

**City Council Hearing, April 4, 2016**  
**Valero Appeal of the Planning Commission denial of FEIR Certification and denial of the Crude By Rail Project permit; Valero Request for Delay in Appeal Process; Council Consideration of adequacy of the FEIR and Permitting of the CBR Project**

Good evening, Mayor Patterson and Councilmembers,

This City is now at a crucial juncture in the CEQA process as it relates to Valero's request for Permit and the adequacy of the CEQA document — *the* critical juncture in the decision process, to allow or not allow the permit for the Crude By Rail Project. Benicia is currently in a position to make final determinations, and the State of California as well as many municipalities across California and the nation are watching closely. Benicia's decisions and the reasoned support for those decisions will be critically examined. I believe Benicia, and this Council in particular, has the means, motivation, and ethical wherewithal to deliver a reasoned and supportable decision — no matter how difficult and complex the issues.

First, you must deny Valero's request for a delay of the appeal process. Input from the Surface Transportation Board (STB) would merely represent another written "opinion" on the EIR. The STB is not the arbiter of the preemption issue — this responsibility lies with the judiciary. As such, the opinion provided would be of no value. If Valero wanted the STB's opinion to be entered into the record, Valero should have solicited and obtained that opinion well before the close of the comment period on the FEIR. The public (inclusive of all agencies) responded to the CEQA documents on time — at a significant cost of time and money. Approving this delay would serve Valero only. An exception made for the STB is inappropriate and would create a special class of CEQA responder — one with special privileges in the CEQA process. Further, there is no guarantee that STB would provide a response, let alone, provide one within any certain timeframe. Will the response be in six months, twelve months?

Throughout the CEQA process, Valero has complained about the length of time to resolution. Now, Valero, through this request, is the creator of an indefinite delay.

**WHY?**

One significant impact of delay to this City would be that new information provided "de novo" would require a newly revised draft EIR be prepared and circulated with subsequent review and public comment period. This equates to significant additional Staff time and effort.

**Why** move future hearings beyond the election season — perhaps to keep the issue out of public debate? Does the Applicant believe that an additional delay will quell the public's momentum and interest in the outcome, given the overwhelming critical and valid public response? Does the Applicant need more time to come up with other clever strategies?

Our Planning Commission made no snap decision. Commissioners finally deliberated after three years of studying the Draft EIR, the Revised DEIR and the Final EIR, listening to the public and

reading volumes of written comments. Their unanimous vote signals hundreds of hours committed to understanding the Project and its impacts as they were described and analyzed – or not – in those documents and as discussed by the public.

In their final deliberations, our Commission upheld CEQA and its legal requirements and rightfully determined that the CEQA document was not certifiable. The Commission additionally voted to decline approving the Project Permit and thereby stood firmly, *and ethically*, voting to protect public health, safety and the environment for sake of our own community's protections, but also, with respect for lives and locales near and far beyond Benicia. They recognized that the risks and impacts posed by this Project overall, would exist *in perpetuity*.

We expect that each of you has read, reviewed and analyzed the DEIR, the REIR, the FEIR as well as the vast amount of public testimony submitted on the failure of those documents to meet minimum CEQA requirements. The comments of local and regional residents, elected officials, public agencies, refinery experts, environmental organizations and our California Attorney General were ignored, dismissed, and avoided or refuted with repeated false, unsupported arguments and suspect analyses. Comments made to the DEIR remained unaddressed and uncorrected in the subsequent revisions and the final Response to Comments. The City has received volumes of commentary in opposition to the FEIR's certification from multiple parties and such comments contained shared criticisms even though they were independently derived.

Valero and UPPR's opinions on preemption and trade secret law are flawed, extreme in their breadth and scope of interpretation and represent a significant threat to local authority. Their interpretation serves to divest The City of its mandate to regulate land use on properties within its jurisdiction. Certainly, Valero cannot neuter our City and preclude Benicia from exercising its lawful authority over land use development issues on non-railroad-owned property within city limits.

The public, inclusive of professional engineers and refinery experts, have spoken to the exceptional hazards and risks of locating a crude off-loading rail terminal on Valero property that would pose a daily increased threat to the refinery itself as well as to the industrial park generally. The Final EIR glosses concerns raised regarding the degree of intensification of risk posed by siting the terminal adjacent to crude storage tanks and Sulphur Springs Creek, in a flood plain zone and active fault zone, and also directly across from companies along East Channel Rd. engaged in activities involving heavy machining and arc welding [Benicia Fabrication & Machine Shop]; concrete fabrication and heavy diesel trucking [CONCO]; and gas and chemical supply, including gases the refinery uses [PRAXAIR]. I urge you to examine thoroughly the latest comment letter from Phyllis Fox, Phd., submitted on behalf of SAFER California on the failures of the Qualitative Risk Analysis provided in the FEIR.

The Benicia Industrial Park must be protected from becoming a de-facto train yard for Valero and/or a sacrifice zone in the event of a catastrophic accident caused by a derailed crude-loaded train. If a manifest freight train carrying beer to Biagi were to derail, we might have a keg party.

