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BY HAND DELIVERY

May 31, 2016

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20423

Re: STB Finance Docket No. 36036, Petition for Declaratory Order, Valero Refining Company – California.

Dear Ms. Brown:

Enclosed for filing in the above-referenced docket are the original and ten copies of the Petition for Declaratory Order of the Valero Refining Company – California. Also enclosed are three compact disks containing electronic copies of this Petition for Declaratory Order and a check in the amount of \$1,400 to cover the filing fee.

Please note that we are requesting expedited consideration of this Petition for Declaratory Order for the reasons stated herein. We have emailed a copy of this Petition for Declaratory Order to Heather McLaughlin, City Attorney for the City of Benicia and Amy Million, Principal Planner, Community Development at the City of Benicia with the request that the City post the Petition for Declaratory Order on the City of Benicia website.

Please time and date stamp the extra copy of the Petition and return it with our messenger. If you have any questions, please contact me.

Sincerely,

A handwritten signature in blue ink that reads 'Justin J. Marks'.

Justin J. Marks
Attorney for Valero Refining Company -
California

cc: Heather McLaughlin (w/encls.)
Amy Million (w/encls.)

EXPEDITED CONSIDERATION REQUESTED

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36036

VALERO REFINING COMPANY - CALIFORNIA

PETITION FOR DECLARATORY ORDER

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Dated: May 31, 2016

EXPEDITED CONSIDERATION REQUESTED

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36036

VALERO REFINING COMPANY - CALIFORNIA

PETITION FOR DECLARATORY ORDER

Petitioner, Valero Refining Company - California (“Valero”), hereby respectfully petitions the Surface Transportation Board (“Board”) for a declaratory order pursuant to its discretionary authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321. Valero seeks a declaratory order that the City of Benicia Planning Commission’s decisions (1) denying certification of the environmental impact report based on findings with respect to rail transportation impacts and the absence of rail transportation mitigation, and (2) denying Valero’s conditional use permit for a crude oil off-loading facility for the same reasons are preempted by the Interstate Commerce Commission Termination Act (“ICCTA”) (49 U.S.C. §§ 10101-16106).

INTRODUCTION

Valero owns and operates an oil refinery located in Benicia, California. The Benicia refinery produces ten percent of gasoline consumed in California and 25% of gasoline consumed in the San Francisco Bay Area. The refinery currently receives crude oil by marine vessel and pipeline. Although Valero receives some commodities by rail at the refinery, it does not receive any crude oil shipments for refinery operations. Valero has determined that in order for the Benicia refinery to remain competitive over the long term, it must have access to North American crude oil feedstock. In California, North American crude oil is available only by rail.

Accordingly, Valero has proposed to construct a crude oil off-loading facility to allow the refinery to efficiently receive North American crude oil deliveries by rail. Union Pacific Railroad Company (“UPRR”) will transport crude oil in unit train service to the refinery once the crude oil off-loading facility is built.

In December of 2012, Valero submitted a use permit application to the City of Benicia for construction and operation of the necessary crude oil off-loading facility. Over the next three years, the City staff and various environmental consultants evaluated the environmental impact of the construction and operation of the crude oil off-loading facility, culminating in the completion of a Final Environmental Impact Report (“EIR”) under the California Environmental Quality Act. The EIR disclosed the potential environmental impact of UPRR rail operations between the Benicia refinery and California’s borders with Oregon and Nevada, including in UPRR’s Roseville, CA yard, seventy-two miles from Benicia.

On February 11, 2016, the Planning Commission denied certification of the EIR and denied Valero’s land use permit application (collectively, the “EIR/Permit Denials”). The EIR/Permit Denials were substantially based on findings of adverse rail transportation impacts and the absence of rail transportation mitigation.

Valero has appealed the Planning Commission’s EIR/Permit Denials to the City Council. The City Council has granted Valero’s request to defer a decision on Valero’s appeal until September 20, 2016. The City Council’s decision allows time for Valero to seek this declaratory relief in advance of the City Council decision. As stated, the EIR/Permit Denials were based substantially on findings with respect to rail transportation impacts and the absence of rail transportation mitigation. Valero seeks a declaratory order that the EIR/Permit Denials are preempted by the ICCTA because the Planning Commission is indirectly regulating rail

transportation, denying Valero the right to receive rail common carrier service and preventing UPRR from providing such service and unreasonably burdening interstate commerce.

DECLARATORY RELIEF IS APPROPRIATE

The Board has discretion to issue declaratory judgments to eliminate controversy and remove uncertainty. 5 U.S.C. § 554(e); 49 U.S.C. § 1321. The Planning Commission's EIR/Permit Denials are preempted by the ICCTA. Valero therefore believes a Board declaration is appropriate here to provide specific guidance to the City Council as it considers Valero's appeal of the EIR/Permit Denials. Furthermore, the City Council continued the hearing to September 20, 2016 on Valero's request. The continuance provides an opportunity for the City Council to benefit from the Board's input on preemption.

The Benicia project is not the only rail facility project affected by local regulation of rail transportation. Localities have denied or materially delayed the construction, expansion or continued use of several other crude oil and ethanol rail projects based on rail transportation impacts. In each instance, the localities are indirectly regulating rail transportation in the guise of regulating refinery or fuel storage facilities. A Declaratory Order in this case could provide clarity and curb this unfortunate trend.

The Alon Bakersfield Refinery Crude Flexibility Project ("Alon Project"). The Alon Project, located in Kern County, California is for construction of a crude oil railcar unloading facility connected to the BNSF Railway. The Alon Project will increase the refinery's ability to receive light crude oils produced in North Dakota, Colorado and Utah.¹ The Kern County Board of Supervisors approved the Alon Project in September 2014 based upon its conclusion that it did not have authority to regulate BNSF rail operations or impose rail transportation

¹ *Ass'n of Irrigated Residents v. Kern County Bd. of Supervisors*, S1500-CV-283166 (Kern . Super. Ct. Apr. 1, 2016), Minute Order at 2 ("Alon Decision").

environmental mitigation due to ICCTA preemption.² Two environmental organizations and a group of residents challenged the County's approval of the Alon Project in state court, alleging that Kern County's approval failed to comply with CEQA in part because the County failed to adequately analyze rail impacts.³ On April 1, 2016, a year and a half after the lawsuit was filed, the Superior Court of California upheld the County's approval.⁴ An appeal is likely, which would delay the project for at least another 12 to 18 months.

The Phillips 66 Rail Spur Extension Project (“Phillips Project”). The Phillips Project, located in San Luis Obispo County, California, is for a crude oil railcar unloading facility connected to a UPRR line of railroad.⁵ The Phillips Project will enhance the refinery's ability to receive crude oil from oilfields throughout North America.⁶ The Planning Commission staff recommended denial of the permits, primarily based on the project's significant and unavoidable environmental impacts from UPRR rail operations. On May 16, 2016, the San Luis Obispo Planning Commission rejected the staff recommendation and directed staff to come back on September 22 with conditions of approval and a statement identifying any significant unavoidable environmental impacts.⁷

The Shell Oil Puget Sound Refinery Project (“Shell Project”). The Shell Project, located in Skagit County, Washington, is for a crude oil railcar unloading facility connected to a

² Kern County Board of Supervisor Meeting Minutes at 20 (Sept. 9, 2014), http://kern.granicus.com/DocumentViewer.php?file=kern_f1b938a1f6bdcc5691b47b31c3136709.pdf&view=1.

³ See Alon Decision.

⁴ *Id.*

⁵ Phillips 66 Company Rail Spur Extension Project, http://www.slocounty.ca.gov/planning/environmental/EnvironmentalNotices/Phillips_66_Company_Rail_Spur_Extension_Project.htm (last visited May 27, 2016).

⁶ San Luis Obispo County, Phillips 66 Company Rail Spur and Crude Unloading Project, Final Environmental Impact Report and Vertical Coastal Access Project Assessment, (2015), <http://www.slocounty.ca.gov/Assets/PL/Santa+Maria+Refinery+Rail+Project/FEIR+Phillips+Rail+Spur+Project+Dec+2015/Main+Document+EIR/Phillips+Rail+Spur+Project+FEIR+December+2015.pdf> at 2-1 – 2-2.

⁷ Although minutes are not yet available from the May 16, 2016 meeting, a video of the meeting is available at http://slocounty.granicus.com/MediaPlayer.php?view_id=3&clip_id=2314.

BNSF Railway line of railroad. The Shell Project will enhance the refinery’s ability to receive light crude oils produced in North Dakota.⁸ In August 2014, Skagit County issued a modified mitigated determination of nonsignificance (“MDNS”) and found that an environmental impact statement (EIS) was not required under the State Environmental Policy Act (“SEPA”).

Consistent with SEPA and its implementing regulations, environmental groups appealed the modified MDNS to a hearing examiner in September 2014.⁹ The groups argued that the MDNS failed to account for the significant environmental impacts posed by the Shell Project, including crude oil spill risks and impacts along the rail route and at the facility, increased rail traffic and necessary coordination, and rail tank car safety. In February 2015, the hearing examiner ordered an EIS to be prepared.¹⁰ Among other things, the hearing examiner concluded that “the potential magnitude and duration of environmental and human harm from oil train operations in Northwest Washington could be very great.”¹¹ On February 27, 2015, Shell appealed the hearing examiner’s decision on several grounds, including that the decision intrudes upon the Surface

⁸ See, e.g., Letter from Tom Rizzo, Shell Oil Products USA to Leah Forbes, Senior Planner, Skagit County Planning and Development Services (July 17, 2014), <http://skagitcounty.net/PlanningAndPermit/Documents/ShellPermit/Shell%20Crude%20by%20Rail%20Response%20to%20Skagit%20County%207-17-14.pdf> (referencing Bakken crude oil).

⁹ Notice of Appeal by RE Sources for Sustainable Communities, et al., In the Matter of the Application of Equilon Enterprises, LLC (Shell) for a Shoreline Substantial Development Permit and a Shoreline Substantial Development Permit and a Shoreline Variance Permit, PL 13-0468, PL 14-0396A, (Skagit County, WA Board of County Commissioners, Sept. 10, 2014), <http://skagitcounty.net/PlanningAndPermit/Documents/ShellPermit/Notice%20of%20Appeal%20of%20Modified%20MDNS.pdf>.

¹⁰ Findings of Fact, Conclusions of Law and Order, In the Matter of the Application of Equilon Enterprises LLC, (Feb. 23, 2015), <http://skagitcounty.net/PlanningAndPermit/Documents/ShellPermit/02-23-15%20Hearing%20Examiner%20Decision.pdf>; See also Memorandum to Skagit County Hearing Examiner, from Leah Forbes, Senior Planner, Skagit County Planning and Development Services re; Appeal No. PL 14-0396, (January 8, 2015), <http://skagitcounty.net/PlanningAndPermit/Documents/ShellPermit/Skagit%20County%20SEPA%20Appeal%20Memo%201-21-15.pdf>, (Describing applicable procedures and role of hearing examiner).

¹¹ Findings of Fact, Conclusions of Law and Order, In the Matter of the Application of Equilon Enterprises LLC, (Feb. 23, 2015), <http://skagitcounty.net/PlanningAndPermit/Documents/ShellPermit/02-23-15%20Hearing%20Examiner%20Decision.pdf> at 13.

Transportation Board's exclusive jurisdiction over interstate railroad operations and facilities.¹²

On March 17, 2015, the County Board of Commissioners dismissed the appeal for lack of jurisdiction on the grounds that the hearing examiner's decision was not appealable to the Board (*see* Skagit County Code § 14.12.210(1)). An EIS is now being prepared for the project.¹³

The Tesoro Savage Vancouver Energy Project (“*Tesoro Project*”). The Tesoro Project involves the construction of a crude by rail unloading facility at the Port of Vancouver, Washington. The Tesoro Project's principal purpose is to provide North American crude oil to U.S. refineries.¹⁴ Tesoro Savage Petroleum Terminal LLC submitted an Application for Site Certification to the Energy Facility Site Evaluation Council (“EFSEC”) in August 2013. The EFSEC will hold a hearing on the application in June and July 2016. The rail impact issues that are to be addressed at the hearing include whether the Tesoro Project: (1) will have impacts on water quality, including from diesel emissions and potential oil spills and/or train derailments at the project location and along the rail route; (2) will provide for an adequate response to potential oil spills in the Columbia River; (3) will cause impacts related to the sources and types of crude oil shipped, including with respect to health risks, fire and explosion, spill clean-up, and climate impacts; (4) will have impacts on air quality; (5) will have GHG emission impacts; (6) will have impacts on wildlife movement/migration; (7) will have geological impacts, including on soil; (8) will have noise impacts; (9) will impact local communities as to environmental justice issues, including noise, odors, toxic fumes, and rail-related traffic and access issues; (10) will

¹² Request for Confirmation and, in the Alternative, Notice of Appeal By Equilon Enterprises LLC, In the Matter of the Appeal of the Application of Equilon Enterprises LLC, (Feb. 27, 2015), <http://skagitcounty.net/PlanningAndPermit/Documents/ShellPermit/02-27-15%20Notice%20of%20Appeal%20PL15-0071.pdf> at 3.

¹³ *See* [Shell Puget Sound Refinery East Gate Rail Project](http://www.shell.us/about-us/projects-and-locations/puget-sound-refinery/shell-puget-sound-refinery-east-gate-rail-project.html), <http://www.shell.us/about-us/projects-and-locations/puget-sound-refinery/shell-puget-sound-refinery-east-gate-rail-project.html> (last visited May 27, 2016).

¹⁴ Washington State Energy Facility Site Evaluation Council, Tesoro Savage Vancouver Energy Distribution Facility, Draft Environmental Impact Statement, (2015), http://www.efsec.wa.gov/Tesoro%20Savage/SEPA%20-%20DEIS/DEIS%20Chapters/DEIS%20Ch%200b%20Exec_Summary.pdf at ES-4.

adequately protect public safety, including relating to train safety at the project location and along the rail route; and (11) will adequately protect and provide for response against natural disasters or catastrophic accidents, including earthquakes, floods, windstorms, tank fires, oil spills, train derailments, and other disaster scenarios.¹⁵ The EFSEC will also consider at the June and July hearings whether these impacts can be adequately mitigated.¹⁶

The Buckeye Terminal Project (“Buckeye Project”). Buckeye Terminals operates a bulk petroleum fuel storage and distribution facility in the City of West Sacramento. The Buckeye Project involved the reissuance of a conditional use permit for the continued use of an existing rail loading facility for ethanol delivery.¹⁷ In the City staff report, it was noted that local governments are limited in their ability to regulate rail, whereas transportation by road can be locally regulated.¹⁸ In November 2014, the West Sacramento Planning Commission denied the conditional use permit in part based on the conclusion that shipping ethanol by truck was more desirable than rail because it “would reduce the number of rail crossings, decrease[] traffic conflicts, and improve[] emergency response time.”¹⁹ Buckeye Terminals challenged the denial in Yolo County Superior Court, but later decided not to pursue the case due to the high cost of the litigation.²⁰ Buckeye Terminals continues to operate the storage and distribution facility, but now does so without rail service even though truck transport of ethanol is more expensive.

¹⁵ Order Clarifying EFSEC’s Process, etc., Case No. 15-001. In the Matter of Application No. 2013-01, Tesoro Savage, LLC Vancouver Energy Distribution Terminal, State of Washington Energy Facility Site Evaluation Council, (February ___ - 2016) <http://www.efsec.wa.gov/Tesoro%20Savage/Adjudication/20160203TESORO%20Issue%20Consolidation%20Order%20-%20ES.pdf> at 4-5.

¹⁶ *Id.*

¹⁷ See City of West Sacramento, Planning Commission Agenda Report, Item No. 2, November 6, 2014, <http://www.cityofwestsacramento.org/civica/filebank/blobload.asp?BlobID=11162>.

¹⁸ *Id.* at 18 (Attachment 8).

¹⁹ *Id.* at 5.

²⁰ *Buckeye Terminals v City of West Sacramento*, Case No. PT14-2060 (Yolo Cnty. Super. Ct.) (dismissed Oct. 2015).

STATEMENT OF FACTS

The Benicia Refinery. The refinery is located on the north shore of the Carquinez Strait, in the San Francisco Bay area and the refinery is currently permitted to process on average up to 165,000 barrels of crude oil per day. From this crude oil the refinery produces gasoline, diesel, jet fuel, and asphalt.²¹ Ten percent of gasoline consumed in California – the most populous state in the Union,²² which has approximately 28,686,000²³ motorized vehicles – is from the Benicia refinery.²⁴ California is the third largest consumer of gasoline in the world. Valero currently receives crude oil by marine vessel from Alaska and foreign sources, and by pipeline from California. The refinery does not receive any crude oil by rail.²⁵

The Planned Off-Loading Facility. Valero submitted its application to the City requesting a permit to install the off-loading rack, track on both sides of the rack and track connecting the rack to UPRR. The crude oil off-loading facility will have the capacity to receive 50-car unit trains of crude oil twice per day, equal to 70,000 barrels of crude oil per day. However, the operating capacity of the refinery will not change. See Land Use Permit Application Crude by Rail Project, Valero Benicia Refinery at 1 (Dec. 2012), Exhibit 1.

The Need For North American Crude Oil Feedstock. Valero has determined that the refinery needs access to North American crude oil feedstock in order to remain viable and competitive over the long term. North American crude oil is economically and competitively

²¹ City of Benicia, Valero Benicia Crude By Rail Project, Revised Draft Environmental Impact Report at 2-20 (2015).

²² 2010 Statistical Abstract: State Rankings, UNITED STATES CENSUS BUREAU, <https://www.census.gov/library/publications/2009/compendia/statab/129ed/rankings.html> (last visited May 17, 2016).

²³ Statista, <http://www.statista.com/statistics/196024/number-of-registered-automobiles-in-california/> (last visited May 17, 2016).

²⁴ The Benicia refinery produces 25% of gasoline consumed in the San Francisco Bay Area. Additionally, the refinery produces 35% of the asphalt supply in northern California. Valero, <https://www.valero.com/en-us/Pages/Benicia.aspx> (last visited May 18, 2016).

