Presentation to
Benicia City Council
April 6, 2016

Valero Crude by Rail Project
Appeal to City Council
Comments & Images
By Ed Ruszel

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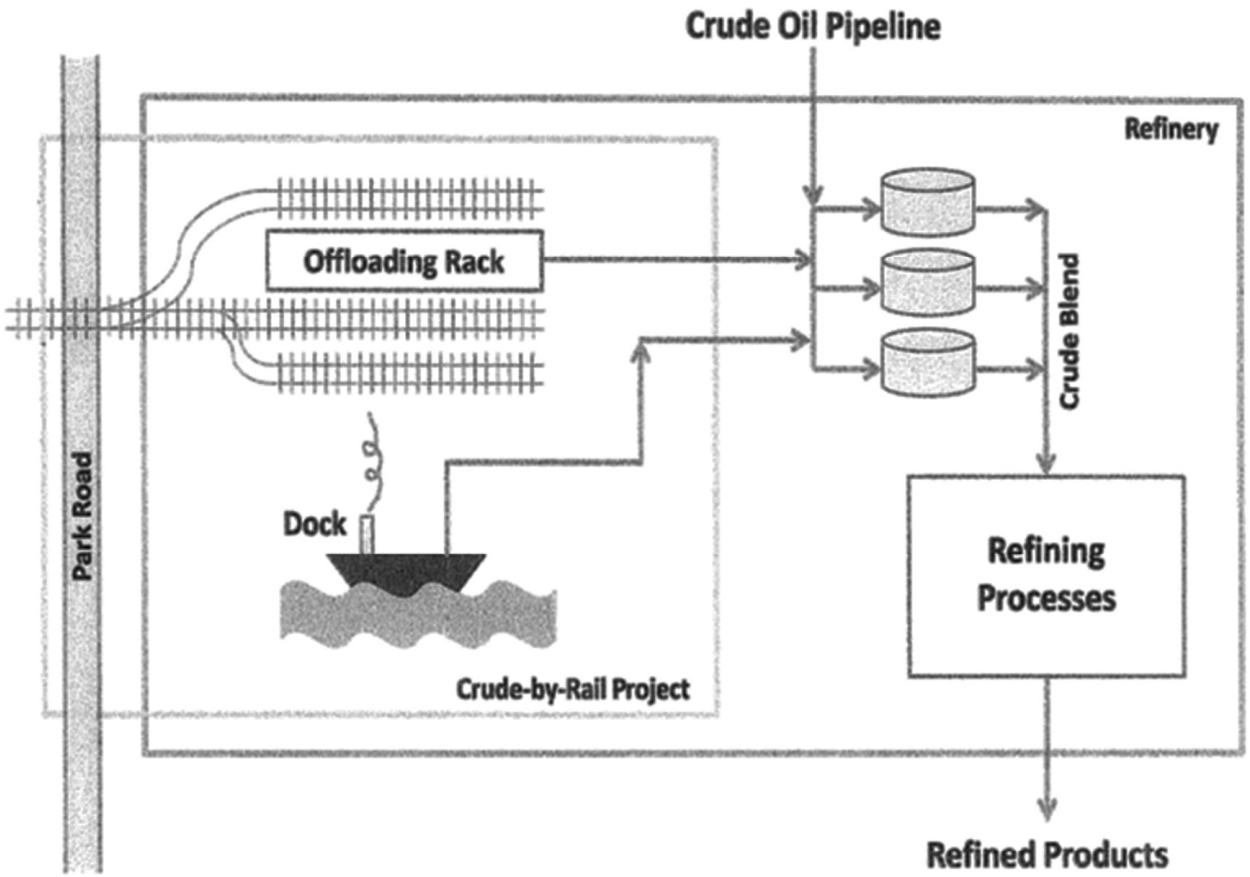
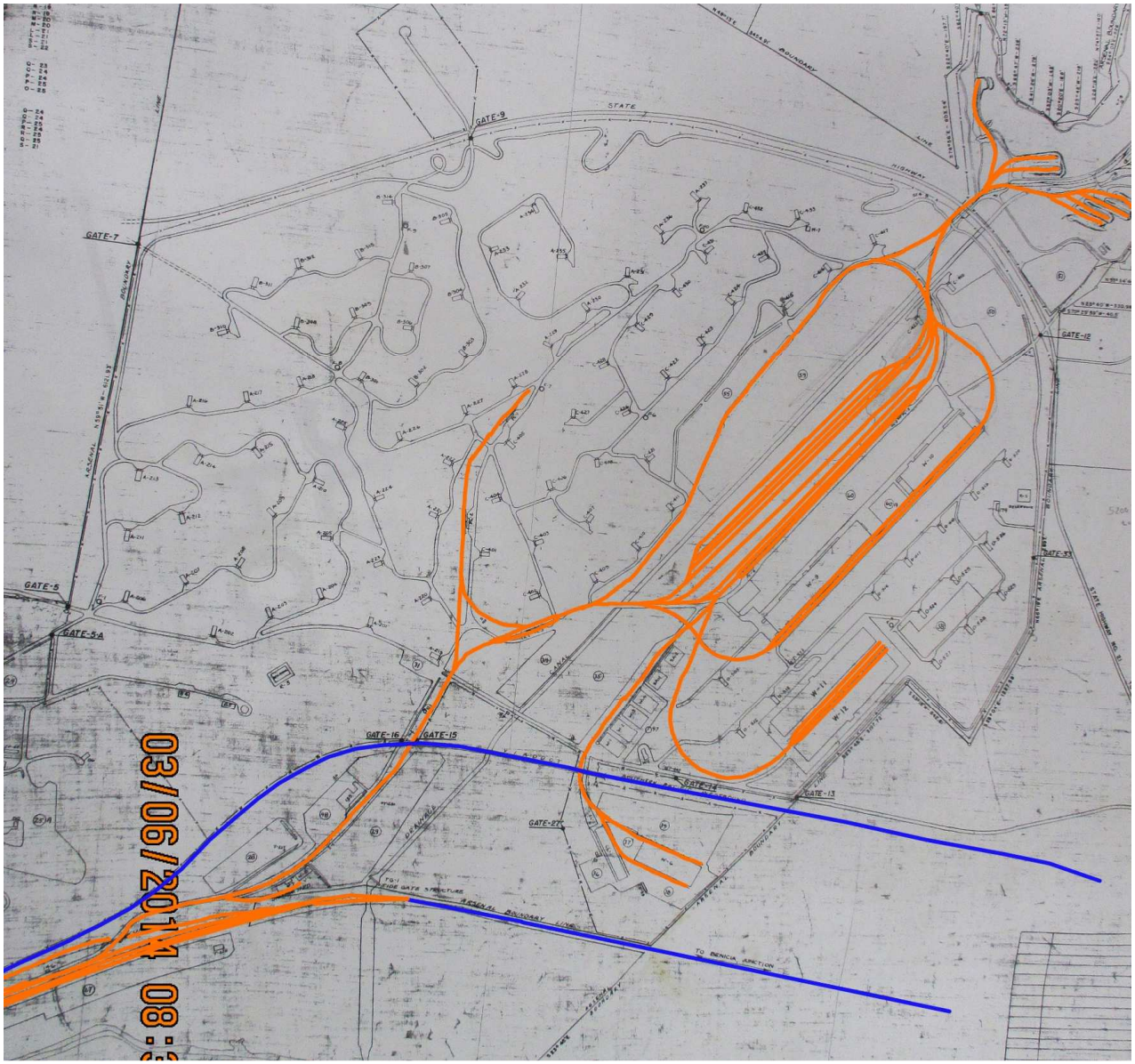
Imagery Date: 5/26/2014 38°03'23.49" N 122°07'59.39" W elev 161 ft eye alt 5758 ft
Google earth



Valero Benicia Refinery
Crude-by-Rail Project Description

September 12, 2013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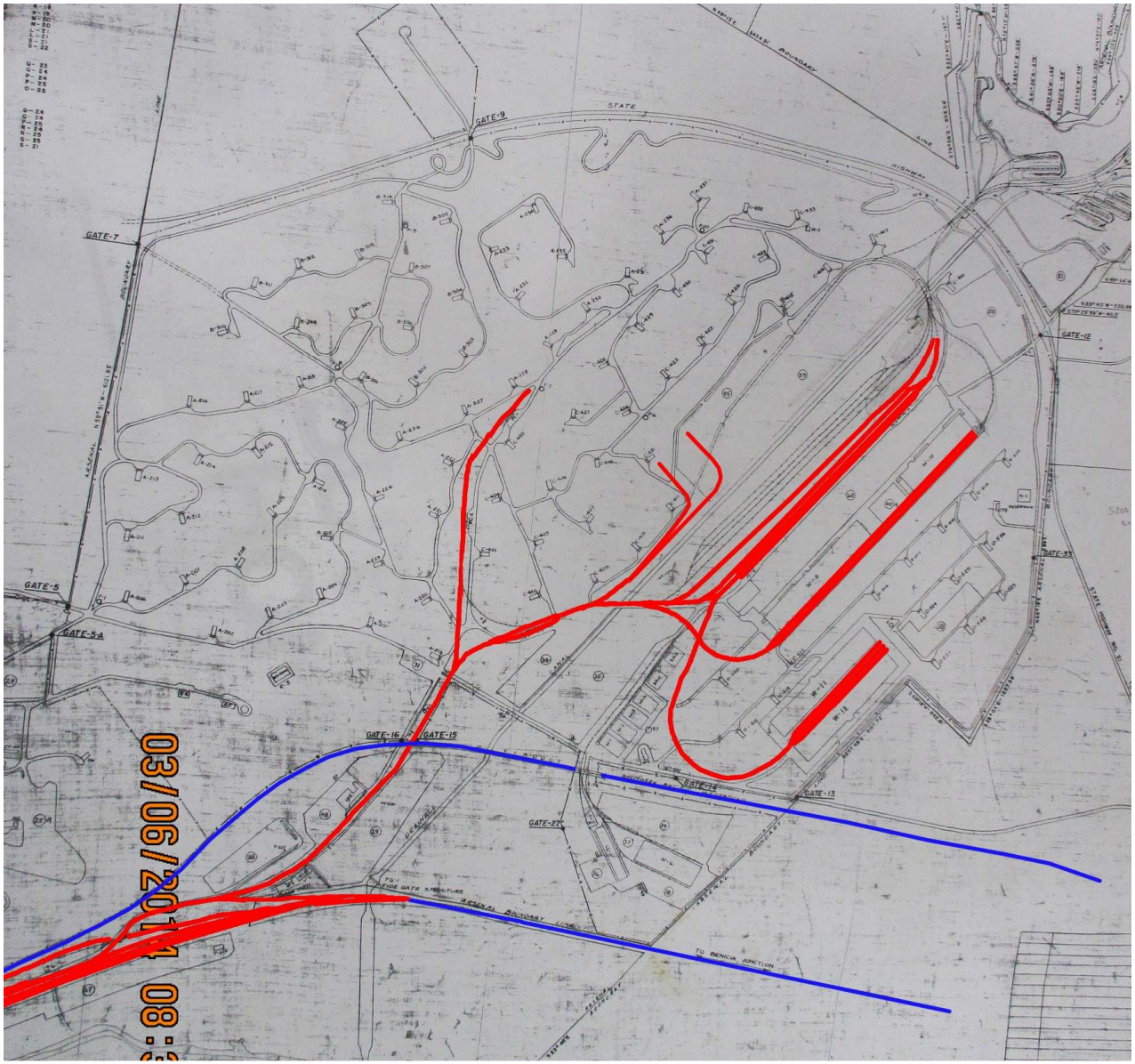
ARSENAL BOUNDARY LINE
