

February 8, 2015

***Via email to***

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Re: The City of Benicia's Final Environmental Impact Report for the  
Valero Benicia Crude-by-Rail Project

Dear Ms. Million,

On behalf of the undersigned groups, we submit the following comments on the City of Benicia's Final Environmental Impact Report (Final EIR) for the Valero Benicia Crude-by-Rail Project (the Project). The City released a Draft EIR for public comment in June 2014. After receiving numerous comments pointing out the deficiencies in the Draft EIR, the City recirculated the Revised Draft EIR in August 2015. The City published a Final EIR, which includes responses to comments, on January 5, 2016.

As described below, the EIR does not meet the requirements of the California Environmental Quality Act (CEQA) because it fails to properly analyze, disclose, and mitigate the Project's significant environmental impacts. Furthermore, the Final EIR fails to adequately respond to our prior comments submitted on October 30, 2015 and in the fall of 2014. We highlight the major deficiencies in the Final EIR below. We have also reviewed the staff report for the Planning Commission hearing on the Project and include our response to staff's recommendations in this letter.

**Air Quality.** In our prior comments, we explained that there is evidence that the Project will increase emissions from the refinery, either because it will increase total throughput or because it will increase the proportion of dirty crudes being refined. The Project also could cause additional transportation-related emissions. In the Final EIR, the City steadfastly maintains that there will be no increase in emissions, but its explanations do not hold water, given that the Project will add an entirely new method for importing crude oil.

First, the City fails to disclose and analyze the Project's effect on the throughput of the refinery, hindering the public's ability to evaluate whether the Project will increase refinery emissions. Indeed, evidence shows that the refinery is not currently operating at its maximum capacity. See Ex. A, Socio-economic Analysis of Proposed Regulation 12, Rule 15 (showing that Valero's recent effective throughput was 114,443 barrels per day);

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Ex. B (Valero website claiming total throughput capacity of 170,000 barrels per day); DEIR at 3-2 (“The Refinery’s crude oil processing rate is limited to an annual average of 165,000 barrels per day (daily maximum of 180,000 barrels per day).”). The City’s responses to comments assert that any oil imported by rail would be offset by equal decreases in oil imported by ship. But the City does not explain why that is the case, except to say that it is a “project objective.” Final EIR at 3.5-57. Nor does the City make that tradeoff a binding requirement of approval. Accordingly, the City’s description of the Project as “changing” the shipment method of 70,000 barrels per day of oil is inaccurate and misleading. The also City states that if Valero desired to increase the amount of crude oil delivered to the refinery, it could do so now by increasing the amount delivered by ship. Final EIR 3.5-58. Even if true, that is irrelevant to whether *this Project* will cause an increase in refinery emissions. If so, that increase must be disclosed and analyzed under CEQA.

Second, there is no doubt that changes in crude slate can affect emissions, even if there are no changes to the process equipment. Yet the City continues to withhold critical information about the type of crudes the Project will import, incorrectly claiming that the information is confidential business information. To the contrary, the particular crudes proposed to be imported should be made public, and the EIR should evaluate possible changes in air quality based on those changes. The City also continues to claim that blending the crudes into a “narrow” range of weight and sulfur content will avoid any negative air quality effects. Final EIR at 3.5-58. But the EIR fails to explain why the blended range is “narrow”—indeed, the stated range from 20° to 36° API gravity, and from 0.4% to 1.9% sulfur content. Draft EIR at 3-13 (stating range); Draft EIR at 3-7 (showing that the range accounts for nearly all types of crude oil, from light sweet to heavy sour). Furthermore, although the EIR states that the crude imported by rail will be stored in the same tanks currently used to store oil, it fails to analyze whether the different types of crudes imported by rail (e.g., those with higher psi) could safely be stored in those tanks.

Third, the EIR claims there will be reductions in transportation-related air pollution based on reduced ship traffic. But as explained above, there is no requirement that ship traffic actually decrease. It could remain the same if throughput increases. And even if throughput remains the same, the Project’s crude could replace crude currently imported by pipeline. The Final EIR brushes aside this possibility, stating that Valero does not “anticipate” changes in amount of crude received by pipeline as a result of this Project. Final EIR at 3.5-57. However, as we explained in previous comments, it is clear that pipeline sources are diminishing. Finally, even if there were a proportionate decrease in ship traffic, the EIR fails to explain whether the resulting additional capacity at the port will be used by ships for other purposes. For example, will the additional port capacity be used to export refined products internationally? If so, then the supposed “decrease” in ships from the Project is illusory. The EIR must disclose any proposed or expected use of port capacity freed up by this Project.

**Environmental Justice.** There is ample evidence that the Project would disproportionately affect low-income communities and communities of color. Yet in the response to comments, the City claims that it need not include an environmental justice analysis at all. Final EIR at 3.5-59. To the contrary, state law requires this analysis. See Ex. C, Kamala D. Harris, Attorney General, *Environmental Justice at the Local and Regional Level, Legal Background*, May 2012. This analysis should be added to the EIR.

**Hazards.** The City fails entirely to respond to our comments explaining that federal law does not preempt regulation of Valero, which is not a rail carrier. The City continues to claim that any and all mitigation for this Project is preempted (except for the condition that Valero use CPC-1232 tank cars—the City does not explain this inconsistency). To the contrary, there are many legally feasible mitigation measures that the City could impose on Valero. Most notably, the city could require Valero to pay emissions offset credits or reduce the capacity of unloading operations, which, in and of themselves have serious air quality and hazards impacts. Neither of those actions has the effect of managing rail operations as defined under federal law because Valero is not a rail carrier. Nor do they “indirectly” regulate rail, as the City claims; neither of those mitigation measures would prevent Valero from receiving common carrier services more generally.

**Water Quality.** In our comments on the Revised Draft EIR, we pointed out that the Project would have significant impacts on water bodies during routine operations. In response, the City claims these impacts were analyzed, but points to a section of the Draft EIR that says nothing about these impacts. Final EIR at 3.5-61. The City’s analysis of the Project’s impacts to water during routine operations remains insufficient. And as explained above, there are many mitigation measures that can be imposed on Valero, such as emissions offsets, oil spill planning requirements, and financial contributions to water protection programs.

The City also asserts that it was not required to consider the potential impact of climate change-induced sea level rise on the Project, citing to *Ballona Wetlands Land Trust v. City of Los Angeles*, 201 Cal. App. 4th 455 (2011). However, the California Supreme Court recently upheld the validity of Guidelines section 15126.2(a), which requires an EIR to “evaluate any potentially significant impacts of locating development in other areas susceptible to hazardous conditions (e.g., floodplains, coastlines, wildfire risk areas)” to the extent that it involves an analysis of “a project’s potentially significant *exacerbating* effects on existing environmental hazards.” *California Bldg. Industry Assn. v. Bay Area Air Quality Mgmt. Dist.*, 62 Cal.4th 369, 388-89 (2015). As the California Supreme Court found, the *Ballona* court did not consider these requirements (*id.* at 392), and thus it provides no authority for the City’s failure to analyze such impacts here.

**Biological Resources.** The City’s responses to our comments on biological impacts are similarly inadequate. Again, the City claims to have analyzed the impacts on

biological resources during routine operations, *see* Final EIR at 3.5-63, but that analysis, which is merely snippets pulled together from various sections, is inadequate under CEQA.

**Additional Impacts Not Analyzed.** We recently learned that the City is considering an application for the development of a 527-acre property between East Second Street and Lake Herman Road, commonly known as the Seeno Property. See Ex. D, April 20, 2015 Letter from SCO Planning & Engineering; Ex. E, September 3, 2015 email attaching conceptual land use diagram. The proposal includes industrial, commercial, and residential land uses—all adjacent to the refinery and the Project. Given that the City has known about this proposal since at least the spring of 2015, analysis of how the Project may affect any sensitive uses, especially residential uses, and whether any of the Project’s impacts will be cumulatively significant in light of the proposed new development, should have been included in the EIR.

**Staff report.** On January 28, 2016, the City released a staff report recommending that the Planning Commission certify the EIR and approve the use permit for the Project. As we explained above, the EIR fails as an informational document. At the very least, the City must revise the EIR and recirculate it for public comment. However, despite its faults, the EIR does disclose that this Project will have numerous significant and unavoidable environmental impacts, including serious safety and air quality impacts. On that basis alone, the City should deny the permit for this Project.

The staff report claims that the Interstate Commerce Commission Termination Act (ICCTA) preempts the City from mitigating effects in any way tangentially related to rail, even if the mitigation is imposed on Valero. It also claims that the City has no discretion to deny the use permit for the Project based on health and safety risks posed by rail operations.

However, the law is clear that ICCTA preemption applies only to rail carriers. ICCTA’s plain language states that federal jurisdiction over rail transportation is limited to “transportation *by rail carriers*.” 49 U.S.C. § 10501(b)(1) (emphasis added). “Rail carrier” is defined as a person providing “common carrier railroad transportation for compensation.” *Id.* § 10102(5). A long line of Surface Transportation Board orders and judicial decisions have found that “to be subject to the Board’s jurisdiction and qualify for Federal preemption under section 10501(b), the activities at issue must be transportation, *and that transportation must be performed by, or under the auspices of, a ‘rail carrier.’*” *Town of Babylon and Pinelawn Cemetery – Pet. for Decl. Order*, 2008 WL 275697, at \*3 (S.T.B. 2008) (emphasis added); *see also, e.g., Grafton and Upton R.R. Co. v. Town of Milford*, 417 F. Supp. 2d 171, 176 (D. Mass. 2006) (“As this Court reads the relevant statutory language, Congress intended the transportation and related activities undertaken by rail carriers to benefit from federal preemption but did not mean such preemption to extend to activity related to rail transportation undertaken by non-rail

carriers.”); *Hi Tech Trans, L.L.C. v. New Jersey*, 382 F.3d 295, 308-309 (3d Cir. 2004) (waste transloading rail facility operated by a non-rail carrier did not constitute rail transportation and was not governed by ICCTA); *New York & Atlantic Ry. Co.*, 635 F.3d 66, 73 (2nd Cir. 2011) (waste transfer rail facility operated by a non-rail carrier did not constitute rail transportation and was not governed by ICCTA); *Florida E. Coast Ry. Co. v. City of W. Palm Beach*, 266 F.3d 1324, 1332-1336 (11th Cir. 2001) (rail construction materials distribution center operated by a non-rail carrier did not constitute rail transportation and was not governed by ICCTA); *Girard v. Youngstown Belt Rwy.*, 134 Ohio St.3d 79, 90 (Sup. Ct. Ohio 2012) (“the mere fact” that materials are delivered to a facility by rail does not make their receipt “railway transportation” protected from local regulation); *Babylon*, 2008 WL 4377804 (transloading of construction and demolition debris by non-rail-carrier tenant of railway property did not constitute rail transportation and was not governed by the ICCTA); *Milford, Mass.—Petition for Declaratory Order*, STB Finance Docket No. 34444, 2004 WL 1802301 (Aug. 11, 2004) (despite contractual agreement with a rail carrier, the transloading of steel by a non-rail carrier in a manner that was not being offered as part of common-carrier services for the public did not constitute rail transportation and was not governed by ICCTA).

