

AGENDA ITEM
PLANNING COMMISSION MEETING: FEBRUARY 8, 2016
REGULAR AGENDA ITEMS

DATE : January 28, 2016

TO : Planning Commission

FROM : Amy Million, Principal Planner

SUBJECT : **VALERO CRUDE BY RAIL PROJECT**

PROJECT : 12PLN-00063 Use Permit
3400 East Second Street
APN: 0080-110-480

RECOMMENDATION:

Staff recommends that the Planning Commission hold a public hearing, consider all appropriate documents and testimony, and then act to:

1. Adopt the draft Resolution certifying the Final Environmental Impact Report, adopting California Environmental Quality Act ("CEQA") findings for the Project and adopting the Statement of Overriding Considerations and the Mitigation Monitoring and Reporting Program.
2. Adopt the draft Resolution approving the Use Permit for the Valero Crude by Rail Project, with the findings and conditions listed in the resolution.

EXECUTIVE SUMMARY:

The proposed Valero Crude by Rail Project (CBR) would allow the Valero Benicia Refinery (Refinery) access to additional North American-sourced crude oil for delivery to the Refinery by railroad. Valero Refining Company is requesting approval of a Use Permit which would allow the installation and modification of Refinery non-process equipment that would allow the Refinery to receive a portion of its crude oil deliveries by rail car, replacing equal quantities of crude currently being delivered to the Refinery by marine vessel. Valero intends to replace up to 70,000 barrels per day of the crude oil currently supplied to the Refinery by marine vessel with an equivalent amount of crude oil transported by railcars. The crude oil to be transported by railcars is expected to be of similar quality compared to existing crude oil imported by marine vessels. Crude delivered by rail would not displace crude delivered to the Refinery by pipeline.

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BUDGET INFORMATION:

Valero is a large source of revenue for the City and the single largest private employer, employing more than 500 employees. The combined property, sales and utility user tax represent more than 20% of the City's general fund revenue. The proposed Project will allow the Refinery to remain competitive in the marketplace. In addition, the proposed Project will generate an estimated \$240,000 in building permit fees as part of the construction plan review and inspection process.

ENVIRONMENTAL REVIEW PROCESS:

The Project is a significant Project for the City, the Refinery, and communities near and far, and as such, it has generated a great deal of public interest. Moreover, the Project is intertwined with a complex legal issue of preemption and the Environmental Impact Report (EIR) is necessarily complex as well. In recognition of those facts, the City has conducted a public information and review process that went beyond the legal requirements of CEQA to try to ensure that all interested persons had an opportunity to review and comment on the EIR and the Use Permit.

A special page for the Project was established on the City's website at the time that the Initial Study was prepared. All application materials were posted on the website along with, all official notices regarding the Project, the Initial Study, scoping comments received, the Draft EIR, Revised Draft EIR and Final EIR and related documents, public comments received during the course of the Project (Initial Study/Mitigated Negative Declaration, Draft EIR, Revised Draft EIR) and the minutes of all the Planning Commission hearings. All of these documents comprise the Record of Proceedings for the EIR. Note that twenty additional hard copies of the environmental documents were made available to the public free of charge.

Mitigated Negative Declaration

In accordance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines and the City of Benicia's adopted CEQA Guidelines, an Initial Study was completed for the proposed Project. A Mitigated Negative Declaration was prepared and circulated for a 30-day public review period between May 31, 2013 and July 1, 2013. On July 11, 2013, the Planning Commission held a public meeting where formal presentations on the Project were provided. Based on public comment, the City determined that an EIR was necessary for the Project.

Draft EIR

A Notice of Preparation/ Notice of Scoping Session was prepared and circulated to the Planning Commission, the City Council, responsible and interested agencies and organizations including all agencies and school districts

along the Union Pacific Railroad (UPRR) line from Benicia to Roseville. A Notice of Preparation and Scoping Session was also sent to property owners within 300 feet of the refinery properties, posted at City Hall and the Benicia Public Library.

A legal notice and display ad was placed in the Benicia Herald and Vallejo Times Herald and a press release was sent to media groups along the UPRR line from Benicia to Roseville to inform the general public. The City held a public scoping session before the Planning Commission on September 13, 2013. Twenty-one written comments were received regarding the scope of the EIR. In addition to the written comments, oral comments at the scoping session, and all of the comments on the Initial Study Mitigated Negative Declaration were considered as part of the process of EIR preparation.

The Draft EIR was completed and released for a 45-day public review period on June 17, 2014. At their July 10, 2014 meeting, the Planning Commission extended the public review period an additional 45-days to September 15, 2014. As required by CEQA, a Notice of Availability of the Draft EIR was mailed to all property owners and occupants within 300' of the Project site and a notice was posted at City Hall and the Library. A Notice of Availability of the Draft EIR was also mailed to all agencies and school districts along the UPRR line from Benicia to Roseville. The Draft EIR was circulated to interested and responsible agencies and copies were provided to the State Clearinghouse as required for transmittal to state agencies. Copies of the EIR were also made available at the Community Development Department and the Library.

During the public review period for the Draft EIR, the City held three public meetings to hear oral comment on the Draft EIR on July 10, 2014, August 14, 2014 and September 11, 2014. The first session, held on July 10, 2014, included formal presentations to the Planning Commission. All meetings were well-publicized in advance and large numbers of the public attended.

Revised Draft EIR

In response to comments received on the Draft EIR, a Revised Draft EIR was prepared and released for a 45-day review period on August 31, 2015. A Notice of Availability of the Revised Draft EIR was mailed to all property owners and occupants within 500' of the Project site, and a notice was posted at City Hall and the Library. The mailing of the Notice of Availability of the Revised Draft EIR was expanded to include all agencies and school districts along the Union Pacific Railroad (UPRR) line from Benicia to the California Stateline. A copy of the notice was also provided to all who commented on the Draft EIR. The Draft EIR was circulated to interested and responsible agencies and copies were provided to the State Clearinghouse as required for transmittal to state agencies. Copies of the EIR were also made available at the Community Development Department and the Library.

During the public review period for the Revised Draft EIR, the City held a public meeting to hear comments on the Revised Draft EIR on September 29, 2015. Although additional meetings had been tentatively scheduled in anticipation of a large number of speakers, the meetings were canceled because all the speakers spoke at the September 29 meeting.

Final EIR

The Final EIR was published on January 5, 2016. The Final EIR, consistent with CEQA requirements, is comprised of the Draft EIR, Revised Draft EIR and the Response to Comments document which includes all written and oral comments received during the comment period, responses to all of the comments, and necessary corrections to the Draft EIR. Copies were provided to the commenting agencies, Planning Commission and the City Council and were made available to the public at the Library, at the Community Development Department, and on the City's website. All agencies and individuals who provided comments within the public review periods for the Draft EIR and Revised Draft EIR were provided with a response to their comments in the Final EIR, at least 30 days in advance of the public hearing to consider approving the Final EIR and taking action on the Use Permit. A notice of the Planning Commission hearing was provided to all commenters and was mailed to property owners within 500 feet of the refinery properties. A legal notice and a display ad were placed in the Benicia Herald and Vallejo Times Herald and a notice was posted at City Hall and the Library.

The EIR concludes that there are impacts from the Project that are:

1. Potentially Significant Mitigated to a Less-than-Significant Level

The EIR identified 8 potentially significant impacts relating to air quality, biological resources, energy conservation, geology and soils, and hydrology and water quality. All of these impacts can be mitigated to a less-than-significant level by mitigation measures described in the EIR.

2. Potentially Significant and Unavoidable

The EIR identified 11 significant and unavoidable impacts related to air quality, biological resources, greenhouse gas emissions, and hazards and hazardous materials. All of these impacts identified are due to rail operations and the City is preempted from mitigating those impacts.

A more detailed discussion of the environmental review is provided below in section "Environmental Review".

GENERAL PLAN:

Relevant General Plan Goals and Policies:

- ❑ GOAL 2.5: Facilitate and encourage new uses and development which provide substantial and sustainable fiscal and economic benefits to the City and the community while maintaining health, safety, and quality of life.
- ❑ GOAL 2.6: Attract and retain a balance of different kinds of industrial uses to Benicia.
 - Policy 2.6.4: Link any expansion of Industrial land use to the provision of infrastructure and public services that are to be developed and in place prior to the expansion.
 - Policy 2.6.5: Establish and maintain a land buffer between industrial/commercial uses and existing and future residential uses for reasons of health, safety, and quality of life.
- ❑ GOAL 2.7: Attract and retain industrial facilities that provide fiscal and economic benefits to—and meet the present and future needs of—Benicia.
- ❑ GOAL 2.20: Provide a balanced street system to serve automobiles, pedestrians, bicycles, and transit, balancing vehicle-flow improvements with multi-modal considerations.
 - Policy 2.20.1: Maintain at least Level of Service D (“LOS D”) on all city roads, street segments, and intersections. *Exceptions may be allowed where measures required to achieve LOS D are infeasible because of right-of-way needs, impact on neighboring properties, aesthetics, or community character.
- ❑ GOAL 3.9 Protect and enhance scenic roads and highways.
 - Policy 3.9.1 Preserve vistas along I-780 and I-680
- ❑ GOAL 4.1: Make community health and safety a high priority for Benicia.
 - Policy 4.1.1: Strive to protect and enhance the safety and health of Benicians when making planning and policy decisions.
- ❑ GOAL 4.7: Ensure that existing and future neighborhoods are safe from risks to public health that could result from exposure to hazardous materials.
- ❑ GOAL 4.8: Protect sensitive receptors from hazards.
 - Policy 4.8.1: Evaluate potential hazards and environmental risks to sensitive receptors before approving development.
- ❑ GOAL 4.9: Ensure clean air for Benicia residents.
- ❑ GOAL 4.22: Update and maintain the City’s Emergency Response Plan.
- ❑ GOAL 4.23: Reduce or eliminate the effects of excessive noise.

