



DRAFT

**BENICIA PLANNING COMMISSION  
SPECIAL MEETINGS MINUTES**

**City Hall Council Chambers**

**Monday, February 8, 2016  
Tuesday, February 9, 2016  
Wednesday, February 10, 2016  
Thursday, February 11, 2016**

**6:30 P.M.**

**I. OPENING OF MEETING ON FEBRUARY 8, 2016**

**A. Pledge of Allegiance**

**B. Roll Call of Commissioners**

Present: Commissioners Birdseye, Cohen-Grossman, Oakes,  
Radtke, Young and Chair Dean  
Absent: Commissioner Sherry  
Staff Present: Christina Ratcliffe, Community Development Director  
Amy Million, Principal Planner  
Jim Lydon, Fire Chief  
Damiean Sylvester, Police Lieutenant  
Janna Scott, ESA  
Cory Barringhaus, ESA  
Brad Hogin, Contract Attorney  
Kat Wellman, Contract Attorney  
Dorothy Dickson-Dodds, Recording Secretary

**C. Reference to Fundamental Rights of Public**

**II. ADOPTION OF AGENDA**

On motion of Commissioner Birdseye, seconded by Commissioner Oakes, the agenda was adopted by the following vote:

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

**III. OPPORTUNITY FOR PUBLIC COMMENT**

**A. WRITTEN:** None.

**B. PUBLIC COMMENT:** None.

**IV. CONSENT CALENDAR**

**V. REGULAR AGENDA ITEMS**

**A. VALERO CRUDE BY RAIL PROJECT - ENVIRONMENTAL IMPACT REPORT AND USE PERMIT**

Application No. 12PLN-00063 Use Permit

Project Address: 3400 East Second Street; APN: 0080-110-480

Commission disclosed ex-parte communications.

- Commissioner Young reported that he had none.
- Commissioner Cohen-Grossman disclosed that she had taken a tour at Valero, attended a meeting at library and the League of Women Voters' meeting on crude by rail.
- Commissioner Oakes reported that he had none.
- Commissioner Birdseye disclosed that she toured Valero and attended a conference in Richmond on the topic of crude by rail.
- Commissioner Radtke disclosed that she also toured Valero refinery and reached out to a few agencies with questions.
- Chair Dean disclosed that he attended a tour of the Valero refinery and that he had communications with a former member of City Council and more recently Marilyn Bardet.

Ms. Million introduced staff members and consultants and provided a presentation of the project.

Cory Barringhaus, ESA, provided a presentation of the environmental review and a summary of the environmental impacts.

Brad Hogin, Contract Attorney, provided a presentation of the Interstate Commerce Commission Termination Act (ICCTA) preemptions.

Ms. Million provided a review of the recommendations and proposed CEQA findings for the project.

Commissioner Young asked various questions in regard to the type of crude oil, crude shipment, the operation aid agreement between the City and Valero, mutual aid response, the traffic study, air and greenhouse gas emissions,

certification of the EIR, the Climate Action Plan, project alternatives, the project's objectives, federal preemption, economic impacts.

City Staff and various consultants including Jack Hutchinson of ESA, Tim Rimpo of ESA, and Mr. Hogin provided responses.

Commissioner Birdseye inquired about maritime operations and the city's purview, rail car monitoring, economic issues, the impact on property values and potential health risks addressed in the EIR.

The Commission asked about possible traffic congestion at the I-680 off-ramp, Caltrans January 2016 comment letter and the impact to emergency situations.

Commissioner Oakes questioned what will be done to mitigate the impact of access and emergency situations.

Commissioner Cohen-Grossman inquired about the preemption, role of CEQA and NEPA and asked for clarification on Valero and Union Pacific's roles.

Chair Dean requested clarification on preemption and the required findings under CEQA.

Commissioner Young asked about the project alternatives and various questions on preemption.

8:50 p.m. - Chair Dean recessed for a break.

9:04 p.m. - Chair Dean reconvened the meeting.

Commissioner Young asked about risk analysis report for the transport of crude by rail including the classification of tracks, train speeds, Donner Pass and Feather River areas, probability of derailments, railcar standards, and positive train control.

City Staff, Steve Radis of MRS Marine Research Specialists and Francisco Castillo of Union Pacific Railroad (UPRR) provided responses.

Commissioner Young asked about emergency response, the operational aid agreement, training for first responders, and firefighting foam. Commissioner Radtke requested additional information on the use of foam. Commissioner Young continued with questions regarding clean up after a rail incident, the probability of an accident and air quality impacts related to a fire.