²⁵ The refinery receives isobutane, and ships caustic, commercial coke, liquefied propane gas, and petroleum coke by rail. However, only isobutane relates to feedstocks used in crude oil refinery operations.

accessible to the Benicia refinery only by rail delivery. The crude oil off-loading facility (with UPRR common carrier service) will provide the refinery with this needed source of crude oil. In 2012, when the off-loading facility was proposed, access to North American crude oil had the potential to save Valero millions of dollars per month, compared with the high price of oil shipped by marine vessel. The price of crude oil has declined, but oil prices fluctuate by source and Valero must diversify its sources of crude oil for the sake of long-term viability and competitiveness.²⁶

The Planning Commission Actions. On December 21, 2012, Valero submitted a land use permit application to the City of Benicia for the crude oil off-loading facility.²⁷ On August 9, 2013, the City issued a notice informing the public that it intended to prepare an EIR to ensure full consideration of all environmental issues.²⁸ City staff ultimately completed a Draft EIR, a Revised Draft EIR, and a Final EIR (referred to collectively herein as the “EIR”).²⁹ The EIR disclosed potential rail transportation environmental impacts (including locomotive emissions) on UPRR rail lines between the refinery and California’s borders with Oregon and Nevada, including in UPRR’s Roseville, CA yard, approximately 72 miles from Benicia.³⁰

The EIR did not include proposed mitigation for potential environmental impacts of UPRR railroad operations, because City staff, advised by Special Counsel, determined that such

²⁶ If used to full capacity (70,000 barrels per day), the crude oil off-loading facility will reduce greenhouse gas emissions by 225,000 tons per year compared with crude oil delivered by marine vessel. The reduction in air pollutants is primarily due to the shorter transport distance by rail. City of Benicia, Valero Benicia Crude By Rail Project, Revised Draft Environmental Impact Report at 2-60 (2015), Exhibit 2.

²⁷ Land Use Permit Application Crude by Rail Project, Valero Benicia Refinery (Dec. 2012), Exhibit 1.

²⁸ City of Benicia, Notice of Preparation of An Environmental Impact Report and Notice of Scoping Meeting, Valero Crude by Rail Project (Aug. 9, 2013), available at <http://www.ci.benicia.ca.us/vertical/sites/%7BF991A639-AAED-4E1A-9735-86EA195E2C8D%7D/uploads/EIR-ScopeNoticePreparation.pdf>.

²⁹ City of Benicia, Valero Benicia Crude By Rail Project website, http://www.ci.benicia.ca.us/index.asp?SEC=B7EDC93A-FFF0-4A14-9B1A-1C8563BC256A&Type=B_BASIC.

³⁰ City of Benicia, Valero Benicia Crude By Rail Project, Revised Draft Environmental Impact Report at 2-30 – 2-39; 2-40 – 2-41; 2-27 (2015), Exhibit 2.

mitigation would be preempted by the ICCTA.³¹ In staff's presentation to the Planning Commission, the Special Counsel advised the Planning Commission that although state law did apply to the unloading rack itself, the Planning Commission did not have the "authority to attempt to condition Valero's permit on any mitigation of impacts that are caused by rail operations" nor does the City of Benicia "have the authority to deny the permit based on rail impacts."³²

On February 11, 2016 the Planning Commission voted to deny certification of the EIR and to deny Valero's conditional use permit application.³³ With respect to denial of certification of the EIR, the Planning Commission Resolution included the following findings:

2. Staff's interpretation of preemption is too broad and the EIR should consider including mitigation measures to offset the significant and unavoidable impacts associated with rail operations, such as air pollution emissions, improved rail car requirements, additional funding for emergency responders and degasifying the oil before transport.

* * *

6. The size of the project is too big and would result in traffic and train backups which would negatively affect access to businesses in the Benicia Industrial Park.

* * *

8. The project could potentially have negative biological impacts on Sulphur Springs Creek and the marsh area between the Benicia Industrial Park and the Carquinez Strait.

9. The traffic, air quality, and greenhouse gas emissions analyses are insufficient.

* * *

³¹ Transcript of Record at 5-6, Benicia Special Planning Commission Meeting (Feb. 11, 2016)(statement of City Special Counsel Bradley Hogin), Exhibit 3.

³² *Id.*

³³ City of Benicia, Cal., Planning Comm'n Resolution No. 16-1 (Feb. 11, 2016), Exhibit 4.

11. The EIR does not evaluate mitigations to uprail communities and how each potential mitigation is or is not preempted.

* * *

13. The response to comments in the FEIR are found to be inadequate, non-responsive and dismissive including, but not limited to, the following specific comment letters:
 - a. Sacramento Area Council of Government: unfunded obligations on communities related to first responders, no evidence of mitigation measures to address transporting crude by rail, no evidence that mitigation measures for the significant and unavoidable impacts are infeasible due to preemption; and insufficient evaluation of potential alternatives including how preemption is applicable.
 - b. State of California Attorney General: insufficient evaluation of air quality impacts and an overly broad interpretation of trade secrets.
 - c. Bay Area Air Quality Management District: insufficient consideration of the their (sic) recommended mitigation measures for offsetting rail impacts, the analysis does not accurately characterize air emissions or health impacts, including an insufficient evaluation of PM2.5.³⁴

City of Benicia, Cal., Planning Comm'n Resolution No. 16-1 (Feb. 11, 2016) Exhibit 4 at 4-5.

With respect to denial of the use permit, the Planning Commission Resolution included the following findings:

1. That the proposed location of the conditional use and the proposed conditions under which it would be operated or maintained would not be consistent with the General Plan as it would be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the neighborhood of the use, or to the general welfare of the city, as well as uprail communities.

* * *

³⁴ PM2.5 is particulate matter less than 2.5 microns in diameter. The EPA defines PM2.5 as “the term for particles found in the air, including dust, dirt, soot, smoke, and liquid droplets.” *Fine Particle Designations, Frequent Questions*, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, <https://www3.epa.gov/pmdesignations/faq.htm#0> (last visited May 17, 2016).

There is no provision for clean-up in case of a spill or accident and local jurisdictions, including Benicia would bear the economic burden of such a clean-up...The project would limit access for emergency response; especially access to Sulphur Springs Creek including the potential for rail cars to fall into Sulphur Springs Creek.

* * *

As set forth above, the finding cannot be made for the Project due to the potential significant on- and off-site impacts associated with the project and the associated rail operations, the need for further evaluation of the environmental impacts, the economic purposes of the project and the conflicting interpretations of preemption. [Emphasis added.]

Id. at 5-6.

On February 29, 2016, Valero appealed the Planning Commission's decision to the Benicia City Council.³⁵ On April 19, 2016, Valero requested that the Benicia City Council defer a decision on Valero's appeal so that Valero could seek this declaratory relief.³⁶ The City Council voted to defer a decision until September 20, 2016.³⁷

ARGUMENT

The ICCTA preempts states or localities from indirectly regulating rail transportation by imposing requirements that could deny a shipper the right to receive rail carrier service or deny a railroad's ability to conduct rail operations. In this case, the EIR/Permit Denials were based in very large part on findings of unacceptable rail transportation impacts, and the absence of rail transportation mitigation. The EIR/Permit Denials prevent efficient rail transportation of crude oil to the refinery, thereby denying Valero its right to receive rail service, preventing UPRR from providing such rail service, interfering with interstate rail transportation essential to the long-

³⁵ Letter from John J. Flynn III, Counsel to Valero to Lisa Wolfe, City Clerk, City of Benicia (Feb. 29, 2016).

³⁶ Transcript of Record at 109, Benicia City Council Meeting (Mar. 15, 2016), Exhibit 5.

³⁷ Transcript of Record at 150-151, Benicia City Council Meeting (Apr. 19, 2016), Exhibit 6.

term viability of a refinery that produces ten percent of the gasoline consumed in the most populous state in the Union, which is the third largest consumer of gasoline in the world, and impinging on the Board's exclusive jurisdiction over transportation by rail carriers.

1. State And Local Laws That Deny A Rail Carrier The Ability To Provide Service Or Deny A Shipper The Right To Receive Rail Carrier Service Are Preempted.

Under the ICCTA, the jurisdiction of the Board over "transportation by rail carriers" is "exclusive." 49 U.S.C. § 10501(b). The intent of section 10501(b) is to "prevent a patchwork of local regulation from unreasonably interfering with interstate commerce." *Boston and Maine Corporation and Springfield Terminal Railroad Company – Petition for Declaratory Order*, STB Finance Docket No. 35749, slip op. at 3 (STB served July 19, 2013) ("*Winchester*"), reconsideration denied (STB served October 31, 2013); *CSX Transp., Inc.—Pet. for Declaratory Order*, FD 34662, slip op. at 11 (STB served Mar. 14, 2005), reconsideration denied (STB served May 3, 2005) (States and municipalities "cannot take an action that would...unreasonably burden interstate commerce.")

The ICCTA prevents states or localities from intruding into matters directly regulated by the Board, including rail carrier operations and services. *Winchester* at 3-4. The ICCTA also prevents states or localities from indirectly regulating rail transportation by "imposing requirements that, by their nature, could be used to deny a railroad's ability to conduct rail operations." *Id.* at 3. (citing *City of Auburn v. STB*, 154 F.3d 1025, 1029-31 (9th Cir. 1998); *Green Mountain R.R. v. Vermont*, 404 F.3d 638, 643 (2d Cir. 2005); *Norfolk S. Ry. v. City of Austell*, No. 1:97-cv-1018-RLV, 1997 U.S. Dist. LEXIS 17236 (N.D. Ga. Aug. 18, 1997); *CSX Transp., Inc.—Pet. for Declaratory Order*, FD 34662 (STB served Mar. 14, 2005), reconsideration denied (STB served May 3, 2005); *Joint Pet. for Declaratory Order—Bos. & Me. Corp.*, FD 33971 ("*Town of Ayer*") (STB served May 1, 2001), reconsideration denied (STB

served Oct. 5, 2001)). “While federal law permits ‘the continued application of laws having a more remote or incidental effect on rail transportation,’ it preempts ‘state laws that may reasonably be said to have the effect of managing or governing rail transportation.’” *Id.*, quoting *N.Y. Susquehanna & W. Ry. v. Jackson*, 500 F.3d 238, 252 (3d Cir. 2007)).

The ICCTA provides any person with the right to request common carrier rail service and obligates rail carriers to provide such service upon reasonable request. 49 U.S.C. § 11101. The Board has exclusive jurisdiction over a shipper’s right to receive rail carrier service. *Winchester*, slip op at 4. State and local laws that deny a shipper the right to receive rail carrier service or have the effect of managing or governing the receipt of such service are preempted. *Id.*

2. The EIR/Permit Denials Were Based To A Great Degree On Rail Transportation Impacts And The Absence Of Rail Transportation Mitigation; Deny Valero The Right To Receive Rail Common Carrier Service; And Prevent UPRR From Providing Such Service.

The EIR/Permit Denials were substantially based on findings with respect to rail transportation impacts and objections to the absence of rail transportation mitigation. The need to regulate rail transportation impacts is the thread that runs through the entire Planning Commission Resolution. For example: the project would result in “train backups which would negatively affect access to businesses in the Benicia Industrial Park;”³⁸ the project could “have negative biological impacts on Sulphur Springs Creek and the marsh area between the Benicia Industrial Park and the Carquinez Strait; the EIR “traffic, air quality, and greenhouse gas emissions analyses are insufficient;”³⁹ the EIR inadequately responded to the assertion of “insufficient evaluation of air quality impacts;”⁴⁰ the EIR inadequately responded to the assertion

³⁸ Planning Comm’n Resolution, Exhibit 4, at 4. Planning Commission Chair Dean said, “[e]xtra traffic tie-ups caused by trains put a constraint on the attractiveness of the [industrial] park to new business. Transcript of Record at 10, Benicia Special Planning Commission Meeting (Feb. 9, 2016), Exhibit 7.

³⁹ Planning Comm’n Resolution, Exhibit 4, at 4.

⁴⁰ *Id.*

that it did not “accurately characterize air emissions or health impacts, including an insufficient evaluation of PM2.5;”⁴¹ the crude oil off-loading facility “would not be consistent with the General Plan as it would be detrimental to the public health, safety, or welfare of persons residing or working in ... uprailand communities;”⁴² and “the finding cannot be made for the Project” (i.e., the EIR cannot be certified) due to significant “off-site impacts associated with the project and the associated rail operations.”⁴³

The Planning Commission Resolution repeatedly invokes the absence of rail transportation mitigation or such mitigation analysis. For example: “the EIR should consider including mitigation measures to offset the significant and unavoidable impacts associated with rail operations, such as air pollution emissions, improved rail car requirements, additional funding for emergency responders and degasifying the oil before transport;”⁴⁴ the EIR “does not evaluate mitigations to uprailand communities;”⁴⁵ the EIR inadequately responded to the assertion of “unfunded obligations on communities related to first responders, [and] no evidence of mitigation measures to address transporting crude by rail;”⁴⁶ the EIR inadequately responded to a commenter assertion of “insufficient consideration of the their (sic) recommended mitigation measures for offsetting rail impacts;”⁴⁷ and “[t]here is no provision for clean-up in case of a spill or accident and local jurisdictions, including Benicia would bear the economic burden of such a

⁴¹ *Id.* at 4-5

⁴² *Id.* at 5. The Resolution refers to the crude oil off-loading facility, but it is inconceivable that the crude oil off-loading facility could affect the safety of persons in uprailand communities. This can only be reasonably construed as addressed to rail transportation.

⁴³ *Id.* at 5-6. Planning Commissioner Chair Dean’s comment supports the language of the Resolution. He expresses his “prime concern, which is the hazards related to transportation of crude by rail” Transcript of Record at 166, Benicia Special Planning Commission Meeting (Feb. 11, 2016), Exhibit 3.

⁴⁴ Planning Comm’n Resolution, Exhibit 4, at 4.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* at 4-5.

clean-up...The project would limit access for emergency response; especially access to Sulphur Springs Creek including the potential for rail cars to fall into Sulphur Springs Creek.”⁴⁸

Perhaps Planning Commissioner Grossman’s comments sum it up best. Even though the EIR/Permit Denial would have adverse economic impact, he concluded “the environmental impacts and the consideration for the world, for our brethren, sistren, upstate, up rail” required denial and he did not want to say “’screw you’ to the up rail cities.” Transcript of Record at 167-68, Benicia Special Planning Commission Meeting (Feb. 11, 2016), Exhibit 3. The Planning Commission Resolution is so full of managing, governing and regulating rail transportation that it is not possible to determine with any degree of certainty what action the Planning Commission would have taken on the EIR or the permit if it had acted within the bounds of its authority. What is known is that the EIR/Permit Denials prevent rail transportation of crude oil to the refinery, thereby denying Valero its right to receive rail service, preventing UPRR from providing such rail service, interfering with interstate rail transportation essential to the long term viability of a refinery that produces ten percent of the gasoline consumed in the most populous state in the Union, the third largest consumer of gasoline in the world and impinging on the Board’s exclusive jurisdiction over transportation by rail carriers.⁴⁹

Valero does not seek by this Petition an order declaring that the City of Benicia’s permitting authority over the construction and operation of the unloading rack itself is subject to ICCTA preemption. However, the EIR/Permit Denials impinge on Board jurisdiction, regulate rail transportation and unreasonably burden interstate commerce.

3. A Board Declaration That The EIR/Permit Denials Are Preempted Would Be Consistent With Board Precedent.

⁴⁸ *Id.* at 5.

⁴⁹ If the EIR had contained rail transportation mitigation and had been certified, and the Planning Commission had approved Valero’s use permit with rail transportation conditions, those conditions would not have been enforceable.

a. The Board's Decision In The *Winchester* Case Supports A Preemption Declaration In This Case.

In *Winchester*, the Board concluded that a town zoning board's orders banning rail transportation to a warehouse were preempted because they deprived a shipper of the right to receive service and encroached on the Board's exclusive jurisdiction over rail transportation. The case involved service provided by two rail common carriers (collectively referred to as "Pan Am") to a warehouse operated by Tighe Logistics Group ("Tighe"). *Winchester*, slip op. at 1. After residents complained about noise associated with switching operations at the Tighe warehouse, the zoning board found that freight service to Tighe violated municipal zoning laws and ordered cessation of rail service to Tighe. *Id.* at 2.⁵⁰ The Board found the zoning board's order was preempted because:

The Interstate Commerce Act provides any person the right to ask for common carrier rail service and carriers the obligation to provide such service upon reasonable request. ... The Town's orders prohibiting all rail traffic to the warehouse conflict with the federal right of Tighe to request common carrier service and the federal obligation of Pan Am, a rail common carrier, to provide that service, as well as the Board's exclusive jurisdiction over that service. 49 U.S.C. § 10501(b)(1). As the federal courts and the Board have stated repeatedly, where a local regulation conflicts with the rights and obligations contained in the Interstate Commerce Act, federal law will preempt the local regulation. ... Such an attempt to prohibit common carrier rail transportation directly conflicts with the most fundamental common carrier rights and obligations provided by federal law and the Board's exclusive jurisdiction over that service.

Id. at 3-4 (citing *City of Auburn*, 154 F.3d at 1031; *City of Austell*, 1997 U.S. Dist. LEXIS 17236, at *19-22; *CSXT*, slip op. at 8-9; *Town of Ayer*, slip op. at 8-11).

The *Winchester* zoning board asserted that its actions were aimed at Tighe alone. This was inaccurate, but the Board said even if it construed the zoning board's action as directed only

⁵⁰ The Town of *Winchester* sought the advice of special counsel on ICCTA preemption. Special counsel opined that banning rail transportation to a warehouse appeared to be preempted. Petition for Declaratory Order at 1-2,4, *Boston and Maine Corporation and Springfield Terminal Railroad Company – Petition for Declaratory Order*, STB Finance Docket No. 35749 (Filed July 1, 2013).

at Tighe, there would still be a fundamental conflict between the zoning board’s regulation and the rights of Tighe as the shipper to request rail service and “states and localities could engage in impermissible regulation of the interstate freight rail network under the guise of local regulations directed at the shippers who would use the network, and thereby create the patchwork of conflicting local regulations that Congress sought to avoid” in the ICCTA.⁵¹ The same unlawful regulation – regulation of rail transportation – under the guise of local regulations directed at another party – is happening in the present case.

In this case, as in *Winchester*, the EIR/Permit Denials conflict with the right of Valero to request common carrier service, and prevent UPRR from providing such rail service, as well as the Board’s exclusive jurisdiction over the service. 49 U.S.C. § 10501(b)(1). The Planning Commission’s attempt to prohibit common carrier rail transportation to the refinery directly conflicts with the “most fundamental common carrier rights and obligations” provided by federal law and directly threatens the long-term viability of an essential facility for the production of gasoline supplying the most populous state in the Union.

b. The Board’s Decision In The SEA-3 Case Is Factually Distinguishable, But Supports A Preemption Declaration In This Case.

In *SEA-3, Inc. – Petition for Declaratory Order*, STB Finance Docket No. 35853 (STB Served Mar. 17, 2015)(“*SEA-3*”), the Board denied a Petition for Declaratory Order filed by the owner/operator of a liquefied natural gas (“LNG”) transload facility because the action challenged did not impose conditions on rail carrier transportation to or from the LNG facility.⁵²

The Board noted that the challenge related to the expansion of an LNG facility and that the

⁵¹ *Winchester*, slip op. at 5, citing as in accord *Norfolk S. Ry. v. City of Alexandria*, 608 F.3d 150, 158-60 (4th Cir. 2010)(“*City of Alexandria*”) (city cannot seek to regulate interstate commerce indirectly by regulating trucks that would use the carrier’s transload facility). See discussion of *City of Alexandria*, below.