A detailed analysis of the Project’s consistency with the General Plan is included later in this report.

STRATEGIC PLAN:

Relevant Strategic Issues and Strategies and Actions:

- ❑ Strategic Issue 2: Protecting and Enhancing the Environment
 - Strategy 2.1 Reduce greenhouse gas emissions and energy consumption
- ❑ Strategic Issue 3: Strengthening Economic and Fiscal Conditions
 - Strategy 3.2 Strengthen Benicia Industrial Park competitiveness
 - Strategy 3.3: Retain and attract business

PROJECT BACKGROUND:

Applicant/Owner: Valero Refining Company

General Plan: General Industrial, Water-front Industrial (marine terminal)

Zoning: IG (General Industrial), IW (Waterfront Industrial)

Existing use: existing refinery and associated shipping operations

Adjacent zoning and uses:

North: IG, IP and IW; industrial uses; undeveloped industrial property

East: IG; industrial uses

South: IG; industrial uses; Carquinez Strait

West: IG; undeveloped refinery property

The Refinery was constructed by Humble Oil in 1969, and it has undergone a number of changes over the years. Many of the changes were in response to new regulations limiting emissions from Refinery process units and requiring reformulation of gasoline to produce cleaner-burning fuels. In 2000, Exxon sold the Refinery to Valero, an independent refining company. In 2003, Valero received Use Permit approval for the Valero Improvement Project to 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%. The proposed Crude by Rail Project would change the shipment method of up to 70,000 barrels per day of crude oil to be delivered by railcar rather than by marine vessel. The Refinery is limited by its permits from the Bay Area Air Quality Management District to 180,000 barrels per day on a maximum daily basis and 165,000 barrels per day on an annual average. This limit would not change.

PROJECT DESCRIPTION/SUMMARY:

Description

The Project would consist of the installation and modification of Refinery non-process equipment that would allow the Refinery to receive a portion of its crude oil deliveries by railcar replacing equal quantities of crude currently being delivered to the Refinery by marine vessel. These changes would include the installation of new facilities as well as the modification of certain existing

facilities. The components of the Project include the following:

1. Change the shipment method of up to 70,000 barrels per day of crude oil to be delivered by rail cars rather than by marine vessel
2. Installation of a new 1,500-foot-long unloading rack capable of offloading two rows of 25 crude oil rail cars
3. Construction of two parallel rail spurs on Valero property to access the unloading rack
4. Installation of approximately 4,000 linear feet of 16-inch diameter crude oil pipeline (above ground)
5. Removal of approximately 1,800 feet of earthen containment berm and replacement with a new 8-foot-tall concrete berm approximately 12 feet west of the existing berm
6. Relocation of an existing firewater pipeline, compressor station and associated underground infrastructure
7. Relocation of existing groundwater monitoring wells along Avenue "A"
8. Construction of a new 20-foot-wide service road along the western side of the new unloading rail spurs
9. Installation of three new pumps located on the western side of the new service road.

Approval Process

A two-step process is required to approve the Project: 1. Certify the Environmental Impact Report and 2. Approve the Use Permit. In order to approve the Project the Planning Commission must first take action on the Environmental Impact Report. If the Commission certifies the EIR, the Commission may then act to approve the Project. If the Commission fails to certify the EIR, the Commission may not approve the Project. Note that if the Commission declines to certify the EIR, the Commission should provide specific comments on the deficiencies of the EIR and/or direction on what needs to be improved in the EIR.

Note that the City has no ability to reject the EIR or the Use Permit due to rail related impacts. As noted in the EIR, the City and its legal team have evaluated the preemption issue and determined that the City is preempted from imposing mitigation measures which have the effect of regulating the rail aspects of the proposed Project. Similarly, the City is preempted from conditioning the Use Permit in such a way that impacts the rail aspects of the Project. The preemption issue is discussed r below.

LEGAL ISSUES AND PREEMPTION:

The Interstate Commerce Commission Termination Act (ICCTA), preempts any attempt by state and local governments to regulate railroad operations directly or indirectly. The EIR identifies significant offsite impacts from rail operations in

certain areas, including air quality, hazards, biological resources, and greenhouse gas emissions. There are various mitigation measures that might reduce and/or avoid these impacts, such as limiting the number of rail deliveries that Valero may accept per day, requiring Valero to purchase emissions credits to offset locomotive emissions, or requiring Valero to use upgraded tank cars that are not required by federal law. However, any attempt by the city to adopt such a mitigation measure or condition Project approval on such requirements, is preempted because the requirements would clearly “have the effect of managing or governing rail operations.” *People v. Burlington N. Santa Fe R.R.*, 209 Cal. App. 4th 1513, 1528 (2012).

ICCTA preempts local permitting or “preclearance” requirements that “could be used to deny a railroad the ability to conduct some part of its operations or to proceed with activities that the [Surface Transportation Board] has authorized.” *Town of Atherton v. California High-Speed Rail Auth.*, 228 Cal. App. 4th 314, 330 (2014)

In addition, the City may not deny Valero’s application based on impacts or health and safety risks posed by rail operations because that denial would preclude UPRR operations that have been authorized by the Surface Transportation Board. This means, among other things, that the City cannot deny the application based on the fact that the benefits of the Project do not outweigh the Project’s unavoidable significant impacts from rail operations. If the Commission were to deny the Project, the denial must be based on an inability to make the required Use Permit findings and that inability must be based on non-rail impacts.

As discussed later in this report, staff recommends that the City consider sending a letter to the City’s congressional representatives urging they adopt appropriate laws to protect the public from significant rail impacts.

PROJECT ANALYSIS:

The IG district requires a Use Permit for oil and gas refining. The Valero Refinery was constructed prior to the adoption of that requirement and, therefore, the existing Refinery is a legal nonconforming use. The nonconforming use regulations require a Use Permit for “alteration” or “expansion,” of a legal nonconforming use. The Project constitutes an “alteration” of the existing use, in accordance with Benicia Municipal Code (BMC) Section 17.98.070, because its cost, estimated at \$50 million, exceeds the \$20 million threshold.

The proposed Project will be constructed within the existing developed area of the Refinery, and the Project will meet the setback, lot coverage and landscaping requirements set forth in the Zoning Ordinance. The height of the new loading racks and walkways measure a maximum of 23 feet above grade,

which is well below the 75 foot height limit for the IG zoning district. The proposed Project does not trigger additional parking requirements of the Zoning Ordinance and the Refinery has ample parking to accommodate both permanent employees and contractors. The addition of approximately 20 permanent workers or contractors as part of the Project will not change those determinations.

Lighting

The proposed Project would add new safety lighting on and around the proposed rail car unloading racks. Lighting standards provided in BMC Section 17.70.250 D2, require that *site lighting shall be designed and installed to confine direct light rays to the site. Minimum illumination at ground level shall be 0.5 footcandles. Security lighting in any district may be indirect or diffused, or shall be shielded or directed away from adjoining properties and public rights-of-way.*

The unloading rack platform walkway would be approximately 13 feet above grade and is located near the northeastern property line adjacent to Sulphur Springs Creek. The 1,500-foot-long unloading rack would consist of twenty-five 60-foot-long segments. Each segment would include an aluminum pole with four LED lights mounted 12 feet above the unloading rack platform walkway and two LED pendant fixtures mounted underneath the platform, eight feet above grade. In addition, two pole-mounted LED lights would be located 18 inches above grade. Walkways extending over the rail spurs would include six stanchion-mounted LED fixtures along the walkway and stairs and four at stairway landings at each end of the unloading rack. Eleven stanchion-mounted LED fixtures would be mounted eight feet above eleven monitoring stations that would be evenly spaced along the length of the unloading rack. Eight stanchion mounted fixtures at eight feet above grade would be installed in the pumping station.

As shown on the attached lighting plans, all proposed lighting is shielded downward toward the platform, walkways, loading rack and adjacent service road. Prior to issuance of a building permit, the applicant is required to provide a detail of the specific lighting fixture per condition of approval no. 7.

Noise

Noise levels associated with the proposed Project would be related to the movement of rail cars and operation of the unloading rack pumps. Chapter 8.20 BMC provides the noise regulations. BMC 8.20.140 addresses noise from the operation of machinery, equipment, fans, and air conditioning units. This section limits noise *increases* from such mechanical devices to a maximum of 5 dBA over ambient base noise levels at the property line of any property generating the noise. A noise assessment was prepared by Wilson Ihrig & Associates to

evaluate noise level increases at the Refinery due to the implementation of the proposed Project.

A copy of this report is included as an attachment to the Draft EIR. The noise assessment found that under worst-case conditions, noise from the unloading rack pumps and the rail car movements would be up to 21 dBA and 58 dBA, respectively, at the nearest residence at Lansing Circle, approximately 2,700 feet northwest of the northern end of the Project site (Wilson, Ihrig & Associates, 2013). Existing average hourly L_{eq} noise levels for day, evening, and nighttime hours at the nearest residences to the proposed Project site were measured to range between 52 dBA and 55 dBA. Therefore, the noise generated by the Project once operational would be similar to existing noise generated by the Refinery.

BMC 8.20.150 prohibits construction activities within any residential zoning district, or within a radius of 500 feet from a residential zone prior to 7:00 a.m. or after 7:00 p.m. on Monday through Friday, or prior to 8:00 a.m. or after 7:00 p.m. on Saturdays and Sundays. The Project area is more than 2,000 feet from the nearest residential zoning district and therefore the standard related to construction noise does not apply to this Project.

