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Via Certified Mail and Email

September 8, 2014

City of Benicia
Attn: Amy Million, Principle Planner
Community Development Department
250 East L. Street
Benicia, California 94510

Re: Valero Benicia Crude by Rail Project Draft Environment Impact Report

Dear Ms. Million:

Thank you for the opportunity for the City of Davis (Davis) to review the Draft Environmental Impact Report (DEIR) for the Valero Benicia Crude by Rail Project (Valero Project).

The Project, as described in the DEIR, proposes daily shipments of 70,000 barrels of crude oil to the Valero Benicia Refinery. (DEIR at ES-3.) The crude oil tank cars would originate at unidentified sites in North America, would be shipped to the Union Pacific Railroad Roseville Yard, and would be assembled there into two daily 50-car trains to Benicia. (Id.) Valero states that it will use so-called “1232 Tank cars” to transport the crude oil. (Id.)

The California Environmental Quality Act (CEQA) requires lead agencies, such as Benicia, to inform decision makers and the public about the potential environmental impacts of proposed projects, and to reduce those environmental impacts to the extent feasible. If a project may cause adverse environmental impacts, the lead agency must prepare an Environmental Impact Report (EIR). EIRs must contain in-depth studies of potential impacts, measures to reduce or avoid those impacts, and an analysis of alternatives to the project. As famously stated, the EIR’s role “as an environmental alarm bell whose purpose is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.” (*County of Inyo v Yorty* (1973) 32 Cal.App.3d 795, 810.)

While Davis is not seeking to prevent the transportation of crude oil to Benicia, we are committed to ensuring that all measures are taken in order to protect the safety of our community. We firmly believe that through full compliance with CEQA and by building-in the highest levels of protection before disasters such as hazardous material releases and explosions occur we can avoid having such disasters in the first place.

Based upon our review of the DEIR, we have concluded that, for reasons detailed below, as well as those contained in the comment letters submitted on the Valero Project DEIR by the Sacramento Area Council of Governments (SACOG) and the County of Yolo (comments which are attached to this letter and which are incorporated by reference), the DEIR does not comply with the provisions of the California Environmental Quality Act (CEQA) and must be withdrawn. The DEIR must be revised to comply with CEQA before it can be recirculated. In order to facilitate the preparation of a revised DEIR Davis submits the following comments.

The DEIR's Project Description Is Incomplete and Misleading

The DEIR states that “[i]f the Project is approved, Valero will accept up to 100 tank cars of crude oil a day in two 50-car trains.” (DEIR at 3-1.) Indeed, the DEIR’s entire analysis is predicated on two 50-car trains traveling to Benicia each day, with a maximum of 730 train visits per year. But the DEIR fails to include in its Project Description any information as to how these 50-car trains will be designed or operated in order to comply with the Department of Transportation’s May 7, 2014 Emergency Order. The DEIR also fails to include in its Project Description any information as to how these 50-car trains will be designed or operated in order to comply with the August 1, 2014 Notice of Proposed Rulemaking issued by the Department of Transportation’s Pipeline and Hazardous Materials Safety Administration, which proposes additional regulation for trains carrying 20 or more tank car loads of flammable liquids. Given these proposed rules, is it still accurate for the DEIR to state that the Project will operate 50-car trains? Are the Project Description and the DEIR’s analysis predicated on a scope of Project operation that is no longer assured? By failing to address the existing and reasonably foreseeable regulatory limits on the operation of 50-car trains, Davis is concerned that the DEIR misleads the public as to the scope of the Project and, equally fatally, fails to fully analyze the Project

Next, the DEIR states that the Project will use so-called 1232 Tank Cars, and states that by doing so it will “exceed legal requirements” regarding the safe transport of crude oil. (DEIR at 3-19 through 3-20.) But the National Safety Transportation Board’s Vice-Chairman Christopher A. Hart has expressed concern about the level of safety provided by 1232 Tank Cars. (See the March 6, 2014 testimony of Mr. Hart to Before the Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety, and Security Committee on Commerce, Science and Transportation United States Senate at its Hearing on Enhancing Our Rail Safety: Current Challenges for Passenger and Freight Rail.) Further, other than Valero’s voluntary statement that it will use 1232 Tank Cars, how will Benicia ensure that such cars and only such cars are used to transport oil to Benicia? Any safety benefits of the newer 1232 Tank Cars can only be realized if old and new tank cars are not commingled. At the very least, the use of 1232 Tank Cars (or of tank cars with more safety measures) for 100 percent of the tank cars carrying crude oil to the Valero Refinery should be mandated as a condition of Project approval.