But if a train derailed loaded with flammable crude oil, you could have a powder keg and BLEVE explosion with a call for immediate evacuation. Recall that derailments have occurred in the Industrial Park in the last few years that have caused several hours of delays at Park Rd.

Each time I have spoken to the EIR, I have endeavored to provide scenarios not addressed in the EIR. Tonight, I will provide yet another example:

Within the tight confines that would be dedicated to rail terminal operations along Valero's eastern fenceline, two 50 car trains loaded with crude oil would be arriving and departing within a 24 hour period. According to the DEIR, it would take 12 hours to offload a single 50 car train, [DEIR p. 3-22]. This means that over a number of days or weeks Valero's preferred train arrival and departure times – requested of Union Pacific, but not guaranteed to avoid rush hours – would be thrown off by the minutes required for two trains to be moving in and out of the rail offloading racks So let's just say the schedule would be thrown off by at least a few minutes, in each consecutive 24 hour period, and more if there are problems. How many days would it take before two trains, one arriving, one departing, would be moving through the Park Road intersection and the industrial park, crossing private company driveways along Bayshore Rd. at rush hour? The DEIR didn't do the math.

A second concern: for an indefinite interval, two 50-car trains would simultaneously be "parked" on Valero property, one loaded train just arrived, idling on a side track waiting to enter the terminal, and the other, emptied, but with residual gases inside the tanks, getting ready to depart the terminal. Thus, a total of 100 tank cars could be "parked" on Valero property at one time, along with as many as six diesel locomotives, presumably with engines firing up or idling, but not counting other tank cars that could be sidelined nearby, holding ethanol or propane. This routine scenario would occur twice in a 24 hour cycle. The FEIR does not discuss this daily event and the potential additional hazards from fugitive emissions it represents, cumulative or catastrophic.

You must be concerned by the quality and quantity of the crude oil proposed to be imported by rail. For example: the DEIR offers no factual basis for its claim that there would be no net increases in emissions resulting from refining the crudes the Project would import. To the contrary, there are dangerous, known characteristics of tar sands dilbits and Bakken oil that the FEIR failed to disclose that relate to future crude blend processing as an indirect impact of the Project. The California Supreme Court has ruled that projected processing emissions estimates must be compared to current emission baselines, not to permitted emissions levels, which are much higher and were established 13 years ago by the VIP Project. For detail on this issue, read Greg Karras' most recent comment letter on behalf of Communities for a Better Environment regarding deceptive emissions reporting and the FEIR's failure to account for the increase in emissions of neurotoxic and carcinogenic heavy metals, increases in energy and hydrogen consumption, and substantial increases in GHG emissions resulting from refining tar sands. All of these facts are vitally relevant to understanding the magnitude of the cumulative effects of this Project on Air Quality, and the critical importance of your decisions with regard to environmental protection, public health and safety.

The Project description does not account for changes at Valero's port if and when "up to 82% of ships" importing crude oil would be eliminated. What project and business decision would follow from freeing up port capacity? Would production be ramped up for increasing exports of finished product to the Pacific Rim? What would be the environmental consequences and impacts of a greater expansion of port use as an indirect impact of the rail project? Any claimed GHG savings for the Project in the EIR would be erroneous.

As the commission did, you must uphold the principle goal of the Benicia General Plan for sustainable development. This Project is not sustainable in any sense. It does not reflect the goals of AB32, the California Global Warming Solutions Act. Commissioners rightfully concluded that the Crude By Rail Project is, essentially, BAD FOR BENICIA, bad for people and places uprail and BAD for the planet.

The Project is BAD for Benicia economically: it would add a real estate disclosure issue for residential and commercial properties. It would cast a dark cloud over public perception of Benicia's values: After all, putting all our eggs in One Big Future Super Fund Site as an investment basket is NOT wise. With a yes vote for this Project, the City sacrifices its potential for creating greater economic diversity to Valero's immediate interests in profit for their investors. The City may think of an immediate gain, but think again long-term: the City loses.

You are obliged to reject the FEIR based on CEQA requirements that call for a full Project Description, analysis of all foreseeable impacts and provide feasible, effective and enforceable mitigations for those projected significant impacts. The FEIR must provide feasible project alternatives that would reduce impacts overall. The FEIR deemed the NO PROJECT ALTERNATIVE as "environmentally superior." In good faith, each of you will make a decision about a project that if permitted would risk millions of lives and locales, including urban and rural centers, precious rivers, forests, marshes, ag land — from here all the way to the sources of crude oil in North Dakota and Alberta, Canada.

We urge you to deny Valero's appeal, deny FEIR certification and deny the Project a permit. A unanimous decision by this Council, echoing the Planning Commission, would be GOOD FOR BENICIA, Good for the State of California, Good for People and Good for the Planet.

Thank you for your consideration of my comments.

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on behalf of Benicians For a Safe and Healthy Community

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