⁵² The LNG facility was served by Pan Am. SEA-3 secured approval from the Town of Newington Planning Board to expand the LNG facility. The Town of Portsmouth sued the Newington Planning Board for not complying with its own zoning and site review regulations and sought, among other things, a safety/hazard study of the facility expansion. *SEA-3*, slip op at 3.

facility was neither a rail carrier facility nor operated under the auspices of a rail carrier. *SEA-3*, slip op at 5.

Although *SEA-3* argued that the Board's decision in *Winchester* supported its Petition, the Board concluded that *SEA-3* had not "identified an attempt by Portsmouth to regulate *Pan Am's* operations, as was the case in *Winchester*." *SEA-3*, slip op. at 6. The Board added that "[i]f Portsmouth or any state or local entity were to take actions as part of a proposed safety/hazard study, or otherwise, that interfere unduly with Pan Am's common carrier operations, those actions would be preempted under § 10501(b)." *SEA-3*, slip op. at 7. Thus, the *SEA-3* case, like *Winchester*, stands for the proposition that states and localities with authority to regulate shipper facilities cannot use that authority to regulate "transportation by rail carriers."

The present case has the fact pattern the Board warned of in *SEA-3*. The EIR/Permit Denials interfere unduly with rail common carrier operations to the Benicia refinery.

4. A Board Declaration That The EIR/Permit Denials Are Preempted Would Be Consistent With Court Precedent Regarding Preemption Of Indirect Regulation Of Rail Transportation.

In *City of Alexandria*, the locality attempted to regulate a Norfolk Southern Railroad ethanol rail transloading facility by regulating non-rail carrier truck access to the facility. *City of Alexandria*, 608 F.3d 150, 158-60 (4th Cir. 2010). The lower court held that the ICCTA preempted the locality's regulations and the locality appealed. *City of Alexandria*, 608 F. 3d at 154. The court concluded that the ordinance and permitting process granted the locality the "power to halt or significantly diminish the transloading operations at the [f]acility by declining to issue haul permits or by increasing the restrictions therein." *City of Alexandria*, 608 F. 3d at 160. Therefore, the ordinance and permitting process "directly impact[ed] Norfolk Southern's

ability to move goods shipped by rail” and therefore “unreasonably burdened rail carriage and thus cannot escape ICCTA preemption.” *Id.* at 159-160.

In this case, like the locality in *City of Alexandria*, the Planning Commission is indirectly attempting to regulate rail transportation. The locality in *City of Alexandria* attempted to indirectly regulate Norfolk Southern rail carrier operations by regulating non-rail trucking companies. In this case, the Planning Commission attempted to indirectly regulate UPRR rail carrier operations by regulating the Benicia facility. Even though the Benicia refinery is not a rail-owned or operated facility, the obvious indirect regulation of rail transportation by the Planning Commission is equally impermissible. The Planning Commission’s EIR/Permit Denials granted the Planning Commission the power to halt or significantly diminish UPRR crude oil deliveries to the refinery. Therefore, the Planning Commission unreasonably burdened rail carriage because the EIR/Permit Denials directly impacted UPRR’s ability to move crude oil.

REQUEST FOR EXPEDITED CONSIDERATION

Valero respectfully requests that the Board issue an order regarding the scope of ICCTA preemption as applicable to the EIR/Permit Denials. On April 19, 2016, Valero requested that the Benicia City Council defer a decision on Valero’s appeal so that Valero could seek this declaratory relief. The City Council voted to defer a decision until September 20, 2016.

To facilitate expedited consideration, Valero has served a copy of this Petition for Declaratory Order on the City Attorney for the City of Benicia and on the Principal Planner, Community Development for the City of Benicia with the request that the Petition be posted on the City of Benicia website.

PROPOSED PROCEDURAL SCHEDULE

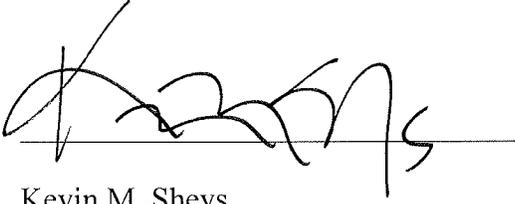
In consideration of Valero's request for expedited consideration, Valero respectfully requests that the Board adopt the following schedule for submission of comments in this proceeding.

Day 0	STB order instituting a declaratory proceeding
Day 30	Reply Comments Due
Day 45	Rebuttal Comments Due

CONCLUSION

For the foregoing reasons, Valero respectfully requests the Board issue an order declaring that the EIR/Permit Denials are preempted by the ICCTA.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'K. Sheys', is written over a horizontal line.

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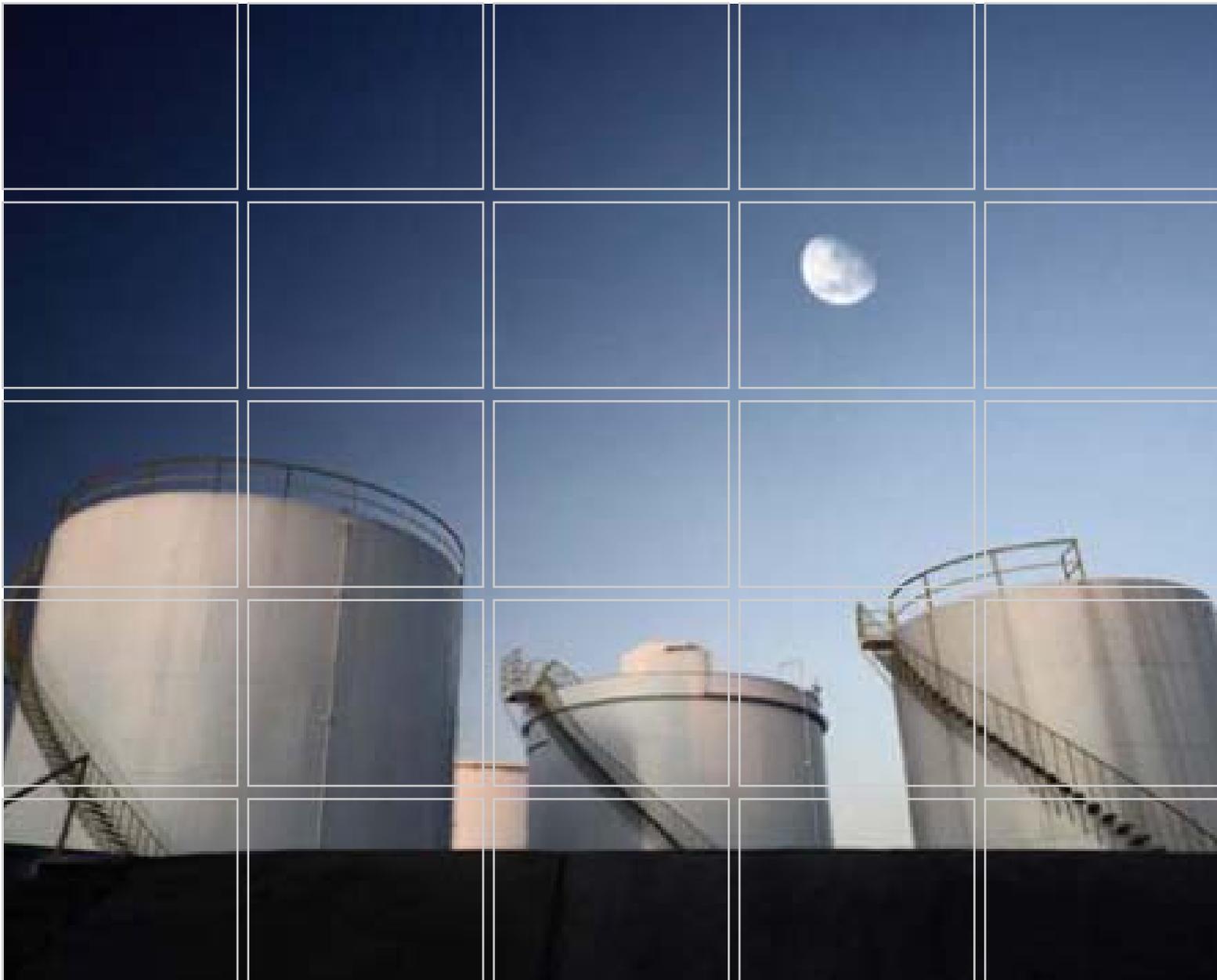
Dated: May 31, 2016.

LIST OF EXHIBITS

- Exhibit 1: Land Use Permit Application Crude by Rail Project, Valero Benicia Refinery (Dec. 2012)
- Exhibit 2: Excerpts - City of Benicia, Valero Benicia Crude By Rail Project, Revised Draft Environmental Impact Report (2015)
- Exhibit 3: Excerpts - Transcript of Record Benicia Special Planning Commission Meeting (Feb. 11, 2016)
- Exhibit 4: City of Benicia, Cal., Planning Comm'n Resolution No. 16-1 (Feb. 11, 2016)
- Exhibit 5: Excerpts - Transcript of Record Benicia City Council Meeting (Mar. 15, 2016)
- Exhibit 6: Excerpts - Transcript of Record Benicia City Council Meeting (Apr. 19, 2016)
- Exhibit 7: Excerpts - Transcript of Record Benicia Special Planning Commission Meeting (Feb. 9, 2016)

EXHIBIT 1

**LAND USE PERMIT APPLICATION CRUDE BY RAIL PROJECT,
VALERO BENICIA REFINERY (DEC. 2012)**



Prepared for:
City of Benicia

Land Use Permit Application Crude by Rail Project

Valero Benicia Refinery
Benicia, California

December 2012

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1.0 INTRODUCTION

1.1 Project Overview

Valero owns and operates an oil refinery located in Benicia, California. Valero is proposing the Crude by Rail Project (“project”) to allow the refinery to receive a larger proportion of its crude oil deliveries by railcar.

1.2 Project Purpose

Valero currently processes crude oil received by pipeline and by marine vessels. The purpose of this project is to allow Valero to receive a larger proportion of its crude oil by railcar, up to 70,000 barrels per day of North American crude. 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 because the increase in crude oil deliveries by railcar would be offset by a corresponding decrease in crude oil deliveries by marine vessels. No modifications would be made to refinery process equipment and there would be no net increase in operational emissions.

2.0 USE PERMIT APPLICATION

2.1 Use Permit Application Checklist

See following pages.

2.2 Planning Application Form

See following pages.



Community Development Department Planning Division

Project Address: Valero Refinery, 3400 East Second St. Date: 12/2012 Planner: Charlie Knox
Benicia, CA 94510

For Applicant's Use	For Staff Use	Use Permit Application Checklist Please note: Your project planner may require additional information depending on the specifics of your project.	Use Permit Type			
			Temp	Day care	Staff	PC
			Requirement			
X		Application Form	(Yes)			
X		Project Summary Sheet	No	(Yes)		
X		Environmental Checklist	Depending on Project			
		Mailing Labels	No	Yes (See <u>Mailing Notice</u> handout)		
		Filing fee Write amount here: \$2,730	(Yes) (see <u>Fee Schedule</u>)			
For the following items, see <u>Submittal Standards</u> sheet						
X		Written Statement	(Yes)			
X		Site Plan	6 sets			
		Elevations and Architectural Plans Parking and Circulation Plan Landscaping Plan Lighting Plan Floor Plan (Plans may be combined with the site plan or may be provided on separate sheets)	6 sets, if required (Depending upon project)			
X		Photographs (1 set printed and 1 set electronic)	Yes	No	(Yes)	
		Additional documents and materials, as needed Architectural historian's report Historic photographs and/or maps Title report Traffic report	Depending upon project			
		Additional Plans Required Subsequent to Initial Submittal Plans – If revised, but needs further staff review: Plans – Ready for Commission review:	6 sets 1 set 11" x 17" size 1 full-size set, rolled 7 full-size sets, folded			





250 East L Street • Benicia, CA 94510 • (707) 746-4280 • Fax (707) 747-1637

Public Works & Community Development Department
Planning Division

Staff Use
30-Day Review:

PLANNING APPLICATION FORM

** Applications are only accepted between the hours of 8:30 – 9:30 a.m. and 1:00 – 2:00 p.m.
To schedule an appointment outside of these hours, please call 707-746-4280.

1. Type of Application. Check all applicable items below.

- Use Permit (circle: PC Staff, Day Care, Temp)
Design Review (circle: PC, HPRC, Staff, Minor)
Variance (circle: PC, SFR)
Planned Development
General Plan amendment
Zoning Text amendment
Zone Change/Overlay District
Extension of Approval (write Planning Application # under Other)
Revision to approved project (write Planning Application # under Other)
Other
Check here if project is located within 100 feet of the shoreline (mean high tide) (Requires BCDC review)
Check here if there will be any sale/service of alcoholic beverages. (Please describe below)

2. Property Information.

Address/location: 3400 East Second Street, Benicia, CA 94510
APN(s) 0080110480 Parcel area (sq. ft. or ac) 14,143,496 sq. ft.

3. Project Description. Describe the type of development, use being proposed, exterior alterations, need for variance, etc. Attach additional sheets if necessary.

Crude by Rail project. See attachments for details.

4. Contact Information. Check the [] to indicate the primary contact.

- Property Owner
Name John Hill, Vice President & General Manager Organization Valero
Mailing address 3400 E. Second St., Benicia, CA 94523
Phone 707-745-7613 Fax 707-745-7452 E-mail john.hill@valero.com
Applicant, if different from owner
Name Don Cuffel Organization Valero
Mailing address 3400 E. Second St., Benicia, CA 94510
Phone 707-745-7545 Phone (2)
E-mail Donald.cuffel@valero.com Fax 707-745-7600
Architect/Engineer/Contractor
License # License Type (Arch, Eng, Contr, etc.)
Business RDS Engineering Individual's Name Keith Johnston
Mailing address 750 Pearl Street, Beaumont, TX 77701
Phone 409-832-7827 Fax 409-727-3426 E-mail

5. Signatures. Applicant and Property Owner must sign on reverse side.

Table with 4 columns: For Staff Use, Appl. #(s), Date Filed, and Total Fees Paid. Rows include Date Entered, Fee Breakdown, and GP designation.

DESIGNATION OF A REPRESENTATIVE FORM

Applicants or property owners who desire to authorize a representative or representatives to act on their behalf in conjunction with this application shall provide the following information:

Name of authorized representative(s): _____

Address of representative(s): _____

Phone number of representative(s): _____

The above named representative(s) is authorized as follows:

File any and all papers in conjunction with the application including the signing of the application. ___ (initial)

Speak on behalf of, or representing, the [choose owner and/or applicant and fill in blank] _____ at any staff meeting and/or public hearing. _____(initial)

Sign any and all papers on my behalf, with the exception of the application form. . _____(initial)

This authorization is valid until revoked in writing and filed with the Community Development Department.

Owner/ Applicant (specify)

Date

2.3 Project Summary Sheet

2.3.1 Project Components

The project would consist of the following primary components:

- Changing an existing external floating roof tank to crude oil service from JP4 service (Valero Tank No. TK-1776 / Bay Area Air Quality Management District Source No. S-97).
- Installing one offloading rack capable of offloading two parallel rows of crude oil rail cars and transferring crude oil to TK-1776.
- Constructing two offloading rail spurs, a parallel engine runaround track, and a “wye connector” track on refinery property to allow receipt of rail cars at the 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. The wye connector track would be constructed on the south side of the intermediate tank farm and be used for moving empty rail cars between the offloading rail spurs and the existing upper coke silo track.
- Installing approximately 4,000 feet of 12-inch diameter crude oil pipeline and associated components and infrastructure between the offloading racks and TK-1776 (S-97).
- Relocating approximately 1,500 feet of tank farm dike wall and an existing firewater pipeline to accommodate the new rail tracks.
- Increasing the volume of crude oil received by rail (up to 100 rail cars per day, equivalent to approximately 70,000 barrels per day of crude oil). Overall there would be no net increase in crude oil deliveries because railcar crude oil deliveries would be offset by a corresponding decrease in marine vessel crude oil deliveries.

The project would require up to two additional employees or contractors. The vehicle traffic associated with the project would be one or two additional locomotive trips per day with 100 or 50 railcars, respectively. The locomotive trips are scheduled for around noon each day, but this could change for the project as potentially required for mitigation of local traffic impacts.

Construction of the new rail spurs and runaround track would involve some dust generation and noise and odors associated with minor amounts of heavy construction equipment, but this would be temporary. The project involves bringing in more crude via rail, but also decreases the amount of crude brought in by ship. There would be no net increase in hazardous materials involved with this project, but the location would be different, i.e. at the rail unloading rack versus the dock.

2.3.2 Project Schedule

Valero plans to begin construction in mid-2013 and to commence operating the rail offloading facility in early 2014.

2.4 Environmental Checklist

See following page.



Community Development Department
Planning Division

ENVIRONMENTAL CHECKLIST FORM

1. Property Information.

Address/location Valero Refinery, 3400 East Second Street, Benicia, CA 94510

APN(s) 0080110480 Parcel area (sq. ft. or ac) 14,143,496 sq. ft

Other permits/approvals required for this project (federal, state, regional, etc.)

BAAQMD – Authority to Construct

City of Benicia – Use Permit, Grading Permit, Building Permit

CALTRANS – Encroachment Permit

2. Project Information. Indicate which of the following types of impacts may be applicable to or generated by the project. Discuss below all items checked "Yes" or "Maybe". Attach additional sheets if necessary.

Table with 4 columns: Type of Impact, Yes, Maybe, No. Rows include: Change in existing features of any bay, tidelands, beaches, lakes or hills, or substantial alteration of ground cover; Change in scenic views or vistas from existing residential areas or public lands or roads; Change in pattern, scale, or character of general area of project; Creation of significant amounts of solid waste or litter; Change in dust, ash, smoke, fumes, or odors in vicinity; Change in bay, lake, stream, or groundwater quality or quantity, or alteration of existing drainage patterns; Change in existing noise or vibration levels in the vicinity; Site on filled land or slope of 10 percent or more; Use or disposal of potentially hazardous materials (toxic substances, flammables, explosives, etc.); Substantial change in demand for municipal services (police, fire, water, etc.); Substantial increase in fossil fuel consumption (oil, natural gas, etc.); Relationship to a larger project or series of projects; Construction in a floodplain.

Use this space to discuss items checked "Yes" or "Maybe" (attach additional sheet if necessary)

SEE ATTACHED SHEET.

3. Applicant's Signature. By signing below, I hereby certify that the information I am submitting is complete and accurate to the best of my knowledge. I understand that any misstatement or omission of the requested information may cause unforeseen delays in the processing of my application.

Applicant _____ Date _____

For Staff Use: Appl. #(s) _____ Date Filed _____

City of Benicia Environmental Checklist Form (7/04)

Environmental Checklist

e. Change in dust, ash, smoke, fumes, or odors in vicinity.

