

RESOLUTION NO. 03-5

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA
APPROVING A USE PERMIT FOR THE VALERO IMPROVEMENT PROJECT
(PLN2002-00022)**

WHEREAS, the Valero Refining Company – California has submitted a Use Permit application for the Valero Improvement Project (VIP) which would modify existing refinery equipment and install new equipment to allow the refinery to process lower grades of raw materials (crude oil and gas oil) and to increase overall production by about 10%; and the project is proposed to be carried out in phases between 2003 and 2009; and

WHEREAS, the Planning Commission held a public hearing on April 28, 2003, 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 Valero Improvement Project, and heard testimony from members of the public regarding the documents and the proposed use permit; and,

WHEREAS, the Planning Commission certified the Final EIR, adopted CEQA findings and adopted the Mitigation Monitoring and Reporting Program for the Valero Improvement Project on April 28, 2003;

NOW, THEREFORE, the Planning Commission of the City of Benicia hereby resolves as follows:

SECTION 1. That the Planning Commission makes the following findings based on the Valero Improvement Project application, the staff report, the Final EIR and related documents, and information presented at the public hearing on April 28, 2003:

1. That the proposed location of the use is in accord with the objectives of the City of Benicia Zoning Ordinance set forth as Title 17 of the Municipal Code, and the purposes of the district in which the site is located.

Section 17.04.030 of the Zoning Ordinance sets forth nine specific overall purposes of the Ordinance as follows:

- "A. Provide a precise guide for the physical development of the city in order to:
1. Preserve the character and quality of residential neighborhoods,
 2. Foster convenient, harmonious, and workable relationships among land uses,
and
 3. Achieve progressively the arrangement of land uses described in the general plan;
- B. Promote the economic stability of existing land uses that are consistent with the

- general plan and protect them from intrusions by inharmonious or harmful land uses;
- C. Prevent excessive population densities and overcrowding of land or buildings;
 - D. Ensure the provision of adequate open space for light, air, and fire safety;
 - E. Permit the development of office, commercial, industrial, and related land uses that are consistent with the general plan, in order to strengthen the city's economic base;
 - F. Conserve and enhance the city's architectural and cultural resources;
 - G. Conserve and enhance key visual features of Benicia's setting, including the shoreline and undeveloped hillsides and ridgelines, consistent with the general plan;
 - H. Require the provision of adequate off-street parking and loading facilities, and promote a safe, effective traffic circulation system;
 - I. Ensure that service demands of new development will not exceed the capacities of existing streets, utilities, or public services".

The VIP would be consistent with Purpose A because it would be located entirely within the existing refinery where its location could not create a new conflict with other land uses; and because the EIR shows that the project, as mitigated, would not have significant environmental effects on other land uses. The VIP would be consistent with Purpose B because the existence of the refinery in its location is consistent with its General Plan designation, and the VIP would promote the economic stability of the refinery. The VIP would require no more than 20 new employees and thus would not cause or make a significant contribution to excessive population densities, consistent with Purpose C. The VIP would not affect existing open space nor would it interfere with future open space plans of the City; therefore the project would be consistent with Purpose D. The project would be consistent with Purpose E because the refinery is an industrial use that is consistent with the General Plan and the VIP would improve the City's economic base by increasing the refinery's output and helping it to remain competitive in the marketplace. The project would have no effect on the City's architectural and cultural resources and, therefore it would be consistent with Purpose F. The VIP would not have a new substantial adverse effect on views of the shoreline and undeveloped hillsides and ridgelines and, therefore it would be consistent with Purpose G. The refinery's existing parking is substantially in excess of Zoning Ordinance requirements and the short-term effects of construction traffic would be mitigated by measures provided in the EIR and the Mitigation Monitoring and Reporting Program. Therefore, the project would be consistent with Purpose H. The VIP would not have service demands that exceed the capacities of existing streets, utilities or public services. The potentially significant effects on streets and water supply would be mitigated by measures provided in the EIR and the Mitigation Monitoring and Reporting Program. No other potentially significant effects on City services are projected and, therefore, the project would be consistent with Purpose I.