In contrast, the cases the City cites in the staff report involve the regulation of *rail carriers*. *Burlington N. Santa Fe R.R.*, 209 Cal. App. 4th 1513, 1528 (2012) (overturning conviction of Burlington Northern Santa Fe Railroad for blocking public grade crossing); *Town of Atherton v. California High-Speed Rail Auth.*, 228 Cal. App. 4th 314, 330 (2014) (referring to “any form of state or local permitting or preclearance that, by its nature, could be used to deny a *railroad* the ability to conduct some part of its operations or to proceed with activities that the [STB] has authorized”) (emphasis added).

In sum, no law prohibits the City from denying a use permit for this Project. The denial of a use permit for a refinery project proposed by a non-rail carrier simply does not trigger federal preemption. And even if the City were correct that it could not deny the permit on the basis of any impacts related to rail, there are significant impacts having nothing to do with rail that have not been mitigated and are, on their own, enough to warrant denial. Most notably, the Project will cause significant air quality impacts due to changes in refinery emissions, as explained above.

Benicia Municipal Code 17.104.060, prohibits the City from approving a project that will be detrimental “to the public health, safety, or welfare of persons residing or working” near the project, “to properties or improvements in the vicinity,” or “to the general welfare of the city.” For all the reasons stated above and in our prior comments, the Project will harm Benicians, other communities throughout the state, and our climate. The City should decline to certify the EIR and deny the permit for this Project.

Sincerely,

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# EXHIBIT A

**SOCIO-ECONOMIC ANALYSIS OF PROPOSED  
REGULATION 12, RULE 15: PETROLEUM  
REFINING EMISSIONS TRACKING AND  
REGULATION 12, RULE 16: PETROLEUM  
REFINING EMISSIONS LIMITS AND RISK  
THRESHOLDS**

Prepared for:

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***Prepared by:***



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# 1. INTRODUCTION

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The Bay Area Air Quality Management District (“BAAQMD” or the “Air District”) seeks to adopt Regulation 12, Rule 15 (“Petroleum Refining Emissions Tracking” or “Regulation 12-15”) and Regulation 12, Rule 16 (“Petroleum Refining Emission Limits and Risk Thresholds” or “Regulation 12-16”). The purpose of Regulation 12-15 is to track air emissions and crude oil quality characteristics from petroleum refineries over time, to complete health risk assessments (HRAs) for each Bay Area petroleum refinery, and to establish monitoring systems to provide detailed air quality data along refinery boundaries and in nearby communities. The purpose of Regulation 12-16 is to establish action levels for public notification and risk reduction based on the results of the HRAs required in Regulation 12-15, and also to require demonstrations of local compliance with national ambient air quality standards (NAAQS) for SO<sub>2</sub> and PM<sub>2.5</sub>, which are the criteria pollutants with the greatest potential for local health impacts. After this introduction, this report discusses in greater detail the elements of Regulation 12-15 and Regulation 12-16 with cost impacts to Bay Area refineries (Section Two). A complete discussion of all of the elements of these rules is included in the Final Staff Report. After the discussion of cost impacts, the report describes the socioeconomic impact analysis methodology and data sources (Section Three). The report describes population and economic trends in the nine-county San Francisco Bay Area (Section Four), which serves as a backdrop against which the Air District is contemplating adopting Regulations 12-15 and 12-16. Finally, the socioeconomic impacts stemming from the proposed regulations are discussed in Section Five.

The report is prepared pursuant to Section 40728.5 of the California Health and Safety Code, which requires an assessment of socioeconomic impacts of proposed air quality rules. The findings in this report can assist Air District staff in understanding the socioeconomic impacts of the proposed requirements, and can assist staff in preparing a refined version of the rule. Figure 1 is a map of the nine-county region that comprises the San Francisco Bay Area Air Basin.



## 2. BACKGROUND OF BAAQMD'S RULE 12-15 AND RULE 12-16

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In general, the Air District regulates stationary sources of air pollution, which includes certain petroleum refineries that would be subject to proposed Regulation 12, Rule 15 ("Regulation 12-15") and Regulation 12, Rule 16 ("Regulation 12-16"). Bay Area refineries are currently subject to over 20 separate air quality rules, many of which focus on specific equipment in place at refineries, as well as different kinds of pollutants emitted by refineries.

In an effort to further improve air quality, the Air District seeks to adopt Regulation 12, Rule 15 and Regulation 12, Rule 16. The purpose of Regulation 12-15 is to track air emissions and crude oil quality characteristics from petroleum refineries over time, to complete health risk assessments (HRAs) for petroleum refineries, and to establish monitoring systems to provide detailed air quality data along refinery boundaries and in nearby communities. The purpose of Regulation 12-16 is to establish action levels for public notification and risk reduction based on the results of the HRAs required in Regulation 12-15, and also to require demonstrations of local compliance with national ambient air quality standards (NAAQS) for SO<sub>2</sub> and PM<sub>2.5</sub>, which are the criteria pollutants with the greatest potential for local health impacts. The rule covers three classes of regulated air pollutants, including "criteria pollutants", "toxic air contaminants" (TACs), and greenhouse gases (GHGs).<sup>1</sup>

The Air District proposed the new rules in light of changes with regard to "crude oil slates" at the five petroleum refineries in the Bay Area. Crude oil slates refers to the characteristics of crude oil such as sulfur content and other things. Some types of crude oil require more energy to refine, which could lead to higher emissions. Other types of crude oil may contain higher levels of contaminants which, if not removed, may find their way into the emissions stream. Some crude oils tend to be more corrosive which, if not properly regulated, could result in an increase in accidents.

Proposed Regulation 12, Rule 15 includes the following steps that will result in costs to the affected petroleum refineries:

- Report on-going **annual emissions inventories** of all regulated air pollutants based on upgraded methods, including emissions from cargo carriers
- Establish a **Petroleum Refinery Emissions Profile (PREP)**, and require that on-going inventories include comparisons with the PREP
- Report on-going **crude oil quality characteristics** with annual emissions inventories (e.g., sulfur, nitrogen content, API gravity, Total Acid Number)

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<sup>1</sup>Criteria pollutants are air pollutants for which there are ambient air quality standards that set levels of concentrations of pollutants designed to be protective of public health. Examples of criteria pollutants include ozone and particulate matter in the air. TACs refer to up to 200 air pollutant compounds that may have health impacts in terms of exposure though there are not yet any air quality standards. GHG refers to air pollutant compounds that affect global warming and climate change.

- Update refinery-wide **Health Risk Assessments (HRA)** with enhanced emissions inventories and revised OEHHA HRA guidelines
- **Enhance fence line systems and establish community air quality monitoring systems**

Proposed Regulation 12, Rule 16 includes the following steps that will result in costs to the affected petroleum refineries:

- Comply with public notification requirements and risk reduction requirements based on refinery-specific health risk established by HRA required by Regulation 12-15;
- Comply with NAAQS compliance demonstration for SO<sub>2</sub> and PM<sub>2.5</sub>.

The analysis of the socioeconomic impacts of new Regulations 12-15 and 12-16 in Section Five are based on the costs in Tables 1 and 2. The basis for these costs is provided after the tables.

<b>Table 1 - Regulation 12, Rule 15 Costs</b>		
<b>Section</b>	<b>Requirement</b>	<b>Cost (per refinery)</b>
12-15-401	Annual Petroleum Refinery Emissions Inventory (beginning with year 2015 data)	\$90,000 / year
	Monthly Crude Slate Report (beginning with year 2015 data)	
12-15-402	Petroleum Refinery Emissions Profile Report (one-time submittal)	
12-15-413	Provide Monthly Crude Slate Reports for 2012, 2013 & 2014 (one-time submittal)	
12-15-405	HRA Modeling Protocol and HRA (one-time submittals)	\$250,000 (one-time)
12-15-407	Fenceline and Community Air Monitoring Plans (one time submittal)	\$250,000 (one-time)
12-15-412	Provide available energy utilization data	Not significant
12-15-501	Community Air Monitoring System (construction and operation)	\$6,000,000 (one-time construction)
12-15-502	Fenceline Air Monitoring System (construction and operation)	\$125,000 / year (maintenance & operation)

#### **12-15-401, 402, 413**

These sections require one-time submittals related to the refinery inventory and crude slate, as well as ongoing (monthly crude slate reports and annual inventories) are assumed to constitute one-half of a full-time employee (FTE) with a resulting annualized cost of \$90,000 at each of the Bay Area refineries.

#### **12-15-405**

This section requires a one-time protocol submittal for the required Health Risk Assessment (HRA) and submittal of the HRA itself. These documents are expected to be prepared by an environmental consulting firm at a cost of no more than \$250,000 at each of the Bay Area refineries. Air District staff

has contracted this type of work in the past and are familiar with the resource requirements and cost of this type of project. Although there is a provision for a refinery to be required to submit additional updated HRAs in the future, no additional cost is attributed to this provision because it is not clear that this provision will ever be used.

#### **12-15-407**

The one-time fenceline and community monitoring plans are expected to be prepared by an environmental consulting firm at a cost of no more than \$250,000 at each of the Bay Area refineries. Air District staff is familiar with the required elements of type of document and the resources required to complete them.

#### **12-15-412**

The energy utilization data required to be provided by each refinery is data that has already been prepared for the refineries' own use. Therefore, no significant cost is associated with the submittal of this data.

