Valero Crude by Rail Project Public Comments received DEIR Public Review Period September 11 (2:01 p.m.)- September 15, 2014										
					Part 1 of 3					
					Commenter	Date Received				
Agencies										
California Assemblyman Dan Logue	11-Sep-14									
California State Senator Jim Nielsen	15-Sep-14									
Solano County Department of Resource Management	15-Sep-14									
Feather River Air Quality Management District	15-Sep-14									
University of California, Davis	15-Sep-14									
California Public Utilities Commission, Safety and Enforcement Division and California Department of Fish and Wildlife, Office of Spill Prevention and Response	15-Sep-14									
Capitol Corridor Joint Powers Authority	15-Sep-14									
Bay Area Air Quality Management District	15-Sep-14									
Sutter County Supervisors James Gallagher and Stanley Cleveland	15-Sep-14									
Organizations										
San Francisco Baykeeper	15-Sep-14									
Cool Davis	15-Sep-14									
350 Sacramento	15-Sep-14									
Benicians for a Safe and Healthy Community (BSHC)	15-Sep-14									
Communities for a Better Environment (CBE)	15-Sep-14									
National Resources Defense Council (NRDC)	15-Sep-14									
Adams Broadwell Joseph & Cardozo on behalf of SAFER California	15-Sep-14									
Planning Commissioners										
Stephen Young	15-Sep-14									
George Oakes	15-Sep-14									
Susan Cohen-Grossman	15-Sep-14									
Belinda Smith	15-Sep-14									

California Legislature



DAN LOGUE ASSEMBLYMAN, 3RD DISTRICT



August 20, 2014

Amy Million 250 East L Street Benicia, CA 94510

Dear Ms. Million,

I wish to express my complete support for Valero's proposed Crude by Rail project and the City of Benicia's Draft Environmental Impact Report. I have full confidence in the analysis of independent experts as it relates to this project and in the abilities of the refinery, railroad, and local and uprail first responders to ensure this project is operated safely.

Moving crude oil by rail is not a new mode of transportation. In fact, this material and other hazardous materials has been safely transported by rail for many years. Transporting crude by rail provides great benefits to communities throughout California and across the country, including job creation, increased tax revenues and support for local and regional industries.

But the value of this project far exceeds the associated jobs and tax revenues. Per the Draft Environmental Impact Report, this project will have significant environmental benefits, including a reduction in statewide air emissions and greenhouse gases. It also reduces the likelihood of a crude oil release, thereby ensuring that this project prioritizes community safety in Benicia and uprail communities.

The Valero Benicia Refinery is one of the newest and most advanced refineries in the nation. Their safety record is unquestionable, as evidenced by their continuous designation as a Cal/OSHA VPP Star Site since 2006. The refinery has indicated that safety will continue to be paramount to their operations by committing to go above and beyond federal mandates in their safety standards and procedures, including the use of 1232 tank cars rather than DOT-111s.

Over a dozen regulatory agencies will oversee the implementation and operation of this project. The Valero Benicia Refinery and Union Pacific Railroad have also adopted voluntary safety measures, including increased prevention, preparedness and response training for local and regional first responders which only furthers their commitment to working together to benefit the communities they operate in.

By collaborating with regulatory agencies and local and uprail first responders, the proposed Crude by Rail project will be safe, environmentally conscious and economically beneficial to Benicia and uprail communities. It will also ensure that a vital industry in the region is able to remain competitive in a shifting marketplace and maintain safe operations while continuing to provide regional economic prosperity and clean burning fuels to California consumers.

Thank you,

Dan Logue

Assemblyman, 3rd Assembly District

CAPITOL OFFICE STATE CAPITOL SACRAMENTO, CA 95814 (916) 651-4004

CHICO DISTRICT OFFICE 2653 FOREST AVE., STE, 110 CHICO, CA 95928 (530) 879-7424

CRESCENT CITY DISTRICT OFFICE 1080 MASON MALL, STE. 4 CRESCENT CITY, CA 95531 (707) 464-1255

ROSEVILLE DISTRICT OFFICE 2200A DOUGLAS BLVD., STE. 100 ROSEVILLE, CA 95765 (916) 772-0571

> YUBA CITY DISTRICT OFFICE 409 CENTER ST., STE. C YUBA CITY, CA 95993 (530) 751-8657

> > September 11, 2014

Amy Million, Principal Planner Community Development Department 250 East L Street Benicia, CA 94510

Re: Valero Crude by Rail Project Draft Environmental Impact Report

Dear Ms. Million:

I am writing to express my support for the City of Benicia's Draft Environmental Impact Report on the Valero Crude-by-Rail Project. The Draft EIR comprehensively analyzes the potential impacts and mitigation measures for this project. I am fully confident in the project as outlined in the Draft EIR and believe that both the Valero Benicia Refinery and Union Pacific Railroad can and will operate safely.

Per the California Environmental Quality Act, the purpose of a Draft EIR is to identify the impacts associated with a potential project and what steps, if any, are needed to mitigate them. The City's Draft EIR for the Valero project addresses all potential impacts of the project under CEQA and correctly identifies the boundaries of City jurisdiction when addressing railroad operations given federal preemption.

The issue of rail safety has been raised often in relation to this project. As America's energy renaissance sees increased use of trains for crude transportation, it is important that we look at current laws and regulations to ensure community and environmental safety here and for communities across the nation. In order to be effective, these policy issues must be addressed completely and cohesively.

Preemption requires that discussions of rail safety and operations be directed to the federal government. Neither the City of Benicia nor the Valero Benicia Refinery as the sole applicant has authority to regulate Union Pacific or rail safety issues given federal preemption. Despite these limitations, the DEIR explored the potential for relatively minor releases of crude oil, which was found to be reduced when compared to current marine delivery.

California State Senate

COMMITTEES BUDGET & FISCAL REVIEW HEALTH INSURANCE VETERANS AFFAIRS



SENATOR JIM NIELSEN FOURTH SENATE DISTRICT



In conclusion, I support the extensive efforts of independent experts, the City of Benicia and their findings in the Draft EIR. I recognize the importance continued discussions about rail safety but want to emphasize that these conversations must be had at the federal rather than local level to have a lasting impact for our communities.

Thank you,

JIM NIELSEN Senator, District Four



SOLANO COUNTY Department of Resource Management Administration Division

Administration Division 675 Texas Street, Suite 5500 Fairfield, CA 94533 www.solanocounty.com



Telephone No: (707) 784-6765 Fax: (707)784-4805 Bill Emlen, Director Terry Schmidtbauer, Assistant Director

September 8, 2014

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

RE: Valero Benicia Crude by Rail Project Draft Environmental Impact Report

Dear Ms. Million:

Solano County Department of Resource Management has reviewed the City of Benicia's Draft Environmental Impact Report ("DEIR") related to the project at the Valero Benicia Refinery (Valero Project). The purpose of the Valero Project is to install new equipment, pipelines, and infrastructure to allow the refinery to receive a portion of its crude oil feedstock deliveries by rail tank car. This may result in the daily delivery of up to 70,000 barrels of crude oil by rail to the refinery, which will divert up to approximately 80% of Valero's crude oil deliveries away from marine vessel deliveries.

As part of this project, it is necessary for the crude to be delivered using the Union Pacific Railroad's (UPRR) line that runs through incorporated cities and unincorporated areas of Solano County. In unincorporated Solano County, UPRR's route includes portions that run through marshlands and other sensitive habitat. We feel that the DEIR underestimates potential impacts to these sensitive areas. Additionally, based on our discussion with other emergency response agencies, and review of our own authority as a Certified Unified Program Agency, we feel that the DEIR does not fully address issues related to emergency response, such as updates to county-wide emergency response plans and provisions for training and equipment for emergency responders, or provide all mitigation measures necessary to prevent accidents from occurring or provide for completely effective response to accidents should they occur.

Based on review of the documents, the Department of Resource Management has comments and suggested mitigation measures for the following impact statements provided in the DEIR:

Building & Safety David Cliche Chief Building Official Planning Services Mike Yankovich Program Manager Environmental Health Vacant Program Manager

Administrative Services Suganthi Krishnan Sr. Staff Analyst Public Works-Engineering Matt Tuggle Engineering Manager Public Works-Operations Wayne Spencer Operations Manager Impact Statement 4.7-2 describing that the Valero Project "could pose significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment". This impact is listed as "Less Than Significant" with no mitigation measures provided. The Department of Resource Management disagrees with this finding as written and believes this is a significant impact that requires mitigation.

Information used to support the DEIR's "Less Than Significant" with no mitigation required finding includes the following:

<u>Valero has committed to the use of the more protective CPC 1232 tank cars</u>: Valero is in the process of purchasing or leasing CPC 1232 tank cars, which are more protective than DOT 111 tank cars, for use in the unit trains that will transport crude oil from Roseville to Benicia.

The Department concurs that CPC 1232 tanks cars are more protective than DOT 111 tank cars. While the DEIR uses CPC 1232 tank cars in its analysis, there appears to be only a voluntary commitment by Valero to utilize them, and there is no mitigation measure requiring only the use of the more protective CPC 1232 tank cars by Valero for this project. Therefore, the Department recommends a specific mitigation measure be added to ensure that CPC 1232 tanks cars, or tank cars that provide better protection, will be used once the facility begins to receive crude by rail from this project (see recommended mitigation measure M1 below).

 Implementation of a 40 MPH speed limit in High Threat Urban Areas reducing potential for derailment and spills: The speed of the unit trains will be reduced to 40 miles per hour for High Threat Urban Areas (HTUAs), which includes cities along the route from Roseville to Benicia, and that a release of crude oil would be less likely to occur with the use of the more fortified CPC 1232 rail cars and the reduced speeds.

The Department cannot concur with the analysis of High Threat Urban Areas (HTUAs) used in the DEIR. It is correct that the American Association of Railroads and their members have adopted a 40 mile per hour speed limit for trains transporting crude oil in HTUAs. However, according to the U.S. Department of Transportation press release dated February 21, 2014 (Attachment 1), this voluntary agreement is only for trains utilizing the older DOT 111's, not using the CPC 1232's as Valero is proposing for this project. Also, HTUAs exclude most of Solano County per the U.S. Department of Homeland Security. Transportation Security Administration definition contained in the Code of Federal Regulations, 49 Part 1580, Appendix A (pages 443 and 444; Attachment 2). That document states that the HTUA for the Bay Area is defined as only extending 10 miles beyond Vallejo, and the HTUA for the Sacramento Area is defined as only extending 10 miles beyond Sacramento. As the project proposes to use CPC 1232 tank cars, and most of the UPRR route within Solano County is more than 10 miles from Vallejo and Sacramento, large portion of Solano County is not included within a HTUA, or covered by any voluntary speed restriction agreement as stated in the DEIR. The Department recommends an additional mitigation measure to ensure train speeds do not exceed 40 MPH throughout Solano County (see recommended mitigation measure M2 below).

By way of example is the Lynchburg, Virginia derailment incident that occurred in April 2014 and is discussed in the DEIR. In this incident, a train traveling at 23 MPH derailed along the James River, resulting in rupture of two CPC 1232 cars and

release of 30,000 gallons that was mostly consumed by fire on the James River (proposed Code of Federal Regulations, Docket No. PHMSA–2012–0082 (HM–251), Table 3; Attachment 3). Therefore, the use of CPC 1232 tank cars at low speeds does not alone mitigate the potential impact from a train derailment. Additional mitigation measures should be required to reduce the likelihood of derailment and to ensure proper and quick responses to spills and fires, and possible explosion, should a derailment occur to support the concept of less than significant.

• <u>Less impact due to lower population density in unincorporated areas of Solano</u> <u>County:</u> Tank car rupture in certain portions of Solano County will have less of an impact due to the lower population density in those areas.

The Department cannot agree with the assertion that impacts will be less in areas with lower population density given the environmentally sensitive conditions along much of the route in unincorporated Solano County. Solano County has direct experience with infrequent petroleum releases in the Suisun Marsh, resulting in significant impacts to the marsh. For example, in 2004 there was a similar, unlikely and infrequent event of a pipeline release of 84,966 gallons of diesel within the Suisun Marsh. This resulted in the deployment of significant resources from the federal, state, and local agencies, and personnel and contractors from the responsible party, to mitigate the environmental harm from the incident. Environmental restoration from the incident was required for six years after the release, and Solano County staff was consistently involved throughout this process. This event, though infrequent, clearly resulted in a significant impact and has a direct parallel to the Valero project.

An example from outside Solano County is the train derailment at Aliceville, Alabama in November 2013 that resulted in a crude oil release into a swamp, impacting wildlife and disrupting commerce. The Aliceville derailment resulted in a deployment of resources from federal, state, and local agencies, as well as the responsible party, to extinguish the resulting fire and mitigate the impacts of the release. As of April 2014 this effort was still ongoing. This, too, shows that infrequent events in sensitive habitats do cause significant impacts. Additional mitigation measures are required to reduce the likelihood of derailment and to ensure proper response should it occur.

Given the above concerns, the Department believes that the project does have significant impact and additional mitigation measures are necessary. The Department understands that UPRR's transportation of commodities is interstate commerce and is regulated by federal law and regulations. However, Valero, as recipient of the crude products by rail, does have the ability to obtain commitments from UPRR to improve tank car and rail line safety for Valero's project. The Department requests the following mitigation measures to be implemented prior to receipt of crude by rail at Valero as a result of this project:

- M1. CPC 1232 tank cars will be used for the project. Valero will ensure that UPRR uses Valero's CPC 1232 tank cars, or tanks cars owned by Valero that are more protective once developed and available, within Solano County for this project.
- M2. Crude rail unit train speeds will be reduced throughout Solano County. Valero will obtain a commitment from UPRR to reduce crude oil train speeds to no more than 40 miles per hour throughout all of Solano County, including the cities of Dixon, Vacaville, Fairfield, Suisun City, and the unincorporated areas.

- M3. Improvements to crude rail train controls and braking will be implemented. Valero will obtain a commitment from UPRR to implement the following for trains used in the project within Solano County: 1) use distributed power, in the form of an engine 2/3 the length of the unit train; and 2) use positive train control, which is the use of a system that will monitor and control train movement to prevent collisions with other trains. The use of these systems will increase the braking capability of each train to prevent an accident, or, in the event of an incident, reduce the impact from a derailment.
- M4. Improvements to track safety. Valero will obtain a commitment from UPRR to increase track safety specifically within Solano County by: 1) performing at least one more internal rail inspection each year above those required by the Federal Rail Administration regulations; 2) conduct at least two high-tech track geometry inspections each year; and 3) increase trackside safety technology by installing wayside wheel bearing detectors in Solano County (at least two within county boundary).
- M5. Response capabilities, equipment, and procedures to respond to accidental releases will be provided. Valero will obtain a commitment from UPRR to provide information on an ongoing basis on UPRR's capabilities, equipment and procedures to respond to incidents in Solano County. Valero will also provide the Solano County Certified Unified Program Agency information on all of Valero's response capabilities.
- M6. Assistance in training local fire departments and districts on responding to crude by rail incidents and fighting industrial fires shall be provided during the life of the project.
 - Valero will sponsor emergency response drills free of charge for local emergency response agencies regarding crude by rail within Solano County. Valero must obtain a commitment from UPRR to participate in drills and exercises. If UPRR is unable to participate, Valero will still use their CPC 1232 tank cars at their facility and obtain assistance from the TransCAER organization for the drill and/or exercise. The drills/exercises will be coordinated through the Solano County Office of Emergency Services in coordination with the Solano County Fire Chiefs Association, and
 - Valero will work with the Solano County Emergency Manager and the Solano County Fire Chiefs Association on an ongoing basis to offer and pay for personnel from Solano County fire departments and districts located along the railroad transportation corridor to obtain industrial firefighter training.

This training will ensure a qualified cadre of locally available fire personnel to address any fires from a train derailment involving the rail transport of crude oil within Solano County.

- M7. Valero will ensure adequate foam and equipment are available along the route used to deliver their crude. Valero will work with Solano County Emergency Manager and the Solano County Fire Chiefs Association to establish caches of foam and necessary equipment at various fire departments/districts facilities within Solano County located in the vicinity of the railroad transportation corridor.
- M8. Valero will work on an ongoing basis with the Solano County Emergency Manager and the Solano County Fire Chiefs Association to establish a

maintenance program to ensure the viability of the equipment and foam caches located throughout Solano County.

- M9. Valero will provide the Department of Resource Management and Solano County Office of Emergency Services with the anticipated schedule of unit trains arriving to the Valero Benicia Refinery on an ongoing basis. This will allow emergency responders to schedule staff and stage equipment appropriately to be ready for response.
- 2. Impact Statement 4.7-7 regarding impairing implementation of, or physically interfering with, an adopted emergency response plan or emergency evaluation plan is listed as less than significant with mitigation. The Department of Resource Management disagrees that this impact is fully mitigated as described in the DEIR.

The DEIR discusses that Valero responds to emergencies at the Valero Benicia Refinery, that the City of Benicia has overall responsibility within the City, and that the Valero Project would not pose a potentially significant new impact to existing City of Benicia emergency/evacuation response plans. However, the DEIR does not address the impact to emergency/ evacuation response plans within the remainder of Solano County. The Environmental Health Service Division, as the Solano County Certified Unified Program Agency (CUPA), is responsible for preparing and revising the Solano County Area Plan, which is the countywide contingency plan for responding to hazardous materials incidents mandated by state law. The potential impacts and necessary updates to the Area Plan have not been addressed in the DEIR. The Department of Resource Management requests the following mitigation measures be implemented:

- M10. Valero Benicia Refinery personnel will assist the Department of Resource Management, Environmental Health Services Division, as the CUPA, in revising the Solano County Hazardous Materials Area Plan to better address hazardous materials incidents at the refinery, and the response to incidents during the transportation of hazardous materials to or from Valero, including response at the refinery and along transportation routes.
- M11. Valero Benicia Refinery personnel will sponsor and commit to having annual drills and/or exercises coordinated with the Solano County Office of Emergency Services, fire departments/districts, and other responders within Solano County that exercise components of the Area Plan. Valero will obtain input from Solano County CUPA on the drill design to verify it addresses components of the Area Plan.
- 3. Impact Statement 4.5-3 discusses the slumping and subsidence of soils, including those resulting from seismic activity, and the rail tipping potential. The Department of Resource Management cannot adequately evaluate whether Mitigation Measure 4.5-3 is sufficient to address any rail tipping potential because a geotechnical report that incorporates site specific geologic data is not included as an attachment to the DEIR. Therefore the DEIR should include the geotechnical report prepared for the construction of the rail spur or a previous geotechnical report that includes site specific data from the area of the proposed rail spur.

In conclusion the Department of Resource Management requests that DEIR address and incorporate the comments stated herein. For questions, you may also contact Matthew Geisert at 707-784-3314 or Terry Schmidtbauer at 707-784-3157. Sincerely,

Bill Emlen Director, Solano County Department of Resource Management

Attachments:

- 1. U.S. Department of Transportation press release dated February 21, 2014
- 2. Department of Homeland Security, Transportation Security Administration in the Code of Federal Regulations, 49 Part 1580, Appendix A (page 443 and 444).
- Proposed Code of Federal Regulations, Docket No. PHMSA-2012-0082 (HM-251), Table 3.
- cc: Linda Seifert, Chair, Board of Supervisors Erin Hannigan, Vice Chair, Board of Supervisors James Spering, Member, Board of Supervisors John Vasquez, Member, Board of Supervisors Skip Thomson, Member, Board of Supervisors Birgitta Corsello, County Administrator Donald Ryan, Emergency Manager

Freight Railroads Join U.S. Transportation Secretary Foxx in Announcing Industry Crude By Rail Safety Initiative

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WASHINGTON, D.C., Feb. 21, 2014 – The nation's major freight railroads today joined U.S. Transportation Secretary Anthony Foxx in announcing a rail operations safety initiative that will institute new voluntary operating practices for moving crude oil by rail. The announcement follows consultations between railroads represented by the Association of American Railroads (AAR) and the U.S. Department of Transportation (DOT), including the leadership of the Federal Railroad Administration (FRA) and the Pipeline and Hazardous Materials Safety Administration (PHMSA).

The announcement today covers steps related to crude by rail operations. Additional issues relating to the safe transport of crude oil, such as tank car standards and proper shipper classification of crude oil, are being addressed separately.

"We share the Administration's vision for making a safe rail network even safer, and have worked together to swiftly pinpoint new operating practices that enhance the safety of moving crude oil by rail," said AAR President and CEO Edward R. Hamberger. "Safety is a shared responsibility among all energy-supply-chain stakeholders. We will continue to work with our safety partners – including regulators, our employees, our customers and the communities through which we operate – to find even more ways to reinforce public confidence in the rail industry's ability to safely meet the increased demand to move crude oil."

Under the industry's voluntary efforts, railroads will take the following steps:

Increased Track Inspections – Effective March 25, railroads will perform at least one additional internal-rail inspection each year above those required by new FRA regulations on main line routes over which trains moving 20 or more carloads of crude oil travel. Railroads will also conduct at least two high-tech track geometry inspections each year on main line routes over which trains with 20 or more loaded cars of crude oil are moving. Current federal regulations do not require comprehensive track geometry inspections.

Braking Systems – No later than April 1, railroads will equip all trains with 20 or more carloads of crude oil with either distributed power or two-way telemetry end-of-train devices. These technologies allow train crews to apply emergency brakes from both ends of the train in order to stop the train faster.

Use of Rail Traffic Routing Technology – No later than July 1, railroads will begin using the Rail Corridor Risk Management System (RCRMS) to aid in the determination of the safest and most secure rail routes for trains with 20 or more cars of crude oil. RCRMS is a sophisticated analytical tool, developed in coordination with the federal government, including the U.S. Department of Homeland Security (DHS), PHMSA and FRA. Railroads currently use RCRMS in the routing of security sensitive materials. This tool takes into account <u>27 risk factors</u> – including volume of commodity, trip length,

۰. ب population density along the route, local emergency response capability, track quality and signal systems – to assess the safety and security of rail routes.

Lower Speeds – No later than July 1, railroads will operate trains with 20 or more tank cars carrying crude oil that include at least one older DOT-111 car no faster than 40 miles-per-hour in the <u>federally designated 46 high-threat-urban areas (HTUA)</u> as established by DHS regulations. In the meantime, railroads will continue to operate trains with 20 or more carloads of hazardous materials, including crude oil, at the industry self-imposed speed limit of 50 miles per hour.

Community Relations - Railroads will continue to work with communities through which crude oil trains move to address location-specific concerns that communities may have.

Increased Trackside Safety Technology – No later than July 1, railroads will begin installing additional wayside wheel bearing detectors if they are not already in place every 40 miles along tracks with trains carrying 20 or more crude oil cars, as other safety factors allow.

Increased Emergency Response Training and Tuition Assistance – Railroads have committed by July 1 to provide \$5 million to develop specialized crude by rail training and tuition assistance program for local first responders. One part of the curriculum will be designed to be provided to local emergency responders in the field, as well as comprehensive training will designed to be conducted at the Transportation Technology Center, Inc. (TTCI) facility in Pueblo, Colo. The funding will provide program development as well as tuition assistance for an estimated 1500 first responders in 2014.

Emergency Response Capability Planning – Railroads will by July 1 develop an inventory of emergency response resources for responding to the release of large amounts of crude oil along routes over which trains with 20 or more cars of crude oil operate. This inventory will include locations for the staging of emergency response equipment and, where appropriate, contacts for the notification of communities. When the inventory is completed, railroads will provide DOT with information on the deployment of the resources and make the information available upon request to appropriate emergency responders.

Railroads will continue to work with the Administration and rail customers to address other key shared safety responsibilities, including federal tank car standards and the proper shipper classification and labeling of oil moving by rail. PHMSA is currently reviewing public comments on increasing federal tank car standards.

To learn more about all railroads do to continuously improve the safety of America's rail system, please visit <u>www.aar.org</u>.

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For more information contact: AAR Media Relations at <u>media@aar.org</u> or 202-639-2345.

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About AAR: The Association of American Railroads (AAR) is the world's leading railroad policy, research and technology organization focusing on the safety and productivity of rail carriers. AAR members include the major freight railroads of the U.S., Canada and Mexico, as well as Amtrak. Learn more at <u>www.aar.org</u>. Follow us on Twitter: AAR FreightRail or Facebook: <u>www.facebook.com/freightrail</u>.

Transportation Security Administration, DHS

AUTHENTICATED U.S. GOVERNMENT , INFORMATION / GPO

> (6) Discharge, discovery, or seizure of a firearm or other deadly weapon on a train or transit vehicle or in a station, terminal, facility, or storage yard, or other location used in the operation of the passenger railroad carrier or rail transit system.

(7) Indications of tampering with passenger rail cars or rail transit vehicles.

(8) Information relating to the possible surveillance of a passenger train or rail transit vehicle or facility, storage yard, or other location used in the operation of the passenger railroad carrier or rail transit system.

(9) Correspondence received by the passenger railroad carrier or rail transit system indicating a potential threat to rail transportation.

(10) Other incidents involving breaches of the security of the passenger railroad carrier or the rail transit system operations or facilities.

(d) Information reported should include, as available and applicable: (1) The name of the passenger railroad carrier or rail transit system and contact information, including a telephone number or e-mail address.

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(2) The affected station, terminal, or other facility.

(3) Identifying information on the affected passenger train or rail transit vehicle including number, train or transit line, and route, as applicable.

(4) Origination and termination locations for the affected passenger train or rail transit vehicle, including departure and destination city and the rail or transit line and route.

(5) Current location of the affected passenger train or rail transit vehicle.(6) Description of the threat, incident, or activity.

(7) The names and other available biographical data of individuals involved in the threat, incident, or activity.

(8) The source of any threat information.

[73 FR 72173, Nov. 26, 2008, as amended at 74 FR 23657, May 20, 2009]

APPENDIX A TO PART 1580-HIGH THREAT URBAN AREAS (HTUAS)

State	Candidate urban area	Geographic area captured in the data count	Previously des- ignated urban areas included
AZ	Phoenix Area •	Chandler, Gilbert, Glendale, Mesa, Peoria, Phoenix, Scottsdale, Tempe,	Phoenix, AZ.
CA	Anaheim/Santa Ana Area.	Anaheim, Costa Mesa, Garden Grove, Fullerton, Huntington Beach, Irvine, Orange, Santa Ana, and a 10-mile buffer extending from the border of the combined area.	Anahelm, CA; Santa Ana, CA.
	Bay Area	Berkeley, Daly City, Fremonl, Hayward, Oakland, Palo Alto, Richmond, San Francisco, San Jose, Santa Clara, Sunnyvale, Vallejo, and a 10-mile buller extending from the border of the combined area.	San Francisco, CA; San Jose, CA; Oakland, CA.
	Los Angeles/Long Beach Area.	Burbank, Glendale, Inglewood, Long Beach, Los Angeles, Pasadena, Santa Monica, Santa Clarita, Torrance, Simi Valley, Thousand Oaks, and a 10- mile buller extending from the border of the combined area.	Los Angeles, CA; Long Beach, CA.
	Sacramento Area *	Elk Grove, Secramento, and a 10-mile buffer extending from the border of the combined area.	Sacramento, CA.
:	San Diego Area*	Chula Visla, Escondido, and San Diego, and a 10-mile buller extending from the border of the combined area.	San Diego, CA.
co	Denver Area	Arvada, Aurora, Denver, Lakewood, Westminster, Thornton, and a 10-mile buffer extending from the border of the combined area.	Denver, CO.
DC	National Capital Region.	National Capital Region and a 10-mile buller extending from the border of the combined area.	National Capital Region, DC.
FL	Fort Lauderdale	Fort Lauderdale, Hollywood, Miami Gardens, Miramar, Pembroke Pines, and a 10-mile buffer extending from the border of the combined area	N/A.
	Jacksonville Area Miami Area	Jacksonville and a 10-mile buffer extending from the city border	Jacksonville, FL Miami, FL.
	Orlando Area Tampa Area *	Orlando and a 10-mile buffer extending from the city border Clearwater, St. Petersburg, Tampa, and a 10-mile buffer extending from the border of the combined area.	Orlando, FL. Tampa, FL.
GA	Atlanta Area	Atlanta and a 10-mile buffer extending from the city border	Allanta, GA.
HI	Honolulu Area	Honolulu and a 10-mile buffer extending from the city border	Honolulu, HI.
IL]	Chicago Area	Chicago and a 10-mile buller extending from the city border	Chicago, IL.
IN	Indianapolis Area	Indianapolis and a 10-mile buffer extending from the city border	Indianapolis, IN.
KY (Louisvillo Area* I	Louisville and a 10-mile buller extending from the city border	Louisville, KY.