Section 17.32.010 of the Zoning Ordinance sets forth the following specific purposes of industrial district regulations:

1. Provide appropriately located areas consistent with the general plan for a broad range of manufacturing and service uses;
2. Strengthen the city's economic base, and provide employment opportunities close to home for residents of the city and surrounding communities;
3. Provide a suitable environment for various types of industrial uses, and protect them from the adverse impacts of inharmonious uses;
4. Reserve areas for port terminals and water-related industry;
5. Ensure that the appearance and effects of industrial uses are compatible with the character of the area in which they are located;
6. Minimize the impact of industrial uses on adjacent residential districts;
7. Ensure the provision of adequate off-street parking and loading facilities.

The VIP would be consistent with Purposes 1 and 3 because it would consist of changes and improvements to an existing industrial use in an existing industrial district. The project would be constructed within the existing refinery footprint, and would, as mitigated, not have any significant environmental impacts on other land uses. Therefore, the VIP would be consistent with Purposes 5 and 6. As stated under Purpose E above, the refinery would strengthen the City's economic base. It would also provide an estimated 200 short-term construction jobs and up to 20 permanent jobs, thereby establishing consistency with Purpose 2. The project would add ship traffic over an existing wharf in a Water-Related Industrial zoning district, consistent with Purpose 4. As stated under Purpose H above, the refinery has sufficient parking to accommodate the use, consistent with Purpose 7.

Section 17.32.010 also contains the following statement of purpose for the IG (General Industrial) district:

"To provide sites for the full range of manufacturing, industrial processing, general service, and distribution uses deemed suitable for location in Benicia; and to protect Benicia's general industrial areas, to the extent feasible, from disruption and competition for space from unrelated retail and commercial uses that could more appropriately be located elsewhere in the city. Performance standards will minimize potential environmental impacts".

The refinery, as a use that manufactures products (fuels) by processing raw materials (crude oil and gas oil), is consistent with the purpose of the IG district and the VIP, which would enhance the refinery's ability to fulfill that purpose, would also be consistent with the purpose. The VIP, as mitigated and conditioned, would meet performance standards set forth in Section 17.70.240 of the Zoning Ordinance to ensure that development projects conform with all applicable air and water quality regulations and do not create hazards or problems related to noise, glare, hazardous materials, heat and humidity or electromagnetic interference.

Section 17.32.010 includes the following statement of purpose for the IW (Water-Related Industrial) district:

"To protect site [sic] for port-priority uses and to provide opportunities for water-related industry and marine services supporting the Port of Benicia. Performance standards will minimize potentially adverse environmental impacts".

The VIP would increase shipping at the port, consistent with the stated purpose.

2. That the proposed location of the conditional use and the proposed conditions under which it would be operated or maintained would be consistent with the General Plan and will not be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the neighborhood of the use, nor detrimental to the properties or improvements in the vicinity or to the general welfare of the city for the following reasons:

The EIR analysis, together with the conditions of approval set forth herein and discussed in the staff report, show that the VIP, as mitigated and conditioned, would be consistent with all applicable goals and policies of the General Plan. The VIP would not be detrimental to public health, safety, and welfare because the impacts of the project that might affect those impact areas would be mitigated by measures that are incorporated into the project or that are required by the conditions of approval. In addition, if constructed, the proposed main stack scrubber would enhance consistency with Finding 2 by reducing air emissions below current levels. Further enhancement may be provided by Bay Area Air Quality Management District conditions of approval which are expected to establish new emission caps on ship emissions and on main stack emissions. If and when the main stack components are installed, the main stack emission cap would be lowered, to reflect the emission reduction provided by the scrubber.