#### **12-15-501 and 502**

The draft Air Monitoring Guidelines prepared as a companion document to Rule 12-15 suggest that 2 permanent fenceline monitors (upwind and downwind of the refinery) and 1 to 3 permanent community monitors (depending on meteorological conditions and the location of receptors) will be required. In addition, temporary monitors will probably be necessary to establish pollutant gradients to allow siting of community monitors. Total capital cost, including site development, infrastructure development (electricity and communications) and construction is not expected to exceed \$6,000,000 per refinery. Assuming \$25,000 per year for maintenance and operation at each monitor, and 5 monitors per refinery, the total annual cost is not expected to exceed \$125,000 per year per refinery. Air District staff have designed, constructed and operated similar monitoring facilities and are familiar with these costs.

<b>Table 2 - Regulation 12, Rule 16 Costs</b>		
<b>Section</b>	<b>Requirement</b>	<b>Cost (per refinery)</b>
12-16-301 and 302	Risk Reduction Audit and Plan (one-time submittal)	\$250,000 (one-time)
12-16-303	Implementation of Risk Reduction Plan.	\$600,000 (one-time) for diesel particulate filter installation on all permitted engines
12-16-304, 305.1 and 406	<u>SO<sub>2</sub> and PM<sub>2.5</sub> NAAQS compliance through air modeling or air monitoring with no capital costs.</u>	\$250,000 (one-time for preliminary work leading to compliance through Sections 12-16-305.2 and 408)
12-16-304, 305.2 and 408	<u>SO<sub>2</sub> and PM<sub>2.5</sub> NAAQS compliance through emission reductions</u> (construction and operation of a wet gas scrubber system)	Chevron, Shell, Tesoro, Valero: \$8,200,000 / year each (annualized); Phillips 66: \$3,000,000 / year (annualized)

### **12-16-301 and 302**

These sections establish three increasing health effect thresholds (“notification risk”, “significant risk” and “unreasonable risk”). Previous HRAs at the three refineries found that they were all below the “notification risk” threshold. However, the HRA methodology has been revised and the Air District has estimated, based on the new guidelines and the current refinery inventory data, that new HRAs required by Regulation 12-16 will place all five Bay Area refineries in the “significant risk” category, such that each refinery would perform the specified public notification of a significant risk finding, and also prepare a Risk Reduction Audit and Plan (RRAP). Air District staff estimate that public notification and preparation of a RRAP will cost no more than \$250,000 at each of the Bay Area refineries, if performed by an environmental consultant. The Air District regularly performs public notifications related to facility risk and is able to estimate these costs. The Air District also has engaged environmental consulting firms to perform work similar to an HRA and is able to estimate these costs.

### **12-16-303**

After a refinery has prepared a Risk Reduction Audit and Plan (RRAP), it must implement the elements of the RRAP. The RRAP itself will indicate the specific sources and operations within the refinery that contribute most to the refinery health impact on the public, and will allow the refinery operator to choose the most cost-effective approach to risk reduction.

For the purposes of estimating a cost of compliance for this report, it will be assumed that each refinery will be able to reduce significantly the health risk from all stationary sources at the refinery by installing particulate control filters (“diesel particulate filters” or “DPFs”) on all diesel engines onsite. DPFs are used here as the example risk reduction measure because: 1) refineries use many diesel engines, 2) most of these are older, uncontrolled engines with high emission rates, 3) the health impact of diesel particulate is very high relative to other toxic compounds, and 4) CARB has established that retrofits of DPFs are generally successful at achieving particulate emission reductions of 85% or more and maximum cost of \$55 per horsepower for a DPF retrofit, with no significant increase in operations or maintenance costs (from the CARB staff report for the 2011 Stationary Diesel Engine ATCM).

To estimate the highest expected cost of DPF implementation, the horsepower of all the permitted diesel engines at Chevron refinery (from 2014 Title V permit), the refinery with the highest crude oil processing rate, was summed and CARB’s retrofit cost estimate of \$55 per horsepower was applied:

Total diesel horsepower: 10,914 HP at 22 diesel engines

Total estimated cost: (10,914 HP)((\$55/HP) = \$600,000

### **12-16-304, 305.1 and 406**

Section 304 requires a demonstration of local compliance with SO<sub>2</sub> and PM<sub>2.5</sub> NAAQS through air modeling or air monitoring (Section 406). To provide a conservative cost estimate, it will be assumed that neither modeling nor monitoring demonstrate compliance and that emission reductions (Section 407) will be required. However, \$250,000 of preliminary work is estimated to occur to inform the finding that emission reductions will be required.

**12-16-304, 305.2 and 408**

When compliance with the SO<sub>2</sub> and PM<sub>2.5</sub> NAAQS cannot be established through the air modeling or monitoring in Section 406, emission reductions of these pollutants will be required. For 3 refineries (Chevron, Shell, Tesoro), compliance cost is based on the installation of a wet scrubber system with an annualized cost of \$8.2 million on FCCU exhausts to address both SO<sub>2</sub> and PM<sub>2.5</sub> emissions. Valero Refinery has already installed a wet scrubbing system on their combined FCCU and Fluid Coker exhaust stack that has resulted in significant reductions of SO<sub>2</sub> and PM<sub>2.5</sub>. Valero therefore does not have the compliance option of installing a wet scrubber. But given that it has already achieved significant SO<sub>2</sub> and PM<sub>2.5</sub> emission reductions, the further cost of control is expected to be bounded by the same wet scrubber cost applied to the other refineries. Phillips 66 does not operate an FCCU and therefore does not have a single very large source of PM<sub>2.5</sub> emissions. To significantly reduce SO<sub>2</sub> emissions, Phillips 66 could install a hydrotreating system to reduce the sulfur content of the refinery fuel gas that is burned throughout the refinery. District staff have estimated such a system to have an annualized cost of \$3 million.

All costs are summarized in Table 7 of Section 5, with costs shown above as occurring one-time converted to annualized costs by applying a capital recovery factor of 0.14 to the one-time cost, as discussed in Table 7.

### 3. METHODOLOGY

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Applied Development Economics (ADE) began this analysis by preparing a statistical description of the industry groups of which the affected sources are a part, analyzing data on the number of establishments, jobs, and payroll. We also estimated sales generated by impacted industries, as well as net profits for each affected industry.

This report relies heavily on the most current data available from a variety of sources, particularly the State of California's Employment Development Department (EDD) Labor Market Information Division. In addition, this report relies on data from the State of California's Energy Commission (CEC), particularly with respect to measuring throughput capacity of the five refineries subject to these new regulations. From the CEC, we also obtained information on retail and wholesale prices of gasoline and other refinery products, as well as industry-specific profitability ratios.

With the above information, ADE was able to estimate net after tax profit ratios for sources affected by the proposed new regulations. ADE calculated ratios of profit per dollar of revenue for affected industries. The result of the socioeconomic analysis shows what proportion of profits the compliance costs represent. Based on assumed thresholds of significance, ADE discusses in the report whether the affected sources are likely to reduce jobs as a means of recouping the cost of compliance or as a result of reducing business operations. To the extent that such job losses appear likely, the indirect multiplier effects of the jobs losses are estimated using a regional IMPLAN input-output model. In some instances, particularly where consumers are the ultimately end-users of goods and services provided by the affected sources, we also analyzed whether costs could be passed to households in the region.

When analyzing the socioeconomic impacts of proposed new rules and amendments, ADE attempts to work closely within the parameters of accepted methodologies discussed in a 1995 California Air Resources Board (ARB) report called "Development of a Methodology to Assess the Economic Impact Required by SB513/AB969" (by Peter Berck, PhD, UC Berkeley Department of Agricultural and Resources Economics, Contract No. 93-314, August, 1995). The author of this report reviewed a methodology to assess the impact that California Environmental Protection Agency proposed regulations would have on the ability of California businesses to compete. The ARB has incorporated the methodologies described in this report in its own assessment of socioeconomic impacts of rules generated by the ARB. One methodology relates to determining a level above or below which a rule and its associated costs is deemed to have significant impacts. When analyzing the degree to which its rules are significant or insignificant, the ARB employs a threshold of significance that ADE follows. Berck reviewed the threshold in his analysis and wrote, "The Air Resources Board's (ARB) use of a 10 percent change in [Return on Equity] ROE (i.e. a change in ROE from 10 percent to a ROE of 9 percent) as a threshold for a finding of no significant, adverse impact on either competitiveness or jobs seems reasonable or even conservative."

## 4. REGIONAL DEMOGRAPHIC AND ECONOMIC TRENDS

This section of the report tracks economic and demographic contexts within which the Air District is contemplating new Regulations 12-15 and 12-16. Table 3 tracks population growth in the nine-county San Francisco Bay Area between 2003 and 2013, including data for the year 2008. Between 2003 and 2008, the region grew by approximately 1 percent a year. Between 2008 and 2013, the region grew annually at a much slower rate of 0.1 percent per year. Overall, there are 7,420,453 people in the region. At 1,868,558, Santa Clara County has the most people, while Napa has the least, at 139,255.

