

# **Valero Crude by Rail Project**

**3400 East Second Street  
Use Permit Application # 12PLN-00063**

**Planning Commission  
February 8, 2016**

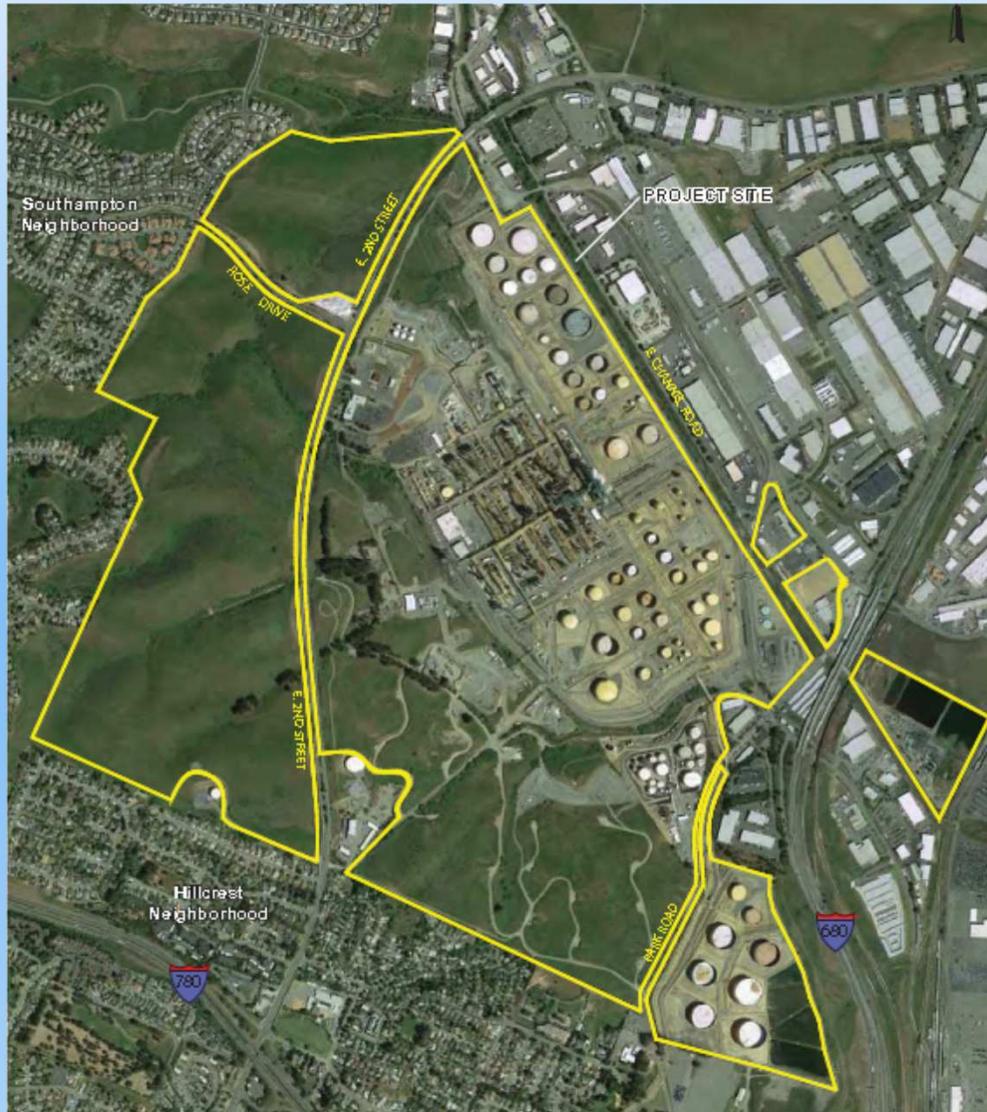
# Public Hearing Outline:

