



**KAMALA D. HARRIS**  
Attorney General

State of California  
**DEPARTMENT OF JUSTICE**



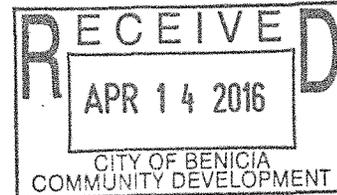
1300 I STREET, 15<sup>TH</sup> FLOOR  
SACRAMENTO, CA 95814

Telephone: (916) 445-5077  
E-Mail: Scott.Lichtig@doj.ca.gov

April 14, 2016

Via U.S. and Electronic Mail

Amy Million  
Community Development Department  
City of Benicia  
250 East L Street  
Benicia, CA 94510



**RE: Valero Appeal of Planning Commission Denial of Use Permit for Valero Benicia Crude-by-Rail Project**

Dear Ms. Million:

Attorney General Kamala D. Harris submits the following comments regarding Valero Refining Company's ("Valero") appeal of the Benicia Planning Commission's denial of a Use Permit for its Crude-by-Rail Project ("Project").<sup>1</sup> This Office previously submitted comments on the Project's draft Environmental Impact Report (EIR), urging the City to correct several deficiencies in its analysis of environmental impacts flowing from an increased demand in rail services to the Project facility, including public-safety risks specific to crude-by-rail operations.

In its appeal of the Planning Commission's decision to deny the Use Permit, Valero has asserted that the Interstate Commerce Commission Termination Act (ICCTA) prohibits the City from taking those same rail-related impacts and public-safety risks into account in determining whether to approve or deny the Project. We disagree. For the many reasons set forth below, ICCTA does not preempt or constrain the City's discretionary decision-making authority where, as here, the City is exercising that authority with respect to a project undertaken by an oil company that is not subject to the jurisdiction of the Surface Transportation Board (STB).

The Project proposes improvements to Valero's Benicia refinery that, if approved, will draw up to 100 tank-cars of crude oil per day, on interstate rail lines. With this and other projects like it, California is faced with a dramatic increase in the amount of fossil fuels transported by rail into the State for domestic processing and/or shipment abroad, including highly flammable crude oils from North Dakota and coal from Utah. As the Final EIR recognizes, these rail shipments will have significant and unavoidable impacts on California's

<sup>1</sup> The Attorney General submits these comments pursuant to her independent power and duty to protect the environment and natural resources of the State. See Cal. Const., art. V, § 13; Gov. Code, §§ 12511, 12600-12612; *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1, 1415.

citizens and environment, including adverse impacts on air quality and the potential for an accident causing death or severe personal injury. Indeed, several crude-by-rail crashes have resulted in catastrophic consequences, including one derailment in downtown Lac-Mégantic, Canada, that killed 47 people.

As indicated in the Attorney General's previous letter, where, as here, a local agency is vested with discretionary authority to determine whether to approve a project within its jurisdiction,<sup>2</sup> California law requires the agency to analyze and disclose the full scope of the project's foreseeable environmental impacts. This requirement ensures that the agency is fully informed of the consequences of its action, and thus that any discretionary action is ultimately in the public interest. This legal duty is not circumscribed by ICCTA for this Project. In fact, for Benicia to turn a blind eye to the most serious of the Project's environmental impacts, merely because they flow from federally-regulated rail operations, would be contrary to both state and federal law.

### Background

This Office submitted comments on the Draft EIR in 2014, in which we asserted, among other things, that the City had failed to properly analyze the Project's foreseeable impacts on public safety and the environment, including impacts both related and unrelated to rail transportation. The City subsequently revised the Draft EIR, correcting many of the noted deficiencies in its analysis of rail-related impacts.<sup>3</sup> Pursuant to this revised analysis, the City found eleven significant and unavoidable impacts caused by the transport of crude oil to the refinery, including significant and unavoidable impacts to air quality, biological resources, and greenhouse gas emissions. The City also analyzed the risks to public health and safety presented by the transport of hazardous materials and found that they, too, presented a significant and unavoidable impact.

Due to these impacts, City Staff has concluded that the Project's benefits do not outweigh its significant and unavoidable environmental impacts. Nonetheless, City Staff also argues that federal preemption prohibits Benicia from considering the Project's rail-related impacts in determining whether to approve the Project. Specifically, City Staff has asserted that Benicia is "legally prohibited" from denying the Project based on the rail-related impacts disclosed in the Revised Draft EIR. Valero agrees with City Staff, asserting, "the City Council's hands are, in effect, tied by the law of federal preemption."

We disagree that the City is prohibited from considering the Project's eleven significant and unavoidable rail-related environmental impacts when exercising its local land use authority. Where, as here, an oil company proposes a project that is not subject to STB regulation and over

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<sup>2</sup> Neither the City nor Valero assert that the Project is not subject to the City's discretionary permitting authority.

<sup>3</sup> To the extent that the Final EIR has not addressed the deficiencies outlined in this Office's previous comment letter, we reiterate the objections to the adequacy of the City's analysis.

which a public agency retains discretionary permitting authority, it would be a prejudicial abuse of discretion for that agency not to consider all of the project's foreseeable impacts in exercising its authority.

### Discussion

While ICCTA may preempt certain local permitting authority over activities constituting "transportation by rail carrier," ICCTA does not preempt the City's permitting authority over this Project: an oil company's proposal to construct a new service road, 4,000 feet of pipeline, tank-car unloading racks, and new private rail tracks at the refinery, and to replace and relocate tank farm and underground infrastructure.

### *CEQA Background and Statutory Overview*

The purpose of CEQA (Pub. Res. Code, § 21000 et seq.) is to ensure that, when a public entity takes a discretionary action such as approval of Valero's Use Permit, it considers the foreseeable environmental impacts before taking that action. (§§ 21000, 21001, subd. (d); *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 393.) Accordingly, a public agency with discretionary authority to approve a project must publicly disclose the project's potentially significant direct and indirect environmental impacts, and – if feasible – impose measures to mitigate or lessen those impacts.<sup>4</sup> (§§ 21002, 21002.1.) This process yields a final assessment of the project's environmental impacts, and on the basis of that information, and all other available information regarding the costs and benefits of the project, the agency exercises its discretionary authority to issue a decision. A failure to include all of a project's potential environmental impacts in the CEQA analysis, or to disregard that information in making a decision like the one regarding Valero's Use Permit, not only would defeat the purpose of CEQA, but would be an abuse of discretion. (See *Kings Cnty. Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 712, *reh'g denied and opinion modified* (July 20, 1990) ["A prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process."]; *Assoc. of Irrigated Residents v. Cnty. of Madera* (2003) 107 Cal.App.4th 1383, 1391.) Importantly, CEQA does not dictate a particular project outcome: A lead agency may approve a project, even if that project will have significant environmental impacts. (Pub. Res. Code, § 21002.1(c); Guidelines, §§ 15043 and 15093.)