Chief Lydon, Valero Fire Chief Joe Bateman, and Mr. Hutchinson as well as Mr. Castillo, provided various responses.

Chair Dean requested clarification on the mitigation for significant and

unavoidable impacts.

Commissioner Young asked various questions regarding the explosiveness of gas and oil, threshold for worst case scenario and the risk analysis, emergency response plans, stabilization and testing at the crude source, train scheduling and traffic, the traffic study and the less than significant determination in the EIR.

City Staff and consultants including Mr. Hutchinson, Francisco Martin of Fehr & Peers as well as Mr. Castillo, provided various responses.

Commissioner Young asked various questions regarding the greenhouse gas emissions relating to the type of crude, confidential business information, air quality impacts and analysis.

Mr. Rimpo provided responses.

Commissioner Young inquired about liability, costs associated with cleanup and UPRR responsibility, and trade secrets.

At 11:00 p.m. Chair Dean adjourned for the evening and continued the meeting to February 9, 2016.

**Tuesday, February 9, 2016**

**6:30 P.M.**

**VI. OPENING OF CONTINUED MEETING FROM FEBRUARY 8, 2016**

**A. Pledge of Allegiance**

**B. Roll Call of Commissioners**

Present: Commissioners Birdseye, Cohen-Grossman, Oakes,  
Radtke, Young and Chair Dean

Absent: Commissioner Sherry

Staff Present: Christina Ratcliffe, Community Development Director  
Amy Million, Principal Planner  
Jim Lydon, Fire Chief  
Damiean Sylvester, Police Lieutenant  
Janna Scott, ESA  
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Heather McLaughlin, City Attorney  
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The Commission made various comments and inquired about the stated economic benefits of the project, preemption's impacts on real estate disclosures, air emissions analysis, the number of project alternatives, Alon Terminal in Bakersfield, increased traffic and the traffic study, the unloading rack, and the City's preemption determination and its comparison to similar projects.

Don Wilson, Valero Refinery Manager, introduced the project.

Don Cuffel, Valero, provided project specific details and responded Commissioners' questions regarding greenhouse gasses, Valero operations and refining parameters, and permit requirements.

The Commission asked various questions of the applicant including, the blending process, transportation of Bakken crude, temperature and pressure of the crude for storage, confidential business information, train schedule, Valero's existing and potential future operations, preemption, location and configuration of the proposed unloading rack, economic benefits of the project to the industrial park, and Valero corporate's position on the project.

Public Comment was opened.

Bob Livesay, Benicia resident, in favor of the Valero project and certification of the Final EIR (FEIR). Thanked the City staff. Commented that greenhouse gases would be reduced, and stated his general support of the refinery.

Bill Pinkham, Richmond resident, opposed to the project, stated the negligence of refineries; concern with derailment, major explosion, crude train transport accidents, railroad crossing accidents, derailments due to rail failure, and railroad personnel issues.

Constance Beutel asked various questions such as Valero's economic contributions to the City, number of employees and the number that live in Benicia, tax records, and the Climate Adaptation Plan. She asked the Commission to not certify the EIR and decline the project.

Pat Toth-Smith thanked the Planning Commission, recommends not certifying the Final EIR noting deficiencies in the traffic study such as the traffic backups at the Bayshore Road off-ramp, traffic at Park Road intersection, possible traffic hazards, and trains blocking private business driveways.

Ms. Wellman provided clarification on the procedures for public comment.

Judi Sullivan, Benicia resident, thanked the Commission for their due diligence and answering all her questions last night. She commented that Valero is the applicant, not UPRR. Valero is making the choice to use UPRR. She recommends the Commission choose the no project alternative and does not support the City's determination on preemption.

Marilyn Bardet, on behalf of Benicians for a Healthy and Safe Community, spoke about the role of CEQA and the Commission. She stated that the FEIR does not support the project in regard to GHG emissions and overseas export. She urged the Commission to read the letter from Petra Pless, consider other failures of the EIR including, no discussion of the Seeno property development and the cement plant on Mare Island, misleading project objectives, insufficient project description, ineffective mitigation measures, lack of project alternatives and the project's impact on the industrial park.

Andres Soto, on behalf of Benicians for a Safe and Healthy Community, spoke about the history of the group. He commented on City staff's position on the project, the deficiencies in the EIR, Valero's allocation of funds, and the damage to the Suisun Marsh and Carquinez Strait. He urged the Commission to not certify the EIR and deny the use permit application.

8:38 p.m. - Chair Dean recessed for a break.

8:50 p.m. – Chair Dean reconvened the meeting.

