Benicians For A Safe and Healthy Community
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March 12, 2015

Mr. Don Dean, Chair, Benicia Planning Commission
Planning Commissioners: Rod Sherry, Susan Cohen Grossman, Suzanne Sprague, Belinda Smith, George Oakes, Steve Young
c/o Benicia City Hall
250 East L Street, Benicia CA 94510

SUBJECT: Public Request for information on the Recirculation of the DEIR on the Valero CBR Project

Dear Mr. Dean and Commissioners,

I am writing on behalf of Benicians for a Safe and Healthy Community ("**BSHC**") as a member, and on behalf of the general public (Benicians and the community at large) who have directly approached me as well as other BSHC members with specific questions regarding the current status of the CEQA review of the Valero CBR Project.

There are numerous questions regarding the recirculation of the DEIR (the "**RDEIR**"): what the new document would be comprised of; the focus of any revisions; the scope and extent of rewritten material; the process generally; how and when public comments previously submitted would be addressed; issues of timing and dependencies which may impact timing; and a description of the task before the City's Staff to date and going forward.

To the best of my ability, representing the public's interest, I've taken note of and compiled the public's questions that I've received to date regarding the recirculation process and am, by this letter, passing them to Staff via this Commission.

By Sept. 15, 2014, the official deadline for public response to the DEIR, volumes of critical comments had been submitted to the City from all quarters that gave evidence of the public's level of engagement in the CEQA review process. However, since that time, over the last five months, only sparse and limited information has been provided to the public by the City regarding the overall process and the revised document. The public's request for context and details going forward is understandable and justified, considering concerns for full discussion and disclosure throughout the review process.

Given that a target date for the release of the RDEIR has been officially set for June 30, on behalf of the public, I am asking to receive written answers from Staff to the questions set forth below (see attachment) – questions that represent the public's interest in the CEQA review to date. I anticipate that the answers to the questions posited would already have been addressed by Staff and that, therefore, those answers would be available without any significant additional efforts. Providing a written response to the public's questions will allow a wider and more fluid dissemination of the information and will avoid any inadvertent misstatement of facts.

Providing substantive information on the material, contributing components and considerations that led to the City's decision to proceed with a RDEIR, together with additional detail regarding the revised content and scope of the RDEIR, may aid the public's preparation for review of the new document when released.

With only a 45 day review period currently allotted for public comment on the RDEIR, Staff's response to the public's questions may serve as public guidance and preview as well as provide transparency into the process and City's decisions.

For Staff's ease of response, I have compiled and attached to this letter the public's questions. If Staff wishes to contribute any other information it deems appropriate or vital to understanding the current situation, the public would welcome such information. Additionally, if this letter together with the City's response may be posted on the City's website, that would be ideal.

I appreciate the Commission's and Staff's diligence and desire to comply with the requirements of CEQA, and thank you for the considerable time and effort you continue to put towards the CEQA review of the Valero CBR Project. If you have any questions or require additional clarification, please reach out to me directly. I am happy to assist.

Most respectfully,

Marilyn J. Bardet

Benicians for a Safe and Healthy Community
also:
member, Good Neighbor Steering Committee

Attachment: Public's Questions

PUBLIC'S QUESTIONS (*text in italics is offered for additional context*)

1. The City made a determination that the DEIR required recirculation pursuant to the requirements of CEQA. Please elaborate on the specific inadequacies of the DEIR that triggered this decision as well as the specific CEQA provision(s) that support the decision for recirculation for each material inadequacy identified.

2. In order for Staff to make a final determination on the adequacy of the DEIR, did Staff require any other information not then currently available at the time of release of the DEIR and/or was the decision dependent upon input from other sources? In addition to reviewing the DEIR responses, did Staff need to consult with 'others' and/or wait for additional information? If yes, please identify the 'others', type of information needed, when such information was requested, and when such information was provided? (*The public wants to understand more fully the scope of tasks before the City during the period from the DEIR response due date, Sept. 14, 2014, to the date of the announcement of the need for a recirculation, as well as any dependencies on others for information, facts or data).*