Additionally, the DEIR assumes that a “just-in-time” supply chain can and will be used for the Project. As a consequence, the Project Description does not include a description of how often crude oil tank cars may be stored, for what length of time and where, before they can be processed at the Valero facility and does not discuss the possible locations for such storage. As Valero concedes that it ultimately cannot control the timing of the crude oil shipments, the

DEIR must account for such events in the Project Description. By failing to discuss these storage needs, the DEIR fails to analyze the entire project. As set forth in the CEQA Guidelines, a "project" is "the whole of an action" that may result in either a direct physical environmental change or a reasonably foreseeable indirect change. (CEQA Guidelines, § 15378; see also *Habitat & Watershed Caretakers v City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1297; *Banning Ranch Conservancy v City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1220.)

In Davis, the shipments would travel on a Union Pacific rail line with three active sidings of up to 6,500 feet in length that run parallel to Second Street and Interstate 80. These sidings are utilized for storage of rail cars on a regular basis, with rail cars often being stored on these sidings for days or weeks at a time. These sidings are immediately adjacent to multiple businesses and multi-family housing (see attached map). City Staff have personally witnessed tanker cars stored on these sidings, though it is impossible to determine whether the tank cars are full or empty. The DEIR fails to describe whether storage of crude oil cars on this siding is possible, under what circumstances and for what duration. Tank cars sitting on this siding, unattended, would pose a significant hazard to the community, residents, businesses, and interstate transportation (I-80, Amtrak) and commerce should they be the subject of any accident, tampering or other impact on the cars, resulting in a spill or explosion.

The DEIR Inadequately Describes the Project Setting

An EIR must describe the environmental setting for the project, which is made up of "the physical environmental conditions in the vicinity of the project" viewed from "a local and regional perspective." (State CEQA Guidelines §15125(a), (c).) An EIR's description of this environmental setting must be sufficiently comprehensive to allow the project's significant impacts "to be considered in the full environmental context." (State CEQA Guideline §15125(c).)

Here, the DEIR does not provide any information with regard to the existing conditions on the rail lines the train cars carrying crude oil will take on their journey to Benicia. It states only that: "Each train, carrying up to 50 cars of crude oil, would pass through the cities of Roseville, Sacramento, Davis, Dixon, Vacaville, Fairfield, Suisun City, and Benicia. The Refinery would receive two trains per day, 7 days per week (730 train visits per year)." (DEIR at 4.7-16.) But what are the conditions along the rail line that these trains carrying crude oil will travel 730 times per year, passing through Roseville, Sacramento, Davis, Dixon, Vacaville, Fairfield, Suisun City and Benicia? Are the tracks in good condition? Are they curved in any areas? Are there any cross-overs? Are they interrupted by rail or vehicle crossings in any areas? Are there any existing safety concerns on any portion or portion(s) of these tracks? Are there areas where the train operators will need to change speed to safely navigate the tracks? What land uses surround these tracks? The DEIR is entirely silent. Absent this information, the public is denied any ability to consider the Project in its full environmental context, a clear violation of CEQA.

The DEIR appears to substitute discussion of the Project's setting outside of Benicia with a generalized assurance that Valero's experts have estimated "the annual rate of crude oil release accidents on the route between Roseville and Benicia" and concludes that 100 or more gallons of crude oil will likely be spilled .009 times per year. (DEIR at 4.7-17; Appendix F at 10.) But

even Valero's expert report contains no information regarding the track between Roseville and Benicia, stating vaguely only that the "annual crude oil train derailment and release rates from Roseville to Benicia" were calculated "using the particular characteristics of the route."¹ (DEIR, Appendix F at 7.) However, the report does not consider the location of the track, the operational components of the track, the proximity of the track to highly populated areas, schools, hospitals, dangerous facilities, or sensitive lands or habitat.²

The City of Davis insists that the methodology leading to these statistics be clearly defined and sources referenced. In addition, the City of Davis asks for clarification to assure that the additional hazards specific to Davis were factored into the probability for derailment, such as 1) Need to slow for 30mph curve; 2) Need to potentially slow for 10mph mainline crossover; 3) Need to potentially negotiate 45mph double-crossover southwest of the Davis Amtrak Station 4) The potential conflict with switching operations where yard tracks are parallel to the main lines. The unique railroad layout in Davis and the actual train and vehicle collision, derailment, and train speeding incidents that have occurred in and near Davis should also be factored into the risk assessment.