### *Scope of Preemption Under ICCTA*

Because the Project applicant Valero is not a rail carrier and not acting pursuant to STB authorization, ICCTA simply has no application to Valero and its proposed refinery upgrades. ICCTA grants the STB exclusive jurisdiction over "transportation by rail carriers," and therefore

<sup>4</sup> The fact that the agency may lack authority to impose a particular mitigation measure, as where that authority is preempted, does not relieve the agency of the obligation to analyze and consider that impact when deciding whether to approve a project. (*Ctr. for Bio. Diversity v. S. Coast Air Qual. Mgmt. Dist.* (2010) 48 Cal.4th 310, 325.)

preempts state or local regulation only if the activity at issue is performed by a rail carrier. (See 49 U.S.C. § 10501(b)(1); *New York & Atlantic Railway Co. v. Surface Transportation Board* (2nd Cir. 2011) 635 F.3d 66, 72). But Valero is not a “rail carrier” constructing a project subject to STB’s exclusive jurisdiction; it is an oil company engaged in a project entirely removed from STB’s regulation. (See 49 U.S.C. § 10102(5); *Hi Tech Trans, LLC-Petition for Declaratory Order-Newark, NJ*, FD No. 34192 (S.T.B. served Aug. 14, 2003) 2003 WL 21952136 at \*4.) Federal preemption does not apply because Valero’s Project involves constructing ancillary refinery infrastructure over which Union Pacific, the actual rail carrier, will maintain no ownership or operational control and over which the STB has no jurisdiction. (*Sea-3, Inc.-Petition for Declaratory Order*, FD No. 34192 (S.T.B. served March 17, 2015) 2015 WL 1215490 at \*4. [“The Board’s jurisdiction extends to rail-related activities that take place at transloading facilities if the activities are performed by a rail carrier, the rail carrier holds out its own service through a third party that acts as the rail carrier’s agent, or the rail carrier exerts control over the third party’s operations.”])

The scope of ICCTA’s preemption is broad, but not unlimited: Preemption applies only to state or local laws that may reasonably be said to have the effect of ‘manag[ing]’ or govern[ing]’ rail transportation,” while allowing continued application of state laws that have “a more remote or incidental effect on rail transportation.” (*Fla. E. Coast Ry. Co. v. City of West Palm Beach* (11th Cir. 2001) 266 F.3d 1324, 1331.) Courts have interpreted the plain language of ICCTA’s preemption provision to categorically preempt a state or local law if that law operates either (1) to deny a railroad the ability to conduct its operations or proceed with activities the STB has authorized, or (2) to regulate matters directly regulated by the STB, including the construction, operation, and abandonment of rail lines. (*People v. Burlington N. Santa Fe R.R.* (2012) 209 Cal.App.4th 1513, 1528.) State actions that do not fall into one of these categories may be preempted as applied only when they would have the effect of preventing or unreasonably interfering with railroad transportation. (*Ibid.*)

Both Valero and City Staff incorrectly argue that the City’s denial of Valero’s Use Permit will somehow impermissibly interfere with Union Pacific’s rail operations. However, applying ICCTA’s preemption analysis, the City’s denial of Valero’s Use Permit is not categorically preempted, because it would neither (1) deny Union Pacific the ability to conduct its operations or proceed with activities the STB has authorized; nor (2) regulate matters directly regulated by the STB. The City’s action with respect to Valero’s Project does not “regulate” Union Pacific or interfere with STB-authorized activities or STB-regulated operations.

Nor is the City’s action preempted “as applied” to Valero’s Project, because it does not have the impermissible “effect of preventing or unreasonably interfering with” Union Pacific’s railroad operations. (*Burlington, supra*, 209 Cal.App.4th at p. 1528.) While the City’s denial of Valero’s Use Permit may diminish any prospective economic advantage Union Pacific may have enjoyed if Valero’s Project were constructed, this is, at best, “a more remote or incidental effect on rail transportation.” (*Fla. E. Coast Ry. Co., supra*, 266 F.3d at p. 1331 see also *Cal. Div. of Labor Stnds. Enforcement v. Dillingham Constr. N.A.* (1997) 519 U.S. 316, 334 [no preemption where statute “alters the incentives, but does not dictate the choices” of the federally regulated entity].) Union Pacific has no vested right in the completion of Valero’s Project, and denial of

Amy E. Million  
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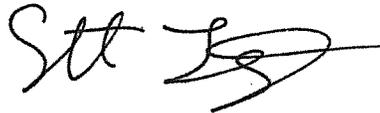
Valero's Project would not prevent or unreasonably interfere with Union Pacific's rail operations.

**Conclusion**

Under federal law, the City retains its authority to take discretionary action to approve or deny Valero's Project. In exercising that authority, state law requires the City to analyze and disclose the Project's direct and indirect environmental impacts, and thus to be fully informed of the consequences of its action. The City has done that here, and its action has not interfered with federally regulated activities. Valero's assertion that the Planning Commission's action was illegal is without merit.

We appreciate your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Lichtig". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

SCOTT J. LICHTIG  
Deputy Attorney General

For KAMALA D. HARRIS  
Attorney General

## Amy Million

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**From:** Andres Soto <andres@cbeal.org>  
**Sent:** Thursday, April 14, 2016 11:12 AM  
**To:** Christina Ratcliffe; Amy Million  
**Cc:** Elizabeth Patterson; Mark Hughes; Alan Schwartzman; Tom Campbell; Christina Strawbridge  
**Subject:** For the Valero CBR record: Solano County Realtors Association Disclosures and Disclaimers Advisory  
**Attachments:** SOLANO COUNTY DISCLOSURES AND DISCLAIMERS ADVISORY\_4\_1\_2015.pdf

Dear Ms. Ratcliffe:

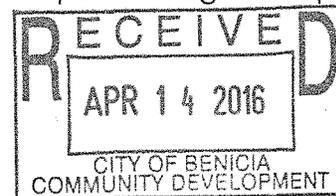
Please add the attached document to the official record for the Valero Benicia Crude By Rail project.

This document advises both the Valero Refinery and the Valero Crude By Rail project be disclosed prior to a property sale. This document is dated since it refers to December 2014 as the most current information on the project. Perhaps there is an updated version. Certainly, approval of the appeal by Valero on the project will ensure these disclosures will continue.

These disclosures will certainly cause some prospective property purchasers to reconsider or choose not moving to Benicia due to the risks associated with such a dangerous activity and the possible negative impact on property values.