The proposed Project is anticipated to generate dust during construction activities, particularly during the relocation of the tank dike walls. This dust would be mitigated, as required by the BAAQMD, by applying Basic Construction Mitigation Measures, such as watering areas of bare soil several times per day. Operational emissions would occur primarily due to additional locomotive engines delivering rail cars carrying crude oil to the Benicia refinery. However, since no increase in the refinery's crude oil processing capacity will be permitted, less crude oil would be delivered by marine shipments. As such, marine vessel emissions from crude oil deliveries would be reduced and are expected to cause a net decrease in air pollutant emissions. Valero will document the change in air pollutant emissions and seek approval for this project from the BAAQMD consistent with BAAQMD permitting requirements, rules and regulations.

f. Change in bay, lake, stream, or groundwater quality or quantity, or alteration of existing drainage patterns

Modifications to groundwater monitoring wells are being worked in parallel with this application, as they may need to be relocated between Sulphur Creek and the final proposed structure.

g. Change in existing noise or vibration levels in the vicinity.

Construction activities would result in temporary increases in noise and vibration in the vicinity. Operation of the rack will result in more frequent train traffic into the refinery and would likely result in increased periods of noise and vibration. However, the construction of this project will not involve pile driving for structures.

h. Site on filled land or slope of 10 percent or more.

The Valero Refinery is terraced with facilities located at multiple elevations. The rail unloading rack and track would be on a lower-lying area that borders the west side of Sulphur Creek. However, the departure track and wye connector and connecting pipelines to TK-1776 would cross into different terraces, and thus would be sloped.

i. Use or disposal of potentially hazardous materials (toxic substances, flammables, explosives, etc.).

The proposed Project would involve transporting additional crude oil by rail, to the Valero Refinery and converting use of an existing storage tank from JP4 to crude oil service. Crude oil is considered a hazardous substance. However, the Valero Refinery already handles crude oil, and the proposed Project would not result in a net increase in the amount of crude oil stored or processed at the Refinery.

2.5 Written Statement

Describe the proposed use, including:

1. Number of people involved (employees, clients, customers, etc.): **2 additional employees/contractors.**
2. Type of vehicle traffic (auto, truck, drop off, etc.): **locomotive/railcars**
3. Hours of operation (existing, proposed): **24 hours per day, 7 days per week, 365 days per year.**
4. Outdoor activities (storage, work areas, play areas, etc.): **rail unloading, crude storage and pumping, and pipeline transport.**
5. Purpose of new structures (if any), length of time they will be used on the site, and whether the structures will be permanent or temporary (Note: Permanent structures must undergo the normal design review process for new structures): **rail offloading rack, pump, piping, and crude storage tank – these would be permanent structures.**
6. Description of the previous use of the site, if the proposed use is new: **refinery operations; no new proposed use of the site.**
7. Description of any lease controls or management programs that will ensure that the use will not be detrimental to surrounding uses in the area or to the City in general: **continued use of the existing refinery site.**
8. Odors, noise, dust or glare involved: **see item (e) of the Environmental Checklist above.**
9. Hazardous or volatile materials or chemicals involved: **see item (i) of the Environmental Checklist above.**

2.6 Elevations and Architectural Plan

2.6.1 Elevation

The refinery facilities are constructed at multiple elevations located on an east-facing, 200-foot bedrock hill located at the northwestern edge of the refinery. Along the southwestern side of the refinery, a south-to-southeast trending alluvial valley and several east-to-west trending tributary valleys dissect this hill. At the eastern side of the refinery, the hill slopes downward to a broader, relatively flat south-to-southwest trending alluvial valley at an elevation of 10 to 20 feet above mean sea level.

The main refinery area is located at the base of the 200-foot hill and slopes downward to the southeast. Elevation ranges from 80 feet to 10 feet across the main refinery area.

The proposed unloading rack and tracks on the east side of the main refinery area would be at an elevation of approximately 10 feet, and would connect to the departure track on the west side of the main refinery area, which rises to elevations greater than 100 feet.

2.6.2 Architectural Plan

The architectural plot plan and plans depicting the rail unloading pumps and rack are shown in Figure 3.

2.7 Parking and Circulation Plan

The construction contractor parking for the Project would be in the two existing lots on the south side of the main refinery area (Figure 4). No new parking areas would be required.

2.8 Lighting Plan

See Figure 5 Lighting Plan.

2.9 Photographs

See following pages.



PHOTOGRAPH 1
View NW, Tank Farm Avenue A

ERM

Valero Refinery
Benicia, CA



PHOTOGRAPH 2

View SE along Avenue A (Sulphur Springs Creek on left, Lower Tank farm on right)

ERM	<i>Valero Refinery Benicia, CA</i>
-----	--



PHOTOGRAPH 3

View NW. Fire water pipeline, earthen Lower tank farm dike on left, Sulphur Springs Creek on right.

ERM	<i>Valero Refinery Benicia, CA</i>
-----	--



PHOTOGRAPH 4

View NW. Lower tank farm earthen dike, fire water pipeline.

ERM

*Valero Refinery
Benicia, CA*



PHOTOGRAPH 5

View NW from Lower tank farm earthen dike

ERM

*Valero Refinery
Benicia, CA*



PHOTOGRAPH 6
View S from Lower tank farm earthen dike.

ERM

*Valero Refinery
Benicia, CA*



PHOTOGRAPH 7
View N along Avenue A.

ERM

*Valero Refinery
Benicia, CA*



PHOTOGRAPH 8

View NW from Avenue A. Crude pipelines (yellow), firewater pipeline (red), Tank 1720 (center).

ERM

*Valero Refinery
Benicia, CA*



PHOTOGRAPH 9

View NW from Avenue A. Crude pipelines, Tank 1739.

ERM

*Valero Refinery
Benicia, CA*



PHOTOGRAPH 10

View SE. Crude pipeline, firewater pipeline, 9th Street, Tank 1820, railcars on existing rail spur

ERM

*Valero Refinery
Benicia, CA*



PHOTOGRAPH 11

View S. Firewater pipeline, 9th Street, Tank 1820, railcars on existing rail spur.

ERM

*Valero Refinery
Benicia, CA*



PHOTOGRAPH 12

View E. Existing LPG loading rack and rail spurs

ERM

*Valero Refinery
Benicia, CA*



PHOTOGRAPH 13

View SE on Avenue A. Intermediate tank farm far upper right.

ERM	<i>Valero Refinery Benicia, CA</i>
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2.10 Traffic Report

The proposed project would affect the railroad crossing at Park Road near Bayshore. In 2002, ESA prepared a traffic study associated with the Valero Improvement Project (VIP). The discussion of this study within the EIR did not mention Park Road specifically as a potential impact location. Since the concern with the proposed project is at Park Road, information was obtained from the City of Benicia traffic engineers regarding the current Level of Service (LOS) of Park Road near the railroad tracks into the refinery, which was found to be LOS B.

A traffic study is planned as part of the proposed project to assess current baseline traffic conditions and focus on impacts of the rail crossing at Park Road near Bayshore.

Figures

Figure 1 Site Plan

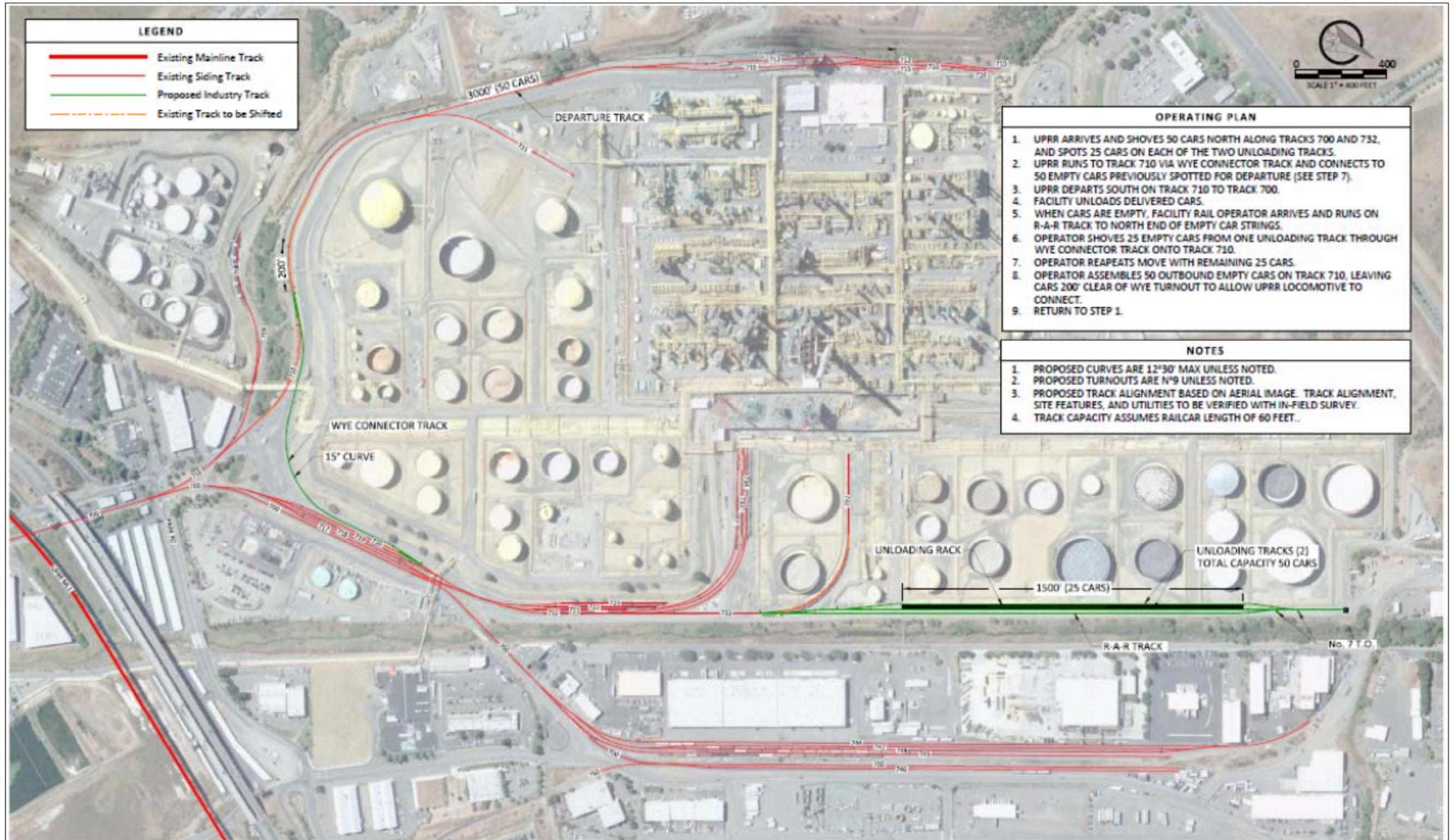


Figure 2 Facility Wide Plan



0 0.125 0.25 0.5
Miles

Legend
— Property Boundary

Figure 2

Valero Refining Company - California
Property Boundary

Figure 4 Construction Worker Parking Areas



Figure 5 Lighting Plan

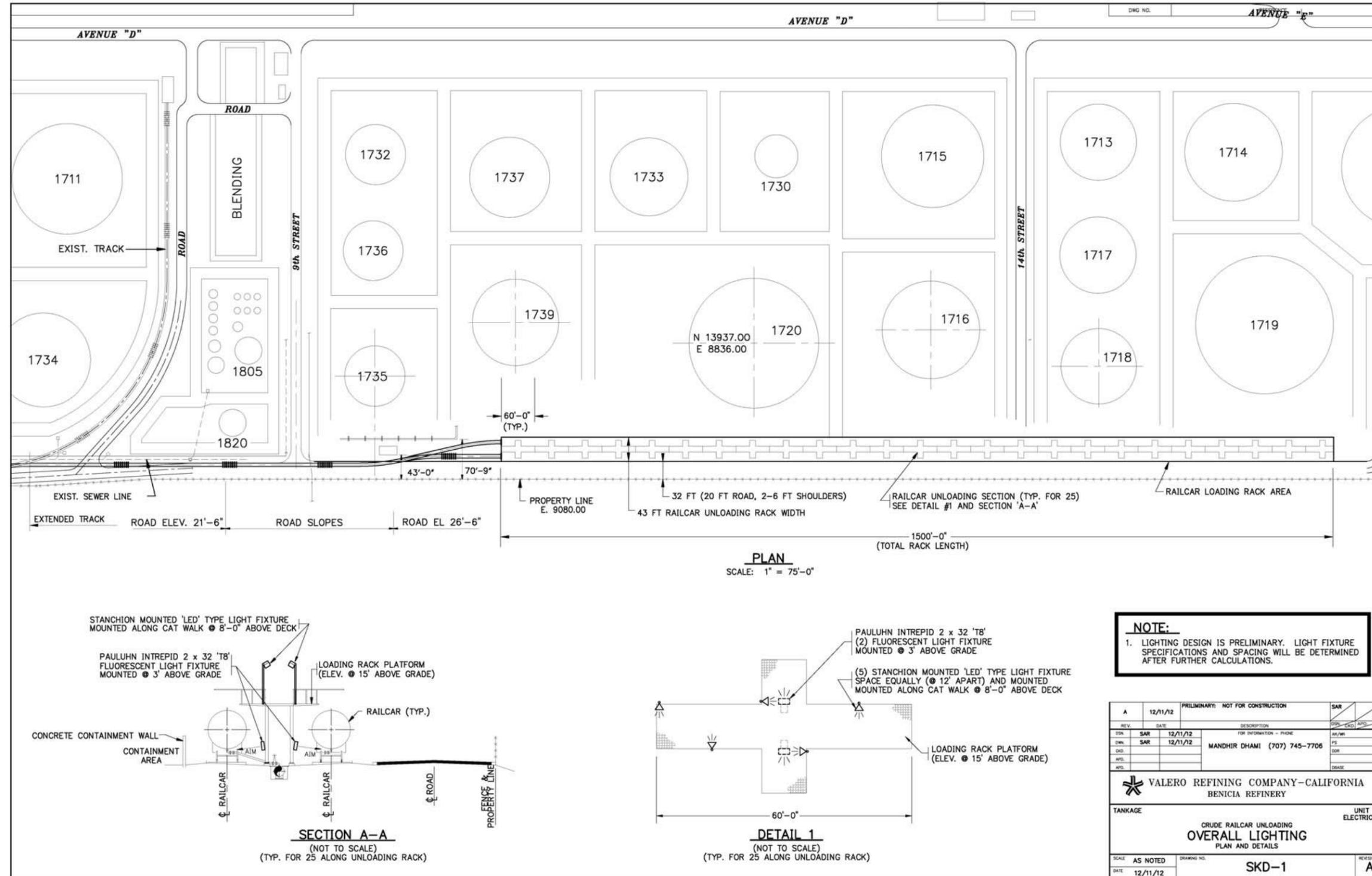


EXHIBIT 2

**EXCERPTS - CITY OF BENICIA, VALERO BENICIA CRUDE BY RAIL
PROJECT, REVISED DRAFT ENVIRONMENTAL IMPACT REPORT
(2015)**

VALERO BENICIA CRUDE BY RAIL PROJECT

Revised Draft Environmental Impact Report
SCH # 2013052074
Use Permit Application 12PLN-00063

Prepared for
City of Benicia

August 2015



Quality and Greenhouse Gas Impacts for Project Subject to CEQA Review“ (BCAQMD, 2014), and Feather River AQMD in “Indirect Source Review Guidelines: A Technical Guide to Assess the Air Quality Impact of Land Use Project” (FRAQMD, 2010).

2.6.2 DEIR Section 4.1.6, Uprail Impacts and Mitigation Measures

Together with the DEIR, this Revised DEIR analyzes emissions from Project-related locomotives traveling along the established rail network between the Refinery, the Roseville Yard, the State border, and (more generally) to the point(s) of the crude oil’s origination. Within the State, emissions would be generated in the Bay Area Basin, the Sacramento Basin, and basins under the jurisdiction of the Placer County APCD, Yolo-Solano AQMD, Tehama County APCD, Butte County APCD, Feather River AQMD, Siskiyou County APCD, Shasta County AQMD, Lassen County APCD, and Northern Sierra AQMD.⁸

Impact 4.1-1: The Project could conflict with implementation of applicable air quality plans. (Significant and Unavoidable)

[As noted in the DEIR Section 4.1.4, the Project would not conflict with the air quality plan for the San Francisco Bay Area. The revisions provided below pertain to air quality plans in other air districts that Project-related trains would travel through between the Refinery and the State line.]

Because the crude by rail trains would cross other air districts between Benicia and the ~~Roseville rail yards~~ California border, indirect emissions from Project-related locomotives were analyzed in the Yolo-Solano YSAQMD, Sacramento Metropolitan SMAQMD, and Placer County APCD, Tehama County APCD, Butte County APCD, Feather River AQMD, Siskiyou County APCD, Shasta County AQMD, Lassen County APCD, and Northern Sierra AQMD. As is discussed in Section 4.1.5 b), significant impacts for NO_x emissions from these locomotives were identified for ~~both the YSAQMD and SMAQMD~~ each of these air districts. Consequently, the Project would conflict with each of these air districts’ applicable air quality plans. See Impacts 4.1-1b and 4.1-5 for additional information.

Impact 4.1-3: The Project could expose sensitive receptors to substantial pollutant concentrations. (Less than Significant)

The BAAQMD recommends that lead agencies assess the incremental toxic air contaminant (TAC) exposure risk to all sensitive receptors within 1,000 feet of a project. Construction of the Project would generate diesel particulate matter (DPM), which is considered to be a TAC, from the use of diesel off-road equipment. For short-term construction emissions, the BAAQMD recommends that construction health risks be evaluated if there are sensitive receptors located within 1,000 feet of the construction site. All project-related construction sources would be temporary (i.e., 25 weeks) and

⁸ The northeastern part of Roseville Yard is in western Placer County and the southwestern part of the yard is in northern Sacramento County.

except different meteorological data sets were used. For Dixon, meteorological data from Davis was used. Data from the Sacramento Executive Airport was used for the modeling analysis in Sacramento and Roseville. Data from this station are more representative of the Sacramento Basin than that used for Benicia or Fairfield. As indicated in Table 4.1-10, the impacts associated with Project-related incremental risk and PM_{2.5} concentrations relative to locomotive emissions at residences in these air districts would less than significant.