Although the VIP will use a substantial amount of water, that impact will be mitigated to a less than significant level by mitigation measures included in the Final EIR. Valero's additional documented commitment to participate in the wastewater reuse project, as reinforced by Use Permit Condition 13, would completely offset the water use of the VIP, as well as reducing a part of the refinery's current water use, thereby helping to implement Program 2.36.A of the General Plan and adding to the consistency of the project with Finding 2 by enhancing the public health, safety, and welfare if the wastewater reuse project is approved and constructed.

3. That the proposed conditional use will comply with the provisions of the Zoning Ordinance, including any specific condition required for the proposed conditional use in the district in which it would be located, based on the following:

As shown by Findings 1 and 2, and the discussion in the staff report, the VIP, as mitigated, would comply with the provisions of the Zoning Ordinance. There are no specific conditions required for oil and gas refining in the IG district except that a use permit is required.

BE IT FURTHER RESOLVED, that the Planning Commission of the City of Benicia hereby approves the proposed use permit for the Valero Improvement Project, subject to the following conditions:

1. The scope of approval is limited to the Valero Improvement Project as described in the

Use Permit Application (PLN 2002-00022), submitted by Valero to the City of Benicia and including the following documents:

- a. Application for City of Benicia Use Permit, dated March 20, 2002;
- b. Noise Assessment, prepared by Illingworth & Rodkin, Inc., dated May 30, 2002;
- c. Public Safety Analysis, prepared by URS Corporation, dated June 28, 2002;
- d. Air Emission Calculations: Baseline and Project Emissions, prepared by URS Corporation, dated June 30, 2002;
- e. Assessment of Visible Steam Plume Formation, prepared by URS Corporation, dated June 2002;
- f. Visual Simulations with accompanying text and process block diagrams, prepared by Environmental Vision and URS Corporation;
- g. Geotechnical and Geologic Assessment, prepared by URS Corporation, dated May 2002;
- h. Health Risk Assessment, prepared by URS Corporation, dated June 30, 2002;
- i. Response to VIP Review of Application for Completeness, prepared by URS Corporation, dated August 8, 2002;
- j. Letter from URS Corporation to BAAQMD, dated August 6, 2002, supplementing the application for Authority to Construct/Permit to Operate with regard to ship emissions;
- k. Letter from Sam Hammonds at Valero dated July 23, 2002, amending the use permit application to add the hydrocracker maximization project and pressure swing adsorption of hydrogen and the cat feed hydrotreater guard reactor installation;
- l. Letter from Sam Hammonds at Valero dated September 27, 2002, providing additional information regarding project sequencing and schedule;
- m. Letter from Sam Hammonds at Valero, dated October 21, 2002, amending the use permit application to limit the circumstances under which the refinery would operate without the main stack scrubber;
- n. Final Environmental Impact Report for the Valero Improvement Project, dated March 2003, consisting of the Draft EIR dated October 2002 and the Response to Comments dated March 2003.
- o. Response to the Valero Improvement Project Review of Application for Completeness, prepared by URS Corporation, dated May 28, 2002.
- p. Letter from Sam Hammonds at Valero, dated October 24, 2002, detailing additional water consumption forecast due to VIP.

Any substantial changes in the project as described in the above documents shall require a Use Permit amendment with associated CEQA review in order to proceed.

2. This approval is based in part on representations of the applicant, consistent with conditions of approval expected to be imposed by the BAAQMD, that there will be no net increase in overall refinery emissions as a result of the VIP. The BAAQMD proposed conditions include emission limitations, based on the three-year baseline emissions reported to the BAAQMD by Valero for purposes of this project, to insure there will be no net increase in emissions as a result of the VIP. A change in the project ,

or in the proposed BAAQMD conditions of approval, such that project facilities would result in such a net emission increase shall require a use permit amendment with associated CEQA review.