TO BENICIA JUNCTION
03/06/2011 08:3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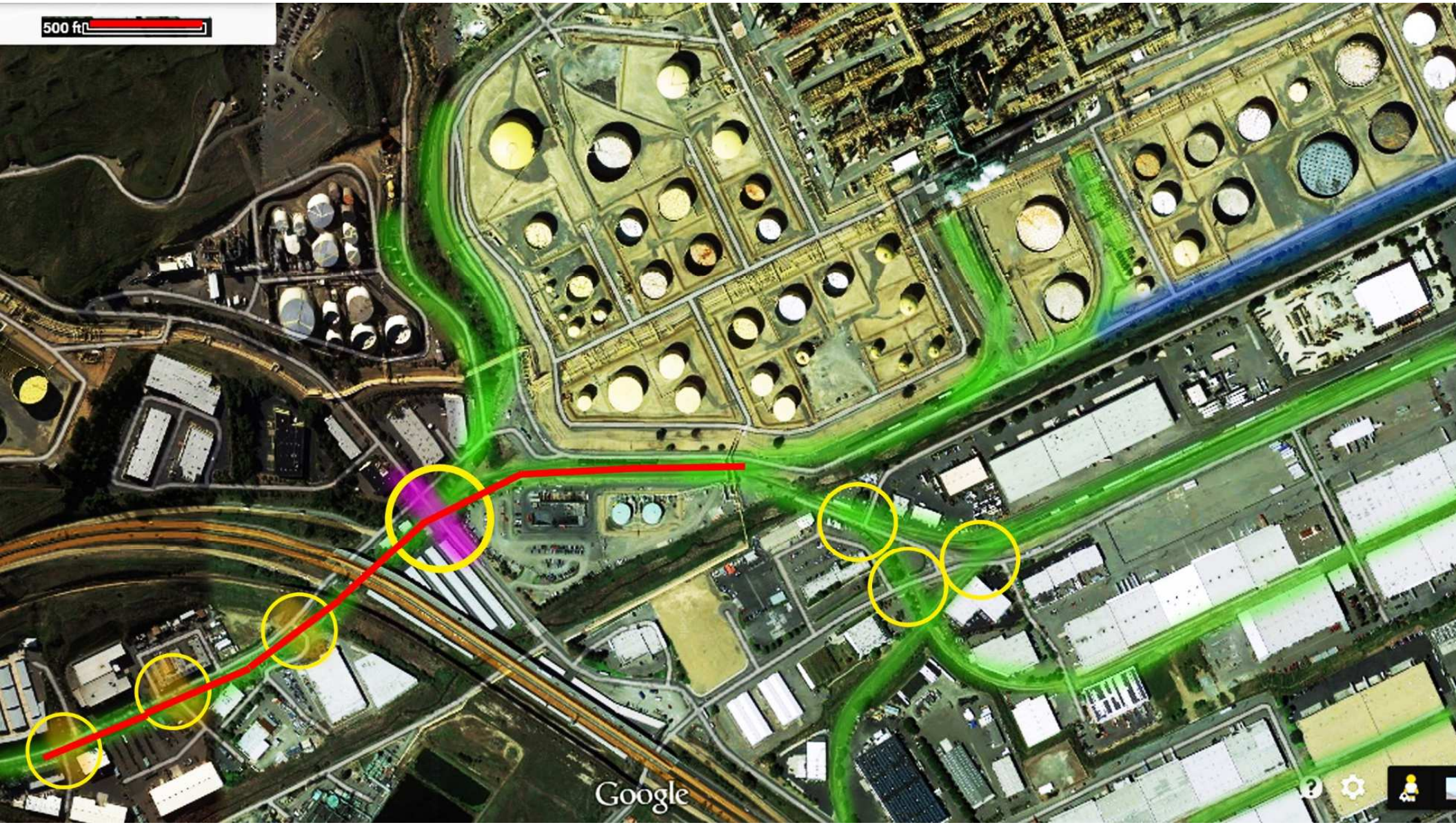
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Google earth