Noise levels associated with movement of railcars along the rail line beyond the Refinery were evaluated in the EIR. See *Environmental Review* section for further details.

Emergency Access and Response

Valero maintains an onsite Fire Department that regularly coordinates with the City of Benicia Fire Department. The Draft EIR disclosed that operation of the proposed Project could interfere with an emergency evacuation plan, resulting in a potential significant adverse impact due to the amount of time during which Project-related rail traffic would block Park Road outside the Refinery's southern border (Impact 4.7-8) and recommended as Mitigation Measure 4.11-4 that an Operational Aid Agreement be concluded between the City of Benicia Fire Department/Valero Benicia Refinery Fire Department to be implemented in the event an emergency occurs during a Project train crossing. Due to preemption, the City has no ability to require such a mitigation measure since the impact to be mitigated relates to the rail operations.

The City, however, does have the ability to enforce existing agreements with Valero. The Fire Department and Exxon were parties to the 1996 County-wide mutual aid agreement. Valero's commitment to mutual aid was confirmed in the September 2000 Good Neighbor Agreement. A separate operational aid agreement specific for Benicia was executed last year. This Operational Aid Agreement meets all of the recommendations of draft Mitigation Measure 4.11-

4 and was fully executed by the responsible parties on December 18, 2015. It includes enforceable actions that would reduce Impact 4.7-7 to a less-than-significant level already are in place. Mitigation Measures 4.7-7 and 4.11-4 (Appendix H MMRP of FEIR) are no longer required and an updated Mitigation Monitoring and Reporting Program is attached this staff report for your review and approval. The signed Operational Agreement was included as Appendix B of the Final EIR.

The Benicia Fire Department has a response time goal of 7 minutes for all emergency calls. In 2012, the average response time was 5.2 minutes (2,099 total incidents) and the average response time to the Park Road/Bayshore Road area was about 6.6 minutes (27 total incidents). An average of about two emergency incidents a month occurred along the industrial areas of Park Road and Bayshore Road.

Although the probability of an emergency at the same time as a train crossing is low, the existing at-grade train crossing at Park Road can potentially delay response times by the City of Benicia's emergency response vehicles in the area. If an emergency incident were to happen during those times, the City emergency respondents would be required to use East 2nd Street to Industrial Way in order to access areas that normally would be accessed via Park Road. The additional rail crossings proposed by the CBR Project increases the number of potential times where an alternative response route to the industrial area will need to be used. This alternative route of travel increases the response time to areas of the industrial park by slightly over two (2) minutes. This is based on an average travel speed of 30 mph.

However, pursuant to the City's Operational Aid Agreement with the Refinery to address emergency response, the Refinery's onsite emergency response team will assist Benicia Fire Department by responding to off-site emergencies within the Park Road and Bayshore Road industrial areas if an emergency occurs during the event of a train crossing on Park Road. This helps keep response times at acceptable levels.

Additionally, Benicia Fire Department uses Opticom transmitters which are placed on stoplights and on emergency response vehicles as a form of communication so that the stop light is changed to green for their direction of travel and a red light for cross traffic. There may be locations throughout the City where this is not available. Since the alternative route to the Park Road/Bayshore Road area is longer and designated for emergency response, it is important to have the equipment in place along this route. Consistent with the City's Operational Aid Agreement with the Refinery, draft condition of approval no. 11 requires that Valero insures that Opticom (3m) receivers along the entire alternate route of travel from Fire Station 11 (150 Military West) along Military

West, East 2nd Street and Industrial Way to Park Road are installed and functional. In addition, Opticom transmitters shall be provided on all fire suppression units, including incident command vehicles.

The Park Road at-grade train crossing is also used by UPRR for deliveries to other parts of the industrial park. Some of these deliveries can cause extensive delays at the intersection due to the dividing of the train cars by UPRR. This activity is not associated within the Project. It is understood that Valero does not oversee the operation of UPRR; however it is important that the City's emergency responders are kept apprised of any blockage. Staff is recommending as a condition of approval that Valero provide communications to emergency responder agencies with the City of Benicia as to the blockage of normal travel routes due to the presence of a Refinery train at the intersection of Bayshore and Park Road. Any information provided to Valero by UPRR regarding known potential delays at railway crossings must be communicated to Benicia Police and Fire dispatch promptly. Draft condition of approval no. 12 requires that Valero actively coordinate with the City's emergency responders to provide advanced notification of any known blockage as well as install cameras at the intersection which provide live feed back to the City's Police and Fire dispatch center. This condition is consistent with the Operational Aid Agreement.

General Plan Consistency

The City's use permit regulations require that a Project be consistent with the General Plan. The Refinery itself is located in the General Industrial land use category. As stated on p. 28 of the General Plan, *"the General Industrial land use category is the least restrictive of the three [industrial] categories and is intended to allow a great deal of flexibility for industrial development. Over half of the Benicia Industrial Park is designated General Industrial. This includes nearly all of the Industrial Park north of I-780 and east of East Second Street. This category includes manufacturing, assembly, and packaging of goods and products from extracted, raw, and previously prepared materials and related industrial and commercial services."*

An analysis of how the Project is consistent with the applicable General Plan goals and policies are as follows:

- **GOAL 2.5:** *Facilitate and encourage new uses and development which provide substantial and sustainable fiscal and economic benefits to the City and the community while maintaining health, safety, and quality of life.*

The General Plan states that the Benicia Industrial Park, which includes the Valero Refinery, *"provide[s] a strong economic base for the City. In addition, businesses that support the refinery industry need to be located nearby, and many choose Benicia given its location and large concentration of like*

businesses. The tax revenues that the BIP and other heavy industrial uses generate allow the City to provide a relatively high level of public services, including its own library system. As a result, the Economic Development Goals, Policies, and Programs emphasize the importance of protecting existing heavy industrial uses.” (p. 38).

The General Plan also notes that the Refinery was the City's largest private-employer in 1999, which is still the case today, with the Valero Refinery employing more than 500 employees. Project construction would create temporary jobs and economic benefits for the local community. This would include 121 construction workers per day over the 25-week construction period. Implementation of the Project, which includes operation of the proposed crude oil unloading rack, would require approximately 20 new full-time jobs.

The proposed Project would allow the Refinery access to additional North-American sourced crudes thus allowing the Refinery to remain competitive in the marketplace into the future.

The proposed change of shipment methods of up to 70,000 barrels per day from marine vessel to railcar would result in a net reduction of GHG (greenhouse gas) emissions in the Bay Area, therefore benefiting the community while maintaining health, safety, and quality of life.

- ❑ **GOAL 2.6:** *Attract and retain a balance of different kinds of industrial uses to Benicia.*
 - **Policy 2.6.4:** *Link any expansion of Industrial land use to the provision of infrastructure and public services that are to be developed and in place prior to the expansion.*
 - **Policy 2.6.5:** *Establish and maintain a land buffer between industrial/commercial uses and existing and future residential uses for reasons of health, safety, and quality of life.*

The Project would consist of changes and improvements to an existing industrial use in an existing industrial district. The Refinery is unique in that it is the only use of its kind in the City of Benicia and one of five refineries in the San Francisco Bay Area. Currently the Refinery receives crude oil for processing from pipeline and marine vessel. The Project would provide a change of shipment methods of up to 70,000 barrels per day from marine vessel to railcar. The Project's proposed improvements are located within a development area of the Refinery in the northeast area of the parcel. The proposed Project does not expand the Refinery itself nor require additional public infrastructure or services. Therefore, the proposed Project does not

warrant a provision for the inclusion of new infrastructure to provide public services.

The closest residential areas are more than 2,000 feet from the proposed unloading rack and new rail infrastructure. Valero owns about 400 acres of land west and south of their facility which has served as a buffer between the Benicia Industrial Park, the Refinery and the City's residential neighborhoods. The Project does not alter or impact this existing land buffer between the Refinery and the residential uses.

- **GOAL 2.7:** *Attract and retain industrial facilities that provide fiscal and economic benefits to—and meet the present and future needs of—Benicia.*

Valero is a large source of revenue for the City and the single largest private employer, employing more than 500 employees. The combined property, sales and utility user tax represent more than 20% of the City's general fund revenue. The proposed Project would allow the Refinery access to additional North-American sourced crudes, thus allowing the Refinery to remain competitive in the marketplace into the future.

Furthermore, upon completion of the Project Valero will hire twenty (20) additional full time employees or contractors.

- **GOAL 2.20:** *Provide a balanced street system to serve automobiles, pedestrians, bicycles, and transit, balancing vehicle-flow improvements with multi-modal considerations.*

- **Policy 2.20.1:** *Maintain at least Level of Service D (“LOS D”) on all city roads, street segments, and intersections. *Exceptions may be allowed where measures required to achieve LOS D are infeasible because of right-of-way needs, impact on neighboring properties, aesthetics, or community character.*

As stated on p. 59 of the General Plan, “traffic operations at intersections are described in terms of Level of Service (LOS). LOS D is generally accepted as the standard for intersection operation and has been adopted as the standard for Benicia.” The Project's train crossings would not degrade any intersection currently operating at LOS D or better to a level worse than LOS D. As part of the Transportation Impact Analysis Report prepared by Fehr & Peers Transportation Consultants (included in the Draft EIR), vehicular and train crossing studies were conducted in the area of proposed increased railcar activity (Park Road rail crossing at Valero) as follows:

- 1) An automatic traffic count was conducted on Park Road;

- 2) A train crossings count was collected at the Park Road at-grade crossing; and
- 3) A train crossing count at the Iron Workers Union Driveway 700 feet southeast of Park Road, each study conducted for seven days.

These studies show that the proposed Project would increase the frequency of the number of crossings (four crossings per day), but the increased crossing frequency is within the current range of crossing variability (length of time). The proposed crossing duration of 8-minutes is lower than train crossing durations that already exist today without the proposed Project. The Project would not further decrease the LOS beyond what current exists and therefore would be consistent with the City's LOS standards.

- ❑ **GOAL 3.9** *Protect and enhance scenic roads and highways.*
 - **Policy 3.9.1** *Preserve vistas along I-780 and I-680*

The most visible physical changes at the site would be the replacement portions of the farm dikes with the 8-foot tall retaining wall and the rail car unloading rack. Views of these changes would be blocked from most offsite viewpoints due to their location within the Refinery and surrounding topography. The proposed facilities would be much shorter than the existing tanks in the immediate area. The proposed Project would blend in with the existing facilities in the Refinery and would not obstruct predominant visual elements of the area including the nearby hills, Suisun Bay and adjacent open space; all of which are visible from I-680.

Furthermore, according to the Scenic Highway Guidelines (California Department of Transportation), freeways are evaluated on the merits of how much natural landscape a traveler sees and the extent of visual intrusions. Visual intrusion may be natural or constructed and the less affected the scenic corridor is by the intrusion, the more likely it is to be nominated [for designation]. Based on the requirements and the existing extent of visual intrusions, designation of I-680 as a scenic highway is unlikely.

- ❑ **GOAL 4.1:** *Make community health and safety a high priority for Benicia.*
 - **Policy 4.1.1:** *Strive to protect and enhance the safety and health of Benicians when making planning and policy decisions.*
- ❑ **GOAL 4.7:** *Ensure that existing and future neighborhoods are safe from risks to public health that could result from exposure to hazardous materials.*

The closest residential areas are more than 2,000 feet from the proposed unloading rack and new rail infrastructure. Valero owns about 400 acres of land west and south of their facility which has always served as a buffer between the Benicia Industrial Park, the Refinery and the City's residential

neighborhoods. The Project does not alter or impact this existing land buffer between the Refinery and the residential uses.

In addition, due to the nature of its operations, the Refinery maintains an onsite Fire Department that regularly coordinates with the City of Benicia Fire Department. Although the probability of an emergency at the same time as a train crossing is low, the existing at-grade train crossing at Park Road can potentially delay response times by the City of Benicia's emergency response vehicles in the area. If an emergency incident were to happen during those times, the City emergency responders would be required to use East 2nd Street to Industrial Way in order to access areas that normally would be accessed via Park Road. This alternative route of travel increases the response time to areas of the industrial park by slightly over two (2) minutes. However, the city has an operational aid agreement with the Refinery to address emergency response. Pursuant to the existing Operational Aid Agreement, the Refinery's onsite emergency response team will assist Benicia Fire Department by responding to off-site emergencies within the Park Road and Bayshore Road industrial areas if an emergency occurs during the event of a train crossing on Park Road.

Additionally, Benicia Fire Department uses Opticom transmitters which are placed on stoplights and on emergency response vehicles as a form of communication so that the stop light is changed to green for their direction of travel and a red light for cross traffic. There may be locations throughout the City where this is not available. Since the alternative route to the Park Road/Bayshore Road area is longer and designated for emergency response, it is important to have the equipment in place along this route. Draft condition of approval no. 11 requires that Valero insures that Opticom (3m) receivers along the entire alternate route of travel from Fire Station 11 (150 Military West) along Military West, East 2nd Street and Industrial Way to Park Road are installed and functional. In addition, Opticom transmitters shall be provided on all fire suppression units, including incident command vehicles.

Draft condition of approval no. 12 requires that Valero actively coordinate with the City's emergency responders to provide advanced notification of any blockage as well as install cameras at the intersection which provide live feed back to the City's Police and Fire dispatch center.

In regard to hazards associated with the proposed crude oil unloading rack, the Revised Draft EIR provides the following:

“[An] accident may occur at the rail unloading facility when a rail car is coupled to the manifold during unloading operations. This process could

result in spills due to mechanical failure, structural failure, corrosion, or human error. The most likely spill related event would be a release during the unloading process due to a loading line failure.

To minimize the likelihood and the volume in the event of an oil spill at the unloading rack, hardware design on the rack includes a sight/flow glass for each tank car to verify that the contents have been emptied prior to decoupling the hose, a check valve between the offloading header and each tank car to prevent backflow from the offloading header, and manually operated block valves on both ends of the offloading hose. Since the volume released would be relatively small, contained on site, and under controlled conditions, the impact would be less than significant. Even so, the sump under the unloading facility has the capacity to receive and contain a volume almost nine times greater than the capacity of one tank car. This containment volume is significantly larger than the EPA 40 CFR 112.9 SPCC, which requires 100% of a single storage container and sufficient freeboard to contain precipitation. Given this, even if the contents of one entire tank car were released during an unloading operation, the impact would remain contained and less than significant.

The loading area also would be equipped with a fire protection system that complies with code requirements at the time of construction..." (pp. 2-106 to 2-107)

- **GOAL 4.8:** *Protect sensitive receptors from hazards.*
 - **Policy 4.8.1:** *Evaluate potential hazards and environmental risks to sensitive receptors before approving development.*

The environmental review associated with the proposed Project evaluated and addressed several different factors relating to community health and safety including, air quality, hazardous materials, water quality, transportation, etc. The EIR determined that the potential impacts within the City's purview can be mitigated to a less-than-significant level. All associated significant and unavoidable Project impacts are associated with rail operations and therefore beyond the authority of the City to mitigate or regulate.

The proposed change of transport of up to 70,000 barrels of crude oil per day by marine vessel transport by rail car results in a net decrease of air pollutants and greenhouse gas emissions in the Bay Area.

The Project area is located on the northeast portion of the Refinery. The closest sensitive receptors to the proposed Project would be residencies over

2,000 feet northwest of the Project site. The potential impacts to these receptors were evaluated in the EIR and it was determined that the impact would be less than significant.

□ **GOAL 4.9:** *Ensure clean air for Benicia residents.*

The General Plan requires that projects with identified significant air quality impacts include all feasible mitigation measures needed to reduce impacts to less than significant levels. This Project does not change the air impacts from the processing of crude oil but does change air quality impacts due to temporary construction and the change in delivery method. The EIR prepared for the proposed Project identified mitigation measures during Project construction. Those mitigation measures implement the Bay Area Air Quality Management District (BAAQMD) control measure for Project construction.

The change of shipment of up to 70,000 barrels of crude oil per day by marine vessel to shipment by rail car results in a net decrease of air pollutants and greenhouse gas emissions. The emissions by marine vessel are higher than the emissions by rail car; therefore, the operation of the proposed Project results in proportionately less emission reduction in the San Francisco Bay Area air basin which includes the City of Benicia. By reducing the air pollutants, the proposed Project is consistent with the goal of having clean air for Benicia residents.

- **GOAL 4.22:** *Update and maintain the City's Emergency Response Plan.*
- **Policy 4.22.1** *Provide an early community alert and notification system and safe evacuation plan for emergency incidents.*
 - **Policy 4.22.3** *Provide the public with information on specified emergency evacuation routes.*

The proposed Project does not necessitate an update to the City's Emergency Response Plan. However, the potential impacts associated with the transport of crude by rail serve as a reminder that the City can always benefit from maintaining such a plan.

As part of the City's Emergency Response Plan, the City uses the Community Alerting & Notification (CAN) System. The CAN System consists of seven sirens throughout the community, and is intended to alert the community to potential hazards associated with the Refinery. In addition, the CAN System also includes the ability to display messages on the local cable station and provide broadcast information on the local AM radio station. The intent is that community members upon hearing the siren could tune into the radio or television for further information or instructions related to the incident. This

system is currently being upgraded to include more modern technology and enhanced notification to the public.

Emergency evacuation route information is communicated to the public through local cable channel, local radio, City's website, social media (Facebook & Twitter), and CityWatch. (Reverse 911). Proposed upgrades to the CAN System will provide enhanced notification capabilities.

□ **GOAL 4.23:** *Reduce or eliminate the effects of excessive noise.*

As described in the EIR, the proposed Project does not create excessive noise; therefore no effects need to be reduced or eliminated. Noise levels associated with the proposed Project would be related to the movement of rail cars and operation of the unloading rack pumps. A noise assessment was prepared by Wilson Ihrig & Associates to evaluate noise level increases due to the implementation of the proposed Project. The noise assessment found that under worst-case conditions, noise generated by the Project once operational would be similar to existing noise generated by the Refinery.

Climate Action Plan Analysis/Consistency

The purpose of the City of Benicia Climate Action Plan (CAP) is to provide objectives and strategies that guide the development and implementation of actions that cut Benicia's greenhouse gas emissions (GHG) to meet its established goals of reducing GHG. Principle 3 GHG Reductions in Industrial and Commercial Sector on p. 16 of the CAP states that "Reducing GHG emissions in the Industrial and Commercial sector is critically important given the significant emissions associated with the sector...."

While the CAP states that the Valero Refinery is one of two large emitters in the City which are primarily regulated by federal and State agencies, the Project would result in a reduction of GHG emissions in the Bay Area.

Objective IC-4 is to *Encourage the Valero Refinery to Continue to Reduce Emissions*. Strategy IC-4.1. *Continue Implementing Capital Improvement Programs* focuses on regular replacement of inefficient equipment to maintain efficient industrial processes. Strategy IC- 4.2. *Investigate Onsite Energy Production* supports generating on-site energy to reduce fluctuation in energy costs and increase the efficiency of the power generated due to reduced transmission loss. The strategy suggests that Valero should consider becoming operationally independent for energy supply.