Paz,

Andrés Soto  
Benicians for a Safe and Healthy Community



**SOLANO COUNTY DISCLOSURES AND DISCLAIMERS ADVISORY**

**\*A Service of the Solano Association of REALTORS®**

**(This form is intended only for use with the California Association of REALTORS® Form SBSA-Statewide Buyer and Seller Advisory)**

**Address of Property:**

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**This Advisory consists of several disclosures and disclaimers in connection with your purchase of real property located in Solano County. It is not intended or designed to alarm you. Nor is it intended to limit any statutory or common law duty real estate agents have to you. It does, however, point out some limitations on a real estate agent's ability to provide assistance to you and is designed with the intent to educate buyers and sellers of real property that they have a legal responsibility to protect themselves by taking precautions and exercising diligence, to investigate the issues detailed in this Advisory, as well as other disclosures which impact the use, value and/or desirability of the real property being bought and sold. You are encouraged to consult with appropriate professionals and experts you choose, and to conduct or have conducted on your behalf investigations of and about the property, and to rely on your experts and your investigations, and not on real estate agents or the other party to the transaction when you have questions or concerns. For more information about Solano County, you can go online to <http://www.co.solano.ca.us>.**

**This is an Advisory; it is not meant to be a complete source of information on all matters which can become issues in real property purchase and sales transactions. It is strongly recommended that buyers and sellers of real property exercise the utmost care and diligence in reviewing and investigating all matters which are or could be relevant to a real property transaction. You are most knowledgeable about what is relevant for you and for a particular property. Matters affecting real property are subject to change. Hence the Solano Association of REALTORS® has not verified and does not warrant or guarantee the accuracy of the information contained in this Advisory or the adequacy of the information contained herein as it relates to a specific property transaction.**

- 1. Valero Oil Refinery Disclosure** - Buyers are aware that certain homes in **Benicia** may be located near the Valero Oil Refinery off 2<sup>nd</sup> Street in the Industrial Park. Buyers are encouraged to satisfy any concerns they may have regarding oil processing and safety issues surrounding the refinery and its proximity to the property by contacting the Valero Oil Refinery at 707-745-7011.
- 2. Information Technology Corporation (IT Corp)** - Buyers are aware that Information Technology Corporation operated a hazardous waste disposal facility outside the city limits of **Benicia** above the Lake Herman area. It is said to have stopped accepting such wastes in 1986., It is believed that IT Corp is in the process of the formal closure of the facility. This information has not been verified. For further information regarding the facility and closure, you may contact **Benicia's** Senior Planner at 707-746-4280.

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- 3. Braitto Landfill** - The Braitto Landfill is located on the Northwest end of the Southampton Subdivision. Public records indicate the landfill closed in the late 1970's when the Southampton Company and First Nationwide Bank purchased the property. The Rose Drive and Blake Court area was remediated under a closure plan approved by state and local authorities. In June 1994, Southampton disclosed that waste material was buried under two previously undisclosed locations west of Channing Circle and east of the intersection of Rose Dr and Cambridge Dr. This information has not been verified. For further information regarding the landfill, you may contact the project manager of the Department of Toxic Substance Control, State of California at 800-728-6942.
- 4. Benicia Arsenal** - served as a principal depot of the Division of the Pacific. Records show it operated from approximately 1851 to 1962. Much of the Arsenal is now the Benicia Industrial Park operated by the **City of Benicia**. Valero Oil is a major tenant. This information has not been verified. For more information regarding this, or the North Canyon area which is slated to be developed for single family residences, please contact the U.S. Army Corp of Engineers at 916-557-5100.
- 5. Turtlelot** - Buyers are aware that certain acreage North of Rose Dr, East of Kearney and West of East 2<sup>nd</sup> Street in Benicia is currently owned by a subsidiary of Granite Management Corporation, was at one time leased by the U.S. Government, and was used as part of the **Benicia Arsenal** from approximately 1944 to 1960. Live ordnance and traces of TNT and other environmental hazards have been discovered on the site. This information has not been verified. For more information regarding Turtlelot, please contact the City of **Benicia** at 707-746-4200 or visit the **Benicia** City Library to view the Turtlelot Property Cleanup Project Report on file.
- 6. Benicia Crude by Rail:** It has been proposed by Valero Oil Company that crude oil be shipped by rail into the City of Benicia. This issue is being examined by the City Council and an initial Environmental Impact Report (EIR) has been completed. No decisions have been made as of 12/31/14 regarding this issue, but if it is a concern to you, please go to the following link for more information: [http://www.ci.benicia.ca.us/index.asp?Type=B\\_BASIC&SEC={FDE9A332-542E-44C1-BBD0-A94C288675FD}](http://www.ci.benicia.ca.us/index.asp?Type=B_BASIC&SEC={FDE9A332-542E-44C1-BBD0-A94C288675FD}), or search Valero Crude by Rail on the City of **Benicia** website at <http://www.ci.benicia.ca.us>. This information is subject to change and has not been verified.
- 7. Locks, Alarms and Openers:** Buyer is advised that the Seller may have given spare keys, remotes or alarm codes to other individuals during the course of the time they owned and/or have lived at the property. Buyer is advised that as soon as escrow closes they should have all locks re-keyed or changed, and all alarms and remote device codes, such as garage door opener, changed in order to insure the safety and security of buyer and all his/her possessions.

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- 8. Permit Issues:** Some improvements to property such as repairs, remodels and additions may have been done without a required permit. Some of these improvements are known as “in law” or “granny units” and may not conform to current city zoning. Buyer should verify the legality of any such unit and/or other modifications or repairs to the property with the appropriate City Planning/Building Department. Any improvement made without the required permits can have a negative impact on property value as well as require a retrofit, impact habitability, preclude insurance coverage and/or result in fees, penalties and enforcement actions. **Buyer is advised to investigate public records. Real estate agents do not inspect off-site records.**
- 9. Property Line:** Buyer is advised that if the property is fenced or partially fenced, the fencing may or may not coincide with the exact location of the property boundary lines. If this is a concern for the buyer, buyer is advised to hire a licensed surveyor to determine the location of boundary lines, corners and/or land areas. For more information please consult the website for the California Board for Professional Engineers and Land Surveyors: <http://www.pels.ca.gov/>
- 10. Fireplaces/Woodstoves:** Due to public health concerns regarding particulate matter from wood smoke that may affect air quality in this area, Buyer is advised that if the property has a wood-burning appliance(wood burning appliance includes, but is not limited to, a fireplace insert, a free standing wood stove, or a wood heater or masonry fireplace, but does not include appliances or fireplaces that burn solely propane or natural gas or pellets as fuel), the Bay Area Air Quality Board issues “spare the air” alerts on a fairly regular basis precluding use of wood burning appliances. Buyer is further advised that certain cities and counties in the surrounding area may be considering or have considered ordinances that may affect existing and future wood burning appliances at the property. Buyer should contact all relevant agencies, including, without limitation, city and county offices, for the property being purchased to determine the future use of these appliances. To check for “Spare the Air” alerts go to <http://www.bit.ly/Spb3Aw>.
- 11. Tempered Glass:** Many homes may contain glass that is not tempered in locations where tempered glass is required by current building codes. Buyer is advised to have a contractor’s inspection to identify the presence of any glass that is not properly tempered. Buyer is advised to have any non-tempered glass replaced to reduce the risk of injury.
- 12. Property Tax Reassessment:** California property tax law requires the Assessor to revalue real property at the time the ownership of the property changes. The Assessor may revalue real property at the request of individual property owners based on specified criteria. When the County Assessor revalues the property it does so at its market value on the date of a change of ownership. In many cases, the sales price will be accepted by the Assessor as the market value, but not always.