Katherine Black, member of the steering committee for Benicians for a Safe and Healthy Community, noted her disapproval of the recommendation to approve the project. She encouraged consideration of health impacts over profits, and asked the Commission not approve the EIR.

Larry Fullington stated that Valero has done many things for our city and approval of the project means less crude from the Middle East. He commented on previous train accidents and the different circumstances present. He noted that the project will create new jobs, the 13.7 million dollars in donations made by Valero to Benicia, commented that Valero is a responsible neighbor, and asked Commission to approve this project.

Joseph Rizzi stated that he is in support of crude by rail in general, that this project provides a different means of transportation for the refinery, the project would keep the cost of gas down and that people should go to their Congressman not the Benicia Planning Commission if they want this stopped, and we should support our community.

Don Stock, Benicia resident, said that Valero is good neighbor; it is a safe, clean refinery, involved in the community, supports local charities and business. He encouraged the Commission to approve the project.

Bill Darnell spoke about his personal history with the refinery, the hazardous materials transported by rail, and Valero's positive business practices. He expressed his support of Valero.

Joe Bateman, Valero Fire Chief, said that Valero is a good neighbor. He talked about the support the Valero Fire Department provided during the rail accident in Lac-Mégantic Canada and the local Big O Tire fire last year. He commented on training practices, including the training of the Benicia Fire Department, and stated that his department is the best trained industrial fire department.

Dan Broadwater, IBEW Local 180, talked about the safety requirements at the Valero refinery, the hysteria created by the train accidents across the country, the air pollution scrubber, and asked the Commission to approve the project.

Bart Sullivan spoke in general about the negative impacts of transporting crude by rail including terrorism and public safety and health.

Eric Hogle, Benicia resident, stated that there is nothing inherently dangerous about the rail, it is the preferred way and is safe. He supports Benicia businesses and the industrial park and asked the Commission to certify the EIR and approve the project.

Lionel Largaespada, Benicia resident, thanked the Commission, staff and Valero. He expressed concern for our future and urged the Commission to objectively and programmatically consider the project, certify the EIR and approve the use permit.

Dr. Richard Lundin, Benicia resident, spoke about the project supporting the nation's energy goals. He supports the project and urged the Commission to approve the project.

Rachael Koss spoke about the comments previously submitted that show problems with the EIR such as significant environmental impacts on site and beyond, and the FEIR does not comply with CEQA. She disagrees with the preemption determination.

Madeline Koster spoke in opposition to the project commented on water issues, properties of crude, noise associated with the trains, air quality and odor issues associated with the refinery, and the project's negative impacts to property values.

Richard Freeman stated that he is opposed to the project, the number of new jobs appears low and the project will permit reckless endangerment of people. He asked the Commission to deny the project.

Adele Poenish read a comment letter prepared by her sister. It stated that the EIR must address two topics: the transport of crude and the product volatility. It does not address product volatility. She stated that Bakkan crude is the reason for shipment by rail, Valero may be unprepared to handle this crude. She stated that the Final EIR is incomplete and supports the no project alternative.

Ken Matsumura stated that Valero has been a good neighbor but they will not go out of business if the project is not approved. He encouraged looking into the future and voting against the project.

Charles Davidson, Hercules resident, spoke about the Valero Improvement Project, stated his concerns with the levels of sulfurs, different crudes found in different parts of North America; the effects of air pollution and derailment hazard. He asked the Commission to deny the project.

Elizabeth Lasensky with Yolo Move-On and Yolo Climate Action, spoke about the project's significant and unavoidable impacts, Feather River and Yolo Bypass Wildlife Refuge; she showed where the Union Pacific track goes through Davis, showing how close the tracks are to the city and UC Davis proximity. She stated that her organizations are opposed to the project.

Lynne Nitler spoke about the significant and unavoidable impacts and staff's recommendation to contact our congressional representatives, rail accidents and her legislative efforts. She asked the Commission to consider the trail of GHG emissions, hazardous risk, air quality degradation, threat to wildlife, and the economic situation.

Nancy Rieser with Crockett-Rodeo United to Defend the Environment, commented on preemption, the impacts of a train derailment, and asked the Commission to turn down this project.

Alan Miller commented on a weak point in the rail infrastructure in Davis, his concern with probable accidents and provided a copy of an article he wrote for the Davis Enterprise.

Reverend Will McGarvey spoke about the health disparities of those living downwind of the refinery, the health risks in Contra Costa County, the consequences of air quality. He asked the Commission to not pass the Final EIR and require a new proposal from Valero that decreases their emissions; he said they to be need clean neighbors, and they should be energy companies instead of carbon companies.

Shashona Wexler, resident of Contra Costa County, said the tax revenue is what is important; the proposed project's underlying attitude is that what is good for Valero is good for Benicia. Because of greenhouse gas emissions, Benicia should say no to Valero now. It will increase emissions for Benicia and up rail communities. She asked the Commission to deny the project and not certify the Final EIR; send it back so they can address the issues.

Jean Jackson, Davis resident, stated that she is fearful of the transport of crude through her town and the Sacramento River as a water supply. She said low speed crossover is dangerous; she raised concerns for schools, hospitals being affected by a derailment; she said to consider the health of Benicia. She asked the Commission to not approve this project unless all impacts are mitigated.

Jaclyn Prange spoke about previous comments she submitted on behalf of the National Resources Defense Council, the issue of preemption stating that the city can deny this project. She noted her concerns are air quality, unloading crude, and impacts of local creeks. She asked the Commission to deny the project and decline to certify the EIR.

At 11:00 p.m. Chair Dean adjourned for the evening and continued the meeting to February 10, 2016.

**Wednesday, February 10, 2016  
6:30 P.M.**

**VIII. OPENING OF CONTINUED MEETING FROM FEBRUARY 9, 2016**

**A. Pledge of Allegiance**

**B. Roll Call of Commissioners**

Present: Commissioners Birdseye, Cohen-Grossman, Oakes,  
Radtke, Young and Chair Dean  
Absent: Commissioner Sherry  
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**IX. REGULAR AGENDA ITEMS**

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Ms. Million announced that additional comments were received and provided to the Commission and copies available to the public. She also stated that Mr. Chang from Andrew Chang and Company was in attendance this evening to answer questions presented by the Commission on Monday, February 8.

Commission decided to ask their questions of Mr. Chang regarding the economic study prior to the continuation of public comment.

Mr. Chang introduced himself and provided a brief history of the report.

The Commission asked various questions on the values provided in the economic report such as the projections for sales tax revenue and the job creation numbers.

Responses were provided by Mr. Chang and his associate David Lovell.

Public Comment was continued.

Nick Despota, resident of Richmond, spoke in favor of the No Project Alternative and questioned the reason for the recommendation of approval of the project.

Donna Wapner encouraged the Commission to deny the permit. She spoke on a variety of topics including Valero in general, the City's recommendation of approval, rail accidents, air pollution and the impact of the project on the City of Benicia.

Adrean Hayashi, Benicia resident, spoke on her personal experience with the City of Benicia. She expressed her opposition to the project, the requirement for real estate disclosures regarding the transport of crude by rail in the City, Valero's property tax, public notification, and requested that the City reject the project.

Janet Pygeorge, resident of Rodeo, spoke about emissions, protecting children, the visibility impacts and impacts of approving this project. She expressed concerns regarding living near a refinery, processing of tar sands. She asked the Commission to reject this project.

Ethan Buckner spoke against staff's recommendation to ignore the rail impacts, requirements of CEQA, the application of federal preemption, the Phillips 66 project in San Luis Obispo County, tank cars. Mr. Buckner provided a presentation of photographs of fire fighters and tank explosions.

Alison Vogel, expressed concern about the environmental impacts of the project, encouraged health over project approval, and protecting children. She also spoke about the presidential campaign of Bernie Sanders.

Giovanna Sensi Isolani stated her support of the comments of Ms. Vogel. She expressed concern about the project "bomb trains", encouraged people to consider the entire planet, air quality issues, liability, Valero's goodwill in the community and past air quality violations.

Rick Slizeski, encouraged the Commission to not approve the project due to the significant impacts of greenhouse gas emissions, climate change, tar sands oil and Bakken crude oil. He stated that the EIR has significant deficiencies in areas such as greenhouse gas, traffic and economic benefits. He recommended the City obtain a ruling on the preemption before proceeding.

Rick Steerwall, construction superintendent, spoke about the lack of UPRR bridge inspectors, stating they only had 1 inspector for the 11 western states. He complimented Commissioner Young on his questions. He also commented on the inadequacy of existing safety laws, and encouraged the Commission to vote against the project.

Dan Smith thanked the Commission for volunteering their time. He also spoke to the City's approval of the Valero Improvement Project and City Staff's position on the project. He commented on the previous correspondence including comments on preemption and rail safety in recent years. He pleaded with the Commissioners to protect the community.

Michele Rowe-Shields, Benicia resident, encouraged the Commission to vote against the project. She spoke about the recent rail incident in the City of Martinez, nationwide train derailments and their environmental impacts.