**TABLE 4.1-10
MAXIMUM CANCER AND NONCANCER RISK IN THE SACRAMENTO BASIN**

Location of Estimated Health Impact	Cancer Risk (per million)	Chronic Hazard Index	Acute Hazard Index¹	PM_{2.5} Concentration (µg/m³)
Yolo-Solano Air Quality Management District (Dixon) (602805E, 4256360N) 603050 E, 4256574 N	<u>2.2</u> 3.9	<u>0.0004</u> 0.002	<u>N/A</u>	<u>0.002</u> 0.008
Sacramento Metropolitan Air Quality Management District (Sacramento) (642944E, 4283022N) 643028 E, 4283130 N	<u>3.2</u> 4.4	<u>0.0006</u> 0.002	<u>N/A</u>	<u>0.0031</u> 0.009
Placer County Air Pollution Control District (Roseville) (648208E, 4289991N) 648387 E, 4290123 N	<u>3.2</u> 4.6	<u>0.0006</u> 0.002	<u>N/A</u>	<u>0.0031</u> 0.008
Significance Threshold	10	1	<u>N/A</u>	0.3 ug/m ³
Significant Impact?	No	No	<u>N/A</u>	No

¹ For locomotive travel, the only TAC of concern is diesel particulate matter, which does not have an acute health effect.
SOURCE: ERM. 2015a.

Impact 4.1-5: Operation of the Project could contribute to an existing or projected air quality violation uprail from the Roseville Yard. (Significant and Unavoidable)

This air quality assessment evaluates the potential air quality impacts of transporting crude oil along each of the three rail routes from the California border to the Roseville Yard, as described in Section 4.0.4, Geographic Scope of Analysis. The three routes include: Oregon to Roseville, Nevada to Roseville (northern), and Nevada to Roseville (southern) (see Figure 1-3 for an illustration of the routes). Each of the three routes cross multiple air districts that would be affected by the proposed rail transport of crude oil. The affected air districts include:

- Siskiyou County APCD
- Shasta County AQMD
- Tehama County APCD
- Butte County AQMD
- Feather River AQMD
- Lassen County APCD
- Northern Sierra AQMD
- Placer County APCD
- Sacramento Metropolitan AQMD

Unlike the BAAQMD, there are no marine vessel baseline emissions within these air district jurisdictions that would be displaced by the locomotive emissions. Therefore, Project-related

increases in 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 routes.

The methodology used to estimate uprail air pollutant emissions that would be generated by the Project is similar to the methodology used to estimate emissions disclosed in Appendix E of the DEIR. Locomotive exhaust and fugitive emissions from tank cars were estimated using pounds of pollutant per mile travelled emissions factors (see Appendix A of the Revised DEIR). Therefore, the daily distance travelled within each of the air districts is directly proportional to the daily emissions that would be generated within each of the applicable air districts. Because train routing is under the control of UPRR and can vary from day to day, it is not possible to identify a sole railroad route that would be used by Project-related trains. Given the uncertainty of the actual rail route or routes that would be used to transport Project-related crude, this analysis conservatively evaluates emissions relative to three scenarios whereby Project-related trains would travel exclusively along one of the three routes to the California state line. Therefore, the maximum level of emissions that could be generated by Project-related trains within any air district along any of the three routes is calculated.

Project-related rail traffic is assumed to consist of 100 tank cars, four locomotives, and two buffer cars per train. The assumed train schedule used in this analysis consists of one train traveling to and from the Roseville Yard each day. Table 4.1-11 provides the estimated distances traveled within each air district jurisdiction along each rail route. For a conservative analysis, the distances travelled in Placer County APCD and Sacramento Metropolitan AQMD reflect the total distances that would be travelled within those jurisdictions, not just the distances travelled within and uprail of the Roseville Yard. Following the table are emissions summary estimates and associated impact discussions for each of the three route scenarios.

**TABLE 4.1-11
MILES TRAVELED WITHIN AIR DISTRICTS FROM ROSEVILLE TO STATE LINE**

<u>Air District</u>	<u>Oregon to Roseville</u>	<u>Nevada to Roseville (northern)</u>	<u>Nevada to Roseville (southern)</u>
<u>Siskiyou County APCD</u>	<u>89</u>	<u>N/A</u>	<u>N/A</u>
<u>Shasta County AQMD</u>	<u>78</u>	<u>N/A</u>	<u>N/A</u>
<u>Tehama County APCD</u>	<u>40</u>	<u>N/A</u>	<u>N/A</u>
<u>Butte County AQMD</u>	<u>44</u>	<u>53</u>	<u>N/A</u>
<u>Feather River AQMD</u>	<u>26</u>	<u>25</u>	<u>N/A</u>
<u>Placer County APCD*</u>	<u>25</u>	<u>25</u>	<u>93</u>
<u>Sacramento Metropolitan AQMD*</u>	<u>16</u>	<u>16</u>	<u>16</u>
<u>Lassen County APCD</u>	<u>N/A</u>	<u>36</u>	<u>N/A</u>
<u>Northern Sierra AQMD</u>	<u>N/A</u>	<u>95</u>	<u>31</u>
<u>Total Distance</u>	<u>318</u>	<u>250</u>	<u>140</u>

* The distances for Placer County APCD and Sacramento Metropolitan AQMD include total mileage within those jurisdictions.

N/A – Not applicable because Project-related trains would not travel through this air district on this route.

SOURCE: ESA, 2015

Oregon to Roseville Route

Project-related trains travelling along the Oregon to Roseville route would result in the generation of emissions in seven air districts: Siskiyou County, Shasta County, Tehama County, Butte County, Feather River, Placer County, and Sacramento Metropolitan. With the exception of Siskiyou County and Shasta County, these air districts have developed CEQA significance thresholds to identify air pollutant emission levels generated within their jurisdictions that could result in, or contribute to, an exceedance of an air quality standard (TCAPCD, 2015; BCAQMD, 2014; FRAQMD, 2010; PCAPCD, 2012; and SMAQMD, 2014). To evaluate the significance of emissions that would be generated within Siskiyou County and Shasta County, the most stringent thresholds adopted by other air districts along the route (i.e., Tehama County, Butte County, and Feather River) were used. Table 4.1-12 presents the estimated maximum air pollutant emissions for ROG, NO_x, CO, SO_x, PM₁₀, and PM_{2.5} that would be generated within each air district under this route scenario and compares those emissions to the applicable significance thresholds.

As shown in Table 4.1-12, emissions of criteria pollutants associated with Project-related trains travelling along the Oregon to Roseville route would not exceed significance thresholds, with the exception of NO_x. NO_x emissions generated by Project-related rail traffic along this route would exceed the significance thresholds in each of the seven air districts. Consequently, Project-related train traffic along this route would result in a significant impact related to the generation of ozone precursor (i.e., NO_x) emissions.

Nevada to Roseville (northern) Route

Project-related trains travelling along the Nevada to Roseville (northern) route would result in the generation of emissions in six air districts: Butte County, Feather River, Lassen County, Northern Sierra, Placer County, and Sacramento Metropolitan. With the exception of Lassen County and Northern Sierra, these air districts have developed CEQA significance thresholds to identify air pollutant emission levels generated within their jurisdictions that could result in, or contribute to, an exceedance of an air quality standard (BCAQMD, 2014; FRAQMD, 2010; PCAPCD, 2012, and SMAQMD, 2014). To evaluate the significance of emissions that would be generated within Lassen County and Northern Sierra, the most stringent thresholds adopted by other air districts along the route (i.e., Butte County and Feather River) were used. Table 4.1-13 presents the estimated maximum air pollutant emissions that would be generated within each air district and compares those emissions to the applicable significance thresholds.

As shown in Table 4.1-13, emissions of criteria pollutants associated with Project-related trains travelling along the Nevada to Roseville (northern) route would not exceed significance thresholds, with the exception of for NO_x. NO_x emissions generated by Project-related rail traffic along this route would exceed the significance thresholds in each of the six air districts. Consequently, train traffic along this route would result in a significant impact related to the generation of ozone precursor (i.e., NO_x) emissions.

**TABLE 4.1-12
PROJECT-RELATED CRITERIA POLLUTANT EMISSIONS – OREGON TO ROSEVILLE ROUTE**

	Emissions (pounds/day)					
	ROG	NO_x	CO	SO_x	PM₁₀	PM_{2.5}
<u>Siskiyou County APCD</u>						
Train Emissions	<u>23.5</u>	<u>474.8</u>	<u>93.5</u>	<u>0.3</u>	<u>12.7</u>	<u>12.3</u>
Threshold of Significance	<u>25</u>	<u>25</u>	<u>None</u>	<u>None</u>	<u>80</u>	<u>None</u>
Exceed Threshold?	<u>No</u>	<u>Yes</u>	<u>---</u>	<u>---</u>	<u>No</u>	<u>---</u>
<u>Shasta County AQMD</u>						
Train Emissions	<u>20.6</u>	<u>416.1</u>	<u>82.0</u>	<u>0.3</u>	<u>11.1</u>	<u>10.8</u>
Threshold of Significance	<u>25</u>	<u>25</u>	<u>None</u>	<u>None</u>	<u>80</u>	<u>None</u>
Exceed Threshold?	<u>No</u>	<u>Yes</u>	<u>---</u>	<u>---</u>	<u>No</u>	<u>---</u>
<u>Tehama County APCD</u>						
Train Emissions	<u>10.5</u>	<u>213.4</u>	<u>42.0</u>	<u>0.2</u>	<u>5.7</u>	<u>5.5</u>
Threshold of Significance	<u>25</u>	<u>25</u>	<u>None</u>	<u>None</u>	<u>80</u>	<u>None</u>
Exceed Threshold?	<u>No</u>	<u>Yes</u>	<u>---</u>	<u>---</u>	<u>No</u>	<u>---</u>
<u>Butte County AQMD</u>						
Train Emissions	<u>11.6</u>	<u>234.7</u>	<u>46.2</u>	<u>0.2</u>	<u>6.3</u>	<u>6.1</u>
Threshold of Significance	<u>25</u>	<u>25</u>	<u>None</u>	<u>None</u>	<u>80</u>	<u>None</u>
Exceed Threshold?	<u>No</u>	<u>Yes</u>	<u>---</u>	<u>---</u>	<u>No</u>	<u>---</u>
<u>Feather River AQMD</u>						
Train Emissions	<u>6.9</u>	<u>138.7</u>	<u>27.3</u>	<u>0.1</u>	<u>3.7</u>	<u>3.6</u>
Threshold of Significance	<u>25</u>	<u>25</u>	<u>None</u>	<u>None</u>	<u>80</u>	<u>None</u>
Exceed Threshold?	<u>No</u>	<u>Yes</u>	<u>---</u>	<u>---</u>	<u>No</u>	<u>---</u>
<u>Placer County APCD</u>						
Train Emissions*	<u>8.7</u>	<u>164.6</u>	<u>29.4</u>	<u>0.1</u>	<u>4.2</u>	<u>4.1</u>
Threshold of Significance	<u>82</u>	<u>82</u>	<u>None</u>	<u>None</u>	<u>82</u>	<u>None</u>
Exceed Threshold?	<u>No</u>	<u>Yes</u>	<u>---</u>	<u>---</u>	<u>No</u>	<u>---</u>
<u>Sacramento Metropolitan AQMD</u>						
Train Emissions**	<u>4.1</u>	<u>82.7</u>	<u>16.3</u>	<u>0.1</u>	<u>2.2</u>	<u>2.1</u>
Threshold of Significance	<u>65</u>	<u>65</u>	<u>None</u>	<u>None</u>	<u>None</u>	<u>None</u>
Exceed Threshold?	<u>No</u>	<u>Yes</u>	<u>---</u>	<u>---</u>	<u>--</u>	<u>---</u>

* Emissions identified within Placer County APCD include locomotive exhaust and tank car fugitive emissions uprail of the Roseville Yard and emissions from switching activities at the yard.

** Although only a portion of the Roseville Yard (i.e., approximately 1 mile) is within the Sacramento Metropolitan AQMD, the emissions estimates include locomotive exhaust and tank car fugitive emissions that would be generated within the entire jurisdiction of the Sacramento Metropolitan AQMD.

SOURCE: ESA, 2015.

**TABLE 4.1-13
PROJECT-RELATED CRITERIA POLLUTANT EMISSIONS
NEVADA TO ROSEVILLE (NORTHERN) ROUTE**

	Emissions (pounds/day)					
	ROG	NO_x	CO	SO_x	PM₁₀	PM_{2.5}
<u>Butte County AQMD</u>						
<u>Train Emissions</u>	<u>14.0</u>	<u>282.8</u>	<u>55.7</u>	<u>0.2</u>	<u>7.5</u>	<u>7.3</u>
<u>Threshold of Significance</u>	<u>25</u>	<u>25</u>	<u>None</u>	<u>None</u>	<u>80</u>	<u>None</u>
<u>Exceed Threshold?</u>	<u>No</u>	<u>Yes</u>	<u>---</u>	<u>---</u>	<u>No</u>	<u>---</u>
<u>Feather River AQMD</u>						
<u>Train Emissions</u>	<u>6.6</u>	<u>133.4</u>	<u>26.3</u>	<u>0.1</u>	<u>3.6</u>	<u>3.5</u>
<u>Threshold of Significance</u>	<u>25</u>	<u>25</u>	<u>None</u>	<u>None</u>	<u>80</u>	<u>None</u>
<u>Exceed Threshold?</u>	<u>No</u>	<u>Yes</u>	<u>---</u>	<u>---</u>	<u>No</u>	<u>---</u>
<u>Lassen County APCD</u>						
<u>Train Emissions</u>	<u>9.5</u>	<u>192.1</u>	<u>37.8</u>	<u>0.1</u>	<u>5.1</u>	<u>5.0</u>
<u>Threshold of Significance</u>	<u>25</u>	<u>25</u>	<u>None</u>	<u>None</u>	<u>80</u>	<u>None</u>
<u>Exceed Threshold?</u>	<u>No</u>	<u>Yes</u>	<u>---</u>	<u>---</u>	<u>No</u>	<u>---</u>
<u>Northern Sierra AQMD</u>						
<u>Train Emissions</u>	<u>25.0</u>	<u>506.8</u>	<u>99.8</u>	<u>0.4</u>	<u>13.5</u>	<u>13.1</u>
<u>Threshold of Significance</u>	<u>25</u>	<u>25</u>	<u>None</u>	<u>None</u>	<u>80</u>	<u>None</u>
<u>Exceed Threshold?</u>	<u>No</u>	<u>Yes</u>	<u>---</u>	<u>---</u>	<u>No</u>	<u>---</u>
<u>Placer County APCD</u>						
<u>Train Emissions*</u>	<u>8.7</u>	<u>164.6</u>	<u>29.4</u>	<u>0.1</u>	<u>4.2</u>	<u>4.1</u>
<u>Threshold of Significance</u>	<u>82</u>	<u>82</u>	<u>None</u>	<u>None</u>	<u>82</u>	<u>None</u>
<u>Exceed Threshold?</u>	<u>No</u>	<u>Yes</u>	<u>---</u>	<u>---</u>	<u>No</u>	<u>---</u>
<u>Sacramento Metropolitan AQMD</u>						
<u>Train Emissions**</u>	<u>4.1</u>	<u>82.7</u>	<u>16.3</u>	<u>0.1</u>	<u>2.2</u>	<u>2.1</u>
<u>Threshold of Significance</u>	<u>65</u>	<u>65</u>	<u>None</u>	<u>None</u>	<u>None</u>	<u>None</u>
<u>Exceed Threshold?</u>	<u>No</u>	<u>Yes</u>	<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>

* Emissions identified within Placer County APCD include locomotive exhaust and tank car fugitive emissions uprail of the Roseville Yard and emissions from switching activities at the yard.

** Although only a portion of the Roseville Yard (i.e., approximately 1 mile) is within the Sacramento Metropolitan AQMD, the emissions estimates include locomotive exhaust and tank car fugitive emissions that would be generated within the entire jurisdiction of the Sacramento Metropolitan AQMD.

SOURCE: ESA, 2015.

Nevada to Roseville (southern) Route

Project-related trains travelling along the Nevada to Roseville (southern) route would result in the generation of emissions in three air districts: Northern Sierra, Placer County, and Sacramento Metropolitan. Placer County and Sacramento Metropolitan have adopted CEQA significance thresholds to identify air pollutant emission levels generated within their jurisdictions that could result in, or contribute to, an exceedance of an air quality standard (PCAPCD, 2012 and SMAQMD, 2014). Northern Sierra does not have adopted significance thresholds; therefore, to

assess the significance of emissions generated within this jurisdiction, the emissions are compared to the Placer County APCD significance thresholds, which are the most stringent thresholds of the other two districts along the route. Table 4.1-14 presents the estimated maximum air pollutant emissions that would be generated within each of the air districts and compares those emissions to the applicable significance thresholds.

**TABLE 4.1-14
PROJECT-RELATED CRITERIA POLLUTANT EMISSIONS
NEVADA TO ROSEVILLE (SOUTHERN) ROUTE**

	Emissions (pounds/day)					
	ROG	NO_x	CO	SO_x	PM₁₀	PM_{2.5}
<u>Northern Sierra AQMD</u>						
<u>Train Emissions</u>	<u>8.2</u>	<u>165.4</u>	<u>32.6</u>	<u>0.1</u>	<u>4.4</u>	<u>4.3</u>
<u>Threshold of Significance</u>	<u>65</u>	<u>65</u>	<u>None</u>	<u>None</u>	<u>82</u>	<u>None</u>
<u>Exceed Threshold?</u>	<u>No</u>	<u>Yes</u>	<u>---</u>	<u>---</u>	<u>No</u>	<u>---</u>
<u>Placer County APCD</u>						
<u>Train Emissions*</u>	<u>26.6</u>	<u>527.4</u>	<u>100.8</u>	<u>0.4</u>	<u>13.9</u>	<u>13.5</u>
<u>Threshold of Significance</u>	<u>82</u>	<u>82</u>	<u>None</u>	<u>None</u>	<u>82</u>	<u>None</u>
<u>Exceed Threshold?</u>	<u>No</u>	<u>Yes</u>	<u>---</u>	<u>---</u>	<u>No</u>	<u>---</u>
<u>Sacramento Metropolitan AQMD</u>						
<u>Train Emissions**</u>	<u>4.1</u>	<u>82.7</u>	<u>16.3</u>	<u>0.1</u>	<u>2.2</u>	<u>2.1</u>
<u>Threshold of Significance</u>	<u>65</u>	<u>65</u>	<u>None</u>	<u>None</u>	<u>None</u>	<u>None</u>
<u>Exceed Threshold?</u>	<u>No</u>	<u>Yes</u>	<u>---</u>	<u>---</u>	<u>---</u>	<u>---</u>

* Emissions identified within Placer County APCD include locomotive exhaust and tank car fugitive emissions uprail of the Roseville Yard and emissions from switching activities at the yard.

** Although only a portion of the Roseville Yard (i.e., approximately 1 mile) is within the Sacramento Metropolitan AQMD, the emissions estimates include locomotive exhaust and tank car fugitive emissions that would be generated within the entire jurisdiction of the Sacramento Metropolitan AQMD.