Davis can report that the rail tracks running through the City travel through a highly populated area of both business and residential land uses, including the core of the Davis Downtown. There are facilities that rail cars traveling the tracks through Davis must negotiate. Train operators must: 1) slow their trains in advance to negotiate a curve with a 30 mile-per-hour speed limit through the heart of the Downtown, 2) be aware of the potential to utilize a 10 mile-per-hour cross-over immediately east of this curve in either direction when left-handed running – note that even though used infrequently the infrequency may actually increase the danger should operators lapse in remembering and fail to slow for this very-low-speed switch between main lines, such as happened in Burlington, Ontario, Canada in 2012; note also that several mainline freight trains have been observed utilizing this crossover in the last few months; 3) navigate over the Richards Subway vehicle undercrossing, as well as the private crossing at the east end of Arboretum Drive, where several pedestrian deaths and at least one vehicle collision and death have occurred, and immediately adjacent to a popular city park and shopping area; 4) navigate an at-grade vehicular crossing immediately east of the City limits at County Road 32A, where the derailment and fire occurred in the early 1990s;. Further east, just to the east of the City of Davis, trains navigate elevated tracks over the highly sensitive habitat area of the Yolo Causeway. None of this information is disclosed or considered in the DEIR.

In addition, the methodology for calculating the potential for spill and explosion does not appear to take into account the recent spills and explosions in Lac-Megantic, QC, Aliceville, AL, Casselton, ND and Lynchburg, VA.

¹ The expert's report discusses the various classes of rail between Roseville and Benicia. But this limited amount of information reveals that over 1.3 miles of rail between Roseville to Benicia is FRA Class 1 track—track which has a 15.5 times greater risk of derailment than FRA Class 5 track that the expert's report focuses on. (DEIR Appendix F, at 6.)

² Although the DEIR lists schools within a quarter mile of the rail line (DEIR, at p. 4.7-23), it does not analyze the risks associated with such proximity other than the air quality impacts.

The DEIR Improperly Truncates Its Description of the Project Setting

As discussed in the SACOG comment letter, the DEIR improperly limits its analysis to the route from Roseville to Benicia, claiming as “speculative” the originating site of the crude oil, though there are only three railroad subdivisions that could reasonably be expected to be used to bring crude oil to Roseville (the Roseville, Sacramento, and Valley subdivisions). Limiting the analysis to Roseville to Benicia is arbitrary and the DEIR must analyze the full environmental impacts of each potential route.

Further, as discussed above, once the entire area which will be affected by the Project is properly delineated, the revised DEIR must provide a full description of that area, including the existing conditions on the rail line that the train cars carrying crude oil will take on their journey to Roseville.

The DEIR’s Analysis of the Potential for Significant Hazards Violates CEQA

As discussed in the Yolo County and SACOG DEIR comment letters, the DEIR’s conclusion that the transportation of crude oil by rail poses a less than significant hazard to upstream communities is unsupported by the evidence contained in the DEIR.

Though the sample Initial Study checklist found in Appendix G to the State CEQA Guidelines is an obvious and commonly used source of thresholds of significance, agencies may not rely on it exclusively when a particular project, or particular circumstance, gives rise to environmental concerns not addressed in the checklist. In *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099, the court held that an agency cannot rely on a reflexive determination to follow the significance thresholds in Appendix G without regard to whether those standards are broad enough to encompass the scope of the project at issue or even relevant. The court explained that, “in preparing an EIR, the agency must consider and resolve every fair argument that can be made about the possible significant environmental effects of a project, irrespective of whether an established threshold of significance has been met with respect to any given effect.” (116 Cal. App. 4th at p. 1109.)