3. We are informed that the RDEIR will be a 'partial' re-write and not a full new document (if this is inaccurate, please advise). If true, please specify which sections or subsections of the DEIR will be amended, the extent and scope of such modifications and why. (*The public is concerned about the breadth and scope of the amendment. Additionally, the public would request some specificity regarding the requirements of CEQA in relationship to the sections identified as needing amendment and the extent of the modifications required).*

4. Please describe the RDEIR 'look and feel'. Will the City be providing a redline document of the DEIR or other? (*The public wants to understand the level of ease or difficulty that may be required to examine the RDEIR especially in relationship to the DEIR. The City's decision on method of presentation of the RDEIR will impact the level of effort required.)*

5. Will the RDEIR be published (paper copy) and available to the public by picking up a copy at City Hall (similar to prior DEIR distribution)? Will copies be limited and, if yes, how many copies will be available?

6. For the RDEIR, we assume that the same consultants engaged for the DEIR will be contributors to its development. Will Environmental Science Associates (ESA) remain the primary consultant/author of the RDEIR? Will sub-consultants (identified in the DEIR) be re-engaged? Will the RDEIR require any new consultants or experts to be contributors to the RDEIR? For all of the above identified, please specify the scope of the engagement, the sections impacted and advise on the date such consultant(s) were instructed (formally engaged) to commence the work required for the RDEIR.

7. For the RDEIR, please identify the primary dependencies (items that may impact the current June 30th release date). For example, is the City or the consultant(s) waiting on any required information or facts from other parties? (*The public wants to understand what information is currently not available but required for the RDEIR together with who (party responsible), when (date the information has been promised or expected) and any other dependencies that may impact the current projected RDEIR release date.)*

8. If the proposed release date (June 30, 2015) for the RDEIR is changed, will the City provide the public with an explanation for the delay and supporting information for the revised date chosen? (*The public is sensitive to the setting of release dates for the RDEIR and must pre-plan for the allotment of time in their personal schedules to address adequately. Therefore, the public would request some reasonable explanations for any change in proposed release dates as well as an explanation why the new date is likely achievable).*

9. Answers to the public's DEIR questions, if made available prior to the release of the RDEIR, may substantially aid the public's response to the RDEIR. Will the City consider releasing in full, or in part, any answers to the DEIR questions to aid the public's response to the RDEIR, especially if those answers are materially relevant to any rewritten section or sections of the RDEIR?

10. Please describe what percentage of the public's questions and comments (or scope or content of the questions by some other adequate measure) have currently been addressed and completed and which remain pending. For those pending, please explain if the City is waiting for additional information from any parties, the scope of information pending and from whom.

11. Who has the authority and/or responsibility for making the decision that the DEIR required recirculation pursuant to CEQA? (*The public has expressed confusion about with whom this decision resides. While they assume it is Staff, they specifically have asked for confirmation that the decision is Staff's, how that decision is made, and who among Staff makes the final determination. The Public is seeking some general education and transparency regarding this process.)*

12. What are the "next steps" following the 45 day review period of the RDEIR? How many hearings led by the Planning Commission are anticipated? When will the commissioners have opportunity for full discussion of the RDEIR's contents and adequacy under CEQA?

13. What will a Final EIR document be comprised of? Will all public comments submitted on both the DEIR and RDEIR be included? Will there be substantial differences in the content of Appendices? In studies cited? Please describe.

END OF PUBLIC QUESTIONS

CITY HALL • 250 EAST L STREET • BENICIA, CA 94510 • (707) 746-4200 • FAX (707) 747-8120

March 25, 2015

Benician's For a Safe and Healthy Community
P.O. Box 622
Benicia, CA 94510

Re: Public's Questions to Valero CBR Project EIR

This is in response to your letter dated March 12, 2015 to the City of Benicia Planning Commission. The questions you provided are below followed by City Staff's responses.

Question 1.

The City made a determination that the DEIR required recirculation pursuant to the requirements of CEQA. Please elaborate on the specific inadequacies of the DEIR that triggered this decision as well as the specific CEQA provision(s) that support the decision for recirculation for each material inadequacy identified.

Response 1.

