.

Although it discloses a new significant greenhouse gas impact, the Revised Draft EIR fails to correct many of the flaws in the original Draft EIR. First, the Revised Draft EIR incorrectly focuses on the emissions generated just in California, rather than all emissions. (Revised Draft EIR at 2-54, 2-55.) Because greenhouse gases are global pollutants, emissions caused by the Project outside of California will have impacts in California, and thus must be fully analyzed in this report.

Furthermore, the Revised Draft EIR again downplays the greenhouse gases that will be emitted from the transport of the crude oil and from refinery operations by assuming that any rail imports would offset marine imports. (*Id.* at 2-59, 2-60.) As explained above, there is no guarantee that there will be any reduction in marine imports due to the Project.

The Revised Draft EIR also does not cure the prior draft’s error in illegally deferring mitigation of GHGs and co-pollutants. In response to comments that the lower quality crude oil feedstock delivered by the Project will increase emissions of these pollutants from the refinery, the Revised Draft EIR cursorily states that “pursuant to State law the Refinery currently participates in the AB 32 emissions reporting and cap-and-trade programs. Any change in GHG emissions generated at the Refinery due to implementation of the Project would be accounted for in these programs.” (Revised Draft EIR at 2-61.) However, nothing in AB 32 excuses agencies from complying with CEQA by evaluating, disclosing, and mitigating impacts. Indeed, compliance with existing applicable standards does not excuse agencies from determining whether the Project nonetheless has significant environmental impacts. (*See Communities for a Better Env’t v. Cal. Res. Agency* (2002) 103 Cal.App.4th 98, 114, *disapproved of on other grounds by Berkeley Hillside Pres. v. City of Berkeley* (2015) 60 Cal.4th 1086.)

Finally, the Revised Draft EIR mistakenly asserts that all mitigation is infeasible, including requiring Valero to pay for mitigation credits. (*Id.* at 2-58.) To the contrary, as explained above, nothing in federal law prohibits the City from requiring such payments or from requiring Valero to reduce the size of the project.

VIII. The Revised Draft EIR fails to properly analyze, disclose, and mitigate the Project's hazards impacts.

Although the Revised Draft EIR discloses a new significant hazards impact from foreseeable upsets and accidents, Revised Draft EIR at 2-90, it nonetheless fails to adequately analyze, disclose, and mitigate the Project's hazards impacts. The Revised Draft EIR contains a confusing and inadequate description of two reports prepared by consultants, assumes that the Project will use a certain type of tank car while simultaneously claiming that the City is preempted from requiring that tank car to be used, and attempts to minimize the risk of the Project by citing new federal standards that will not adequately address any of the problems outlined in this letter. The Revised Draft EIR also incorrectly claims that the City is preempted from imposing any mitigation measures.

a. The Revised Draft EIR's discussion of the MRS and Barkan reports is conclusory and inadequate.

The Revised Draft EIR presents new data in the form of a Quantitative Risk Analysis by MRS and a report by Dr. Christopher Barkan. (*See* Revised Draft EIR, appx. F.) The end result of these analyses is presented in the form of charts showing the risks of spills, injuries, and fatalities. However, the Revised Draft EIR fails to adequately explain, in plain language, the inputs, methodology, and conclusions of these reports. It includes virtually no information about how these charts were created, other than saying that an explosion of tank cars "was evaluated" and that spill rates were determined taking in account "major risk factors." (*Id.* at 2-93, 2-94.) Readers are directed to Attachment 2 of Appendix F for further explanation, but the EIR itself must contain this basic information. "Information scattered here and there in EIR appendices, or a report buried in an appendix, is not a substitute for a good faith reasoned analysis." (*Envtl. Prot. Info. Ctr. v. Cal. Dep't of Forestry & Fire Prot.* (2008) 44 Cal. 4th 459, 493 [internal quotation marks omitted].)

The Revised Draft EIR also fails to clearly explain how the Barkan and MRS reports relate to each other, and the extent to which the MRS report relies on data from the Barkan report or vice versa. For example, the Barkan report, which is an attachment to the Quantitative Risk Analysis, apparently calculates the frequency of a spill, but not an explosion or a secondary release from a fire or thermal tear in a tank car. (*Id.* at 2-93.) It is unclear why the analysis is segregated in this manner.

Each report contains troubling omissions. The Barkan report states that the conditional probability of release for CPC-1232 tank cars is 0.132. (*Id.*, appx. F, attach. 1 at 8.) Similar to the previous report, this report does not explain where this number comes from or how it was derived, except to say that it was “developed using statistical results and methods from the RSI-AAR Project TWP-17 report” and assuming certain average conditions, including that the train was going only 26 miles per hour. (*Ibid.*) Given that trains may travel up to 40 or 50 miles per hour, the conditional probability of release is invalid on its face. Tellingly, this number is inexplicably different from the conditional probability of release used in the prior Draft EIR, which was 0.103. (Draft EIR, Appx. F at 5.)

The Quantitative Risk Analysis prepared by MRS is also lacking relevant information. The report fails to explain, in a simple and concise manner, how MRS calculated the risk of injuries and fatalities for this particular project. Instead, readers are expected to simply trust the model, which was apparently developed by MRS and is not a standard model used in these types of analyses. (*Id.*, appx. F, attach. 2 at 3.) Has this model been validated or deemed reliable? If so, by whom? Troublingly, neither the attachments nor the EIR itself explains why the largest rupture considered involves only 240,000 gallons and eight tank cars. Accidents involving higher-volume spills and many more cars, such as the Lac-Mégantic disaster (over a million gallons of petroleum and at least 20 tank car breaches), can and have occurred.¹² (*Compare* Revised Draft EIR at 2-94 *with* 2-74, 2-75.)

b. The Revised Draft EIR improperly assumes that the Project will use only CPC-1232 tank cars in the near term.

The Revised Draft EIR also underestimates the risk of accidents in the near term by assuming that Valero will use CPC-1232 tank cars, rather than the more common DOT-111 tank cars, until new tank cars are phased in starting in 2020. The report notes that only 25 percent of the tank cars carrying crude today are CPC-1232 tank cars. (Revised Draft EIR at 2-74.) The majority of the remaining 75 percent are presumably DOT-111 cars. (*Id.* at 2-79.) Yet the risk analysis methodology assumes that Valero will use only CPC-1232 tank cars. (*Id.* at 2-93, appx. F at 48.) The City cannot have it both

¹² See Earthjustice, *Crude By Rail Across America*, Map Feature, *available at*: <http://earthjustice.org/features/map-crude-by-rail>; NRDC, “It Could Happen Here: The Exploding Threat of Crude by Rail in California” (June 2014), *available at*: <http://www.nrdc.org/energy/files/ca-crude-oil-by-rail-FS.pdf>.

ways. If federal law preempts it from requiring CPC-1232 tank cars, the City cannot analyze the risk of accidents assuming that only CPC-1232 tank cars will be used.

c. The Revised Draft EIR inappropriately tries to minimize the hazards impacts of the Project by citing irrelevant data and playing up safety improvements that are unlikely to reduce risks.