Here, in complete reliance on Appendix G, and without considering the very real and substantial risks of the transportation of crude by rail, the DEIR fails to address the risk of fire and explosion in its thresholds of significance. The DEIR’s only threshold of significance that addresses the hazards of transportation states:

Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the *release of hazardous materials into the environment*.

(DEIR at 4.7-13 [emphasis added].) As has been reported widely over the last several years, the character and quality of the North American and Canadian crude oil currently being transported by rail across the United States has dramatically shifted the public safety concern from a hazardous material release to fiery explosions. Accordingly, there is more than a fair argument that the DEIR has violated CEQA by failing to employ a threshold of significance broad enough to address the potential environmental impacts of this particular project.

Further, while, in general, lead agencies are given discretion in developing their thresholds of significance, as long as they are supported by substantial evidence, a fair argument can be made that the Project will result in a significant hazard. As discussed in the Yolo County comment letter, the threshold of significance applied to the Project to determine if it will pose a significant hazard is faulty as, even assuming the estimate is accurate (which as Yolo County observes, is questionable given the methodology employed) it focuses only on frequency and ignores magnitude. (DEIR at 4.7-18.) The DEIR assumes that the impact of each individual crude oil train release incident of 100 gallons or more is the same. The DEIR suggests that it is appropriate for the public to compare the chance that an individual driver will be involved in vehicle accident to the potential for a 50-car train carrying crude oil to explode in the middle of an urban area. There is no logic to this comparison.

The DEIR discloses that each 50-car train traveling to Benicia twice a day will carry 35,000 gallons of crude oil. Thus, the release (and potential associated explosion) could be of up to 35,000 gallons of crude oil, depending on the number of oil tank cars involved. This release and potential explosion could occur while the train is passing through the heavily populated cities of Roseville, Sacramento, Davis, Dixon, Vacaville, Fairfield, Suisun City and Benicia. Declaring a potential release of such a vast amount of crude oil (and potential explosion) as less than significant is directly contrary to CEQA. By way of example, if a project located in a 100 year flood plain must treat the possibility of a flood one in every 100 years as a significant impact (see State CEQA Guidelines Appendix G section IX) how can the DEIR conclude that the risk of release of up to 35,000 gallons of crude oils once every 111 years is less than significant?

The Project's Significant Hazard Risk Requires Feasible Mitigation Measures

An EIR is inadequate unless it includes "a detailed statement setting forth . . . mitigation measures proposed to minimize [the project's] significant effects on the environment." (Pub. Res. Code, § 21100(b)(3); State CEQA Guidelines, §§ 15126 (e).) CEQA requires lead agencies to incorporate all feasible mitigation measures into a project to reduce the project's potentially significant impacts to a level of insignificance. (Pub. Res. Code, § 21081(a)(1)-(3); State CEQA Guidelines, §§ 15002 (a)(3), 15021(a)(2), 15091(a)(1).) Here, as discussed above, the risk of release and potential explosion of up to 35,000 gallons of crude oil is a significant effect on the environment that requires mitigation. Such mitigation must address a variety of concerns.

For instance, the DEIR states:

The approximately 730 trains that would transport crude oil through the Marsh each year would introduce a risk of an oil spill if a train were to derail *and* breach the integrity of the tank car, spilling some of its contents. Though a spill could occur anywhere along the line, the aquatic character of Suisun Marsh and the number of special-status organisms it supports make it an especially vulnerable location for a large spill. Depending on the location and severity of an oil spill and its resulting effects on special-status species, this could be a significant impact.

(DEIR at 4.2-33 [emphasis original].)

However, because the DEIR goes on to state that the risk of such spills is very low it concludes that the “impact [to biological resources] would be less than significant.” (*Id.*) By dismissing the need to mitigate what it admits is potentially “significant impact” to the Suisun Marsh, the DEIR avoids recommending mitigation measures to either reduce the risk of an oil spill and/or to develop programs or protocols to address such a spill. In other words, the DEIR fails to meet its obligation to incorporate all feasible mitigation measures into a project to reduce the project’s potentially significant impacts to a level of insignificance.