3. Valero shall provide the City with copies of any application to the BAAQMD for a new Authority to Construct or any amendment to an existing Authority to Construct for any part of the VIP, so that the City may evaluate the proposals for consistency with the scope of the use permit approval and the VIP EIR analysis. The documents shall be provided at no cost to the City.
4. Valero shall provide the City with copies of its emissions reports to the Bay Area Air Quality Management District whenever such reports are requested by the City to evaluate whether the VIP is being constructed or operated consistent with Condition 1. Reasons for such a request may include, but are not limited to, approval by the BAAQMD of a new or amended Authority to Construct for any part of the VIP. The documents shall be provided at no cost to the City.
5. All of the mitigation measures set forth in the Final EIR are hereby incorporated by reference and included as conditions of approval of the use permit. The Mitigation Monitoring and Reporting Program, adopted by the Planning Commission on April 28, 2003, and attached hereto as Exhibit A, is hereby incorporated and included as a condition of the use permit approval to ensure that the mitigation measures identified in the EIR are complied with during project implementation.
6. The Valero Improvement Project shall adhere to all applicable ordinances, plans, and specifications of the City of Benicia.
7. Any significant alteration of the approved plans shall be requested in writing and approved by the Community Development Department prior to changes being made in the field.
8. Valero shall apply for separate building and grading permits for each major component or group of components of the Valero Improvement Project, as determined necessary by the City.
9. The Valero Improvement Project is comprised of a number of individual components; construction of the components is expected to occur at various times between approval of the use permit and the end of 2009; and some components may not be constructed, depending upon the needs of the refinery. To ensure that the City is able to properly evaluate the plans for each phase of construction, Valero shall notify the Community Development Department at least six months in advance of the planned construction of any major component or group of components, and shall work with the City to develop a mutually acceptable schedule for submission and review of plans and required documentation in advance of construction. Submittals shall contain sufficient information to verify that they are within the scope of approval set forth in Condition 1.

Submittals may be reviewed by the compliance monitors provided for in Condition 20, and/or by other plan review experts, as determined necessary by the City. Reasonable costs of expert review shall be paid by Valero.

10. Prior to the issuance of a building or grading permit for any portion of the Valero Improvement Project, the applicant shall document to the City of Benicia that it has obtained necessary permits and approvals from reviewing agencies, including but not limited to Authority to Construct from the Bay Area Air Quality Management District, and approval of wastewater treatment plant modifications, if required, from the Regional Water Quality Control Board.
11. All equipment installed as part of the Valero Improvement Project shall be painted to blend with the refinery's overall color scheme. Any paint colors other than the existing green and gold shall be submitted to the Community Development Department in advance for approval.
12. The design of proposed exterior lighting fixtures, and drawings showing the plans for installation shall comply with requirements of Zoning Ordinance Section 17.70.240 D.2, and shall be submitted to the Community Development Director or designee in advance for approval.
13. Valero shall continue to participate in the planning and development of the City's wastewater reuse project, consistent with its commitment to that project dated October 11, 2002, and signed by the Refinery Vice President and General Manager.
- 14a. Valero shall construct and operate the main stack scrubber at the same time that the sulfur plant expansion is constructed.
- 14b. Notwithstanding any Bay Area Air Quality Management District permit conditions that may allow higher crude rates without such restriction, the refinery shall not operate more than a total of 1,096 consecutive or non-consecutive days at crude rates above 135,000 barrels per day and/or with the third air blower in operation without installing and operating the scrubber. If the scrubber is not completed and operating by the deadline, the refinery shall not process more than 135,000 barrels of crude per day, and shall deactivate the third air blower, if operating, until such time as the scrubber is in operation.
15. Valero shall provide the City with copies of its Anti-Degradation Report and, when requested, monthly self-monitoring reports when those reports are submitted to the Regional Water Quality Control Board. The documents shall be provided at no cost to the City.
16. Valero shall submit Stormwater Pollution Prevention Plans to the City of Benicia when required under the City's Grading Ordinance for any component or group of components of the Valero Improvement Project. If wastewater treatment plant

improvements are to be constructed in a 100-year flood zone, Valero shall comply with the City of Benicia Floodplain Management Policy in designing the improvements and shall document such compliance when it applies for associated building and grading permits.