TABLE 3: REGIONAL DEMOGRAPHIC TRENDS: 2003-2013 POPULATION GROWTH: SAN FRANCISCO BAY AREA						
	Population			Annual Percent Change		
	2003	2008	2013	03 - 08	08 - 13	03 - 13
California	36,199,342	38,292,687	38,340,074	1.1%	0.0%	0.6%
<b>Bay Area</b>	<b>7,025,575</b>	<b>7,375,678</b>	<b>7,420,453</b>	<b>1.0%</b>	<b>0.1%</b>	<b>0.5%</b>
Alameda County	1,495,162	1,556,657	1,573,254	0.8%	0.2%	0.5%
Contra Costa County	1,005,590	1,060,435	1,087,008	1.1%	0.5%	0.8%
Marin County	250,793	258,618	255,846	0.6%	-0.2%	0.2%
Napa County	131,228	137,571	139,255	0.9%	0.2%	0.6%
San Francisco County	795,042	845,559	836,620	1.2%	-0.2%	0.5%
San Mateo County	717,921	745,858	745,193	0.8%	0.0%	0.4%
Santa Clara County	1,739,939	1,857,621	1,868,558	1.3%	0.1%	0.7%
Solano County	416,379	426,729	424,233	0.5%	-0.1%	0.2%
Sonoma County	473,521	486,630	490,486	0.5%	0.2%	0.4%

Source: Applied Development Economics, based on total population estimates from The California Department of Finance (E-5 Report)

Data in Table 4 describe the larger economic context within which officials are contemplating new Regulations 12-15 and 12-16. Businesses in the region employ over three million workers, or 3,376,819. The number of private and public sector jobs in the region grew annually by 0.5 percent between 2008 and 2013, after having grown somewhat slightly also between 2003 and 2008 by 0.8 percent a year. Of the 3,376,819 workers, 422,634, or 12.5 percent, are in the public sector, meaning 87.5 percent of all employment is in the private sector. In the state, almost 15 percent of all jobs are in the public sector, with 85 percent in the private sector. Relative to the state as a whole, manufacturing, professional/technical services, and education/health service sectors comprise a greater proportion of the regional employment base. In the region, these sectors comprise 9 percent (manufacturing), 11 percent (professional/technical services), and 15 percent (private education/health services) respectively of total employment. In the state, these sectors comprise 8 percent (manufacturing), 7 percent (professional/technical services), and 14.6 percent (private

education/health services) of the statewide job base. In other words, as a percent of total workforce, the region employs more people in sectors with occupations that presumptively require more skills and are higher-paying. Conversely, typically lower-paying sectors such as agriculture and retail represent a higher share of the overall statewide employment base relative to the Bay Area. In the state, 2.7 percent of all jobs are in agriculture, whereas in the region, the figure is 0.4 percent. Almost 10.5 percent of all jobs in the state are in retail, while in the region, 9.8 percent of all jobs are in retail.

<b>TABLE 4</b> <b>SAN FRANCISCO BAY AREA EMPLOYMENT TRENDS BY SECTOR: 2003-2013</b>							
		Private and Public Sector Employment Trends			Employment Distribution		Ann. Percentage Chg: Bay Area
		2003	2008	2013	Bay Area '13	State '13	03-08 08-13
<b>Private and Public Sectors</b>		<b>3,158,570</b>	<b>3,285,661</b>	<b>3,376,819</b>			<b>0.8% 0.5%</b>
<b>Private Sector Only</b>		<b>2,713,025</b>	<b>2,837,090</b>	<b>2,954,185</b>	<b>87.5%</b>	<b>85.2%</b>	<b>0.9% 0.8%</b>
11	Agriculture, Forestry, Fishing & Hunting	17,710	18,726	13,315	0.4%	2.7%	1.1% -6.6%
21	Mining	1,744	982	1,876	0.1%	0.2%	-10.9% 13.8%
22	Utilities	4,639	5,497	5,591	0.2%	0.4%	3.5% 0.3%
23	Construction	177,987	178,171	151,847	4.5%	4.1%	0.0% -3.1%
31-33	Manufacturing	361,948	343,551	308,961	9.1%	8.1%	-1.0% -2.1%
42	Wholesale Trade	123,213	116,685	121,274	3.6%	4.5%	-1.1% 0.8%
44-45	Retail Trade	335,893	333,952	329,247	9.8%	10.4%	-0.1% -0.3%
48-49	Transportation and Warehousing	51,995	54,050	68,846	2.0%	2.8%	0.8% 5.0%
51	Information	117,546	114,889	136,214	4.0%	2.9%	-0.5% 3.5%
52	Finance and Insurance	150,174	136,632	118,304	3.5%	3.4%	-1.9% -2.8%
53	Real Estate and Rental and Leasing	61,693	58,089	55,222	1.6%	1.7%	-1.2% -1.0%
54	Professional and Technical Services	277,412	344,560	378,755	11.2%	7.4%	4.4% 1.9%
55	Management of Companies and Enterprises	67,779	60,845	69,367	2.1%	1.4%	-2.1% 2.7%
56	Administrative and Waste Services	177,198	185,013	192,231	5.7%	6.4%	0.9% 0.8%
61	Educational Services	63,905	76,185	88,322	2.6%	2.0%	3.6% 3.0%
62	Health Care and Social Assistance	283,259	305,784	417,312	12.4%	12.6%	1.5% 6.4%
71	Arts, Entertainment, and Recreation	48,740	51,438	57,255	1.7%	1.7%	1.1% 2.2%
72	Accommodation and Food Services	252,693	283,578	314,978	9.3%	9.1%	2.3% 2.1%
81	Other Services, Ex. Public Admin	137,155	156,925	114,764	3.4%	3.1%	2.7% -6.1%
99	UNCLASSIFIED ESTABLISHMENTS	342	11,538	10,504	0.3%	0.4%	102.1% -1.9%
<b>Public Sector Only (Federal, State and Local)</b>		<b>445,545</b>	<b>448,571</b>	<b>422,634</b>	<b>12.5%</b>	<b>14.8%</b>	<b>0.1% -1.2%</b>
	Public Sector (excluding public educ.)	299,104	302,052	281,196	8.3%	8.2%	0.2% -1.4%
6111	Public Education: Elementary and Secondary	112,275	105,053	104,467	3.1%	4.7%	-1.3% -0.1%
6112	Public Education: Junior College	9,850	16,629	11,910	0.4%	0.6%	11.0% -6.5%
6113	Public Education: Colleges and Universities	24,316	24,837	25,024	0.7%	1.2%	0.4% 0.2%
611z	Public Education: Other			37	0.0%	0.0%	

Source: Applied Development Economics, based on California EDD LMID

Table 4 also shows the precipitous decline in employment in industries most-affected by the downturn in the economy that began in late 2007, namely housing. Construction employment declined by 3.1 percent per year between 2008 and 2013, with finance and insurance dropping by 2.8 percent per year, and real estate dropping by 1.0 percent. On a positive note, employment in health care increased annually by 6.4 percent annually between 2008 and 2013, and transportation-warehousing increased annually by five percent.

Proposed Regulations 12-15 and 12-16 affect one particular industry in the Bay Area, namely refineries. While the California EDD LMID reports that there are 23 refineries in the nine-county region, more than likely, this state agency applied a broader definition for refinery operations in the region. Appendix A identifies a number of “refineries” included in the EDD LMID’s database; as this shows, many are not full scale refineries but rather are engaged in a variety of petroleum-related operations. Nonetheless, Table 5 shows refinery trends *per* the EDD-LMID. What is striking about Table 5 is the high average pay workers garner in this industry.

TABLE 5: SF BAY AREA EDD-LMID REFINERY TRENDS, 1999-2009					
	2003	2008	2013	03-08 CAGR	08-13 CAGR
Establishments	35	23	23	-8.05%	0.00%
Employment	6,738	7,816	5,323	3.01%	-7.39%
Payroll	\$768,112,469	\$1,326,728,738	\$986,117,494	11.55%	-5.76%
Average Pay	\$114,006	\$169,756	\$185,250	8.29%	1.76%

Source: Applied Development Economics, Inc., based on California EDD LMID

Table 6 identifies the businesses in the Bay Area that are full-scale refineries. The list comes from the CEC, which also included each refinery’s throughput capacity. Of the five operating refineries in the region, Chevron is the largest, with the capacity to refine 245,271 42-gallon barrels of crude oil per day. At 78,400, Phillips 66 has the lowest throughput capacity.

TABLE 6 BAY AREA REFINERIES ( CALIFORNIA ENERGY COMMISSION) AND CRUDE OIL CAPACITY	
Refinery	Barrels Per Day
Chevron U.S.A. Inc., Richmond Refinery	245,271
Tesoro Refining & Marketing Company, Golden Eagle (Avon/Rodeo) Refinery	166,000
Shell Oil Products US, Martinez Refinery	156,400
Valero Benicia Refinery	132,000
Phillips 66, Rodeo San Francisco Refinery	78,400

Source: Applied Development Economics, Inc., based on California Energy Commission

## 5. SOCIOECONOMIC IMPACT ANALYSIS

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This section of the report analyzes socioeconomic impacts stemming from new Regulations 12-15 and 12-16. If the proposed new regulations are adopted, the District estimates that the five impacted refineries would incur total annualized costs ranging from \$4.3 million to \$9.5 million for ten years, the period over which costs associated with capital equipment would be amortized. After the amortization period, ongoing costs of \$215,000 per year per refinery would continue for additional inventories, reports and operation and maintenance of air monitoring systems.

The five affected sources' combined throughput capacity is approximately 674,582 42-gallon barrels per day, which takes into consideration periods when refineries may be off-line. While the affected sources refine 674,582 barrels of crude oil per day, they generate an estimated 693,044 gallons of refined products a day. Assuming a 87 percent utilization rate, and further estimating the price of refined product at \$120 per barrel<sup>2</sup>, we estimate the affected refineries generate \$30.3 billion in revenues a year, from which is generated \$2.1 billion in after-tax net profits. When comparing these figures with the annualized costs stemming from the proposed new regulations, we obtain cost-to-net profit ratio ranging from 1.5 percent to 2.7 percent. **As a result, impacts are less than significant.** Moreover, because this establishment is not a small business, small businesses are not disproportionately impacted by the proposed regulations.