The City made a determination to recirculate the DEIR pursuant to CEQA Section 15088.5 (a). The determination was made in response to comments made regarding the adequacy of the EIR's evaluation of potential uprail impacts east of the City of Roseville. CEQA Section 15088.5 (a) (1) states that recirculation is required when a new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented is identified. Although the Draft DEIR identified significant impacts along the Roseville to Benicia rail line, it did not evaluate to any specificity beyond that. The June, 2014 DEIR concluded that any estimate of the impacts beyond the city of Roseville would be speculative due to the number of potential rail lines by which the trains could arrive in Roseville. Based on comments received, the City has decided to undertake additional analysis of those potential impacts. Preliminary review of impacts such as air quality, biological resources and hazards and hazardous materials indicated that the impacts identified on the Roseville to Benicia corridor would also pertain to segments of the rail beyond. Other issues may yet be identified during the preparation of the Response to Comments that would also meet the threshold for recirculation.

ELIZABETH PATTERSON, *Mayor*
Members of the City Council
MARK C. HUGHES, *Vice Mayor* . ALAN M. SCHWARTZMAN . TOM CAMPBELL . CHRISTINA STRAWBRIDGE

BRAD KILGER, *City Manager*
KENNETH C. PAULK, *City Treasurer*
LISA WOLFE, *City Clerk*

Recycled Paper

Question 2.

In order for Staff to make a final determination on the adequacy of the DEIR, did Staff require any other information not then currently available at the time of release of the DEIR and/or was the decision dependent upon input from other sources? In addition to reviewing the DEIR responses, did Staff need to consult with "others" and/or wait for additional information? If yes, please identify the "others", type of information needed, when such information was requested, and when such information was provided? (The public wants to understand more fully the scope of tasks before the City during the period from the DEIR response due date, Sept. 14, 2014, to the date of the announcement of the need for a recirculation, as well as any dependencies on others for information, facts or data.

Response 2.

The City did not require other information to make the determination on recirculating the DEIR not available at release of the DEIR. City staff worked closely with the environmental consultants Environmental Science Associates (ESA) and Brad Hogin, CEQA counsel, on making the determination to recirculate.

With regard to process, once the public comment period closes all comments provided on the DEIR are organized. The organization of the comment results in a final list of commenters as well as a list of all individual comments. ESA organized the comments provided and undertook some preliminary evaluation as to whether the response to comment would require significant new information be added to the DEIR as stated in CEQA Section 15088.5 (a) (full citation provided below).

In addition to the required process under CEQA, the applicant must be kept informed as they are responsible for all consultant costs associated with the EIR. Additional time was necessary to address the required administrative functions related to consultant contract management.

CEQA Guidelines

Section 15088.5 (a) A lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification. As used in this section, the term "information" can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement. "Significant new information" requiring recirculation include, for example, a disclosure showing that:

(1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
(2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
(3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project's proponents decline to adopt it.
(4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

Question 3.

We are informed that the RDEIR will be a 'partial' re-write and not a full new document (if this is inaccurate, please advise). If true, please specify which sections or subsections of the DEIR will be amended, the extent and the scope of such modifications and why. (The public is concerned about the breadth and scope of the amendment. Additionally, the public would request some specificity regarding the requirements of CEQA is relationship to the sections identified as needing amendment and the extent of the modifications required).

Response 3.

Pursuant to Sections 15088.5 (c) and (f)(2), when revisions are limited to only certain portions of the EIR, the City is required to only circulate those portions that have been modified (full citation provided below). The City and its consultant are in the process of evaluating all the revisions necessary to the EIR. As stated, the impact related to uprail communities was already identified. Each section of the EIR that is affected by uprail impacts will be revised; however, this will not require the entire section to be revised.

At this point in the process, Staff is unable to provide a complete list of all sections that will be revised. It is too early in the process to identify all sections with certainty and we do not want to make assumptions on how the changes to one section may impact another section. We do know that the uprail impacts analysis will require revisions to air quality, biological resources and hazards and hazardous materials.
CEQA Guidelines:
Section 15088.5 (c) If the revision is limited to a few chapters or portions of the EIR, the lead agency need only recirculate the chapters or portions that have been modified.
Section 15088.5 (f) (2) When the EIR is revised only in part and the lead agency is recirculating only the revised chapters or portions of the EIR, the lead agency may request that reviewers limit their comments to the revised chapters or portions of the recirculated EIR. The lead agency need only respond to (i) comments received during the initial circulation period that relate to chapters or

portions of the document that were not revised and recirculated, and (ii) comments received during the recirculation period that relate to the chapters or portions of the earlier EIR that were revised and recirculated. The lead agency's request that reviewers limit the scope of their comments shall be included either within the text of the revised EIR or by an attachment to the revised EIR.

