

RESOLUTION NO. 16-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA DENYING A USE PERMIT FOR THE VALERO CRUDE BY RAIL PROJECT AT 3400 EAST SECOND STREET (12PLN-00063)

WHEREAS, on December 21, 2012, Valero Refinery requested use permit approval for the Valero Crude by Rail (CBR) Project at 3400 East Second Street; and

WHEREAS, the City of Benicia, as the Lead Agency, prepared an Initial Study/Mitigated Negative Declaration to determine if the Valero 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.), and the City of Benicia California Environmental Quality Act (CEQA) Guidelines pursuant thereto; and

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

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

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 Times 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 through 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 consisting of the Initial Study/Mitigated Negative Declaration, Draft EIR, Revised Draft EIR and the Response to Comments; and said Response to Comments incorporated 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, a Mitigation Monitoring and Reporting Program was prepared to ensure that the mitigation measures identified in the EIR are implemented; 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 held public hearings on February 8, 9, 10 and 11, 2016, at which it considered and discussed the Final EIR, the Mitigation Monitoring and Reporting Program, the staff report, and the proposed use permit with conditions of approval for the CBR Project, and heard testimony from members of the public regarding the documents and the proposed use permit; 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 heard public comment on the appeal and closed the public hearing; and

WHEREAS, the City Council continued its deliberation on the appeal to September 20, 2016 to allow the Surface Transportation Board to weigh in on the issue of preemption; and

WHEREAS, a declaratory order by the Surface Transportation Board has not been issued; and

WHEREAS, the issue of the City's ability to regulate the public health and safety impacts from the rail operations uprail and locally remains uncertain in light of the federal and state authorities lack of clear guidance or regulations; and

WHEREAS, per Section 15270 of the CEQA Guidelines, CEQA does not apply to projects that a public agency disapproves.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia does hereby find that based on the Valero Crude by Rail Project application, the staff report, and related documents, and information presented at the public hearings:

1. That because the Surface Transportation Board has not issued a declaratory order or provided other direction in response to the relevant petition, the City Council lacks sufficient information to decide the full extent of the City's regulatory authority to legally impose mitigation measures and conditions on the Project. This results in the Council being unable to make the required findings to approve the Use Permit and to determine if the proposed Environmental Impact Report provides sufficient information to fulfill its function as an informational document for the City Council as the decisionmakers.
2. That the proposed location of the use is not in accord with the objectives of the General Plan and the Benicia Municipal Code and the purposes of the district in which the Crude By Rail site is located, in that :

While oil & gas refining is an allowed use, it is unclear from the scale of this project how traffic impacts will be mitigated. Public testimony provides that the number of train cars and frequency of the cars will block traffic on Park Road if offloading of the rail cards is delayed. This will back up traffic on Park Road as well as on to the freeway off-ramp which causes an unacceptable and unmitigated risk of traffic accidents. The applicant and Union Pacific Railroad (UPRR) have stated that trains will not be dispatched until it is clear there is room for the next train; but the City does not appear to have the ability to condition the dispatching of the trains to ensure that trains are not prematurely dispatched, this could result in unavoidable impacts to traffic and safety within the Industrial Park, which is not in accord with Benicia Municipal Code (BMC) Section 17.04.030B, in that the Project has the potential to result in an inharmonious and harmful land use within the Industrial Park.

The project could potentially have negative biological impacts on Sulphur Springs Creek and the marsh area between the Benicia Industrial Park and the Carquinez Strait due to a potential spill and risk of accident or upset during operation of the unloading rack. The unloading rack is owned and operated by Valero, is located on Valero's property, and is proposed to be constructed adjacent to Sulphur Springs Creek and the marsh area. There are insufficient mitigation measures that have been applied to protect these areas and it does not appear that there is adequate space to require additional mitigation measures. The risk of potential impacts to the creek is not in accord with the overarching goal of the General Plan, which is sustainability. Further, because of the Project's potential to impact the creek, it would not be in accord with Goal

3.22.1 of the General Plan, "Avoid development that will degrade existing lakes and streams."

On-site and uprail impacts such as the potential (however small) for derailments cannot be adequately addressed due to the lack of federal and state regulations. Trains are subject to federal regulations; however, such regulations have not kept pace with the changing environment and are not protective of public health and safety. Measures such as new technology, reduced track speeds and more frequent inspections have not prevented serious accidents.

3. That the proposed location of the conditional use and the proposed conditions under which it would be operated or maintained are not consistent with the general plan and will be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the neighborhood of such use, and detrimental to properties or improvements in the vicinity or to the general welfare of the city in that the potential (however small) for a catastrophic explosion during the unloading of the tank cars on Valero's tracks on Valero's property is detrimental to the health, safety and welfare of the Industrial Park and the greater community, and detrimental to properties and improvements in the vicinity and the general welfare of the city.
4. That the proposed conditional use will not comply with the provisions of this title, including any specific condition required for the proposed conditional use in the district in which it would be located, in that the Project's site development features (proximity to existing oil tanks and Sulphur Springs Creek) and design is not located and operated in a manner that is compatible with uses on adjoining properties and in the surrounding area, as detailed in Findings 1, 2 and 3, above.

The City Council cannot require adequate conditions for the Project which will mitigate the public health and safety impacts from traffic, potential derailments, oil spill, and explosion, among other impacts.

BE IT FURTHER RESOLVED THAT based on the above findings, the City Council denies the appeal of Valero of the Planning Commission's decision and denies the use permit for the Crude By Rail project.

BE IT FURTHER RESOLVED THAT Benicia's representatives in Congress and the State Legislature shall be contacted by the Interim City Manager on behalf of the Council to urge that they take action to provide clear guidance on the question of preemption and to enact appropriate legislation to provide the

appropriate tool and protection to local governments to enable them to protect public health and safety.

BE IT FURTHER RESOLVED THAT if the City is sued by Valero, that the City Attorney is directed to contact the various organizations in opposition to the Project to solicit funds to help defend the City.

On motion of Council Member _____, seconded by Council Member _____, the above Resolution is introduced and passed by the City Council of the City of Benicia at a regular meeting of the Council held on the 20th day of September, 2016 and adopted by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

Date