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In the case of discretionary property value reductions after 2008, the Assessor may revalue the affected property and increase the property value for taxation purposes at any time. If Buyer disagrees with the Assessor's revaluation, Buyer should contact the local Assessor or Tax Collector's office to get information about appealing the reassessment or applying for a reduced assessment.

**13. Medical Marijuana:** Buyer and Seller are advised that California law may permit individual patients to cultivate, possess and use marijuana for medical purposes. California law may also permit primary caregivers, lawfully organized cooperatives, and collectives to cultivate, distribute and possess marijuana for medicinal purposes. California's medical marijuana law is in direct conflict with federal law which recognizes no lawful use for marijuana and has no exemptions for medical use. Federal criminal penalties, some of which mandate prison time, remain in effect for the possession, cultivation and distribution of marijuana. Buyers and sellers are advised to seek legal counsel as to the legal risks and issues surrounding owning or purchasing a property where medical or any other marijuana activity is taking place or has taken place. Buyers are advised to contact the City offices in their prospective City to determine whether or not there are any ordinances regarding this issue which may affect them.

**14. Manufactured Home:** is a structure that is transportable in one or more sections. In traveling mode, the home is eight feet or more in width and forty feet or more in length. A Manufactured Home is designed and constructed to the Federal Manufactured Construction and Safety Standards and is so labeled. For more information see the HUD webpage on general requirements for manufactured homes at:

<http://search.usa.gov/search?affiliate=housingandurbandevelopment&query=manufactured+home>

**15. Mobile Home:** is a structure designed for human habitation and for being transportable on a street or highway under permit pursuant to California Vehicle Code Section 35790, and as defined in Section 18008 of the Health & Safety Code. "Mobile home" does not include a recreational vehicle as defined in 18010 of the Health & Safety Code, or a commercial coach, as defined in Section 18001.8 of the Health & Safety Code. Mobile Homes are regulated by the Department of Housing and Community Development (HCD). In accordance with the California Health and Safety Codes, Mobile Homes cannot be offered for sale, transferred, rented or leased unless the unit is in compliance with the construction code applicable for that year/model. Seller/Buyer is advised that HCD is the only agency authorized to inspect and certify compliance. Seller/Buyer may obtain inspections from any individual they so desire, however, the inspection/repair may not be to a level satisfactory with HCD requirements and therefore may not be in compliance. This inspection is not currently required by law unless the unit has been modified/improved without an HCD inspection. In any case, we recommend that either/both parties consider an HCD inspection. **BUYER AND SELLER UNDERSTAND THAT ANY DEFECTS DISCOVERED BY AN HCD INSPECTION MUST BE CORRECTED WHETHER THE MOBILE HOME TRANSFERS OWNERSHIP/RENTS/LEASES OR NOT. A SECOND INSPECTION WILL**

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**NEED TO BE CONDUCTED TO VERIFY COMPLIANCE.** For more information contact HCD Department of Codes & Standards at(916) 445-3338

**16. Mobile Home Age versus Residency in a Mobile Home Park:** Park owners may terminate the space rental agreement if a mobile home is over a certain age. Eligibility for termination is triggered when the mobile home is transferred. Buyers/Sellers are advised to consult the park owner/manager as early as possible before the close of escrow.

**17. Mare Island Naval Base/Vallejo - Mare Island** is a former military base and is being converted to housing and commercial use. Prior to conversion a widespread environmental clean-up was reportedly conducted, and clean-up activities are reportedly ongoing. The following, which has not been verified, is the "Mare Island Warning" as distributed by Lennar Mare Island, the Master Developer.

CAUTION: ENTER AT YOUR OWN RISK. You are entering Mare Island, a former Navy Base with potentially hazardous conditions related to ongoing construction and environmental remediation activities. In addition, be advised that there are potentially dangerous areas and conditions on the Island, which you should avoid. Therefore, you must STRICTLY FOLLOW ALL WARNING SIGNS posted throughout the Island and ensure that you do not enter restricted areas. By entering Mare Island, you are assuming full responsibility for any risk, to yourself, or any person within your control under 18 years of age, of personal injury, death, or property damage, arising from hazardous and dangerous areas and conditions resulting from operation, construction and environmental remediation activities taking place on Mare Island. Under no circumstances are you permitted to excavate or otherwise disturb the land on Mare Island without prior written consent of the property owner (Lennar Mare Island) or the City of Vallejo. Please feel free to call (707) 648-4302 if you have any questions. In addition, the City of Vallejo has established a Community Facilities District No. 2002-1(Mare Island Services) whose services, maintenance, upkeep and fees are referenced in the CCR's item 4.4.1 through 4.4.2 which should be reviewed by the buyer. Also Lennar Mare Island or its authorized agents may be investigating and remediating environmental contamination on Mare Island pursuant to reports listed in CCR's Item 4.9.4. A copy of the CCR's is available for inspection at the City of Vallejo and at Lennar Mare Island's office. Within 10 years of the original date of purchase, Lennar Mare Island possesses a Repurchase Option as evidenced by a recorded document at the County Clerk's office. The City of Vallejo also holds a letter from the Federal Emergency Management Agency dated June 16, 2005 regarding the mapping of the Mare Island floodplain mapping.