Question 4.

Please describe the RDEIR 'look and feel'. Will the City be providing a redline document of the DEIR or other? (The public wants to understand the level of ease or difficulty that may be required to examine the RDIER especially in relationship to the DEIR. The City's decision on method of presentation of the RDEIR will impact the level of effort required.)

Response 4.

The Revised DEIR will be provided in a redline format, with text to be deleted shown with a ~~strikeout~~ and new text shown as <u>underlined</u>. This will be done for the ease of the reader to ensure that the changes can be clearly identified.

Question 5.

Will the RDEIR be published (paper copy) and available to the public by picking up a copy at City Hall (similar to prior DEIR distribution)? Will copies be limited and, if yes, how many copies will be available?

Response 5.

As with the release of the DEIR, the Revised DEIR will be published in hard copy and electronically. 20 hardcopies and 20 DVDs will be provided at no charge at a first-come first- served basis. The Revised DEIR will also be uploaded to the City's website. The cost of additional hardcopies will be provided based on the cost of reproduction and that cost will be available once the document is complete and the final page count is known.

Question 6.

For the RDEIR, we assume that the same consultants engaged for the DEIR will be contributors to its development. Will Environmental Science Associates (ESA) remain the primary consultant/author of the RDEIR? Will sub-consultants (identified in the DEIR) be re-engaged? Will the RDEIR require any new consultants or experts to be contributors to the RDEIR? For all of the above identified, please specify the scope of the engagement, the sections impacted and advise on the date such consultant(s) were instructed (formally engaged) to commence the work required for the RDEIR.

Response 6.

ESA will continue to provide consultant services for the Revised DEIR. In addition to the existing sub-consultants, one additional sub-consultant, Marine Research Specialist (MRS), will also be used. MRS will provide qualitative risk data relating to the transport of crude by rail. MRS has provided similar

consultant services to other crude by rail projects including San Luis Obispo County's EIR for the Phillips 66 crude by rail project.

Question 7.

For the RDEIR, please identify the primary dependencies (items that may impact the current June 30th release date). For example, is the City or the consultant(s) waiting on any required information or facts from other parties? (The public wants to understand what information is currently not available but required for the DEIR together with who (party responsible), when (date the information has been promised or expected) and any other dependencies that may impact the current projected RDEIR release date.)

Response 7.

Completion of the Revised DEIR is dependent upon receipt of information from Dr. Christopher Barkan and MRS. Dr. Barkan and his team from the University of Illinois previously provided a *Railroad Crude Oil Release Rate Analysis for Route between Roseville, CA and Benicia, CA* (DEIR Appendix F). The City has engaged Dr. Barkan to provide additional release rate analysis beyond the Roseville to Benicia rail corridor. MRS will evaluate the risk associated with the release of crude oil. The reports will provide an analysis of transporting crude by rail by providing, among other information, both the estimated potential release rate (i.e., how often is there likely to be a release of crude oil associated with the Valero CBR project?) and the risk of that release rate (i.e., what are the specific impacts of a release of crude oil associated with the Valero CBR project?).

Once the City has received the final reports from both Dr. Barkan and MRS (anticipated to take approximately 10-12 weeks), ESA can complete its analysis of the sections affected by these reports.

Question 8.

If the proposed release date (June 30, 2015) for the RDEIR is changed, will the City provide the public with an explanation for the delay and supporting information for the revised date chosen? (The public is sensitive to the setting of release dates for the RDEIR and must pre-plan for the allotment of time in their personal schedules to address adequately. Therefore, the public would request some reasonable explanation for any change in proposed release dates as well as an explanation why the new date is likely achievable.)

Response 8.

The June 30, 2015 tentative release date was provided in an effort to provide the community and decision makers with a time estimate understanding the community's general interest and the time associated with a thorough review of the document. Any delay would be due to additional time needed by the City in order to make sure that we have provided accurate and thorough information. The City will make every effort to provide advanced notice of any changes to the release date of the revised DEIR so that people can plan their schedules to the

extent feasible.