Pt. 1580, App. B

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State	Candidate urban area	Geographic area captured in the data count	Previously des- Ignated urban areas included
LA	Baton Rouge Area*.	Baton Rouge and a 10-mile buller extending from the city border	Balon Rouge, LA.
	New Orleans Area	New Orleans and a 10-mile buller extending from the city border	New Orleans, LA.
MA	Boston Area	Boston, Cambridge, and a 10-mile buller extending from the border of the combined area.	Boston, MA.
MD	Baltimore Area	Baltimore and a 10-mile buffer extending from the city border	Baltimore, MD.
MI	Detroit Area	Detroit, Sterling Heights, Warren, and a 10-mile builter extending from the border of the combined area.	Detroit, MI.
MN	Twin Cilles Area	Minneapolis, SL Paul, and a 10-mile buffer extending from the border of the combined entity.	Minneapolis, MN; St. Paul, MN.
MO	Kansas City Area	Independence, Kansas City (MO), Kansas City (KS), Olathe, Overland Park, and a 10-mile buffer extending from the border of the combined area.	Kansas City, MO.
	St. Louis Area	St. Louis and a 10-mile buffer extending from the city border	St. Louis, MO.
NC	Charlotte Area	Charlotte and a 10-mile buffer extending from the city border	Charlotte, NC.
NE	Omaha Area*	Omaha and a 10-mile buller extending from the city border	Omaha, NE.
NJ	Jersey City/New- ark Area.	Elizabeth, Jersey City, Newark, and a 10-mile buller extending from the border of the combined area.	Jersey City, NJ; Newark, NJ.
NV	Las Vegas Area*	Las Vegas, North Las Vegas, and a 10-mile buller extending from the bor- der of the combined entity.	Las Vegas, NV.
NY	Bullalo Area*	Bullalo and a 10-mile buller extending from the city border	Buffalo, NY.
	New York City Area.	New York City, Yonkers, and a 10-mile buller extending from the border of the combined area.	New York, NY.
OH	Cincinnati Area	Cincinnati and a 10-mile buffer extending from the city border	Cincinnati, OH.
	Cleveland Area	Cleveland and a 10-mile buller extending from the city border	Cleveland, OH.
	Columbus Area	Columbus and a 10-mile buller extending from the city border	Columbus, OH.
	Toledo Area •	Oregon, Toledo, and a 10-mile buffer extending from the border of the com- bined area.	Toledo, OH.
OK	Oklahoma City Area*.	Norman, Oklahoma and a 10-mile buffer extending from the border of the combined area.	Oklahoma City, OK.
OR	Portland Area	Portland, Vancouver, and a 10-mile buller extending from the border of the combined area.	Portland, OR.
PA	Philadelphia Area	Philadelphia and a 10-mile buller extending from the city border	Philadelphia, PA.
	Pillsburgh Area	Pittsburgh and a 10-mile buffer extending from the city border	Pittsburgh, PA.
TN	Memphis Area	Memphis and a 10-mile buller extending from the city border	Memphis, TN,
TX	Dallas/Fort Worth/ Arlington Area.	Arlington, Carrollton, Dallas, Fort Worth, Garland, Grand Prairie, Irving, Mesquite, Plano, and a 10-mile buffer extending from the border of the combined area.	Dallas, TX; Fort Worth, TX; Ar- lington, TX.
	Houston Area	Houston, Pasadena, and a 10-mile buller extending from the border of the combined entity.	Houston, TX.
	San Antonio Area	San Antonio and a 10-mile buffer extending from the city border	San Antonio, TX.
WA	Seattle Area	Seattle, Bellevue, and a 10-mile buller extending from the border of the combined area.	Seallie, WA.
WI	Milwaukee Area	Milwaukee and a 10-mile buller extending from the city border	Milwaukee, WI.

*FY05 Urban Areas eligible for sustainment funding through the FY06 Urban Areas Security Initiative (UASI) program; any Urban Area not identified as eligible through the risk analysis process for two consecutive years will not be eligible for continued funding under the UASI program.

APPENDIX B TO PART 1580—SUMMARY OF THE APPLICABILITY OF PART 1580 [This is a summary—see body of text for complete requirements]

Socurity measure and rule section	Freight tail- road car- nors NOT transponting specified hazardous materials	Froight railroad carriers trans- porting spoci- lied hazardous materials (§ 1560.100(b))	Rail oper- ations at contain fa- cititos that ship (Lo., offor, pro- paro, or load for transpor- lation) haz- ardous ma- torials	Rail opor- ations at cortain fa- cilitos that roceivo or unload haz- ardous ma- terials with- in an HTUA	Passongor raimad car- riers and rail transit systems	Certain othor rail oporations (private, businoss/ol- lico, circus, tourist, his- toric, axcur- sion)
Allow TSA to inspect (§ 1580.5)	х	x	x	х	x	x
Appoint rail security coordinator (§ 1580.101 freight; § 1580.201 passenger)	x	x	x	x	x	(')
Report significant security concerns (§ 1580.105 freight; § 1580.203 passenger)	x	x	x	x	x	x
Provide location and shipping information for rail cars containing specified hazardous materials if requested (§ 1580.103)		x	x	x		

Dakota, prompting authorities to issue a voluntary evacuation of the city and surrounding area. On November 8, 2013, a train transporting crude oil to the Gulf Coast from North Dakota derailed in Aliceville, Alabama, spilling crude oil in nearby wetlands ignited. On July 6, 2013, a catastrophic railroad accident occurred in Lac-Mégantic, Quebec, Canada, when an unsecured and unattended freight train transporting crude oil rolled down a descending grade and subsequently derailed, resulting in the unintentional release of lading from multiple tank cars. The subsequent fires and explosions, along with other effects of the accident, resulted in the deaths of 47 individuals. In addition, the derailment caused extensive damage to the town center, a release of hazardous materials resulting in a massive environmental impact that will require substantial clean-up costs,

and the evacuation of approximately 2,000 people from the surrounding area.

Accidents involving HHFTs transporting ethanol can also cause severe damage. On August 5, 2012, a train derailed 18 of 106 cars, 17 of which were carrying ethanol, near Plevna, MT. Twelve of the 17 cars released lading and began to burn, causing two grass fires, a highway near the site to be closed, and over \$1 million in damages. On October 7, 2011, a train derailed 26 loaded freight cars (including 10 loaded with ethanol) approximately one-half mile east of Tiskilwa, IL. The release of ethanol and resulting fire initiated an evacuation of about 500 residents within a 1/2-mile radius of the accident scene, and resulted in damages over \$1.8 million. On June 19, 2009, near Rockford, IL, a train derailed 19 cars, all of which contained ethanol, and 13 of the derailed cars caught fire. The derailment destroyed a section of single main track

and an entire highway-rail grade crossing. As a result of the fire that erupted after the derailment, a passenger in one of the stopped cars was fatally injured, two passengers in the same car received serious injuries, and five occupants of other cars waiting at the highway/rail crossing were injured. Two responding firefighters also sustained minor injuries. The release of ethanol and resulting fire initiated a mandatory evacuation of about 2,000 residents within a 1/2-mile radius of the accident scene and damages of approximately \$1.7 million. The EPA estimated that 60,000 gallons of ethanol spilled into an unnamed stream, which flowed near the Rock and Kishwaukee Rivers.

The following table highlights the risk of HHFTs by summarizing the impacts of selected major train accidents involving trains of Class 3 flammable liquid.

TABLE 3-MAJOR CRUDE OIL/ETHANOL TRAIN ACCIDENTS IN THE U.S.

[2006-2014]

							and the second se	
Location	Date (MM/YY)	Number of tank cars de- railed	Number of crude oil/ ethanol cars penetrated	Speed at derailment in miles per hour (mph)	Material and type of train	Product loss (gallons of crude or ethanol)	Fire	Type of train accident or cause of train acci- dent
LaSalle, CO	05/14	5	1	9	Crude Oil	5,000	No	To Be Determined
Lynchburg, VA	04/14	17	2	23	Crude Oil	30,000	Yes	TBD.
Vandergrift, PA	02/14	21	4	31	Crude Oil	10.000	No	TBD.
New Augusta, MS	01/14	26	25	45	Crude Oil	90,000	No	TBD.
Cassellon, ND	12/13	20	18	42	Crude Oil (unit)	476,436	Yes	Collision.
Aliceville, AL	11/13	26	25	39	Crude Oil (unit)	630,000	Yes	TBD.
Plevna, MT	08/12	17	12	25	Ethanol	245,336	Yes	TBD.
Columbus, OH	07/12	3	3	23	Ethanol	53,347	Yes	TBD-NTSB Inves- tigation.
Tiskilwa, IL	10/11	10	10	34	Ethanol	143,534	Yes	TBD—NTSB Inves- tigalion.
Arcadia, OH	02/11	31	31	46	Ethanol (unit)	834,840	Yes	Rail Defect.
Rockford/Cherry Val- lev, IL.	06/09	19	13	19	Ethanol	232,963	Yes	Washout.
Painesville, OH	10/07	7	5	48	Ethanol	76,153	Yes	Rail Defect.
New Brighton, PA	10/06	23	20	37	Elhanol (unil)	485,278	Yes	Rail Defect.

Note 1. The term "unit" as used in this chart means that the train was made up only of cars carrying that single commodity, as well as any required non-hazardous buffer cars and the locomotives.....

Note 2. All accidents listed in the table involved HHFTs.

Note 3. All crude oil or crude oil/LPG accidents involved a train transporting over 1 million gallons of oil.

While not all accidents involving crude oil and ethanol release as much product or have as significant consequences as those shown in this table, these accidents indicate the potential harm from future releases. Table 4 provides a brief summary of the justifications for each provision in this NPRM, and how each provision will address the safety risks described previously.



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September 12, 2014



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Christopher D. Brown, AICP Air Pollution Control Officer

Amy Million, Principal Planner Community Development Department 250 East L Street Benicia, CA 94510

Re: Valero Crude by Rail Project

Dear Ms. Million,

Feather River Air Quality Management District (District) appreciates the opportunity to review and comment on the proposed project to allow the Benicia Valero Refinery to receive a portion of its crude by rail. The District has reviewed the DEIR's analysis of air quality impacts and would like to provide the following comments.

The District administers air quality programs for Yuba and Sutter counties, located northeast of the proposed project. Based on the existing rail lines, prior to arriving at the Roseville Rail Yard, the rail cars carrying the crude will either come through Nevada and travel either over Donner Summit or through the Feather River canyon, or they will come through Oregon¹. Two out of three routes pass through the District's jurisdiction. The District includes two federal nonattainment areas, the Yuba City-Marysville area for the 2006 24-hour fine particulate matter² (PM_{2.5}) standard and the south Sutter portion of the Sacramento Federal Nonattainment Area (SFNA) for ozone³. While the Yuba City-Marysville area has recently seen significant improvements in PM_{2.5} concentrations and has requested redesignation to attainment, the SFNA is a Severe nonattainment area for 8-hour ozone. The DEIR analysis evaluates the project's impact by breaking the emissions into the applicable air districts into which the train will pass between the Roseville Rail Yard and Valero's refinery in Benicia, however there is no evaluation of the impact to the SFNA as a whole. The District recommends that the DEIR consider the impact to the nonattainment areas impacted by the project and whether the project would conflict with the applicable air quality plans^{4,5}.

The DEIR states that estimating criteria and toxic emissions generated by rail transport prior to arrival at the Roseville Rail Yard is too speculative. However, the DEIR is able to perform this

¹ http://www.up.com/aboutup/reference/maps/

² http://www.epa.gov/pmdesignations/2006standards/final/region9.htm

³ http://www.epa.gov/ozonedesignations/2008standards/final/region9f.htm

⁴ http://airquality.org/plans/federal/ozone/8hr1997/2013Revision/index.shtml

⁵ http://www.arb.ca.gov/planning/sip/planarea/feathersip.htm

analysis to estimate GHG emissions generated in all of California⁶. The District recommends that the DEIR estimate the criteria and toxics emissions from the Roseville Rail Yard to the California border similar to what was done for GHG emissions, and determine the significance of such emissions.

The DEIR should identify whether transit losses from the tank cars are included in the emissions analysis. If they are not, then the DEIR should include transit losses emissions in its impact analysis.

The DEIR should explicitly list all assumptions used to calculate the emissions in Appendix E.3-Air Permit Application February 2013 and E.5-Air Quality and GHG Emissions Supplement. For example, in the Appendix B-4 Cargo Carrier Emissions of Appendix E.3, the tables on pages 3 and 5 appear to assume 1 train per day with 100 cars per train, however throughout the DEIR the project is described as utilizing 2 trains per day with 50 cars per train⁷. Appendix E.5 also does not specify how many trains per day or locomotives per train are being assumed.

While the regulation of railroad locomotives may be federally preempted, mitigating the emissions of the project is not, and the District would recommend that the lead agency consider all forms of mitigation to reduce the impacts of the project including off-site mitigation, especially in areas already not meeting state and federal air quality standards.

The District thanks the City of Benicia for the opportunity to comment on this project. If you have any questions please contact me at (530) 634-7659 ext 210.

Sincerely,

Screhe Sparthe

Sondra Spaethe Air Quality Planner

File: Chron

Cc: BAAQMD, PCAPCD, SMAQMD, YSAQMD

⁶ "Average long line haul from State line to Roseville represents a composite distance between Roseville and the Oregon and Nevada borders = (100 + 290)/2 = 195." Appendix E.5 Air Quality and GHG Emissions Supplement page 4.

⁷ Section 1.2 Project Overview page 1-1

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KARL MOHR Senior Associate Vice Chancellor CAMPUS PLANNING, FACILITIES AND SAFETY ONE SHIELDS AVENUE DAVIS, CALIFORNIA 95616-8686

September 14, 2014

PRINCIPAL PLANNER AMY MILLION City of Benicia, Community Development Department 250 East L Street Benicia, CA 94510



RE: City of Benicia Valero Crude by Rail Project Draft Environmental Impact Report

Dear Ms. Million:

UC Davis appreciates the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the City of Benicia Valero Crude by Rail Project. The proposed project would result in extensive new operations of rail cars transporting crude oil from Roseville through UC Davis in order to reach Benicia.

UC Davis is a major teaching and research university with extensive residential, recreational, open space, academic facilities and support facilities along the Union Pacific Railroad tracks. The railroad tracks bisect approximately 9,000 linear feet of campus land. Campus residential land uses are directly along the railroad right-of-way and major visitor facilities such as the Robert and Margrit Mondavi Center for the Performing Arts (within 600 feet of the railroad) and the UC Davis Conference Center (within 200 feet of the railroad).

The existing rail operational noise (train horn noise, vibration, and locomotive/rail car noise) are known to impact campus residents living in the Solano Park student housing area and the Aggie Village staff and faculty neighborhood. Residents in these neighborhoods have previously complained to the UC Davis Office of Environmental Stewardship and Sustainability that the rail noise is disruptive to indoor activities during nighttime sleeping hours and disruptive to outdoor activities. As family housing areas, these residential sites provide housing for residents engaged in typical university studying activity and also provide housing and outdoor play areas for young children.

In reviewing the DEIR, the Office of Environmental Stewardship and Sustainability has focused our review and comments on the following subjects: hazards and hazardous materials, and noise impacts.

Hazards and Hazardous Materials

With regard to hazards and hazardous materials, the proposed project would increase the risk of a catastrophic accident along UC Davis property. The UC Davis fire department currently provides fire protection services to UC Davis. In order to meet the increased risk from the proposed project

Principal Planner Million September 14, 2014 Page 2

the fire department and emergency management department seeks to provide an increased level of preparedness.

The particular flammability characteristics of Bakken crude, aging rail tank cars, the potential for human error, and the characteristics of train volumes, seismic activity, variable weather and visibility, and the significant track curvature near UC Davis land all present a unique combination of risk factors. The DEIR should clarify whether the risk analysis includes all of these factors. In combination, these risk factors could multiply the potential likelihood of a catastrophic incident and given the relatively short history of large volumes of Bakken crude by rail shipments, the campus views this risk as uncertain and unacceptable given the current level of preparedness. In order to meet the increased level of risk the campus fire department would need additional training and equipment in order to provide adequate first response capability for the expected volumes of shipments. The campus emergency manager would also have to provide additional training to other departments with response roles to ensure the community was appropriately warned of an accident and protected. The City of Benicia should review the current level of preparedness, the comments contained herein, and approve the proposed project only if adequate training and equipment have been incorporated and guaranteed into the proposed project. While the Valero Corporation may desire an immediate approval process, the City of Benicia is able to approve the proposed project on a timeline that matches adequate preparedness to meet the expected level of risk. In particular, the City of Benicia should not implement the project until the safer rail cars (known as 1232 cars) are guaranteed to operate during all periods of the project.

Noise

With regard to train noise, the DEIR mistakenly characterizes the project as having an indirect impact rather than a direct impact on noise along the rail corridor and has conflicting information regarding the threshold of significance being used in the DEIR. The minimal explanation for this distinction is not an appropriate and thorough impact analysis of the expected noise impacts that will result from the project. The noise impact analysis is so unclear that the campus is unable to ascertain whether the City of Benicia is attempting to characterize the potential impacts to UC Davis as significant or less than significant. Therefore, UC Davis requests that the City of Benicia revise the analysis and provide a new comment period for the DEIR.

For the noise analysis section, Section 4.10.2 of the DEIR provides background information related to noise impact analysis. However, this section fails to provide the reader with information that is relevant to the proposed project. For instance, Figure 4.10-1 contains indoor and outdoor noise level information that is intended to provide the reader with contextual information related to the noise impacts of the proposed project. The primary noise sources that will result from the proposed project are train noise (train horns, at-grade crossing warning bells, locomotive engine and hydraulic noise, and rail car braking noise and track noise). While Figure 4.10-1 provides information about noise from jets, lawn mowers, and dishwashers, the section fails to provide background information for the reader to understand the noise levels expected from train operations.

For a noise threshold of significance, Impact 4.10-1 states that the noise performance standards established by the City of Benicia General Plan and listed in Table 4.10-2 of the DEIR are directly applicable to the operation of the project. The referenced table contains explanatory notes that include the following:

Principal Planner Million September 14, 2014 Page 3

- The above standards do not apply to safety signals or warning devices
- For noise sources that occur on an infrequent basis and are considered to be safety equipment (such as flaring or pressure relief valves), a maximum level of 75dB is acceptable as measured from the receiver's property line. Noise levels that are projected to exceed this maximum are considered a significant environmental impact.

Based on these explanatory notes, the DEIR should examine the train noise expected at UC Davis along the railroad tracks and explain whether the proposed project would result in a significant or less-than-significant impact as compared to the 75dB threshold. One option might be to consider both the overall operational hourly/daily average noise increase from the project and also analyze the 75dB maximum level threshold for safety equipment (train horns and atgrade warning bells) provided in the City of Benicia thresholds quoted above. The DEIR fails to provide such an analysis and mistakenly mentions that the nearest receptor would be 3,400 feet from the project (UC Davis uses are immediately adjacent to the railroad) and the DEIR mistakenly uses a one-hour average threshold (at the bottom of page 4.10-13) rather than the 75dB maximum threshold. The DEIR further fails in the analysis by mistakenly characterizing the impacts outside of Benicia along the rail corridor as indirect impacts and (with no explanation) applying a 10% with a 3dBA increase threshold. The DEIR is unclear in explaining whether the current analysis includes just train horn noise or is intended to consider overall rail operations (train horns, at-grade crossing warning bells, locomotive engine and hydraulic noise, and rail car braking noise and track noise).

In summary, the thresholds are not explained and conflict within the noise analysis in the DEIR. The DEIR does not provide adequate analysis at UC Davis (or other communities) and does not consider the entire composition of railroad noise. Based on these failings, the potential impacts cannot be determined.

With regard to ground borne vibration from the rail cars, the DEIR again fails to consider the direct impacts of the project and mistakenly states on page 4.10-15 that the nearest residential use would be more than 200 feet from the project. In fact, elsewhere in the document (page 4.10-14), the DEIR identified that residential receptors (within the City of Fairfield) are as close as 50 feet from the railroad. UC Davis residential receptors are within 150 feet. Given the incorrect analysis and the directly conflicting information presented in DEIR, the campus requests that new analysis address the inconsistency and reexamine the issue of ground borne vibration to residential occupants.

While the City of Benicia may view indirect impacts as requiring less analysis than direct impacts, the proposed project is unique in that the geographic distance from Benicia does not provide a logical opportunity to classify certain noise or vibration impacts as indirect rather than direct. The proposed project would increase rail car operations and the noise implications from that increase are a direct impact of the project and should be analyzed as such. The DEIR analyzed Greenhouse Gas impacts and Hazardous and Hazardous Materials as direct impacts along the rail corridor and did not attempt to distinguish impacts within Benicia as direct and those outside of Benicia as indirect. The attempted treatment of noise impacts along the rail corridor as indirect impacts is inconsistent with the approach in the Greenhouse Gas and Hazardous Materials Sections. This inconsistency appears to be an attempt to deflect responsibility for the noise

Principal Planner Million September 14, 2014 Page 4

impacts and avoid the appropriate application of project impact thresholds that would result from the direct impacts. Even if the City of Benicia desires to distinguish direct from indirect impacts, the DEIR must adequately analyze the potential impacts in relation to the existing baseline conditions and the stated impact thresholds.

Summary

The campus has reviewed comment letters from Yolo County, the City of Davis, and SACOG for the DEIR, agrees with the comments provided by other agencies. In particular, the DEIR concludes that certain air quality impacts would be significant and unavoidable but the DEIR does not examine potential mitigation measures for the significant and unavoidable impacts. This air quality issue is one additional example of an item that should be addressed in a revised DEIR. Given the importance of the rail corridor and the potential for hazardous conditions related to the proposed project, the campus appreciates the opportunity to have reviewed the DEIR. Please include my office on all future notices for the project:

Thank you for the opportunity to comment on the DEIR.

Sincerely,

Karl Mohr Senior Associate Vice Chancellor Campus Planning, Facilities and Safety

/rjw



CALIFORNIA FISH & WILDLIFE

September 15, 2014

Amy Million, Principal Planner Community Development Department 250 East L Street Benicia, CA 94510 amillion@ci.benicia.ca.us



Ms. Million,

The following State of California agencies appreciate this opportunity to comment on the June 2014 <u>Valero Benicia Crude by Rail Project Draft Environmental Impact Report</u> (Valero DEIR):¹ These comments are submitted by:

- California Public Utilities Commission (CPUC), Safety and Enforcement Division.
- California Department of Fish and Wildlife, Office of Spill Prevention and Response (OSPR).

In summary, for the reasons set forth below, the DEIR likely underestimates the risk posed by the proposed project. Among the issues of concern are the following, discussed in more detail below:

- 1. The length of track accounted for in the risk analysis is insufficient.
- 2. Derailment and accident rate calculations are problematic.
- 3. The cutoff point for analyzing tank car losses is insufficiently supported.
- 4. The risk analysis does not account for Local Safety Hazard Sites.
- 5. The legal enforceability of the Valero commitment to use CPC-1232 tank cars is unclear.
- 6. Total derailments attributable to the project, including those outside California, also should be considered.
- 7. Insufficient attention is paid to potential consequences.
- 8. Assumptions regarding the number of cars expected to derail are insufficiently explained.
- 9. The risk assessment does not include train accidents other than derailments.

¹ <u>Valero Benicia Crude By Rail Project Draft Environmental Impact Report</u>, SCH # 2013052074, Use Permit Application 12PLN-00063, June 2014.

Discussion

As described in the DEIR,

The Project would allow the [Valero Benicia] Refinery to receive crude oil by rail...The crudes would originate at sites in North America. Union Pacific Railroad (UPRR) would transport the crudes in tank cars using existing rail lines to Roseville, California, and then to the Refinery. The Project involves the installation of a new tank car unloading rack, rail track spurs, pumps, pipeline, and associated infrastructure at the Refinery. The Project would allow the Refinery to accept up to 100 tank cars of crude oil a day in two 50 tank car trains...The Project would allow Valero to receive up to 70,000 barrels per day of the crude oil by rail.²

According to the project description, rail transport to the facility may include Bakken crude oil and other similarly volatile crude oils, as well as heavier crudes from Canada.³ Apart from the risks posed by the flammable and/or toxic characteristics of these substances, the trains carrying them pose greater derailment-related risks compared with other trains. As stated in a July 2014 draft Regulatory Impact Analysis issued by the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Agency (PHMSA RIA) for the PHMSA Notice of Proposed Rulemaking (NPRM) for enhanced tank car standards:

There is reason to believe that derailments of HHFTs [High-Hazard Flammable Trains] will continue to involve more cars than derailments of other types of trains. There are many unique features to the operation of unit trains to differentiate their risk. The trains are longer, heavier in total, more challenging to control, and can produce considerably higher buff and draft forces which affect train stability. In addition, these trains can be more challenging to slow down or stop, can be more prone to derailments when put in emergency braking, and the loaded tank cars are stiffer and do not react well to track warp which when combined with high buff/draft forces can increase the risk of derailments.⁴

The combination of risks posed by the contents of these trains, and their vulnerability to derailments, makes it essential that the environmental documentation for projects that potentially entail large numbers of crude-by-rail shipments receives careful review.

The Valero DEIR states the following:

In order to identify the probability of an accidental release of crude oil from a Valero train, the City retained Dr. Christopher Barkan to conduct a quantitative assessment. Dr. Barkan is Professor and Executive Director of the Rail Transportation and Engineering Center at the

² <u>Ibid</u>., p. 1-1.

³ <u>Ibid.</u>, p. 4.7-18; Table 3-1, p. 3-23; "Thus, the project could foreseeably result in Valero's purchase of any of the crudes listed above as well as others that might become available," <u>ibid.</u>, p. 3-24.

⁴ Department of Transportation, Pipeline and Hazardous Materials Safety Administration, <u>Draft Regulatory Impact</u> <u>Analysis, Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard</u> <u>Flammable Trains: Notice of Proposed Rulemaking</u>, Docket No. PHMSA-2012-0082 (HM-251), July 2014, p. 24. The NPRM itself was published in the <u>Federal Register</u> on August 1, 2014 ("Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains," 79 FR 45015). The NPRM defines a HHFT as a train comprised of 20 or more carloads of a Class 3 flammable liquid, which includes the trains and crude oils that would be shipped under the proposed project.

Department of Civil and Environmental Engineering at the University of Illinois at Urbana-Champaign. He and his colleagues prepared a report that is attached hereto as Appendix F.

The annual rate of crude oil release accidents on the route between Roseville and Benicia was estimated. Consistent with recent industry practice a release event in which a tank car loses more than 100 gallons of crude oil was considered significant. It was assumed that the Refinery would use 1232 Tank Cars for all shipments, based on Valero's commitment to do so. The risk analysis took into account major risk factors, including the route's FRA [Federal Railroad Administration] track class, method of operation, tank car safety design and the proposed volume of petroleum crude oil traffic over the route.

The estimated risk of an accident resulting in a release of more than 100 gallons is approximately 0.009 per year, which corresponds to an estimated frequency of occurrence of once per 111 years. The risk of a release along the portion of the route traversing the Suisun wetland area has an even lower annual risk of 0.00381, which corresponds to an estimated frequency of once per 262 years.

According to the report, these risk estimates are probably conservative, meaning that they probably overstate the actual risk. This is because the rate of hazardous materials releases from trains has declined since the rate estimates were developed; the accident rate has been declining for decades, and this trend will likely continue based on continued investment in infrastructure and new safety technologies; the analysis does not take into account the safety practices adopted by AAR earlier this year. In addition, the pending PHMSA rulemaking could result in new tank car standards that are even more stringent than those for 1232 Tank Cars.⁵

This passage mischaracterizes and underestimates the risk posed by the oil shipments by rail that would be a consequence of the proposed project.

1. <u>The length of track evaluated and the routes identified in the DEIR are insufficient</u>. The Valero DEIR limits its rail accident risk analysis (Appendix F, "Railroad Crude Oil Release Rate Analysis for Route between Roseville and Benicia") to the 69-mile train route between Roseville and Benicia. However, as stated in Chapter 3, Project Description:

The crude oil to arrive by tank car would originate at sites in North America and be shipped by Union Pacific Railroad (UPRR). UPRR would transport tank cars on existing rail lines from sources in North America to Roseville, California, where the cars would be assembled into a train for shipment into the Refinery.⁶

However, for the shipments to get to Roseville, they would travel through considerably more mileage in California, from the border entry point to Roseville. Limiting the mileage analyzed only to the Roseville-Benicia segment underestimates the accident risk, as discussed further below. In contrast, the DEIR's analysis of greenhouse gas emissions factors in track lengths between Roseville and the California state line, ⁷ which is more consistent with the CEQA EIR

⁵ Valero DEIR, p. 4.7-18.

⁶ <u>Ibid.</u>, pp. 3-1 - 3-2.

⁷ "Because there is uncertainty regarding the exact route(s) that the crude by rail trains would use to enter the state and arrive at the Roseville rail yard, an average of the track length between the Roseville rail yard and the Nevada state line and the track length between the Roseville rail yard and the Oregon state line (approximately 195 miles of mainline track) was used, to estimate in-state GHG [greenhouse gas] emissions from large line haul." <u>Ibid.</u>, p. 4.6-9.

requirements to identify all impacts that otherwise would not exist without the project.⁸ It is unclear why a different metric is used regarding derailments resulting in oil releases.

There are a variety of routes through California to Roseville, each with different track mileages, depending on where the trains originate. The greenhouse gas analysis in the DEIR uses a figure of 195 miles of mainline track, apparently based on an average of an east-west route and a north-south route.⁹ As no calculations are presented, it is unclear how this figure was derived. (See Attachment 1 for examples of routes that trains to Roseville could take, ranging in length from approximately 119 miles to 298 miles for routes through northern California).

In addition, the project description identifies Texas and other locations as possible sources of crude. From many of those locations, the most direct routes would be through southern California. Those routes are not analyzed in the DEIR.¹⁰ Attachment 1 to this document presents examples of southern routes, which range in length between approximately 607 miles and 705 miles.