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<sup>2</sup> \$119.80 per barrel of gasoline = 
$$\frac{((436,600 * \$124.26)_{\text{GASOLINE}} + (124,748 * \$112.35)_{\text{JET FUEL}} + (131,748 * \$112.35)_{\text{KEROSENE, OTHERS}})}{(693,044)_{\text{TOTAL REFINED PRODUCTS}}}$$

**TABLE 7**  
**SOCIOECONOMIC IMPACT ANALYSIS: PROPOSED NEW RULES REGULATION 12, RULE 15 & REGULATION 12, RULE 16**

	All Sources	Chevron	Tesoro	Shell	Valero	Phillips 66
Effective Barrels of Crude Per Day	674,582	212,648	143,921	135,598	114,443	67,972
Estimated Revenues	\$30.3 billion	\$9.6 billion	\$6.5 billion	\$6.1 billion	\$5.1 billion	\$3.1 billion
Estimated Net Profits	\$2.1 billion	\$653 million	\$442 million	\$416 million	\$351 million	\$208 million
Annual Costs for Regulations 12-15, 12-16 with one-time costs annualized by applying a capital recovery factor (CRF) factor of 0.14. This CRF is derived using BAAQMD's cost-effectiveness methodology in the BACT-TBACT Workbook and assuming an interest rate of 6% and "project horizon" of 10 years.						
Reg 12-15-401, 402, 413, 405: Inventories and Crude Reports (Initial & Annual)	\$450,000	\$90,000	\$90,000	\$90,000	\$90,000	\$90,000
Reg 12-15-405: HRA Protocol and HRA Preparation (annualized)	\$175,000	\$35,000	\$35,000	\$35,000	\$35,000	\$35,000
Reg 12-15-407: Fenceline and Community Air Monitoring Plans (annualized)	\$175,000	\$35,000	\$35,000	\$35,000	\$35,000	\$35,000
Reg 12-15-501 & 502: Fenceline & Community Monitoring Construction (annualized)	\$4,200,000	\$840,000	\$840,000	\$840,000	\$840,000	\$840,000
Reg 12-15-501 & 502: Fenceline & Community Monitoring, Operation & Maintenance	\$625,000	\$125,000	\$125,000	\$125,000	\$125,000	\$125,000
Reg 12-16-301 and 302: Risk Reduction Audit and Plan Preparation (annualized)	\$175,000	\$35,000	\$35,000	\$35,000	\$35,000	\$35,000
Reg 12-16-303: Implementation of Risk Reduction Plan (annualized)	\$420,000	\$84,000	\$84,000	\$84,000	\$84,000	\$84,000
Reg 12-16-304, 305.1, 406: Preliminary Modeling or Monitoring (annualized)	\$175,000	\$35,000	\$35,000	\$35,000	\$35,000	\$35,000
Reg 12-16-304, 305.2, 407: SO <sub>2</sub> and PM <sub>2.5</sub> emission reductions (annualized)	\$35,800,000	\$8,200,000	\$8,200,000	\$8,200,000	\$8,200,000	\$3,000,000
Total Annualized Costs	\$42,195,000	\$9,479,000	\$9,479,000	\$9,479,000	\$9,479,000	\$4,279,000
Cost to Net Profits	2.0%	1.5%	2.1%	2.3%	2.7%	2.1%
Significant?	No, in all cases	No, in all cases	No, in all cases	No, in all cases	No, in all cases	No, in all cases

## 6. APPENDIX A: LIST OF EDD-LMID BAY AREA "REFINERIES"

County	Name of Establishments	City	Number of Workers
Alameda	DASSEL'S PETROLEUM INC	FREMONT	1-4 employees
Alameda	RCA OIL RECOVERY	NEWARK	1-4 employees
Contra Costa	BAY AREA DIABLO PETROLEUM CO	CONCORD	1-4 employees
Contra Costa	CHEVRON CORP	RICHMOND	1-4 employees
Contra Costa	CHEVRON CORP	PACHECO	20-49 employees
Contra Costa	CHEVRON CORPORATION	SAN RAMON	5,000-9,999
Contra Costa	PHILLIPS 66 RODEO REFINERY	RODEO	500-999 employees
Contra Costa	GENERAL PETROLEUM	RICHMOND	10-19 employees
Contra Costa	GOLDEN GATE PETROLEUM	RICHMOND	1-4 employees
Contra Costa	GOLDEN GATE PETROLEUM	RICHMOND	1-4 employees
Contra Costa	GOLDEN GATE PETROLEUM	CONCORD	1-4 employees
Contra Costa	NU STAR	MARTINEZ	20-49 employees
Contra Costa	PITCOCK PETROLEUM INC	PLEASANT HILL	10-19 employees
Contra Costa	SHELL MARTINEZ REFINERY	MARTINEZ	500-999 employees
Contra Costa	TESORO GOLDEN EAGLE REFINERY	PACHECO	500-999 employees
Contra Costa	UOP	DANVILLE	1-4 employees
Marin	GRAND PETROLEUM	SAN RAFAEL	1-4 employees
Marin	GREENLINE INDUSTRIES LLC	LARKSPUR	20-49 employees
San Francisco	DOUBLE AA CORP	SAN FRANCISCO	1-4 employees
San Francisco	R B PETROLEUM SVC	SAN FRANCISCO	5-9 employees
San Francisco	SEAYU ENTERPRISES INC	SAN FRANCISCO	5-9 employees
San Mateo	DOUBLE AA CORP	SOUTH SAN FRANCISCO	5-9 employees
San Mateo	SABEK INC	SOUTH SAN FRANCISCO	5-9 employees
San Mateo	SEAPORT REFINING & ENVRNMNTL	REDWOOD CITY	5-9 employees
Santa Clara	COAST OIL CO LLC	SAN JOSE	20-49 employees
Santa Clara	SHELL OIL PRODUCTS US	SAN JOSE	1-4 employees
Solano	BAY AREA DIABLO PETROLEUM CO	BENICIA	1-4 employees
Solano	CAT TECH INC	DIXON	1-4 employees
Solano	DANVILLE PETROLEUM	VALLEJO	5-9 employees
Solano	GOLDEN GATE PETROLEUM	BENICIA	1-4 employees
Solano	RUBICON OIL	BENICIA	1-4 employees
Solano	TIMEC CO INC	VALLEJO	20-49 employees
Solano	VALERO BENICIA REFINERY	BENICIA	250-499 employees
Solano	VALERO REFINING CO	BENICIA	1-4 employees
Solano	VALERO REFINING CO	BENICIA	1-4 employees
Sonoma	BAY AREA DIABLO PETROLEUM CO	CLOVERDALE	1-4 employees
Sonoma	ROYAL PETROLEUM CO INC	PETALUMA	5-9 employees

Source: ADE, Inc., based on California EDD LMID "Employers By Industry" Database

# EXHIBIT B

Overview

Valero acquired the Benicia Refinery in 2000. Built as a grass-roots project in 1968, this plant has undergone significant modifications and upgrades to become what it is today one of the most complex refineries in the United States. Approximately 70 percent of the refinery's product slate is CARB gasoline, California's clean-burning fuel. The refinery also has significant asphalt production capabilities and produces 35 percent of the asphalt supply in northern California. Currently, the refinery processes domestic crude from the San Joaquin Valley in California and the Alaska North Slope, along with foreign sour crudes.

- Commissioned in 1968, with significant upgrades since that time
- Acquired from ExxonMobil in 2000
- Total feedstock throughput capacity of 170,000 barrels per day
- Products including propane, butane, CARB gasoline, ultra-low-sulfur diesel (ULSD), jet fuel, fuel oil, residual oil and asphalt
- Produces 10 percent of the clean-burning California Air Resources Board (CARB) gasoline used in California and 25 percent of the CARB used in the San Francisco Bay Area
- Located on 800 acres on the Carquinez Strait, a tributary of San Francisco Bay
- Strategic position allowing refinery to receive feedstocks by both ship and pipeline
- Products shipped via pipeline, truck, rail, barge and ship
- Employs approximately 480 personnel

Work at this location.

[Open Positions](#)

Contact Us

**Benicia Refinery**  
3400 East 2nd Street  
Benicia, California 94510-1097

[Send Email](#)  
[\(707\) 745-7011](#)

Community Relations

[Send Email](#)  
[\(210\) 345-2000](#)

Awards & Honors

- Re-approved as a Cal/OSHA Voluntary Protection Program Star Site in 2014, the agency's highest plant safety designation
- Received three American Fuel & Petrochemical Manufacturers (AFPM) safety awards for 2014, including:
  - o Meritorious Safety Performance Award – 0.0 Total Recordable Incidence Rate (TRIR)
  - o Award for Safety Achievement – 1 million-plus employee hours without a lost employee workday case involving days away from work (2,583,278)
  - o Award for Safety Achievement – 1+ years without a lost workday case involving days away from work (2 years)
- Recognized as a multiple-time winner of the United Way of the Bay Area's Spirit of the Bay Award, the organization's top honor
- Past winner of the Benicia Chamber of Commerce Business of the Year award



Community Activities

- Employees pledged more than \$482,000 to the United Way of the Bay Area for 2015, with company match projected to bring total donations to approximately \$723,000
- Nominated 20 organizations to receive \$345,000 in donations from the Valero Texas Open Benefit for Children in 2014. Recipients included:
  - o Bay Area Crisis Nursery
  - o Benicia Community Action Council
  - o Benicia Education Foundation
  - o Boys & Girls Club of El Sobrante
  - o Camp Taylor
  - o Child Haven
  - o Childrens Music and Arts Foundation

- o Childrens Nurturing Project
  - o Continentals of Omega Boys & Girls Club
  - o Court Appointed Special Advocates CASA
  - o Cystic Fibrosis Foundation-NorCal Chapter
  - o East Bay College Fund
  - o Harbor House
  - o Horseplay Therapeutic Riding Center
  - o Junior Achievement of Northern California
  - o Loma Vista Farm
  - o Matt Garcia Foundation
  - o Royal Family Kids Camps Inc.
  - o Take Wings
  - o Vacaville Neighborhood Boys & Girls Club
- Employees logged 1,924 volunteer hours for a variety of projects in 2014.
- Current and past activities include:
  - o Collaborating with United Way of the Bay Area to launch the 2-1-1 phone number in Solano County
  - o Supported the Food Bank of Contra Costa and Solano Counties through a variety of events including the Motorcycle Food Run and the Stuff the Truck Campaign
  - o Organizing and staffing the Tutoring Program at Benicia schools
  - o Participating in blood drives benefiting the Blood Centers of the Pacific
  - o "Adopting" families during the holiday, providing them with clothing, shoes, toys, household appliances, furniture, beddings, bikes, strollers, food and gas certificates and holiday trees and ornaments



# EXHIBIT C



## **Environmental Justice at the Local and Regional Level**

### **Legal Background**

Cities, counties, and other local governmental entities have an important role to play in ensuring environmental justice for all of California's residents. Under state law:

“[E]nvironmental justice” means the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.

(Gov. Code, § 65040.12, subd. (e).) Fairness in this context means that the *benefits* of a healthy environment should be available to everyone, and the *burdens* of pollution should not be focused on sensitive populations or on communities that already are experiencing its adverse effects.

Many local governments recognize the advantages of environmental justice; these include healthier children, fewer school days lost to illness and asthma, a more productive workforce, and a cleaner and more sustainable environment. Environmental justice cannot be achieved, however, simply by adopting generalized policies and goals. Instead, environmental justice requires an ongoing commitment to identifying existing and potential problems, and to finding and applying solutions, both in approving specific projects and planning for future development.

