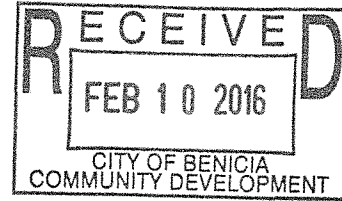


Feb. 9, 2016 — Planning Commission hearing on Valero Crude By Rail Project FEIR  
BSHC Presentation



Good evening, Chair Dean and Commissioners,

I appreciate your service to the community during this arduous CEQA process and the difficulties and pressures of your duty now. I also appreciate the many Benicians and the public from communities uprail who have or will testify and/or submit written comments on this document, including major venerable environmental organizations, public agencies, Sacramento Area Council of Governments and the City of Davis. There are too many to credit here for their tremendous efforts, but I thank all for their collective concerns and valued input.

In these hearings, your deliberations on the Final EIR — a serious and difficult task — must determine if this document passes the CEQA test for adequacy.

The judgments of this commission will be far-reaching, *and in perpetuity*. The Project will put at risk tens of thousands of Californians and populace in other states, 365 days a year in rural, suburban and urban communities. It will put at risk wildlife, precious wetlands, waters and forest — spectacularly vulnerable landscapes. It has no end date, and once in place may continue for generations. CEQA is imposed in this process BECAUSE of the risks to health, safety and the environment. It is the City's responsibility to get this decision Right.

As a local old-timer has aptly remarked, "Not since WWII has a decision made in Benicia been as important as the one to be made on this Project." And the first decision to be resolved in this process is the CEQA issue.

You must analyze the adequacy of the EIR, not by your standards, but by the standards imposed by CEQA — that is the law.

I urge you to put aside any personal opinion on the validity of the Project moving forward — CEQA is not about a PRO or CON vote on the Project. The standards for certification reside with CEQA.

I — and many of the Public — have determined that the EIR fails this test. I am confident that upon your careful examination, each of you will reach this same conclusion.

The Final EIR fails as previous drafts fail. The FEIR cannot be certified "as is". The FEIR's flaws remain striking and fundamental.

The majority of the Responses refute, reject or evade commenters' concerns by re-asserting stock claims, limited analyses and narrow, conclusory arguments provided in the Draft EIR and Revised EIR.

Most damaging are the Lead Agency's and Valero's legal opinions on the scope and breadth of federal Preemption and Trade Secret Law. Those opinions undermine the legitimacy of the FEIR under CEQA and cause its ultimate failure. Such opinions are deployed throughout the discussions "as fact" intended to settle public concerns. The impact of these opinions leave the City with no feasible Project Alternatives—let me repeat — with NO FEASIBLE PROJECT ALTERNATIVES — and no feasible and enforceable mitigations, and, leave City decision-makers without options to regulate significant aspects of the Project.

Those same legal opinions force an "all or nothing" choice — "up or down" — a choice between the Project "as is" or the "No Project Alternative."

The FEIR does not support how the Project overall reflects the Benicia General Plan's overarching goal for sustainable development, nor how the Project comports with the California Global Warming Solutions Act, AB32.

Let's talk about the one environmental benefit of the Project — a purported GHG reduction. However, those claimed "savings" are not based on the full facts. The analysis did not account for the number of ship deliveries eliminated by the Project. It didn't measure GHG emissions resulting from the Refinery's processing of the oils imported by the Project. Project-related GHG emissions from all sources, direct and indirect, must be calculated and were not.

On top of the erroneous GHG calculation, Valero's future intended use of its port has a serious consequence for emissions. When you take away a number of ships coming into Valero that would be eliminated by importing crude by rail, you would open up the port and shipping lanes for outbound ships exporting refinery products. **Such a shipping enterprise envisioned for exporting product overseas, including gasoline, would be dependent on freeing up significant port capacity, which a rail project would achieve.**

This must be analysed with respect to the EIR's misleading Project Objectives #1 and #2, which appear to narrowly stress the desire to access North American-sourced crudes. But given the plunged price of oil, that emphasis is now misplaced. Low priced crude can be accessed anywhere in the world for the indefinite future, by ship. Yet the important, basic subject of port utilization, as related to the Project, wasn't disclosed in the Project Description. Is this a much larger Project being segmented into sequential phases?

I propose that Valero would want to maximize port use to the extent possible in this economy if the Rail Project were to be permitted, thus allowing for ships exporting product. Valero's successful bid in 2010 to have their port designated a "Free Trade Zone" evidences their intent.

A rail project would enable Valero to increase exports via the port. This is an indirect consequence of the Project and offsets the EIR claim of GHG savings under the Project. And, a ramped up *export* operation would allow greater production above current levels. In any case, the export option should have been disclosed as a potential, foreseeable future contributor to

cumulative emissions impacts of the Project “in perpetuity.” Shipping gasoline and emissions overseas would hardly reduce the Refinery’s carbon footprint.

A discussion of this potential scenario was outlined in the Petra Pless Letter submitted as Attachment B of the the Adams Broadwell law firm’s submission written on behalf of SAFER California. [FEIR p. 3.5-117] I urge each commissioner to go back and carefully read this Pless report because it is crucial.

Other failures to disclose include projects in planning stages that would foreseeably contribute to cumulative impacts of the Project:

- Seeno development plans for 527 acres north of the Refinery have been on the City’s radar since at least April 2015. Staff received an application from West Coast Home Builders for initiating a general plan zoning amendment to permit residential as part a mixed use business park.
- The ORCEM development application for a cement plant at Mare Island in Vallejo, a project subject to CEQA. That EIR raised serious concerns regarding Air Quality and traffic impacts anticipated on I-780 and I-680.

Why were these projects not identified and discussed?

**I will summarize basic failures of the document is inadequate for CEQA certification:**

- Failure of misleading and limited Project Objectives that do not disclose all the reasons or intentions of the Project and thus undermine everything else that flows from them.
- Failure of the Project Description, causing all other claims, evaluations and conclusions of impact analyses to fail.
- Failure to provide feasible, effective and enforceable mitigations for significant impacts in Benicia including to the industrial park and port, and to uprail communities associated to Air Quality, Biological Resources, Hazards and Hazardous Materials, Soil & Geology, Hydrology and Water Quality, Cultural Resources, and GHG Emissions.
- Failure to disclose specific information crucial to assessing potential risks and impacts resulting from the Project’s operations — rail transport of oil and, indirectly, the processing of Project-related changed crude slates potentially impacting local and regional Air Quality and public safety.
- Failure to provide feasible and reasonable Project Alternatives that would effectively reduce significant, direct and indirect impacts, as well as cumulatively considerable impacts.

- Failure to discuss “urban blight” owing to perceptions of the industrial park becoming a “rail yard”, a “Local Undesirable Land Use” with increased risk affecting other surrounding businesses and driving other prospective businesses away.

Thank you for your attention and consideration of these comments.

Marilyn Bardet  
on behalf of Benicians For a Safe and Healthy Community

333 East K Street  
Benicia