SOURCE: ESA, 2015

As shown in Table 4.1-14, emissions of criteria pollutants associated with Project-related trains travelling along the Nevada to Roseville (southern) route would not exceed significance thresholds, with the exception of for NO_x. NO_x emissions generated by Project-related rail traffic along this route would exceed the significance thresholds in all three jurisdictions. Consequently, Project-related train traffic along this route would result in a significant impact related to the generation of ozone precursor (i.e., NO_x) emissions.

Total Net Emissions, including Operations Outside the San Francisco Bay and Sacramento Basins of California

As explained above, if the Project were approved and constructed, Project-related trains would travel between oil field locations in North America and the Roseville Yard. These Refinery. In addition to pollutant emissions that would be generated within California air basins, these trains also would cause an increase in locomotive emissions outside of California. These impacts can be described only in general terms, however, because it is impossible to predict the routes that Project-

related trains would take across North America with any degree of certainty. In both the short and the long term, Valero UPRR could obtain crude oil from oil fields in Louisiana, Texas, Oklahoma, North Dakota, and/or parts of western Canada. Any choose any route for any delivery. Accordingly, any attempt to identify and quantify the impact of locomotive emissions associated with the Project on air quality in this vast region, without even knowing where the trains will come from, outside of California would be highly speculative. The Project also would also eliminate maritime emissions from ships traveling between the Refinery and oil field locations in Alaska, South America, the Middle East, and other parts of the world. Similarly For the reasons described above, these emissions can be described only in general terms because it is impossible to identify and quantify emissions across the vast range of possible routes.

This analysis generally describes the net impact of the Project on in terms of overall generation of air quality pollutant emissions, including outside the boundaries of the Bay Area and Sacramento Basins of California, by comparing locomotive emissions with emissions from marine vessels. First, the analysis identifies the relative rate of emissions for ships and trains, for each pollutant, based on a specified distance (1,000 miles) and a specified load (1 million barrels). The results are set forth in Table 4.1-715. For both locomotives and vessels, the emissions estimates are based on average emissions factors. Second, this analysis applies these emissions factors to a few scenarios that take into account the length of specified trips.

TABLE 4.1-15 7
LOCOMOTIVE AND MARINE VESSEL EMISSIONS FACTORS COMPARISON
FOR 1,000,000 BARRELS DELIVERED PER 1,000 MILES TRAVELLED
OUTSIDE OF THE BAY AREA AND SACRAMENTO BASINS

Sources	tons per thousand miles hauled per million barrels delivered					
	ROG	NO _x	CO	SO _x	PM ₁₀	PM _{2.5}
Locomotives – large line haul	0.91	19.1	3.75	0.01	0.51	0.49
Marine Vessel Main Engines	0.65	11.7	0.97	1.62	0.32	0.32

SOURCE: ESA 2014; See Appendix E.5

As Table 4.1-715 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, however, for SO_x. Even with these emissions factors, there is no way to estimate with any certainty the net effect of the Project on areas outside of the Bay Area and Sacramento Basins California because there is no way to predict the length of locomotive trips that could occur if the Project were approved, or the length of marine vessel trips that would occur if the Project were not approved cannot be predicted with reasonable accuracy.

For purposes of a general analysis, it is useful to consider several examples. Currently, vessels carrying crude oil from Alaska to the Refinery travel approximately 2,000 miles (from the terminus of the TransAlaska pipeline), vessels carrying crude oil from South America to the Refinery travel roughly 4,000 miles, and vessels carrying crude oil from the Middle East to the Refinery travel roughly 8,500 miles. Using a weighted-average composite distance for crude oil

delivered to the Refinery from source countries-of-origin during the baseline period, Valero has estimated that the average maritime distance travelled from source to the Refinery was 7,305 miles. By comparison, a train carrying North American crude oil to the Refinery could travel roughly 1,500 miles. Based on these distances, Table 4.1-816 generally compares baseline emissions from marine vessels traveling outside of the Bay Area and Sacramento Basins with locomotive emissions from trains traveling outside of the Bay Area and Sacramento Basins.

**TABLE 4.1-816
EXAMPLES OF TOTAL NET EMISSIONS, INCLUDING OUTSIDE OF THE BAY AREA AND SACRAMENTO BASINS CALIFORNIA**

Emission Sources for Example Crude Oil Origins	Example One-Way Distance (miles)	Tons per 25,550,000 Barrels Delivered per Year					
		ROG	NO _x	CO	SO _x	PM ₁₀	PM _{2.5}
Baseline Marine Vessel Main Engines - Alaskan Origin*	2,000	66.4	1,194.6	99.6	165.9	33.2	33.2
Baseline Marine Vessel Main Engines - South American Origin	4,000	132.7	2,389.2	199.1	331.8	66.4	66.4
Baseline Marine Vessel Main Engines - Middle East Origin	8,500	282.1	5,077.0	423.1	705.1	141.0	141.0
Baseline Marine Vessel Main Engines - Composite Origin	7,305	242.4	4,363.2	363.6	606.0	121.2	121.2
Project Locomotives - large line haul from North American Origin	1,500	69.6	1,460.5	287.7	1.0	38.9	37.8
Net Emissions with Alaskan Origin Baseline	---	3.2	265.9	188.2	-164.9	5.8	-4.6 4.6
Net Emissions with South American Origin Baseline	---	-63.19	-928.71	88.63	-330.81	-27.43	-28.59
Net Emissions with Middle East Origin Baseline	---	-212.51	-3,616.52	-135.35	-704.11	-102.10	-103.25
Net Emissions with Composite Baseline Origin Baseline	---	-172.86	-2,902.76	-75.87	-604.98	-82.27	-83.43

* This estimate excludes emissions from operation of the pipeline from the North Slope to the marine terminal.

SOURCE: ESA, 2014; See Appendix E.5

As indicated in Table 4.1-816, net emissions ~~that would be generated outside of the Bay Area and Sacramento Basins~~ are highly dependent on the origin of the crude oil source. However, due to the uncertainty of the origins of the crude oil that would be delivered by rail as well as the origins of the crude oil that would be displaced, the Project emissions data presented in Table 4.1-816 are disclosed for comparison purposes only and cannot be relied upon with assurance as the basis for any significance determinations. The comparison indicates that the Project would reduce total net emissions from the crude oil's points of origin, unless all marine vessels came from Alaska (although SO_x would still be higher under this scenario).

As disclosed in Tables 4.1-12 through 4.1-14, Project-related train traffic along the three routes within California uprail of the Roseville Yard would result in the generation of ozone precursor

(i.e., NO_x) emissions that could result in, or contribute to, an exceedance of an air quality standard in each of the air districts along the routes, which would be a significant impact.

Mitigation Discussion

As a general rule, CEQA requires an EIR to describe mitigation measures that could, if implemented, minimize significant environmental effects (14 Cal. Code Regs. §§15126(c), 15126.1(a)). Under CEQA Guidelines Section 15370, “mitigation” includes, among other things, minimization of an impact (by limiting the degree or magnitude of the action and its implementation) and compensation for an impact (by replacing or providing substitute resources).

There are several existing technologies available to reduce locomotive emissions, including the use of ultra low-emitting switch locomotives and use of new Tier 4 interstate line haul locomotives (CARB, 2009).⁹ If UPRR were required not only to ensure that all switch locomotives used to direct Project-related rail cars are ultra low-emitting switch locomotives but also to use exclusively Tier 4 interstate haul Project-related rail cars, then Project-related locomotive emissions would be reduced substantially in all air districts that the locomotives would travel and could reduce locomotive NO_x emissions generated within the Placer County APCD along the Oregon to Roseville and Nevada to Roseville (northern) routes, as well as within the Sacramento Metropolitan AQMD along all three uprail routes, to levels that would be considered less than significant. NO_x emissions impacts within all of the other subject air districts would remain at levels that would be considered significant (ESA, 2015).

Compensation also could reduce the significance of Project-related locomotive emissions. Two uprail air districts, Placer County and Sacramento Metropolitan, have off-site mitigation programs that include payment of fees to fund emission reduction activities within their respective air basins. However, the Placer County APCD recommends that the fee be paid at the time of recordation of the Final Map (for residential projects) or issuance of a Building Permit (for non-residential projects) (PCAPCD, 2012). Neither trigger would be met by UPRR’s operation of its locomotives along existing routes; therefore, this off-site mitigation fee program would not apply to the Project. Sacramento Metropolitan’s off-site mitigation fee program appears to be geared toward construction emissions; however, there is no reason based on the plain language of the program why it could not apply to locomotive emissions or require the payment of a fee. If UPRR were required to enter into a voluntary emission reduction agreement (VERA) with the Sacramento Metropolitan AQMD to pay an annual off-site mitigation fee for Project-related locomotive emissions of NO_x generated within the air district in excess of 65 pounds per day in an amount equal to \$17,720 per ton of emissions per year, the fee could be used to fund

⁹ In March 2008, USEPA established federal emission standards for NO_x, hydrocarbons (HC), CO, particulate matter, and smoke for newly manufactured and remanufactured locomotives. These standards, which are referred to as the “2008 Locomotive Rule” are codified at 40 Code of Federal Regulation (CFR) Part 1033. They include several sets of emission standards with applicability dependent on the date a locomotive is/was first manufactured. The standards also apply to existing locomotives when they are remanufactured, which typically is required every 7 to 10 years. The first set of standards (Tier 0) applies to most locomotives originally manufactured before 2001. The most stringent set of standards (Tier 4) applies to locomotives originally manufactured in 2015 and later. The requirements also reduce idling for new and remanufactured locomotives. This year (2015), newly manufactured line haul locomotives are required to meet Tier 4 emission standards; however, CARB estimates that the national Tier 4 locomotive fleet turnover will occur gradually over 30 years from 2015 to 2045. (CARB, 2009).

diesel emission reduction projects in Sacramento County. Although this would not directly reduce Project-related locomotive emissions, it would effectively reduce the significant impact in Sacramento County to a less-than-significant level because the air district would use the mitigation fee to fund diesel emission reduction projects in Sacramento County that would offset Project-related locomotive emissions that would exceed the air district's significance threshold for NO_x.

However, "If the lead agency determines that a mitigation measure cannot be legally imposed, the measure need not be proposed or analyzed. Instead, the EIR may simply reference that fact and briefly explain the reasons underlying the lead agency's determination." (14 Cal. Code Regs. §15126.4(a)(5)). CEQA Guidelines Section 15364 defines "feasible" as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account several factors, including legal, social, and policy ones. Mitigation measures that are beyond a lead agency's powers to impose or enforce are legally infeasible. *Kenneth Mebane Ranches v. Superior Court* (1992) 10 Cal.App.4th 276.

As explained in Revised DEIR Appendix G, the City cannot regulate UPRR's rail operations either directly, by dictating routing or choice of locomotives, or indirectly, by requiring Valero to pay a mitigation fee or purchase emissions offsets. Any such attempt would be preempted by federal law, which proscribes any mitigation measure that would have the effect of managing or governing rail operations.

For these reasons, mitigation measures requiring the use of ultra low-emitting switch locomotives, use of new Tier 4 interstate line haul locomotives, or compensation to reduce the significance of Project-related locomotive emissions in specific air districts are infeasible. Accordingly, Impact 4.1-5, regarding the Project's contribution to an existing or projected air quality violation uprail from the Roseville Yard would remain significant and unavoidable.

Mitigation Measures: None available.

Impact 4.1-6: The Project could expose sensitive receptors uprail from the Roseville Yard to substantial pollutant concentrations associated with locomotive emissions. (Less than Significant)

Health risks and PM_{2.5} concentrations were estimated for the three potential train routes between the Roseville Yard and the California border. Locomotive emissions, meteorological data, and sensitive receptor locations for each route were entered into the AERMOD dispersion model. PM₁₀ emissions from locomotives were used to represent diesel particulate matter (DPM). For the Oregon to Roseville route, the analysis used meteorological data from the Redding Municipal Airport for Redding and from the Yuba County Municipal Airport for Marysville. For the Nevada to Roseville (northern) route, the analysis used meteorological data from the Chico Municipal Airport for Chico, and from the Yuba County Municipal Airport for Marysville. For the Nevada to Roseville (southern) route, the analysis used meteorological data from the Auburn Municipal Airport for Auburn and from the Truckee – Tahoe Airport for Truckee. Table 4.1-17 shows the results of the health risk

analysis. The results are conservative in that they assume that all Project-related train traffic would travel exclusively on each route. Actual train traffic and the resulting emissions would likely be split among the three routes. The Project would not result in a significant health risk because, for each route, the worst-case cancer risks would be less than 10 in a million and the maximum chronic hazard index would be less than one. In addition, the Project's maximum estimated PM_{2.5} annual concentrations would be less than 0.8 micrograms per cubic meter (µg/m³) on all three routes, which is less than the significance threshold for specific projects used by the BAAQMD.

**TABLE 4.1-17
MAXIMUM CANCER RISK, CHRONIC HAZARD, AND PM_{2.5} CONCENTRATIONS
ALONG THE THREE TRAIN ROUTES UPRAIL OF THE ROSEVILLE YARD**

Train Route	Location of Maximum Estimated Health Impact	Cancer (per million)¹	Chronic Hazard Index	PM_{2.5} Annual Concentration (µg/m³)
Roseville to Oregon	Marysville – eastern	5.5	0.0011	0.0052
	Marysville – western	4.9	0.0009	0.0047
	Redding	6.3	0.0012	0.0060
Roseville to Nevada (northern)	Marysville – eastern	5.5	0.0011	0.0052
	Marysville – western	4.9	0.0009	0.0047
	Chico	5.5	0.0011	0.0052
Roseville to Nevada (southern)	Auburn – eastern	4.6	0.0009	0.0043
	Auburn – western	5.2	0.0010	0.0050
	Truckee	4.5	0.0009	0.0043
Significance Threshold		10	1	0.8

¹ Cancer risk calculation includes age sensitivity factors and breathing rates representative of the 95th percentile for all ages, as recommended in the Updated OEHHA Guidelines (OEHHA, 2015). For locomotive travel, the only TAC of concern is diesel particulate matter, which does not have an acute health effect.

SOURCE: ERM, 2015b.

Impact 4.1-7: The Project could result in cumulatively considerable net increases in ozone precursor emissions in uprail air districts. (Significant and Unavoidable)

With the exception of Siskiyou County APCD, which is attainment or unclassified for all federal and state ambient air quality standards (AAQs), each of the uprail air districts are non-attainment of an ozone, PM₁₀, and/or PM_{2.5} federal and/or state AAQS.

Based on guidance from Tehama County APCD, Butte County AQMD, Sacramento Metropolitan AQMD, and Feather River AQMD, if a project within their respective jurisdictions would result in an increase in criteria pollutants of more than their respective average daily mass significance thresholds, then it also would be considered to contribute considerably to a significant cumulative impact (TCAPCD, 2015; BCAQMD, 2014; and FRAQMD, 2010). For projects in Placer County, the Placer County APCD recommends the use of a ROG and NO_x cumulative impact threshold of 10 pounds per day (PCAPCD, 2012). As discussed under Impact 4.1-5 above, Project-related emissions that would be generated with the jurisdictions of Tehama County APCD, Butte County AQMD, Siskiyou County APCD, Shasta County AQMD, Lassen County APCD, Northern Sierra AQMD, and Feather River AQMD would exceed the incremental project significance thresholds

for NO_x under each of the route scenarios. In addition, NO_x emissions generated in Placer County would exceed the cumulative 10 pounds per day significance threshold under each route scenario and ROG emissions generated in Placer County under the Nevada to Roseville (southern) scenario would exceed the 10 pound per significance threshold. Therefore, implementation of the Project would result in a cumulatively considerable increase of NO_x emissions in Yolo-Solano AQMD, Sacramento Metropolitan AQMD, Tehama County APCD, Butte County AQMD, Siskiyou County APCD, Shasta County AQMD, Lassen County APCD, Northern Sierra AQMD, Feather River AQMD, and Placer County APCD, and a cumulatively considerable increase in ROG emissions in Placer County APCD related to the Nevada to Roseville (southern) route, and the associated cumulative impact would be significant and unavoidable.

Mitigation: None available.

Impact 4.1-8: The Project could generate objectionable odors affecting a substantial number of people along uprail routes. (Less than Significant)

Project uprail operations would include the generation of diesel exhaust from train locomotives that could result in the creation of objectionable odors. However, these emissions would be temporary and/or intermittent in nature and the closest sensitive receptors to the railroad are residences that are set back from the railroad, thus odor impacts associated with diesel combustion during Project operations would be less than significant. This impact would be less than significant.

Mitigation: No mitigation required.

2.6.3 Summary of Air Quality Impacts

Potential direct and indirect effects of Project components in the vicinity of the Refinery and between the Refinery and the Roseville Yard are analyzed in DEIR Section 4.1 (p. 4.1-1 et seq.); potential cumulative effects of these components are analyzed in DEIR Section 5.4.3.1 (p. 5-5; 5-12 to 5-14). Potential direct and indirect effects of Project-related transport of crude by rail uprail from the Roseville Yard to the State border and beyond are analyzed in Revised DEIR Section 2.6; potential cumulative effects of travel along these routes are analyzed in Revised DEIR Section 2.17.4.

Acknowledging that neither Valero nor the City has authority to dictate or limit routes selected by UPRR (see DEIR Section 3.7, *Federal Preemption of Railroad Regulation*, DEIR Appendix L, and Revised DEIR Appendix G), it is possible that Project-related crude oil could reach the Refinery from the south rather than by way of Roseville. Potential air quality-related direct, indirect, and cumulative impacts of crude oil transport via a southern California rail route are expected to be substantially similar to the type and severity of impacts that could result between the Refinery and the State border via any of the northern routes. For example, the locomotives' internal combustion engines would emit criteria pollutants and toxic air emissions that would or could exceed air pollution control district thresholds and, thereby, result in a significant and unavoidable impact related to significance criteria a) regarding conflicts with air quality plans,

TABLE 4.6-6¹³
EMISSIONS FACTORS COMPARISON FOR 1,000,000 BARRELS DELIVERED
PER 1,000 MILES TRAVELLED OUTSIDE OF CALIFORNIA

Sources	Metric tons CO₂e per thousand miles hauled per million barrels delivered
Locomotives – large line haul	1,321
Marine Vessel Main & Aux Engines, Open Ocean	876

SOURCE: ESA, 2014; See Appendix E.5

TABLE 4.6-7
EXAMPLES OF GHG EMISSIONS OUTSIDE OF CALIFORNIA

Emission Sources for Example Crude Oil Origins	Example One-Way Distance (miles)	Metric tons CO₂e per 25,550,000 Barrels Delivered per Year (round trip)
Project Locomotives – large line haul from composite North American Origin	1,500	101,219
Baseline Marine Vessel Engines - Alaskan Origin	2,000	89,540
Baseline Marine Vessel Engines – South American Origin	4,000	179,080
Baseline Marine Vessel Engines –Middle East Origin	8,500	380,554
Baseline Marine Vessel Engines – Composite Baseline Origin	7,305	327,044
Net Emissions with Alaskan Origin Baseline	--	11,679
Net Emissions with South American Origin Baseline	--	-77,861
Net Emissions with Middle East Origin Baseline	---	-279,325
Net Emissions with Composite Baseline Origin Baseline	---	-225,825

* This estimate excludes emissions from operation of any pipeline to terminal of origin. The weighted average of sea distances between various ports from which crude oil was imported during the baseline period and the Refinery terminal.