In Table 4.7-2, the Revised Draft EIR cites Federal Railroad Administration data on train accidents to claim that less than one percent of train accidents result in a release of hazardous materials. (*Id.* at 2-66.) It is unclear how these data relate to the transport of crude by rail. The table does not distinguish oil-train accidents from other types of accidents, nor does it specify whether the “hazmat releases” and “cars carrying hazmat” include crude oil trains. (*Id.* at 2-65.) The fact that the number of cars carrying hazmat in this chart has declined from 2005 to 2014 suggests that rail cars carrying crude are not included, as the number of carloads of crude oil have increased exponentially over the past few years. Indeed, crude oil is not included in the definition of “hazardous” for these purposes and likely would not be included in the figures in Table 4.7-2. (*See* 49 C.F.R. § 171.8.) Thus, the trends showing decreasing accidents and hazmat releases are misleading in this context, and this data should be further explained or removed.

The Revised Draft EIR further attempts to downplay the risk of the Project by citing the new federal rule on tank car and operational standards. That rule is far from a panacea. The speed limits in the rule do not apply universally, and even when they do apply, they do not reduce risk of accidents significantly, allowing trains to travel at 40 or 50 miles per hour. The new tank cars built to the upgraded DOT-117 design standards will make up only a small proportion of the future fleet—a large percentage of the existing fleet will be retrofitted to a standard that is weaker than the new DOT-117 design standard. The new and retrofitted tank cars will puncture at speeds of 9.6 to 12.3 miles per hour, far below the speed limits allowed in the rule. Furthermore, rail operators are not required to provide notice and information about routes and crude quality to towns impacted by the Project: notice requirements apply only to operators carrying 1 million gallons of Bakken crude or more, and notice is made to the state and does not necessarily reach individual communities along the rail lines. (*See generally Hazardous Materials:*

Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains, 80 Fed. Reg. 26643 (May 8, 2015).¹³

The report also mentions Positive Train Control as a mitigation measure, but fails to disclose that a portion of the Feather River Canyon along one of the routes the trains would use has not yet been upgraded. (Revised Draft EIR, appx. F at 47.) In November 2014, eleven cars carrying grain derailed in this area, spilling their contents down the canyon and into the river.¹⁴ Although Congress required the railroads to complete installation of Positive Train Control by the end of the year, the railroads sought, and recently received, an extension until December 31, 2018.¹⁵ The City's implication that there is nothing to worry about because of these supposed improvements is misleading and inappropriately minimizes the risk of an accident.

d. The Revised Draft EIR improperly rejects feasible mitigation measures.

Despite the significant hazards impacts of this Project, the Revised Draft EIR continues to claim that no mitigation is available. (Revised Draft EIR at 2-105.) However, as explained above, the City could reduce the Project's impacts by limiting the number of rail cars that can be unloaded per day or otherwise reducing the capacity of the Project. Valero is not a rail carrier as defined by federal law, and the City is not preempted from regulating Valero's actions.

The Revised Draft EIR also erroneously concludes that mitigation along the mainline is infeasible because it may be preempted. State and local entities can implement railroad safety regulations or measures if they are necessary to eliminate an "essentially local safety hazard," and are not incompatible with federal regulations or unduly burdensome on interstate commerce. (49 U.S.C. 20106(a)(2); *see, e.g., So. Pac.*

¹³ *See also* Earthjustice, Analysis of 7 Hidden Dangers in the New Federal Oil Tank Car Rule, available at <http://earthjustice.org/sites/default/files/files/7%20Things%20CBR%20Rule%205%2013.pdf>.

¹⁴ Dave Marquis, "Derailment sends section of train into the Feather River Canyon," *ABC10 News*, Nov. 26, 2014, available at: <http://www.abc10.com/story/news/local/california/2014/11/26/train-derailment-feather-river-canyon/70133634/>

¹⁵ "Obama Signs Bill Delaying Deadline for Train-Safety Equipment Installation," *Associated Press*, Oct. 29, 2015, available at: http://www.nytimes.com/2015/10/30/us/obama-signs-bill-delaying-deadline-for-train-safety-equipment-installation.html?_r=0

Transp. Co. v. Pub. Utility Comm'n of the State of Or. (9th Cir. 1993) 9 F.3d 807, 812.) The Revised Draft EIR contains no analysis whatsoever about whether certain individual mitigation measures can meet this standard.

IX. The Revised Draft EIR fails to properly evaluate or mitigate significant hydrology and water quality impacts.

There are several crucial deficiencies with the Revised Draft EIR's analysis of hydrology and water quality impacts. As an initial matter, many of the concerns raised by the public in comments on the Draft EIR remain unaddressed, including whether the increase of crude-by-rail to the refinery will actually decrease marine delivery; the impacts from any changes in the type of crude oil refined; the failure to assess the condition of railroad infrastructure or the potential effects from sea level rise and storm surge on tracks along the San Francisco Bay and Suisun Marsh; and the lack of cumulative impacts analysis regarding other projects that are likely to increase rail traffic along the routes now being considered by this Project.

Furthermore, the additional information included in the Revised Draft EIR suffers from two major problems with regard to water quality impacts. First, the Revised Draft EIR's assessment of up-rail impacts does not include harms from normal, day-to-day rail operations, and no mitigation is provided for these significant impacts. Second, the Revised Draft EIR underestimates many of the risks leading to and stemming from a rail accident or oil release that could significantly impair water quality, and it does not consider feasible means of mitigating these harms.

a. The Revised Draft EIR fails to consider the impacts to water bodies from normal rail operations.

With regard to Section 4.8, Hydrology and Water Quality, the Revised Draft EIR makes almost no changes with the exception of adding a single page regarding "Uprail Impacts and Mitigation Measures," and a short section summarizing such impacts. (Revised Draft EIR at 2-125.) However, the Revised Draft EIR's analysis of up-rail impacts includes little more than conclusory assertions that there will be no impacts under normal operating conditions. This approach is legally insufficient, and it overlooks important water quality impacts related to normal rail operations.

The fundamental problem with the Revised Draft EIR is that the City analyzes up-rail water impacts only insofar as they relate to an accident or oil spill. Yet transporting crude by rail creates potentially significant impacts to water quality simply by its normal

operation. For example, rail transportation regularly deposits polycyclic aromatic hydrocarbons (“PAHs”) and heavy metals into the proximate environment.¹⁶ PAHs already pose a problem for aquatic ecosystems close to the Benicia refinery,¹⁷ and expanded crude-by-rail operations resulting from this Project will result in the deposit of this toxic substance into such areas and other up-rail waterways.