The Project results in a decrease in GHG emissions in the Bay Area, thus the Project would not directly conflict with the City's established strategies to support Objective IC-4; including Strategy IC-4.1 and Strategy IC4.2. Therefore,

the Project would not conflict with the Climate Action Plan.

Onsite Project construction of the unloading rack, containment berm, piping, etc., would generate GHG construction-related emissions due to the use of heavy-duty off-road equipment that would include excavators, graders, front loaders, dump trucks, cranes, paving equipment, etc. The CAP does not focus on construction related emissions due to their temporary nature. However, the Project would comply with all BAAQMD requirements for emissions during construction, thus mitigating potential impacts during construction.

ENVIRONMENTAL REVIEW:

The first decision that must be made when considering the Use Permit for the Project is whether to certify the EIR. The key issues in certifying the EIR are whether the EIR adequately identifies and addresses the potential significant environmental impacts and whether those impacts within the City's purview would be reduced below established thresholds by the implementation of the proposed mitigation measures. Because CEQA was designed to apprise the public and decision makers, like the Planning Commission, about the potential significant environmental effects of proposed projects, the City ultimately chose to evaluate the Project beyond the boundaries of the Project site. This has resulted in the EIR identifying some potential environmental damage beyond what the City may legally mitigate or avoid because of preemption. The impacts that may be mitigated and the impacts that cannot be mitigated are discussed below. Note that impacts such as Air Quality Impact 4.1-1 may be both mitigatable and not mitigatable depending on the details of the impact (i.e. are the impacts due to rail operations).

Potential Impacts with Mitigation Measures

The EIR identified 8 potentially significant impacts relating to Air Quality, Biological Resources, Energy Conservation, Geology and Soils, and Hydrology and Water Quality. All of these impacts can be mitigated to a less-than-significant level by mitigation measures described in the EIR. An overview of those impacts is provided as follows:

Air Quality

The air quality analysis takes into consideration both the construction phase and the operation of the Project: the EIR concludes that the construction-related air quality impact would be less than significant with mitigation incorporated (Impact 4.1-1) and that the operations-related air quality impact would be less than significant. Air pollutant emissions were estimated by ERM, a consultant to the Applicant, and independently reviewed by the City's consultant, ESA.

BAAQMD basic control measures, which are recommended for every construction project and contained in Mitigation Measure 4.1-1, would be

implemented to ensure that impacts associated with construction exhaust emission and fugitive dust emissions would be reduced to a less-than-significant level.

Mitigation Measure 4.1-1: Implement BAAQMD Basic Mitigation Measures.

Valero and/or its construction contractors shall comply with the following applicable BAAQMD basic control measures during Project construction:

- All exposed dirt non-work surfaces (e.g., parking areas, staging areas, soil piles, and graded areas, and unpaved access roads) shall be watered two times a day.
- All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- All vehicle speeds on unpaved roads shall be limited to 15 mph.
- Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes (as required by the California Airborne Toxics Control Measure Title 13, Section 2485 of California of Regulations). Clear signage shall be provided for construction workers at all access points.
- All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- A publicly visible sign with the telephone number and person to contact at the City of Benicia regarding dust complaints shall be posted throughout construction. Valero and/or contractor shall respond and take corrective action within 48 hours of notification by the City. The BAAQMD's phone number shall also be visible to ensure compliance with applicable regulations.

No mitigation measure is required to address operations-related air quality emissions, which would be less than significant. As explained in the EIR, operation of the proposed Project would result in reduced air emissions relative to the baseline within the San Francisco Bay Area Air Basin, meaning that the annual net operations exhaust emissions from the shipment by rail would be less than that for marine vessel (the baseline condition) within the Bay Area Air Basin.

Biological Resources

While other special-status species occur in the vicinity, they are unlikely to be impacted by the Project due to lack of habitat at the Project site. California red-legged frog (*Rana draytonii*) and Western pond turtle (*Actinemys marmorata*) are unlikely to occur in the proposed Project area, which is defined for this

analysis as the construction footprint where direct impacts to species could occur. Although the chain link fence marking the Refinery boundary is permeable to these species, there is no habitat in the proposed Project area and no protective cover.

Nesting birds also are unlikely to occur in the proposed Project area; however, they could occur in the adjacent Sulphur Springs Creek corridor and so could experience significant adverse indirect effects resulting from construction activities (Impact 4.2-1). The noise, vibrations, visual disturbance, and increased human activity associated with Project construction could result in nest failure (disturbance, avoidance, or abandonment that leads to unsuccessful reproduction), or cause flight behavior that exposes an adult or its young to predators such as Cooper's hawks (*Accipiter cooperii*). Nest failure is a possible but unlikely outcome of construction activities, since the baseline noise and activity levels at the Refinery would not be significantly increased by construction activities. However, if it were to occur, nest failure would be a significant effect under CEQA and a violation of California Fish and Game Code Sections 3503- 3513 and the federal Migratory Bird Treaty Act. Implementation of Mitigation Measure 4.2-1 would reduce potentially significant Project effects on nesting birds to a less-than-significant level.

The implementation of Mitigation Measure 4.8-1 (below in Hydrology and Water Quality) would reduce to a less than significant level potential significant adverse impacts to the Sulphur Springs Creek riparian corridor and downstream coastal brackish marshes during construction activities including grading and other soil-disturbing activities, which could result in excessive sediment loads being carried into surface waters (Impact 4.2-2) and to Sulphur Springs Creek, which is a federally protected waters, and downstream coastal brackish marshes, which are federally protected wetlands (Impact 4.2-3).

Mitigation Measure 4.2-1: Project construction activities should avoid the nesting season of February 15 through August 31, if feasible. If seasonal avoidance is not possible then no sooner than 30 days prior to the start of any Project activity a biologist experienced in conducting nesting bird surveys shall survey the Project area and all accessible areas within 500 feet. If nesting birds are identified, the biologist shall implement a suitable protective buffer around the nest and no activities shall occur within this buffered area. Typical buffers are 250 feet for songbirds and 500 feet for raptors, but may be increased or decreased according to site-specific, Project-specific, activity-specific considerations such as visual barriers between the nest and the activity, decibel levels associated with the activity, and the species of nesting bird and its tolerance of the activity. Construction activities that are conducted within a reduced buffer shall be conducted in the presence of a qualified full-time biological monitor.

Energy Conservation

Construction of the proposed Project would result in the consumption of energy and could cause a potential significant adverse effect on local and regional energy supplies or requirements (Impact 4.4-1). Although construction-related energy consumption would be short-term in duration, it would represent irreversible consumption of fossil fuel energy resources. The implementation of Mitigation Measure 4.1-1, which is set forth above in the Air Quality discussion, would ensure that fuel energy consumed in the construction phase would not be wasted through unnecessary idling or through the operation of poorly maintained equipment. With implementation of Mitigation Measure 4.1-1 and the short construction period (estimated to require approximately 25 weeks), construction of the Project would result in a less than significant impact relating to energy conservation.

Geology and Soils

Consistent with the California Supreme Court's December 17, 2015 decision in *California Building Industry Association v. Bay Area Air Quality Management District* (2015) 62 Cal.4th 369, CEQA's requirement for an EIR to analyze the environmental effects of a project does not require agencies to analyze the environment's effects on a project where the project would not exacerbate existing environmental hazards. Here, the proposed Project would not exacerbate seismic conditions in the Project area. Nonetheless, the EIR analyzes each of the potential geology and soils related issues identified in CEQA Guidelines Appendix G and identifies mitigation measures to reduce potential significant effects below established thresholds.

With foundation and structural design in accordance with the current California Building Code (CBC) standards, seismic shaking should not result in significant structural damage to proposed Project components. Seismic design consistent with current professional engineering and Refinery industry standards would be employed in the proposed construction for resistance to strong ground shaking, especially for lateral forces. At a minimum, the CBC requirements would be followed during design and construction of all elements of the proposed Project. Additionally, consistent with the City's Building Code, the Applicant would be required to submit geotechnical engineering reports to the City that address site stability and foundation integrity for projects involving substantial grading in order to obtain grading or construction permits. Consistent with and in addition to Building Code requirements, the following mitigation measure would ensure that the level of risk from ground shaking (Impact 4.5-1) would be less than significant.

Mitigation Measure 4.5-1: Consistent with the geotechnical investigations and deformation analysis conducted to evaluate the potential for liquefaction hazards, the Valero Benicia Refinery shall incorporate into the final Project

design all recommendations to overcome lateral displacement, horizontal ground separation, and vertical settlement as provided by the licensed geotechnical engineer. Specifically, the Valero Benicia Refinery, in its design of the railroad Project element located in areas identified as underlain by liquefiable or problematic soils, shall design for total seismic lateral displacements of 8 inches to 39 inches. Railroad ties and slabs shall be analyzed to evaluate the effect of up to a 6 inch wide horizontal ground separation and all recommendations to overcome such horizontal ground separation provided by the licensed geotechnical engineer incorporate into the final Project design. A differential settlement of 2 inches across the gage width shall be analyzed to evaluate rail car tipping potential and all recommendations provided by the licensed geotechnical engineer incorporated into the final Project design. All geotechnical design shall comply with seismic design requirements of CBC [the California Building Code].

Mitigation Measure 4.5-2: Valero Benicia Refinery shall include into its current track inspection program, regular and, in the event of a seismic incident with potential for track damage, post-earthquake inspections of the proposed track sections to ensure compliance with Federal Railroad Administration (FRA) track safety standards. Additionally, in the event of an incident with potential for track damage, such as an earthquake and associated secondary ground failure (such as liquefaction or lateral spreading) track inspection shall occur after the occurrence and before the operation of any train over that track.