The project description states that "existing rail lines" would be used by UPRR. Previous shipments of crude oil through California proceeded on track owned by BNSF Railway, and the project description does not rule out shipments conveyed by UPRR on BNSF-owned track. Similarly, it is unclear why BNSF is ruled out as a carrier of crude oil to the facility. Routes on BNSF track should also be analyzed. See Attachment 1 for an additional northern California route of approximately 371 miles and a southern California route of approximately 656 miles.

Lastly, as described in Attachment 1, it is unclear why Appendix F assumes that trains would have to proceed to Roseville rather than directly to Benicia. In some cases, for both northern and southern routes, it would be more efficient for shipments to proceed directly to Benicia.

CEQA requires that the whole of a project be described and analyzed. CEQA Guidelines § 15378(a) defines "project" as follows:

"Project" means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following: [subsections omitted]

The definition includes all phases of a project that are reasonably foreseeable, and all related projects that are directly linked to the project. Analyses of environmental impacts, including the risk and consequences of derailments, should not be limited to the section of track between Roseville and Benicia, and track at the refinery itself. The analyses should also cover the many miles of track, the distance of which will vary depending on entry point into the state, between the state border and Roseville. The additional mileage logically would result in several times the

⁸ See Cal. Code of Regs. § 15126.2.

⁹ Valero DEIR, p. 4.6-9.

¹⁰ See Cal. Code of Regs. § 15126.6 (EIR must discuss and analyze all project alternatives).

accident rate stated in the document. Using the DEIR's methodology, Attachment 2 presents calculations of annual risk and average incident rates based on several scenarios of in-state travel, without taking into consideration the concerns with this methodology detailed in the other portions of this comment letter. In addition, derailments outside of California should be considered (see #6, below).

2. The DEIR's derailment and accident rate calculations are problematic. The DEIR states:

The report also compared the likelihood of an accident involving a Valero train travelling from Roseville to Benicia with the likelihood of automobile accidents, based on recent US federal data on highway safety in terms of incidents per million vehicle miles traveled. The risk of a motor vehicle accident is 22 times higher than the risk of a Valero train release. Considered on an annual basis, the average US driver is 6.3 times more likely to be involved in a motor vehicle accident, and 1.9 times more likely to be involved in an accident involving injuries or fatalities, than the occurrence of a release incident on the Roseville to Benicia route.¹¹

There is no explanation of why automobile accidents constitute an appropriate comparison with railroad accidents, especially as all automobile accidents are being compared with the small subset of train accidents causing a release of more than 100 gallons. If automobile accidents are to be compared with train accidents, a better basis of comparison is the total train accident rate for Class 1 railroads, excluding Amtrak, which was an average of 3.15 per million miles for the ten-year period 2004-2013, and an average of 2.50 for the three year period 2011-2013.¹² The automobile accident rate comparison is inappropriate. Automobiles do not carry large volumes of hazardous substances, and are not being considered as an alternate means of conveying crude oil to Valero. The DEIR should not use such an incomparable metric.

In addition, regarding fatalities and injuries, the DEIR does not give specific estimates that would be associated with the proposed shipments, irrespective of whether or not oil is released by an accident. Considering train accidents alone for Class 1 railroads, excluding Amtrak, the fatality rate was an average of 0.011 per million miles for the ten-year period 2004-2013, and an average of 0.010 for the three year period 2011-2013. The injury rate was an average of 0.195 per million miles for the ten-year period 2004-2013, and an average of 0.093 for the three year period 2011-2013.¹³

¹² Calculations based on Federal Railroad Administration, Office of Safety Analysis website,

¹¹ Valero DEIR, p. 4.7-18.

http://safetydata.fra.dot.gov/officeofsafety/default.aspx, Table 1.12, "Ten Year Accident /Incident Overview, Class 1 Railroads (Excluding Amtrak)," for 2004-2013. As defined by FRA, "A train accident involves one or more railroads that have sustained combined track, equipment, and/or structures damage in excess of the reporting threshold, adjusted annually, is currently \$10,500 (2014). The computed accident damage only includes the loss and/or repair of cars and locomotives, repair of signal systems and other structures, and repair of roadbed and track. Not included in this calculation are the costs associated with clean-up, hazmat clean-up (support from fire department and other groups), loss of lading, societal damage (e.g., closing a business area during clean-up), loss of life or injury, loss of use of main line track, and loss of use of equipment/locomotives." Federal Railroad Administration, Office of Safety Analysis, "Railroad Safety Data Frequently Asked Questions (FAQ)," nd.

¹³ FRA Table 1.12.

It should be noted that the above figures do not include accidents, fatalities, and injuries attributable to collisions with trespassers, highway-rail incidents (i.e., accidents at crossings), and certain other accident causes.¹⁴ If all such accidents and incidents in the U.S. are included, the total accident/incident rate for Class 1 railroads, excluding Amtrak, was an average of 11.89 per million miles for the ten-year period 2004-2013, and an average of 9.98 for the three year period 2011-2013. Fatality and injury rates are more difficult to calculate, but considering both main and yard track mileage, appear to be as follows: the fatality rate was an average of 0.801 per million miles for the ten-year period 2004-2013, and an average of 0.711 for the three year period 2011-2013. The "non-fatal condition" rate was an average of 6.04 per million miles for the ten-year period 2004-2013, and an average of 5.07 for the three year period 2011-2013.¹⁵

Next, considering derailment rates alone, it is difficult to verify the derailment rate applied in Appendix F. The authors do not present their data set. A reference is provided to "Liu (2013)," which apparently refers to a dissertation from the University of Illinois that does not appear to be available on-line. Further, the derailment rate of 0.37 per million train miles given in Appendix F is low, compared with nationwide derailment rates of 0.98 in 2011, 0.78 in 2012, and 0.86 in 2013 on main line track, for an average of 0.87 per million train miles.¹⁶ As a result, further discussion of the derivation of the 0.37 rate is needed. Even if the 0.37 derailment rate for the Roseville-Benicia track segment is correct, the DEIR must either use an FRA nationwide rate for other portions of crude-by-rail routes, with further modifications as detailed elsewhere in this comment letter, or explain why the 0.37 rate would still apply.

Accidents are rare events, and the more severe the accident, the rarer it is, even though those accidents are unacceptable. Estimating a reliable rate of rare events requires a large sample size. For example, if the DEIR estimate depended on a sample of a few years and a small stretch of track, it would very likely find few derailments. The estimated derailment rate would thus be subject to a dramatic change if there was one more or one less accident. Without further information here, it is not possible to have confidence in the DEIR's conclusions.

3. <u>The cutoff point for analyzing tank car losses is insufficiently supported</u>. The DEIR's statement "Consistent with recent industry practice a release event in which a tank car loses more than 100 gallons of crude oil was considered significant"¹⁷ has insufficient justification, and no citation is given for the statement. A citation in Appendix F refers to joint Association of American Railroads/American Short Line Railroad Association comments to PHMSA made in

¹⁴ Casualties to non-U.S. communities such as the 47 fatalities in Lac-Mégantic, Canada, also are not included.

¹⁵ FRA Table 1.12.

¹⁶ Federal Railroad Administration, Office of Safety Analysis website, Table 2.09 "Train Accidents and Rates," queried for derailments on main line track, all track classes. It is unlikely that the mix of track classes described in Appendix F as existing between Roseville and Benicia, where almost 80 percent of track is Class 5, would apply in most other areas of California, or on a national basis. The dominant class for main-line track used in passenger and long-haul freight service is Class 4. Class 4 track accounts for a much higher percentage of total derailments (32.3 percent for the period 2010-2013, the highest percentage of any track class) than Class 5 track (9.2 percent for the same period).

¹⁷ Valero DEIR, p. 4.7-17.

2013; however, these comments do not provide justification for a 100 gallon figure as a risk assessment measurement, merely stating that

Two different CPRs [conditional probability of release] are shown: the CPR for releases on main lines, and the CPR for releases on a main line of more than 100 gallons. The latter is the most relevant to this discussion and will be the CPR referred to in the remainder of these comments. The concern over catastrophic accidents relates to transportation on main lines with significant releases.¹⁸

There are no California or Federal regulatory requirements that specify a 100 gallon minimum before a release must be reported. For example, California Public Utilities Code Section 7672.5 states:

Any railroad corporation which is involved in an incident resulting in a release, or threatened release, of a hazardous material shall immediately report the type and extent of the release or threatened release in the manner specified in Section 25507 of the Health and Safety Code.

CPUC General Order 161 states in part:

3.1 Each railroad shall immediately notify by telephone the appropriate ERA [emergency response agency] of any incident, as defined in Rule 2.6, in addition to other any federal and state reporting requirements.

2.6 "Incident" means any condition involving a release or threatened release of hazardous materials where there is a reasonable belief that the actual or threatened release poses a significant present or potential harm to persons, property or the environment.

2.3 "Emergency response agency" ("ERA") means the fire department or district or other public agency with responsibility for responding to an emergency occurring in the area of an incident.

The physical characteristics of Bakken oil and similar crudes can pose sufficient present or potential threats to trigger these and other state and federal notification requirements in the event of releases of less than 100 gallons. Given its high volatility, and the expected ignition sources in a derailment, a spill of less than 100 gallons of Bakken oil still poses a risk of an uncontrollable fire that could then compromise adjacent tank cars. The DEIR's risk assessment should include an analysis of the relationship of spill volume to the likelihood of the most volatile crude oils igniting, and base its analysis on volumes likely to ignite.

Without a determination of the likelihood of different spill volumes igniting, the DEIR's risk assessment should consider all reportable releases when forecasting the risk of fire and explosion as well as when forecasting the pollution risk from spills, whether or not fire occurs.

4. <u>The risk analysis does not account for Local Safety Hazard Sites</u>. Analyses based on length of track alone do not capture total risk. Before reaching Roseville or Benicia, no matter what the

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¹⁸ Association of American Railroads and American Short Line Railroad Association (AARASLRRA) 2013. Comments on Docket No. PHMSA-2012-0082: Hazardous Materials: Rail Petitions and Recommendations to Improve the Safety of Railroad Tank Car Transportation (RRR), pp. 3-4.

originating locations of the shipments, these trains would travel over one or more portions of track in California that are classified as Local Safety Hazard Sites by CPUC.¹⁹ These sites consist of steep grades and tight curves, and also have historically high frequencies of derailments, which provide additional evidence of their hazardous nature. As described in California Public Utilities Code § 7711,

Factors that the [California Public Utilities] commission shall consider in determining a local safety hazard may include, but need not be limited to, all of the following:

(1) The severity of grade and curve of track.

(2) The value of special skills of train operators in negotiating the particular segment of railroad line.

(3) The value of special railroad equipment in negotiating the particular segment of railroad line.

(4) The types of commodities transported on or near the particular segment of railroad line.

(5) The hazard posed by the release of the commodity into the environment.

(6) The value of special railroad equipment in the process of safely loading, transporting, storing, or unloading potentially hazardous commodities.

(7) The proximity of railroad activity to human activity or sensitive environmental areas.

Local Safety Hazard Sites account for a disproportionate share of derailments occurring in California. For example, analysis of the 1976 - 1991 accidents reviewed by the CPUC after the 1991 Dunsmuir derailment and spill showed that the derailment rate for a track segment covering Local Safety Hazard Site areas in the Feather River Canyon (Keddie to Tunnel 8 segment), was five times the derailment rate for the Benicia to Roseville segment.²⁰ The CPUC's Local Safety Hazard Sites analysis has predictive power. For example, for the period 2003 through 2013, although constituting two percent of track, eighteen percent of derailments took place on tracks designated as being within Local Safety Hazard sites identified by statistical analysis of derailment likelihood by location.

The DEIR risk analysis should consider the additional risks posed by Local Safety Hazard sites on the track segments that would be used by the train shipments resulting from the project. In northern California, this might include local safety hazard sites on the UPRR Roseville, Valley, and Canyon Subdivisions. In southern California, this might include sites on the UPRR Yuma and Mojave Subdivisions. BNSF tracks also pass through local safety hazard sites, e.g., in the BNSF Gateway Subdivision in the north and Cajon Subdivision in the south. Given that all routes to Benicia include at least one of these local safety hazard sites, and given that these sites have a derailment rate over ten times that of other track,²¹ the DEIR significantly underestimates the risk.

¹⁹ Several Local Safety Hazard Reports prepared by CPUC, along with other reports and relevant resources, may be viewed at http://cmsserver/PUC/safety/Rail/Railroad/.

²⁰ In the 1976 – 1991 analysis, there were 1.47 accidents per mile in the Feather River Canyon segment (Keddie to Tunnel 8), compared with 0.28 accidents per mile on the track segment between Roseville and Benicia. The Feather River segment is 49 miles and had 72 derailments. The Benicia-Roseville segment is 75 miles and had 21 derailments.

²¹ As stated earlier, 18 percent of derailments occurred in 2 percent of track identified as local safety hazard sites through statistical analysis of historical derailment location, and thus the remaining 82 percent of derailments occurred in the 98 percent of track outside these sites. This equates to a rate 10.7 times greater in the local safety hazard sites than on other trackage.

5. <u>The legal enforceability of the Valero commitment to use CPC-1232 tank cars is unclear</u>. The DEIR states:

Valero would comply with all legal requirements applicable to the transport of crude oil by rail, including all tank specification requirements. In one respect, however, Valero would exceed legal requirements. Valero has committed that, when the PHMSA regulations call for use of a DOT-111 car, Valero would use 1232 Tank cars rather than legacy DOT-111 cars.²²

It is uncertain how this commitment would be enforced, in light of the fact that federal law governs regulation of rail cars. Would the City of Benicia bring suit against Valero if a DOT-111 tank car was used by UPRR? Also, the ability of UPRR to restrict shipments to CPC 1232 tank cars is unclear, given the small numbers of these cars and prevalence of older DOT-111 tank cars currently in service, as well as the certainty of competing demands for the more modern cars. Without a guarantee that newer model tank cars would be used, and as long as federal regulations permit the use of DOT-111 cars to transport crude oil, the risk analysis should include calculations based on the use of older model cars, absent binding and enforceable authority to ensure the use of CPC 1232 tank cars.

6. <u>Total derailments attributable to the project, including those outside California, also should be considered</u>. As stated earlier, the DEIR risk analysis is based on track mileage between Roseville and Benicia. Apart from including the distance to Roseville from the California state border, as discussed above, the risk analysis should also include the distance from the shipment origins in other states.

The DEIR indicates that for some purposes, the project includes oil shipments through other states and Canada. The chapter on greenhouse gas emissions considers operational emissions outside of California, including locomotive emissions.²³ The Air Quality chapter states:

As explained above, if the Project were approved and constructed, Project-related trains would travel between oil field locations in North America and the Roseville Yard. These trains would cause an increase in locomotive emissions.²⁴

Air quality impacts outside of listed California air district jurisdiction boundaries are termed "difficult to predict given the speculative nature of the exact rail routes that would be used to transport the crude oil" to the Roseville Yard.²⁵ However, predictions of high-hazard fuel train accident rates have been made on a nation-wide basis by PHMSA, and these can be extrapolated to the shipments that would be made under the proposed project, at least regarding the U.S.-portion of these trips.

²² Valero DEIR, pp. 3-19 – 3-20.

²³ <u>Ibid.</u>, p. 4.6-13.

²⁴ Ibid., p. 4.1-20.

²⁵ <u>Ibid</u>., p. 4.1-12.

The July 2014 PHMSA RIA, which analyzes both crude oil and ethanol derailments, bases its analysis on carloads shipped rather than miles traveled:

To estimate the number of derailments associated with the movement of flammable liquids, we used FRA's Derailment Database and the Public Waybill Sample to develop an 18-year historical series on annual derailments per million rail carloads, across all commodities. The Surface Transportation Board (STB) collects cargo waybill data under the requirements that all U.S. railroads that terminate more than 4,500 revenue carloads must submit a yearly sample of terminated waybills. This information provides an indication of the volume of freight rail traffic. We combined these figures with data obtained through rail accident and incident reports submitted to FRA on from Form FRA F 6180.54, "Rail Equipment Accident/Incident Report" to develop derailment rates.²⁶

The RIA notes several difficulties in projecting accident rates. For example, in discussing current derailment rates, it states "Due to limitations in the reported data, it is impossible to isolate the derailment rate of only crude oil and ethanol trains."²⁷ Still, the RIA was able to project mainline derailments per annual carloads of crude oil and ethanol from 2015 through 2034, assuming the absence of implementation of the measures called for in the NPRM. These range from a high of 14.36 derailments for 898,500 carloads in 2015, to a low of 5.16 derailments for 755,613 carloads in 2034.²⁸ The RIA estimates that the same number of accidents would occur even if the NPRM measures were adopted; however, their adoption would prevent the equivalent of ten additional high consequence accidents from occurring.²⁹

Valero would accept up to two unit train shipments of 50 tank cars each, or 100 tank cars of crude oil a day, 365 days a year,³⁰ or 36,500 carloads. At the derailment rate estimated by the RIA for 2015, about 0.000016 per carload, this would be equate to about 0.58 derailments per year, or more than one derailment every two years. At the low end of estimates, for 2034, the derived derailment rate would be about 0.000007 per carload. For Valero's 36,500 carloads, this would equate to about 0.26 derailments per year, or about one every four years.

7. <u>Insufficient attention is paid to potential consequences</u>. It is reasonable to assume that the average quantity of petroleum that would be released from such derailments would at least equal and likely exceed the cutoff point of 100 gallons per release used by the DEIR. Although the RIA does not project the average loss of contents per derailment, noting that the PHMSA hazardous material incident report database often contains inaccuracies, it presents evidence that historically, many derailments have resulted in large releases:

²⁸ <u>Ibid.</u>, Table B3, "Projected Carloads of Ethanol and Crude and Mainline Derailments,", p. 24.

³⁰ Valero DEIR, p. 3-1.

²⁶ PHMSA RIA, p. 21.

²⁷ <u>Ibid</u>.

²⁹ "The high end of the range of estimated benefits includes the same estimate of 5 to 15 annual mainline derailments predicted based on the U.S. safety record, plus an estimate that the U.S. would experience the equivalent of 10 additional safety events of higher consequence—nine of which would have environmental damages and monetized injury and fatality costs exceeding \$1.15 billion and one of which would have environmental damages and monetized injury and fatality costs exceeding \$5.75 billion—over the next 20 years. This outcome could result from a smaller number of more severe events, or more numerous events that are less severe." Ibid, pp. 4 - 5.

For the time period between 2006 and 2013 we identified 40 mainline derailments that resulted in the release of 3,344,081 gallons of crude oil and ethanol for an average of approximately 83,602 gallons released per mainline track derailment.³¹

Total fatalities and injuries also can be estimated using the rates presented in #2, above, depending upon the originating destinations of crude shipments. For example, there are roughly 1,700 miles of track between Williston, North Dakota and Benicia, taking a northern route using both BNSF Railway and UPRR track. (The California portion of these trips would be approximately 375 miles, or about 22 percent.) If all 730 unit train shipments during one year came from this location, one-way trips would total 1,241,000 miles. As stated earlier, for FRA-reportable train accident rates for Class 1 railroads, excluding Amtrak, the fatality rate was an average of 0.011 per million miles for the ten-year period 2004-2013, and an average of 0.195 per million miles for the ten-year period 2004-2013, and an average of 0.012 (using the three-year average), and annual injuries would be 0.242 (using the ten-year average) and 0.115 (using the three-year average).). If rates based on all accident and incident causes were to be considered, these totals would be much higher.

Derailments also can be estimated under this scenario, producing a higher number than that forecasted above using the PHMSA methodology. 1,241,000 miles of train travel would equate to 1.08 derailments per year, using the nationwide 2011-2013 average of 0.87 derailments per million miles.

These expected fatality, injury, and derailment estimates do not address the dangerous nature of the crude oil commodity, and only include estimates based on an increase in train traffic. The potential for tragic consequences of crude oil tank car ruptures would likely raise the impact figures considerably, and should be part of the DEIR's risk analysis.

8. <u>Assumptions regarding the number of cars expected to derail are insufficiently explained.</u> The DEIR analysis uses the median for number of cars expected to derail (six), rather than the average of ten from the same study.³² In accident distributions such as these, the average is generally higher than the median. For example, examining FRA-reportable derailments on a nationwide basis in 2013 for the two Class 1 railroads that operate in California, Union Pacific's average number of cars derailing per train was 11.5, whereas the median number of cars derailing was 7, and BNSF's average number of cars derailing per train was 9.0, whereas the median number of cars derailing was 6.³³ The combined average for UPRR and BNSF was 10.4,

³¹ This was the total number of relevant derailments identified on mainline track. Figures did not include yard derailments and release incidents that did not result from derailments. PHMSA RIA, p. 25-26, and Appendix B.

³² Liu, X., M.R. Saat, C.P.L. Barkan and X. Qin 2013. "Analysis of U.S. freight-train derailment severity using zerotruncated negative binomial regression and quantile regression," <u>Accident Analysis and Prevention</u> 59: 87–93.

³³ Time did not permit the inclusion of more years. However, even this smaller sample makes the point, and it has the added advantage of being more up-to-date than the DEIR's analysis. A list of derailments from the FRA's website were analyzed for freight trains on main line track for UPRR and BNSF for 2013, Table 3.18, "Accident by State/Railroad." Duplicate records for instances when the track maintenance was performed by a different railroad

while the median was 7. Generally, the average is considered the best predictor of future events. No real justification was provided for using the lower median figure. The DEIR's risk analysis cites a research paper when presenting its decision to use the median, but for several reasons that paper does not justify its use.³⁴ The cited research paper's purpose was to construct predictive formulas for targeting maintenance efforts to prevent only derailments, and not collisions and other accidents. While the use of the median in those statistical applications may be justified, no justification is provided for its application in the DEIR. In fact, the paper cites several other studies that have used the mean.³⁵ Thus the use of the median in the DEIR's risk estimate raises concerns about underestimation of risk. This is especially a concern with oil trains, as presented earlier in these comments.³⁶

As a statistic to describe a sample's characteristics the median can be less sensitive to rare but extreme values. However, there is no discussion of whether this was the case here, or if the use of the median was appropriate instead of the average. Our view is that without justification otherwise, the average is a better estimator of cars expected to derail, and to the extent that it may be sensitive to rare but unusually large values (statistically called "outliers"), that sensitivity has no real impact, and that "outlier" information is important as well.

For example, the only likely outlier in 2013 data from the four major Class 1 railroads in the U.S. (UPRR, BNSF Railway, CSX, and Norfolk Southern) was a CSX train that lost its brakes down a steep grade and derailed 73 cars. Historically that has been a concern in California given its steep mountain grades, and remains a concern especially with trains with a high ratio of tons per operative brake, such as these crude oil trains have. And even if the CSX "outlier" was removed from this data, the average only drops from 10.06 to 9.78. Given the reliability of the mean in this data, our results from the 2013 data, and the results from the Liu study, a mean of 10 should be used in the expected number of cars to derail in a derailment. The DEIR should either use this higher number, or provide convincing justification for why it should not be used when it attempts to reliably describe the experience of these Class 1 railroads.

9. <u>The risk assessment does not include train accidents other than derailments</u>. According to the Liu paper referenced in the DEIR for the accident rates and expected number of cars to derail in an accident, derailments accounted for only 72 percent of train accidents.³⁷ This results in two sources of underestimation in the analysis. First, it underestimates the expected frequency of accidents, and, second, it does not account for the number of derailed cars in train collisions.³⁸

were deleted, as were passenger trains, yard jobs, and maintenance of way equipment derailments. Instances where one train derailed and caused cars to derail on another train were counted as one derailment with the total cars derailed on both trains. Consistent with the Liu, et al., (2013) paper, "cars" included derailed locomotives as well.

³⁴ Liu, et al., (2013).

³⁵ Ibid., p. 88.

³⁶ See footnote 4 and the discussion on the first page of this letter.

³⁷ Liu, et al., (2013), p. 87.

³⁸ "Train collisions and highway–rail grade crossing accidents have been analyzed in other recent studies, so this research focused on train derailments." p. 155, Liu, X., Saat, M.R., Barkan, C.P.L., 2012. "Analysis of causes of major train derailment and their effect on accident rates," <u>Transportation Research Record</u> 2289, 154–163; Liu, et al., (2013), p. 87, 89.

While the increase in frequency is relatively small, estimated as 6 percent of train accidents, it still raises the value needed in the DEIR analysis. Additionally, a check of 2013 data indicates that the severity was much higher for collisions on mainline. Illustrating this, 2013 data for the four largest Class 1 railroads shows a range of 11 to 54 derailed cars per collision, with a mean of 24.4 and a median of 21.5. Adding the collision data to the derailment data raises the mean from 10 to 10.5 cars derailed for the 2013 combined set. Although this is a relatively small sample, the results further illustrate that the Liu, et al., studies were developed for a different purpose and thus questions those studies' relevance to the DEIR project risk analysis.

CONCLUSION

Based on the foregoing, we believe that the DEIR underestimates accident and derailment risk and does not sufficiently evaluate a number of factors that are relevant to those risks. Thus, the DEIR is insufficient to comply with CEQA's mandates to thoroughly analyze all project impacts. We urge you to redo the analysis based on these factors. Thank you for your consideration. Please let us know if we can provide any additional information.

Sincerely,

Venice Mull

Denise Tyrrell, Acting Director Safety and Enforcement Division California Public Utilities Commission 505 Van Ness Avenue San Francisco, CA 94102

Sincerely,

thomasl

Thomas M. Cullen, Jr., Administrator Office of Spill Prevention and Response California Department of Fish and Wildlife 1700 K Street, Suite 250 Sacramento, CA 95811
ATTACHMENT 1

CPUC staff calculated approximate distances that oil trains would travel from various locations on the California border to Roseville, and from the California border directly to Benicia.³⁹ These estimates indicate the additional mileage that should be considered in the DEIR's analysis of risk from the proposed project.

Three possible routes for trains from the Bakken region to enter northern California on UPRR track and reach Roseville are listed below. Crude from Canadian sources could follow one or more of the routes as well.

A. Entering California on the UPRR-owned Roseville Subdivision near the southeast corner of Sierra County and passing through Nevada and Placer Counties to Roseville (a total of approximately 119 miles from the state line to Roseville).

B. Entering California on the UPRR-owned Winnemucca Subdivision near Herlong in Lassen County, switching to the UPRR-owned Canyon Subdivision in Plumas County, switching to the UPRR-owned Sacramento Subdivision near Oroville in Butte County, switching to the UPRR-owned Valley Subdivision near Marysville in Yuba County, arriving in Roseville in Placer County (a total of approximately of 229 miles from the state line to Roseville).

C. Entering California on the UPRR-owned Black Butte Subdivision near Dorris in Siskiyou County, switching to the UPRR-owned Valley Subdivision, entering Shasta, Tehama, Butte, Yuba, and Placer Counties to Roseville (a total of approximately 297 miles from the state line to Roseville).

As stated in the text, it is unclear why Appendix F assumes that trains would have to proceed to Roseville rather than directly to Benicia. In some cases, for both northern and southern routes, it would be more efficient for shipments to proceed directly to Benicia. In particular, the list of possible sources of crude oil in the project description includes crude from southwestern U.S. sources, such as Texas, and the most direct routes for such shipments would be through southern California to Benicia. For the routes from southern California (D, E and G below), trains can only get to Roseville by going first to Sacramento, and then turning northeast. With Roseville as the destination, these shipments would then have to backtrack from Roseville through Sacramento on the way to Benicia, adding approximately 30 miles to the total trip.

Possible UPRR routes going directly to Benicia from southern California include:

D. Entering California on the UPRR-owned Yuma Subdivision near Winterhaven in Imperial County, passing through Riverside and San Bernardino Counties, switching to the UPRR-owned Mojave Subdivision near San Bernardino, entering Los Angeles and Kern

1.

³⁹ Note: Appendix F based its calculations on a distance of 69 miles between Roseville and Benicia. It is unclear how this figure was arrived at. In CPUC staff's calculation, the mileage from Roseville (milepost 106.4) to Benicia (milepost 34.5) is 72 miles. The trains would go through Placer, Sacramento, Yolo, and Solano Counties on the UPRR-owned Martinez Subdivision.

Counties, switching to the UPRR-owned Fresno Subdivision near Bakersfield, passing through Tulare, Fresno, Madera, Merced, Stanislaus, San Joaquin, and Sacramento Counties before switching to the UPRR-owned Martinez Subdivision near Sacramento, and going through Yolo and Solano Counties to arrive at the Valero facility in Benicia (a total of approximately 705 miles from the state line to Benicia).

E. Entering California on the UPRR-owned Cima Subdivision near Nipton in San Bernardino County; switching to the BNSF-owned Needles, Cajon, and Mojave Subdivisions; switching to the UPRR-owned Mojave Subdivision in San Bernardino County; and switching to the UPRR-owned Fresno Subdivision in Kern County near Bakersfield. For the rest of the trip to Benicia, the same route used in Route D above would be used (a total of approximately 607 miles from the state line to Benicia).