Similarly, the day-to-day transportation process could contaminate up-rail waterways through air pollution fallout. The Revised Draft EIR states that “locomotive exhaust emissions and fugitive emissions from tank cars would result in a net increase of air pollutant emissions within the air districts along the three [possible travel] routes,” including exceedances of allowable NO_x emissions in every air district that Project-related trains might pass through. (Revised Draft EIR at 2-31.) This harm to air quality is alarming in and of itself, but it also threatens water systems that are susceptible to aerial deposition of pollutants.

While the Revised Draft EIR recognizes that crude-carrying rail cars would “traverse numerous creeks, rivers, wetlands, aqueducts, canals, and sloughs” and are “in proximity to numerous lakes and marine waters,” Revised Draft EIR at 2-125, it fails to assess the fact that PAHs, heavy metals, and other pollutants may deposit or leach into these waterways even without a spill or accident. Instead, the Revised Draft EIR summarily asserts that, “[u]nder normal operating conditions,” Project-related crude oil transportation would have “no impact” on water quality or hydrology issues, with no explanation for reaching this conclusion. (*Ibid.*) The City should acknowledge that rail operations can pollute water even under normal operating conditions, and it should identify and evaluate the Project’s contribution to the problem.

The Revised Draft EIR also fails to identify or implement ways to mitigate the Project’s impacts. Although the City takes the position that it is preempted from regulating rail emissions, it uses this conclusion to foreclose recognized mitigation measures that are legally feasible under CEQA. For example, Valero could be required to

¹⁶ Wilkomirski, *et al.*, *Railway transportation as a serious source of organic and inorganic pollution*, 218 *Water Air Soil Pollut.* at 333-45 (2011), available at: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3096763/>

¹⁷ Daniel Oros, *et al.*, *Polycyclic aromatic hydrocarbon (PAH) contamination in San Francisco Bay: A 10-year retrospective of monitoring in an urbanized estuary*, 105 *Env’t Research* 1 at 101-18 (2007); see also B. Thompson, *et al.*, *Relationships between sediment contamination and toxicity in San Francisco Bay*, 48 *Mar. Environ. Res.* at 285-309 (1999).

contribute to up-rail communities' water pollution control efforts, either through purchasing emissions offsets or by directly funding air or water quality programs. (*See, e.g., Save Our Peninsula Comm. v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 141 [upholding traffic impact mitigation fees].) The City could also require Valero to fund wetland restoration or other ecosystem improvement projects that benefit or protect water quality. (Guidelines § 15370(e) [“Mitigation’ includes ... [c]ompensating for the impact by replacing or providing substitute resources or environments.”]; *see also City of Petaluma v. Cnty. of Sonoma*, No. A134559, 2014 WL 795657, at *14 (Cal. Ct. App. Feb. 28, 2014) (unpublished decision) (upholding an EIR that relied in part on wetland banking as a mitigation measure). The Revised Draft EIR’s failure to even consider such mitigation options violates CEQA.

b. The Revised Draft EIR’s analysis of impacts related to water quality from a spill or accident is fundamentally flawed.

The Revised Draft EIR also includes a new analysis of hydrology and water quality impacts related to an accident or crude oil spill in the Hazards and Hazardous Waste section. (Revised Draft EIR at 2-114 to 2-116.) However, this discussion falls well short of what CEQA requires. The quantitative risk assessment prepared for the Revised Draft EIR miscalculates the true risk of an accident or spill, which consequently underestimates the risk to water resources. And even where the analysis identifies significant impacts, it wrongly brushes aside mitigation measures as legally infeasible. In reality, the Project entails an even greater accident-related risk than the Revised Draft EIR surmises, and there are feasible mitigation measures that the City could implement to address such impacts.

Even with these incorrect assumptions, the Revised Draft EIR acknowledges that an up-rail derailment or accident could cause “substantial degradation to surface water and/or groundwater quality” and associated ecosystems. (Revised Draft EIR at 2-115.) While the analysis discounts this risk because “the incident would need to occur in the vicinity of a water body . . . [or] in a groundwater recharge area,” it correctly recognizes that spills into waterways would make cleanup efforts more difficult, as would certain topographical or terrain features like steep slopes or deep channels or ditches. (*Id.* at 2-115.) Moreover, the Revised Draft EIR notes that “depending upon the location of an oil spill . . . there may be no oil spill containment or cleanup equipment immediately available, and it could take some time for emergency response teams to mobilize,” which “could allow enough time for the spill to affect water resources.” (*Id.* at 2-116.) These unique challenges would exacerbate impacts to water systems.

Despite such acknowledged significant impacts, the City adopts no mitigation measures. (*Ibid.*) In fact, the only mitigation measure even contemplated is “requiring compliance with SB 861,” which requires oil carriers to have an oil spill contingency plan approved by the state Office of Spill Prevention and Response, but that measure is rejected on preemption grounds. (*Ibid.*) As discussed above, the City’s analysis of the preemption issue is incorrect. Moreover, even if federal law prohibits the City from regulating UPRR, there is no question that it could require Valero to mitigate impacts to water resources that result from an accident or spill. For example, providing additional funding, bonding, personnel, or other resources to response agencies located close to important water bodies would be legally and practically feasible, and it would directly reduce the risk of serious impacts to up-rail water resource. The Revised Draft EIR’s failure to even consider any feasible mitigation measure to address this significant impact violates CEQA.

X. The Revised Draft EIR fails to properly evaluate and mitigate significant impacts to biological resources.

The Revised Draft EIR’s analysis of the Project’s impacts on biological resources is fundamentally flawed. The Revised Draft EIR fails to address most of the concerns about the Draft EIR that were raised in public comments. Furthermore, the Revised Draft EIR suffers from numerous deficiencies: (a) it improperly limits the geographic scope of analysis; (b) its identification of special-status species and sensitive habitats affected by the Project is too narrow; (c) it erroneously claims that the Project under normal operating conditions will have no significant impacts under significance criteria (b) through (f); (d) its analysis of impacts to special-status species under normal operating conditions is fundamentally flawed; and (e) it fails to propose feasible mitigation measures to reduce significant impacts to special-status wildlife species from crude oil spills, train derailments, and explosions.

a. The Revised Draft EIR improperly limits the geographic scope of the biological resources impacts analysis.

Although the Revised Draft EIR claims that it analyzes the “uprail impacts” between the Roseville Yard to the State Border and points beyond, including the southern routes within California and routes to the Project-related crude oil’s point of origin, Revised Draft EIR at 2-25,¹⁸ the biological resources impacts analysis only considers the

¹⁸ The Revised Draft EIR states: “The analysis in this EIR considers the potential effects of the Project regardless of whether they could occur within the Refinery boundary,

three northern routes. As explained above, the Revised Draft EIR's restriction of the geographic scope of analysis is arbitrary and violates CEQA.

b. The Revised Draft EIR's identification of biological resources affected by the Project is improperly narrow.