Hydrology and Water Quality

Construction activities associated with the proposed Project would require land disturbing activities such as grading, earthmoving, backfilling, and compaction. Additionally, proposed Project construction would involve use of chemicals and solvents such as fuel and lubricating grease for motorized heavy equipment. Such construction activities could cause dislodging of soil and erosion or inadvertent spills of construction related chemicals into waterways resulting in potential significant adverse water quality impacts (Impact 4.8-1). Sulphur Springs Creek is directly adjacent to the proposed Project and these impacts could be significant in the immediate vicinity of construction activities as well as further downstream. Construction or grading activities occurring on land parcels of one acre or more in size are subject to a General Construction Permit under the National Pollutant Discharge Elimination System permit program under section 402(p) of the federal Clean Water Act. However, the San Francisco Bay Regional Water Quality Control Board confirmed that stormwater runoff generated during Project construction activities would not require coverage under the General Permit for Construction Activities based on measures described in Valero's SWPPP. Implementation of a storm water management plan (SWMP) as described in Mitigation Measure 4.8-1 would ensure that the Project would not substantially degrade water quality. Implementation of

standard construction procedures and precautions would also ensure that the water quality impacts related to the handling of chemicals from Project construction would be less than significant.

Mitigation Measure 4.8-1: The Applicant and/or its contractor shall prepare and implement a storm water management plan (SWMP) for construction of the Project. The Project is covered under the Applicant's National Pollutant Discharge Elimination System (NPDES) permit and storm water pollution prevention plan (SWPPP). A notice of intent (NOI) application and notice of termination (NOT) application are not required. Implementation of the SWMP shall start with the commencement of construction and continue through the completion of the Project. The SWMP shall identify pollutant sources (such as sediment) that may affect the quality of storm water discharge and implement best management practices (BMPs) consistent with the California Stormwater Quality Association's BMP Handbook for Construction to reduce pollutants in storm water. The Applicant or the construction contractor shall install erosion and storm water control measures on the construction site such as installation of a silt fence and other BMPs, particularly at locations close to storm drains and water bodies. The BMPs shall also include practices for proper handling of chemicals such as avoiding fueling at the construction site and overtopping during fueling and installing spill containment pans.

Significant and Unavoidable Impacts (Impacts without Mitigation Measures)

The EIR also identified 11 significant and unavoidable impacts related to Air Quality, Biological Resources, Greenhouse Gas (GHG) Emissions, and Hazards and Hazardous Materials. The EIR concludes that these 11 potential significant environmental impacts are beyond the City's authority to regulate or mitigate. These impacts would result exclusively from the transport of materials for the Project by rail and the City is preempted from mitigating those impacts.

The DEIR and Revised DEIR evaluated all feasible mitigation measures to reduce potential significant impacts to a less-than-significant level. "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)). 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 the EIR,¹ the City cannot regulate UPRR's rail operations either directly (e.g., by dictating routing, timing, or choice of locomotives) or indirectly

¹ See, DEIR Section 3.7, *Federal Preemption of Railroad Regulation*, DEIR Appendix L, *Union Pacific Railroad Statement re: Preemption*, and Revised DEIR Appendix G, *Preemption of CEQA by the ICCTA*.

(e.g., 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 to reduce the potential effects of train transport wherever they may occur between the point of origin and the Refinery are preempted by federal law and legally infeasible under CEQA and the California Planning and Zoning Law.

As discussed in greater detail below, the legal concept of “federal preemption” precludes the City’s ability to condition or regulate operation of the railroad. Potential impacts resulting from operation of the railroad are identified in the EIR, but do not bear on the City’s decision making with respect to certification of the EIR or consideration of the Use Permit. Nonetheless, each potential significant unavoidable impact identified in the EIR is summarized for informational purposes below:

Air Quality

- Locomotive emissions associated with the Project’s transportation of crude oil by rail could conflict with implementation of applicable air quality plans [Impact 4.1-1].
- Locomotive emissions required to transport Project-related crude by rail would contribute to an existing or projected air quality violation(s), including NO_x [Impact 4.1-1b].
- Locomotive emissions required to transport Project-related crude by rail could result in a cumulatively considerable net increase in criteria pollutant and ozone precursor emissions [Impact 4.1-2].
- Locomotive emissions associated with operation of the Project could contribute to an existing or projected air quality violation uprail from the Roseville Yard [Impact 4.1-5].
- Locomotive emissions associated with operation of the Project could result in cumulatively considerable net increases in ozone precursor emissions in uprail air districts [Impact 4.1-7].

Biological Resources

- The Project could have a substantial adverse effect on candidate, sensitive or special-status wildlife species or migratory birds, including injury or mortality, resulting from collisions with trains along the North American freight rail lines as a result of increased frequency (high traffic volumes) of railcars [Impact 4.2-10].

Greenhouse Gas Emissions

- Locomotive emissions associated with the Project would generate direct and indirect GHG emissions [Impact 4.6-1].

- GHG emissions resulting from the increase in locomotive emissions required to transport Project-related crude oil by rail would conflict with Executive Order S-3-05 [Impact 4.6-2].

Hazards and Hazardous Materials

- The Project could pose significant hazard to the public or the environment at points along the North American freight rail lines through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment [Impact 4.7-2]. Although the risk of such an occurrence is extremely low, the potential consequences of such an event could be extremely high.
- Train derailments and rail car unloading accidents that lead to hazardous materials spills, fires, and explosions could result in substantial adverse secondary effects, including to Biological Resources, Cultural Resources, Geology and Soils, and Hydrology and Water Quality [Impact 4.7-6]. As analyzed in the EIR, these extremely low-risk events could have extremely high consequences.
- Operation of the Project could expose people or structures to significant risk, injury, or loss from wildland fire if a train derails in a fire hazard severity zone and a resulting fire or explosion causes a wildland fire [Impact 4.7-9].

CEQA Findings & Statement of Overriding Considerations

In order to certify the EIR, the Planning Commission must make three key decisions. The first relates to the adequacy of the EIR. The second relates to required findings. The third relates to the Statement of Overriding Considerations because of the Project's impacts. All of these decisions which are included in the draft resolution adopting the EIR are discussed in detail below.

First, prior to approving a project, the Planning Commission shall certify that:

1. The Final EIR was completed in compliance with CEQA (is legally sufficient);
2. The Commission reviewed and considered the Final EIR; and
3. The Final EIR reflects the City's independent judgment and analysis. (CEQA Section 15090).

As noted earlier, if the Commission cannot make these findings, the Commission should be very specific in detailing where the document is deficient so that the deficiencies may be corrected.

Second, the City shall not approve a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the City makes written findings for each of those significant effects. CEQA Guidelines Section 15091 (a) states:

"...The possible findings are:

(1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.

(2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

(3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.”

These findings pertaining to each of the significant environmental effects identified in the EIR are provided below and organized as follows:

- A. Findings Regarding Impacts That Will be Mitigated to Below a Level of Significance
- B. Findings Regarding Infeasible Mitigation Measures
- C. Findings Regarding Mitigation Measures That are the Responsibility of Another Agency
- D. Findings Regarding Alternatives.

A. Findings Regarding Impacts That Will be Mitigated to Below a Level of Significance (CEQA §21081(a)(1) and CEQA Guidelines §15091(a)(1))

The FEIR identifies the following potential impacts, which would be mitigated to below a level of significance by the mitigation measures set forth above:

- Air Quality Impact 4.1-1 (construction-related air emissions)
- Biological Resources Impact 4.2-1 (construction-related impacts to nesting birds)
- Geology and Soils Impact 4.5-1 (seismicity-related liquefaction hazards)
- Geology and Soils Impact 4.5-2 (operations-related earthquake-related track displacement)
- Hydrology and Water Quality Impact 4.8-1 (construction-related storm water management)
- Transportation and Traffic Impact 4.11-4 (emergency access to the Park Road and Bayshore Road industrial areas)

The City, having reviewed and considered the information contained in the FEIR and the Record of Proceedings pursuant to Public Resource Code §21081(a)(1)

and State CEQA Guidelines §15091(a)(1), adopts the following finding regarding these potential significant effects:

Finding. Changes or alterations have been required in or incorporated into the project, which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Discussion. With the implementation of recommended mitigation measures, the potential impacts would be reduced to a less-than-significant level.

B. Findings Regarding Infeasible Mitigation Measures (Public Resources Code §21081(a)(3) and CEQA Guidelines §15091(a)(3))

The FEIR identifies the following impacts as significant and unavoidable on the basis that federal preemption precludes the City from imposing any requirement that would regulate rail operations either directly (e.g., by dictating routing, timing, or choice of locomotives) or indirectly (e.g., by requiring Valero to pay a mitigation fee or purchase emissions offsets):

- Air Quality: Impact 4.1-1 (locomotive emission-related conflict with implementation of applicable air quality plans); Impact 4.1-1b (locomotive-related contribution to existing or projected air quality violation(s)), Impact 4.1-2 (cumulatively considerable locomotive-related net increase in criteria pollutant and ozone precursor emissions), Impact 4.1-5 (locomotive emission-related contribution to an existing or projected air quality violation uprail from the Roseville Yard), and Impact 4.1-7 (cumulatively considerable locomotive emission-related net increases in ozone precursor emissions in uprail air districts).
- Biological Resources: Impact 4.2-10 (train collision-related impacts to candidate, sensitive or special-status wildlife species or migratory birds, including injury or mortality).
- GHG Emissions: Impact 4.6-1 (locomotive-generated direct and indirect GHG emissions) and Impact 4.6-2 (locomotive emissions-related conflict with Executive Order S-3-05).
- Hazards and Hazardous Materials: Impact 4.7-2 (reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment posing a significant hazard to the public or the environment at points along the North American freight rail lines), Impact 4.7-6 (train derailments and rail car unloading accidents that lead to hazardous materials spills, fires, and explosions thereby resulting in substantial adverse secondary effects, including to Biological Resources, Cultural Resources, Geology and Soils, and Hydrology and Water Quality), and Impact 4.7-9 (exposure of people or structures to significant risk,

injury, or loss from wildland fire if a train derails in a fire hazard severity zone and a resulting fire or explosion causes a wildland fire).