For trains from northern California, an alternate route that would bypass Roseville and go directly to Benicia for Route B above would be to stay on the Sacramento Subdivision through Yuba, Sutter, and Sacramento Counties to Sacramento and then proceed to Benicia on the Martinez Subdivision, which would save approximately 10 miles on the overall trip to Benicia and associated travel time. Similarly for Route C, trains could switch to the Sacramento Subdivision at Marysville, go directly to Sacramento, and then proceed to Benicia on the Martinez Subdivision, saving approximately 11 miles on the overall trip to Benicia and associated travel time.

Lastly, as stated in the text, routes on BNSF track should also be analyzed. Two additional possible routes, on BNSF track, are:

F. From the north, entering California on the BNSF-owned Gateway Subdivision near Stronghold in Modoc County, going through Lassen and Plumas Counties before switching to the UPRR-owned Canyon Subdivision near Keddie, traveling through Butte County, and switching to the UPRR-owned Sacramento Subdivision near Oroville. After this, the same route described in the Route B alternate could be used (a total of approximately 375 miles from the state line to Benicia).

G. From the south, entering California on the BNSF-owned Needles Subdivision near Needles in San Bernardino County, switching to the BNSF-owned Cajon Subdivision near Barstow, switching to the BNSF-owned Mojave Subdivision near Barstow, proceeding into Kern County, switching to the UPRR-owned Mojave Subdivision near Mojave, switching to the BNSF-owned Bakersfield Subdivision near Bakersfield, proceeding into Tulare, Kings and Fresno Counties, switching to the BNSF-owned Stockton Subdivision near Fresno, going through Madera, Merced, Stanislaus and San Joaquin Counties, switching to the UPRRowned Fresno Subdivision near Stockton, going into Sacramento County, switching to the UPRR-owned Martinez Subdivision near Sacramento, and going through Yolo and Solano Counties to the Valero facility in Benicia (a total of approximately 656 miles from the state line to Benicia).

ATTACHMENT 2

Appendix F of the DEIR states (p. 7):

The annual train release rate on this route [between Roseville and Benicia] is 0.00903, which corresponds to an expected interval between release incidents of approximately once per 111 years of operation (1/0.00903).

A release incident is defined as exceeding 100 gallons (p. 10):

The results show that the expected occurrence of a crude oil train release incident exceeding 100 gallons between Roseville and Benicia is approximately 0.009 per year, or an average of about once per 111 years.

Because additional mileage should be factored into the risk analysis, the 111 year figure is too low. It can be scaled up according to the increased mileages shown in Attachment 1. As it is impossible to predict what percentage of oil shipments -- two unit trains a day, 365 days a year -- would follow any particular route, either to Roseville or directly to Benicia, an alternate figure cannot be presented with any certainty.

However, it is possible to set boundaries on likely incident rates, using the DEIR methodology. The following are incident probabilities and average incident rates if *all* of the trains followed any *one* of the particular routes. The actual figure likely would be a weighted average of several of these routes, and likely would vary each year. Note: the table does not take into account the concerns with the DEIR methodology described previously in this comment letter. For example, if, as is likely, a higher derailment rate is applicable, or if a lower amount than 100 gallons is used as a cutoff point, the average incident rate would be higher.

ROUTE	MILES	ANNUAL INCIDENT PROBABILITY	AVERAGE INCIDENT RATE
Roseville to Benicia	69 [*]	0.00903	Once per 111 years
Roseville to Benicia	72*	0.00946	Once per 105.7 years
A. Entering California on the UPRR-owned Roseville Subdivision near the southeast corner of Sierra County and passing through Nevada and Placer Counties to Roseville (a total of approximately 119 miles from the state line to Roseville); and Roseville to Benicia.	191	0.0251	Once per 39.8 years

Risk of Derailment Resulting in Release of More than 100 gallons of Crude Oil (Assuming All Shipments Follow a Given Route)

3

B. Entering California on the UPRR-owned Winnemucca Subdivision near Herlong in Lassen County, switching to the UPRR-owned Canyon Subdivision in Plumas County, switching to the UPRR-owned Sacramento Subdivision near Oroville in Butte County, switching to the UPRR-owned Valley Subdivision near Marysville in Yuba County, arriving in Roseville in Placer County (a total of approximately of 229 miles from the state line to Roseville); and Roseville to Benicia.	301	0.0396	Once per 25.3 years
C. Entering California on the UPRR-owned Black Butte Subdivision near Dorris in Siskiyou County, switching to the UPRR-owned Valley Subdivision, entering Shasta, Tehama, Butte, Yuba, and Placer Counties to Roseville (a total of approximately 297 miles from the state line to Roseville); and Roseville to Benicia.	369	0.0485	Once per 20.6 years
D. Entering California on the UPRR-owned Yuma Subdivision near Winterhaven in Imperial County, passing through Riverside and San Bernardino Counties, switching to the UPRR-owned Mojave Subdivision near San Bernardino, entering Los Angeles and Kern Counties, switching to the UPRR- owned Fresno Subdivision near Bakersfield, passing through Tulare, Fresno, Madera, Merced, Stanislaus, San Joaquin, and Sacramento Counties before switching to the UPRR-owned Martinez Subdivision near Sacramento, and going through Yolo and Solano Counties to arrive at the Valero facility in Benicia (a total of approximately 705 miles from the state line to Benicia).	705	0.926	Once per 10.8 years
E. Entering California on the UPRR-owned Cima Subdivision near Nipton in San Bernardino County; switching to the BNSF-owned Needles, Cajon, and Mojave Subdivisions; switching to the UPRR-owned Mojave Subdivision in San Bernardino County; and switching to the UPRR-owned Fresno Subdivision in Kern County near Bakersfield. For the rest of the trip to Benicia, the same route used in Route D above would be used (a total of approximately 607 miles from the state line to Benicia).	607	0.0798	Once per 12.5 years
F. From the north, entering California on the BNSF- owned Gateway Subdivision near Stronghold in Modoc County, going through Lassen and Plumas Counties before switching to the UPRR-owned Canyon Subdivision near Keddie, traveling through	371	0.487	Once per 20.5 years
			4

Butte County, and switching to the UPRR-owned			
Sacramento Subdivision near Oroville. After this,			
the same route described in the Route B alternate			
could be used (a total of approximately 371 miles			
from the state line to Benicia).			
G. From the south, entering California on the	656	0.0862	Once per 11.6
BNSF-owned Needles Subdivision near Needles in	-		vears
San Bernardino County, switching to the BNSF-			
owned Cajon Subdivision near Barstow, switching			
to the BNSF-owned Mojave Subdivision near			
Barstow, proceeding into Kern County, switching to			
the UPRR-owned Mojave Subdivision near Mojave,	2 2 -		
switching to the BNSF-owned Bakersfield			
Subdivision near Bakersfield, proceeding into			
Tulare, Kings and Fresno Counties, switching to the			
BNSF-owned Stockton Subdivision near Fresno,			
going through Madera, Merced, Stanislaus and San		· ·	
Joaquin Counties, switching to the UPRR-owned			
Fresno Subdivision near Stockton, going into			
Sacramento County, switching to the UPRR-owned			
Martinez Subdivision near Sacramento, and going			
through Yolo and Solano Counties to the Valero			
facility in Benicia (a total of approximately 656			
miles from the state line to Benicia).			

* As stated in a previous note, Appendix F based its calculations on a distance of 69 miles between Roseville and Benicia. It is unclear how this figure was arrived at. In CPUC staff's calculation, the mileage from Roseville (milepost 106.4) to Benicia (milepost 34.5) is 72 miles. The 72 mile figure is used in the above calculations.



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

DEVELOPME

SUBJECT: Draft Environmental Impact Report for the Valero Crude by Rail Project

Dear Ms. Million:

On behalf of the Capitol Corridor Joint Powers Authority (CCJPA), the managing agency for the Capitol Corridor (Auburn-Sacramento-Oakland-San Jose) intercity passenger trains, I am submitting comments on the Draft Environmental Impact Report (DEIR) for the Valero Benicia Crude by Rail Project (Project).

First, I would like to provide you with an overview of the Capitol Corridor passenger railroad operations and their relation to the Project through the CCJPA's 15-year business relationship with our host railroad, the Union Pacific Railroad (UPRR), who owns the track infrastructure and dispatches and controls the movement (and operational performance) of the Capitol Corridor trains. Together the UPRR and the CCJPA have invested several hundred million dollars along the rail route.

- 1. <u>Capacity Expansion</u>: Service levels have increased to 30 weekday Capitol Corridor trains (nearly hourly service) adjacent to the Project site between Oakland and Sacramento through strategic investments in UPRR's infrastructure;
- 2. <u>Reduced Travel Times</u>: Targeted investments have ensured that the Capitol Corridor trains are now travel-time competitive with automobiles traveling along the U.S. I-80/I-680/I-880 highway corridor;
- 3.<u>Annual Track Upgrades</u>: Capitol Corridor reliability (i.e., on-time performance [OTP]) has steadily improved over the last 10 years so that the trains are now the most reliable trains in the Amtrak system years and are at the number one spot again this year with an OTP of 96%; and
- 4. <u>Safety Improvement Programs</u>: The CCJPA is committed to the safe operation of the Capitol Corridor trains and the safety of the communities along the rail route. Working with UPRR, we have jointly funded a state of good repair program for UPRR track and infrastructure and the trainsets used on the Capitol Corridor trains now are equipped to operate with the UPRR's pending installation of the state-of-the-art Positive Train Control collision-avoidance signal system.

Ms. Amy Million September 15, 2014 Page 2

With this historical background, the CCJPA would like to submit the following comments on the Project DEIR:

- The CCJPA never received any type of communication or any formal communications with respect to the release and availability of the Notice of Preparation for the EIR. Since CCJPA is a stakeholder whose operations may be impacted by the proposed project, the project sponsor should have notified the CCJPA.
- The Final Transportation Impact Analysis, dated October 2013, accompanying the DEIR only evaluates impacts on the surrounding roadway network and does not include an evaluation or any findings relating to the impact of the Project on the performance of the Capitol Corridor and other passenger train services on the UPRR network. The Final Transportation Impact Analysis does not include an analysis of anticipated impacts on the transportation facilities UPRR shares with other transportation providers and lacks proper scoping of the DEIR's evaluation and the validity of its conclusions as to anticipated impacts.
- The UPRR Hazardous Materials Response Plan (HMRP) attached to the DEIR as Appendix H is UPRR's general, systemwide protocol and does not address the specific hazards associated with the proposed service to the Valero refinery. The HMRP is dated October 1, 2009, and predates the current extraordinary increase in crude oil by rail shipments, which have increased nationwide by seventy fold between 2008 and 2014. The DEIR does not contain sufficient analysis to determine whether (a) the response measures described in UPRR's 2009 document are applicable for an incident involving sweet light Bakken crude oil, which is more volatile than other forms of crude oil, and (b) whether specific emergency response measures are necessary on the UPRR corridor which includes CCJPA and Amtrak services.
- The DEIR does not address the potentially significant impacts of collision, derailment, explosion, or release of hazardous materials that may result from an incident involving the delivery of crude oil to the refinery by rail. The DEIR does not provide any supporting documentation for the assertions at Table 2.1, Impacts 4.7-2 and 4.7-3 that, even with mitigation, the effects will be "less than significant". The DEIR must take into account the increased risk of any incidents in the vicinity of the project site or along the rail route for trains which travel through the heavily-populated San Francisco Bay Area-Silicon Valley-Sacramento Megaregion and have the potential to significantly impact the operation of the Capitol Corridor and Amtrak's passenger trains, which carry over 2 million passengers annually.
- The CCJPA is currently conducting a joint analysis with the Bay Conservation and Development Commission (BCDC) of the impact of both general sea level rise and discrete inundation events due to climate change on the rail route currently used by the Capitol Corridor trains. Our initial findings have identified that the rail route used by the Capitol Corridor trains that would also be serving and adjacent to the Project are expected to be impacted; however, the DEIR does not include any discussion of the potential impact of climate change-induced sea level rise and episodic inundation on the Project. More specifically, DEIR does not identify any design features at the facility, and to/from the facility, that are protected against the effects of future sea level rise coupled with inundation events (rainfall, waves, tides, etc.) that can, on top of sea level rise, raise water levels and water energy levels that can disrupt the functions of the project facility and the adjacent UPRR track infrastructure.

Ms. Amy Million September 15, 2014 Page 3

- The federal Pipeline and Hazardous Materials Administration (PHMSA) has recently released a Notice of Proposed Rulemaking (NPRM) that seeks to revise design standards for oil rail tank cars. The CCJPA supports such updated design specifications for the manufacturing of new rail tank cars and the phasing out of the older existing tank cars. To that end, the CCJPA requests that shippers to the project site phase-in these newer more robust, safer oil rail tank cars as early as possible. The replacement of these older tank cars will help ensure the safer transport of the crude by rail thereby enhancing the safety of the UPRR train crews, the communities along the route, and the Capitol Corridor crews and passengers.
- The CCJPA requests that crude oil being transported to and from the project site via rail go through a processing that is currently practiced and used for oil transported in pipelines in Texas where volatile, explosive gases or other unstable components in the oil are removed prior to being transported. This degasification process will ensure a safer transport of crude oil by train along the heavily populated rail route to and from the project site.

The CCJPA appreciates the opportunity to submit comments on the Draft EIR for the Valero Crude by Rail Project and looks forward to working with the City, the project sponsor and UPRR on this project to ensure that the safety of the passengers and train employees and the superior operational performance of the Capitol Corridor trains are considered and not jeopardized in the development of this project.

Sincerely David B. Kutrosky Managing Director

cc: CCJPA Board of Directors The Honorable Brian Kelly, Secretary – California State Transportation Agency Jerry Wilmoth, Union Pacific Railroad Liisa Stark, Union Pacific Railroad



September 15, 2014

BAYAREAMs. Amy Million
City of BeniciaAIRQUALITYCommunity Development Department
250 East L StreetMANAGEMENTBenicia, CA 94510

CITY OF BENICIA COMMUNITY DEVELOPMENT

Subject: Valero Benicia Crude by Rail Project Draft Environmental Impact Report

Dear Ms. Million:

Bay Area Air Quality Management District (Air District) staff has reviewed the City of Benicia's Draft Environmental Impact Report (DEIR) prepared for the Valero Benicia Crude by Rail Project (Project). The Project includes receiving up to 70,000 barrels of crude oil by two 50-tank car trains daily at the Valero Benicia refinery and would replace marine vessels currently delivering crude oil. Additionally, the Project will involve installation of a single tank car unloading rack, new rail track spurs, pumps, a pipeline, new tracks, a service road and underground infrastructure at the Valero Benicia refinery. This project will require an Authority to Construct and Permit to Operate issued by the Air District. Air District staff has the following comments regarding the DEIR.

Operational Emissions

The Project is intended to reduce the amount of crude oil being delivered at the refinery by ship by the same amount being proposed for delivery by railcars. The analysis in the DEIR assumes that an average ship holds 350,000 barrels and that the Project would displace a maximum of 70,000 barrels per day of waterborne crude. The DEIR estimates that approximately 73 ships per year would be displaced, or 82% of existing ships delivering crude oil to the refinery (DEIR, page 1-2). This would equate to approximately 89 ship calls per year over the three year baseline line period of 2010 to 2012.

Air District staff reviewed the Marine Exchange Report (Purchased from: <u>http://www.sfmx.org/</u>) from 2010 to 2012 which indicates that on average there were 125 ship calls per year (see table below). This is higher than the number of ship calls that were used in the analysis in the DEIR (approximately 89 ship calls). Please verify and explain the rationale for the number of ship calls assumed in the analysis and make any adjustments (if necessary) to Project impacts or estimates of "displaced" emissions as provided in Table 4.1-4 of the DEIR.

Tom Bates Margaret Fujoka Scott Haggerty Nate Miley (Chair) CONTRA COSTA COUNTY

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Jack P. Broadbent EXECUTIVE OFFICER/APCO

Year	Number of Vessel Calls at Valero (Marine Exchange Report)
2010	96
2011	90 .
2012	190
2013	181

Sensitive Receptors

The following comments regarding locomotive emissions and health risk modeling are based on review of Appendix E.6 of the DEIR. The appendix indicates that two separate analyses were conducted; one that looked at potential health impacts from locomotive idling, transit, fugitive leaks, and switching operations at the refinery; and another that looked at potential health impacts to sensitive receptors who live near the railroad tracks in the City of Fairfield. Air District staff has the following questions and comments regarding the analyses of the locomotive emissions based on the data provided in the table following Table 5 in the Appendix.

- 1. Please ensure that the emissions factors used to estimate emissions from railcars are consistent between the DEIR and the District's permit application. For example, the average fuel efficiency is presented as 400 tons-mile/gal in Appendix E.6 of the DEIR and 1,005 tons-mile/gal in Appendix E.3 of the permit application submitted to the Air District. Please explain why the fuel efficiency assumptions in the DEIR and the Air District permit application differ.
- 2. The analysis provided in the appendix states that rail emissions from fugitive leaks and idling were included in the analysis of the railcars loading and unloading at the refinery. However, the DEIR does not provide information regarding the modeling parameters and methodology associated with these sources, such as the length of time idling was assumed to occur or the amount of fugitive emissions from valves and flanges. Air District staff recommends that this be provided in order to confirm that the emissions are accurately estimated and modeled.
- 3. The analysis provided in the appendix states that approximately two miles of siding tracks will be installed as part of this project. However, the modeling analysis uses a distance of 3300 feet to characterize emissions associated with switching activities. Please explain why the entire 2 miles of new track was not used to conduct the analysis.
- 4. The analysis provided in the appendix uses a release plume height of 45.8 feet for line haul and switching activities which relies on stationary mobile source emissions from the California Air Resources Board's (CARB) Roseville Railyard analysis. Another study conducted by CARB in 2006 at the Burlington Northern Santa Fe Richmond Railyard used a plume height of 9.5 meters (31 feet). Please explain why the analysis in the DEIR used the 45.8 foot plume height versus the 31 foot plume height.
- 5. The analysis provided in the appendix uses a width of transiting railcars of 30 feet. Please explain why this width was used.

Ms. Amy Million

6. The DEIR should explain how it was determined that the maximally exposed individual along the rail line was located in the City of Fairfield. It appears this location is not based on dispersion modelling taking into effect local meteorology and topography.

Additionally, the modeled cancer risk at the daycare center in Benicia underrepresents exposures to this sensitive receptor since the calculation does not account for the higher breathing rate of children based on the Office of Environmental Health Hazard Assessment's (OEHHA) Hot Spots Program. This impact should be reevaluated using the higher breathing rate based on OEHHA's approved Hot Spots Program Guidance.

Cumulative Analysis

Air District staff recommends that the cumulative impact health risk analysis prepared at a residence in the City of Fairfield should be revised to include emissions from nearby roadways with an AADT volume greater than 10,000 vehicles. Also, please confirm that the distance to the residence is 100 feet from the railroad tracks as reported in the DEIR. The distance from the residence to the railroad line should be taken from the property line of the residence to the closest edge of the tracks. For more information on screening risk analysis methodologies, please see the Air District's Recommended Methods for Screening and Modeling Local Risk and Hazards, available for download at <u>http://www.baaqmd.gov/Divisions/Planning-and-Research/CEQA-GUIDELINES/Tools-and-Methodology.aspx.</u>

<u>Crude</u>

Valero plans to purchase a range of crude consistent with those listed in Table 3-1 of the DEIR (page 3-23) as they become available. Air District staff recommends that the DEIR evaluate potential changes in emissions associated with handling the new crude as a result of this project. Lighter crude generally has a higher content of volatile organic compounds (VOCs) which can result in increased fugitive emissions during transport and storage in comparison to the current crude. One of the VOCs found in crude includes benzene, which is classified as a carcinogen. Air District staff recommends that any potential increase in VOC emissions be quantified, and if it is determined that there will be an increase in toxic air contaminants from the new crude, that the City reevaluate the potential health impacts to nearby sensitive receptors.

Air District staff is available to assist the City of Benicia in addressing these comments. If you have any questions, please contact Andrea Gordon, Senior Environmental Planner, at (415) 749-4940 or <u>agordon@baaqmd.gov</u>. For questions regarding Air District permits for this project or to discuss any equipment modifications, alterations or use of new equipment at the site, please contact Thu Bui, Senior Air Quality Engineer, at (415) 749-5119) or <u>tbui@baaqmd.gov</u>.

Sincerely,

Jean Roggenkamp Deputy Air Pollution Control Officer

cc: BAAQMD Director James Spering

September 15, 2014

Amy Million, Principal Planner Community Development Department 250 East L Street Benicia, CA 94510 RECEIVE SEP 1 5 2014 CITY OF BENICIA COMMUNITY DEVELOPMENT

Re: Valero Crude by Rail Project Draft Environmental Impact Report

Dear Ms. Million:

As regional leaders and members of the Board of Directors for the Sacramento Area Council of Governments (SACOG), we understand the importance of collaborative discussions on regional issues. However, it is important that any discussion we engage in be appropriate given limitations on the jurisdictions we represent.

We believe the letter submitted by SACOG on the City of Benicia's Draft Environmental Impact Report (EIR) for Valero's Proposed Crude by Rail Project raises issues that are already being addressed either in the Draft EIR or by current federal rulemaking. This is problematic because these issues far exceed the scope of your jurisdiction given federal preemption and are outside the parameters of CEQA review.

We agree that there are safety concerns regarding transport of crude oil. However, Per the Draft EIR, "while the City can identify and disclose the risks posed by rail transport of crude oil, it must rely on the federal authorities to ensure that any such risks are mitigated as appropriate" (Draft EIR, 4.7-20). We recognize that SACOG's comments regarding railroad operations are most appropriately directed to the federal government, which has the sole authority to act on these issues and is currently engaged in that process. We fully intend to engage at the federal level in recognition of the limitations on the City of Benicia and Valero, the sole project applicant.

We are also concerned about the arbitrary nature of SACOG's action in submitting this letter and believe that it may set a precedent for other potentially overreaching actions in the future. As we understand, Valero's proposed project seeks to transport crude by rail in much the same manner as currently operational projects but with safety measures that exceed federal standards.

Finally, we believe the tone of SACOG's letter does not accurately represent the sentiments of the entire Board of Directors. The letter contains language that was not unanimously approved, especially given the absence of a discussion on federal preemption. We believe the City of Benicia's Draft EIR comprehensively addresses the issues of environmental and public health and safety and appropriately recognizes the bounds set by both CEQA and federal law. We believe a better approach would be to engage with the federal rulemaking process, Valero and Union Pacific Railroad to ensure that safety practices and procedures of the Valero Benicia Refinery and Union Pacific Railroad are sufficient and the project can operate safely in the region.

Thank you,

ton by M. Clendand fr.

Stanley Cleveland Sutter County Board of Supervisors

James Gallagher Sutter County Board of Supervisors



Amy Million, Principal Planner Community Development Department 250 East L Street Benicia, CA 94510 amillion@ci.benicia.ca.us sent via electronic mail



September 15, 2014

Re: Valero Crude by Rail Draft Environmental Impact Report

Dear Ms. Million:

On behalf of San Francisco Baykeeper and our over 2,000 members who use and enjoy the environmental, recreational, and aesthetic qualities of San Francisco Bay and its surrounding tributaries and ecosystems, we submit these comments in strong opposition to the proposed project, and the Draft Environmental Impact Report ("DEIR") prepared for the project. There can be no dispute that a significant increase in local oil refining would also cause air, water and ground pollution, leading to a greater public health threat for local residents. Not only are Bay Area refineries, including Valero, proposing an increase in production, but new throughputs will use dirtier crude oil from sources that include the Canadian tar sands; the same dirty crude slated for the Keystone XL pipeline. At the same time, increases in the shipment of crude oil by rail have routinely led to irreparable environmental destruction. We therefore urge the City of Benicia to correct this seriously deficient DEIR so that an accurate assessment of the proposed project's environmental impacts is made public, providing all sensible municipal and agency decision-makers with the information needed to disapprove any and all applications for this project.

I. The Project Description is Inadequate.

The DEIR fails to assess impacts associated with expanding the refinery's production. Instead, the DEIR asserts that the receipt of 70,000 bbls/day could be offset by an equal decrease in receipts from marine shipment. This project description is severely flawed, as the DEIR provides no guarantee that the new railroad infrastructure will not ultimately increase refinery production.

First, the DEIR states that "proposed Project *could* reduce marine vessel delivery of crude oil by as much as 25,550,000 barrels in a 365 day year," an amount roughly equal to the proposed increased imports by rail. (DEIR 3-2, emphasis added.) This vague project description does not suffice to support informed decision-making. Will all such marine terminal import contracts be canceled? When? Is a cap on marine terminal imports a binding condition of this project? Increased oil production in the United States and Canada suggests that Valero could profit from increased marine terminal receipts. For example, the proposed Tesoro oil export terminal in



Pollution hotline: 1 800 KEEP BAY www.baykeeper.org

785 Market Street, Suite 850 San Francisco, CA 94103 Tel (415) 856-0444 Fax (415) 856-0443 San Francisco Baykeeper Valero Crude by Rail EIR September 15, 2014 Page **2** of **8**

Vancouver, WA, will send 380,000 barrels per day of new crude to unidentified West Coast facilities, which could include Valero. Given these market forces, the DEIR fails to provide any basis or promise for its assertion that shipment to the refinery by marine vessels will decrease by any amount, much less an amount equal to the new oil shipments received by rail.

Although the proposed project plainly increases the refinery's ability to process more crude oil than ever before, no net increase in production is evaluated. The sole limiting factor referenced in the DEIR for capping facility production is Valero's Bay Area Air Quality Management District ("BAAQMD") operating permit. (DEIR 3-2.) This approach illegally segments the project description and the DEIR's impacts analysis. (*See, Laurel Heights Improvement Association v. Regents of the University of California*, (1988) 47 Cal.3d 376, 397-398.) Future regulatory approvals must always be included within the "whole of the project." The fact that Valero may not yet have precisely committed to additional refinery changes to increase production is beside the point; the mere fact that it is reasonably foreseeable that Valero would use the new rail capacity to increase production is sufficient to trigger the need to consider the future activity in the current EIR.

Moreover, the DEIR should explain what additional changes to the rail offloading infrastructure would be needed to accept additional 50-car trains within any 24 hour period. The 2013 Union Pacific Investment Report projects further increases of Canadian crude oil shipments to West Coast refineries as a major market force for 2014.¹

The DEIR fails to describe rail car hold times, outside of the facility, as a part of the project. The DEIR provides no mandates that the project must process cars without delay, thereby avoiding any storage or residence times off site. Yet, the DEIR does not describe as part of the project the short- or long-term storage of rail cars destined for Valero, outside of the refinery.

The DEIR also fails to indicate whether Valero will receive and process dilbit (heavy tar sands oil with 30% volatile diluent) or railbit (heavy tar sands oil with 17% diluent). The risk of explosion, safety of first responders, and environmental risks from spills vary significantly depending on this formulation.

II. The DEIR's Environmental Setting is Incomplete.

The DEIR must adequately describe the environmental setting for the project to sufficiently allow a project's significant impacts to be considered. (CEQA Guidelines § 15125(a), (c).) Here, the potentially affected environment stretches from Benicia to Roseville, and beyond, yet the DEIR only describes the existing environmental conditions outside of Benicia in the most cursory of fashion. What are the conditions of tracks that will be used? Will Union Pacific meet the December 31, 2015 deadline for Positive Train Control on all segments used to serve Valero (The Government Accounting Office alerted the US Senate last year that most railroads have

¹ www.up.com/investors/attachments/factbooks/2013/fact_book.pdf

San Francisco Baykeeper Valero Crude by Rail EIR September 15, 2014 Page **3** of **8**

indicated they will not make the deadline.² Where will rail cars pass through populated areas, sensitive environmental sites, hazards, etc.? The DEIR admits that the proposed project would result in an increased shipment of crude by rail across much of Northern California, yet completely fails to evaluate and disclose potentially significant impacts throughout the affected area. There is no discussion in the DEIR of the risks to and from Amtrak passenger trains, which care upwards of 1.7 million people per year along the Capitol Corridor on Union Pacific's tracks. The project description indicates the shipments will be made outside of commute hours, but this is not a binding condition of the project, and no monitoring for this project component is provided. The DEIR must be revised and recirculated to meaningfully describe the existing environmental setting along all foreseeable railroad routes that will carry increased crude to Valero as part of this project.

- III. The DEIR's Impact Analysis is Inadequate.
 - a. The DEIR's evaluation of oil spills and fires lacks substantial evidence, misleads the public, and ignores common sense.

The catastrophic impacts of oil car derailments, explosions, and oil spills as a result of recent increases in quantities, and changes in types, of crude shipment by rail, are well documented, yet remain unaddressed by this DEIR. In the face of this evidence, the DEIR asserts that the railroad's "accident rate has been *declining* for decades" (DEIR4.7-18, emphasis added), despite the fact that analysis of government data shows that more oil was spilled from rail cars in 2013 than in every year between 1975 and 2012 *combined*.³ Misleading and uninformative statements such as these and others evince a biased approach in this environmental document that should not be relied upon by the City or any responsible or trustee agency as sufficient to support informed environmental planning and decision-making. Based on the errors and omissions, below, the DEIR's conclusion that any risk of spill or explosion is "extremely low" must be revised.