Section 2.7 of the Revised Draft EIR limits its analysis of species and sensitive habitats to those that occur within 300 feet of three northern/northeast rail routes, improperly excluding those that lie beyond 300 feet but occur within the potential impact zone of the Project. The Revised Draft EIR provides no justification for why 300 feet is a sufficient distance for analyzing impacts under normal operating conditions or accident scenarios. Noise pollution from oil trains extends more than 300 feet from the tracks. (Draft EIR at 4.2-32.) Air pollution such as NO_x emissions, the deposition of heavy metals from oil trains, and the impacts from oil spills, derailments, and explosions can extend well beyond 300 feet. For example, numerous recent oil train derailments and explosions have spilled crude oil into waterways, and harms have been geographically extensive. The oil train derailment and explosion near Aliceville, Alabama, in 2013 spilled an estimated 750,000 gallons of crude oil into a wetland system, causing widespread damage far beyond 300 feet.

c. The Revised Draft EIR erroneously claims that the Project, under normal operating conditions, would "cause no impact" to biological resources under significance criteria (b) through (f).

The Revised Draft EIR claims that the Project, under normal operating conditions, "would not have a substantial adverse effect on any riparian habitat or other sensitive natural community" under criterion (b), and "would not interfere substantially with the resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites" under criterion (d) "because the presence of any such habitat or community located

between the Refinery and the Roseville Yard, between the Roseville Yard and the State border via the three routes described above, via a southern route within California, or beyond the State line to the Project-related crude oil's point of origin. Potential effects of the Project within the Refinery boundary and from the Refinery to the Roseville Yard are addressed in the DEIR except as noted below. Uprail impacts, i.e., those potential impacts that may occur between the Roseville Yard to the State border and points beyond, are addressed in a new subsection within each resource discussion called 'Uprail Impacts and Mitigation Measures.'" (Revised Draft EIR at 2-25.)

within or along the tracks under baseline conditions demonstrates tolerance with trains passing via the tracks.” (Revised Draft EIR at 2-42 to 2-43.) However, the Revised Draft EIR provides no evidence to support the claim that the presence of a riparian habitat, sensitive natural community, wildlife corridor, or wildlife nursery site along the tracks means that it is not experiencing adverse impacts. Such generalized and conclusory statements unsupported by factual information are specifically prohibited under CEQA.

To the contrary, the scientific evidence, detailed below and in our 2014 comments on the Draft EIR, indicates that the Project’s oil trains would result in increased impacts to habitats, natural communities, movement corridors, and nursery sites along the tracks, including substantial adverse impacts from (1) noise disturbance, (2) barriers to movement, and (3) pollution through the emissions of contaminants such as NO_x and heavy metals. Importantly, numerous scientific studies demonstrate that the presence of a community or species in a disturbance zone does not equate to the absence of impacts. Significant impacts may still be occurring that lower reproductive success, reduce body condition, increase stress levels, lower survival and abundance, and disrupt community structure and ecosystem function. For example, a recent study by Ware et al. (2015), which measured the impacts of noise pollution on a songbird community, found that the species or community presence does not mean that impacts are not occurring. In response to traffic noise, 31 percent of the bird community avoided the area, and overall body condition decreased significantly for the individuals that stayed in the noise-affected area, likely because an increase in vigilance decreased their foraging efficiency. The study concluded that “noise degrades habitat that is otherwise suitable, and that the presence of a species does not indicate the absence of an impact.”¹⁹ It stands to reason that if some noise causes adverse impacts, more noise would exacerbate those impacts. The EIR must analyze this.

The Revised Draft EIR also claims, without basis, that “[u]nder normal operating conditions, Project trains also would not have a substantial adverse effect on federally protected wetlands” under criterion (c) because “no wetland removal, fill, hydrological interruption, or other effect on such resources would occur.” (Revised Draft EIR at 2-42 to 2-43.) However, as detailed in our comments on Hydrology and Water Quality, many adverse impacts to water bodies would result from normal Project operations including the deposition of polycyclic aromatic hydrocarbons (PAHs), heavy metals, and air pollution fallout from NO_x and other airborne pollutants.

¹⁹ Ware, H.E. et al. 2015. A phantom road experiment reveals traffic noise is an invisible source of habitat degradation. PNAS 112: 12105-12109.

Finally, the Revised Draft EIR makes the erroneous claim that the Project “would not conflict with” criteria (e) and (f) because “the passage of Project trains along existing tracks would result in no change to existing conditions relative to such plans.” (Revised Draft EIR at 2-42 to 2-43.) However, Project oil trains would clearly change existing conditions of these plans because of the higher risks from trains carrying petroleum crude oil (i.e., higher risk of derailments resulting in oil spills and explosions) and the increased frequency of trains on the tracks leading to increased noise pollution, air pollution, barriers to movement, and other train-related impacts. Illustrating the higher level of train-related impacts, the Revised Draft EIR estimates that Project-related freight rail trips would result in a *12 to 36 percent increase* in train trips along the routes, as shown in Figure 1-3. (Revised Draft EIR at 2-133.) In sum, the Revised Draft EIR violates CEQA in failing to adequately analyze and mitigate the significant Project impacts to biological resources under significance criteria (b) through (f).

d. The Revised Draft EIR’s analysis of impacts to special-status species is fundamentally flawed.

The Revised Draft EIR’s analysis of impacts to special-status species under significance criterion (a) is fundamentally flawed on several counts. First, the Revised Draft EIR claims that there will be no impacts to special-status plants, based on the argument that there is limited potential for plants to occur along the rail routes:

Although there are numerous special status plants documented within 300 feet of the three uprail routes the existing operations of train transportation and track maintenance limits the potential for special-status plants to occur along rail routes. The addition of trains transporting Project-related crude on established rail corridors would not impact special-status plants.

(Revised Draft EIR at 2-44.) This claim directly contradicts the Revised Draft EIR’s finding that numerous special-status plant species occur within 300 feet of the three up-rail routes analyzed: 38 special-status plant species along the Roseville to Oregon route, 40 species along the Roseville to Nevada (northern) route, and 11 species along the Roseville to Nevada (southern) route. (Revised Draft EIR, appx. E.) In addition, special-status plants face adverse impacts from normal operation due to deposition of PAHs, heavy metals, and air pollutants such as NO_x, as well as the need for increased track maintenance, particularly because

heavy oil trains increase damage to railroad tracks.²⁰ The Revised Draft EIR must evaluate and mitigate these impacts.