**18. Solano County Agricultural Notice:** Solano County is an agricultural county with many areas zoned for agricultural operations. The presence of farms and ranches yields significant aesthetic and economic benefits to the residents of the County. Thus, the County's agriculture must be protected, including areas where it is near residential development. To do this, **Solano County** has enacted Chapter 2.2 of its County Code which provides that properly conducted agricultural operations will not be deemed a nuisance. The Ordinance further requires the County to give notice of the Ordinance and its provisions to buyers of real property located in **Solano County**. Accordingly, you

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are hereby notified that if the property you are purchasing is located close to agricultural lands or operations, you may be subject to inconvenience or discomfort from the following agricultural operations: cultivation and tillage of the soil; burning of agricultural waste products; lawful and proper use of agricultural chemicals including, but not limited to, the application of pesticides and fertilizers; and production, irrigation, pruning, growing, harvesting and processing of any agricultural commodity, including horticulture, timber, apiculture, the raising of livestock, fish, poultry, and commercial practices performed as incident to or in conjunction with such agricultural operation, including preparation for market, delivery to storage or market, or to carriers or transportation to market. These operations may generate dust, smoke, noise, and odor. If you live near an agricultural area, you should be prepared to accept such inconveniences or discomfort as a normal and necessary aspect of living in a county with a strong rural character and healthy agricultural sector. To assist in resolving problems between residential and agricultural land use, an Agricultural Grievance Committee has been created in Solano County to arbitrate and mediate disputes concerning agricultural operations. This notice is given for informational purposes only and nothing in the Ordinance or this Notice should be deemed to prevent you from complaining to any appropriate agency or taking any other available remedy concerning any unlawful or improper agricultural practice. For information concerning where agricultural operations are located in relation to your property, you may contact the Solano County Department of Environmental Management, 675 Texas St, Fairfield CA, 707-784-6765. For questions concerning the specific kinds of agricultural operations in your area, including their use of fertilizers and pesticides, and information on the Agricultural Grievance Committee, you should contact the Solano County Agricultural Commissioner's Office, 501 Texas St, Fairfield, CA 707-784-1310.

**19. Suisun Marsh:** If the real property you are considering buying is located near the **Suisun Marsh** be advised that the **Suisun Marsh** is the largest brackish water marsh remaining in the United States. The marsh consists of 116,000 acres; 52,000 acres of seasonally flooded managed wetlands; 6,300 acres of unmanaged tidal wetlands; 3,000 acres of bays and sloughs; and 27,700 acres of uplands, about half of which is around the Marsh perimeter. The State of California's Department of Fish and Game owns and manages a portion of the Marsh that includes the Grizzly Island Wildlife Area. Private landowners also hold land in the Marsh and manage it for farming, cattle, wildlife habitat, and outdoor recreational use, including hunting and fishing. There is a Marsh Interpretive Center and associated lands which are open to the public containing approximately 2,000 acres; the area is located near the north end of the Marsh on Grizzly Island Rd near the intersection of Hwy 12. Year round trails in this area offer the public wildlife viewing, birding, fishing, and other outdoor recreational opportunities. The Suisun Marsh was placed under specific protection when the State Legislature passed Assembly Bill 1717, The **Suisun Marsh** Protection Act, in 1976 (SMPA). The law was designed to protect the many species known to live within the Marsh and their native habitat. Among other things, the SMPA precluded further development of land within the area located south of State Highway 12 near the cities of **Fairfield** and **Suisun City**, and south and east of Highway 680 between the cities of **Benicia** and **Cordelia**, and Cordelia Rd as it lies between Cordelia, Fairfield and

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Suisun City. The Marsh is bordered on the south by Grizzly Bay and Honkers Bay and Montezuma Slough to the east. For more information contact the Suisun Marsh Resource Conservation District at 707-425-9302 or visit <http://www.suisunrcd.org/>.

**20. Rancho Solano Golf Ball Easement:** Pursuant to City of **Fairfield** Ordinance No. 92-12, any transferor of real property abutting any part of the Rancho Solano Golf Course is required to provide the buyer with the following information:

The home you may purchase in Rancho Solano located at \_\_\_\_\_ is subject to an easement for errant golf balls. This means that golf balls from the golf course may cross and land on your property causing substantial property damage or personal injury. Golfers on the Rancho Solano course are responsible for their golf shots and any resulting damages. The City of Fairfield does not plan to make future design changes to the golf course or pay for property damage or personal injury caused by golf balls. This information has not been verified.

\_\_\_\_\_The property you are purchasing abuts Rancho Solano Golf Course and is subject to this golf ball easement.

\_\_\_\_\_The property you are purchasing does not abut the Rancho Solano Golf Course.

**21. Paradise Valley Golf Ball Easement:** Pursuant to City of **Fairfield** Ordinance No. 92-12, any transferor of real property abutting any part of the Paradise Valley Golf Course is required to provide the buyer with the following information:

The home you may purchase in Paradise Valley located at \_\_\_\_\_ is subject to an easement for errant golf balls. This means that golf balls from the golf course may cross and land on your property causing substantial property damage or personal injury. Golfers on the Paradise Valley course are responsible for their golf shots and any resulting damages. The City of Fairfield does not plan to make future design changes to the golf course or pay for property damage or personal injury caused by golf balls. This information has not been verified.

\_\_\_\_\_The property you are purchasing abuts Paradise Valley Golf Course and is subject to this golf ball easement.

\_\_\_\_\_The property you are purchasing does not abut the Paradise Valley Golf Course.

**22. Quality Neighborhood Project:** Pursuant to City of **Fairfield** Ordinance No. 95-33, any transferor of real property zoned for residential use located within a Quality Neighborhood Project is required to provide the buyer with the following information: You are hereby notified that the residential property that you may purchase at \_\_\_\_\_ is located within a Quality Neighborhood Project. Further information on this disclosure may be

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obtained from the Fairfield Quality Neighborhood Team, 1000 Webster St, Fairfield, CA 94533; telephone 707-428-7642.

**23. Private Transfer Fees/Higher Property Tax Areas:** Certain developers recently started imposing Private Transfer Fees (PTFs) on newly-built subdivisions. These PTFs require subsequent purchasers of real property to pay a fee to a private entity upon future sales of the property. Private transfer fees (PTFs) are fees imposed by private parties which require the payment of a specified amount of money (usually a percentage of the sales price) upon subsequent sales of the real property. Such fees are normally recorded on new common interest subdivisions by the developer to pay either the developer or a third party entity (sometimes created by the developer). Currently, PTFs range from 0.05% of the purchase price to 1.75% of the purchase price. PTFs can also be a flat amount that is not dependent upon the purchase price. There is no known legal limitation on the amount of or method of calculation of any PTF. There are a few subdivisions that require the payment of private transfer fees upon sale of the property. They are: **Benicia Marina** which requires X%; **Lennar Mare Island** which requires 0.05% which goes towards Lennar Charitable Contributions Endowment Fund. The PTF should be listed as an exception on the preliminary title report. Sellers should first obtain a copy of the preliminary report and review it to make sure it includes all the exceptions relevant to the property. For all new PTFs, the heading for the exception should, but may not, be "Payment of Transfer Fee Required." Beginning in 2009, all PTFs described in the exceptions to the preliminary report should, but may not, have that heading. For sales during 2008 of properties subject to existing, pre-2008 PTFs, however, the heading of the relevant exception on the preliminary report may be different from that stated above; for example "Community Benefit Fee" or "Lifestyle Fee," or "Endowment Fee on Transfer." Seller should review all of the exceptions carefully and make inquiry of the respective title company issuing the report where there is any doubt to determine if any of the exceptions describe a fee that must be paid, on all future transfers, to a private entity. Sellers should notify buyers of the presence of PTFs, and should note the same when completing the Seller Property Questionnaire (Form SPQ). **Buyer is advised to seek the advice of an attorney for any further questions regarding PTFs. The foregoing information has not been verified.**

It should also be noted that some newer developments have higher annual property taxes than the usual basic 1.25% assessed by the County Tax Assessor's Office. One such area includes properties located on Mare Island in Vallejo, CA. Buyers are advised to review all of the various individual taxes and Mello-Roos fees that are assessed on each individual property when reviewing the itemized taxes listed on the Natural Hazard Report provided by the seller.