UNION PACIFIC RAILROAD STATEMENT RE PREEMPTION

Union Pacific will not agree to any limitation on the volume of product it ships or the frequency, route or configuration of such shipments. Such restrictions are clearly preempted under federal law. A general overview of the case law is set forth below.

THE ICC TERMINATION ACT PREEMPTS STATE LAWS THAT MANAGE OR GOVERN RAIL TRANSPORTATION

The ICC Termination Act ("ICCTA") also preempts state laws with respect to rail transportation. The ICCTA, which became effective on January 1, 1996, created the Surface Transportation Board ("STB"). As codified at 49 U.S.C. § 10501, one section of the ICCTA addresses both the jurisdiction of the STB and the preemptive effect of its decisions and the remedies provided under the Act:

> (1) *transportation by rail carriers,* and the remedies provided in this part with respect to rates, classifications, rules *(including car service, interchange, and other operating rules), practices, routes, services,* and facilities of such carriers; and
>
> (2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State, *is exclusive.*
>
> Except as otherwise provided in this part, *the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law*.

49 U.S.C. § 10501(b) (emphasis added). The STB's substantive powers concern economic regulations or core operational decisions about railroads and other aspects of transportation. The ICCTA's definition of "transportation" includes the physical apparatus of railroad operations (locomotives, cars, rails and terminals that are owned by rail carriers) and the services related to the movement of passengers or property by rail. *See* 49 U.S.C. *§* 10102(9).

The ICCTA preempts laws "with respect to regulation of rail transportation." *!d.* § 10501(b). Congress' use of this phrase meant that it intended to preempt all laws that "have the effect of 'manag[ing]' or 'govern[ing]' rail transportation ... " *Florida East Coast Ry. v. City of W. Palm Beach,* 266 F.3d 1324, 1331 (11th Cir. 2001). Because the STB's jurisdiction is exclusive, states may not legislate in the aforementioned areas, which embrace matters such as railroad

Appendix L.
Union Pacific Railroad Statement re: Preemption

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K C S
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VALERO
BENICIA
REFINERY
Oregon St
Indiana St
Stone Rd
680
Park Rd
Industrial Way
Teal Dr
Mallard Dr
Sprig Dr
Bayshore Rd
Bay Vista Ct
1
2
3
4
5
Park Rd
McKinney Pl
6th St
Elm St
LEGEND
Cumulative No Project
2:45 - 3:45 PM Hour
Maximum Queue Length
Cumulative Plus Project
2:45 - 3:45 PM Hour
Maximum Queue Length
Study Intersection
UPRR At-Grade Crossing
UPRR Overland
Route (Spur)
UPRR Overland
Route (Mainline)

BUSINESSES AND EMPLOYEES IN THE BENICIA INDUSTRIAL PARK

ARE YOU CONCERNED ABOUT TRAFFIC DELAYS DUE TO TRAINS CROSSING PARK ROAD NEAR BAYSHORE ROAD?

DID YOU KNOW THAT THE CITY IS BEING ASKED TO AUTHORIZE A PROJECT TO BRING CRUDE OIL INTO THE INDUSTRIAL PARK BY RAIL WHICH WILL RESULT IN ADDITIONAL TRAIN TRAFFIC IN THE INDUSTRIAL PARK – 100 CARS IN AND 100 CARS OUT – AN ADDITIONAL 200 CARS DAILY?

The refinery is proposing to bring in one hundred train cars per day into their facility, across Park Road. They would also be sending out one hundred empty cars daily. The current proposal is to have fifty car "unit trains" approximately 4000 feet long deliver the crude.

This is at least FOUR additional trains running thru the Benicia Industrial Park daily 24/7/365. Plus, these trains are twice as long as the average trains we see currently.

The City has released a Draft Environmental Impact Report (DEIR) for public review and comment on or before Aug 1 2014. Public review is encouraged so that any erroneous or missing information contained in the report may be corrected before it is finalized by the City.

Regarding traffic, the DEIR concludes that the project will not cause any significant delays due to train movement across Park Road. This conclusion ASSUMES that Union Pacific Railroad (UPRR) will only schedule trains outside of commute hours.

BUT UPPR WILL NOT GUARANTY THAT TRAINS WILL ONLY OPERATE OUTSIDE OF BUSINESS HOURS.

- UPRR is allowed unrestricted movement of any and all rail traffic on their right of way. UPRR states that they "preempt" the law and are exempt from local regulation and/or restrictions on their operations. *This includes the ability to park unit trains (of Crude oil or any other products) outside the Refinery property on the railroad siding along Industrial Way. Use of this siding could dramatically increase the number of trains crossing Park Road since the trains would need to be shunted between the refinery and the storage siding or vice versa.*

Are you concerned about the effects of increased train traffic on your business operations or your employees' commute? If yes, YOU NEED TO VOICE YOUR CONCERNS TO THE CITY NOW.

Here are some things you can do:

- Attend The City of Benicia Planning Commission's public meeting on July 10. The commission will hear comments from the community. (see attached Public notice) The City needs "first hand" information on how train traffic impacts your business.
- Voice your concerns by writing to Amy Million at Benicia's Community Development

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- Contacted representatives at 25 businesses in closes proximity to the rail lines.
- More than half of them expressed some level of concern for the impact VCBR would have on traffic and their business.
- Eleven agreed to including their name on a letter expressing this concern.

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