

RESOLUTION NO. 16-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA UPHOLDING THE APPEAL OF THE PLANNING COMMISSION'S DECISION TO NOT CERTIFY THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE VALERO CRUDE BY RAIL PROJECT (12PLN-00063)

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

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

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

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

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

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

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

WHEREAS, a Notice of Completion of the Revised Draft EIR was filed with OPR on August 31, 2015, and a public notice of the availability of the Revised Draft EIR was published in the Benicia Herald and Vallejo Time Herald on August 31, 2015; and

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

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

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

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

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

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

WHEREAS, the Planning Commission reviewed and considered the Final EIR and has heard and considered public comments regarding the Final EIR at a public hearings on February 8, 9, 10, and 11 2016; and

WHEREAS, a Mitigation Monitoring and Reporting Program has been prepared to ensure that the mitigation measures identified in the EIR are

implemented, and that Program is set forth in Exhibit B; and

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

WHEREAS, the Planning Commission adopted Resolution No. 16-1 and denied certification of the Final EIR and denied the use permit for the CBR Project on February 11, 2016; and

WHEREAS, on February 29, 2016, Valero Refinery filed a timely appeal of the Planning Commission decision stating that the denial was based on grounds either preempted by federal law, contrary to governing law and/or not supported by substantial evidence in the record; and

WHEREAS, the City Council has reviewed and considered the Final EIR and has heard and considered public comments regarding the Final EIR at a public hearings on March 15, 2016, April 4, 2016, April 18, 2016, April 19, 2016 and September 20, 2016.

NOW, THEREFORE BE IT RESOLVED THAT the City Council of the City of Benicia hereby resolves as follows:

1. The Final EIR for the Valero Crude by Rail Project has been completed in compliance with the California Environmental Quality Act, the State CEQA Guidelines and the City of Benicia's adopted CEQA Guidelines.
2. The City Council reviewed and considered the information in the Final EIR.
3. The Final EIR reflects the independent judgment and analysis of the City of Benicia.

BE IT FURTHER RESOLVED THAT the City Council makes the following findings based on the staff report, the Final EIR and related documents, and information presented at the public hearings on the Final EIR on March 15, 2016, April 4, 2016, April 18, 2016, April 19, 2016 and September 20, 2016:

- A. That the Final EIR has identified all significant environmental effects of the project, and that there are no known potential environmental impacts that are not addressed in the Final EIR.

- B. That the Final EIR has described a reasonable range of alternatives to the project that could feasibly attain most of the basic objectives of the project.
- C. That a good faith effort has been made to seek out and incorporate all points of view in the preparation of the Draft EIR, Revised DEIR and Final EIR as indicated in the public record of the project, including the Final EIR.
- D. 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. [Impacts 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)

- E. 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 related to rail operations identified in the Final EIR. Each of the significant unavoidable impacts identified below 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). [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 upr ail from the Roseville Yard), and Impact 4.1-7 (cumulatively considerable locomotive emission-related net increases in ozone precursor emissions in upr ail 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).

F. That that the above significant and unavoidable effects are within the responsibility and jurisdiction of other public agencies and not the City of Benicia. Such changes can and should be adopted by such other agencies. [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 in the Record of Proceedings, each of the significant unavoidable impacts identified above has been determined to be unavoidable on the basis of legal infeasibility due to federal preemption.

G. That 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. , Federal preemption precludes the City from regulating rail operations including the number of rail cars and the timing of rail car deliveries. [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:

- H. That the No Project Alternative would not allow the Refinery to meet most of the project objectives.
- I. That Alternative 1 would reduce negative air quality and climate change effects, however it would not result in a reduction of other environmental effects, would not meet the project objectives, and is preempted by

federal law.

- J. That Alternative 2 would reduce the negative air quality and climate change effects, however it would increase noise effects and not result in a reduction of other environmental effects, would not meet the project objectives, and is preempted by federal law.
- K. That Alternative 3 would increase potential significant impacts of the Project and would relocate these impacts to another area. This alternative would allow the Refinery to meet most of the basic project objectives; however it is highly speculative, likely infeasible, and preempted by federal law.
- L. That the City finds and declares that, having reduced the significant adverse environmental effects of the proposed Project to the extent feasible by adopting mitigation measures, having considered the entire administrative record of the proposed Project, and having weighed the benefits of the proposed Project against its unavoidable adverse impacts after mitigation, the City has determined that the above Project benefits do not outweigh the Project's potential unavoidable significant adverse impacts from rail operations, and the impacts remain unacceptable. The federal Interstate Commerce Commission Termination Act, however, preempts Public Resources Code Section 21081 to the extent that it prohibits an agency from approving a project that will result in significant unavoidable impacts from rail operations absent a finding that the Project's benefits outweigh the Project's significant effects on the environment. [Statement of Overriding Considerations (Public Resources Code §21081(b)) and CEQA Guidelines §15093]]

As provided in Exhibit A: Statement of Overriding Considerations dated March 15, 2016, the City finds that reasonable and good faith efforts have been made to eliminate or substantially mitigate potential impacts from the foregoing significant and unavoidable impacts. To the extent any mitigation measures could not be incorporated, such mitigation measures are infeasible because of specific economic, legal, social, technological and other considerations, and requirement to find the benefits of the proposed Project outweigh the unmitigated impacts is preempted.

BE IT FURTHER RESOLVED THAT the City Council directs staff to prepare a letter for congressional support for continued regulatory efforts to further minimize potential risks associated with the transportation of hazardous materials, including crude oil by rail.

BE IT FURTHER RESOLVED THAT the City Council has reviewed and

considered the proposed Mitigation Monitoring and Reporting Program, attached hereto as Exhibit B, and finds that it adequately ensures project compliance with the mitigation measures directed at potentially significant impacts and meets all the requirements of the California Environmental Quality Act and the State CEQA Guidelines.

BE IT FURTHER RESOLVED THAT the City Council has reviewed and considered the proposed Mitigation Monitoring and Reporting Program, attached hereto as Exhibit B, and finds that it adequately ensures project compliance with the mitigation measures directed at potentially significant impacts and meets all the requirements of the California Environmental Quality Act and the State CEQA Guidelines.

BE IT FURTHER RESOLVED THAT the City Council of the City of Benicia upholds the appeal and approves the Environmental Impact Report and adopts the Statement of Overriding Considerations attached as Exhibit A and Mitigation Monitoring and Reporting Program attached as Exhibit B.

* * * * *

On motion of Council Member _____, seconded by Council Member _____, the above Resolution was adopted at a regular (or continued regular) meeting of said City Council held on September 20, 2016, and adopted by the following vote:

Ayes:
Noes:
Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

Date: