RESOLUTION NO. 16- 1 (PC)

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

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

WHEREAS, the City of Benicia, as the Lead Agency, prepared an Initial Study/Mitigated Negative Declaration to determine if the Valero CBR Project could have a significant impact on the environment, in accordance with the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), the Guidelines for the Implementation of the California Environmental Quality Act (14 CCR Section 15000 et seq.), and the City of Benicia Guidelines pursuant thereto; and

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

WHEREAS, a Draft Environmental Impact Report (Draft EIR) was prepared for the Valero CBR Project and circulated for a 90-day comment period between June 17, 2014 through September 15, 2014; and

WHEREAS, a Notice of Completion of the Draft EIR was filed with the Office of Planning and Research (OPR) on June 17, 2014, and a public notice of the availability of the Draft EIR was published in the Benicia Herald and Vallejo Time Herald on June 17, 2014; and

WHEREAS, copies of the Draft EIR were provided to the State Clearinghouse (State Clearinghouse No. 2013052074) and to those public agencies that have jurisdiction by law with respect to the project, and a Notice of Availability to other interested persons and agencies, and the comments of such persons and agencies were sought for a 90-day comment period between the dates of June 17 through September 15, 2014; and

WHEREAS, the Planning Commission held a public hearing and accepted testimony on the Draft EIR on July 10, 2014, August 14, 2014 and September 11, 2014, and the City accepted written comments on the Draft EIR through September 15, 2014; and

WHEREAS, a Revised DEIR was prepared for the Valero CBR Project and circulated for a 60-day comment period between August 31, 2015 through October 30, 2015; and

WHEREAS, a Notice of Completion of the Revised Draft EIR was filed with OPR

on August 31, 2015, and a public notice of the availability of the Revised Draft EIR was published in the Benicia Herald and Vallejo Times Herald on August 31, 2015; and

WHEREAS, copies of the Revised Draft EIR were provided to the State Clearinghouse (State Clearinghouse No. 2013052074) and to those public agencies that have jurisdiction by law with respect to the project, and a Notice of Availability to other interested persons and agencies, and the comments of such persons and agencies were sought for a 60-day comment period between the dates of August 31, 2015 through October 30, 2015; and

WHEREAS, the Planning Commission held a public hearing and accepted testimony on the Revised Draft EIR on September 29, 2015, September 30, 2015, October 1, 2015 and October 8, 2015, and the City accepted written comments on the Revised Draft EIR through October 30, 2015; and

WHEREAS, 287 written communications were received regarding the Draft EIR, 3,822 written communications were received regarding the Revised Draft EIR and these are included, along with responses, in the Final EIR; and

WHEREAS, the Final EIR document consisting of the Initial Study/Mitigated Negative Declaration, Draft EIR, Revised Draft EIR and the Response to Comments; and said Response to Comments incorporated all written comments received, all oral comments made at the Planning Commission public hearings, the responses to those written and oral comments, and the necessary corrections to the Draft EIR; and

WHEREAS, the Response to Comments document was circulated for public information and provided to the Planning Commission on January 5, 2016; and

WHEREAS, agencies and persons commenting on the Draft EIR and Revised Draft EIR were provided with copies of the Response to Comments document or the City's proposed responses to their specific comments on January 5, 2016; and

WHEREAS, a Mitigation Monitoring and Reporting Program was prepared to ensure that the mitigation measures identified in the EIR are implemented; and

WHEREAS, the various documents and other materials related to the Project constitute the Record of Proceedings upon which the City bases its findings and decisions contained herein. Those documents and materials are located in the offices of the custodian of records for the documents and materials, who is the Community Development Director, City Hall, 250 East L Street, Benicia, California; and

WHEREAS, the Planning Commission held public hearings on February 8, 9, 10 and 11, 2016, at which it considered and discussed the Final EIR, the Mitigation Monitoring and Reporting Program, the staff report, and the proposed use permit with conditions of approval for the CBR Project, and heard testimony from members of the public regarding the documents and the proposed use permit; and

WHEREAS, per Section 15270 of the California Environmental Quality Act (CEQA) Guidelines, CEQA does not apply to projects that a public agency disapproves, but the Planning Commission determined it was necessary to provide findings per CEQA Sections 15090 and 15091, and to deny certification of the EIR and identified the following deficiencies in the EIR:

1. The EIR does not express the independent judgment of the City as required by CEQA.
2. Staff's interpretation of preemption is too broad and the EIR should consider including mitigation measures to offset the significant and unavoidable impacts associated with rail operations, such as air pollution emissions, improved rail car requirements, additional funding for emergency responders and degasifying the oil before transport.
3. The application's objectives are not the City's objectives and the City's objectives were never stated or evaluated.
4. The EIR never discussed or evaluated the City's need for the project.
5. The project is located in the 100-year floodplain, which could increase the hazards related to an accidental spill on the property.
6. The size of the project is too big and would result in traffic and train backups which would negatively affect access to businesses in the Benicia Industrial Park.
7. The project's benefits such as the local employment and economic benefits were not thoroughly examined in the EIR and would not outweigh the significant effects on the environment.
8. The project could potentially have negative biological impacts on Sulphur Springs Creek and the marsh area between the Benicia Industrial Park and the Carquinez Strait.
9. The traffic, air quality, and greenhouse gas emissions analyses are insufficient.
10. The EIR does not evaluate a sufficient number of project alternatives that are feasible.
11. The EIR does not evaluate mitigations to uprail communities and how each potential mitigation is or is not preempted.
12. The EIR's infeasibility determinations are incorrect for Alternative 1 (1, 50-car train) and Alternative 3 (off-site terminal).
13. The response to comments in the FEIR are found to be inadequate, non-responsive and dismissive including, but not limited to, the following specific comment letters:
    a. Sacramento Area Council of Government: unfunded obligations on communities related to first responders, no evidence of mitigation measures to address transporting crude by rail, no evidence that mitigation measures for the significant and unavoidable impacts are infeasible due to preemption; and insufficient evaluation of potential alternatives including how preemption is applicable.
    b. State of California Attorney General: insufficient evaluation of air quality impacts and an overly broad interpretation of trade secrets.
    c. Bay Area Air Quality Management District: insufficient consideration of the their recommended mitigation measures for offsetting rail impacts, the

analysis does not accurately characterize air emissions or health impacts, including an insufficient evaluation of PM2.5.

14. The EIR does not disclose all information necessary for complete evaluation of the air quality impacts of the project including the makeup of the crude oil associated with this project, which is based on an overly-broad interpretation of what constitutes trade secrets.

NOW, THEREFORE, BE IT RESOLVED THAT the Planning Commission of the City of Benicia denies certification of the EIR and denies the use permit and makes the following finding based on the Valero Crude by Rail Project application, the staff report, and related documents, and information presented at the public hearings on February 8, 9, 10 and 11, 2016:

1. *That the proposed location of the conditional use and the proposed conditions under which it would be operated or maintained would not be consistent with the General Plan as it would be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the neighborhood of the use, or to the general welfare of the city, as well as uprail communities.*

The project is inconsistent with the General Plan including Goals 2.5, 4.8, and 4.9 due to the direct and indirect impacts of the proposed project which will not maintain the City's health, safety and quality of life. The negative impacts of the project such as impacts to the traffic in the industrial park, freeway, the community's ability to travel in and out of the industrial park and economic impacts to adjacent businesses would not maintain the City's health, safety, and quality of life. The potential for negative environmental impacts would dissuade businesses from staying in the Benicia Industrial Park and dissuade new businesses from locating in the Benicia Industrial Park. There is no provision for clean-up in case of a spill or accident and local jurisdictions, including Benicia would bear the economic burden of such a clean-up. In addition, the design of the unloading rack, its location in the 100-year flood zone, and the size of the facility creates issues with traffic and emergency access. The project would limit access for emergency response; especially access to Sulphur Springs Creek including the potential for rail cars to fall into Sulphur Springs Creek.

The Planning Commission finds that the project would be inconsistent with the General Plan in that it would place Benicia residents and uprail communities at risk. There is not sufficient technology currently available to make the rail cars safe. In addition, the project creates significant environmental concerns surrounding the project's impact on Sulphur Springs Creek and the bay, potential increases in the cost of insurance coverage for the community, liability risks for property damages and cleanup costs associated with on-site and off-site impacts of the transport of crude by rail.

As set forth above, the finding cannot be made for the Project due to the potential

significant on- and off-site impacts associated with the project and the associated rail operations, the need for further evaluation of the environmental impacts, the economic purposes of the project and the conflicting interpretations of preemption.

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On motion of Commissioner Young, seconded by Commissioner Birdseye, the above Resolution was adopted at a special meeting of the Planning Commission on February 11, 2016, by the following vote:

Ayes:	Commissioners Birdseye, Cohen-Grossman, Oakes, Radtke, Young and Chair Dean
Noes:	None
Absent:	Commissioner Sherry
Abstain:	None

Don Dean
Planning Commission Chair