Second, the Revised Draft EIR claims, without providing any evidence, that the increased frequency of trains would not “substantially increase noise impacts to special status wildlife within the uprail study area beyond existing operations” because “[w]ildlife species are expected to soon habituate to the more frequent noise.” (Revised Draft EIR at 2-44.) To the contrary, numerous studies show that noise pollution has a wide range of adverse impacts on species and ecosystems across a broad range of taxa.²¹ Noise pollution can drive changes in community structure and species interactions,²² drive or contribute to declines in abundance,²³ lower reproductive success,²⁴ increase

²⁰ See, e.g., Vartabetian, R. “Why are so many oil trains crashing? Track problems may be to blame,” *Los Angeles Times*, Oct. 7, 2015, available at <http://www.latimes.com/nation/la-na-crude-train-safety-20151007-story.html>

²¹ Barber, J.R. et al. 2009. The costs of chronic noise exposure for terrestrial organisms. *Trends Ecol Evol* 25: 180–189; Francis, C.D. and J.R. Barber. 2013. A framework for understanding noise impacts on wildlife: An urgent conservation priority. *Front Ecol Environ* 11(6): 305–313.

²² Francis, C.D. et al. 2012. Noise pollution alters ecological services: enhanced pollination and disrupted seed dispersal. *Proceedings of the Royal Society B* 279: 2727–35.

²³ Bayne E.M. et al. 2008. Impacts of chronic anthropogenic noise from energy-sector activity on the abundance of songbirds in the boreal forest. *Conservation Biology* 22(5): 1186–93; Fahrig, L. and T. Rytwinski. 2009. Effects of roads on animal abundance: An empirical review and synthesis. *Ecol Soc* 14(1): 21; Goodwin, S.E. and W.G. Shriver. 2011. Effects of traffic noise on occupancy patterns of forest birds. *Conservation Biology* 25:406–411; Blickley, J.L. et al. 2012a. Experimental evidence for the effects of chronic anthropogenic noise on abundance of Greater Sage-Grouse at leks. *Conservation Biology* 26(3): 461–71; Francis, C.D. and J.R. Barber. 2013. A framework for understanding noise impacts on wildlife: An urgent conservation priority. *Front Ecol Environ* 11(6): 305–313.

²⁴ Habib, L. et al. 2007. Chronic industrial noise affects pairing success and age structure of ovenbirds *Seiurus aurocapilla*. *Journal of Applied Ecology* 44: 176–184; Halfwerk, W. et al. 2011. Negative impact of traffic noise on avian reproductive success. *Journal of Applied Ecology* 48: 210–219.

stress levels,²⁵ decrease foraging efficiency,²⁶ and reduce activity levels.²⁷ Increased traffic volumes, analogous to the increased train activity that will result from the Project, have been shown to increase the magnitude of impacts to wildlife.²⁸ Importantly, a recent review of noise impacts on wildlife found that individuals that are assumed to have “habituated” to noise pollution may in fact experience significant fitness costs: “research . . . indicates that acclimation to a stressor might not release an organism from costs to fitness”; and further that “behavioral modifications among individuals confronted with noise—even those individuals that outwardly appear to habituate—can lead to decreased fitness.”²⁹

Third, although the Revised Draft EIR correctly concludes that the Project will have significant adverse effects on special-status wildlife species and migratory birds due to collisions with Project trains, Revised Draft EIR at 2-44, the City fails to identify and implement feasible mitigation measures to reduce these significant impacts. The Revised Draft EIR only considers reducing train speeds, which it acknowledges would reduce the severity of impacts. (Revised Draft EIR at 2-44-45.) However, the City determines that this mitigation measure is pre-empted by federal law, and fails to adopt other feasible mitigation measures. (Revised Draft EIR at 2-45.) As detailed in these comments, the City’s analysis of the preemption issue is flawed. However, even if federal law were to preempt the City from regulating UPRR, the City could nonetheless require Valero to

²⁵ Blickley, J.L. et al. 2012b. Experimental chronic noise is related to elevated fecal corticosteroid metabolites in lekking male greater sage-grouse (*Centrocercus urophasianus*). PLoS ONE 7(11): e50462.

²⁶ Siemers, B.M. and A. Schaub. 2011. Hunting at the highway: Traffic noise reduces foraging efficiency in acoustic predators. Proceedings of the Royal Society B 278: 1646–1652.

²⁷ Bunkley, J.P. et al. 2015. Anthropogenic noise alters bat activity levels and echolocation calls. Glob Ecol Conserv 3: 62–71.

²⁸ Leblond, M. et al. 2013. Avoidance of roads by large herbivores and its relation to disturbance intensity. Journal of Zoology 289: 32-40; Gagnon, J.W. et al. 2007. Traffic volume alters elk distribution and highway crossings in Arizona. Journal of Wildlife Management 71: 2318-2323.

²⁹ Francis, C.D. and J.R. Barber. 2013. A framework for understanding noise impacts on wildlife: An urgent conservation priority. Front Ecol Environ 11(6): 305–313. This study states: “In our experience with stakeholders, habituation is an oft-cited reason for persistence and an absence of noise impacts, yet research on other stressors indicates that acclimation to a stressor not release an organism from costs to fitness.”

adopt mitigation measures to reduce impacts to special-status species from collision mortality.

For example, the City could require Valero to implement common mitigation measures to reduce wildlife collisions across a broad array of taxa.³⁰ Wildlife crossing structures, including underpasses (e.g., culverts, amphibian tunnels) and overpasses (e.g., land bridges, rope bridges, glider poles), and fencing to funnel wildlife toward crossing structures, are commonly used to reduce wildlife mortality from collisions.³¹ Many wildlife species regularly and frequently use crossing structures, including wildlife passages over and under railroads,³² and well-designed crossings have been shown to reduce mortality³³ and enhance connectivity and population viability.³⁴ Crossing

³⁰ Yanes, M. et al. 1995. Permeability of roads and railways to vertebrates: the importance of culverts. *Biological Conservation* 71: 217-222; Elmiger, C. and M. Trocmé. 2007. Developing Fauna-Friendly Transport Structures: Analysis of the Impact of Specific Road Engineering Structures on Wildlife Mortality and Mobility. In *Proceedings of the 2007 International Conference on Ecology and Transportation*, edited by C. Leroy Irwin, Debra Nelson, and K.P. McDermott. Raleigh, NC: Center for Transportation and the Environment, North Carolina State University, 2007. pp. 212-219; Craighead, A.C. et al. 2009. Bozeman Pass Wildlife Pre-And Post-Fence Monitoring Project. Craighead Environmental Research Institute, Bozeman, MT; Glista, D.J. et al. 2009. A review of mitigation measures for reducing wildlife mortality on roadways. *Landscape and Urban Planning* 91: 1-7; Grilo, C. et al. 2008. Response of carnivores to existing highway culverts and underpasses: implications for road planning and mitigation. *Biodiversity Conservation* 17: 1685-1699; Jacobson, S.L. 2005. Mitigation Measures for Highway-caused Impacts to Birds. USDA Forest Service Gen. Tech. Rep. PSW-GTR-191; Beebee, T.J. 2013. Effects of road mortality and mitigation measures on amphibian populations. *Conservation Biology* 27: 657-668; van der Grift, E.A. et al. 2013. Evaluating the effectiveness of road mitigation measures. *Biodiversity Conservation* 22: 425-448; Rytwinski, T. et al. 2015. Experimental study designs to improve the evaluation of road mitigation measures for wildlife. *Journal of Environmental Management* 154: 48e64.