**24. Water Conservation:** California is a state known to suffer from drought conditions requiring water conservation efforts on the part of its residents. Such conditions are dependent on accumulated and annual precipitation from various sources. Buyer is encouraged to contact the local governmental agency(ies) responsible for water and its conservation and distribution in the community in which Buyer seeks to purchase real property for the latest information on drought conditions, water conservation programs and use limitations, the current impact(s) of the drought

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on home owners in a given community and any other information about water, water conservation, water usage and water distribution relative to the property Buyer seeks to purchase.

- 25. Green Valley/Cordelia Water District:** Certain sections, but not all of parts, of Green Valley and Cordelia are supplied with water **at significantly higher rates** than the Vallejo Service area by the City of Vallejo using the Lakes Service Area Rates table. The rates are as listed on the City of Vallejo website at <http://www.ci.vallejo.ca.us/common/pages/DisplayFile.aspx?itemId=117388> or may be found by looking at the City of Vallejo Water Management Plan (USBR Mid-Pacific Region 2011 Standard Criteria) dated September 19, 2014. This report can be found in its entirety on the City of Vallejo website at <http://ci.vallejo.ca.us>. Water rates can also be found on this site by clicking on the link for the Water Department and viewing the rate table. **Buyers are advised to determine in advance whether or not the property they are buying is located within the borders of the Lakes Service Area.**
- 26. Property Registration Program:** The City of **Vallejo** is one of many municipalities in California which is making efforts to deal with the negative effects of foreclosed/abandoned/vacant properties on the community. On March 12, 2013, the Vallejo City Council adopted the Modification to Vallejo Municipal Code (VMC) Chapter 7.62 (known as the Vacant Building Ordinance) as City Ordinance No. 1672, which authorizes the implementation of the Vacant and Foreclosed Residential Property Registration Program. Ordinance No. 1672 became effective on April 12, 2013, and was to be codified with VMC Chapter 7.62 in June 2013. A letter from the Code Enforcement Division is now being issued to the property owners of vacant or foreclosed residential properties within the City of **Vallejo**. "Property Owners" as defined in the ordinance includes makers or holders of loans secured by real property mortgages and their agents, mortgage lenders, beneficiaries, banks, mortgage servicers, trustees, foreclosure trustee servicers, title insurance companies, real estate property management firms, real estate brokers and other interested persons. Requirements: This program requires the registration, maintenance, and security of vacant and foreclosed residential properties including single family houses, multi-family complexes, and condominiums up to 4 units within the City of **Vallejo**.

The City of **Vallejo** requires that you register the property within 10 days and pay an annual fee of \$368. Please address any questions or concerns to the following: Code Enforcement Division, Vallejo City Hall 555 Santa Clara Street, 1st Floor, Vallejo, CA 94590. E-mail us at [cenforcement@ci.vallejo.ca.us](mailto:cenforcement@ci.vallejo.ca.us). Phone (707) 648-4469, Fax (707) 649-3540, - See more at:

<http://www.ci.vallejo.ca.us/cms/one.aspx?portalId=13506&pageId=46329#sthash.la9XQYMr.dpuf>

The City of **Benicia** has a similar property registration program requiring registration within 10 days and an annual fee of \$157.11. The City of **Vacaville** also has a property registration program requiring registration within 30 days. You should contact the City of **Vacaville** regarding any fees.

**The foregoing information has not been verified and is subject to change by the respective Cities. Buyers and Sellers are encouraged to investigate the full scope of the registration of vacant properties so as to comply fully with the requirements set forth by the cities mentioned and not to rely on this Advisory solely.**

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**27. Neighborhood Law Program:** The Neighborhood Law Program (NLP) is a two year pilot project, funded by Measure B. The program will put attorneys on the streets of Vallejo to tackle blight and nuisance conditions. In addition to meeting with residents and community organizations, the NLP lawyers will work with the Vallejo Police Department, Code Enforcement Division, and other departments to abate the City's most unfavorable nuisances and improve the quality of life in Vallejo. – For more information to:  
<http://www.ci.vallejo.ca.us/cms/one.aspx?portalId=13506&pageId=39379#sthash.Knj9hJpG.dpuf>

**28. Travis Air Force Base:** Pursuant to City of **Fairfield** Ordinance No. 95-34, any transferor of real property zoned for residential use located north of Air Base Parkway and east of Clay Bank Road, or south of Air Base Parkway and east of Walter Road is required to provide the buyer with the following information:

You are hereby notified that the residential property that you may purchase at \_\_\_\_\_ is located within the Vicinity of Travis Air Force Base. Travis Air Force Base is located in the eastern portion of the City of **Fairfield**. The City of **Fairfield** does not permit residential development at a noise level in excess of 60 decibels noise contour for the maximum mission of Travis Air Force Base (as represented in the 2002 Travis AFB Land Use Compatibility Plan). However, residents of Fairfield within the vicinity of Travis Air Force Base may experience noise from aircraft operations at Travis Air Force Base. The amount of noise may change over time depending on the mission and operations of the base. Further information on this disclosure may be obtained from the Fairfield Planning and Development Department, 1000 Webster St., Fairfield, CA 94533, 707-428-7461.

**29. Wet Weather Conditions:** At times, **Solano County** experiences heavier than normal rainfall. During these times, hillside properties may be susceptible to earth movement and drainage problems. Properties on flatlands may be susceptible to flooding. Properties which may not have experienced water intrusion into or under the property in the past may experience these conditions as a result of weather-related phenomena. Sellers are obligated to disclose to buyers those material defects or conditions known to them that affect the desirability or value of the property; however, not all Sellers may be aware of recent changes in the condition of the property or its improvements caused by unusually wet weather. Because of these factors, it is recommended that, in addition to a home inspection, Buyer have such additional inspections by inspectors and/or engineers and/or other experts of Buyer's choosing.