17. Valero shall notify the Public Works Department and shall meet with designated representatives of the Police and Public Works Departments in advance of construction and monthly during construction to coordinate issues related to construction traffic and determine what traffic control measures need to be implemented by Valero.
18. Valero shall submit semi-annual construction progress reports to the Community Development Department during all phases of project construction.
19. Valero shall submit annual reports no later than 60 days following December 31 of each year documenting compliance with the conditions of approval and the Mitigation Monitoring and Reporting Program. The annual reports shall contain supporting information from other regulatory agencies as applicable. For each condition and mitigation measure, the report shall identify the status of compliance with the measure, the procedures or standards used to judge the compliance, times and dates of the monitoring and whether further action is required. The reports shall be submitted until the year 2010. If at that time the applicant has completed all mitigation measures and complied with the conditions of approval, no further reports shall be necessary. The Community Development Director shall notify Valero in writing when the reports shall no longer be required.
20. The Community Development Department will retain expert consultants to assist the City in monitoring Valero's compliance with the conditions of the use permit. The consultants' scope of work shall be discussed with Valero in advance but, at a minimum, the scope shall include advising the City with respect to technical aspects of the project that are outside the expertise of City staff. All costs of compliance monitoring shall be paid by Valero. Monitoring costs shall not exceed \$70,000 unless changing circumstances dictate a need for additional funding. In that case, the City and Valero shall discuss and determine any additional amount needed by mutual agreement.
21. Valero shall record the conditions of approval of this use permit with the Solano County Recorder in a form that is satisfactory to the City of Benicia. The use permit shall not be in full force and effect until Valero provides evidence to the City that the required recordation has been accomplished.
22. This use permit shall expire two years from the approval date unless activated by the commencement of construction of one or more components of the Valero Improvement Project. The use permit shall be vested with respect to each component when a building permit has been issued and construction of that component has been diligently pursued. The use permit shall expire on December 31, 2009, with respect to any components of the Valero Improvement Project for which construction has not

commenced.

23. The applicant shall defend, indemnify, and hold harmless the City of Benicia and its agents, officers, and employees from any claim, action, or proceeding against the City of Benicia, or its agents, officers, or employees to attack, set aside, void or annul any approval of the Planning Commission, City Council, Community Development Director, or any other employee, department, committee, or agency of the City concerning the environmental review, use permit approval, or other actions, permits and approvals for the Valero Improvement Project; provided, however, that the applicant's duty to so defend, indemnify, and hold harmless shall be subject to the City's promptly notifying the applicant or permittee of any said claim, action, or proceeding and the City's full cooperation in the applicant's defense of said claims, actions, or proceedings. This duty to indemnify includes any damages awarded against the City, if any, the cost of suit, attorney's fees, and other costs and expenses incurred in connection with such claim, action or proceeding and whether incurred by Valero, the City and/or the parties initiating or bringing such claim, action, or proceeding.

In the event Valero is required to defend the City, the City shall retain the right to (a) approve the counsel to defend the City, (b) approve all significant decisions concerning the manner in which the defense is conducted, and (c) approve all settlements, which approval shall not be unreasonably withheld. The City shall have the right not to participate in said defense, except the City shall cooperate with the applicant in the defense of said claim, action or proceeding.

The foregoing motion was made by Commissioner Lobdell, seconded by Commissioner Railsback, and carried by the following vote at a special meeting of the Commission on April 28, 2003:

Ayes: Commissioners Lobdell, Martinez, Railsback, and Chair Silveria
Noes: Vice Chair Schwartzman
Absent: Commissioners Askham and Kalian
Abstain: None


Bonnie Silveria, Chair


Colette Meunier, Secretary