1. City Staff presentation
2. Commission question to City Staff
3. Applicant's presentation
4. Commission questions to applicant
5. Public comment is opened
6. Public comment is closed
7. Commission deliberation and decision

# City Staff Presentation Outline:

- An overview of the proposed project by City Staff.
- An overview of the environmental impacts addressed in the EIR by the City's consultant, ESA.
- An overview of the project's legal issues and preemption by the City's Attorney

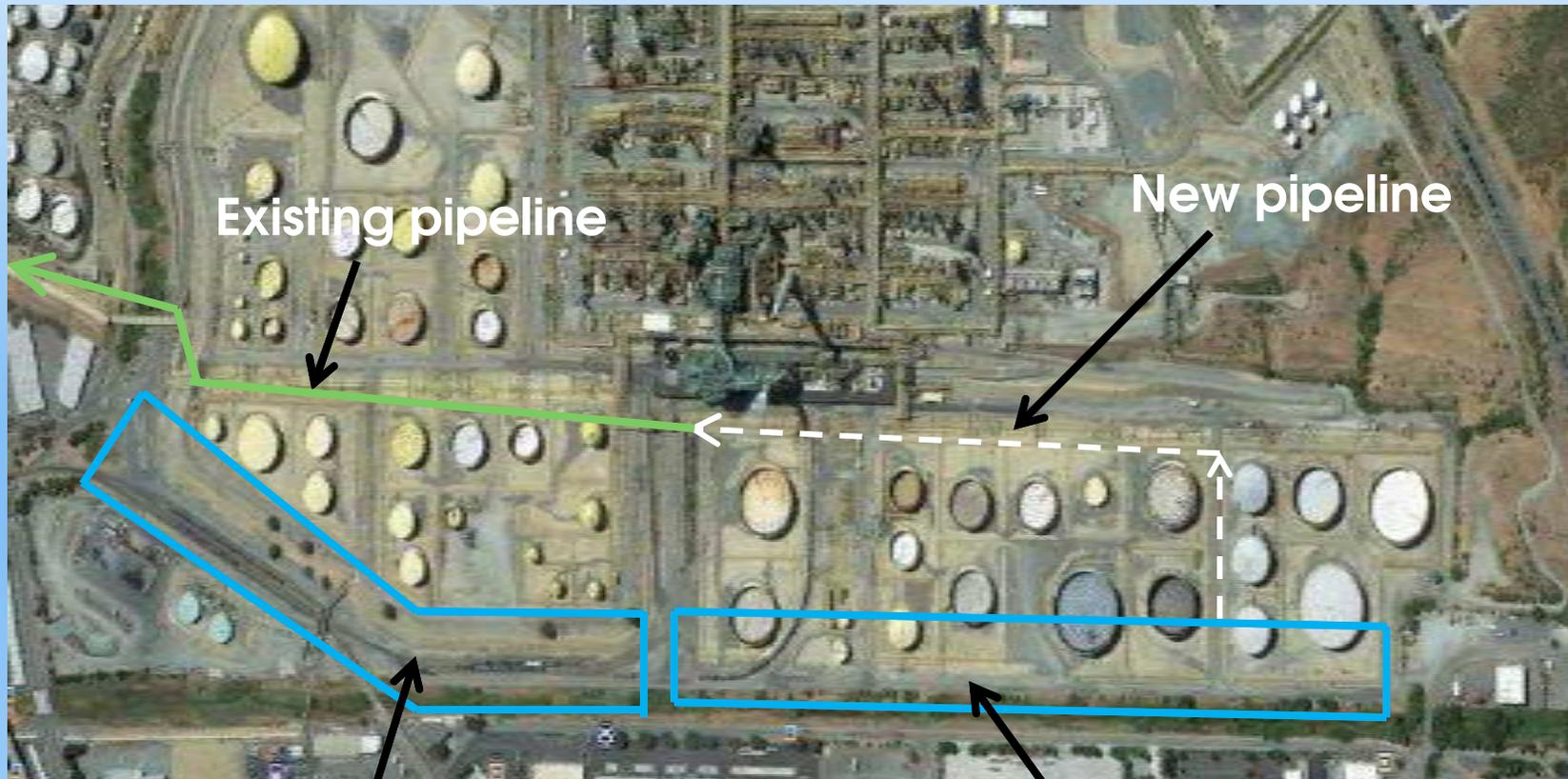
# Valero Refinery



# Project Description

- Up to 70,000 barrels per day of crude oil to be delivered by rail cars
- Construction of new track for switching activity and unloading rack
- 4,000 linear feet crude oil pipeline
- Replacement and relocation of tank farm dikes with a concrete berm
- Relocation of underground infrastructure
- New Service road