**30. BCDC:** The San Francisco Bay Conservation and Development Commission ("BCDC") is charged with the responsibility of restoring Bay wetlands and marshes, preventing wetlands and mudflats from being filled, and supporting the continued and productive use of salt ponds. Solano Properties abutting San Francisco and Suisun Bay and the Napa River, its tidelands and marshes may be subject to the jurisdiction of the BCDC which may limit building, and may impose other requirements on

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property owners. The jurisdiction of the BCDC is believed to extend from the Mean High Water Line or edge of marsh (up to 5 ft above Mean Sea Level) to 100 ft inland. This information has not been verified. If any property is within the covered region, BCDC has jurisdiction over it. Any modification to the property within the jurisdictional boundaries may require a permit and/or other approvals from BCDC. Buyers of such property are urged to contact BCDC at 415-352-3600 or go online to <http://www.bcdc.ca.gov/permits/faqs.shtml>.

**31. Mills Act:** Economic incentives foster the preservation of residential neighborhoods and the revitalization of downtown commercial districts. The Mills Act is the single most important economic incentive program in California for the restoration and preservation of qualified historic buildings by private property owners. Enacted in 1972, the Mills Act legislation grants participating local governments (cities and counties) the authority to enter into contracts with owners of qualified historic properties who actively participate in the restoration and maintenance of their historic properties while receiving property tax relief. Mills Act contracts are for 10 years initially with automatic yearly extensions and stay with the property when transferred. Subsequent owners are bound by the contract and have the same rights and obligations as the original owner who entered into the contract. Because the local government and the property owner negotiate other specific terms of the contract, you need to contact your local government to determine the rights and obligations a Mills Act contract creates. For more information, please go to the following: [http://ohp.parks.ca.gov/?page\\_id=21412](http://ohp.parks.ca.gov/?page_id=21412)

**32. Williamson Act:** In 1965, California passed the Williamson Act (Government Code section §51200) with the intent of using the tax system to prevent premature urban conversion of agricultural land. This voluntary program takes advantage of ten-year restrictive use contracts between landowners and local governments. Cities and counties are not mandated to participate, as such, local attitudes towards the conservation of farmland steer the development of policy. One incentive for landowners entering into contracts under the Williamson Act is that the farm land is valued for property tax purposes according to the income it is capable of generating from agriculture and other compatible uses, rather than its fair market value which could result in the property being valued substantially higher because of its development potential. In exchange for lower taxes, agricultural landowners commit their land to farming for ten years. The contract is automatically renewed annually for an additional year unless either the land owner or the County files a “notice of non-renewal.” Farm owners may have the option to pay to remove their property from the Williamson Act in less than ten years through a cancellation process under specific circumstances. The program, administered at the state level by the California Department of Conservation, reimburses counties for some of the lost property tax revenue.

In 1998, the state legislature went a step further by approving the Farmland Security Zone, also known as the Super Williamson Act (revenue and Taxation Code § 423.4). It provides a further 35 percent reduction in assessed property value in exchange for a 20-year commitment to farming. Today, approximately 16 million acres are currently protected under the Williamson Act. According to the Department of Conservation, 52 counties and 20 cities are currently using the Act and nearly

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70% of the state's prime agricultural land is protected under the Act. For more information, please go to the following link:

<http://www.parks.ca.gov/pages/795/files/what%20is%20a%20conservation%20easement.pdf>

Buyers should inquire of Seller if the property they are purchasing is subject to a Williamson Act contract.

**33. Earthquakes:** Buyer and Seller are advised that California has experienced earthquakes in the past, and there is always a potential of future earthquakes. Damage caused by an earthquake may not be discoverable by a visual inspection of Sellers, Buyer(s) or Broker(s). Inspection by a licensed, qualified professional is strongly recommended to determine the structural integrity and safety of all structures and improvements on the Property. On Sunday, August 24, 2014 an earthquake of 6.1 magnitude approximately 3.7 miles northwest of **American Canyon** struck on the West Napa Fault causing substantial damage in both **Napa and Vallejo** and resulting in numerous cases of structural damage, fallen chimneys, broken glass and numerous other issues. Buyer and Seller are advised that if this is of concern to them and they would like more information, there is additional information in the statutorily required disclosure-Natural Hazard Report that is provided to all buyers regarding Alquist-Priolo Earthquake Fault Zones and Seismic Hazard Zones as per the State of California, Department of Conservation Division of Mines and Geology. Sellers of homes built before 1960, with one to four units of conventional light-frame construction, must deliver to the buyer, "as soon as practicable before the transfer," a copy of The Homeowner's Guide to Earthquake Safety (this booklet) and disclose certain earthquake deficiencies according to Government Code, Section 8897.1 to 8897.4. The seller's real estate agent must provide the seller with a copy of this booklet to give to the buyer. This is also specified in Government Code, Section 8897.5. The Alquist-Priolo Earthquake Fault Zoning Act prohibits building for human occupancy astride active faults. Public Resources Code, Section 2621 and following sections, requires sellers of existing residences to disclose to potential buyers on a Natural Hazards Disclosure Form if the property is located in a designated fault zone. The Seismic Hazards Mapping Act requires the state to prepare maps of the zones in California most susceptible to landslide and liquefaction hazards during earthquakes. Public Resources Code, Section 2694 and following sections, states that sellers must disclose to buyers, on a Natural Hazards Disclosure Form, whether the property is in such a zone, after the map for that area has been issued officially. Information is also available in the GOVERNMENTAL GUIDES: "HOMEOWNER'S [COMMERCIAL PROPERTY OWNER'S] GUIDE TO EARTHQUAKE SAFETY" PUBLISHED BY THE CALIFORNIA SEISMIC SAFETY COMMISSION CONTAINING IMPORTANT INFORMATION REGARDING EARTHQUAKE AND GEOLOGIC HAZARDS. Go to the following link for the guide:

[http://www.ca.gov/Apps/SearchNew.aspx?search=earthquake+guides&cx=001779225245372747843%3Amdsmtl\\_vi1a&cof=&ie=UTF-8&submit.x=0&submit.y=0](http://www.ca.gov/Apps/SearchNew.aspx?search=earthquake+guides&cx=001779225245372747843%3Amdsmtl_vi1a&cof=&ie=UTF-8&submit.x=0&submit.y=0)

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**34. RECOMMENDATION TO RETAIN AN ATTORNEY AND ACCOUNTANT:** In addition to the professional service providers you will retain to inspect and analyze the property you are purchasing or selling, a situation may arise during the course of your transaction that requires you to make an important decision, or select a plan of action that could result in significant legal consequences and substantial impact on your personal finances. You are hereby advised that you should retain the services of a certified public accountant (CPA) and/or a real estate attorney in advance that you can contact quickly should any financial and/or legal advice and guidance be needed during this transaction.