SOURCE: ESA, 2014; See Appendix E.5

As indicated in Table 4.6-6~~7~~, delivery of crude oil by large line haul tank cars would result in lower overall emissions outside of the State than delivery of crude oil by marine vessel from the composite baseline origin. Net GHG emissions that would be generated outside of the State are highly dependent on the origin of the crude oil source and due to the uncertainty in the origins of the crudes that would be delivered by rail as well as the origins of the crudes that would be displaced, the net Project emissions estimates presented in Table 4.6-7 are disclosed for comparison purposes only.

¹³ The estimates provided in Table 4.6-7 do not include the following emissions, which occur in California: locomotive emissions associated with small-line (25-rail car trains) hauling or switching that would occur at or in the vicinity of the Refinery, and the marine vessel emissions do not include emissions from main and auxiliary engines and auxiliary boiler operation associated with slow cruise in reduced speed zone, vessel maneuvering, or hoteling at the Refinery dock (i.e., operation of main and auxiliary engines and boilers at/near the dock) or emissions associated with tugboat escorts and berthing, because it would be overly speculative to attempt to estimate such emissions.

EXHIBIT 3

**TRANSCRIPT OF RECORD BENICIA SPECIAL PLANNING
COMMISSION MEETING (FEB. 11, 2016)**

TRANSCRIPTION OF THE VIDEOTAPED
BENICIA SPECIAL PLANNING COMMISSION MEETING

Date: Thursday, February 11, 2016

Transcribed By: Josie C. Gonzalez
CSR No. 13435

Job No. 7077

1 about that. We will be able to provide that for you as
2 well as members of the public in just a few minutes.

3 CHAIR DEAN: Okay. Do you want to hold off on
4 the preemption for a couple minutes and talk about some
5 of these other issues? No?

6 MS. RATCLIFF: No, I think this is fine.

7 MR. HOGIN: Mr. Chair and members of commission,
8 I am going to take just a few minutes to respond to some
9 of the questions and the comments that were received
10 both from the commission and from members of the
11 audience that spoke on the issue of preemption. To
12 start off the discussion, I'm just going to briefly
13 summarize what the staff's position is on preemption so
14 we can tee up the issues and refresh everyone's
15 recollection.

16 There's basically four points to it. First,
17 CEQA does apply in the view of staff to the on-site
18 operations that Volero has purposed, including the
19 unloading rack and related facilities that will be
20 owned, operated and constructed by Volero. Second, the
21 city has required Volero to participate in the
22 disclosure of impacts that will occur from rail
23 operations, which includes impacts from locomotive
24 emissions, impacts related to hazards and potential for
25 derailment and fire explosion and so on. All the

1 impacts that occur up rail of the Benicia Refinery.

2 I will note that in those two respects, staff
3 has taken a narrower view of preemption than Volero.
4 Volero asserted quite strenuously that CEQA does not
5 apply to the project at all, and Volero asserted quite
6 strenuously that the disclosure requirement is preempted
7 in addition to any other matters. The districts -- I'm
8 sorry. The city staff's view of preemption is not the
9 same as Volero, and it is in fact, in important
10 respects, significantly narrower.

11 The third point is that the staff has concluded
12 that mitigation of rail impacts is preempted. The city
13 does not have the authority to attempt to condition
14 Volero's permit on any mitigation of impacts that are
15 caused by railroad operations.

16 Finally, the fourth point is corollary of that.
17 The city does not have the authority to deny the permit
18 based on rail impacts, and that's in two respects. One,
19 the city doesn't have the ability to find, in weighing
20 the conditional use permit application, that the project
21 will be detrimental to the health, safety and welfare of
22 the community based on rail impacts. Could have other
23 on-site impacts, but not based on rail impacts.

24 And second, the requirement in Public Resources
25 Code Section 21081 that the city adopt a statement of

1 significant and unavoidable impacts, I have serious
2 concerns with the EIR, and there are serious flaws.

3 CHAIR DEAN: Commissioner Oakes.

4 COMMISSIONER OAKES: Thank you. Way to echo
5 many of the things -- I didn't know this was going to be
6 a full-time job as it was for everybody here. I think
7 everybody started the process with the same thing:

8 Let's get this right. I think everybody has worked real
9 hard to do that. I think we found some serious flaws in
10 the EIR. I think they go around the traffic impacts
11 that we have here. I still think that we are not
12 counting all of the emissions that are not accurately
13 portrayed. I think we need to evaluate those as well.

14 For to be told at the 11th hour that we have
15 virtually no options when it comes to rail is -- I don't
16 know what the correct word is, but it's not nice. I
17 can't tell you how many hundreds of hours I personally
18 have spent -- and anxious, frustrated. I don't
19 de-stress well. Being here, working at night, my wife
20 working days, some of those other stress-management
21 options aren't available. We have to laugh sometime.

22 I don't want to be complicit in a decision made
23 here with what has become a social nightmare across our
24 country. That is -- they don't even call them crude oil
25 trains. They call them bomb trains. I don't

1 necessarily agree with that. I think everybody in the
2 process, again, wants to do the right thing. But I
3 think that the business has outstripped the technology
4 in common sense. Until we can write that, I have a hard
5 time allowing that stuff in our country -- in our state
6 here, which is an island, they have already told us.
7 It's an oil island. Let's keep it out. We don't know
8 enough about it.

9 In the early 1980's -- in the early 1990's I was
10 a founder, co-founder, and first president of the first
11 clean-air vehicle coalition in the Bay Area. We -- I
12 fought for that because I thought it was the right thing
13 to do. Things have changed. But without the technology
14 that the clean air movement brought to us -- they
15 brought us electric vehicles. They brought batteries.
16 They brought us a way to use natural gas, and one of our
17 big partners was PG&E. Obviously they want to sell
18 more, but all of this comes at a time when it becomes
19 obvious we need to wean ourselves away from this.

20 I don't think we are going to do that in my
21 lifetime. I think that the impacts on the economy would
22 be so catastrophic that you wouldn't even deal with it.
23 But the facts we have at hand here are -- what we are
24 really talking about is additional profit for a couple
25 of companies; some in the oil fields, some on the rail

1 lines, and some refining stuff. We already pay more
2 than any state for gasoline, for oil. We are a captive
3 audience to multi-thousands of tons of pollution a year
4 with five refineries -- you better move.

5 CHAIR DEAN: Okay. I'll go next. You've
6 already heard my prime concerns, which is the hazards
7 related to transportation of crude by rail. I have all
8 the concerns related to the road impacts, particularly
9 how those extend through the industrial park and
10 possibly onto the freeway. Also economic impacts to
11 businesses that would be blocked by crude-by-rail trains
12 and just general inconvenience to Benicians trying to
13 get in and out of the industrial park on a regular basis
14 without interruptions to their -- daily interruptions to
15 their lives. Those are my main concerns.

16 Also a biological concern in the Sulfur Creek
17 area, and certainly in the -- through the marsh between
18 the industrial park and the bay or the straight. With
19 that, Commissioner Cohen Grossman.

20 COMMISSIONER COHEN GROSSMAN: When I started
21 reading the draft EIR I thought, well, you know, I can
22 read. I have a graduate degree. I spent probably three
23 days on two pages under air pollution. I'm not a
24 regulator. I'm not a chemist. I'm not a lawyer. It's
25 a lot of words on paper. So, okay. I learned a lot

1 about crude by rail. I've learned a lot about the oil
2 industry. I've learned a little bit about Volero, and I
3 respect all of the professions I've just mentioned. I
4 respect the people who get their hands really, really
5 dirty, whether it's in North Dakota or the Middle East,
6 doing the heavy-duty lifting, the stuff that -- I don't
7 have calluses on my hands, but I drove a car here; and
8 they have calluses on their hands and they've got gunk
9 on their face and worse because they have done the work
10 to get the oil to us.

11 We are still dependent on oil. I wish we were
12 not, but we are. So with respect to this project -- I
13 guess I'll say it this way: It's clear -- and I really
14 appreciate Commissioner Radtke teasing it out that the
15 goal is to have more oil come in by train than by ship,
16 and knowing that we already have a lot of crude going
17 through here. Maybe it doesn't stop, but it comes right
18 through. We have train tracks and we have crude. We
19 have learned a lot about this in the last two or three
20 years.

21 Despite the economic impacts, I think the
22 environmental impacts and the consideration for the
23 world, for our brethren, sistren, upstate, up rail, I
24 don't want to be the one planning commissioner in the
25 one city that said -- excuse my language -- "screw you"

1 to the up-rail cities. I don't feel that way. I'm not
2 a lawyer, and I'm not a chemist, and I'm probably not
3 even very good at public policy. But I like people, and
4 I'm a person, and I live here. And the people in --
5 name a county -- Siskiyou County, they live there. And
6 we have, even though we are not supposed to talk about
7 it -- that's the lawyer that's telling me -- not
8 criticizing anyone in the room or not in the room -- we
9 are not supposed to talk about up-rail impacts because
10 that's not our business, but it's a fact that has been
11 brought out. And to have to put blinders on because of
12 this issue is -- I think Chair Dean said it very well
13 earlier. It's like being tied in a knot.

14 I think every commissioner, including the newer
15 ones, have spent hours and hours and hours. You guys
16 have spent hours and hours and hours, you all in the
17 room, and the public at home has spent hours and hours
18 and hours, and staff has spent hours. They fed us.
19 Thank you. They've endured questions of every simple
20 and complicated nature.

21 I'm just going to say it this way. Maybe all my
22 colleagues here have said it better than I'll say it.
23 The general plan doesn't support this idea of making the
24 world any more dangerous. The health and safety of our
25 residents is key. If we are just going to look at

1 Benicia, we'll stop at the general plan. That's all I
2 have to say right now.

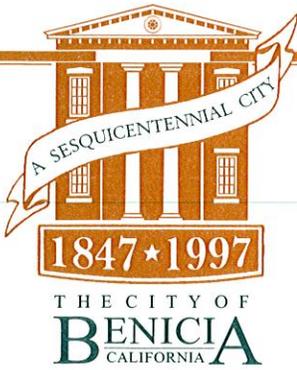
3 CHAIR DEAN: Commissioner Young.

4 COMMISSIONER YOUNG: First of all, I want to
5 thank Volero for their patience. And they waited a long
6 time for this to happen. I think they have been very
7 professional in this whole thing all the way through. I
8 was struck by the comments of the people from Davis and
9 Sacramento yesterday talking about the impacts of having
10 two trains a day going through their community --
11 sorry -- four trains a day, and be close to their
12 schools and blocking traffic for eight-and-a-half
13 minutes at all the grade crossings.

14 And I -- it struck me: What if instead of
15 Volero Refinery being on the east side of town, it was
16 on the west side of town? Because right now these
17 trains would just barely touch Volero -- I'm sorry --
18 Benicia. If the refinery was now where the state park
19 is instead, and the trains had to cross First Street and
20 Military and any number of streets at grade crossings
21 and block traffic for eight-and-a-half minutes, and if
22 this project, which will likely end up in front of the
23 City Council anyway for a final determination -- if this
24 project was put to them with that kind of scenario, the
25 amount of opposition that we have seen from Benicia

EXHIBIT 4

**CITY OF BENICIA, CAL., PLANNING COMM'N RESOLUTION NO. 16-1
(FEB. 11, 2016)**



February 18, 2016

Susan Gustofson
Valero Benicia Refinery
3400 East Second St.
Benicia, CA 94510

Re: Valero Crude by Rail Project; 3400 East Second Street
Use Permit 12PLN-00063

Dear Susan Gustofson,

On February 11, 2016, the Planning Commission denied certification of the EIR and denied the Use Permit 12PLN-00063 for the Valero Crude by Rail project based on the findings and conditions listed in Resolution No. 16-1 (enclosed).

The Commission's decision is final ten business (10) days from the date of this decision unless an appeal to the City Council is filed. The deadline to file an appeal with the Community Development Department is 5:00 p.m., Monday, February 29, 2016.

Sincerely,

Amy Million
Principal Planner

Encl: Planning Commission Resolution No. 16-1

RESOLUTION NO. 16- 1 (PC)

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA DENYING CERTIFICATION OF THE EIR AND DENYING A USE PERMIT FOR THE VALERO CRUDE BY RAIL PROJECT AT 3400 EAST SECOND STREET (12PLN-00063)

WHEREAS, on December 21, 2012, Valero Refinery requested use permit approval for the Valero Crude by Rail (CBR) Project at 3400 East Second Street; and

WHEREAS, the City of Benicia, as the Lead Agency, prepared an Initial Study/Mitigated Negative Declaration to determine if the Valero CBR Project could have a significant impact on the environment, in accordance with the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), the Guidelines for the Implementation of the California Environmental Quality Act (14 CCR Section 15000 et seq.), and the City of Benicia Guidelines pursuant thereto; and

WHEREAS, the Initial Study/Mitigated Negative Declaration was circulated for a 30-day comment period between May 30, 2013 through July 1, 2013; and

WHEREAS, a Draft Environmental Impact Report (Draft EIR) was prepared for the Valero CBR Project and circulated for a 90-day comment period between June 17, 2014 through September 15, 2014; and

WHEREAS, a Notice of Completion of the Draft EIR was filed with the Office of Planning and Research (OPR) on June 17, 2014, and a public notice of the availability of the Draft EIR was published in the Benicia Herald and Vallejo Time Herald on June 17, 2014; and

WHEREAS, copies of the Draft EIR were provided to the State Clearinghouse (State Clearinghouse No. 2013052074) and to those public agencies that have jurisdiction by law with respect to the project, and a Notice of Availability to other interested persons and agencies, and the comments of such persons and agencies were sought for a 90-day comment period between the dates of June 17 through September 15, 2014; and

WHEREAS, the Planning Commission held a public hearing and accepted testimony on the Draft EIR on July 10, 2014, August 14, 2014 and September 11, 2014, and the City accepted written comments on the Draft EIR through September 15, 2014; and

WHEREAS, a Revised DEIR was prepared for the Valero CBR Project and circulated for a 60-day comment period between August 31, 2015 through October 30, 2015; and

WHEREAS, a Notice of Completion of the Revised Draft EIR was filed with OPR

on August 31, 2015, and a public notice of the availability of the Revised Draft EIR was published in the Benicia Herald and Vallejo Times Herald on August 31, 2015; and

WHEREAS, copies of the Revised Draft EIR were provided to the State Clearinghouse (State Clearinghouse No. 2013052074) and to those public agencies that have jurisdiction by law with respect to the project, and a Notice of Availability to other interested persons and agencies, and the comments of such persons and agencies were sought for a 60-day comment period between the dates of August 31, 2015 through October 30, 2015; and

WHEREAS, the Planning Commission held a public hearing and accepted testimony on the Revised Draft EIR on September 29, 2015, September 30, 2015, October 1, 2015 and October 8, 2015, and the City accepted written comments on the Revised Draft EIR through October 30, 2015; and

WHEREAS, 287 written communications were received regarding the Draft EIR, 3,822 written communications were received regarding the Revised Draft EIR and these are included, along with responses, in the Final EIR; and

WHEREAS, the Final EIR document consisting of the Initial Study/Mitigated Negative Declaration, Draft EIR, Revised Draft EIR and the Response to Comments; and said Response to Comments incorporated all written comments received, all oral comments made at the Planning Commission public hearings, the responses to those written and oral comments, and the necessary corrections to the Draft EIR; and

WHEREAS, the Response to Comments document was circulated for public information and provided to the Planning Commission on January 5, 2016; and

WHEREAS, agencies and persons commenting on the Draft EIR and Revised Draft EIR were provided with copies of the Response to Comments document or the City's proposed responses to their specific comments on January 5, 2016; and

WHEREAS, a Mitigation Monitoring and Reporting Program was prepared to ensure that the mitigation measures identified in the EIR are implemented; and

WHEREAS, the various documents and other materials related to the Project constitute the Record of Proceedings upon which the City bases its findings and decisions contained herein. Those documents and materials are located in the offices of the custodian of records for the documents and materials, who is the Community Development Director, City Hall, 250 East L Street, Benicia, California; and

WHEREAS, the Planning Commission held public hearings on February 8, 9, 10 and 11, 2016, at which it considered and discussed the Final EIR, the Mitigation Monitoring and Reporting Program, the staff report, and the proposed use permit with conditions of approval for the CBR Project, and heard testimony from members of the public regarding the documents and the proposed use permit; and

WHEREAS, per Section 15270 of the California Environmental Quality Act (CEQA) Guidelines, CEQA does not apply to projects that a public agency disapproves, but the Planning Commission determined it was necessary to provide findings per CEQA Sections 15090 and 15091, and to deny certification of the EIR and identified the following deficiencies in the EIR:

1. The EIR does not express the independent judgment of the City as required by CEQA.
2. Staff's interpretation of preemption is too broad and the EIR should consider including mitigation measures to offset the significant and unavoidable impacts associated with rail operations, such as air pollution emissions, improved rail car requirements, additional funding for emergency responders and degasifying the oil before transport.
3. The application's objectives are not the City's objectives and the City's objectives were never stated or evaluated.
4. The EIR never discussed or evaluated the City's need for the project.
5. The project is located in the 100-year floodplain, which could increase the hazards related to an accidental spill on the property.
6. The size of the project is too big and would result in traffic and train backups which would negatively affect access to businesses in the Benicia Industrial Park.
7. The project's benefits such as the local employment and economic benefits were not thoroughly examined in the EIR and would not outweigh the significant effects on the environment.
8. The project could potentially have negative biological impacts on Sulphur Springs Creek and the marsh area between the Benicia Industrial Park and the Carquinez Strait.
9. The traffic, air quality, and greenhouse gas emissions analyses are insufficient.
10. The EIR does not evaluate a sufficient number of project alternatives that are feasible.
11. The EIR does not evaluate mitigations to uprail communities and how each potential mitigation is or is not preempted.
12. The EIR's infeasibility determinations are incorrect for Alternative 1 (1, 50-car train) and Alternative 3 (off-site terminal).
13. The response to comments in the FEIR are found to be inadequate, non-responsive and dismissive including, but not limited to, the following specific comment letters:
 - a. Sacramento Area Council of Government: unfunded obligations on communities related to first responders, no evidence of mitigation measures to address transporting crude by rail, no evidence that mitigation measures for the significant and unavoidable impacts are infeasible due to preemption; and insufficient evaluation of potential alternatives including how preemption is applicable.
 - b. State of California Attorney General: insufficient evaluation of air quality impacts and an overly broad interpretation of trade secrets.
 - c. Bay Area Air Quality Management District: insufficient consideration of the their recommended mitigation measures for offsetting rail impacts, the

analysis does not accurately characterize air emissions or health impacts, including an insufficient evaluation of PM2.5.