The DEIR repeatedly downplays the project's inherent and unavoidable risks, without relying on any evidence to support its conclusions. For example, the DEIR concludes that the risk of any spill from Roseville to Benicia of greater than 100 gallons is approximately 0.009 per year. (DEIR 4.7-17.) Yet, the DEIR admits that it did not assess the on-the-ground characteristics of the rail lines from Roseville to Benicia, including, for example, an evaluation of environmental risks existing through the railway corridor, such as proximity to populated areas, crossings, adjacent facilities, railway operational components, or any expected increases in rail traffic, like

² Gov't Accountability Office, *Positive Train Control: Additional Authorities Could Benefit Implementation*, GAO Rpt. No. GAO-13-720 (August 2013), *available at* <u>http://www.gao.gov/assets/660/656975.pdf</u>.

³ http://www.huffingtonpost.com/2014/01/22/oil-train-spills n_4645339.html

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the planned addition of 10 commuter trains per day connecting Roseville to the Capitol Corridor line.⁴ Without reviewing the existing and reasonably foreseeable conditions of the rail lines carrying the project's rail cars, any estimation of accident rate is unsupported by fact.

Similarly, the DEIR relies heavily on the presence of federal and state regulations and protocol to avoid or mitigate the significant impacts from rail car accidents, but fails to actually assess the capability and capacity of emergency responders (for fire or a spill) on the remote sections of UPRR's high-risk corridors, and assumes, without factual support, that the FRA has conducted all local track inspections necessary to ensure track safety, even where FRA inspections have a history of being inadequate. In addition, the recent joint announcement from USDOT and AAR on voluntary changes in railway operations indicates some important deficiencies in track safety and response preparedness, with recommendations that should be used to help inform the risks posed by this project, and/or incorporated into the terms of any project approval:⁵

- Increased track inspections;
- Upgrades to brake systems;
- Applying route planning and route selection requirements in 49 C.F.R. 172.820 to crude oil trains;
- New 40 mph speed limit through high-threat urban areas;
- Increased emergency response training; and,
- Inventory of emergency response capability and increased coordinated planning.⁶

The DEIR simply fails to assess the extent to which such measures are already in place, and, where lacking, consider them as feasible mitigation measures for the project. The DEIR also fails to discuss risks associated with human error along hazardous rail corridors where Positive Train Control is not utilized.

The DEIR's review of recent crude-by-rail catastrophes is also inadequate to support the DEIR's finding of no significant impact. For example, the DEIR relies almost exclusively on new "1232" train cars to mitigate the significant impacts caused by derailment, spill, and/or explosion. At the same time, the DEIR admits that even where these cars have been used, spills have still occurred. (DEIR 4.7-19.)⁷

⁴ <u>http://www.dot.ca.gov/hq/tpp/offices/owd/horizons_files/pph_2013/09-10-2013_Planning_Horizons-</u> CSRP_Pax_Final.pdf

^b <u>https://www.aar.org/newsandevents/Press-Releases/Pages/Freight-Railroads-Join-U-S-Transportation-Secretary-Foxx-in-Announcing-Industry-Crude-By-Rail-Safety-Initiative.aspx#.VA-CmaOK19Z</u>

⁶ See Attachment 1. Recent communication between Union Pacific and the California Department of Fish and Wildlife Office of Spill Prevention and Response reflects UP's position that it is not beholden to state requirements for contingency planning, sensitive species site analysis, and coordination with the designated State On-Scene Coordinator in response to oil spills. The risk from this gap in preparedness is not addressed in the DEIR where Valero defers to UP for all off-site spill response.

⁷ The DEIR fails to provide any discussion of why 1232 cars were insufficient to prevent significant impacts in this spill.

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Indeed, the American Association of Railroads in 2012 commented to the PHMSA that even the CPC-1232 compliant cars should be further retrofitted to remain in service. Specifically, high-flow capacity pressure relief devices and reconfigured bottom outlets must be required for these tanks. The DEIR does not contain any binding commitment to use the highest safety standards recommended at this time. Potential impacts from using unmodified CPC-1232 tank cars must be analyzed in the DEIR.⁸ Moreover, the DEIR admits that, with a crash of the severity of Lac-Megantic, where human error is the cause, the 1232 car would also likely not prevent any release. (Id.) Are humans living and working between Roseville and Benicia immune to error? The DEIR further offers pure speculation that, "[h]ad the trains in Aliceville or Casselton been using 1232 Tank Cars, it is possible that crude oil might not have been released." (Id.) An assertion that "it is possible" that 1232 cars will prevent spills from this project is insufficient to support the DEIR's conclusion that impacts from release will be less than significant.

Importantly, the DEIR should require that as a condition of project approval that all rail cars used at the facility are 1232 cars, including appropriate monitoring and reporting mechanisms to determine compliance. Without including this as a mandatory project condition, the DEIR's entire impact analysis is undermined. And even if 1232 cars are mandated, the additional AAR recommendations should be put in place,⁹ requiring:

- Outer steel jacket and thermal protection;
- Full-height head shields;
- High flow capacity pressure relief valves; and,
- Design changes to prevent bottom outlets from opening in an accident.

The DEIR plainly attempts to hide the severity of the impact caused by any spill or explosion by only discussing the impacts of spills "greater than 100 gallons." The DEIR states that, "[a]lthough the consequences of a release are potentially severe, the likelihood of such a release is very low. The probability of an accidental release of crude oil from a tank car traveling to the Refinery involving more than 100 gallons of crude oil is just 0.009 per year." (DEIR 4.7-20.) This analysis and conclusion simply fail to assess the true *magnitude* of harm that could occur as a result of a spill and/or explosion, by instead placing a greater focus on frequency. Never does the DEIR answer exactly *how much* "greater than 100 gallons" might be spilled, and what the impacts of that spill could be. The focus on a 100 year timeline simply misses the point. For example, impacts related to flooding may be considered significant if only in a 100 year flood plain. In comparison, impacts resulting from oil spills may have even farther reaching effects.^{10, 11, 12, 13} The DEIR does reference several high profile crude by rail spills over the last few years,

⁸ <u>http://earthjustice.org/sites/default/files/files/PetitionforEmergencyOrderReBakkenCrudeRailCars.pdf</u>

 ⁹ <u>https://www.federalregister.gov/articles/2014/08/01/2014-17764/hazardous-materials-enhanced-tank-car-standards-and-operational-controls-for-high-hazard-flammable</u>
¹⁰ <u>http://response.restoration.noaa.gov/about/media/oil-sands-production-rises-what-should-we-expect-diluted-</u>

¹⁰ <u>http://response.restoration.noaa.gov/about/media/oil-sands-production-rises-what-should-we-expect-diluted-bitumen-dilbit-spills.html</u>

¹¹ <u>http://insideclimatenews.org/news/20130725/dilbit-disaster-3-years-later-sunken-oil-looming-threat-kalamazoo-river</u>

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but conspicuously fails to disclose approximately how much oil was spilled at each. For reference:

- Lac Megantic, Quebec, July 2013, 1,580,000 gallons.¹⁴
- Pickens County, Alabama, November 2013, up to 750,000 gallons.¹⁵
- Casselton, ND, December 2013, 400,000 gallons.¹⁶
- Winona, MN, February 2014, 12,000 gallons.¹⁷

Given that each rail car would carry approximately 30,000 gallons of crude, the DEIR's use of a 100 gallon spill for its environmental analysis is patently misleading, and fails to provide the public and agency decision-makers with an accurate assessment of the proposed project's likely environmental impacts.

The DEIR fails to explain why it uses a worst case scenario spill quantity of 30,000 for an accident during train maneuver at the unloading station. (DEIR 4.7-20.) If one car is derailed, could more than one car not be derailed during such operations?

Environmental damage wrought by rail car explosion could be devastating. The Association of American Railroads estimates that a catastrophic train accident in an urban area could generate liabilities exceeding one billion dollars.¹⁸ Yet, despite the national attention focused on these accidents, the DEIR downplays the risk of fire and explosion from additional shipment of crude by rail, by only considering whether the project would result in the "release of hazardous materials into the environment." (DEIR 4.7-13.) This inadequately captures the additional harms resulting from fire and explosion, including the obvious concerns of loss of life and property, but also further harm caused by any actual release where response and containment efforts are compromised by safety concerns.

The DEIR also fails to assess increased risk of train derailment resulting from seismic activity, including subsidence and liquefaction of the soft Bay mud underlying the tracks that cross the Suisun marshes. Indeed, the DEIR's entire evaluation of seismic risk is once again limited to the refinery and its immediate vicinity.

The DEIR attempts to offset any harm from spill by rail in an equal amount to the supposed reduction in marine shipping Valero will receive as a part of the project. (DEIR 4.7-18.)

¹⁸ https://www.otc-cta.gc.ca/sites/all/files/consultations/AAR.pdf

¹² <u>http://insideclimatenews.org/news/20120626/dilbit-diluted-bitumen-enbridge-kalamazoo-river-marshall-michigan-oil-spill-6b-pipeline-epa</u>

¹³ http://insideclimatenews.org/news/20130327/cleanup-2010-mich-dilbit-spill-aims-stop-spread-submerged-oil

¹⁴ http://www.huffingtonpost.com/2014/01/22/oil-train-spills n 4645339.html

¹⁵ http://articles.latimes.com/2013/nov/09/nation/la-na-nn-train-crash-alabama-oil-20131109

¹⁶ <u>http://www.latimes.com/nation/nationnow/la-na-nn-north-dakota-oil-train-crash-investigation-20140113-story.html#axzz2qfnvXmS1</u>

¹⁷ http://thinkprogress.org/climate/2014/02/05/3255791/crude-rail-oil-spill-minnesota/

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Again, however, the project contains no binding commitments that Valero will, in fact, reduce its marine terminal shipments. For this reason, all instances in which the EIR relies on this shipping reduction are misleading and should be revised.

The DEIR's preemption arguments are a red-herring. There is no dispute that the City could disapprove of the project, or require mitigation measures or alternatives to the project before agreeing to any project approval. Such action by the City would not constitute regulation of rail activity.

b. The DEIR inadequately evaluates biological impacts.

As noted, above, the DEIR repeatedly fails to assess the project's impacts to areas adjacent to rail lines outside of the DEIR's overly-narrow "project area." The DEIR's biological resources section does, however, extend the DEIR's analysis of biological impacts to Suisun Marsh regarding "potential indirect impacts of accidental releases related to this proposed new transport." (DEIR 4.2-31.) The DEIR then goes on to admit that "these impacts also may apply to other sensitive areas anywhere along the railroad tracks used to transport crude feedstocks," but completely fails to evaluate these impacts. (Id.) This disclosure, while admitting that significant impacts are possible, is not a substitute for actual evaluation of impacts to biological resources along the project corridor.

The DEIR should evaluate impacts resulting from a spill or release to Suisun Marsh as direct impacts of the project, not indirect impacts. (DEIR 4.8-16.) Risk to federally listed species such as the endangered salt marsh harvest mouse, endangered California clapper rail must be analyzed. The brackish marsh assemblage of Suisun marsh – which includes endangered Soft bird's-beak and Suisun thistle, as well as pickleweed habitat – support these species. The internal network of sloughs in the marsh provides critical nursery habitat for the endangered Delta smelt. In 2004, there was a Kinder Morgan pipeline oil spill of approximately 124,000 gallons into Suisun marsh (along the Union Pacific rail line that would carry crude to Valero if this project is approved). The Natural Resource Damage Assessment for the spill, which took over six years to complete, documents injury to many small mammals, macroinvertebrates, birds, fish, insects, and vegetation in the marsh, including semipalmated plover, crayfish, Marsh wren, and stickleback. Restoration of the most-heavily impacted area reduced the area to a plowed field with a projected recovery time of 10-years from restoration.¹⁹

In addition, the DEIR completely sidesteps evaluating whether operational effects could disrupt nesting birds or dabbling migratory waterfowl, stating that "[d]uring operation, the noise, vibrations, visual disturbance, and increased human activity associated with the Project become part of the ambient environment, so any birds that subsequently nest nearby are presumed to be tolerant of the disturbance." (DEIR 4.2-28.) The DEIR simply fails to assess whether operational impacts would, in the first instance, disrupt any nesting, resting, or feeding patterns, instead only evaluating the project's construction-related activities.

¹⁹ http://www.interior.gov/restoration/library/casedocs/upload/CA_Kinder_Morgan_Suisun_Marsh_RP_05-10.pdf

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c. The DEIR inadequately evaluates impacts related to climate change.

This project may also increase the amount of heavy sour crude processed by Valero, which would produce substantially more petcoke for export. It is well documented that upgrading tar sands oil produces higher carbon emissions than conventional oil.^{20, 21} The DEIR has failed to assess the impacts of shipping and burning additional petcoke, including impacts to water quality, and increased greenhouse gas emissions.

The DEIR also fails to assess potential effects from sea level rise and storm surge undermining railroad tracks along San Francisco Bay and Suisun marsh. As the DEIR admits, flooding can cause train derailment, leading to possible fires or spills. (See discussion of Cherry Valley derailment, DEIR 4.7.2.3.) The DEIR considers whether the new development at the Valero refinery itself could be affected by rising water levels and increased risk of flood (DEIR 4.8-19) but fails to conduct this analysis for railroad lines that would be carrying crude by rail for the proposed project.

d. The DEIR fails to analyze cumulative impacts.

The WesPac Pittsburg Energy project, the Phillips 66 Rail Spur project, and Chevron "Modernization" project, will all increase rail traffic, but the DEIR fails to evaluate the resulting effect on any operational controls and rail integrity along the railway. Similarly, the DEIR should have evaluated any projects that could reasonably and foreseeably increase rail traffic in general, such as the new commuter spur between Roseville and Sacramento, as any additional rail traffic could increase risk of collision. Further, the increase risk of derailment and/or explosion created by these other projects further increases the risk proposed by Valero's placement of more oil tank cars on these tracks.

IV. Conclusion

Thank you for your careful consideration of these comments, and of the growing public concern regarding the increased environmental and public safety risks that would be felt throughout Northern California as a result of this proposed project.

Sincerely,

Due her

Deb Self Executive Director

 ²⁰ Adam R. Brandt. Variability and Uncertainty in Life Cycle Assessment Models for Greenhouse Gas Emissions from Canadian Oil Sands Production. In Environmental Science & Technology. 2012, 46, pp. 1253-1261.
²¹ http://priceofoil.org/content/uploads/2013/01/OCI.Petcoke.FINALSCREEN.pdf

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July 3, 2014

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Re: Federal Preemption of S.B. 861

Dear Ms. Williamson,

At our meeting on June 18, 2014, Union Pacific and BNSF requested the State to consider amending S.B. 861 because federal law preempts the financial security and contingency plan requirements that this legislation would impose on the railroads. State officials at the meeting acknowledged that federal law would preempt oil spill prevention requirements but expressed the view that emergency response requirements are nonetheless saved from preemption by the Clean Water Act. We agreed to explain in further detail why we believe that view is wrong as a matter of federal law. We write now to do so.

I. EMERGENCY RESPONSE PLANNING

A. Preemption Under The Federal Rail Safety Act

As you know, Congress directed in the Federal Railroad Safety Act ("FRSA") that "[I]aws, regulations, and orders related to railroad safety and laws, regulations, and orders related to railroad security shall be nationally uniform to the extent practicable." 49 U.S.C. § 20106(a)(1). To accomplish that objective, Congress provided that a State may no longer "adopt or continue in force a law, regulation, or order related to railroad safety" once the "Secretary of Transportation . . . prescribes a regulation or issues an order covering the subject matter of the State requirement." *Id.* § 20106(a)(2).¹

¹ The statute provides an exception for requirements "necessary to eliminate or reduce an essentially local safety or security hazard," *id.* § 20106(a)(2)(A), but the risk of a spill into California waterways "is not one that is fundamentally different from those of other locales" and therefore does not come within the exception, *Union Pacific R.R. Co. v. Cal. Pub. Util. Comm'n*,

The contingency response plans mandated by S.B. 861 are preempted by § 20106 for two reasons. First, the subject of oil spill contingency plans, including emergency response, has already been "cover[ed]" by Department of Transportation ("DOT") regulations and orders. Second, § 20106 applies to *any* regulation that DOT adopts related to rail safety. It does not matter whether the regulation is adopted under the FRSA, the Clean Water Act ("CWA"), or some other federal law. The CWA preemption provision accordingly does not govern the validity of the mandates imposed by S.B. 861. Section 20106 of the FRSA controls, foreclosing any state regulation of the railroads' oil spill contingency plans.

1. The Subject Of Oil Spill Contingency Plans Has Been Covered

As state officials at our meeting acknowledged, the Secretary of Transportation has adopted regulations that cover the subject of oil spill prevention. We accordingly do not address that issue further here. But the Secretary of Transportation has also prescribed regulations covering the subject matter of oil spill contingency planning, including *emergency response* to oil spills, in 49 C.F.R. Part 130 (titled "Oil Spill Prevention and Response Plans"). The purpose of these regulations is to adopt requirements for "spill response planning and response plan implementation intended to prevent and contain spills of oil during transportation." 61 Fed. Reg. 30533 (June 17, 1996) (emphasis added). Much like the contemplated California regulations, the federal regulations require covered parties (including railroads) to "[s]et[] forth the manner of response to discharges that may occur during transportation," identify "private personnel and equipment available to respond to a discharge," and identify the "appropriate persons and agencies (including their telephone numbers) to be contacted in regard to such a discharge." 49 C.F.R. § 130.31(a). Where a covered party transports oil in sufficiently high quantities, the regulations impose additional requirements, including the obligation to "ensure[] by contract or other means the availability of ... private personnel ... and the equipment necessary to remove, to the maximum extent practicable, a worst case discharge ... and to mitigate or prevent a substantial threat of such a discharge." Id. § 130.31(b)(4).

Unlike the California legislation, however, the Part 130 regulations intentionally omit any location-specific spill planning for environmentally sensitive areas. *Compare* 61 Fed. Reg. 30538 (June 17, 1996) ("Neither the basic nor the comprehensive plan is required to address response on a vehicle- or location-specific basis."), *with* Cal. Gov. Code § 8670.29(d)(4) (requiring "[p]rovisions detailing site layout and locations of environmentally sensitive areas requiring special protection")). Instead, federal authorities determined that the railroads' contingency plans did *not* need to include "location specific" plans as long as the plan "covers the range of spill scenarios that the [railroad] foreseeably could encounter." 61 Fed. Reg. 30538. The agency reasoned that the required plans, including the "basic plans," represent a "complete and practical document that serves" the purpose of "ensur[ing]" that "personnel are trained and available and equipment is in place to respond to an oil spill" and that "procedures are established before a spill occurs so that required notifications and appropriate response actions will follow expeditiously." *Id*.

346 F.3d 851, 862 (9th Cir. 2003) (noting the "more than 10,000 miles of track . . . adjacent to waterways in North America").

Ms. Dana Williamson July 3, 2014 Page 3

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The Part 130 regulations supplement another set of federal regulations governing emergency response preparation for transportation of hazardous materials, including petroleum crude oil. In 49 C.F.R. Part 172 subpart G, the Secretary required "persons who . . . transfer or otherwise handle hazardous materials during transportation" to have "[e]mergency response information . . . immediately available for use at all times the hazardous material is present." 49 C.F.R. § 172.600(b), (c)(1). The required emergency response information includes the "[i]mmediate precautions to be taken in the event of an accident or incident," the "[i]mmediate methods for handling fires," the "[i]nitial methods for handling spills or leaks in the absence of fire," and "[p]reliminary first aid measures." *Id.* § 172.602(a). Moreover, the regulations require an emergency response telephone number "[m]onitored at all times the hazardous material is in transportation" by a person with "comprehensive emergency response and incident mitigation information for that material." *Id.* § 172.604(a). Given this "comprehensive regulatory framework," the Secretary determined in 1996 that "no additional spill prevention or containment requirements are necessary" beyond those imposed by Parts 172 and 130. 61 Fed. Reg. 30536 (June 17, 1996).

These DOT emergency response regulations are more than sufficient to "cover" the subject of oil spill contingency planning and to trigger complete preemption of any state requirements on this subject under the express terms of the FRSA preemption provision. In addition, where federal officials have affirmatively determined that certain requirements are unnecessary—as they did with respect to site-specific response planning—the "authoritative federal determination that the area is best left *un*regulated [has] as much pre-emptive force as a decision *to* regulate." *Sprietsma v. Mercury Marine*, 537 U.S. 51, 66 (2002) (quoting *Arkansas Elec. Coop. Corp. v. Arkansas Pub. Ser. Comm*'n, 461 U.S. 375, 384 (1983)).

Even if federal authorities subsequently determine that greater protections may be warranted, States are not permitted to step in and adopt additional requirements of their own. See Norfolk Southern R.R. Co. v. Shanklin, 529 U.S. 344, 355-56 (2000) (holding federal regulations covering a subject preempted state tort law notwithstanding federal agency's view that additional safety regulation was appropriate). And in any event, here there is no need for State supplementation, because the federal government has demonstrated its commitment to updating its safety requirements as necessary. To that end, the Secretary recently issued orders that cover particular aspects of oil spill contingency planning in even greater depth than the earlier Part 130 and Part 172 regulations. Specifically, in his May 7, 2014 Emergency Order, the Secretary ordered railroads transporting large quantities of crude oil to notify state authorities of the estimated number of trains traveling through each county of the State, provide certain emergency response information required by 49 C.F.R. Part 172, subpart G, and identify the route over which the oil will be transported. And in his February 25, 2014 Emergency Order, the Secretary ordered certain changes in the way petroleum crude oil is classified and labeled during shipment, emphasizing that "with regard to emergency responders, sufficient knowledge about the hazards of the materials being transported [is needed] so that if an accident occurs, they can respond appropriately." February 25, 2014 Emergency Order at 13.

Under 49 U.S.C. § 20106(a)(2), these DOT regulations and orders preempt California's distinct (though in many respects overlapping) requirements covering the same issues. California may not, for example, require railroads to provide the detailed information about oil

shipments described in Cal. Gov. Code § 8670.29(e), because the Secretary's May 7 Emergency Order has already covered the issue of what information a railroad must provide to state officials when transporting petroleum crude oil through the State. California may not require railroads to adopt "[p]rovisions for emergency medical treatment and first aid," Cal. Gov. Code § 8670.29(d)(2), because the Part 172 regulations already cover the issue of emergency medical care after a spill. And more generally, California may not require railroads to prepare Californiaspecific oil spill contingency plans, *see* Cal. Gov. Code § 8670.29(a), because the Secretary has already determined precisely what sorts of planning the railroads are required to undertake in 49 C.F.R. Part 130. The subject of oil spill contingency plans is covered.

2. The Terms Of § 20106 Govern The Preemptive Force Of All DOT Regulations And Orders Related To Rail Safety

The text of § 20106 is unambiguous. It plainly states that the terms of § 20106 govern the preemptive force of *all* DOT regulations and orders related to rail safety. At our meeting, State officials nevertheless expressed the view that the text of the FRSA preemption provision must be disregarded and that the preemption provision of the Clean Water Act, 33 U.S.C. § 1321(o)(2)—which would allegedly permit this legislation—should govern here. A State official reasoned that this was the correct outcome because the Part 130 regulations were adopted pursuant to authority granted under the Clean Water Act.²

Section 1321(0)(2) simply states that § 1321 does not *itself* preempt state law regarding removal activities. Thus, where no other preemption provision is applicable, the Part 130 regulations have no preemptive force. That is why, as DOT explained in response to a comment by the American Trucking Associations, the Part 130 regulations would not preempt state laws governing cleanup of oil spills from highway accidents. *See* 61 Fed. Reg. 30539 (June 17, 1996).

But railroads are different. Unlike § 1321(0)(2), § 20106 is not tied to a particular source of federal regulatory authority. Rather, it is directed to ensuring broad regulatory uniformity on the subject of railroad safety—whatever the source of federal authority may be.³ As the Solicitor General has explained, Congress "recognized that the Secretary had diverse sources of statutory authority . . . with which to address rail safety issues," and therefore "preemption had to apply to regulations issued" under *any* of those sources, for "otherwise, the desired uniformity could not

² Even if the CWA preemption provision governed the effect of DOT regulations adopted pursuant to the CWA—and, as we explain, it does not—that would not save all of the state requirements at issue. The Part 172 emergency response requirements and the Secretary's recent Emergency Orders, which by themselves cover much or all of the subject matter the State is now attempting to regulate under S.B. 861, were not promulgated pursuant to the CWA.

³ Because the Department addressed the preemptive effect of the Part 130 regulations only with respect to the trucking industry, it had no occasion to discuss their preemptive force as to state rail safety requirements under § 20106. However, as we explain above, the Department has subsequently taken the position that *all* of its regulations have preemptive force in connection with overlapping state rail safety requirements. *See* 74 Fed. Reg. 1790-91 (Jan. 13, 2009).

be attained." Brief for United States as Amicus Curiae at 6, *Public Util. Comm'n of Ohio v. CSX Transp., Inc.*, 498 U.S. 1066 (1991) (No. 90-95), *available at* <u>http://www.justice.gov/osg/briefs/1990/sg900560.txt;</u> see also H.R. Rep. No. 1194, 91st Cong., 2d Sess. 19 (1970) ("[S]uch a vital part of our interstate commerce as railroads should not be subject to [a] multiplicity of enforcement by various certifying States as well as the Federal Government.").

In *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658 (1993), for example, DOT had adopted the relevant grade crossing provisions under the Highway Safety Act. As the Eleventh Circuit there noted, the Highway Safety Act—unlike FRSA—contains no preemption provision and reflects no Congressional intent to preempt a field. *See Easterwood v. CSX Transp., Inc.*, 933 F.2d 1548, 1555 (11th Cir. 1991). Nevertheless, the Supreme Court held that regulations adopted solely pursuant to the Highway Safety Act would have preemptive effect under FRSA if they covered a subject matter related to railroad safety, because "the plain terms of [§ 20106] do not limit the application of its express pre-emption clause to regulations adopted by the Secretary pursuant to FRSA. Instead, they state that any regulation 'adopted' by the Secretary may have pre-emptive effect, regardless of the enabling legislation." 507 U.S. at 663 n.4; *see also* Brief for United States as Amicus Curiae Supporting Affirmance at 19 n.17, *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658 (1993) (No. 91-790), 1992 WL 12012044 ("[R]egulations adopted by the Secretary pursuant to federal highway legislation trigger FRSA's express preemption if a State regulation 'relate[s] to railroad safety' and the Secretary's regulations 'cover[] the subject matter' of the state law requirement at issue.").

Similarly, in *CSX Transp., Inc. v. Public Util. Comm'n of Ohio*, 901 F.2d 497 (6th Cir. 1990), the Sixth Circuit addressed regulations promulgated by the Secretary solely under authority conferred by the Hazardous Materials Transportation Act ("HMTA"). There, too, the preemption provision of the authorizing statute was more solicitous of state regulation than was § 20106. "[U]nlike the preemption provision of FRSA, . . . the HMTA allows state regulations which are consistent with federal regulation." *Id.* at 501. Nevertheless, the court concluded that "the language of the FRSA . . . applies to the HMTA as it relates to the transportation of hazardous material by rail," preempting state requirements that were otherwise permissible under the HMTA. *Id.* That approach, it said, "retains the essential character and purpose of both statutes," showing respect for "[t]he national character of railroad regulation" *id.* at 503.

Building on these decisions, DOT has recognized that "[t]hrough [the Federal Railroad Administration] and [the Pipeline and Hazardous Materials Safety Administration], DOT comprehensively and intentionally regulates the subject matter of the transportation of hazardous materials by rail . . . These regulations leave no room for State . . . standards established by any means . . . dealing with the subject matter covered by the DOT regulations." 74 Fed. Reg. 1790 (Jan. 13, 2009). Thus, "with the exception of a provision directed at an essentially local safety or security hazard, § 20106 preempts any State statutory, regulatory, or common law standard covering the same subject matter as a DOT regulation or order." *Id.* at 1791. The Department has taken this position not only in its regulatory actions, but also in amicus briefs filed in response to state regulatory efforts that seek to supplement the uniform federal scheme. *See, e.g.*, Brief for Amicus Curiae United States of America at 6, *Union Pacific R.R. Co. v. Cal. Pub.*

Util. Comm'n, No. C-97-3660 (Sept. 14, 1998). California's apparent view to the contrary—that FRSA's preemption provision does not apply to regulations related to railroad safety adopted by the Secretary pursuant to some other authorization other than § 20106—is thus inconsistent with both binding legal precedent and the repeatedly expressed views of the Department itself.

State officials in attendance at our meeting also suggested that California's new contingency planning requirements would escape preemption under § 20106 because they are targeted toward protecting the environment rather than toward "rail safety." Again, this argument is contrary to controlling law. Section 20106(a)(2) covers any state law "related to railroad safety." The Supreme Court has recognized that phrases like "related to," "relating to," and "relate to" are intended to "express a broad pre-emptive purpose." Morales v. Trans World Airlines, Inc., 504 U.S. 374, 387 (1992); see also Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 46 (1987) (phrase is "deliberately expansive"); FMC Corp. v. Holliday, 498 U.S. 52, 58 (1990) (phrase is "conspicuous for its breadth"). As the Solicitor General has observed, FRSA's "preemption provision covering all laws relating to railroad safety" should be "construed broadly." Brief for United States as Amicus Curiae at 8, Pub. Util. Comm'n of Ohio v. CSX Transp., Inc., 498 U.S. 1066 (1991) (No. 90-95).