# Project Overview



Existing pipeline

New pipeline

Track Improvements  
for Switching

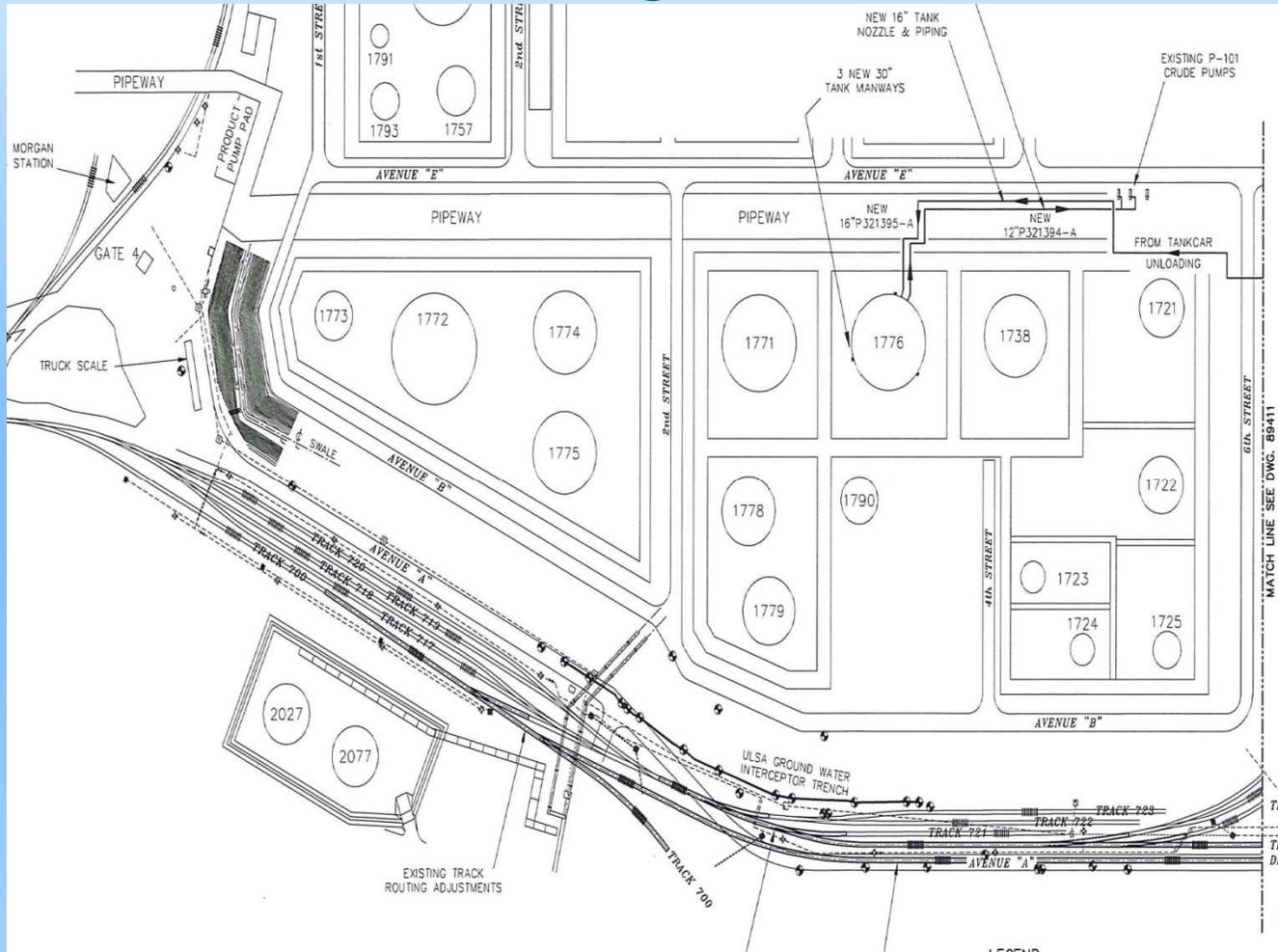
New Track for  
Unloading Rack



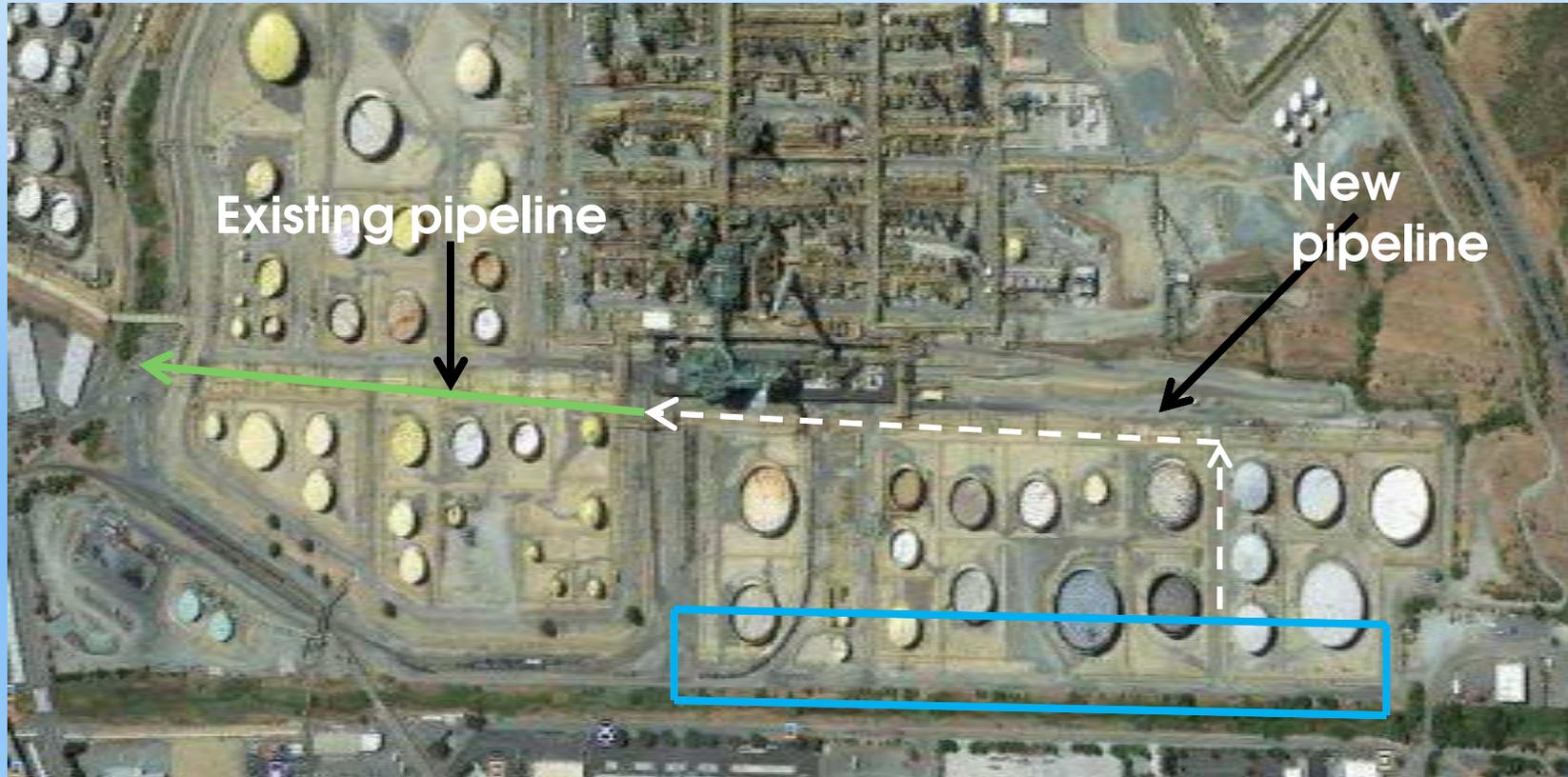
# Proposed Track Improvements for Switching Activity