Sue Kibbe, Benicia resident, thanked the Commission for their time. She commented on the refining industry and associated economics and the need to reduce greenhouse gas emissions. She stated that this project was not good for Benicia. She commented on Impact 4-6.1 regarding construction of the unloading rack. She expressed her opposition to the project and the preemption determination.

Matt Jones, Planning Manager with the Yolo Solano AQMD representing the Yolo Solano AQMD and multiple adjacent air districts. He commented on the emissions exceeding the air district standards and the lack of mitigation measures. He stated that the City does have the authority to implement mitigation measures. He compared the Valero CBR project with the Phillips 66 CBR project and spoke about a mitigation measure in the Phillips 66 project which required the applicant to investigate the ability to reduce locomotive emissions. They are recommending the City of Benicia not certify the EIR.

Commissioner Cohen-Grossman requested clarification Mr. Jones on what an offset mitigation program would look like.

Mark Altgelt expressed concern about Bakken crude and encouraged the purchase of crude oil in the Middle East. He encouraged the Commission to vote against the project for the future.

Linda Maio, Vice Mayor City of Berkeley, commented on federal preemption relating to rail spurs once they are approved, complemented previous testimony, and the cleanup associated with the tanker spill in the bay. She urged the Commission to deny the project.

Jan Cox Golovich spoke about her past experiences with the projects in the City of Benicia and encouraged the Commission to deny the project.

Roger Straw thanked the Commission. He requested that the Commission not certify the EIR and if the Commission does, then to deny the permit. He commented on the written comments submitted most recently and suggested that the Commission ask for additional time to review them. He spoke about tar sands and rail accidents.

Craig Snider, Benicia resident, thanked the Commission and community participants. He commented on the price of crude of oil, Valero's current processing of tar sands and Bakken crude, liability, routes and track conditions, traffic, Benicia Strategic Plan, impacts of the project on the industrial park and the environment. He does not support the project.

Paul Cushing, Benicia resident, commented on the positive aspects of having Valero in the City including their community support. He also commented on the risk associated with the project and the risks associated with transporting crude by ship.

Aimee Durfee, resident of Martinez, expressed her concerns about the project including the 11 significant and unavoidable impacts relating to rail operation and the lack of mitigations, the increase of profit and property value to Valero at the risk to community health, the jobs associated with the project, and greenhouse gas emissions. She encouraged the Commission to stand up for their community and deny this project.

Tom Griffith, resident of Martinez, spoke about a previous spill in 1988 in the Suisun Bay. He expressed concern about the transport of crude by rail, rail safety and encouraged the Commission to deny the project.

8:41 p.m. Chair Dean recessed for a break.

8:55 p.m. Chair Dean reconvened the meeting.

Jack Bethards, local business owner, spoke on his personal experience with the Park Road railroad crossing. He stated that he supports the staff report and the project. He commented on the risk that Valero is taking on the project, about the history of locating his business in Valero and encouraged the Commission to approve the project.

Angela Martin, Benicia resident, expressed her concerns regarding the project, potential impacts to children, insufficient rules and procedures and encouraged the Commission to not vote for this project.

Jim MacDonald provided information from the US Department of Energy. He commented that NEPA review was required, due process, the wear on rail track due to crude oil rail cars, the 1-mile radius, standard for using foam to extinguish crude oil fires. He does not support the project.

Jack Ruszel thanked the Commission and expressed disapproval of the EIR. He commented on the letters that he had previously submitted, stating they were dismissed. He spoke about bullying and encouraged the Commission to deny the project.

Greg Kavvas commented on what Communities for a Better Environment (CBE) had submitted into the record. He spoke about his personal history with refineries, Chevron, worker safety, CBE's lawsuits and how refining tar sands result in substantially more greenhouse gas emissions. He provided information on Valero's operations to ship crude oil overseas.

Anneliese Harlander, Benicia resident, commented on her personal experience living in Benicia, working in Uganda, and indigenous people, their desires and what they would want. She encouraged the community to come together and create a vision for the future. She provided a blessing honoring the crossroads.

Janet Johnson, representing the Sunflower Alliance and the Richmond Alliance, spoke on her personal history with refinery workers. She commented on the administrative operations of refineries, the practices of the City's Contract Attorney Brad Hogin and encouraged the Commissioners to reject the EIR.

Jon Van Landschoot stated his support for the environmentally superior choice. He spoke on his personal experience with the Native American community. He asked the Commission several questions including whether or not Valero will close the refinery if the project is denied and if Valero will leave Benicia. He thanked the Commission and asked them to vote against the project unanimously.