The City, having reviewed and considered the information contained in the FEIR and the Record of Proceedings and pursuant to Public Resource Code §21081(a)(3) and State CEQA Guidelines §15091(a)(3), makes the following finding regarding these impacts:

Finding. Specific economic, legal, social, technological or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR. Each of the significant unavoidable impacts identified above has been determined to be unavoidable on the basis of legal infeasibility due to federal preemption of CEQA by the Interstate Commerce Commission Termination Act of 1995 (ITCA).

Discussion. "Feasible" is defined in CEQA Guidelines Section 15364 to mean "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." The CEQA statute (Section 21081) and Guidelines (Section 15019(a)(3)) also provide that "other" considerations may form the basis for a finding of infeasibility. Case law makes clear that a mitigation measure or alternative can be deemed infeasible on the basis of its failure to meet project objectives or on related public policy grounds.

C. Findings Regarding Mitigation Measures That are the Responsibility of Another Agency (Public Resources Code §21081(a)(2)) and CEQA Guidelines §15091(a)(2))

As noted above, each of the significant unavoidable impacts identified above has been determined to be unavoidable on the basis of legal infeasibility due to federal preemption. The City, having reviewed and considered the information contained in the FEIR and the Record of Proceedings, finds pursuant to CEQA §21081(a)(2) and CEQA Guidelines §15091(a)(2) that there are changes or alterations which could reduce significant impacts that are within the responsibility and jurisdiction of another public agency.

Finding. Such changes or alterations are within the responsibility and jurisdiction of other public agencies and not the agency making the finding. Such changes have been adopted by such other agencies or can and should be adopted by such other agencies.

Discussion. Federal law precludes the City from imposing any mitigation measure, condition of Use Permit approval, or other requirement that would

regulate rail operations either directly (e.g., by dictating routing, timing, or choice of locomotives) or indirectly (e.g., by requiring Valero to pay a mitigation fee or purchase emissions offsets). The Federal Railroad Administration (FRA) is a department within the U.S. Department of Transportation (USDOT). The FRA adopts and enforces railroad safety regulations, including regulations relating to track safety, grade crossings, rail equipment, operating practices, and the transport of hazardous materials by rail. FRA promulgates railroad safety regulations (49 CFR subtitle B, chapter II (parts 200-299)) and orders, enforces those regulations and orders as well as the Hazardous Materials Regulations at 49 CFR Parts 171-180, and the Federal railroad safety laws, and conducts a comprehensive railroad safety program. Federal agencies, specifically including the FRA and USDOT more generally, have jurisdiction over locomotive emissions, including emission of GHGs, and over track and rail car safety. Federal agencies' ongoing efforts to improve rail safety are summarized in Revised DEIR Section 2.12.2.4 (p. 2-68 et seq.).

The Pipeline and Hazardous Materials Safety Administration (PHMSA) is another department within the USDOT. Pursuant to the Hazardous Materials Transportation Act, PHMSA adopts regulations governing the transport of hazardous materials by rail, highway, air, and water. The PHMSA regulations are set forth in Chapter I of Subtitle B of Title 49 of the Code of Federal Regulations (CFR). The FRA enforces the requirements set forth in PHMSA regulations.

The United States Environmental Protection Agency (EPA) is a federal agency that implements and enforces federal environmental laws, including the federal Clean Air Act. EPA has the authority to regulate air emissions from locomotive engines, and has adopted regulations to that end. See 40 C.F.R. Part 1033.

Federal agencies can and should continue regulatory efforts to further minimize potential risks associated with the transportation of hazardous materials, including crude oil, by rail. The Planning Commission could recommend to the City Council that the Council request congressional representatives adopt appropriate laws to address these issues.

D. Findings Regarding Alternatives (Public Resources Code §21081(a)(3) and CEQA Guidelines §15091(a)(3))

Because the Project would cause one or more significant unavoidable environmental effects, the City must make findings with respect to the alternatives to the proposed Project considered in the FEIR, evaluating whether these alternatives could feasibly avoid or substantially lessen the proposed Project's unavoidable significant environmental effects while achieving most of its objectives. Project objectives are listed in DEIR Section 3.2.1 and set forth below for ease in reference:

1. Allow for the delivery of up to 70,000 barrels per day of North American-sourced crude oil by rail.
2. Replace marine vessel delivery with rail delivery of up to 70,000 barrels per day of crude oil.
3. Mitigate Project-related impacts.
4. Implement the proposed Project without changing existing Refinery process equipment or Refinery process operations, other than operation of the Project components.
5. Continue to meet requirements of existing rules and regulations pertaining to oil refining including the State of California Global Warming Solutions Act of 2006 (AB 32).

The EIR evaluated four alternatives, including three Project alternatives and one No Project Alternative: Alternative 1, which would limit the proposed Project to one 50-car train delivery per day as described in DEIR Section 6.4.2.1 (p. 6-7 et seq.); Alternative 2, which would restrict train delivery at the Refinery to nighttime hours as described in DEIR Section 6.4.2.2 (p. 6-8); Alternative 3, which would involve an offsite unloading terminal as described in DEIR Section 6.4.3 (p. 6-8 et seq.); and the No Project Alternative.

The City, having reviewed and considered the information contained in the FEIR and the Record of Proceedings, and pursuant to Public Resource Code §21081(a)(3) and State CEQA Guidelines §15091(a)(3), makes the following findings with respect to the alternatives discussed in the FEIR:

Finding. Specific economic, legal, social, technological, or other considerations, including considerations of the provision of employment opportunities for highly trained workers, make infeasible Alternative 1 and Alternative 2 identified in the FEIR. More specifically, Federal preemption precludes the City from regulating rail operations including the number of rail cars and the timing of rail car deliveries.

Discussion. Definitions, issues of feasibility, and federal preemption are discussed above.

Finding. The No Project Alternative would not allow the Refinery to meet most of the Project objectives.

Discussion. If the City selected the No Project Alternative, then existing authorizations for the Refinery would not allow for the delivery of up to 70,000 barrels per day of North American-sourced crude oil by rail, would not replace marine vessel delivery with rail delivery of up to 70,000 barrels per day of crude oil, and would not mitigate Project-related [air quality] impacts [within the Bay Area Air Basin]. The No Project Alternative would meet the objectives of not

resulting in a change in existing Refinery process equipment or Refinery process operations and of continuing to meet requirements of existing rules and regulations pertaining to oil refining including the State of California Global Warming Solutions Act of 2006 (AB 32).

Finding. Alternative 3 would not avoid or substantially lower potential significant impacts of the Project, but would allow the Refinery to meet most of the basic Project objectives. Alternative 3 may be infeasible.

Discussion. As shown in Revised DEIR Table ES-1 (p. 2-10 et seq.), which summarizes the environmental impact conclusions for the proposed Project and each of the alternatives, Alternative 3 would result in greater impacts to Biological Resources, Hydrology and Water Quality, and Noise relative to the proposed Project. Feasibility is questionable based on whether it would be capable of being accomplished in a successful manner within a reasonable period of time, considering that no specific site or sites have been identified or permitted and that environmental impacts would be shifted and possibly intensified by siting an offloading rack and related infrastructure in a different location.

Notwithstanding these concerns, Alternative 3 would meet most of the basic Project objectives: it would allow for the delivery of up to 70,000 barrels per day of North American-sourced crude oil by rail, would replace marine vessel delivery with rail delivery of up to 70,000 barrels per day of crude oil, would not result in a change in existing Refinery process equipment or Refinery process operations, and would allow the Refinery to continue to meet requirements of existing rules and regulations pertaining to oil refining including the State of California Global Warming Solutions Act of 2006 (AB 32).

Third, a Statement of Overriding Considerations is required if the Project is to be approved because of the environmental impacts that cannot be mitigated as noted in the findings discussed above. The Statement of Overriding Considerations is in addition to those findings discussed above. Under Public Resources Code Section 21081, a lead agency cannot approve a project that will result in significant unavoidable impacts on the environment unless the agency finds that "specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment." The Interstate Commerce Commission Termination Act (ICCTA), however, preempts this provision as applied to significant impacts caused by rail operations. The ICCTA broadly preempts local permitting or "preclearance" requirements that "could be used to deny a railroad the ability to conduct some part of its operations or to proceed with activities that the [Surface Transportation Board] has authorized." (*Town of Atherton v. California High-Speed Rail Auth.*, 228 Cal. App. 4th 314, 330 (2014).) If the City were to deny

Valero's application based on impacts from rail operations, the effect would be to preclude Union Pacific operations that have been authorized by the Surface Transportation Board.

Staff has prepared a Statement of Overriding Considerations for the Planning Commission's consideration. The Statement of Overriding Considerations will be an attachment to the resolution for the EIR. The Planning Commission must weigh the Project benefits and impacts in the Statement of Overriding Considerations. Staff believes that the benefits of the Project do not outweigh the significant and unavoidable impacts on uprail communities. The draft Statement of Overriding Considerations attached to this report as Exhibit A-1 finds that the Project benefits do not outweigh the Project's impacts, but that it is legally infeasible due to preemption to mitigate the impacts of the Project.

Because it is within the Commission's discretion to determine that the Project benefits do outweigh the significant and unavoidable impacts on uprail communities, the Commission could adopt a "standard" Statement of Overriding Considerations. This alternative has been provided as Exhibit A-2.