³¹ Glista et al. 2009, van der Grift et al. 2013, Rytwinski et al. 2015).

³² Yanes et al. 1995; Rodriguez, A. et al. 1997. Factors affecting crossing of red foxes and wildcats through nonwildlife passages across a high-speed railway. *Ecography* 20: 287-294.

³³ Niemi, M. et al. 2014. Dry paths effectively reduce road mortality of small and medium-sized terrestrial vertebrates. *Journal of Environmental Management* 144: 51-57.

structures can be placed in hotspots for wildlife collisions and should be paired with monitoring and research on efficacy.³⁵ The Revised Draft EIR's failure to consider and adopt feasible mitigation measures to reduce this significant impact violates CEQA.

e. The Revised Draft EIR fails to propose feasible mitigation measures to reduce significant impacts to special-status wildlife species from crude oil spills, fires and explosions.

In its Hazards and Hazardous Materials analysis in Section 4.7, the Revised Draft EIR determines that the Project would result in "significant and unavoidable" adverse effects on biological resources from hazardous materials spills, fires, and explosions. (Revised Draft EIR at 2-108, Impact 4.7-6.) As detailed in these comments, the quantitative risk assessment errs in underestimating the risk of an accident or spill and thus the impacts to biological resources. Moreover, the Revised Draft EIR violates CEQA in failing to consider and adopt feasible mitigation measures to reduce these significant and potentially catastrophic impacts. The only mitigation measure considered by the City is compliance with SB 861, and the City rejects this measure based on unsubstantiated preemption arguments. However, even if federal law were to preempt the City from regulating UPRR, the City could require Valero to mitigate impacts to species and ecosystems that would result from an accident or spill. For example, the City could require Valero to provide funding, personnel, and other resources to response agencies to provide for an oil spill containment and response team specialized in recovering and rehabilitating oiled wildlife and habitats.

XI. The Revised Draft EIR's analysis of cumulative impacts is fundamentally flawed.

The Revised Draft EIR fails to properly analyze the Project's cumulative impacts. It concludes that there will be not significant cumulative air quality impacts within the BAAQMD basin, Revised Draft EIR at 2-152 to 2-155, but that conclusion is based on the flawed assumption that the Project will not change the type of, or increase the amount of, crude oil processed at the refinery.

The Revised Draft EIR also improperly concludes that the Project would not result in significant cumulative impacts to biological resources or water quality because "the likelihood that two or more trains would derail in the same area is remote." (Revised

³⁴ van der Ree, R.. et al. 2009. Wildlife tunnel enhances population viability. *Ecology and Society* 14: 7.

³⁵ van der Grift et al. 2013; Rytwinski et al. 2015.

Draft EIR at 2-157; *see also id.* at 2-164.) However, this is not the correct test under CEQA. Impacts from the Project and other related projects need not occur in the exact same location for the impacts to be considered “cumulatively considerable.”

“Cumulatively considerable” is defined as meaning that “the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.” (Guidelines § 15065(a)(3).) As evident in the Revised Draft EIR at Table 5.1, there are a large number of past, present, and proposed projects, including numerous projects that will increase oil train activity on the rail routes used by the Project and/or increase crude oil transport in the Project vicinity, that when considered collectively with the Project, will undoubtedly have significant cumulative impacts on the environment.

XII. Conclusion

While the City has finally acknowledged many of the significant environmental impacts this Project would cause, the Revised Draft EIR still contains numerous flaws. The City cannot approve the Project on this document, and must revise the EIR to address the problems discussed in this letter.

Sincerely,

Jackie Prange, Staff Attorney
Natural Resources Defense Council

Katherine Black
Benicians for a Safe and Healthy
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Roger Lin, Staff Attorney
Communities for a Better Environment

Nancy Rieser
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Idle No More SF Bay Area

Janet Johnson
Richmond Progressive Alliance

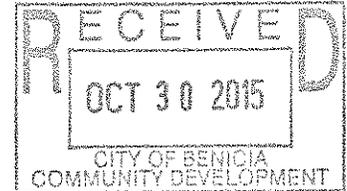
Carla West
350 Bay Area



Cool Davis Foundation

Empowering Citizens for Climate Action

October 30, 2015
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Principal Planner
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District

Staff:

Chris Granger
Interim Executive Director

Mission:

To inspire our community to reduce greenhouse gas emissions, adapt to a changing climate, and improve the quality of life for all.

Cool Davis Foundation
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Re: Comments on the Valero Crude-By-Rail Project DEIR

Dear Amy Million,
Please enter the following comments on the Benicia Valero Refinery Project RDEIR into the public record.

Cool Davis is a non-profit organization whose mission is to inspire our community to reduce greenhouse gas (ghg) emissions, to adapt to a changing climate, and to improve the quality of life for all! We work to implement aspects of the Climate Action and Adaptation Plan of the City of Davis related to home energy efficiency, transportation, and consumption.

Cool Davis has reviewed our comment letter to the DEIR last year, and the RDEIR document as well. Many areas of concern remain.

First, it is appropriate that the mileage calculations will now be based on round trips, as tank cars pass through each community once full and once empty each day. There is no indication that the very real possibility of 5 additional trains per week headed to the Phillips 66 refinery in San Luis Obispo County may be approved, thus almost doubling the amount of air pollution and Greenhouse gas emissions for the region. The two projects are proceeding simultaneously, and both must be considered in the larger context of the other project and what is proposed for California.

The most troubling aspect of the Valero project RDEIR is how lightly the Air Quality degradation and the additional Greenhouse gas emissions are taken. There is no attempt to hide them or pretend they are insignificant, but they are dismissed easily. The nature of the crude in the tank cars is "confidential" and "Federal preemption" means "significant and unavoidable" consequences can simply be ignored, leaving CEQA gutted, the public good unprotected, the air quality more polluted, the atmosphere more damaged, and all of us hurtling farther down the road to living on an imperiled planet whose climate is irretrievably out of control and whose life support systems are shutting down.

Part 2.6 DEIR Section 4.1 Air Quality

In terms of air quality, the RDEIR explores some worthwhile mitigation for the air pollution emissions of Nitrous Oxide deemed "significant and unavoidable," including several worthy ideas:

1) requiring the use of ultra low-emitting locomotives and/or

2) offering compensation which could in turn be used to fund emission reduction of diesel vehicles by purchasing natural gas vehicles, such as the \$650,000 award made to the Sacramento Metropolitan Air Quality Management District just this week which will be used to replace three diesel-powered refuse trucks with natural gas-fueled vehicles, and to replace up to six non-road diesel-powered agricultural tractors with cleaner models.