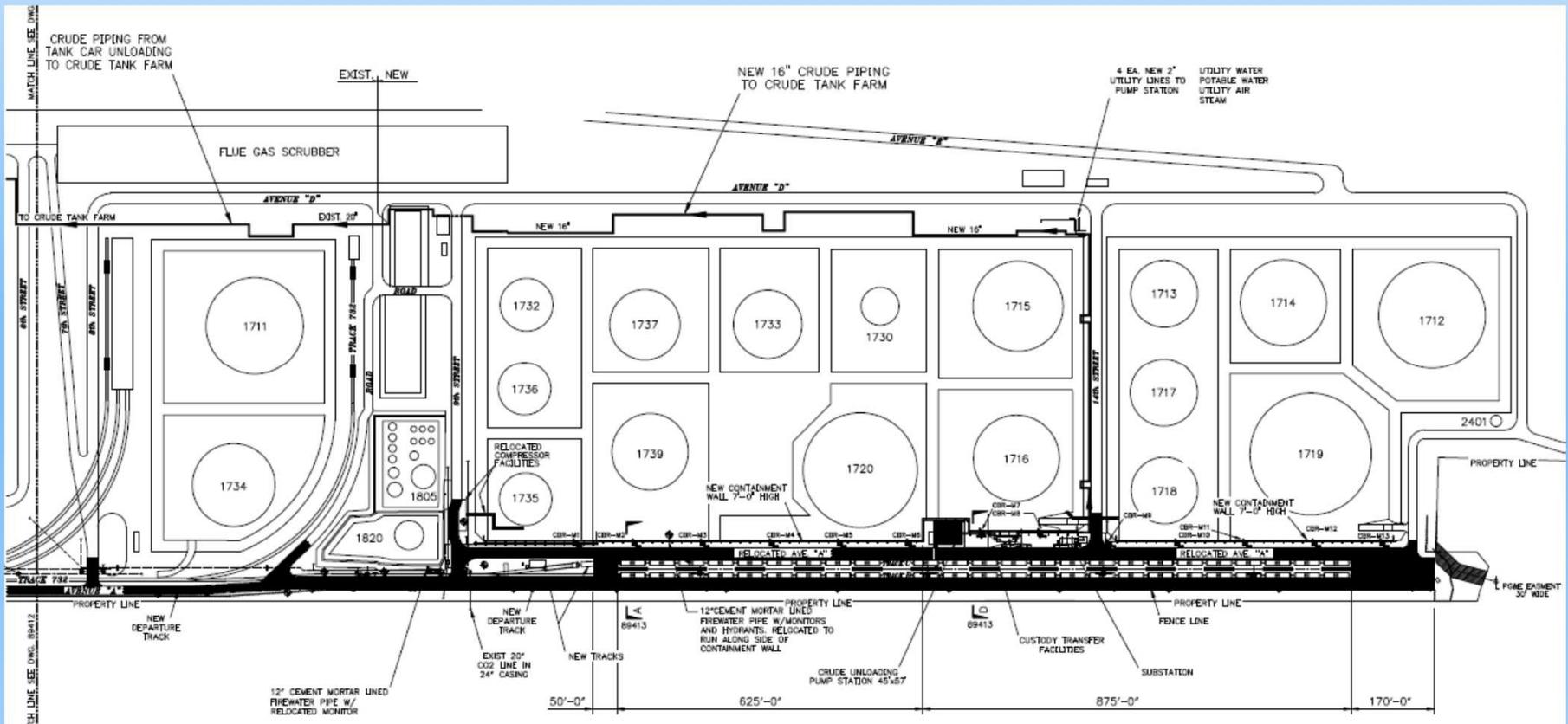
# Proposed Track Improvements for Switching Activity