**BROKER/AGENT DOES NOT WARRANT THE CONDITION OF THE PROPERTY. BROKER/AGENT SHALL NOT BE RESPONSIBLE FOR FAILING TO DISCLOSE FACTS WHERE THE CONDITION (A) IS NOT WITHIN BROKER/AGENT'S ACTUAL KNOWLEDGE OR (B) IS IN AN AREA NOT REASONABLY AND NORMALLY ACCESSIBLE TO BROKER/AGENT. BROKER/AGENT HAS NOT INSPECTED AREAS OUTSIDE THE PROPERTY, COMMON AREAS, OR PUBLIC RECORDS AND/OR PERMITS REGARDING THE STATE OF TITLE OR USE OF THE PROPERTY. BROKER/AGENT HAS NOT VERIFIED ANY OF THE INFORMATION CONTAINED IN THIS ADVISORY, UNLESS OTHERWISE SPECIFIED IN WRITING INDEPENDENTLY.**

**BUYER AND SELLER HEREBY ACKNOWLEDGE RECEIPT OF THIS DISCLOSURE AND ADVISORY**

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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Seller

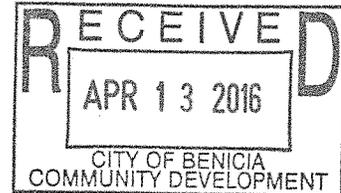
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Buyer

444 Mills Dr.  
Benicia, Ca  
April 13, 2016

Mayor Elizabeth Patterson and Members of the City Council  
250 East L St.  
Benicia, Ca 94510



Subject: Valero CBR Project

Dear Mayor Patterson and Members of the City Council:

I am writing to urge you not to take any action that could hurt the ability of the Valero refinery to be able to compete with its competitors. If that takes the Council more time so be it. Valero has been very good to this community, both directly and indirectly. If anything, they have more than fulfilled the promises they made regarding community and employee safety 16 years ago when it was purchased from Exxon. It would be false to accept the idea that steps inhibiting its ability to compete, now or in the future, would not damage all our interests and I know of no other operator who would be as sensitive to community concerns as Valero has been - period.

Sincerely,

A handwritten signature in black ink, appearing to be "Reg Page", written over a horizontal line.

Reg Page

cc Brad Kilger

## Amy Million

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**From:** KnowWho Services <noreply@knowwho.services>  
**Sent:** Tuesday, April 12, 2016 1:13 PM  
**To:** Amy Million  
**Subject:** Public Comment re Valero Crude by Rail Project - Appeal Application No. 16PLN-00009

Dear Benicia City Council,

I'm writing to urge the Benicia City Council to back the Planning Commission's unanimous decision to reject Valero's proposal to transport explosive crude oil by rail through California communities to its refinery in Benicia, and to reject Valero's attempts to delay a final decision on this project.

I have lived four blocks from downtown Davis for 30 years. The derailment in 2009 occurred less than a quarter mile from my home. Additionally, a train partially jack-knifed off the same stretch of track since I have lived here.

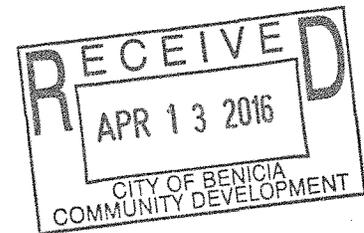
We have a serious curve in the tracks adjacent to downtown and a speed limit of 10 MPH found nowhere else in the region.

This project is a potential disaster for all up-rail communities, but especially for Davis, California.

PLEASE VOTE NO.

Respectfully,

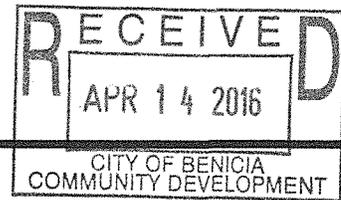
Cathy Forkas  
336 K Street  
Davis, CA 95161



Sincerely,

Cathy Forkas  
336 K St  
Davis, CA 95616-  
cforkas@yahoo.com  
(530) 758-6161

Amy Million



**From:** Jan Cox Golovich <janlcg@gmail.com>  
**Sent:** Thursday, April 14, 2016 4:02 PM  
**To:** Brad Kilger; Heather McLaughlin; Amy Million; Mark Hughes; Alan Schwartzman; Christina Strawbridge; Tom Campbell; Elizabeth Patterson  
**Subject:** Attorney General's rejection of City's legal position on Federal Pre-emption

14 April 2016

Re: Attorney General's rejection of City's legal position on Federal-Pre-emption

Dear City Manager Kilger, City Attorney McLaughlin, Mayor and Councilmembers,

Last week, during the public hearing on Valero's Crude By Rail appeal, I requested that the City Council direct staff to put forward the question of Federal Pre-emption before the California Attorney General for her legal opinion. Now you don't have to. The Attorney General has weighed in on the issue of her own accord and the City of Benicia should take heed.

The Attorney General's strongly-worded letter rejects the City and Valero's assertion that the City is prohibited from considering the project's significant and unavoidable rail-related environmental impacts due to Federal Pre-emption. The Attorney General states that Valero and City Staff "incorrectly argue that the City's denial of Valero's Use Permit will somehow impermissibly interfere" with UP's operations. The Attorney General concludes that the Planning Commission's action to deny the project was legal.

This legal opinion shouldn't come as a surprise because but it should immediately trigger a re-evaluation and adjustment in the City's current Staff recommendation of the Project. With the weight of the Attorney General's Office behind you (as well as sixty-four other governmental and non-governmental entities), the City can correct its misapplication of Federal Pre-emption. The City has made a good start; it correctly concluded that the Project's benefits do not outweigh its significant and unavoidable environmental impacts.

The next step is to uphold the Planning Commission's decisions: rejection of the EIR and rejection of the Use Permit for the Crude By Rail project.

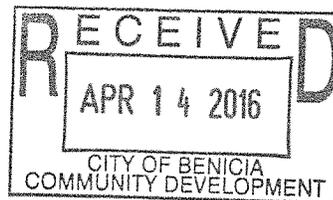
Sincerely,

Jan Cox Golovich  
179 Harbor Vista Ct.  
Benicia, CA 94510  
707.319.0876

**Amy Million**

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**From:** Jan Cox Golovich <janlcg@gmail.com>  
**Sent:** Thursday, April 14, 2016 4:14 PM  
**To:** Brad Kilger; Heather McLaughlin; Amy Million; Mark Hughes; Alan Schwartzman; Christina Strawbridge; Tom Campbell; Elizabeth Patterson  
**Cc:** Roger Straw; Katherine Black  
**Subject:** Attorney General's rejection of City's legal position on Federal Pre-emption



14 April 2016

Re: Attorney General's rejection of City's legal position on Federal-Pre-emption

Dear City Manager Kilger, City Attorney McLaughlin, Mayor and Councilmembers,

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The next step is to uphold the Planning Commission's decisions: rejection of the EIR and rejection of the Use Permit for the Crude By Rail project.

Sincerely,

Jan Cox Golovich  
179 Harbor Vista Ct.

Benicia, CA 94510  
707.319.0876

Sent lightning fast from Yahoo Mail