There are a number of state laws and programs relating to environmental justice. This document explains two sources of environmental justice-related responsibilities for local governments, which are contained in the Government Code and in the California Environmental Quality Act (CEQA).

### **Government Code**

Government Code section 11135, subdivision (a) provides in relevant part:

No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state....

While this provision does not include the words “environmental justice,” in certain circumstances, it can require local agencies to undertake the same consideration of fairness in the distribution of environmental benefits and burdens discussed above. Where, for example, a general plan update is funded by or receives financial assistance from the state or a state agency, the local government should take special care to ensure that the plan's goals, objectives, policies and implementation measures (a) foster equal access to a clean environment and public health benefits (such as parks, sidewalks, and public transportation); and (b) do not result in

concentration of polluting activities near communities that fall into the categories defined in Government Code section 11135.<sup>1</sup> In addition, in formulating its public outreach for the general plan update, the local agency should evaluate whether regulations governing equal “opportunity to participate” and requiring “alternative communication services” (e.g., translations) apply. (See Cal. Code Regs., tit. 22, §§ 98101, 98211.)

Government Code section 11136 provides for an administrative hearing by a state agency to decide whether a violation of Government Code section 11135 has occurred. If the state agency determines that the local government has violated the statute, it is required to take action to “curtail” state funding in whole or in part to the local agency. (Gov. Code, § 11137.) In addition, a civil action may be brought in state court to enforce section 11135. (Gov. Code, § 11139.)

### **California Environmental Quality Act (CEQA)**

Under CEQA, “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects ....” (Pub. Res. Code, § 21002.) CEQA does not use the term “environmental justice.” Rather, CEQA centers on whether a project may have a significant effect on the physical environment. Under CEQA, human beings are an integral part of the “environment.” An agency is required to find that a “project may have a ‘significant effect on the environment’” if, among other things, “[t]he environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly[.]” (Pub. Res. Code, § 21083, subd. (b)(3); see also CEQA Guidelines,<sup>2</sup> § 15126.2 [noting that a project may cause a significant effect by bringing people to hazards].) As set out below, by following well-established CEQA principles, local governments can help achieve environmental justice.

#### **CEQA’s Purposes**

The importance of a healthy environment for all of California’s residents is reflected in CEQA’s purposes. In passing CEQA, the Legislature determined:

- “The maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern.” (Pub. Res. Code, § 21000, subd. (a).)
- We must “identify any critical thresholds for the health and safety of the people of the state and take all coordinated actions necessary to prevent such thresholds from being reached.” (*Id.* at subd. (d).)

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<sup>1</sup> To support a finding that such concentration will not occur, the local government likely will need to identify candidate communities and assess their current burdens.

<sup>2</sup> The CEQA Guidelines (Cal. Code Regs., tit. 14, §§ 15000, et seq.) are available at <http://ceres.ca.gov/ceqa/>.

- “[M]ajor consideration [must be] given to preventing environmental damage, while providing a decent home and satisfying living environment for every Californian.” (*Id.* at subd. (g).)
- We must “[t]ake all action necessary to provide the people of this state with clean air and water, enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and freedom from excessive noise.” (Pub. Res. Code, § 21001, subd. (b).)

Specific provisions of CEQA and its Guidelines require that local lead agencies consider how the environmental and public health burdens of a project might specially affect certain communities. Several examples follow.

### Environmental Setting and Cumulative Impacts

There are a number of different types of projects that have the potential to cause physical impacts to low-income communities and communities of color. One example is a project that will emit pollution. Where a project will cause pollution, the relevant question under CEQA is whether the environmental effect of the pollution is significant. In making this determination, two long-standing CEQA considerations that may relate to environmental justice are relevant – setting and cumulative impacts.

It is well established that “[t]he significance of an activity depends upon the setting.” (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718 [citing CEQA Guidelines, § 15064, subd. (b)]; see also *id.* at 721; CEQA Guidelines, § 15300.2, subd. (a) [noting that availability of listed CEQA exceptions “are qualified by consideration of where the project is to be located – a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant.”]) For example, a proposed project’s particulate emissions might not be significant if the project will be located in a sparsely populated area, but may be significant if the project will be located in the air shed of a community whose residents may be particularly sensitive to this type of pollution, or already are experiencing higher-than-average asthma rates. A lead agency therefore should take special care to determine whether the project will expose “sensitive receptors” to pollution (see, e.g., CEQA Guidelines, App. G); if it will, the impacts of that pollution are more likely to be significant.<sup>3</sup>

In addition, CEQA requires a lead agency to consider whether a project’s effects, while they might appear limited on their own, are “cumulatively considerable” and therefore significant. (Pub. Res. Code, § 21083, subd. (b)(3).) “[C]umulatively considerable” means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.” (*Id.*) This requires a local lead agency to determine whether pollution from a

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<sup>3</sup> “[A] number of studies have reported increased sensitivity to pollution, for communities with low income levels, low education levels, and other biological and social factors. This combination of multiple pollutants and increased sensitivity in these communities can result in a higher cumulative pollution impact.” Office of Environmental Health Hazard Assessment, *Cumulative Impacts: Building a Scientific Foundation* (Dec. 2010), Exec. Summary, p. ix, available at <http://oehha.ca.gov/ej/cipa123110.html>.

proposed project will have significant effects on any nearby communities, when considered together with any pollution burdens those communities already are bearing, or may bear from probable future projects. Accordingly, the fact that an area already is polluted makes it *more likely* that any additional, unmitigated pollution will be significant. Where there already is a high pollution burden on a community, the “relevant question” is “whether any additional amount” of pollution “should be considered significant in light of the serious nature” of the existing problem. (*Hanford, supra*, 221 Cal.App.3d at 661; see also *Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1025 [holding that “the relevant issue ... is not the relative amount of traffic noise resulting from the project when compared to existing traffic noise, but whether any additional amount of traffic noise should be considered significant in light of the serious nature of the traffic noise problem already existing around the schools.”])

### The Role of Social and Economic Impacts Under CEQA

Although CEQA focuses on impacts to the physical environment, economic and social effects may be relevant in determining significance under CEQA in two ways. (See CEQA Guidelines, §§ 15064, subd. (e), 15131.) First, as the CEQA Guidelines note, social or economic impacts may lead to physical changes to the environment that are significant. (*Id.* at §§ 15064, subd. (e), 15131, subd. (a).) To illustrate, if a proposed development project may cause economic harm to a community’s existing businesses, and if that could in turn “result in business closures and physical deterioration” of that community, then the agency “should consider these problems to the extent that potential is demonstrated to be an indirect environmental effect of the proposed project.” (See *Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal.App.3d 433, 446.)

Second, the economic and social effects of a physical change to the environment may be considered in determining whether that physical change is significant. (*Id.* at §§ 15064, subd. (e), 15131, subd. (b).) The CEQA Guidelines illustrate: “For example, if the construction of a new freeway or rail line divides an existing community, the construction would be the physical change, but the social effect on the community would be the basis for determining that the effect would be significant.” (*Id.* at § 15131, subd. (b); see also *id.* at § 15382 [“A social or economic change related to a physical change may be considered in determining whether the physical change is significant.”])

### Alternatives and Mitigation

CEQA’s “substantive mandate” prohibits agencies from approving projects with significant environmental effects if there are feasible alternatives or mitigation measures that would substantially lessen or avoid those effects. (*Mountain Lion Foundation v. Fish and Game Commission* (1997) 16 Cal.4th 105, 134.) Where a local agency has determined that a project may cause significant impacts to a particular community or sensitive subgroup, the alternative and mitigation analyses should address ways to reduce or eliminate the project’s impacts to that community or subgroup. (See CEQA Guidelines, § 15041, subd. (a) [noting need for “nexus” between required changes and project’s impacts].)

Depending on the circumstances of the project, the local agency may be required to consider alternative project locations (see *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 404) or alternative project designs (see *Citizens of Goleta*

*Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167, 1183) that could reduce or eliminate the effects of the project on the affected community.

The lead agency should discuss and develop mitigation in a process that is accessible to the public and the affected community. “Fundamentally, the development of mitigation measures, as envisioned by CEQA, is not meant to be a bilateral negotiation between a project proponent and the lead agency after project approval; but rather, an open process that also involves other interested agencies and the public.” (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 93.) Further, “[m]itigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments.” (CEQA Guidelines, § 15126.4, subd. (a)(2).)

As part of the enforcement process, “[i]n order to ensure that the mitigation measures and project revisions identified in the EIR or negative declaration are implemented,” the local agency must also adopt a program for mitigation monitoring or reporting. (CEQA Guidelines, § 15097, subd. (a).) “The purpose of these [monitoring and reporting] requirements is to ensure that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded.” (*Federation of Hillside and Canyon Assns. v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261.) Where a local agency adopts a monitoring or reporting program related to the mitigation of impacts to a particular community or sensitive subgroup, its monitoring and reporting necessarily should focus on data from that community or subgroup.

#### Transparency in Statements of Overriding Consideration

Under CEQA, a local government is charged with the important task of “determining whether and how a project should be approved,” and must exercise its own best judgment to “balance a variety of public objectives, including economic, environmental, and social factors and in particular the goal of providing a decent home and satisfying living environment for every Californian.” (CEQA Guidelines, § 15021, subd. (d).) A local agency has discretion to approve a project even where, after application of all feasible mitigation, the project will have unavoidable adverse environmental impacts. (*Id.* at § 15093.) When the agency does so, however, it must be clear and transparent about the balance it has struck.

To satisfy CEQA’s public information and informed decision making purposes, in making a statement of overriding considerations, the agency should clearly state not only the “specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits” that, in its view, warrant approval of the project, but also the project’s “unavoidable adverse environmental effects[.]” (*Id.* at subd. (a).) If, for example, the benefits of the project will be enjoyed widely, but the environmental burdens of a project will be felt particularly by the neighboring communities, this should be set out plainly in the statement of overriding considerations.

\* \* \* \*

The Attorney General's Office appreciates the leadership role that local governments have played, and will continue to play, in ensuring that environmental justice is achieved for all of California's residents. Additional information about environmental justice may be found on the Attorney General's website at <http://oag.ca.gov/environment>.