14. The EIR does not disclose all information necessary for complete evaluation of the air quality impacts of the project including the makeup of the crude oil associated with this project, which is based on an overly-broad interpretation of what constitutes trade secrets.

NOW, THEREFORE, BE IT RESOLVED THAT the Planning Commission of the City of Benicia denies certification of the EIR and denies the use permit and makes the following finding based on the Valero Crude by Rail Project application, the staff report, and related documents, and information presented at the public hearings on February 8, 9, 10 and 11, 2016:

1. *That the proposed location of the conditional use and the proposed conditions under which it would be operated or maintained would not be consistent with the General Plan as it would be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the neighborhood of the use, or to the general welfare of the city, as well as uprail communities.*

The project is inconsistent with the General Plan including Goals 2.5, 4.8, and 4.9 due to the direct and indirect impacts of the proposed project which will not maintain the City's health, safety and quality of life. The negative impacts of the project such as impacts to the traffic in the industrial park, freeway, the community's ability to travel in and out of the industrial park and economic impacts to adjacent businesses would not maintain the City's health, safety, and quality of life. The potential for negative environmental impacts would dissuade businesses from staying in the Benicia Industrial Park and dissuade new businesses from locating in the Benicia Industrial Park. There is no provision for clean-up in case of a spill or accident and local jurisdictions, including Benicia would bear the economic burden of such a clean-up. In addition, the design of the unloading rack, its location in the 100-year flood zone, and the size of the facility creates issues with traffic and emergency access. The project would limit access for emergency response; especially access to Sulphur Springs Creek including the potential for rail cars to fall into Sulphur Springs Creek.

The Planning Commission finds that the project would be inconsistent with the General Plan in that it would place Benicia residents and uprail communities at risk. There is not sufficient technology currently available to make the rail cars safe. In addition, the project creates significant environmental concerns surrounding the project's impact on Sulphur Springs Creek and the bay, potential increases in the cost of insurance coverage for the community, liability risks for property damages and cleanup costs associated with on-site and off-site impacts of the transport of crude by rail.

As set forth above, the finding cannot be made for the Project due to the potential

significant on- and off-site impacts associated with the project and the associated rail operations, the need for further evaluation of the environmental impacts, the economic purposes of the project and the conflicting interpretations of preemption.

* * * * *

On motion of Commissioner Young, seconded by Commissioner Birdseye, the above Resolution was adopted at a special meeting of the Planning Commission on February 11, 2016, by the following vote:

Ayes: Commissioners Birdseye, Cohen-Grossman, Oakes, Radtke, Young and
Chair Dean
Noes: None
Absent: Commissioner Sherry
Abstain: None



Don Dean
Planning Commission Chair

EXHIBIT 5

**TRANSCRIPT OF RECORD BENICIA CITY COUNCIL MEETING (MAR.
15, 2016)**

TRANSCRIPTION OF THE VIDEOTAPED
CITY OF BENICIA - CITY COUNCIL MEETING

DATE: Tuesday, March 15, 2016

REPORTER: Sally Bronner
Certificate No. 7090

JOB NO. 7212

1 here tonight to provide some additional insight on
2 federal preemption.

3 Thank you.

4 MR. FLYNN: Mayor Patterson and members of the
5 Council, I'd like to --

6 MAYOR PATTERSON: So wait. Can I stop for a
7 second?

8 We had -- my understanding -- well, let me
9 stop this -- is that we had 15 minutes for Valero. And
10 so is Mr. Flynn part of that 15 minutes and is that
11 consistent with our procedures? Because I -- I
12 wasn't --

13 FEMALE SPEAKER: (No audible response.)

14 MAYOR PATTERSON: Okay. So we can split the
15 applicant as well the organized opposition?

16 MS. RATCLIFFE: Yes. And we have
17 traditionally done that before.

18 MAYOR PATTERSON: Okay. Great. Thanks.

19 Sorry about that. You didn't lose a minute.

20 MR. FLYNN: Not a problem.

21 Mayor Patterson and members of the Council, my
22 name is John Flynn as Mr. Don Cuffel just indicated.
23 I'm an attorney assisting Valero with its application
24 for Use Permit for construction and operation of a rail
25 car unloading facility at Valero's existing refinery.

1 As you know the Planning Commission recently
2 denied Valero's permit application and we are now
3 before you on appeal from the Planning Commission's
4 denial.

5 As you no doubt have learned by now the
6 governmental regulations of railroads is committed
7 solely to the federal government. You've heard that a
8 number of times and that's an inarguable principle.

9 We decided as a nation many decades ago that
10 the seamless movement of goods and people around the
11 country was essential to the common national good. For
12 that very reason the nation as a nation has also
13 preempted cities, counties and states from regulating
14 the railroads. The nation includes all of us.

15 The reason for that is nearly self-evident. A
16 different set of rules, as Mr. Hogin pointed out
17 earlier, in every city, county and state would negate
18 the good that we are trying to achieve by running the
19 railroads according to a single set of rules.

20 Preemption, therefore, is essential to the
21 common good of the nation. It is too often in these
22 proceedings before the Planning Commission, it's been
23 depicted only as a negative force, free of the goods
24 and the good that we are trying to achieve by virtue of
25 preemption.

1 Just as importantly, preemption is the law.
2 It's a law that binds all of us. During the Planning
3 Commission hearings that took place last month, your
4 own attorneys clearly and correctly advised the
5 Planning Commission on preemption. And advised the
6 Planning Commission accordingly that the Commission had
7 no power to deny Valero's permit application because of
8 the impacts of rail operations.

9 Valero also wrote letters providing the same
10 clear and correct advice on the scope of preemption and
11 provided to the Commission a copy of the letter to the
12 very same effect from Union Pacific.

13 Project opponents by contrast submitted
14 incorrect and highly misleading arguments to the
15 Planning Commission, urging the Commission to ignore
16 the federal limits on the Commission's discretion
17 arguing in effect that your own lawyers did not really
18 understand preemption and that the city is free to
19 either deny Valero's application on the basis of rail
20 impacts or impose mitigating restrictions over and
21 above those already imposed by the federal government.

22 The Planning Commission unfortunately took the
23 bait, deemed itself free to deny the application on the
24 basis of rail impacts citing in part the so-called
25 ambiguity of the law of preemption. There should be no

1 doubt about preemption given its clear application to
2 Valero's Crude by Rail project.

3 Nevertheless, the opposition on legally and
4 indefensible grounds have disagreed with your attorneys
5 on the issue. Our confidence in our position and the
6 position taken by your own lawyers, however, is so high
7 that we intend to submit the matter for a decision by
8 the Surface Transportation Board; the federal agency
9 that is authorized by law to issue declaratory orders
10 concerning the scope of preemption.

11 Specifically the question to be submitted to
12 the Surface Transportation Board is whether the
13 preemption imposed by the Interstate Commerce
14 Commission Termination Act applies to Valero's Crude by
15 Rail project.

16 The direction provided by such an order would
17 be a significant benefit to everyone involved in these
18 proceedings regardless of where they stand on the
19 project itself.

20 We, therefore, recommend that you continue
21 these hearings until after the Surface Transportation
22 Board takes an action on our petition for a declaratory
23 order.

24 That's all I have. I'm happy to answer any
25 questions you might have.

EXHIBIT 6

**TRANSCRIPT OF RECORD BENICIA CITY COUNCIL MEETING (APR.
19, 2016)**

CONTINUED SPECIAL MEETING OF THE
BENICIA CITY COUNCIL

REPORTER'S TRANSCRIPT OF RECORDED PROCEEDINGS
IN RE VALERO CRUDE BY RAIL PROJECT
HEARING AND DISCUSSION

Date and Time: Tuesday, April 19, 2016
7:00 p.m. - 9:42 p.m.

Transcribed By: Annie Doezie, CSR No. 8478
Certified Shorthand Reporter

Job No. 7360

1 So there we are. That's the discussion. I
2 think it's unfortunate that it looks like the majority
3 is going to vote for a delay.

4 Are you ready to call the vote?

5 COUNCILMEMBER SCHWARTZMAN: I -- can I just
6 make a -- a request to Valero?

7 May I?

8 MAYOR PATTERSON: I'm --

9 COUNCILMEMBER SCHWARTZMAN: Well, it's a
10 hope.

11 MAYOR PATTERSON: -- with a motion on the
12 table, can you make a --

13 COUNCILMEMBER SCHWARTZMAN: -- it's a hope.

14 MAYOR PATTERSON: -- I -- that troubles me,
15 because why not --

16 COUNCILMEMBER SCHWARTZMAN: It's a
17 discussion.

18 Okay. I'm okay. That's all right.

19 MAYOR PATTERSON: Okay.

20 So call the roll, please.

21 THE CLERK: Councilmembers Campbell?

22 COUNCILMEMBER CAMPBELL: No.

23 THE CLERK: Hughes?

24 VICE MAYOR HUGHES: Yes.

25 THE CLERK: Schwartzman?

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COUNCILMEMBER SCHWARTZMAN: Yes.

THE CLERK: Strawbridge?

COUNCILMEMBER STRAWBRIDGE: Yes.

THE CLERK: And Mayor Patterson?

MAYOR PATTERSON: No.

Without objection, we are adjourned.

Thank you.

(End of Reporter's Transcript of Recorded
Proceedings)

* * *

EXHIBIT 7

**TRANSCRIPT OF RECORD, BENICIA SPECIAL PLANNING
COMMISSION MEETING (FEB. 9, 2016)**

TRANSCRIPTION OF THE VIDEOTAPED
BENICIA SPECIAL PLANNING COMMISSION MEETING

Date: Tuesday, February 9, 2016

Transcribed By: Susan H. Caiopoulos
Certificate No. 8122

Job No. 7075

1 provided yesterday.

2 CHAIRMAN DEAN: Okay. Thank you.

3 So with that, I'm going to reopen this public
4 hearing. It's on the Valero Crude By Rail Project
5 environmental impact report and use permit. Last night
6 we were in the middle of comments by the Commission.
7 And we will start right where we left off last night.

8 So commissioners who would like to make
9 comments, ask questions of staff? Commissioner Young.

10 COMMISSIONER YOUNG: I'd like to start by
11 responding to a notice that came out from Valero today
12 that said, "Thanks for taking the time to show your
13 support, and we hope you can come back to speak.
14 Unfortunately, no public comment was allowed during the
15 first evening of the hearings project. Opponents have
16 attempted to drag out the hearing process and discourage
17 participation."

18 I don't think that's really fair. I think I
19 said last night that I was only speaking at length
20 because this was my only time that I was going to be
21 allowed to speak on this issue, and that I was happy to
22 hold off until after the public comment. And again I
23 will say that. But we have an agenda that has been
24 adopted, and that calls for all the Commission to make
25 their public comments first.

1 I will not go nearly as long tonight as I did
2 last night. I'm sure people will be happy to hear that.
3 But I do want to get to a couple of issues that I didn't
4 get to last night. And that is -- the first is on the
5 economic impacts of the project.

6 The staff is asking us to certify the EIR and
7 approve the project. And to do that, however, we have
8 to make findings that the benefits of the project
9 override the substantial and unmitigated environmental
10 impacts of the project.

11 Since we can't say that the significant and
12 unavoidable impacts to the environment have been
13 mitigated, because of the opinions that were given on
14 indirect preemption, we're being asked to accept -- I'm
15 sorry, that opinion that we're being asked to accept.
16 The only remaining way under CEQA that we can certify
17 the project is to argue that the project has overriding
18 economic benefits to the City. So that's what I would
19 like to focus on.

20 The first economic benefit talked about is tax
21 revenue. Valero has been advertising fairly heavily
22 about the economic benefits of the project. And when
23 they first started advertising in Benicia Magazine, they
24 promised millions of dollars in additional tax revenue.

25 In July that advertising was changed to say the

1 City is losing \$36,000 a month due to delays in
2 approving the project, and that would be enough to pay
3 for four police officers.

4 According to the City budget, the actual cost
5 of a police officer, including benefits and overhead, is
6 closer to \$160,000 a year. So it's more accurate to say
7 that the extra taxes would pay for two, not four, police
8 officers. Not insignificant, but -- you know, we'd like
9 to see more police officers. But it's important that we
10 are accurate in what we're talking about here.

11 The source of the new tax revenue, I'm
12 guessing, because it's not really spelled out, and
13 perhaps when Valero speaks tonight they can speak to
14 this question, is -- I'm guessing it's increased
15 property tax.

16 Now, many people have rightly complimented and
17 thanked Valero for their charitable contributions. And
18 they have made generous contributions to the community.

19 The staff report says the project will increase
20 the assessed value of the refinery by \$55 million, which
21 is the cost of the project. Now, the City gets about a
22 third of the property tax payments. The rest goes to
23 the schools and other -- the county, and other tax
24 districts.

25 According to the Fairfield Daily Republic,

1 Valero has challenged \$1.6 billion of their assessments
2 since 2012. According to the county assessor's office,
3 in 2004 Valero had their assessment reduced from
4 \$864 million to \$674 million on an appeal. And they
5 were successful, but that appeal cost the City about
6 \$600,000 a year.

7 In 2005, after the Valero improvement project
8 was completed, the assessed value went up to
9 \$963 million, but it was reduced on another appeal
10 \$848 million. And that appeal cost the City about
11 \$300,000 a year.

12 Now, the current assessment is \$900 million.
13 But Valero is appealing that, saying that the refinery
14 is only worth \$100 million. So if Valero is successful
15 again in reducing their tax bill from \$9 million to
16 \$1 million, the City would lose nearly \$3 million on an
17 annual basis.

18 Now, it's common practice and understandable
19 for businesses to try to save on taxes however they can
20 and wherever they can. And Valero has done that by
21 appealing, successfully, their property tax assessments
22 every year since 2012. But every time they successfully
23 challenge their assessment, it costs the City
24 significant levels of taxes, and it outweighs the level
25 of their charitable giving in Benicia.

1 So we need to look at these promises of tax
2 benefits with more than a little skepticism, unless
3 Valero is willing to guarantee that they will no longer
4 take any action that will further damage the City's tax
5 base. And perhaps they will speak to that when they
6 make their presentation.

7 In the staff report, on the section on economic
8 impacts, reference is made to a report commissioned by
9 Valero from the Andrew Chang Company. And on page 35 of
10 the staff report, which talks about the basis for
11 approving a statement of overriding consideration -- and
12 that's what you need to have to approve an EIR when a
13 project's significant and unavoidable impacts cannot or
14 will not be mitigated.

15 That staff -- that statement -- I'm sorry. The
16 report from the Chang Company estimates the project will
17 generate \$2 million in one-time sales taxes to the City,
18 based on the sales of construction materials. That's on
19 page 35 of the staff report. So I need to understand
20 how that \$2 million figure was arrived at.

21 This is my understanding of how sales tax
22 works. The sales tax rate in Solano County is 7.625
23 percent. According to the City web page, the City
24 receives about 1 percent of that 7.6 percent.

25 Now, sales tax is collected on the sales of

1 materials or products made in Benicia or sold by Benicia
2 companies.

3 Valero has estimated that the cost of the
4 project, including labor, materials and engineering, is
5 \$55 million. But to generate \$2 million in sales tax
6 there would have to be sales in Benicia, of construction
7 materials, of \$200 million.

8 And I don't know if Mr. Chang is here, or
9 somebody from the City can correct me if my analysis is
10 not correct, but that's how I understand it. So I think
11 that number is greatly inflated and should not be relied
12 on for something as important as a statement of
13 overriding considerations.

14 On the issue of jobs, that same report says
15 that there will be up to 20 permanent new jobs at the
16 refinery as a result of this project. But through a
17 multiplier effect, the economic analysis turns that 20
18 jobs into 1,000 jobs in the Bay Area. So if somebody
19 can explain to me how that happens, how you move from 20
20 jobs to 1,000 jobs, I would be happy to hear that.

21 But again, this is -- these are some of the
22 basis on which they are asking us to make these
23 findings. And for me, at least, I don't think the math
24 adds up. But I'm happy to be corrected.

25 Finally, the new jobs at Valero, would they be

1 offset by jobs that would be lost at the port, or by
2 crews on the tugboats that accompany the tankers into
3 the port? How many jobs would be lost as a result of
4 fewer tankers unloading? And was that factored in -- is
5 that 20 jobs a net number or a gross number?

6 And finally, since crude can now be exported,
7 much of the crude brought in could be exported and not
8 refined, or refined and exported. So hopefully Valero
9 will answer the question of whether or not they intend
10 to export any crude oil. Because if they do, now they
11 would have to be exporting it through tankers. Tankers
12 then would be generating their own emissions, and all
13 the presumed benefits of switching from rail to -- I'm
14 sorry, from tanker to rail would be lost.

15 Finally, on the economic -- on the general
16 economic development front, I think we, as a commission,
17 need to look at whether this project would harm the
18 development of the industrial park or would it help the
19 development of the industrial park.

20 Extra traffic tie-ups caused by trains would
21 conceivably put a constraint on the attractiveness of
22 the park to new businesses. The City is spending a good
23 deal of money on a new bus hub right at the corner of
24 Park and Bay Shore, which would be sort of the nexus,
25 the central location, that would be affected by the

1 Crude By Rail Project from a traffic perspective.

2 So given the public safety risks and the health
3 impacts of the project, I think we had to ask whether
4 the image of the City in the industrial park would be
5 helped or hurt by this project.

6 Thank you. And that's all I have.

7 CHAIRMAN DEAN: Okay. Comments from other
8 commissioners? Commission Radtke.

9 Yeah, we'll continue with the questions until
10 we make sure the Commission has its questions answered
11 before we go to the public hearing.

12 (Inaudible question.)

13 CHAIRMAN DEAN: That will be part of the public
14 hearing.

15 Yeah, so -- please.

16 COMMISSIONER RADTKE: Okay. So I wanted to
17 follow up on Commissioner Birdseye's comment yesterday
18 about perception and house values.

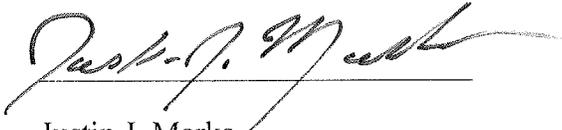
19 Several years ago we decided, when the interest
20 rates went down, we decided to renew our mortgage. And
21 one of the things we had to do was sign a disclosure
22 statement. And on this disclosure statement, right next
23 to, "You're near the Green Valley Fault," and all this
24 other stuff, it said something, "You are located in an
25 area that recently had an incident."

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Petition for Declaratory Order was served on the 31st day of May 2016, by email on the following parties:

Heather McLaughlin
City Attorney
City of Benicia
Heather.mclaughlin@ci.benicia.ca.us

Amy Million
Principal Planner, Community Development
City of Benicia
amillion@ci.benicia.ca.us



Justin J. Marks