# New Track/Unloading Rack

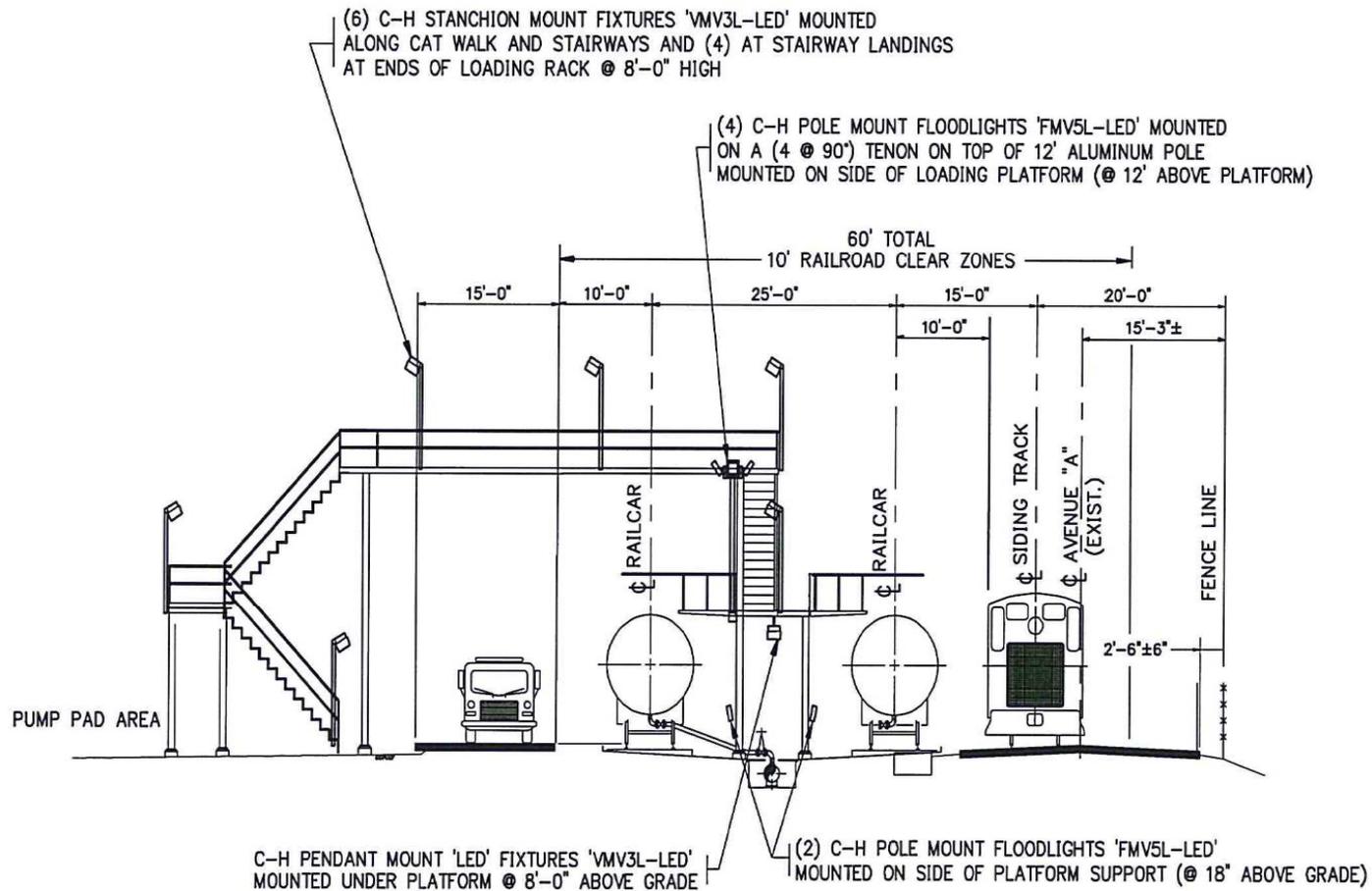


# New Track for Unloading Rack





# Unloading Rack Lighting



# Zoning Ordinance Consistency

- General Industrial (IG) Zoning District
- Use Permit required
- Project complies with all  
Development Standards for IG  
Zoning District

# General Plan Consistency

- Industrial Uses - protect, retain, and encourage
- City Roads – multi-modal, scenic views and LOS D
- Community Health & Safety

# Conditions of Approval

- 14 draft conditions of approval
  - Compliance with BMC, CBC, MMRP
  - Storm water Management
  - Emergency access & response

# Use Permit Findings

1. That the proposed location of the use is in accord with the objectives of the Zoning Ordinance and the purposes of the IG district
2. That the proposed use is consistent with the General Plan and will not be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the neighborhood of the use.
3. That the proposed use will comply with the provisions of the Zoning Ordinance, including any specific condition required for the proposed conditional use.

# Environmental Review

Cory Barringhaus, ESA

# Environmental Review

- Initial Study and MND
- Scoping and Draft EIR
- Revised Draft EIR
- Final EIR (with responses to comments)

# Summary of Environmental Impacts

- 8 impacts reduced via mitigation
  - Air quality, biological resources, energy conservation, geology and soils, and hydrology and water quality
- 11 significant and unavoidable impacts related to rail transport