One need venture nowhere near the limits of the phrase's logical meaning to conclude that "related to railroad safety" encompasses the statutory requirements at issue here. S.B. 861 embodies the State's conclusion that "the emphasis must be put on *prevention*, if the risk and consequences of oil spills are to be minimized." Cal. Gov. Code § 8670.2(f) (emphasis added). Preventing railroad accidents is, of course, the very heartland of "railroad safety." But even setting aside the core focus on prevention and looking to just those aspects of the statute targeted at post-accident response, the relation to railroad safety remains obvious. Just as an airbag is obviously "related to" automobile safety because it minimizes the injuries that result once a crash has already occurred, so too a response plan is "related to" railroad safety because it minimizes the harmful impact of a railroad accident.

That a response plan is *also* "related to" protection of the environment does not exempt it from the scope of § 20106. In *Union Pacific R.R. Co. v. California Public Utilities Comm'n*, for example, the challenged state regulations were directed toward reducing the "risk of severe environmental damage." 346 F.3d 851, 861 (9th Cir. 2003). It made no difference. Because federal regulations covered the same subject matter, the state regulations were preempted. *Id.* Indeed, Congress has directed that railroad safety regulations are appropriate for the express purpose of protecting the environment. *See* 49 U.S.C. § 20104(a) (authorizing Secretary to issue emergency orders to prevent "significant harm to the environment"). The Secretary's Emergency Orders reflect this concern, directing the railroads to take "steps to increase the safety of petroleum crude oil shipments by rail," and thereby "assist emergency responders in mitigating the effects of accidents," including "environmental damage." May 7, 2014 Emergency Order at 4, 7. The state requirements for oil spill contingency plans are "related to railroad safety" and the DOT regulations and orders covering that subject must be given full preemptive effect under the Supreme Court's decision in *Easterwood*.

B. Preemption under the Interstate Commerce Commission Termination Act

Along with being preempted under FRSA, the new state requirements also run afoul of a second federal railroad law. The Interstate Commerce Commission Termination Act ("ICCTA") confers exclusive jurisdiction over licensing and economic regulation of interstate railroad operations on the Surface Transportation Board ("STB"). Under 49 U.S.C. § 10901, the "Board has exclusive licensing authority for . . . operation of new railroad lines" and may certify rail line operation unless the STB finds the project to be "inconsistent with the public convenience and necessity." *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1073 (9th Cir. 2011). To determine public convenience and necessity, the STB looks at a variety of circumstances surrounding the proposed action, "which can include consideration of the applicant's *financial fitness*, the public demand or need for the service, and the potential harm to competitors." *Alaska Survival v. STB*, 705 F.3d 1073, 1078 (9th Cir. 2013) (emphasis added).

The express preemption clause in ICCTA declares that the STB's jurisdiction over transportation by rail carriers "is exclusive." Specifically, Section 10501(b), provides:

(b) The jurisdiction of the Board over-

(1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), ... and facilities of such carriers; and

(2) the ... operation ... of spur, industrial, team, switching, or side tracks, or facilities ...

is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.

The purpose of this preemption provision is to protect the railroad industry from a patchwork of state regulations that would balkanize the network. The STB has explained that § 10501(b) "is intended to prevent a patchwork of local regulation from unreasonably interfering with interstate commerce." *CSX Transp., Inc.—Pet. for Declaratory Order*, 2005 WL 584026, at *9 (STB served Mar. 14, 2005).

The federal courts have repeatedly recognized that these provisions broadly preempt state laws regulating transportation operations. *See, e.g., City of Auburn v. United States,* 154 F.3d 1025, 1031 (9th Cir. 1998) (describing language of § 10521(b)(2) as "broad" and giving Board "exclusive jurisdiction over . . . operation . . . of rail lines"); *CSX Transp., Inc. v. Ga. Pub. Serv. Comm'n,* 944 F.Supp. 1573, 1581 (N.D. Ga. 1996) ("It is difficult to imagine a broader statement of Congress's intent to preempt state regulatory authority."). The STB observed that "[e]very court that has examined the statutory language has concluded that the preemptive effect of Section 10501(b) is broad and sweeping, and that it blocks actions by states or localities that

would impinge on . . . a railroad's ability to conduct its rail operations." CSX Transp., Inc.—Pet. for Declaratory Order, 2005 WL 584026, at *6 (STB served Mar. 14, 2005).

Over the years, federal courts and the STB have found two types of state regulations of railroads to be so pernicious as to be "categorically" preempted, without any inquiry into the State's reason for the regulation or burden on the railroad industry. *First*, States are categorically prevented from intruding into matters that are directly regulated by the Board (e.g., railroad rates, services, and licensing). *See 14500 Limited LLC—Pet. For Declaratory Order*, FD 35788, slip op. at 4 (served June 5, 2014) (citing *City of Auburn*, 154 F.3d at 1029-31). Thus, ICCTA categorically precludes any form of state regulation in traditional areas of economic regulation, such as the parameters of the common carrier obligation or licensing of carriers (which may include a financial fitness inquiry).

Second, States cannot impose permitting or preclearance requirements. The STB has reasoned that these kinds of regulation, by their nature, can be used to deny a railroad's ability to conduct rail operations that the STB has authorized. *Id.* Thus, state permitting or preclearance requirements—including environmental and land use permitting requirements—are categorically preempted. *City of Auburn*, 154 F.3d at 1029-31. Otherwise, state authorities could deny a railroad the right to construct or maintain its facilities or to conduct its operations, which would irreconcilably conflict with the STB's authorization of those facilities and operations. *14500 Limited* at 4 n.5 (*citing City of Auburn*, 154 F.3d at 1031; *CSX Transp., Inc.—Pet. for Declaratory Order*, FD 34662, slip op. at 8-10 (STB served Mar. 14, 2005)).

The California legislation implicates *both* of these categorical bans on state regulation. The legislation mandates that a railroad have an approved oil spill plan from California if it intends to transport crude oil in the state. Failure to do so exposes the railroad to criminal sanctions and massive fines. And the legislation permits the administrator to order the railroads to "cease and desist" any activity that "requires a permit, certificate, approval, or authorization under this chapter" if the railroad has not obtained such approval. Cal. Gov. Code § 8670.69.4.

ICCTA flatly prohibits this kind of state preapproval requirement. It is now beyond dispute that any form of state or local permitting or preclearance that, by its nature, could be used to deny a railroad the ability to conduct its licensed common carrier operations is preempted by ICCTA. *City of Auburn*, 154 F.3d at 1030-31 (environmental and land use permitting categorically preempted); *Green Mountain Ry. v. Vermont*, 404 F.3d 638, 642-43 (2d Cir. 2005) (preconstruction permitting of transload facility necessarily preempted by § 10501(b)). For example, the District of Columbia sought to require railroads to obtain a permit before shipping certain hazardous material though the District. The STB invalidated that provision under ICCTA. It reasoned that, "[t]o the extent that the D.C. Act would require a permit to move certain rail traffic through protected parts of the City, it is directly covered by the categorical preemption against state and local permitting processes." *CSX Transp., Inc.—Pet. for Declaratory Order*, FD 34662, slip op. at 8-10 (STB served Mar. 14, 2005)).

Federal preemption of state permitting or preclearance regulations is not a new phenomenon. Since the turn of the last century, the Supreme Court of the United States has frequently invalidated attempts by states to impose obligations on common carriers that are

plainly inconsistent with the plenary authority of the STB. For example, in *Chicago v. Atchison*, *T. & S. F. Ry. Co.*, 357 U.S. 77 (1958), the Court held that a city ordinance requiring a license from a municipal authority before a railroad could transfer passengers—an activity also subject to regulation under the Interstate Commerce Act—was facially invalid as applied to an interstate carrier. "[I]t would be inconsistent with [federal] policy," the Court observed, "if local authorities retained the power to decide" whether the carriers could do what the Act authorized them to do. *Id.* at 87.

Here, federal law *requires* rail carriers to transport crude oil upon reasonable request. The railroads cannot simply stop transporting crude oil through California. They have a federal common carrier obligation under 49 U.S.C. § 11101 to provide transportation for commodities that have not been exempted from regulation pursuant to 49 U.S.C. § 10502. Crude oil has not been exempted from this obligation. "The common carrier obligation," the Board thus explained, "requires a railroad to transport hazardous materials where the appropriate agencies have promulgated comprehensive safety regulations." *See Union Pacific R.R. Co.—Pet. for Decl. Order*, FD 35219 (STB served June 11, 2009). A system under which California (and other states) could preclude carriers from operating because the carriers do not have a state-approved oil spill response plan in place could hardly be more at odds with the uniformity contemplated by Congress in enacting the Interstate Commerce Act. As the Ninth Circuit explained, "if local authorities have the ability to impose 'environmental' permitting regulations on the railroad, such power will in fact amount to 'economic regulation' if the carrier is prevented from ... operating ... a line." *City of Auburn*, 154 F.3d at 1031.

In sum, the STB and federal courts have repeatedly rejected state and local regulations of rail transportation that "giv[e] the local body the ability to deny the carrier the right to . . . conduct operations." *Green Mountain*, 404 F.3d at 643 (quoting *Joint Pet. For Declaratory Order—Boston and Maine Corp. and Town of Ayer, MA*, STB Finance Docket No. 33971, 2001 WL 458685, at *5 (STB Apr. 30, 2001)). The same result can be expected with respect to the contingency planning requirements imposed here.

II. FINANCIAL RESPONSIBILITY CERTIFICATIONS

Along with the state-specific oil spill contingency planning requirements, S.B. 861 added a second new state requirement: the need to secure a certificate of financial responsibility to operate within the State. *See* Cal. Gov. Code § 8670.37.51(d). The legislation purports to give the Administrator authority to halt all transportation of oil by rail in the State until a railroad has complied with the still-to-be-developed state regulations. *See* Cal. Gov. Code § 8670.37.53(c)(1) (requiring railroads to "demonstrate to the satisfaction of the administrator the financial ability to pay for any damages that might arise during a reasonable worst case oil spill").

Here, too, the State has made its way into an area in which federal control is exclusive. Regulating financial fitness of rail carriers is quintessential economic regulation that is categorically preempted by ICCTA. The STB is the only regulator (at a state or federal level) with the authority to review the financial fitness of a railroad or otherwise license a railroad to provide common carrier service. *N. Plains Res. Council*, 668 F.3d at 1073; *Alaska Survival v.*

STB, 705 F.3d at 1078; Tongue River R.R.—Rail Construction & Operation—Ashland to Decker, Montana, STB Finance Docket No. 30186 (Sub-No. 2) (STB service date Nov. 8, 1996) (explaining the purpose of the STB's financial fitness test). Once the STB has granted a federal license to carriers to operate in interstate commerce, California cannot superimpose another layer of economic regulation by forcing carriers to obtain yet another certificate of financial responsibility before they can operate within California. See R.R. Transfer Serv., Inc. v. City of Chicago, 386 U.S. 351, 358-59 (1967) (city could not regulate the "financial ability" of a party to render safe service where the regulated service was an integral part of interstate railroad transportation authorized and subject to regulation under the Interstate Commerce Act). As the Senate noted when it enacted ICCTA in 1995:

> The hundreds of rail carriers that comprise the railroad industry rely on a nationally uniform system of economic regulation. Subjecting rail carriers to regulatory requirements that vary among the States would greatly undermine the industry's ability to provide the 'seamless' service that is essential to its shippers and would weaken the industry's efficiency and competitive viability.

See S. Rep. No. 104-176, at 6 (1995), U.S. Code Cong. & Admin. News 1995, p. 793.

III. CONCLUSION

The railroads have been highly successful in challenging California regulations that seek to supplement the uniform federal safety program. *See, e.g., Union Pacific R.R. Co.,* 346 F.3d at 858-62 (holding that the FRSA preempted the CPUC's attempt to regulate mountain grade rail operations as essentially local safety hazards pursuant to a California statutory mandate); *Ass'n of Am. R.R. v. S. Coast Air Quality Mgmt. Dist.,* 622 F.3d 1094, 1098 (9th Cir. 2010) (holding that ICCTA preempted the South Coast Air Quality Management District's rules imposing limits on the permissible amount of emissions from idling trains); *City of Auburn,* 154 F.3d at 1029-31 (BNSF Railway Co. intervening party; court rejecting the City of Auburn's arguments that ICCTA only preempted economic regulations, and holding that the scope of ICCTA's preemption was broad and encompassed environmental regulations as well); *Union Pacific R.R. Co. v. Cal. Pub. Util. Comm'n,* No. 1:07-CV-00001-OWW-TAG, ECF No. 37 at 13–14 (E.D. Cal. June 1, 2007) (consent judgment stipulating that Union Pacific's and BNSF's Federal Security Programs satisfy the mandates of a California statute requiring local security plans). We hope, however, that resort to litigation will not be necessary this time.

Union Pacific and BNSF are not opposed to working with the State to improve railroad safety near state waters—or elsewhere. No one likes railroad accidents less than railroads. But we *are* opposed to a state-by-state approach in which different rules apply to the beginning, middle, and end of a single rail journey. Congress is too. *See* 49 U.S.C. § 20106(a)(1) ("Laws, regulations, and orders related to railroad safety . . . shall be nationally uniform to the extent practicable."); *Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 318 (1981) (Congress' assertion of federal authority over the railroad industry is "among the most pervasive and comprehensive of federal regulatory schemes").

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We therefore hope that, through negotiation and voluntary agreements, we can arrive at a mutually agreeable solution that addresses our shared safety concerns without need for resort to litigation.

Sincerely,

/s/

_____ Maureen E. Mahoney of LATHAM & WATKINS LLP Counsel for Union Pacific Railroad Co. and BNSF Railway Co.

cc: Martha Guzman-Aceves, Deputy Legislative Affairs Gareth Elliott, Legislative Secretary Keali'i Bright, Deputy Secretary, Natural Resources Agency Charlton Bonham, Director, Department of Fish and Wildlife Thomas Cullen, Administrator, Office of Spill Prevention and Response

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Board Members:

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Judy Moores Past President, CDF

Chris Soderquist

Staff: Chris Granger Volunteer Executive Director Cool Davis

Cool Davis Mission To inspire our community to reduce greenhouse gas emissions, adapt to a changing climate, & improve the quality of life for all.

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Cool Davis Empowering Citizens for Climate Action

September 10, 2014

Amy Million, Principal Planner Community Development Department amillion@ci.benicia.ca.us



Re: Comments on the Valero Crude-By-Rail Project DEIR

Dear Ms. Million,

Please add these comments to the public legal record on Valero's Crude-By-Rail Project and incorporate them as part of the review of its DEIR, which proposes the shipment of crude oil by trains which would pass through the City of Davis.

Cool Davis is a non-profit organization whose mission is to inspire our community to reduce greenhouse gas (ghg) emissions, to adapt to a changing climate, and to improve the quality of life for all! We work to implement aspects of the Davis Climate Action and Adaptation Plan related to home energy efficiency, transportation, and consumption.

The various Air Quality Management Districts have written comments already addressing the need for the DEIR to offer mitigations to offset the admitted emissions from the increased train traffic. This is helpful as far as it goes, but the proposed mitigations are limited to the immediate air pollution impacts.

Cool Davis believes there are several more impacts to be considered. First, the two daily trains that deliver crude to Benicia will be returning on the same route each day to be filled again with a new delivery of crude oil. The mitigations must cover the ghg emissions for the round trip for each train each day.

Second, the impacts of the trains are cumulative as more trains travel on the tracks. By mid-September, 2014 – in other words as soon as next week – San Luis Obispo County expects to release their DEIR for recirculation on the Santa Maria Refinery Rail Spur Project that will mean an additional train per day moving through Davis. This means the ghg emissions will be even higher, exacerbating the pollution problems already increased by the Valero trains. The mitigation for the Valero train emissions must take into account the round trip of the Valero train in the context of the existing air quality and the compromised air quality in the near future should the Santa Maria project be approved.

Third, CEQA specifically addresses impacts for all of California. The DEIR for the Valero project has chosen to focus on train ghg emissions from Roseville to Benicia rather than from the borders of California to Benicia. At a minimum, the total ghg emissions beginning when the trains cross the border into California must

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be recognized and evaluated.

To be complete, the DEIR should consider the full life-cycle impact of the fossil fuel footprint from the extraction process to the transportation to the final consumption which all contribute to local pollution and global climate change. Singling out only the greenhouse gas emissions as the train passes through town is a thin slice of the total lifecycle and its impact. CEQA requires a more cumulative and holistic approach.

Under AB32, the California Global Warming Solutions Act, California has chosen a set of goals for greenhouse gas reduction. According to the California Energy Commission, in the last year California significantly reduced its consumption of oil through conservation measures such as more efficient vehicles and more trips by transit, biking and walking. We have proven we can reduce our footprint!

Generally, mitigations are direct offsets related to local pollution. However, since ghg emissions do contribute to global climate changes that affect California communities as well as others around world, the mitigation should also provide global benefits. Cool Davis proposes that creative mitigations such as funding toward the transition to electric and hybrid vehicles, including incentives and behavioral approaches to encourage households to purchase electric vehicles and to encourage multi-family residences to install electric vehicle charging devices for their residents. Another example would be funding to local governments for conversions to "complete streets" to encourage more biking and walking. Cool Davis would be happy to work with the project proponents on possible mitigations to effectively reduce ghg emissions to best fit our community, the region, and the world. The mitigations must reduce ghg emissions sufficiently to counterbalance the emissions added to the community by the daily trains.

Unfortunately, the sudden and substantial increase in crude-by-rail into our state takes us backwards, increasing our ghg emissions into the atmosphere and slowing our necessary conversion to renewable energy and low-carbon fuels as we confront climate change. This DEIR must examine how the increase in oil trains will affect our climate goals and propose appropriate mitigations if it finds that the incoming crude-by-rail makes it harder to reach those goals. At stake is a livable planet for all living beings, including our children and their children. The best mitigation may be to stop importing high carbon intensity and volatile crude oil by rail and instead put our efforts into supporting passenger rail and other measures more consistent with a safe climate. The "No Project" option deserves serious consideration.

Cool Davis Mission

To inspire our community to reduce greenhouse gas emissions, adapt to a changing climate, & improve the quality of life for all.

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Cool Davis Empowering Citizens for Climate Action

Thank you for taking into account the above concerns regarding greenhouse gas emissions for the Valero Crude-by-rail Project. We trust the Benicia Planning Commission will agree it is important to extend the analysis of the present DEIR and we look forward to the recirculation of the DEIR with new analysis and, if necessary, meaningful mitigations.

Sincerely,

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Bill Heinicke, President of Cool Davis Foundation Board of Directors Davis, California info@cooldavis.org

Cool Davis Mission

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PO Box 161677 • Sacramento, CA 95816 • info@350sacramento.org

September 10, 2014

Brad Kilger, City Manager 250 East L Street, Benicia, CA 94510 bkilger@ci.benicia.ca.us

Amy Million, Principal Planner Community Development Department 250 East L Street, Benicia, CA 94510 amillion@ci.benicia.ca.us



Re: Comments on the Valero Crude By Rail Project DEIR

Dear Mr. Kilger and Ms. Million,

Please add these comments on behalf of 350 Sacramento to the public legal record on Valero's Crude By Rail Project and incorporate them as part of the review of its DEIR. *In addition,* please forward my comments to the Planning Commissioners.

350 Sacramento is a local grassroots nonprofit organization working to address the threat of climate change. We are concerned about the increasing numbers of crude oil trains coming through Sacramento for numerous reasons: in the short term these trains pose a great danger to the safety of thousands of people in our city and in the long term the oil they carry poses an even greater danger to the people of Sacramento and the world by exacerbating climate change.

The DEIR is inadequate in countless ways. We support the excellent comments made by SACOG (Sacramento Area Council of Governments) and, without repeating all their arguments, would like to go on record with the same concerns.

- The DEIR fails to consider the risk of fire and explosion as a threshold of significance.
- The Project poses a significant hazard to the public and the environment through reasonably foreseeable upset and accident conditions.
- The Release Rate Analysis is flawed as a tool to assess the potential environmental impacts of the project.
- The DEIR fails to analyze the potential environmental impacts of crude oil transport beyond the Roseville to Benicia alignment.
- The DEIR fails to analyze the cumulative impacts of the project.
- The DEIR improperly conflates its description of the project with measures

intended to reduce or avoid the clear impacts of the project.

Additionally, we have many concerns and observations that go beyond those expressed by SACOG. These oil trains are extremely dangerous, as evidenced by the many derailments, fires, and the great tragedy in Lac Megantic. There are ways to make the oil trains less dangerous—more frequent inspection of rail tracks and bridges, slower speeds, higher standard tank cars, removal of the more volatile chemicals before transport, safer routes that avoid waterways and populated areas, Positive Train Control, etc.—but none of these safeguards have been implemented or guaranteed. We assert that all safety measures and guarantees must in place *before* the project is allowed to go forward.

But safety measures are not enough to protect people and the environment. Each oil train goes by countless communities, waterways, and other precious and sensitive habitat. Each oil train endangers millions of people and thousands of miles as it travels from the Bakken oil fields or Canadian tar sands to the refineries in the Bay Area. In Sacramento alone, a quarter of a million people live within a mile of the train tracks (*please include the attached map in the public comments*), which is the impact zone in the case of a disaster like that in Lac Megantic. The DEIR neglects to acknowledge that each train is playing Russian roulette with all the communities and the environment from the extraction site to the refinery. In addition, the great increase in oil trains through our community (expected to be up to 6 or 8 100-car per day trains in the next few years) increases the threat exponentially through increased traffic on the rails, increased wear on the rails, increased chance of derailments, increase in oil train traffic were not adequately addressed in the DEIR.

Our waterways are very vulnerable. In Sacramento the trains go by and over the American River. This water body is priceless; an oil spill would have devastating consequences. A spill of toxic tar sands into the Kalamazoo River has still not been cleaned up after 3 years and over \$1 billion dollars spent. California is in a drought and cannot afford the risk of a spill from even one of these trains, which could destroy the water supply for millions of people. The effects of such a spill on wildlife would be equally disastrous and have not been adequately addressed in the DEIR.

Given the record of the past 18 months, there is no doubt that it's simply a matter of time before another oil spill and tragedy. But even if there are no derailments, no fireballs, no more tragedies, the effects of the oil being transported through our communities will still cause immense suffering. The cumulative effects of the oil trains from the Valero Project plus all the other projects in the planning stages for the Bay Area refineries and other locations in California will exacerbate climate change to the point of no return. According to the latest IPCC report, we are already experiencing the effects of climate change; extreme weather, sea level rise, droughts, floods, extinctions, etc. will continue to increase and worsen. The tar sands and Bakken crude being transported in these oil trains are extreme fossil fuels that require an intensive amount of energy and cause toxic pollution in their extraction and processing. These are all significant cumulative effects that have not been adequately addressed in the DEIR, especially given their extreme risk to the planet, future generations, and all we hold dear.

California has set commendable goals for greenhouse gas reduction through AB32, the California Global Warming Solutions Act. As a State, we have lowered our carbon
emissions significantly. These oil trains are going in the wrong direction. They will increase our carbon emissions and slow efforts to convert to renewable energy and address climate change; this is the direction we must go if we are to have a livable planet. The DEIR must address how the increase in oil trains will affect the goals of AB32.

The DEIR fails to provide an adequate No Action alternative. No Action means maintaining the status quo, i.e., not doing the project. If the crude by oil project does not go forward, the risk to people and the environment will not occur. In a cost/benefit analysis the great benefit of the No Action alternative to the vast majority of the population is apparent.

Here are some questions that must be answered in the DEIR:

- 1. How will Valero guarantee that tank cars meet the DOT standards currently under review immediately—not phased in over years—so uprail communities are protected, plus implement the previously mandated Positive Train Control technology?
- 2. What are the daily and cumulative impacts and risks of transporting two extreme crude oils—tar sands and Bakken crude—through our cities, through our sensitive habitats, and over our water supplies?
- 3. What are the cumulative impacts of the Valero daily train in the context of the additional 3 daily oil trains currently being approved in Bakersfield, 1 daily train to San Luis Obispo, and all other proposed and anticipated oil trains that will potentially travel through Sacramento? Include the increased potential for spills, accidents, greenhouse gas emissions, conflicts of interest on the rails, etc.
- 4. What is Valero's liability should there be a spill or accident on the oil trains en route to Benicia? Who carries enough coverage for a catastrophic incident? Will the taxpayers ultimately be responsible?
- 5. Why are the boundaries of the DEIR limited only to travel from Roseville to Benicia and not extended at least to the borders of CA if not all the way to the extraction sites? The impact and risk analysis area should be considerably extended.

We urge you to redo the DEIR with an honest assessment of the true impacts and cumulative effects of this project, including the lifecycle effects of the products transported, and with answers to the preceding questions. With such an assessment it is obvious that this project should not go forward.

Sincerely,

Laurie Litm

Laurie Litman President, 350 Sacramento

Crude Oil Train Derailment Risk Zones in Sacramento, CA



Sacramento Population at Risk*

^			- OCI
U.	5 mile	1.5	5.004
	Omile	75	6799
	~	· · · · · · · · · · · · · · · · · · ·	V1

*The number of residents of the City of Sacramento living within these impact zones

Legend

Schools (K - 12)

++++ Active rail lines

0.5 mile US DOT Evacuation Zone for Crude Oil Train Derailments

1.0 mile US DOT Potential Impact Zone in case of Crude Oil Train Fire

Sources:

Population (2010): Estimates based on US Census 2010 Block Centroid Populations. Estimates were calculated within buffers located within US Census "Place" boundary (not shown).

Schools: http://portal.gis.ca.gov/geoportal/catalog/ main/home.page

NTAD Rail Lines: 2013 National Transportation Atlas Database http://www.rita.dot.gov/bts/sites/ rita.dot.gov.bts/files/publications/national_trans portation_atlas_database/2013/polyline.html

Rail Line Buffers: Zones indicating risks around rail lines in the event of crude oil tanker car derailments, based on the US Department of Transportation Emergency Response Guidebook used throughout North America. This guidebook recommends a standard evacuation zone of 800 meters (0.5 miles) for accidents involving railcars filled with flammable liquids and gases and an isolation zone of 1600 meters (1 mile) in all directions around any railcar filled with those materials if they are on fire. http://phmsa.dot.gov/staticfiles/PHMSA/Download ableFiles/Files/Hazmat/ERG2012.pdf

If viewing this online comments from Benicians for a Safe and Healthy Community (BSHC) are provided as a separate document.

Please refer to the following documents available on the City's webpage for the Valero Crude by Rail Project at www.ci.benicia.ca.us:

BSHC Comments on DEIR

If viewing this online comments from Communities for a Better Environment (CBE) are provided as a separate document.

Please refer to the following documents available on the City's webpage for the Valero Crude by Rail Project at www.ci.benicia.ca.us:

CBE Legal Comments on DEIR

CBE Karras Comments on DEIR

If viewing this online comments from the National Resources Defense Council (NRDC) are provided as a separate document.

Please refer to the following documents available on the City's webpage for the Valero Crude by Rail Project at www.ci.benicia.ca.us:

NRDC Comments on DEIR

Attachment 1 – Fox DEIR Comments

Attachment 2 – NRDC IS-MND Comments

Attachment 3 – Fox IS-MND Comments

Attachment 4 – Bailey Report on CBR

Attachment 5 – Millar Report

Attachment 6 – OES Report on Oil Bay Rail Safety in California

Attachment 7 – Crude Oil Train Derailment Risk Zone Maps

If viewing this online comments from Adams Broadwell Jospeh & Cardozo on behalf of SAFER California

are provided as a separate document.

Please refer to the following documents available on the City's webpage for the Valero Crude by Rail Project at www.ci.benicia.ca.us:

SAFER California Comments on DEIR

Attachment A

Attachment B

Attachment C

September 11, 2014

RECEIVE SEP 1 1 2014 CITY OF BENICIA COMMUNITY DEVELOPMENT

Re: Questions and Comments on Valero Crude by Rail Project DEIR

By Stephen Young, Planning Commissioner

There are several substantive issues that the DEIR does not appear to address, or addresses with insufficient documentation to support its findings.

Environmental Impacts of Transporting Bakken Shale or Tar Sands oil

<u>Question 1</u>- Has the DEIR properly considered the environmental impacts of unit trains consisting of 50 cars of Bakken Shale or tar sands oil, given the extensive public information available about its use by both Valero and other refineries. I would like to see the EIR provide analysis of these two types of crude oil in regards to emissions, environmental impacts of a possible spill, and emergency preparedness.

The press has reported the use of Bakken shale or Canadian tar sands oil at: 1) Shell Refinery in Martinez, Phillips 66 refinery in Rodeo and Chevron refinery in Richmond currently processing tar sands oil (Contra Costa Times, 6/1/13); Tesoro refinery in Martinez currently receiving and processing 5,000-10,000 barrels of Bakken shale oil per day (Contra Costa Times 3/29/14); and an October 2012 Memphis Commercial-Appeal interview with Valero spokesman Bill Day who described how using Bakken was a cost savings for Valero, and that Bakken represented 75% of the oil used at the Memphis refinery. In another interview with investors reported by the financial website ADVFN, Mr. Day said Valero had been moving Bakken crude to its Memphis refinery by rail for some time, and was looking into rail options for other refineries as well.