Unfortunately, not a single mitigation for air pollution or greenhouse gas emissions is actually offered. "Federal preemption" allows the railroads to avoid any responsibility for the pollution they cause, by labeling any mitigation "infeasible." They are not subject to any state laws or expectations, though presumably they respond to federal standards. Unfortunately, there apparently are no federal limits on air pollution or ghg emissions that apply to railroad transport. Presumably, states make such legislation, not the federal government. The RDEIR study is complete; the damage from the daily oil trains is named correctly, yet nothing will be done to lessen the impact!

Can UPRR offer mitigations if it chooses? Would it choose to upgrade its locomotives or make compensatory offers to uprail communities knowing the air pollution will be ongoing and serious? This would be an admirable gesture to the community at large and the health of the planet. Does this industry have a conscience?

Table 4.1-16 is incomplete. This table compares only the train option transporting crude from North American crude sources through CA to Benicia against marine sources from Alaska, South America, and the Middle East. By this comparison, the train route reduces total emissions because of the huge distance the marine tankers must travel, even though marine tankers are more efficient mile by mile.

However, a new Port in Vancouver, Washington has opened. Valero can receive crude directly from Vancouver in marine shipments, which would result in far fewer emissions than rail delivery through California! Arguably, Valero should return to marine deliveries and drop the idea of oil trains traveling over treacherous routes in Northern or Southern CA.

Why would the Benicia Planning Commission or City Council approve a plan that increases air pollution with no compensatory mitigation and subjects the public and its lands to dangers, when another less polluting source of the same crude is available?

2.11 Greenhouse Gas Emissions

California is working hard to reduce its greenhouse gas emissions in many arenas, and the Valero project takes us in the opposite direction. Worse, it offers no mitigations to offset the severity of the increase in emissions that will contribute to global warming which is the greatest threat civilization has ever faced. Once again, federal preemption allows UPRR to operate without the payment of carbon emission offset fees that other polluting industries must pay. That industry should profit over protection of the public and the health of the planet is inexcusable. Federal preemption was granted to the railroads, but it needs to be reevaluated in light of the public good.

There is another critical factor in section 2.11. The RDEIR neglects to mention the new Port of Vancouver USA rail entrance in Washington State. Right now, Valero can receive the same crude directly from Vancouver in marine shipments, which would result in far less emissions than the carbon footprint from rail delivery through California!

The RDEIR assumes all marine deliveries come from Alaska (2,000 miles), South America (4,000 miles), and the Middle East (8,500 miles), thus they have high carbon footprints due to the huge distance they must transport the crude oil. Vancouver, Washington is only 644 miles from the Bay Area. In the RDEIR, the

baseline emissions are calculated using the project locomotive distance at 1,500 miles. Since Vancouver is less than half that distance, and marine travel emits less than rail travel, it follows that marine delivery from Vancouver would reduce at least half the greenhouse gas emissions the project proposes in the RDEIR. *Why is this option not explored in the RDEIR?* Other North American or Canadian ports may open as well. In terms of emissions and risks, Valero should return to marine deliveries and drop the idea of oil trains over treacherous routes in Northern or Southern CA.

A final point on greenhouse gas emissions. Before importing crude oil at all, we must ask the question whether we need to refine as much crude oil as in the past. In California in particular and in the US overall, oil consumption has been dropping since 2005, although it rose a little in 2014, perhaps due to the decline in gasoline price. Californians consumed 14.5 billion gallons of gas in 2012, but 14.57 billion gallons of gasoline in the fiscal year ending June 30, 2014 (both figures from the San Diego Tribune include aviation fuel). With programs under AB 32, CA is deliberately converting to more efficient and electric cars, improving transit, promoting carpooling, and creating bike and walk-friendly cities to decrease the use of individual car driving. It's working!

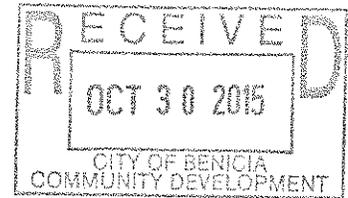
As our usage declines, so should the amount of extreme crude we refine, thus sparing the environmental damage at the point of extraction as well as the carbon emissions caused by transportation and refining! We're moving away from a fossil fuel economy and that needs to be reflected in downsizing the amount of crude processed at our refineries. The crude is best left in the ground so that precious resource can be used sparingly into the future even as we transition to clean, renewable energy. While we transition to renewable energy, it is unethical to extract extreme crude and refine it for sale to foreign markets as fast as we can; the process exacerbates global warming for the sake of industry profits and undercuts the conservation efforts we are making to combat climate change.

We look to the decisions of the Benicia Planning Commission and the Benicia City Council regarding the RDEIR to consider both the short and long term needs and health of your own community and also our region, state, country, and indeed the planet. Decisions about air quality and greenhouse gas emissions carry serious implications far beyond your own community to all the life forms on this planet. We each have opportunities to help shift the balance to a more sustainable future. At this juncture, the Benicia Planning Commission and City Council have the vote while those of us who live uprail have no direct voice. *Your decision on the Valero crude by rail project can be a gift of a more sustainable way of living for your community and for all the uprail communities.* Thank you for considering the gravity of your position in our region. We are counting on you to think carefully, know your heart, reflect on the large picture of what is at stake as you cast your vote, and be brave enough to make the right decision for all of us and for our only home – planet Earth.

Sincerely,
Bill Heinicke
President of Cool Davis Foundation Board of Directors

October 30, 2015

Amy Million,
Principal Planner
Community Development Department
amillion@ci.benicia.ca.us



Re: Comments on the Valero Crude-By-Rail Project DEIR

Dear Ms. Million,

Please enter the following comments on the Benicia Valero Refinery Project RDEIR into the public record. (Please note that this letter draws with permission from the excellent Davis letter composed by Lynne Nitter and signed by 50+ residents, supplemented by many additional important points from 350 Sacramento.)

350 Sacramento is a local grassroots nonprofit organization working to address the threat of climate change. We are concerned about the increasing numbers of crude oil trains coming through Sacramento. In the short term these trains pose a grave danger to the safety of thousands of people in our city and in the long term the oil they carry poses an even greater danger to the people of Sacramento and the world by exacerbating climate change.

Bakken crude and tar Sands bitumen are far too dangerous to transport on the proposed routes into California. In Sacramento, the tracks go by 17 schools in Sacramento City Unified School District alone—13,000 students study daily within the evacuation zone of a potential derailment and explosion. A disaster here would cause unthinkable horror.