The DEIR’s failure to incorporate feasible mitigation measures to either prevent or to address the impacts posed by a spill or explosion infects and invalidates the document. Any future efforts to revise the DEIR so that it complies with CEQA must include such mitigation. Davis recommends that the revised DEIR include the following measures:

- Advance notification to the county and city emergency operations offices of all crude oil shipments;
- Limitations on storage of shipments in urbanized areas, and appropriate security for all storage of shipments;
- Support, including full cost funding, for training and outfitting emergency response crews;
- No oil transported by rail for this project until the entire fleet of tank cars to be used meet the upcoming recommendations by the US DOT or better, with at minimum reinforced puncture-resistant bulkheads, electronically controlled pneumatic brakes and rollover protection;
- Priority funding for rail safety projects;
- Utilization of best available inspection equipment and protocols; and
- Implementation of positive train control (PTC) to prioritize areas with crude oil shipments before such shipments begin (see attached letter to U.S. DOT).
- Limit all shipments of crude by rail to the Benicia Valero Refinery to only those shipments that have stripped out the most volatile elements, including flammable natural gas liquids (NGLs) before it is loaded into rail cars for shipment.
- Replace the left-hand, 10 mile-per-hour cross-over between main lines just east of the Davis depot with a the standard 45 mile-per-hour crossover standard used on the rest of the Capitol Corridor between Emeryville and Sacramento. This will greatly decrease the likelihood of an overspeed train derailment at this location caused by operator inattentiveness of a red-over-green signal aspect or should the operator lapse in remembering that this one switch has a much lower posted speed than other crossovers on the corridor displaying the same signal aspect for diverging movements. (Note: Implementation of PTC on all trains using the corridor before oil trains begin running would be acceptable instead in mitigating the risk at this significant potential derailment location.)
- Ensure full implementation and proper operation of track side monitoring equipment.
- Consideration of the construction of alternate means of oil transport other than rail or bypass routes for oil trains and other hazardous and flammable material trains around populated areas, such as Davis and Sacramento for example, such that the risk of explosion in a populated area would be wholly mitigated.

The DEIR fails to analyze the cumulative impacts of the Project.

In its cumulative impacts analysis the DEIR dismisses the potential for any increase in risk due to multiple rail cars from multiple projects transporting crude oil by rail by opining that any explosion/leakage from a rail car would be separate and apart from any other any other such explosion/leakage and thus there could be no cumulative impact. However, this discussion ignores that there is a higher probability of such an explosion/leakage with a greater frequency of trains, because a key factor in the risk analysis relied on in the DEIR is the number of train-miles traveled. Therefore, as the cumulative number of train trips increase along a particular rail alignment, the risk of accidents increases. The DEIR should have, but failed to, consider whether the proposed Project's contribution to this cumulative risk is cumulatively considerable. Further, at least two of the projects identified in the DEIR are projected to result in new crude oil shipments along the same rail alignment: the WesPac Pittsburg Energy Infrastructure Project and the Phillips 66 Company Rail Spur Extension Project.

Where, as here, a DEIR's evaluation of cumulative impacts is based on a list of past, present, and probable future projects it must include in that list any project "producing related impacts, including, if necessary, projects outside the lead agency's control." (State CEQA Guidelines §15130(b)(1)(A).) Here, the DEIR has also failed to consider in its list of reasonably foreseeable future projects the potential for overall increase in rail cars traveling along the paths that will be taken by the Project's trains. The addition of any rail cars on the tracks will produce related safety issues, not just the increase in the number of rail cars transporting crude oil.

Revision to the DEIR to ensure it complies with CEQA must include a complete list of cumulative projects and a full assessment of any cumulatively considerable risk of release or explosion related to the Project.

We thank Benicia for this opportunity to comment on the DEIR and urge it to prepare and circulate a revised DEIR which includes a complete Project description and setting, properly identifies the Project's potentially significant Project-level and cumulative impacts, and incorporates all feasible mitigation measures into the Project that will reduce the significant impacts of the Project to a less than significant level or lessen those impacts that are determined to be significant and unavoidable even with the implementation of mitigation.

Sincerely,



Michael Webb
Director of Community Development & Sustainability

Attachments:

1. Map of Davis Rail Facilities
2. Letter to the U.S. DOT from Congress Members Garamendi, Matsui, Thompson and Miller