Question 9.

Answers to the public's DEIR questions, if made available prior to the release of the RDEIR, may substantially aid the public's response to the RDEIR. Will the City consider release in full, or in part, any answers to the DEIR questions to aid the public's response to the RDEIR, especially if those answers are materially relevant to any rewritten section or sections of the RDEIR?

Response 9.

The City will continue to process this project consistent with the State and City's CEQA Guidelines. The response to comments provided on the DEIR and Revised DEIR will be included in the Final EIR. Any changes provided in the Revised DEIR will be provided with contextual information so that it is clear how the new information relates to the DEIR. The City will not release in full or in part any responses to comment other than the new information provided in the Revised DEIR.

Question 10.

Please describe what percentage of the public's questions and comments (or scope or content of the question by some other adequate measure) have currently been addressed and completed and which remain pending. For those pending, please explain if the City is waiting for additional information from any parties, the scope of information pending and from whom.

Response 10.

Pursuant to CEQA Section 15132, all of the public's DEIR questions will be answered in the Final EIR (full citation provided below). Some of the comments provided on the DEIR will be addressed in the Revised DEIR. Those comments that do not require modifications to the DEIR will be responded to in the Response to Comments section of the Final EIR. The FEIR will address all the comments made on the June, 2014 DEIR and comments made on the Revised DEIR. The City does not have a firm date for release of the FEIR, but it is not expected to be available before fall, 2015.

CEQA Guidelines:
Section 15132. Contents of a Final Environmental Impact Report
The Final EIR shall consist of:

(a) The draft EIR or a revision of the draft.
(b) Comments and recommendations received on the draft EIR either verbatim or in summary.
(c) A list of persons, organizations, and public agencies commenting on the draft EIR.
(d) The responses of the Lead Agency to significant environmental points raised in the review and consultation process.
(e) Any other information added by the Lead Agency

Question 11.

Who has the authority and/or responsibility for making the decision that the DEIR required recirculation pursuant to CEQA? (The public has expressed confusion about with whom this decision resides. While they assume it is Staff, they specifically have asked for confirmation that the decision is Staff's, how that decision is made, and who among Staff makes the final determination. The Public is seeking some general education and transparency regarding this process.

Response 11.

The Community Development Director or designee, through the City Manager, has the authority and responsibility for making the decision that the DEIR required recirculation.

Question 12.

What are the "next steps' following the 45-day review period of the RDEIR? How many hearings led by the Planning Commission are anticipated? When the commissioners have opportunity for full discussion of the RDEIR's contents and adequacy under CEQA?

Response 12.

Pursuant to the City's CEQA Guidelines, the Planning Commission shall conduct a public meeting(s) to take public comment on a DEIR. The Planning Commission will conduct at least one public meeting to take public comment on the Revised DEIR. In anticipation of the community interest in the Revised DEIR and therefore the large number of speakers, City Staff will work with the Planning Commission to pre-schedule a number of meetings to receive public comment. To allow for an efficient process, meetings will be pre-scheduled over a two week period within the 45-day public review period. After the initial meeting, the pre-scheduled meetings will occur on an as needed basis. If the meeting is not needed, then the meeting will be canceled. Commenters are again encouraged to put their comments in writing. Advanced notice of these meetings will be provided when the Revised DEIR is released for public review.

Upon conclusion of the 45-day public review period, City Staff will work with ESA on preparation of the Final EIR.

The Planning Commission will have the opportunity to provide their comments on the Revised DEIR in the same format as they did with the DEIR. The opportunity for the Commission to have a full discussion regarding the adequacy of the DEIR will occur after the release of the Final EIR when it is before the Commission for certification.

Question 13.

What will the Final EIR document be comprised of? Will all public comments

submitted on both the DEIR and RDEIR be included? Will there be substantially difference in the content of Appendices? In studies cited. Please describe.

Response 13.

The Final EIR will include all public comments submitted on both the DEIR and Revised DEIR. See response to #10 for the requirements under CEQA.

Thank you for your questions. Please let us know if you have any further questions or concerns.

Regards,

Amy E. Million
Principal Planner

Cc: City Council
Planning Commission
Brad Kilger, City Manager
Heather McLaughlin, City Attorney
Dan Marks, Interim Community Development Director