In a conference call with investors in January 2013, reported on Wall Street Cheat Sheets, Joe Gorder, President and CEO of Valero, was quoted as saying "we're running Bakken". In the same investors conference call, Lane Riggs, Valero Sr. VP of Refining Operations, spoke extensively of the qualities of Bakken and its use in refining operations.

Both Bakken shale oil and tar sands oil have significant potential environmental impacts, especially in the area of emergency preparedness and clean-up, as well as GHG and other toxic emissions that should be addressed in the EIR. Do we know if the higher sulfur or acid content in those crudes will' increase the risk of corrosion to factory equipment and pipes, which in turn could lead to leaks, fires or explosions? This should be analyzed.

Valero and the DEIR describes the project as simply a logistics project. This description is far too narrow. The approval of this project, and the construction of the off-loading facility, will allow for the importation of 100 train cars per day of crude oil and have impacts on cities up rail.

It is the Commission's responsibility to look at a broader definition than the one offered in the DEIR. I would like to see the DEIR look more closely at the environmental impacts of the daily movement of large amounts of crude oil by rail, not only within the City of Benicia, but also along the train route through the sensitive Suisun marsh and other environmentally sensitive areas as well.

Possible Increase in amount of oil refined and associated increases in emissions

Page 3-2 of the DEIR states that the refinery is limited to processing an annual average of 165,000 barrels per day. However, elsewhere in the DEIR, the applicant says it is currently refining 75,000 barrels per day.

<u>Question 2</u>- Would the approval of this project potentially lead to the refining of more oil than is currently being refined? If more oil could be refined than is currently being refined, please calculate the quantities of additional emissions that would be produced from the additional refining activity.

Lack of Disclosure of Documentation for Greenhouse Gas (GHG) Calculations

The applicant states, and the DEIR agrees, that the shipping of oil by train will be less polluting, and therefore an environmentally superior alternative, to shipping oil by tanker. That argument rests on the analysis of GHG and other emissions from both sources of transport.

However, documentation to support that argument is missing or inconclusive.

CEQA defines the baseline period as one ending with the publication of the Notice of Preparation (NOP) by the City. For this project, the NOP was issued in August, 2013. However, the consultant uses the period ending November, 2012 as the baseline for purposes of calculating GHG emissions.

<u>Question 3</u>- Why was the period ending in November 2012 used rather than the CEQA defined baseline period ending in August 2013? I would like to see the consultant re-calculate GHG emissions for the three year period ending August, 2013.

Question 4- What is the distance used to calculate GHG emissions for ships?

On P.4.1-21, the reports states that, currently, Valero imports crude oil on ships coming from Alaska, (a distance of approximately 2000 miles), South America (4000 miles) and the Middle East (8500 miles). "Using a weighted average composite distance for crude oil delivered to the refinery from source countries of origin during the baseline period (a period that should be recalculated for the CEQA defined baseline period of August, 2010-August, 2013), Valero has estimated the average maritime distance travelled from source to the refinery was 7,305 miles."

To arrive at that exact composite average, however, it is necessary to know precisely how much oil was imported from each of the stated regions over the three year baseline period.

Appendix E2 (p.1015-P.1039) is titled "Marine Vessel Criteria Pollutant and GHG Baseline Emissions", and contains 25 tables with data totally or partially redacted.

Baseline Ocean Going Vessels Emissions

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Crude by Rail Project Marine Vessel Criteria Pollutant and GHG Baseline Emissions 3/17/2014

Baseline Ocean Going Vessels Emission

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Date		Emissions: Sea Buoy - Valero Marine Terminal Main Engine Emissions (g/trip)									
		NO,	со	ROG	PM	PM _{2.8}	SO,	CH	CO ₂	N ₂ O	CO ₂ e
12/10/09		564613	39564	32120	13108	12073	59789	2883	18503110	963	18862224
12/13/09		582954	40773	32987	13520	12453	61825	2960	19133246	994	19503694
12/25/09		561549	39362	31976	13040	12010	59448	2870	18397614	958	18754838
12/29/09		290396	27758	20809	7060	6503	45424	1867	14057632	708	14316232
12/31/09	A state of the production of the	406015	40577	32842	10090	9294	61503	2947	19033619	989	19402242
1/10/10		555459	38961	31691	12903	11884	58770	2844	18187913	948	18541377
1/28/10		313993	29907	22324	7623	7021	49210	2003	15229052	765	15508334
1/29/10	F - Herster Viscou	390351	39105	31793	9714	8947	59014	2853	18263157	951	18617970
2/7/10	Contraction of the	163815	15971	12543	4029	3711	25188	1126	7794989	399	7942384
2/5/10	han an a	582419	40735	32954	13508	12441	61770	2957	19116205	994	19486306
2/4/10		300349	28471	21114	7276	6702	47188	1895	14603296	732	14869990
2/9/10		299589	28442	21085	7260	6607	47067	1692	14566022	/30	14832088
2/11/10		2/6/44	20485	19905	6733	0201	43249	1/86	13384498	749	15101716
2/13/10		316432	30040	27/10	7667	7053	40207	2012	14010010	740	15580166
2/22/10		282043	18201	14430	6100	5618	28395	1295	8787602	452	8954884
2/24/10		579524	40544	32818	13443	12381	61448	2945	19018501	989	19384816
3/6/10		276341	19076	15214	6377	5873	29535	1365	9140398	471	9315206
3/10/10	tradise and the	547933	38470	31347	12735	11729	57929	2813	17927423	935	18276259
3/9/10		534633	53209	43081	13277	12229	81062	3866	25088506	1303	25571593
3/14/10	Stell Development	581342	40664	32904	13484	12419	61850	2953	19079124	992	19448562
3/23/10		337245	32141	24027	8190	7544	52827	2156	16348619	822	16648676
2/24/10	FOR ALL CONTRACTOR	456292	45301	36206	11299	10407	69494	3249	21506660	1112	21919606
3/30/10		546759	38393	31292	12708	11705	57798	2808	17887002	933	18235114
4/11/10	an a	356722	22437	17089	7624	7022	36528	1534	11304361	572	11513746
4/5/10	S.C.A. Passar Balances	578882	40502	32788	13428	12368	61376	2943	18994407	988	19362327
4/16/10		389551	39030	31740	9695	8929	58886	2848	18223817	949	18577925
4/14/10		307452	29554	22488	7501	6909	47849	2018	14807910	749	15082559
4/21/10		346685	33007	24698	8418	7753	54292	2216	16802099	845	17110553
4/2//10		42//11	42010	34284	10612	9//4	64952	3078	20100828	1042	20488576
4123110 673/10		213004	20580	16000	6040	4201	22040	2420	102/0242	510	10009107
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5/21/10		294993	28015	20782	7150	6586	46334	1885	14339291	719	14601313
5/25/10		319658	30457	22822	7765	7152	50033	2048	15484019	779	15768519
5/31/10		407796	40744	32961	10133	9333	61786	2958	10121252	994	19491445
6/1/10		289986	27508	20431	7028	6473	45535	1834	14091909	707	14349487
6/4/10		269702	25618	19071	6540	6024	42313	1712	13094690	657	13334382
6/6/10		576766	36079	27093	12286	11316	59348	2431	18366796	924	18704327
6/8/10		226593	21843	16718	5537	5099	35187	1500	10889605	552	11092294
6/15/10		268044	25600	19219	6517	6002	41922	1725	12973842	653	13212559
6/17/10	TSU MARKAN	294855	28024	20894	7153	6588	46235	1875	14308587	719	14570716
6/23/10		531412	37383	30573	12364	11388	56091	2744	17358572	907	17697212
7/13/10		293564	27964	208/9	7127	6565	46004	1874	14237017	716	14498143
7/12//10		453467	30241	22006	10281	9469	49683	2034	153/55/3	114	15658094
7/14/10		180063	17/07	12/10	/181	4062	27020	1002	14365950	121	14029102
8/2/10		100233	27958	21048	0411	8745	45752	1990	14158030	714	14410701
8/4/10	Free Constanting	358942	34043	25480	8671	7987	55885	2287	17295322	870	17612090
7/29/10	a and a second second	252216	24188	18195	6138	5654	39378	1633	12188570	615	12411401
8/17/10		255137	24398	18386	6207	5717	39865	1648	12337130	622	12564489
8/14/10	A STATE OF STATE	432014	28851	21682	9801	9028	47285	1948	14633474	737	14902796
8/24/10	Sector Sector	380890	38216	31160	9487	8738	57510	2796	17797773	928	18144246
9/1/10	Martin Procession And	311288	29718	22385	7570	6972	48849	2007	15055460	759	15332775
9/5/10	President and a second	193586	18807	14570	4748	4373	29908	1308	9255747	472	9429453
9/7/10		285733	19116	14454	6493	5981	31219	1297	9661585	487	9839927
9/12/10		274807	26304	19777	6686	6158	42941	1775	13288991	670	13533869
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9/16/10	The second s	558249	39145	31822	1 12966	111942	59081	2856	18283988	952	18639174

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Since this information on sources of crude oil purchased in the period 2010-2013 is not listed as confidential business information in Section 1-7 of the DEIR, that information should be released by the applicant so that the calculation of the composite average distance for shipping crude oil can be validated. Without data showing clearly how the composite distance of 7,305 miles was calculated, the Planning Commission cannot rely on that estimate of GHG emitted by ships. In addition, the argument that ships are more polluting than trains must be re-examined using all required documentation.

According to CEQA, a DEIR must cite all documents used in its preparation (Guidelines S. 15148), and is required to make all documents available for public review (Public Resource Code 21092 (b). It must also identify all people consulted in the preparation of a DEIR (Guidelines S.15129). I would like to have the applicant disclose from which countries it bought oil, and in what amounts, for the baseline period July 2010 to July 2013, and direct the consultant to re-calculate GHG emissions with updated information for the corrected baseline period.

GHG Emissions in Bay Area vs. GHG Emissions in Benicia.

Table 4-1-5 of the DEIR shows "Net Operational Exhaust Emissions within the Bay Area Basin" and calculates the emissions from ships traveling from the buoy west of the Golden Gate Bridge to Benicia. It then deducts the emissions expected in Benicia from the use of diesel locomotives delivering oil by rail from those larger emissions covering the entire Bay Area, and makes a finding that this constitutes a less than significant impact.

<u>Question 5</u>- Is it appropriate to compare displaced emissions from a much larger area to new emissions from the project area, and then to make a finding of less than significant impact if the reduced emissions in the larger area exceed the new emissions generated by the project?

I would like to see comparisons of emissions in the same geographic area (Benicia) rather than comparing increased emissions in Benicia to decreased emissions in the much larger Bay Area.

Calculation of GHG emissions for trains

DEIR Table 4.1-7 compares emissions for trains and ships measured in tons per thousand miles hauled. (It is not clear in the DEIR if the calculation assumes use of one or two locomotives per train and the DEIR does not appear to answer that question. It is now believed that UP plans to use two locomotives per train and calculations need to reflect this fact and be confirmed by consultants.)The table lists six types of emissions, and shows that ships are less polluting than trains for five of them. "Even with these emissions factors, there is no way to estimate with any certainty the net effect of the Project on areas outside the Bay Area and Sacramento Basins because there is no way to predict the length of locomotive trips that could occur if the project were approved..."

The California Energy Commission reports that 85% of the oil being imported by rail into California is Bakken shale. Assuming that this is true, it is reasonable that the calculations for train emissions be made from North Dakota, where Bakken shale originates. Since there are only three main rail routes from Northern California borders to Roseville (Feather River Canyon, Donner Summit, and Dunsmuir) it is not to difficult to predict the actual GHG emissions for each train trip using two locomotives. I would like to see the consultants perform this analysis of GHG emissions for trains using the entire predictable train routing.

Table 4.1-4 (Baseline Maritime Emissions in Bay Area) calculates TOTAL emissions over the 3 year baseline period while the project, if approved, would reduce oil delivered by ship by 82%.

would like to see the Consultant recalculate marine emissions using 82% rather than 100%, and using the corrected baseline period.

Air Quality Impacts

Section 4.1.4 (Discussion of No Air Quality Impacts) states that the project would not conflict or obstruct the applicable air quality plan (Bay Area 2010 Clean Air Plan). To make that determination, the Commission must consider three questions. The second question is whether the project would "reduce population exposure and protect public health".

The result of this project would be to shift transport of oil from ships to trains. Ships do not put populations at risk from an air quality aspect as they come from out to sea, through the bay, and never get close to population centers until they dock and off-load at the Benicia Port. Trains, by contrast, pass close by population centers in Roseville, Sacramento, Citrus Heights, West Sacramento, Davis, Vacaville, Fairfield and Suisun City.

It seems that this project would increase, not decrease, population exposure to emissions and, in fact, the DEIR states that there would be significant emissions for nitrogen oxide in those cities which cannot be mitigated. Nevertheless, the DEIR makes the finding that there is no air quality impact in regards to this question because "there are no 2010 Clean Air Plan (CAP) measures applicable to the Project."

<u>Question 6</u>- Is the fact that there are no CAP measures applicable to the project sufficient to make a finding that there are no air quality impacts?

CEQA guidelines (S.15064.4) relate to determining the Significance of Impacts from Greenhouse Gas Emissions. Among the things the City should consider are whether the project "increases or reduces GHG emissions resulting from the project in comparison to baseline conditions; whether the emissions exceed an adopted threshold of significance; and the extent to which the project complies with plans for reductions of GHG emissions. "(CEQA Deskbook, 3rd Edition). The DEIR should describe what is the baseline level of significance for GHG, who established it, how was it calculated, and where is it available for review?

<u>Question 7</u>- If BAAQMD set this threshold, and the project has cumulatively considerable GHG emissions, but is still below the air district threshold, does that mean that the impacts are less than significant?

<u>Question 8</u>- If the limit for each toxic emission is 10,000 tons, and the project emits 9,500 tons for each emission, is that considered less than significant? Or is there a cumulative impact that should be acknowledged and reported within the DEIR?

In the discussion of GHG, the DEIR states that the project will emit a net increase of 6,726 metric tons of carbon dioxide per year, but since that is below the City's significance threshold of 10,000 metric tons, it is not considered significant.

<u>Question 9</u>- Please provide copies of the City's significance thresholds for GHG emissions or explain how they were calculated or determined.

Cumulative Impacts

P. 5-15 of the DEIR lists various projected increases in rail and other projects in the Suisun marsh, and then concludes "The cumulative increase in railcar usage, however, would occur on the existing

mainline track where baseline usage is already the routine. Thus, addition of project related railcars would not involve a cumulatively considerable contribution to impact on biologic resources. "

Question 10- What is the baseline used for this purpose and how was that determined?

Question 11- How is an increase in railcar usage considered to be the same as the baseline usage?

Page 5-16 of the DEIR states that changing transport of oil from ship to rail actually lessens the chance of an oil spill, and also states that the cleanup of an oil spill in marsh land would be easier to clean up than a spill in the Bay because it would be easier to contain. The DEIR should provide information to support these conclusions.

Traffic Impacts

It has been repeatedly stated that railroads, as a federally regulated entity, cannot be regulated in any way by the City. As a result, one of the alternatives presented in the DEIR to limit trains to once per day, or to have trains only operate at night, was deemed by the DEIR to be a non-permissable condition and that, therefore, the idea of reducing the number of daily trains as an alternative could not be considered.

<u>Question 12-</u> If that is the case, how can the applicant assure with any level of certainty that train deliveries will only happen in the described off-peak traffic hours? Given that these oil trains will share the tracks with AMTRAK and other freight trains, it is reasonable to assume that, occasionally, deliveries will be delayed, and could then reasonably be anticipated to occur during peak traffic times. I would like to see the traffic consultant re-do their traffic analysis to reflect impacts of traffic delays in the event trains were to enter Benicia at peak hours.

The traffic study from Fehr and Peers is included in the Appendices. It describes traffic Level of Services (LOS) as going from A (no delays) to E (more than a 35-50 second delay) to F (more than 50 second delay with intersection capacity exceeded). The Benicia General Plan calls for no worse than Level D (long traffic delay of 25 to 35 seconds) throughout the City, but does not have a standard for at-grade RR crossings as exist at Park and Bayshore Road. The traffic study says that LOS levels may not be appropriate to use in industrial park because people driving there "have a higher tolerance of delay with intermittent at grade rail activity".

<u>Question 13</u>- Is this assumption about people's different tolerance for delays in the Industrial Park supported by any evidence? If so, please provide evidence used for that conclusion.

Because the estimated crossing of an oil train is 8 1/2 minutes, every crossing of an oil train at Park/Bayshore will, by definition, create a LOS F at that and surrounding intersections. According to the traffic study, "During periods of the day when traffic volumes are low, it is possible that an atgrade crossing will result in LOS F, with resulting vehicle queues accommodated within storage capacity provided at intersections. In that case, it is less likely at-grade crossings will adversely affect the transportation network."

Although the City doesn't have significance criteria for at-grade crossings, the traffic study recommends using the following criteria to determine if impacts are significant: "if train crossings cause vehicle backups that impede other traffic such as on to the mainline of 680 or other intersections not trying to cross intersections, and if the project would result in a change of traffic patterns or would it result in inadequate emergency access."

Table 2-6 says traffic backups during train crossings would be 975 ft on 680N off-ramp, about 7 times longer than without a train crossing, but since the ramp is 1300 ft long this won't be a hazard.

<u>Question 14</u>- How was it determined that traffic backups would only reach 975 feet and not 1300 feet onto the mainline of 680?

As part of the traffic study, the traffic consultant set up a video camera in April, 2013 and recorded all train crossings for a one week period. The study showed that the average train crossing on weekdays was under 3 minutes, with 86% of crossings taking under 5 minutes. Yet the traffic study assumes a baseline condition of 11 minutes 50 seconds (p.21 of traffic study), despite the fact that only 2 of 58 trains recorded in that week took that long to cross the intersection.

<u>Question 15</u>- Why use a train crossing of nearly 12 minutes used as the baseline if it only happens twice a week, and the average crossing was closer to 3 minutes?

The longest reported train observed in the study was 35 cars, and took over 16 minutes to cross the Park/Bayshore intersection. The baseline being used in the DEIR does not reflect the actual results of the video study of train crossings performed by the traffic consultant. That study showed significantly shorter average crossing times. I would like to see the consultant use a baseline that reflects the majority of actual train crossing times.

<u>Question 16-</u> How would a 50 car train take only 8 1/2 minutes to cross if a 35 car train takes 16 minutes to cross? I would like more information on why the consultant used an 8 1/2 minute projected train crossing interval when trains with significantly fewer cars took longer than 8 1/2 minutes to cross the same intersection.

On P. 1307 of the report it is stated that, if there are no train crossings at intersections, traffic is acceptable, but if there were train crossings of more than 5 minutes, conditions at intersections degraded to LOS F. The study says there was, on average, one train per day that took over 8 minutes to cross. Table 3.1 shows LOS F at different intersections in off-peak hours and assumes a 8 1/2 minute train crossing for the oil trains. Table 3.2 of the traffic study compares the existing situation to the situation with proposed oil train crossings. Yet the study shows queue length of cars waiting to cross over the intersection to be shorter with oil trains than without the trains.

<u>Question 17</u>- How would a presumed train crossing of 8 1/2 minutes, 4 times/day, not worsen traffic delays at Park/Bayshore intersection?

Table 2.5 on p.22 of the traffic study shows that 5 intersections would degrade from LOS A to LOS F at times of train crossings, but assumes a nearly 12 minute train crossing as the baseline, despite an average train crossing of less than 3 minutes, with 86% of all trains taking less than 5 minutes to cross.

Using that one time exception as the baseline, the study concludes that the delays caused by oil train crossings were less than significant. Using this much higher baseline assumption vs. the existing documented reality of train crossings allows the study to make a conclusion that the intersections are already at LOS F, even though there are only two trains a week that actually take that long.

Using the assumption that those twice weekly events are normal (or baseline), the study then concludes that the addition of 4 trains a day (which would obviously mean LOS F) is not a changeand therefore represents a less than significant traffic impact.

This is important because a finding of a significant impact in a DEIR requires a mitigation of that impact, or explanation of why it cannot be mitigated. And the only real way to mitigate this particular impact of excessive traffic delays (as well as emergency services discussed below) is to either not

have the extra crossings or require a mitigation measure like the construction of an overpass or underpass to allow traffic to pass unimpeded.

Table 3.1 and table 4.2 (cumulative intersection crossings) shows delays actually decreasing at all intersections with additional trains vs. no additional trains. The conclusion that delays decrease with more train crossings needs to be supported by documentation.

Impact on FAST Transit

Page 1315 of the study says that train crossings will likely happen between 330 and 4 pm and 6 and 8 pm. How is that assertion made, if UP refuses to allow any limitation on scheduling of their trains? It also says the likelihood of a bus wanting to cross at the time of a train crossing is small.

Question 17- What constitutes a "small likelihood" and how was it calculated?

The study also says that FAST already travels on clogged segments of I-80 and I-680, and that since delays are variable, delays from oil train crossings should not be a factor.

<u>Question 18</u>- Does the fact that traffic delays occur elsewhere outside the project area, at various times of the day, lessen the impact of delays occurring within the City because of the project?

Question 19- Was FAST consulted on the traffic study, and do they agree with its conclusions?

Emergency Preparedness

The National Fire Protection Association standard for emergency response time in 2012 was 5 minutes from dispatch. The Benicia Fire Department (BFD) has an agreement with Solano county emergency medical services to provide advanced life support for all medical emergency calls within 7 minutes. The BFD tries to reach all incidents within 7 minutes. In 2012, the BFD response time was 5min 13 seconds in the rest of the city and 6min 35 sec in the Industrial Park.

<u>Question 20-</u> If a train crossing were happening at the time of an emergency call to BFD from within the Industrial Park, and the train takes 8 1/2 minutes to clear the intersection of Park and Bayshore, how could BFD respond in a timely manner? How much time would be needed to access a call via 2nd street if the call was to a site just north of the Park/Bayshore intersection? What if cars were clogging the street in each direction waiting for the train to clear?

The study says the probability of an emergency happening at the time of a train crossing is low. I would like to see more information on emergency preparedness and how that would be addressed, even if chances of an emergency are low.

<u>Question 21</u>- What is the probability of a simultaneous train crossing and emergency service call, and how was it determined? Is it sufficient to say that the probability of an impact is low, without providing information supporting that assumption, and then conclude that the impact is therefore less than significant?

Mitigation measure 1 says the applicant will work with BFD to prepare an action plan in the event an emergency occurs. According to the CEQA training provided to the Commission by its Attorney (Kat Wellman), CEQA does not allow the adoption of mitigation measures based on the promise of a future action.

According to the DEIR, Valero would be the first responder for any accident, fire or derailment on their property. BFD would be the first responder outside the refinery, but within city limits.

<u>Question 22</u>- Have BFD personnel been trained to fight crude oil fires? Have they had the advanced training offered by the National Fire Protection Association for hazardous materials responders which has sections specifically devoted to tank car incidents?

Anywhere outside Benicia, the DEIR says UP would be the first responder.

<u>Question 23-</u> How many first responders does UP have on call to serve the Roseville-Benicia main line at any one time? Where are they stationed? How much foam does UP have on hand to fight fires and where is the foam located? Can the consultant obtain this information?

Emergency Planning and difficulty in fighting oil fires of Bakken Crude

Attempting to put out fires involving Bakken crude has proven to be very difficult. According to testimony by the National Fire Protection Association (NFPA) to the National Transportation Safety Board in March, 2014, crude oil and ethanol fires caused by derailed freight trains are left to burn out on their own because first responders can't extinguish them. "They are no-brainers," according to Greg Noll of the NFPA. "There is very little we as first responders are going to do." (White Plains NY Journal Mar 17, 2014).

On December 30, 2013 there was a derailment and explosion in Casselton, North Dakota involving a train carrying Bakken oil. The oil tanker train belonged to the BNSF Railway Company. BNSF spokesman Steven Forsberg said "A fire ensued, and quickly a number of the cars became engulfed," adding that firefighters had managed to detach 50 of the 104 cars but had to leave the rest before concluding, "They can't fight the fire due to the extremes of the explosion and high temperatures." Firefighters had to let the oil burn for 18 hours until foam was delivered.

In the explosion of the oil train in Quebec, firefighters tried to fight the fire with only water, were unsuccessful, and had to wait until 8000 gallons of foam was delivered from Toronto, 8 hours away. The foam used to fight Bakken oil fires is quite expensive-it costs \$45/minute to use. The DEIR says Valero has less than 3000 gallons of foam on hand. Would that be sufficient in a fire that involved an entire 50 car train of Bakken oil? How much foam does BFD have on hand? Who pays for the foam used by BFD?

After the derailment and explosion of the Bakken oil train in Quebec last year, the National Transportation Safety Board did an extensive investigation along with their Canadian counterparts. The investigators recommended that rail carriers be able to ensure that they are capable of responding to worst case scenarios of the discharge or a fire of the entire quantity of product carried on a train.

<u>Question 24</u>- Does UP have an emergency response plan that anticipates responding to a discharge or fire of a 50 car trainload of Bakken oil? Has that plan been shared with the BFD, the California Office of Emergency Services as well as up-rail emergency responders?

According to the Chair of the National Transportation Safety Board (Deborah Hersman), the agency is concerned that a "major loss of life, property damage and environmental consequences could occur as a result of the 400% increase in oil by rail since 2005. Our safety regulations need to catch up to reality." (Toronto Globe and Mail, 1/24/14).

In a memo to the Pipeline and Hazardous Materials Safety Administration on Jan. 21, 2014, NTSB Chairman Hersman wrote that "Oil spill response planning requirements for rail transportation of oil/petroleum products are practically nonexistent compared with other modes of transportation." Unlike marine barges, pipelines and fixed facilities that transport and store crude oil, U.S. railroads

are not federally required to have comprehensive plans in case of a worst-case oil disaster. When it comes to oil spills – as opposed to emergency planning — railroads must write basic response plans, but they don't need to be shared with state agencies or sent to the Federal Rail Administration. These basic plans don't include training drills and exercises, assigning a qualified individual to man the response or plans for a worst-case discharge – which can result in up to three million gallons spilled. Railroads only have to file comprehensive plans if they haul a tank car with a 42,000-gallon capacity – and no tank cars currently in use can hold that much. Though U.S. railroads don't have to disclose any information about hazardous materials to communities, they are not prevented from doing so.

The DEIR contains a document from UP called the Hazardous Materials Emergency Response Plan. The plan is dated 2009, and makes no mention of oil fires or the special equipment and training needed to fight fires involving derailments of oil trains. Are there other documents or plans that UP can provide that deal specifically with how possible fires, leaks and explosions involving Bakken shale oil and tar sands oil would be addressed?

Financial responsibility of cleanup

After the Bakken oil explosion and fire in Quebec, the railroad involved declared bankruptcy and left the local and provincial governments responsible for rebuilding their town. After an oil spill from a train in Michigan in 2011, in which tar sands oil sunk to the bottom of the Kalamazoo river (because tar sands oil is heavier than water), the cleanup is still ongoing three years later- with cleanup costs exceeding \$1 billion.

The NTSB has sent a letter to the Federal Railway Administration stating that railways are "not required to develop detailed emergency response plans for crude oil shipments. As a result, the burden of responsibility for responding to an accident or remediating the aftermath is still left with local communities." In testimony before the Senate, NTSB Chairman Deborah Hersman said "no community is prepared for a worst case event". (Toronto Globe and Mail, 1/24/14).

<u>Question 25</u>- Who would be responsible for the cost of cleanup if there were a derailment, leak or fire outside Valero property in a sensitive environmental area like the Suisun marsh or in a populated community up rail?

Question 26- Are there any limitations on liability for UP in the event of a leak, fire or explosion?

<u>Question 27</u> - Would Valero be liable for damages or clean-up costs for an accident of a train full of oil they owned?

Presumably, UP carries insurance to pay for cleanup of derailments and accidents. In January 2014, the Wall Street Journal (WSJ) had an article describing insurance issues for railroads hauling crude oil. The article concluded that any railroad would be unable to cover costs of an oil train explosion in an urban area. According to the Journal story, even if railroads wanted to buy insurance for a catastrophic accident, no one would sell it to them. Marsh and McClellan provides insurance to railroads. James Beardsley of the firm was quoted in the

article as saying there is not enough coverage in the commercial market anywhere in the world to cover a worst case derailment scenario.

The worst derailment and explosion so far, in Quebec, has estimated liabilities of \$2 billion and cleanup costs of \$200 million. The shipper of the oil in that case is denying responsibility since they were not the owner of the oil, and the railroad involved has filed for bankruptcy.

There is a fund that is supposed to be used for cleanup costs of oil spills. Most oil companies pay an 8 cents per gallon excise tax into the Oil Spill Liability Trust Fund. But a 1980 federal law states that tar sands oil (AKA diluted bitumen (dilbit) is not classified as oil. In 2011 the IRS ruled that oil companies do not need to pay this tax on tar sands oil. The fund itself is at risk of running out of money because of the cost of the cleanup of the BP oil spill in the Gulf of Mexico, as well as the cost of the tar sands spill in Kalamazoo Michigan which to date has cost over \$1 billion. Are there any other funds available for clean up costs and reimbursement for property losses due to oil spills by rail?

<u>Question 28</u>- In the event of a tar sands spill into the Suisun Marsh, or the Feather River Canyon, or a derailment of a Bakken crude unit train in downtown Sacramento, who is responsible for paying for the clean up of the spill and associated property damages?