Phillis Ingerson, Benicia resident, spoke about the impact of rail car explosions, her personal history with Chevron, the necessary training for Benicia citizens in the case of an explosion, questioned if the City has an evacuation plan, her personal history with Benicia, air quality, the possible impact of rail accidents and public notification.

Hadieh Elias, Benicia resident and business owner in the industrial park, commented that the response to comments she received in the FEIR, did not address her question adequately. She commented that the City should require additional care for this project such as additional setbacks. She stated that the EIR is lacking and urged the Commission to not certify the EIR and reject this project.

Amir Firouf, stated this project is representative of bad city planning. He spoke about the design of the project, service road, substantial degrading of the emergency access. He requested that the Commission reject the project.

Ed Ruszel stated that UPRR has an easement over his property, that he does not support this project and encourages the Commission to reject the project. He expressed concern that the traffic impacts in the EIR are understated and flawed. He commented on the impacts that rail operations have on his business and adjacent businesses. He encouraged the Planning Commission to watch the video that he submitted in August 2014 about traffic conditions. He spoke about his history with Valero and the City on this project, the lack of alternatives, and the FEIR dismissiveness of comments.

Rebecca Sganbati spoke in support of the Valero refinery and her professional experience as an employee at Valero. She requested that the Commission certify the EIR and approve the use permit.

Steve Ingerson, Benicia resident commented on and expressed concern regarding his personal experience with air quality issues in his family and living in Benicia.

Ruby Wallis, Benicia resident, spoke against Valero and about her personal experience being a pipe welder at refineries. She stated that Valero hates unions and that they are not good neighbors. She commented on Benicia's high asthma rates, Valero workers and Valero pipes,

Antonia Tsobanoudis, resident of Davis, expressed concern about her safety and requested that the Planning Commission require that the volatility of the oil be reduced. She stated that she wishes the federal government would step in fix the problem.

Tom Russell commented on his previous comments on Valero's project. He stated that the response to his comments in the FEIR were inadequate. He stated that

the EIR does not address exports, Valero's profit gains associated with the project and that the EIR was a flawed document.

David Lockwood stated that the project is not about the environment and the shipping dangers, but is about foreign oil interests that do not want domestic oil operations. He commented that they have been shipping highly volatile goods for years and the inability of Valero to process tar sands. He encouraged the Commission to examine the truth carefully and consider the existing rail traffic.

Marisol Pacheco-Mendez spoke on rail accidents stating that they could be handled by well-trained emergency responders. She encouraged the Commission to go to the CARB website to see that GHG emissions have gone down. She asked that the Commission to approve the project.

Lisa Crowley, Benicia resident, commented on the community of Benicia in general. She stated her support of the project, that the project does not change refinery operations, that this project is well conceived, the public process, and the railroad is a key asset. She encouraged the Commission to approve the project.

Chris Brown, Sacramento resident, expressed his opposition to the certification of the EIR and approval of the use permit. He commented on the uprail air quality impacts and encouraged the Commission to consider the other communities, the impacts to water quality and preemption.

Ryan Haeter, Sacramento resident, commented on the high accident risk in downtown Sacramento, the 17 schools in Sacramento located in the blast zone, his disagreement with the preemption determination and his encouragement of health and safety over profit.

Eric Lee, Planner with City of Davis, mentioned the City's previous comments submitted on the project. He commented that the EIR is inadequate under CEQA because feasible mitigation measures to the significant unavoidable impacts are not presented, their comments were not adequately responded to and that preemption does not apply. He is requesting that the Commission decline to certify the EIR and remand it back to staff to analyze potential mitigation measures.

Frances Burke, resident of Davis, expressed her concern about potential train derailments and the inadequacy of the EIR due to the lack of mitigation for the project's impacts. She asked that the Commission vote no on the EIR and permit.

Chair Dean polled the Commission on continuing the meeting past 11:00 p.m. to hear the remaining public comment. The Commission agreed by consensus.

June Heath, Benicia resident, presented written comments from Carol Warren, resident of Dixon. The comments expressed concern about rail accidents, spill and explosion and federal preemption.

Cathy Williams stated she does not support the proposal due to the volatility of the oil. She expressed concern related to the risk of transport and asked the Commission to reject the EIR and this project.

Nancy Price stated her support of the comments by Tom Russell. She commented on the Paris agreement, Valero's ability to change their operations to import and export and the Trans Pacific Partnership (TPP).

Elly Benson stated her disagreement that the impacts identified in the EIR are the only impacts as well as her disagreement with the determination on preemption. She commented on the letter from the Attorney General and urged the Commission to reject the idea of preemption. She stated air emissions would increase due to the new oil coming in by rail, this project results in disproportionate impacts on the disadvantaged and people of color as well as biological impacts to Sulphur Springs Creek.