  - Air quality, biological resources, greenhouse gas emissions, and hazards and hazardous materials

# Overview of Legal Issues

Brad Hogin, Contract Attorney  
for the City of Benicia

# ICCTA Preemption

- STB Has Exclusive Jurisdiction Over Rail Operations
- Jurisdiction Includes:
  - Operation of Locomotives & Rail Cars on Track
  - Construction & Operation of Ancillary Facilities

“It is difficult to imagine a broader statement of Congress's intent to preempt state regulatory authority over railroad operations”

- Quote cited in 22 published cases

# Types of Preempted Regulation

- “Preclearance” Requirements
- Requirements That “Have the Effect of Governing or Managing Rail Transportation”

# CEQA Review of Refinery Operations is Not Preempted

- Union Pacific Does Not Own or Operate the Unloading Rack
- Valero is Not Acting as an Agent of Union Pacific

# Clearly Preempted

- Permit Denial Based on Rail Impacts
- “Overriding Considerations”  
Requirement as to Rail Impacts
- Mitigation of Rail Impacts Through  
Conditions or Alternatives

# CEQA Disclosure Requirement May Be Preempted

- Is the Disclosure Requirement an Unlawful Preclearance Requirement?
- Or, Does it Only Have a “Remote & Incidental” Impact on Rail Operations?

# Recommendation

1. Adopt the draft Resolution certifying the Final Environmental Impact Report, adopting CEQA findings for the project and the Mitigation Monitoring and Reporting Program.
2. Adopt the draft Resolution approving the Use Permit, with the findings and conditions listed in the resolution.