These extremely hazardous materials travel through sensitive habitat, across our waterways, and right through the centers of small towns and large cities all along the train route. The delivery of 70,000 barrels a day of highly hazardous crude oil puts irreplaceable habitat, our sources of clean drinkable water, and lives constantly at risk. The secrecy that surrounds these deliveries ignores the extreme risk to the public and environment. While the refineries claim confidentiality to avoid revealing what crude they are moving and the railroads claim federal preemption to avoid all responsibility for mitigation, the people and our lands must accept daily life-threatening risks with none of the financial gain. By any standards, this is unacceptable.

The RDEIR indicates the three northern routes to transport the crude from North America to the hub in Roseville. It does not discuss the terrain, some of it very dangerous, over which the trains will travel. These include:

- The route from Oregon running south (297 miles) includes the treacherous section outside Dunsmuir where a train derailed spilling 19,000 gallons of herbicide that killed everything in the

Upper Sacramento River for 38 miles in 1991. It took years to recover, and some say amphibians never did.

- The “Nevada to Roseville” route (229 miles) being used presently for the twice-a-week oil trains headed to Kinder-Morgan follows the Feather River Canyon along a narrow canyon with high trestle bridges and steep canyon walls where 11 cars of corn spilled down to the river below on Nov. 14, 2014, causing much fearful speculation about what would have happened to our water supply had it been an oil train.
- The third route over Donner Summit (119 miles) is well known for its treacherous route at high altitudes over the snowy mountains where storms can come up suddenly.

None of the three routes is easy or safe for 100-tank cars pulled by four locomotives and two buffer cars per train. The terrain is rough and remote in many sections. On winding mountainous tracks, once one car derailed others are likely to follow. Note: Most of the previous oil train accidents happened on simple flat terrain, not the challenging landscape of these three routes. It is entirely possible the incidence of accidents will increase in the CA terrain.

The OSPR interactive map marks earthquake faults throughout the state. The surprise 4.1 Napa quake in 2014 alerted us to previously unsuspected quake areas. The map shows fault lines along the UPRR lines from Fairfield to Benicia, so the two daily trains would be traveling regularly over seismically active ground. There are other parts of the three routes where earthquake faults overlap the tracks as well. Who knows when another earthquake might strike and of what magnitude?

The RDEIR suggests, without evidence, that the CP-1232 tank cars that Valero is promising to purchase will be safe enough to carry highly flammable Bakken oil. This is simply not true. At Lynchburg, Virginia, on May 1, 2014, several 1232s punctured and ruptured, releasing 30,000 gallons of flammable Bakken oil into the James River and causing an enormous fire. Other derailments and accidents have involved 1232s. CP-1232s are not safe for carrying flammable crude oil.

Spilled tar sands dilbit must be captured immediately or it sinks with its heavy metals. The 2010 tar sands spill into the Kalamazoo River is still not restored 5 years later and at a cost of over a billion dollars! The three routes into Roseville follow rivers that are critical to the fresh water supplies for population centers and agriculture—a spill would be devastating. We simply cannot afford the risk of dangerous trains moving at fast speeds (UPRR plans to go 50 mph) through this dangerous, sensitive, and valuable terrain.

The RDEIR suggests that Union Pacific’s emergency response protocols would be adequate to deal with any “uprail” train disaster—whether a catastrophic derailment involving explosion and fire in rural or urban environments, and/or crude oil spill in a city neighborhood, a river, or marsh. This is untrue! Since 2013, disastrous incidents involving ruptured tank cars carrying

Bakken oil have caused enormous fires that emergency responders have had to let burn out over many hours, even days, calling for evacuations, such as in Casselton, North Dakota, one mile from a catastrophic derailment and conflagration on Dec 30, 2013, when ruptured tank cars full of Bakken oil ignited in fiery explosions, spilling 400,000 gallons of oil. The RDEIR does not discuss the environmental impacts of letting such fires burn out, nor identify the types and quantities of emissions that would potentially be released during such a catastrophic event that would affect people living within 1 mile from such a fire.

The additional 100-car daily trains will contribute significantly to air pollution, which our air quality management districts are striving to reduce to meet state standards. The RDEIR admits that trains going from the CA border to Roseville and on to Benicia will impact nearly all of the counties with “significant and unavoidable” air quality emissions increases, specifically nitrous oxide. In the Sacramento area, that includes numerous schools and thousands of students, many of whom are already suffering from asthma and other chronic illnesses caused by poor air quality.

The RDEIR recognizes that the project could have substantial adverse effects on candidate, sensitive, or special wildlife species or migratory birds, including injury or mortality to protected wildlife and migratory bird species, from collisions with trains as a result of increased frequency of railcars. However, the railroad federal preemption once again makes any mitigation such as slowing near wetlands or critical zones or areas “infeasible.” It is our duty to protect the biodiversity around us.

Climate change is the greatest challenge of our time and the biggest threat to a livable future. California is working hard to reduce its greenhouse gas emissions, but the Valero project takes us in the opposite direction. It offers no mitigation to offset the severity of the increase in emissions the project will contribute to global warming. Federal preemption allows UPRR to operate without the payment of carbon emission offset fees other polluting industries must pay. Federal preemption needs to be reevaluated in light of the public good.

The RDEIR does not describe the environmentally destructive methods by which the crude oil used by this project is extracted. The worst environmental problem is the impact on climate of the accelerating rise of greenhouse gases (GHGs) in the upper atmosphere from the combustion of fossil fuels. But the extraction process itself is unbelievably destructive. The decimation of boreal forest in Alberta represents a loss of carbon-sequestering forest. The RDEIR’s claims for GHG reductions do not factor the huge energy and water consumption required to extract one barrel of either Bakken or tar sands, nor the enormous environmental destruction to our planetary ecosystems or contributions to global warming effects. GHGs and habitat destruction must be accounted for as part of this process.

Before importing crude oil at all, we must ask whether it is even necessary to extract this oil. Oil consumption has generally dropped since 2005. California is converting to more efficient and

electric cars, improving transit, promoting carpooling, and creating bike and walk-friendly cities to decrease the use of individual car driving. As our usage declines, so should the amount of extreme crude we refine, thus sparing the environmental damage at the point of extraction as well as the carbon emissions caused by transportation and refining! We're moving away from a fossil fuel economy, as we must, and that should be reflected in downsizing the amount of crude processed at our refineries. The crude is best left in the ground.

Conclusion:

This project clearly favors industry profits over people's health and welfare. The Benicia Planning Commission and City Council should NOT approve a plan that submits Benicia and all uprail communities and lands to all these known dangers.

Despite the RDEIR's conclusions, the "No Project Alternative" is the Environmentally Superior Alternative, based on the great number of significant and unavoidable impacts cited in the RDEIR's summary of impacts. The threats to human lives, wildlife, drinking water and waterways, our environment, the climate, and the future livability of the planet, make this a no-brainer. The Benicia Planning Commission and City Council owe it to the public to deny the Valero Project request.

Thank you for accepting these comments to the RDEIR.

Sincerely,

Laurie Litman, President
350 Sacramento