Claudia Antoccia stated her disagreement with the determination on preemption. She spoke on express and implied preemption and the ICCTA.

Rylee Kercher stated her disagreement with the determination on preemption and the requirements of the CEQA guidelines to analysis impacts. She commented that the City has full authority to deny the permit, all project impacts must be disclosed and the City should speak up for its citizens.

Ehren Herguth provided his personal history as a lubricant technician and working with refineries. He spoke about the extensive regulation for hazardous materials and that crude by rail should be the same. He urged the Commission to vote no on the project.

Don Cuffel commented on the Commission needing discern fact from fiction, air emissions language in CEQA and comparing the air emissions and the health risk assessment. He also stated that Valero is proactive in addressing risk as demonstrated by agreeing to use DOT 1232 tank cars and added that Valero cannot export as a result of this project.

Public Comment was closed.

Ms. Ratcliffe announced additional information from City Staff in response to the preemption issue and requested that the Commissioners bring their calendars tomorrow night so that they are prepared to schedule additional meetings, if necessary.

In acknowledgement that staff would be providing responses to the Commissioners' questions at the next meeting, Chair Dean asked the Commission to provide a short list of their comments.

Commissioners requested that staff provide answers to the preemption issue, Sulphur Springs Creek setback and the letter submitted by Amir Firouz.

At 11:45 p.m. Chair Dean adjourned for the evening and continued the meeting to February 11, 2016.

**Thursday, February 11, 2016**

**6:30 P.M.**

**X. OPENING OF MEETING CONTINUED FROM FEBRUARY 10, 2016**

**A. Pledge of Allegiance**

**B. Roll Call of Commissioners**

Present: Commissioners Birdseye, Cohen-Grossman, Oakes,  
Radtke, Young and Chair Dean

Absent: Commissioner Sherry

Staff Present: Christina Ratcliffe, Community Development Director  
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Ms. Ratcliffe announced that staff will be responding to Commission questions.

Mr. Hogin provided a presentation on preemption in response to Commission questions and statements made by commenters during public comment.

Commissioner Young asked various questions of Mr. Hugin on preemption such as requiring additional mitigation measures, denial of the use permit and differing legal opinions.

Ms. Wellman provided clarification on the preemption determinations in previous court cases.

The Commission requested clarification on the San Luis Obispo County EIR for the Phillips 66 project, action on the permit in relation to rail impacts and the ICCTA, the difference in legal opinion by Valero and the City of Benicia, regulation of rail cars and the regulation of crude oil at the point of origin.

Ms. Scott provided a response to Commissioners' questions on air emissions.

Commissioner Young requested clarification on the air emissions analysis.

Ms. Scott provided a response to Commissioners' questions on traffic.

The Commission requested clarification on the train crossings.

Ms. Scott provided a response to Commissioners' questions on the Caltrans January 15, 2016 and January 20, 2016 letters.

Commissioner Young requested clarification on the LOS determination.

Chief Lydon provided a response to Commissioners' questions on emergency response.

The Commission asked various questions regarding derailments.

Ms. Million provided a response to Commissioners' questions regarding the unloading rack's setback from Sulphur Springs Creek.

Mr. Barringhaus provided a response to Commissioners' questions regarding potential of hazardous spills to Sulphur Springs Creek.

The Commission asked for clarification of the containment and sump design in the area.

Don Cuffel of Valero and Chief Lydon provided a response on the specifics of the containment system and containment process during emergency response, respectively.

The Commission requested clarification from Chief Lydon on fire lane access in the area of the unloading rack

8:47 p.m. Chair Dean recessed for a break

9:01 p.m. Chair Dean reconvened the meeting.

Mr. Barringhaus provided a response to Commissioners' questions regarding structures for human occupancy.

Ms. Scott provided a response to Commissioners' questions regarding Lake Herman, dam safety and the California Building Code citations in the EIR.

Ms. Wellman provided a response to Commissioners' questions regarding the operational aid agreement between the City of Benicia and Valero.

Ms. Scott provided a response to Commissioners' questions regarding Mitigation Measures that are requirements of law.

The Commission requested clarification on this issue.

Ms. Scott provided a response to Commissioners' questions regarding the cost for cleanup.

The Commission commented on the project's potential financial impacts to an individual's property in the case of an accident.

Mr. Barringhaus provided clarification on a comment providing during public testimony regarding a response to their comments on unloading versus offloading.