Explosiveness of Bakken Crude

Although Bakken crude is listed in the DEIR as one of several crude oils that could be brought in on oil trains by the applicant, it represents 70% of all oil in the US being transported by train, and 85% of all oil moved by train in California (according to the California Energy Commission). As such, it is reasonable that the DEIR should analyze the characteristics of Bakken as it relates to air emissions and emergency preparedness.

On Jan 2, the Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a safety notice to the general public, first responders, and shippers stating that Bakken crude oil may be more flammable than traditional heavy crude, and advised that trains carrying Bakken crude be routed away from populated areas and sensitive areas.

<u>Question 29</u>- Are there any plans for UP to avoid populated areas like downtown Sacramento or sensitive areas like the Suisun marsh?

The Pipeline and Hazardous Materials Safety Administration has said that properly characterizing the oil and its properties could help improve awareness of the risks involved in its transportation, or in the case of an accident. Properly labeling the oil also could ensure that it is moved and transported properly, the agency said. "Based upon preliminary inspections conducted after recent derailments in North Dakota, Alabama and Quebec involving Bakken crude oil, PHMSA is reinforcing the requirement to properly test, characterize, classify, and where appropriate, sufficiently de-gassify hazardous materials prior to and during transportation". The agency said that the quality of light sweet crude oil from the Bakken fields should be categorized in one of two groups of products, including one for materials that have a low boiling point. "This means the materials pose significant fire risk if released from the package in an accident," the agency said.

According to a July 7. 2014 article in the Wall Street Journal, companies extracting oil from the Bakken Shale field in North Dakota have not installed necessary equipment to de-gassify Bakken and make it safer to handle and transport. "The result is that the second fastest growing source of crude in the US is producing oil that pipelines often would reject as too dangerous to transport...Only one stabilizer, which can remove the most volatile gases before transport, has been built in North Dakota and it hasn't begun operation. Stabilizers use heat and pressure to force light hydrocarbon molecules-including ethane, butane and propane-to form into vapor and boil out of the liquid crude. The operation can lower the vapor pressure of crude oil, making it less volatile and therefore safer to transport by pipeline or rail tank car."

<u>Question 30</u>- Will Valero require that all Bakken oil shipped to their refinery be sufficiently degassified to make it safer to transport?

Rail Cars, Tracks and Positive Train Controls

The project anticipates 4 trains per day traveling to and from Roseville to Benicia, through several cities as well as the Suisun Marsh. Among the concerns listed by the National Transportation Safety Board in the transportation of crude oil is the ability of older and deteriorating rail lines and bridges to handle the exceptional weight of oil trains.

<u>Question 31</u>- What is the weight of a 50 car train carrying crude oil and what are the weight limits on bridges on the rail line between Sacramento and Benicia and in the Suisun marsh?

<u>Question 32</u>-With rising waters in Suisun marsh predicted because of climate change, what impact would that have on the condition of rail lines?

These questions are not addressed in the DEIR.

In the United States, freight railroads are privately owned and the companies that operate them are responsible for track maintenance and upkeep. According to the General Accounting Office, the Federal Railroad Administration (FRA) is able to inspect only two-tenths of one percent of the railroads operations each year.

Rail cars - Positive Train Controls

Federal Law (RSIA of 2008) requires railroads to implement Positive Train Controls (PTC) by the end of 2015. PTC is a computerized system to control speeds and avoid collisions and derailments. Railroads were required to submit PTC implementation plans to the Federal Railway Association.

<u>Question 34</u>- Has Union Pacific's implementation plan for PTC been approved, and will it meet the December, 2015 deadline for implementation of PTC on the Roseville-Benicia mainline?

Likelihood of Oil Spill

The report from Dr Barkan in the DEIR appendix says that the chance of a spill between Roseville and Benicia is one in 111 years. It is impossible for a layperson to understand the calculations Dr. Barkan used in his projections, and it would be helpful if this could be simplified to make it comprehensible to the average educated person. While I do not pretend to understand the complexity of his study, the conclusion seems counter-intuitive when considering the number of oil train derailments and fires that have occurred in the last 18 months.

The study states in section 3.3 that the railroad industry hazardous materials accident rate has declined in the years since 2009. This is in conflict with data from the US Pipeline and Hazardous Materials Safety Administration, which stated that there was more crude oil spilled from trains in 2013 than in the previous 37 years combined, with more than 1 million gallons of oil spilled in 2013 alone.

Figure 4 in the study shows data from the FRA from 1980 until 2012, which roughly tracks with data from Pipeline and Hazardous Materials Administration.

But the study does not show data from 2013, when accident and spill rates spiked with the surge in oil train traffic from less than 100,000 gallons spilled to more than 1 million gallons.

The study used train derailments from 2005 to 2009, when crude oil was not being shipped in trains in significant amounts during that period.

<u>Question 35</u>- Did the study take these facts into account when predicting the likelihood of an oil spill from a train?

I would like to see the consultant and sub-consultant (Dr. Barkan) update his study using data from 2013 and 2014, and issue an executive summary in layman's language explaining his conclusions and including the source documents used for his conclusions.

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Amy Million - addition to my public comments

From: To: Date:	"Steve & Marty Young" <escazuyoungs@gmail.com> Amy Million <amillion@ci.benicia.ca.us> 9/15/2014 12:36 AM</amillion@ci.benicia.ca.us></escazuyoungs@gmail.com>	R	E O SEP	E 15	<u>IVE</u> 2014	
Subject:	addition to my public comments	Lco	CITY	OF B	ENICIA	
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at the hearing on sept.11, Valero representative (john hill?) said that Valero was currently processing Bakken shale oil.

In response to my question as to how the Bakken oil arrived at Valero, he said that it was transported by barge.

Please add to my public comments the following question::

where was the barge loaded with the bakken oil before it was transported to valero?

Thanks

Steve Young

Valero Benicia Crude by Rail Project.

Questions and comments from George Oakes Sr.

The project description is for a two lane rail car off loading ramp and related piping and safety equipment to allow for use of crude oil delivered via rail cars versus marine vessels. The project is designed to replace crude delivered via marine vessel (ships and barges). A Permit for the Project is pending a successful certification of the EIR.

The Draft Environmental Impact Report (DEIR) has been provided as a draft response to the intent of the California Environmental Quality Act (CEQA) requiring governmental agencies to consider the impacts and potential consequences to the environment.

I believe the DEIR is flawed as it does not mention or consider the total Bay Area Impacts of crude oil delivered via rail cars. Currently, 3 of the 5 refineries are using rail cars for delivery of crude oils. Their operations and impacts need to be considered and included with those of this project. Benicia and Valero do not stand alone In the Bay Area, therefore, the entire impact needs to be presented to the Planning Commission with separation of all users and their individual impact then totaled for the cumulative impact (this may not be simple math!). Include the permitted emissions and reported violations for each for all refineries using crude by rail delivery.

The California State Attorney General reviewed the Recirculated Environmental Impact Report for the WesPac Pittsburg Energy Infrastructure Project (SCH # 2011072053) and provided the following comments on January 15, 2014 to the City of Pittsburgh:

"As set forth below, our review of the RDEIR has revealed some significant legal problems under the California Environmental Quality Act (CEQA). As a threshold matter, the document fails to disclose the sources and analyze the environmental impacts of the new crude. There are a wide range of crudes with different chemical compositions currently available in commerce, and an increasing number of unconventional crudes, such as crudes produced from bitumen sands (so-called "oil sands" or "tar sands"). Different types of crude can have very different types of impacts on such things as local air quality, greenhouse gas emissions, and the risks associated with accidental releases.

This fundamental defect affects the adequacy of the entire document. Because of this and other errors, the RDEIR fails to:

- Adequately disclose and analyze local air quality impacts to the already impacted community of Pittsburg;
- Consider the effects to other Bay Area communities of refining the new crudes;
- Propose and analyze feasible mitigation that could reduce local air quality impacts;
- Adequately disclose and address the risk of accidents that could result from transportation and storage of the new crudes;

- Fully disclose and consider mitigation for the Project's climate changerelated impacts; and
- Consider a reasonable range of feasible alternatives that could reduce the Project's significant impacts.

We urge the City of Pittsburg to correct these deficiencies before certifying the RDEIR.

While the Valero project is different from the Pittsburgh project I believe the issues noted must be addressed. The DEIR does address most of these items, but not the transportation and storage of the crude materials. The large and unforgettable rail accident in Quebec is a telling potential impact that has not been addressed, other than a study that stated the likelihood of an accident is every 111 years. Totally inadequate.

At issue is the proposed statement that the Project will reduce harmful emissions in the Bay Area. Numerous citizen and specialists have made public statements that these figures and/or the methods used to arrive at the DEIR conclusions may not be accurate. The DEIR also provides Table 2-1, Summary of Impacts and Mitigation Measures for the Valero Benicia Crude by Rail Project. Impacts 4.1-1b, 4.1-2 are shown as **Significant and Unavoidable** yet no mitigation measures are offered. This is inadequate and possibly misleading when read with the statements that this project will reduce harmful emissions. These items need greater clarification.

Wikipedia defines Accident as: "An **accident** or a **mishap** is an unforeseen and unplanned event or circumstance, often with lack of intention or necessity. It usually implies a generally negative outcome which might have been avoided or prevented had circumstances leading up to the accident been recognized, and acted upon, prior to its occurrence."

Accordingly, this Projects needs to provide for **accident mitigation**, **ownership**, **and responsibility**. The following is provided as background and the issues/questions.

- Crude oil by rail has increased significantly and looks to have the potential to continue to increase in the short and long term.
- Crude laden trains seems to be having more accidents,
- The crude being shipped is more volatile and appears to be more prone to fire in the event of an accident.
- The severity of the accidents with crude cars seems greater,
- The availability of insurance for rail companies is limited. To wit, the \$25,000,000 policy for the rail company operating the train that exploded in Quebec. This event is more than 1 year old and the cleanup and legal issues have not been resolved, ongoing cleanup is more than \$200,000,000 and the total recovery is estimated to be greater than \$2,000,000,000. While this may not be a great amount for Bill Gates it should be for us; taxpayers pick up the tab for uninsured costs, ask them in Quebec.

- If the use of rail cars to deliver crude oil is such a great method please provide an Insurance or Bond underwriter's estimate of the costs for the type of insurance or Bond needed to provide TOTAL coverage in the event of an Accident. <u>As the oil would not be traveling to Benicia unless</u> <u>this project is approved the coverage needs to provide</u>:
 - Full living wage to those directly impacted by the Accident,
 - Immediate loss of income payments and then full recovery of losses due to lack of access, loss of business and/or damage to local businesses,
 - Full costs to return any area impacted by the Accident to a Normal life style and expectation of a similar future.
 - Provide methods and measures needed to lessen the cost of such coverage as well and the need to adjust coverage amounts based on an underwriter's review of what they determine are pertinent facts.
- One key issue of the Quebec Accident was who actually owned the product and who had responsibility for the product when. Accordingly, the issue of who owns the product and who has both the operating and financial responsibility for the crude needs to be provided. There can be no ambiguity on this issue.
- The State of California is working to increase the funding for training and outfitting first responders in light of the increased rail car usage. Based on the comments made to Congress by firefighters and first responders, this may be inadequate. The incremental cost to train for, provide equipment and resources needs rests with the entity bringing the new and unique requirement. Other have mentioned the foam needed to respond to oil fires. More equipment and personal to operate them may be needed as well. Question is, what is Valero offering in this matter?
- I really do not agree with the idea that an accident is not anticipated to happen for 111 years. This needs to be presented in layman's terms and background information so we can all agree on this or other mean time between failure questions. As stated above, we do not stand alone. This impact needs to be addressed based on the increased and increasing volume of cruder oil by rail in the entire Bay Area.

September 15, 2014



TO:AMY MILLIONFROM:SUSAN COHEN GROSSMANSUBJECT:COMMENTS ON Draft EIR for Valero Crude By Rail (VCBR) Project

The initial study and the EIR form the basis for public discussion of the project. The final EIR will become basis of any conditions that are applied to the use permit that has been requested by the applicant.

Questions. I am submitting the following questions pertinent to the DEIR:

- 1. Scope of DEIR. The project includes not only trains offloading at Valero, it would result in increased rail traffic carrying crude oil, from Roseville (or more accurately, from the source of the oil) to Benicia and the resulting transport of final products and/or waste products out of Valero to its final destination (overseas, outside CA, inside CA, etc.) possibly also via rail. In numerous parts of the DEIR, there is the statement that because the crude oil is being transported by rail, that the City of Benicia may not include mitigations for that which it doesn't regulate. To quote, for example, page ES-5, "Alternative 1 may be legally infeasible". The air basins to the east of the one that Benicia lies in would have negative environmental effects. Per the DEIR these are not the jurisdiction of this EIR; again, because the railroad is federally exempt from local regulating. Question: Since the City is preempted by federal law as to the geographic range of the project analysis, then which agency(s) are responsible for review of the changes that the increased transport might bring?
- 2. Effects. Refer to Table 2-1. Impact 4.11-4 and Its Mitigation Measure refer to that "Valero shall be responsible for the maintenance of the camera during the life of the Project." Question: What is the time (start and end) for the "life" of the project? This should be clarified so that results can be assured to be in line with expectations.
- 3. Transportation of Materials Out. The project discussed at length the product that will be transported into Valero. Questions: What product(s) will be transported out via rail as a result of this project? Will volumes of the transport of those products out be increased? Will they be different products than are currently being transported out? Currently, per the DEIR, Valero exports via rail the following: asphalt, petroleum coke, and LPG. Questions: Will there be more transportation of products beyond the ship port, i.e. will some of the exports go out via rail? Will the new tracks being installed be used to transport out product or only empty rail cars? Will the current uses of track 700 remain unchanged?
- 4. Changes Needed for New Product Coming In. Question: Does Valero plan to make any changes (other than described in the DEIR) to existing facilities or operations for the additional crude oil?

- 5. Hydrogen Plant. Valero has a permit from BAAQMD to construct a hydrogen plant. This permit expires 12/2014. Questions: Does Valero plan to request an extension of this permit? Does Valero plan to construct this plant at a future date? Page 5-5 refers to Page 3.3.3 for more details about the VIP Project? Where is page 3.3.3 or is this a typo? If it's a typo, which page was it meant to refer to?
- 6. Safety. Question: How does Valero plan to change its safety procedures with the addition of crude oil coming in by rail, if at all? The DEIR refers to the MOC Process (Management of Change) and MI Program (Mechanical Integrity). Question: Will they be revised with the changes in operations, specifically the bringing in of crude by rail?
- 7. PHMSA (Pipeline and Hazardous Materials Safety Administration) Regulations. When the PHMSA regulations call for use of DOT-111 cars, Valero has stated that they would use 1232 cars rather than legacy DOT-111's. Questions: Is this enforceable? Would Valero be compelled to do so or is this advisory? What if the car standards change in the future? How does the PHMSA assure the DEIR reader that this will be adhered to, now and into the future?
- 8. Tank Car Handling on Valero Property. The process of transporting the crude oil to Valero's unloading rack is described a bit vaguely. After the 50 car train gets to Benicia, somehow it is transported and broken up into two 25-trains that are positioned on the side of the unloading rack with UPRR locomotives attached to each. Valero is then in charge of the offloading. After UPRR/Valero inspections, then UPRR would move the 50 car train to the departure spur across Park Road and to the east. Questions: How does the 50 car train get broken into two 25-car trains and then reassembled? Can the details of this process be explained step by step, including the locations for each of the steps?
- 9. Air Quality. Questions: At any site (including a nearby residence) would NAAQS (federal air standards) be exceeded? Does BAAQMD do any ongoing testing as part of the annual renewal of the permit to Valero? Are the 2010 BAAQMD thresholds of significant being applied to this project or does this project follow the December 1999 CEQA Guidelines? Were permits issued in connection with the prior CEQA (for air quality) for the maximum allowable levels of equipment operation or for the 3 year average levels? If for the 3 year average levels, was this for the period 12/09-11/12? If so, were there any unusual occurrences, such as a turnaround project which would skew the data for this particular 3 year period?
- 10. Air Quality to Neighboring Air Districts. Questions: If Yolo-Solano and Sacramento Municipal Air Quality Management Districts both have unavoidable <u>significant</u> impacts and Benicia has no jurisdiction because rail is federally regulated, does this put Benicia in the position of being a bad neighbor? Isn't this counter to the spirit of cooperativeness between cities that Benicia would also expect from its neighbors?

- 11. Level of Emissions. Rail v Ship. It's stated in the DEIR that locomotives generate more emissions than ships per miles transited for ROG, NOX, CO, PM10 and PM2.5. It goes on to state that the DEIR cannot evaluate effect of the project because it cannot predict the length of the train trips if the project is approved, nor can it predict the length of the ship's journeys if it's not approved. Therefore, it uses very broad estimates to conclude that rail pollutes less than ship and the entire report is based on these rough numbers. Questions: Isn't there a more quantifiable way to measure the differences? What about time idling for ships and trains? With the differing procedures for offloading and handling the crude, would train emissions as idling be a factor to be considered? Some ports have electrification process so ships "plug in" while in port rather than burn fuel and create emissions with vast improvement in air emissions for port area. Question: Do trains have similar options or options for fuel sources with different emission levels?
- 12. Federal Railroad Administration (FRA). Questions: What is the role of this agency? Since the project has impacts that are not regulated by Benicia or the State of California, but which are federally regulated, why does the DEIR state (page 4.4-2) that the project does not require FRA approval? Which federal agency(s) regulates the project where it's outside the authority of the city, regional air quality management district or the state?
- 13. Energy Efficiency. Pages 4.4-8 through 4.4-9 discuss the energy efficiency of transport by rail as compared to by ship and that ship uses 340 person miles per gallon as compared to rail which uses 190 person miles per gallon. Question: How does this project affect the bottom-line? The DEIR states that the Refinery would continue to be a net exporter of energy to the marketplace. Thus using the less efficient method of transport (rail) would be a less-than-significant effect. Question: How is this conclusion logically derived?
- 14. Track Inspections. Refer to page 4.5-9. Question: Will this project increase the percentage of track being inspected?
- 15. Geotech. Questions: When will this project's site be evaluated by California Geological Survey? Is the geotech analysis part of the EIR?
- 16. Seismic. Mitigation Measure 4.5-2 (refer to page 4.5-17) refers to seismic incidents. Questions: What is meant by "a seismic incident with the potential for track damage"? What will happen if a train is on the track during such an incident?
- 17. Greenhouse Gases (GHGs). Question: What are the effects of idling trains on GHGs?
- 18. Carbon Emissions. Footnote 5 on page 4.6-13 states that it would be overly speculative to estimate emissions from tugboats, slower cruising speeds, etc. Question: Does this mean that therefore, the estimate of 6,726 more tons of emissions (as discussed on the prior page) is not accurate?

- 19. Hazardous Materials. The refinery would have to modify its SPCC and FRP for crude (page 4.7-2). Questions: Which agency(s) review the SPCC and FRP? Who reviews Valero's Emergency Management Plan? If this is done by the Environmental Health Division of the County Department of Resource Management what resources do they have to assist and lend expertise to this type of business? (They probably don't have an in-house oil expert since the County doesn't have many refineries.)
- 20. Railcars. The DEIR has a description of the desired qualities for the stronger railcars and a list of what's in place now on the 1232s. Question: Do the 1232 cars have bottom outlet valves that will remain closed during accidents?
- 21. Type of Crude. The crudes are classified as packing group I, II, or III with various boiling points and flash points. Questions: What packing group oils will be brought into Benicia? What about the flammability and combustibility? Who assures that they are corrected categorized? As of 3/6/14, US DOT requires all crude to be I or II and FRA/PMSA performed "operation classification". Questions: What were the results to date? Will these unannounced inspections continue?
- 22. Unattended Trains. The DEIR says that trains will not be unattended unless "specifically authorized" (page 4.7-15). Question: When would this be?
- 23. Transport/fires. Page 4.7-20 states that the risk of an accidental release of crude from Roseville to Benicia is insignificant and that one of the reasons is that "the transport of Bakken crude to the Refinery, if any, will be subject to the new, more stringent requirements" (extracted from third bullet). Question: Are the words "if any" incorrect since this DEIR is all about that there would be transport of crude by rail to the Valero Refinery?
- 24. Spills Off of Valero Property. The DEIR states that these could be handled by UPRR. Questions: What if the oil is being transported by UPRR onto Valero's property so is still under UPRR's control and there's a spill ON Valero property? Have any changes been made by UPRR with the huge increase in transport of the last 5 years of crude by rail?
- 25. SWPP. If the project starts after 12/31/14 there would need to be a new SWPP issued to Valero. Questions: Is it expected to be unchanged from the current SWPP if there is crude by rail being handled at the Refinery? Will content remain unchanged from the current SWPP?
- 26. Use Permit. Questions: Would Valero be changing any of the refining procedures with the crude by rail as part of the operation? Would a new/revised use permit be sought? Would this come to the Planning Commission?

- 27. Noise. Questions: What are the expected increases to the residential neighbors when winds are from the east or the north (as happens during the winter)?
- 28. Transportation. Questions: How many freight trains currently cross Park Road now? How would the Bus Hub be affected by the project? If the Level of Service (LOS) goes from A to D or F at 5 intersections, how can the project be classified as no impact? The DEIR states that "any" driver (page 4.11-4) that crosses Park Road is traveling to or from an industrial use. Question: The word "any" presumes a study; was one done?
- 29. Park Road and Iron Workers Rail Crossing Delays. Question: If there is, on average, no increase in the length of delays, are there, however an increase in the number of delays due to the increased number of trains?
- 30. At-Grade Crossings. The DEIR states that there are 24 at grade crossings along public roads and 9 along private. Of the 24, 6 are within urban areas. It states that most likely traffic is low at all but the 6 urban crossings. It goes on to state that the duration of the crossings would be "short" because the train would be going faster than 5 mph. Questions: Shouldn't the urban at-grade crossings be done at slower speeds, i.e. 5 mph? If this is correct, then would there be delays at the urban crossings due to the transport of crude by rail?
- 31. Emergency Response. The DEIR states (page 4.11-12) "The probability of an emergency incident occurring at the same time as a Project train crossing is low." Question: Can this be conclusion be explained?
- 32. Alternatives. CEQA has standards for alternatives analysis. Questions: How does this DEIR compare to the expectations in CEQA for alternatives? For example, does the 50% reduction plan get analyzed to CEQA standards or is it dismissed because of the increased air quality that would result if half of the ships continue to deliver? Is this an assumption that could be discussed in more detail? The volume of crude by rail discussion assumes that it must be a 1:1 change from crude by ship to crude by rail. Is this an adequate reason to dismiss this alternative?
- 33. Effects Found Not to Be Significant. On page 5-20 it states: "All identified environmental effects of the Project would be less than significant, or less than significant after implementation of the identified mitigation measures". Question: Is this an accurate concluding statement in light of the fact that numerous times in the DEIR it stated that it was noting items that are beyond the jurisdiction of the City of Benicia, thus, those items could not be evaluated. Does this means they are not significant?

September 15, 2014

Ms. Amy Million, Principal Planner City of Benicia Community Development Department 250 East L Street Benicia, CA 94510



Dear Ms. Million:

At the Planning Commission meeting of September 11, 2014 Planning Commissioners were advised to summit written comments on the Draft Environmental Impact Report (DEIR) for the Valero Crude By Rail Project (Project). The Project would allow the Benicia Valero Refinery to receive a portion of its crude via rail. Since there has been substantial comment on the DEIR and many comments for which I share a similar concern, I have limited my comments to those I feel have not been highlighted.

My written comments are intended to provide clarification of some of the issues I raised at the Planning Commission of September 11, 2014, but not to the exclusion of my verbal comments. I have reviewed the DEIR and offer the following comments:

• Chapter 1 Purpose of the Document it states "The document assesses the environmental impacts that might result from the Project, as it is described in the application to the City, as well as the cumulative impacts in the vicinity of the project area."

CEQA requires that the description of the physical environmental conditions must include both local and regional perspectives. The DEIR uses several descriptors such as "project area" "vicinity of the project area" "immediate vicinity of the project area" and "outside the project area"

Please provide clarification of each of these descriptors.

 Location - The DEIR is deficient in site specific information (physical conditions) of the project setting within the refinery. CEQA requires an EIR to describe the environmental setting to establish a baseline to determine whether project impacts are significant. 14 Cal Code of Regulations §15125 states, The EIR must describe "the physical environmental conditions in the vicinity of the project" as they exist when the Notice of Preparation for the EIR is published. The description of the pre-existing environment helps so that changes can be seen in context and for reviewers to check the Lead Agency's identification of significant effects.

The DEIR provides scant information on the actual area where the project is to be located. "New rail would be installed in the northeastern section of the refinery between the tank farm and fence line adjacent to Sulphur Springs Creek." Without knowing the conditions and possible current use of the "northeastern section of the refinery between the tank farm and fence line adjacent to Sulphur Springs Creek" (rail site), the reviewer does not have a clear understanding of any significant effects of the project.

What is the approximate size (length/width) of the rail site?

What is the topography of the rail site? Are there any structures on the rail site? Are there dikes on the site? Is there native vegetation in or adjacent to the rail site? Another section mentions Avenue A and D, and 9th and 14th Streets in the area. Are the avenues and streets within the rail site? Are they actively used for on-site traffic? If so what is the level of usage? Are the streets and avenues paved? Will the streets and avenues be relocated? Are there street lights?

As an example if the rail site is used on a regular basis for internal truck, car, and heavy equipment traffic the reviewer would have some concept of noise generation, water run-off, exposure for ground water infiltration, removal, etc.

While much attention was paid to potential residential impacts there was no discussion of industrial users near the rail site that could be impacted.

What is the distance from the rail site to the nearest industrial use? Was any analysis undertaken to determine impacts to industrial uses in terms of noise, vibration, lighting, etc.?

• Tank Cars - Valero states that they will buy or lease 1232 tank cars. Section 3.4.1.3 states "All tank cars used to transport crude oil from Roseville to Benicia would be owned or leased by Valero."

Will Valero also use 1232 tank cars from points north/northeast to Roseville?

There are several safety initiatives some of which are specific to braking systems. Do 1232 tank cars have brakes, and if so will the Valero owned or leased tank cars be fitted with these recommended braking systems?

The DEIR states that "Each tank car is nominally 60 ft long, has an approx. capacity of 700 barrels and a max gross weight on rail of 286,000 pounds."

Is this the weight of a filled tank car or empty tank car? How does weight affect the rate of inspection and was this factor used for safety inspections?

Air Quality - The public has raised a number of issues related to air quality. Of concern are the air quality impacts in air basins outside the Bay Area Air Quality Management District (BAAQMD). Solano County is located in two air quality basins, the BAAQMD and the Yolo Solano Air Quality Management District (YSAQMD). While boundaries have been established to distinguish between the two air basins, pollutants do not make that distinction.

What is the level of transport of air pollution between the two air basins? Was this factored into the analysis? Were forseeable increases in rail traffic included in the analysis? Biological Resources – As noted in Location above little information is provided on the rail site. Additionally, there is emphasis on project construction and minimal information on ongoing operation of the project and potential impacts to biological resources. Of special concern is the potential for run-off into Sulphur Springs Creek.

The DEIR states "Project operation would not significantly increase surface runoff", additionally on pg 4.8-3 Crude tank farm it states "Runoff from areas outside of diked areas surrounding the crude tanks would not come into contact with crude oil; therefore, it is discharged to Sulphur Springs Creek (and ultimately to Suisun Bay) through NPDES-permitted discharge point 006", There is further discussion on the relocation or abandonment of groundwater monitors in the rail site.

Since current use of that area is not adequately described how can these conclusions be supported? How can the reviewer properly assess this conclusion?

Was there an analysis of run-off in comparison with the current conditions and conditions with rail/tank/engines?

How will rain water be handled in the offloading rack basin, and how will it be handled during extreme storm conditions?

Without an analysis of current conditions and conditions with project operation how can the relocation or abandonment of groundwater monitors be justified?

While protection of nesting birds is discussed during project construction, it is left to chance if birds return. The conclusion is that if birds nest nearby after project operation they are presumed to be tolerant. If birds are present during construction the logical conclusion would be they would continue to habituate the area unless they were impacted by the ongoing operation of the project. Reliance on past studies is not equivalent to information on current conditions and is leading to unsubstantiated conclusions.

Has an assessment of plant, birds, and other wildlife been conducted under current conditions?

Are there planned post-operation assessment planned to determine any impact to plant and wildlife communities?

Noise – The DEIR does provide rail site specific ambient noise levels, thank you. It further
provides noise standards for trains, however no noise standards were provided for run whistles.
Although other industrial related activity is not considered a sensitive receptor, there should be
some consideration for those working in facilities in the industrial park.

Were the ambient noise levels for the site and the dBA standards for trains combined to create an estimated noise level?

Were any impacts assessed for industrial uses near the rail site?

Was vibration a consideration when evaluating biological resources?

• Cumulative impacts -A number of other crude by rail projects are identified under cumulative impacts. What consideration was made regarding the use of UPRR rail lines through Solano County by the future proposed rail project?

This concludes my written comments on the DEIR.

Sincerely,

Belinda Smith, Member Benicia Planning Commission