In order to prepare the Statement of Overriding Considerations, staff has identified the following benefits of the Project:

1. The Project will generate additional tax revenue for the City. A report commissioned by Valero, prepared by Andrew Chang & Company, LLC and dated May 2014² concluded as follows:

- The Project will generate almost \$200,000 in additional sales tax.
- The Project will increase the value of the Refinery property by approximately \$55 million, which will increase property tax revenue by \$175,000 per year.
- Project construction will create over 1,000 jobs and could generate up to \$2 million in one-time sales tax revenue for the City based on sales of construction materials.

2. The Project will create 20 permanent jobs at the Refinery, and indirectly create an additional 30-40 jobs in the region.

3. The Project will reduce greenhouse gas (GHG) emissions by a total of 225,000 tons per year based on replacing ship trips with locomotive trips for delivery of 70,000 barrels per day of crude oil to the Refinery.

² Note that this report was submitted as part of the draft EIR comments from Diane Sinclair.

4. The Project will generate as much as \$1,600,000 in annual funding for the California's Office of Spill Prevention and Response for inland spill preparedness.

5. The Project will reduce the likelihood of an oil spill as compared to the risk of maritime spills under current conditions.

6. The Project will ensure the continuing economic viability of the Valero Refinery, thus protecting more than 500 jobs and tax revenues comprising approximately 20% of the City's general fund operating budget.

The January 22, 2016 Report of the City's consultant Dr. Steve McGovern supports benefit no. 6. In his report, Dr. McGovern explains that, without access to North American crudes, the Benicia Refinery could be at a severe economic disadvantage as compared with other West Coast refiners, which could lead to closure of the Refinery.

The failure of the Planning Commission to take any of these three steps means that the Project cannot be approved. Once the three steps are approved, consideration of the Use Permit is appropriate.

USE PERMIT FINDINGS

Once the Commission has certified the FEIR, adopted the mitigation measures and the Statement of Overriding Considerations, it must determine whether to approve or deny the Use Permit based on the required findings. As discussed in the previous section on the CEQA Findings and Statement of Overriding Considerations, preemption again limits consideration of the rail related aspects of the Project. This is discussed further in the paragraph below. The City may only consider aspects of the Project which are within its purview.

Per BMC 17.104.060, the City cannot approve a project that will be "detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the neighborhood of such use, nor detrimental to properties or improvements in the vicinity or to the general welfare of the city." However, the Interstate Commerce Commission Termination Act (ICCTA), among other laws, preempts this requirement to the extent that it would require the City to deny Valero's application based on the health and safety risks of rail operations. The ICCTA broadly preempts local permitting or "preclearance" requirements that "could be used to deny a railroad the ability to conduct some part of its operations or to proceed with activities that the [Surface Transportation Board] has authorized." (*Town of Atherton v. California High-Speed Rail Auth.*, 228 Cal. App. 4th 314, 330 (2014).) If the City were to deny Valero's application for the proposed Project based on health and safety risks posed by rail operations, the

effect would be to preclude Union Pacific operations that have been authorized by the Surface Transportation Board.

Therefore, the Planning Commission is limited and may only make Use Permit findings as they relate to the aspects of the Project that do not involve the railroad. Findings not related to rail operations would have to be made to deny the proposed Project. Findings related to rail impacts cannot be used as a reason to deny the project.

The three findings which are required to be made in order to approve a Use Permit as outlined in BMC 17.104.060 are as follows:

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.

The proposed Project meets the objectives of the Zoning Ordinance and the purposes of the General Industrial (IG) zoning district as outlined in Sections 17.04.030 and 17.32.010 of the Zoning Ordinance as follows:

The specific purpose of the IG zoning district is “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 in that the Project would enhance the Refinery's ability to fulfill that purpose. The Project would consist of changes and improvements to an existing industrial use in an existing industrial district. The Project's improvements would be constructed within the existing Refinery footprint, and 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.

The Project would not have service demands that exceed the capacities of existing streets, utilities or public services. The Project would not have an effect on views of the shoreline and undeveloped hillsides and ridgelines as the new rail car unloading rack would be much shorter than the adjacent development blocking their visibility from most of the off-site viewpoints. The

Project would have no effect on the City's architectural and cultural resources. The Project would not affect existing open space nor would it interfere with future open space plans of the City.

The Project would support the Refinery in its ability to remain competitive in the marketplace and into the future. It would also provide an estimated 121 temporary construction jobs and up to 20 permanent full-time jobs, thereby strengthening the City's economic base. The addition of no more than 20 new employees or contractors would not cause or make a significant contribution to excessive population densities.

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.

The EIR, together with the conditions of approval set forth herein and discussed in the staff report, show that the Project, as mitigated and conditioned, would be consistent with all applicable goals and policies of the General Plan. For areas of impact within City purview, the Project would not be detrimental to public health, safety, and welfare because the impacts of the Project would be mitigated by measures that are incorporated into the Project or that are required by the conditions of approval. In addition the proposed change of shipment from marine vessel to rail car for up to 70,000 barrels per day will result in a net decrease in the amount of greenhouse gas emissions in the Bay Area. The mitigation monitoring and reporting program will ensure that the Project is consistent with implementing Program 2.36.A of the General Plan and enhancing the public health, safety, and welfare.

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.

As shown by the Use Permit Findings 2 and 3 and the discussion in the staff report, the Project as mitigated and conditioned 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.

As set forth above, the findings can be made for the Project, as mitigated and with the proposed conditions of approval.

PUBLIC COMMENT

The Project has received a great deal of interest over the last few years. As noted in the "Environmental Analysis" section of this staff report, the City has held five public meetings and solicited public input on the environmental review for the Project on five different occasions. The majority of written comments received were submitted during one of the four official comment periods:

1. Initial Study Mitigated Negative Declaration
2. EIR Scoping
3. Draft EIR
4. Revised Draft EIR

Those comments which were submitted after the end of the official comment period for the Draft EIR (September 16, 2014- August 28, 2015) and after the end of the official comment period for the Revised Draft EIR (October 31, 2015 – January 25, 2015) were not included in the Response to Comments of the Final EIR. Those are attached to this staff report.

In addition to late comments on the EIR, comments have been submitted throughout the process on the Project in general. All of these comments are also included as an attachment to this staff report.

CONCLUSION:

The Final EIR has been completed in accord with CEQA requirements and accurately describes the potential impacts of the Project and the necessary mitigations. Due to the fact that all significant and unavoidable impacts which would necessitate a Statement of Overriding Considerations are related to the Project's association with rail operations, Section 21081 of the Public Resources Code is preempted. As noted earlier, the Statement of Overriding Considerations has been prepared recognizing that the fact that Commission may not be able to find that the benefits of the Project outweigh the impacts but that preemption negates the application of Public Resources Code Section.

Those aspects of the proposed Project which are within the City's jurisdiction, with the mitigations proposed in the EIR, and with the proposed conditions of approval, are consistent with the purposes of the IG district and will not have significant adverse impacts on surrounding land uses, the public, or the environment. The Project will protect tax revenues to the City and will allow the Refinery to remain competitive in the marketplace into the future.

If the City were to deny the Project based on impacts from rail operations, and the absence of overriding benefits, the effect would be to preclude UPRR operations that have been authorized by the Surface Transportation

Board. Thus, the City is preempted from denying the Project based on rail impacts. The preemption issue raises important questions about what state and local governments can do to protect public health and the environment. The Planning Commission could recommend to the City Council that the Council request congressional representatives adopt appropriate laws to address these issues. The draft resolution for the EIR includes language requesting the City Council send a letter supporting continuing regulatory efforts to protect public health related to transporting crude by rail.

RECOMMENDED ACTIONS:

Staff recommends that the Planning Commission hold a public hearing, consider all appropriate documents and testimony, and then act to:

1. Adopt the attached draft Resolution certifying the Final Environmental Impact Report, adopting California Environmental Quality Act ("CEQA") findings for the Project, the Statement of Overriding Considerations and the Mitigation Monitoring and Reporting Program.
2. Adopt the attached draft Resolution approving the Use Permit for the Project (12PLN-00063), with the findings and conditions listed in the draft resolution.

FURTHER ACTION:

The action of the Planning Commission is final unless appealed or called for review to the City Council within ten business days.

ATTACHMENTS:

- [Attachment 1](#): Draft Resolution (Final Environmental Impact Report and Mitigation Monitoring and Reporting Program)
- [Attachment 2](#): Exhibit A 1: Statement of Overriding Considerations (Preemption)
- [Attachment 3](#): Exhibit A 2: Statement of Overriding Considerations (Benefits Outweigh)
- [Attachment 4](#): Exhibit B: Mitigation Monitoring and Reporting Program
- [Attachment 5](#): Draft Resolution (Use Permit)
- [Attachment 6](#): Use Permit Application
- [Attachment 7](#): Applicant's Letter dated January 25, 2016
- [Attachment 8](#): Aerial Photograph of Project Area
- [Attachment 9](#): Project Plans
- [Attachment 10](#): SJ McGovern Report for City of Benicia Valero Crude by Rail Project Economic Impacts
- [Attachment 11](#): Valero's Economic and Revenue Impacts Report, May 2014 by Andrew Chang & Company, LLC
- [Attachment 12](#): Public Comments *
 - Public Comments Part 1

- [Public Comments Part 2](#)
- [Public Comments Part 3](#)
- [Public Comments Part 4](#)
- [Public Comments Part 5](#)

**If viewing online, Attachment 12: Public Comments has been broken into five parts in order to reduce the file size*

Previously provided under separate cover to the Planning Commission members and available for review at the Community Development Department, the Benicia Public Library and the City's website (www.ci.benicia.ca.us):

- Draft EIR
- Revised Draft EIR
- Response to Comments (Final EIR)