# EXHIBIT D

**WEST COAST HOME BUILDERS, INC.**  
**4021 Port Chicago Highway, Concord, California 94520**  
**Telephone: (925) 671-7711      Fax (925) 687-3366**

April 27, 2015

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

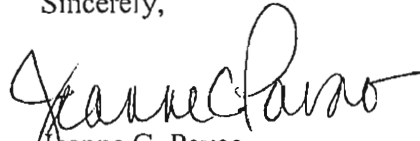


RE: Benicia Business Park Property

Dear Ms. Million:

On behalf of our Company ("Optionor") this letter confirms Robert Schwartz of Featherstone Enterprises, LLC dba Schwartz Land Development Company ("Optionee") has our consent and authority to process a General Plan Amendment application for the above-referenced property.

Sincerely,

  
Jeanne C. Pavao  
Senior Vice President  
and General Counsel



140 Litton Drive  
Suite 240  
Grass Valley, CA 95945  
Tel: 530.272.5841  
Fax: 530.272.5880  
Gen'l Email: [info@scopeinc.net](mailto:info@scopeinc.net)  
Truckee: 530.582.4043

April 20, 2015

*Via UPS Overnight Saver*

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

Re: **General Plan Amendment Request – Seeno Property**  
SCO Job No. 201424

Dear Amy,

Schwartz Land Development Company is requesting to initiate a General Plan Amendment (GPA) for consideration of a Mixed-Use Development project on approximately 527 acres of land located between East 2<sup>nd</sup> Street and Lake Herman Road, commonly known as the Seeno Property. The land use zoning categories proposed are as follows:

- IL (Limited Industrial) along East 2<sup>nd</sup> Street;
- IL (Modified Limited Industrial w/ targeted uses) along Industrial Way and within the mid portion of the site;
- CG (General Commercial) at the corner of Lake Herman Road and East 2<sup>nd</sup> Street;
- RS/RM/RH (residential) - Pockets of residential land uses accessible from Lake Herman Road, ranging from single family to high density multi-family zoning classifications;
- OS (Open Space) to provide significant physical and psychological buffer zones between land use clusters, and to protect natural drainages, steep slopes and environmentally sensitive areas.

The amount of acreage for each land use has not yet been confirmed or proposed. The land use ratio needs to provide economic and fiscal benefits to the City, enhance the economic climate of Benicia Business Park, reduce the potential for conflicting land uses, provide a competitive edge to allow the City to attract high wage industry and jobs and provide a diversified land use mix that encourages private investment. In an effort to determine the type of development concepts

Date: April 17, 2015

To: Amy Million

Re: **General Plan Amendment Request – Seeno Property**

that might address these various interests, we have prepared a “Project Justification Report” (see attached) that outlines what we believe to be prudent market projections and techniques that have been employed in other jurisdictions to accommodate the emerging lifestyles sought by knowledge-based and high wage employees and employers. Using this report, along with this GPA application, we respectfully ask the City to coordinate with Chabin Concepts to provide an economic analysis that tiers off the Benicia Industrial Park Market Study to assess opportunities a mixed-use development approach might provide to the city while still providing economic opportunity for private investment. From that assessment we hope to develop a Specific Plan that incorporates a successful land use mix that reflects the common interests outlined above.

We understand that an economic analysis is typically prepared later in the planning review process after a specific land use map and application have been filed. However, given this sites history, the City’s interest in economic development, and the unique opportunity of a large acreage single ownership parcel within the City’s urban planning boundary, we believe this approach offers the most productive path forward.

Thank you for your consideration of our request to initiate a General Plan Amendment. Please provide us with the initial application processing fees and a list of additional items that will be needed.

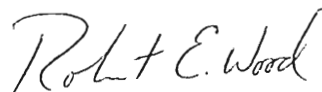
Sincerely,

**SCO Planning & Engineering, Inc.**

A handwritten signature in black ink, appearing to read "Dale T. Creighton".

Dale T. Creighton, AICP

Principal

A handwritten signature in black ink, appearing to read "Robert E. Wood".

Robert E. Wood, AICP

Senior Planner

Attachments *(as stated herein)*



**Community Development Department  
Planning Division**

*Staff Use*

30-Day Review:

**PLANNING APPLICATION FORM**

**\*\* Applications are only accepted between the hours of 8:30 – 9:30 a.m. and 1:00 – 2:00 p.m.  
To schedule an appointment outside of these hours, please call 707-746-4280.**

**1. Type of Application.** Check all applicable items below.

- |   |   |
|---|---|
| <input type="checkbox"/> Use Permit (circle: PC, Staff, Day Care, Temp) | <input type="checkbox"/> Zone Change/Overlay District   |
| <input type="checkbox"/> Design Review (circle: PC, HPRC, Staff, Minor) | <input type="checkbox"/> Extension of Approval<br>(write Planning Application # under Other)        |
| <input type="checkbox"/> Variance (circle: PC, SFR)                     | <input type="checkbox"/> Revision to approved project<br>(write Planning Application # under Other) |
| <input type="checkbox"/> Planned Development                            | <input type="checkbox"/> Other _____  |
| <input checked="" type="checkbox"/> General Plan amendment              |   |
| <input type="checkbox"/> Zoning Text amendment                          |   |
- ☐ Check here if project is located within 100 feet of the shoreline (mean high tide) (Requires BCDC review)
- ☐ Check here if there will be any sale/service of alcoholic beverages. (Please describe below)

**2. Property Information.**

Address/location East 2nd Street and Lake Herman Road, commonly known as "The Seeno Property"

APN(s) 080-010-030, 181-260-060, 080-030-060, -070, -140, -160 Parcel area (sq. ft. or ac) ~ 527 acres

**3. Project Description.** Describe the type of development, use being proposed, exterior alterations, need for variance, etc. Attach additional sheets if necessary.

Mixed-Use development consisting of limited industrial, general commercial and residential land uses (see

Project Justification)

**4. Contact Information.** Check the ☐ to indicate the primary contact.

☐ **Property Owner**

Name West Coast Home Builders, Inc. Organization \_\_\_\_\_

Mailing address \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

☐ **Applicant, if different from owner**

Name Robert K. Schwartz Organization Schwartz Land Development Company

Mailing address 114 Raven Hill Road, Orinda, CA 94563

Phone (925) 258-4277 Phone (2) (510) 409-7277

E-mail schwartzltd@yahoo.com Fax (925) 258-5277

☒ **Architect/Engineer/Contractor**

License # \_\_\_\_\_ License Type (Arch, Eng, Contr, etc.) Land Planner

Business SCO Planning & Engineering, Inc. Individual's Name Robert E. Wood

Mailing address 140 Litton Drive, Suite 240, Grass Valley, CA 95945

Phone (530) 272-5841 Fax (530) 272-5880 E-mail rob@scopeinc.net

**5. Signatures.** Applicant and Property Owner must sign on reverse side.

<b>For Staff Use:</b>	Appl. #(s) _____	Date Filed _____
Date Entered _____	Entered By _____	Receipt # _____
Fee Breakdown _____	Total Fees Paid \$ _____	
GP designation _____	Current zoning _____	Historical Dist./designation _____

**5. Signatures.** Applicant and Property Owner must sign on page 2. The signature of the architect and/or engineer is also required if drawings are submitted by professional architects and/or engineers.

**Signatures of Applicant and Property Owner.** Both signature lines must be signed, even if the applicant and property owner are the same.

**Applicant**

As part of this application the applicant hereby agrees to defend, indemnify and hold harmless the City of Benicia, its Council, boards and commissions, officers, employees, volunteers and agents from any claim, action, or proceeding against the City of Benicia, its Council, boards and commissions, officers, employees, volunteers and agents, to attack, set aside, void or annul an approval of the application or related decision, including environmental documents, or to challenge a denial of the application or related decisions. The applicant's duty to defend, indemnify and hold harmless shall be subject to the City's promptly notifying the applicant of said claim, action or proceeding and the City's cooperation in the applicant's defense of said claims, actions or proceedings. The City of Benicia shall have the right to appear and defend its interests in any action through the City Attorney or outside counsel. The applicant shall not be required to reimburse the City for attorney's fees incurred by the City Attorney or its outside counsel if the City chooses to appear and defend itself in the litigation.

By signing below, I hereby certify that the application I am submitting, including all additional required information, is complete and accurate to the best of my knowledge. I understand that any misstatement or omission of the requested information or of any information subsequently requested may be grounds for rejecting the application, deeming the application incomplete, denying the application, suspending or revoking a permit issued on the basis of these or subsequent representations, or for the seeking of such other and further relief as may seem proper by the City of Benicia.

Applicant: *[Signature]* For: Schwartz Land Development Date: April 20, 2015

**Property owner**

By signing below, I hereby certify under penalty of perjury, that I am the owner of record of the property described herein and that I consent to the action requested herein. All other owners, lenders or other affected parties on the title to the property have been notified of the filing of this application. Further, I hereby authorize City of Benicia employees and officers to enter upon the subject property, as necessary to inspect the premises and process this application.

In order to facilitate the public review process, the City requires that property owners agree to allow any plans or drawings submitted as part of the application to be copied for members of the public. Property owner(s) hereby agree to allow the City to copy the plans or drawings for the limited purpose of facilitating the public review process.

Property owner: \_\_\_\_\_ Date: \_\_\_\_\_

**Architect/Engineer**

In order to facilitate the public review process, the City requires that architects and engineers agree to allow any plans or drawings submitted as part of the application to be copied for members of the public. Architect/Engineer hereby agree to allow the City to copy the plans or drawings for the limited purpose of facilitating the public review process.

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

Engineer: *[Signature]* Date: 4/20/15

**NOTE:** In addition to City and other government agency requirements, many development areas, particularly residential areas, are regulated by private agreements and/or private easements. Applicants should check project property descriptions, including title reports, to determine if such private contractual agreements ("CC&Rs") or easement descriptions impact the project proposal.

The City's issuance of a building or development permit does not indicate conformance to these private agreements.

## DESIGNATION OF A REPRESENTATIVE FORM

Applicants or property owners who desire to authorize a representative or representatives to act on their behalf in conjunction with this application shall provide the following information:

Name of authorized representative(s): Robert E. Wood, AICP

Address of representative(s): 140 Litton Drive, Suite 240, Grass Valley, CA 95945

Phone number of representative(s): (530) 272-5841

The above named representative(s) is authorized as follows:

- ☒ File any and all papers in conjunction with the application including the signing of the application. RL (initial)
- ☒ Speak on behalf of, or representing, the [choose owner and/or applicant and fill in blank] Robert K. Schwartz/Owner at any staff meeting and/or public hearing. RS (initial)
- ☒ Sign any and all papers on my behalf, with the exception of the application form. RS (initial)

This authorization is valid until revoked in writing and filed with the Community Development Department.

Robert K. Schwartz For Schwartz Camel Development April 20, 2015  
Owner/ Applicant (specify) Date



## Community Development Department Planning Division

### PROJECT SUMMARY SHEET

#### 1. Property Information.

Address(es)/location East 2nd Street and Lake Herman Road APN(s) See Below  
Current use(s) Open Space; APN's: 181-260-060; 080-010-030; 080-030-060, -070, -100, -140, -160  
Property area (sq ft or ac) 527 Acres # of structures 1 # of dwelling units 0  
Zoning IL and CG Gen. Plan Limited Industrial and General Commercial  
Historic Cons. Dist. \_\_\_\_\_ Historic designation \_\_\_\_\_

#### Setbacks and lot coverage

	Required	Existing	Proposed (if different from existing)
Front (ft)	_____	_____	_____
Side 1 (ft)	_____	_____	_____
Side 2 (ft)	_____	_____	_____
Rear (ft)	_____	_____	_____
Lot coverage, total of all structures (%)	_____	_____	_____

#### Adjacent properties and uses

North	<u>Undeveloped</u>	Zoning <u>OS</u>	Gen. Plan <u>Open Space</u>
East	<u>Highway 680</u>	Zoning <u>N/A</u>	Gen. Plan <u>N/A</u>
South	<u>Benicia Industrial Park (BIP)</u>	Zoning <u>IL</u>	Gen. Plan <u>Limited Industrial</u>
West	<u>BIP &amp; Residential Subdivision</u>	Zoning <u>IL, RS, OS</u>	Gen. Plan <u>Ltd. Ind., Res., Open Space</u>

#### Sitework

Trees over 12" in diameter,  
as measured 4 feet above grade Existing \_\_\_\_\_ To be removed \_\_\_\_\_  
Estimated volume of cut and fill (cubic yds) Cut \_\_\_\_\_ Fill \_\_\_\_\_  
Import/Export Balance (check one) ☐ Net import ☐ Net export ☐ Balance  
Utilities affected \_\_\_\_\_

#### 2. Primary/Affected Building Information.

	Maximum	Existing	Proposed (if different from existing)
Total building floor area (sq ft)	_____	_____	_____
Floor-to-Area Ratio (FAR) (ratio)	_____	_____	_____
Building Footprint (sq ft)	_____	_____	_____
Height			
Wall	_____	_____	_____
Peak of roof	_____	_____	_____

#### 3. Uses of the Property.

##### Building Uses (retail, residential, office, warehouse, manufacturing, etc.)

	Description	Floor Area (sq ft)
Use 1	_____	_____
Use 2	_____	_____
Use 3	_____	_____
Use 4	_____	_____

**Property Uses (parking lot, landscaping, patio, eating area, storage, garbage, etc.)**

	Description	Area (ac or sq ft)
Use 1	_____	_____
Use 2	_____	_____
Use 3	_____	_____
Use 4	_____	_____

**Housing Units (if any)**

Type	Existing	Proposed (if different from existing)
Single family detached units (#)	_____	_____
Apartment units (#)	_____	_____
Condominium units (#)	_____	_____

Bedrooms	Existing	Proposed (if different from existing)
Studio units (#)	_____	_____
1 or 2 bedroom units (#)	_____	_____
3+ bedroom units (#)	_____	_____

**Parking**

	Required	Existing	Proposed (if different from existing)
Regular spaces (#)	_____	_____	_____
Compact spaces (#)	_____	_____	_____

**Operating Information**

	Existing	Proposed (if different from existing)
Business name	_____	_____
Days of operation (circle)	S M T W T F S	S M T W T F S
Operating hours	_____	_____
Operating hours, cont.	_____	_____
Employees (#)	_____	_____
Vehicles (#)	_____	_____

	Existing	Proposed (if different from existing)
Outdoor storage or display (sq ft)	_____	_____
Outdoor food service (sq ft)	_____	_____
Live entertainment (sq ft)	_____	_____

<b>For Staff Use:</b>	Appl. #(s) _____	Date Filed _____
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## Community Development Department Planning Division

### ENVIRONMENTAL CHECKLIST FORM

#### 1. Property Information.

Address/location East 2nd Street and Lake Herman Road

APN(s) 080-010-030;181-260-060;080-030-060,-070,-100,-140,-160 Parcel area (sq. ft. or ac) ~ 527 Acres

Other permits/approvals required for this project (federal, state, regional, etc.)

#### 2. Project Information.

Indicate which of the following types of impacts may be applicable to or generated by the project. Discuss below all items checked "Yes" or "Maybe". Attach additional sheets if necessary.

Type of Impact	Yes	Maybe	No
a. Change in existing features of any bay, tidelands, beaches, lakes or hills, or substantial alteration of ground cover.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Change in scenic views or vistas from existing residential areas or public lands or roads.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Change in pattern, scale, or character of general area of project.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Creation of significant amounts of solid waste or litter.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e. Change in dust, ash, smoke, fumes, or odors in vicinity.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f. Change in bay, lake, stream, or groundwater quality or quantity, or alteration of existing drainage patterns.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g. Change in existing noise or vibration levels in the vicinity.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
h. Site on filled land or slope of 10 percent or more.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i. Use or disposal of potentially hazardous materials (toxic substances, flammables, explosives, etc.)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
j. Substantial change in demand for municipal services (police, fire, water, etc.)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
k. Substantial increase in fossil fuel consumption (oil, natural gas, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
l. Relationship to a larger project or series of projects.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
m. Construction in a floodplain.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Use this space to discuss items checked "Yes" or "Maybe" (attach additional sheet if necessary)

To be discussed and evaluated during Specific Plan and Environmental Review

#### 3. Applicant's Signature.

By signing below, I hereby certify that the information I am submitting is complete and accurate to the best of my knowledge. I understand that any misstatement or omission of the requested information may cause unforeseen delays in the processing of my application.

Applicant Robert Schy For: Schwartz Land Development Date April 20, 2015

**For Staff Use:** Appl. #(s) \_\_\_\_\_ Date Filed \_\_\_\_\_

# EXHIBIT E

## Suzanne Thorsen

---

**From:** Suzanne Thorsen  
**Sent:** Thursday, September 03, 2015 3:39 PM  
**To:** Jason Riley; Richard Ryan; Rick Knight  
**Cc:** Graham Wadsworth; Joshua Chadwick; Christina Ratcliffe; Mario Giuliani; cyoung (cyoung@beniciaunified.org)  
**Subject:** Northern Gateway - Conceptual Land Use Diagram & Phasing  
**Attachments:** Land Use Plan.pdf; phasing.pdf

Good afternoon,

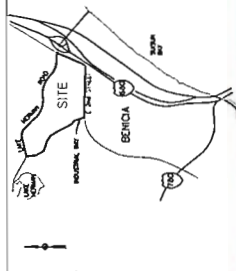
Attached please find updated preliminary/conceptual information for the Northern Gateway project. This conceptual land use diagram is prepared for the purposes of an economic analysis (presently underway). The Planning Commission will consider the development concept (light industrial, commercial and residential uses) along with the economic analysis at a future public workshop. Following the workshop, the applicant will consider the City's feedback and, if he decides to move forward with the project, begin preparation of a Specific Plan. The Specific Plan will precede additional reviews and agreements, including environmental review and mitigations under the California Environmental Quality Act. In summary, this project is still in the very preliminary stages.

Please let me know if you have any questions or comments related to this information.

Suzanne Thorsen, Senior Planner  
City of Benicia  
sthorsen@benicia.org  
(p): 707.746.4279  
(f): 707.747.1637

AUGUST 25, 2015  
Scale: 1"=300'

PROPOSED LAND USE			
ZONING DISTRICT	ACRES	UNITS / SF.	
OS - OPEN SPACE	240.0	-	
RS - SINGLE FAMILY RESIDENTIAL	64.1	50 - 80	
RM - MEDIUM DENSITY RESIDENTIAL	11.8	30 - 50	
RL - HIGH DENSITY RESIDENTIAL	34.5	200 - 250	
CC - COMMUNITY COMMERCIAL	2.7	200K SF - 200K SF	
IL - LIMITED INDUSTRIAL	169.4	18K SF - 24K SF	
TOTAL	493.7 AC		



### VICINITY MAP



# NORTHERN GATEWAY MIXED-USE DEVELOPMENT

SCHWARTZ LAND DEVELOPMENT COMPANY

## PRELIMINARY PHASING PLAN

AUGUST 25, 2015

Scale: 1"=300'

PHASING LEGEND	
	<b>PHASE 1</b>
• Construct 20 to 30 single family homes	
• Construct 100 to 150 units of multi-family housing	
• Construct 100 to 150 units of multi-family housing	
• Improve Riverside Road from E. 2nd Street to Lake Herman Road	
• Improve Lake Herman Road from Phase 1 to Phase 2 intersection to increase building clearance	
• Broaden Industrial Way approx. 1400 LF	
	<b>PHASE 2</b>
• Construct 25 to 300 single family homes	
• Improve Lake Herman Road from northwest corner of project to Phase 1 intersection (approx. 1400 LF)	
	<b>PHASE 3</b>
• Construct 50 to 100 single family homes	
• Construct 100 to 150 units of multi-family housing	
• Improve East 2nd Street from Industrial Way to east end of Phase 3 (approx. 2000 LF)	
• Improve Lake Herman Road from Phase 2 to Phase 3 (approx. 1400 LF)	
	<b>PHASE 4</b>
• Construct 100 to 150 single family homes	
• Construct 100 to 150 units of multi-family housing	
• Improve East 2nd Street from Phase 3 to east end of Phase 4 (approx. 2000 LF)	
	<b>PHASE 5</b>
• Construct 200 to 250 single family homes	
• Construct 200 to 250 units of multi-family housing	
• Improve East 2nd Street from Phase 4 to Lake Herman intersection (approx. 1000 LF)	
• Improve Lake Herman Road from Phase 4 to E. 2nd Street intersection (approx. 1000 LF)	
• Potential Carriage Way (indicated on map)	