Mr. Hogin provided a response to Commissioners' questions regarding redacted information.

The Commission asked various questions on the potential for enforcement of the 70,000 barrels per day maximum and the relationship to shipment by marine vessel, potential changes in the crude brought in by rail and those impacts to refinery operations and emissions, analysis provided by the applicant, how the amount of 70,000 barrels per day was established, how the location of the rack was selected, the type of crude Valero intends on refining as part of this project, the refinery's previously processing of Bakken crude, and refinery's storage and refining process.

Ms. Ratcliffe reviewed the Commission's purview, the boundaries of preemption and the decision making process.

Chair Dean and staff discussed draft finding #2 for the use permit and his concern regarding his inability to make this finding on a personal level.

Commissioner Radtke stated that she feels good about the relationship between the Valero and Benicia Fire Departments and the closer look at the industrial park this project required. She expressed, concerns regarding the design of the unloading rack, its location in the flood zone, emergency access, and the size of the facility creates issues with traffic. She stated she wants to take a deeper look at economic purposes. She expressed serious concerns with insurance coverage.

Commissioner Birdseye stated various concerns with the EIR such as the lack of clarity on preemption, the project's inconsistency with the General Plan (specifically referring to Bob Berman's 2/4/16 letter), insufficient evaluation of the 11 significant unavoidable impacts and their impacts on the City of Benicia, and that the local employment and economic benefits would not compensate Benicia for the significant and unavoidable impact.

Commissioner Oakes stated there were flaws in EIR such as the traffic analysis and evaluation of emissions. He also expressed concern about "bomb" trains.

Chair Dean stated his concerns regarding the project's road impacts in the industrial park, economic impact to adjacent businesses, the community in moving in and out of the industrial park, and biology concerns surrounding the projects impact on Sulphur Springs Creek and the bay.

Commissioner Cohen–Grossman stated that it is clear that the result would be to have more oil come in to the refinery by train than by ship. She does not want to make a decision that results in environmental impacts to the other communities, does not want to put blinders on in making a decision, that the General Plan does not support making the world dangerous, and that the safety of Benicia residents is key.

Commissioner Young thanked Valero for their patience and their professionalism. He commented on the testimony from the residents of Davis. He stated that the EIR is not sufficient for the following reasons:

Absence of project alternatives; the FEIR inadequate response to public comments specifically regarding preemption and highlighted these specific comment letters:

1. Sacramento Area Council of Governments (SACOG): unfunded obligations on communities, no evidence of mitigation measures to address transporting crude by rail, no evidence that the mitigation measures for the significant and unavoidable impacts are infeasible, did not evaluate enough alternatives and how each alternative is and is not preempted.
2. State of California Attorney General: EIR fails to sufficiently analyze air quality impacts and an overly broad interpretation of trade secrets.
3. Bay Area Air Quality Management District (BAAQMD): Recommended

potential mitigation measures for offsetting rail impacts, feasibility of mitigation measures for air emissions that the analysis does not accurately characterize air emissions, insufficient evaluation of PM2.5.

Commissioner Young stated that he agrees with these comments.

Commissioner Young provided an overview of the environmental review associated with this project. He questioned the decision and process to hire ESA as the consultant for this project. He stated that through this process, the city and the consultant have bent over backwards to make findings to support this project. He commented on the requirements of CEQA when preparing a response to comments, the FEIR ignores the relevant criticisms “dismissive” of their concerns and that the EIR does not express the independent judgment of the City in compliance with CEQA.

Commissioner Young stated that the use permit findings cannot be made for this project due the holes in disclosures in the EIR such as the makeup of the crude oil associated with this project. The EIR has an incorrect infeasibility determination for Alternative 1 (1, 50-car train) and Alternative 3 (off-site terminal).

Commissioner Young stated that the City's interpretation of preemption is too broad and the City should require mitigation measures to offset the emissions of air pollution, improved rail cars funding for first responders and degasifying the oil before transport. He also stated that there is an outstanding issue on liability for property damages and cleanup costs associated with rail accidents.

The Commission agreed to continue this public hearing item past 11:00 p.m. to finish the public hearing

The Commission and staff discussed the options and process for not certifying the EIR and denying the project.

**RESOLUTION NO. 16-1 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)**

On a motion by Commissioner Young, seconded by Commissioner Birdseye, the above resolution to not certify the EIR based on the statements of inadequacy stated by the Commission and to deny the use permit, was approved by the following vote:

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

Absent: Commissioner Sherry

**XII. COMMUNICATIONS FROM STAFF**

Ms. Million noted that City Hall was closed on Friday, February 12 and Monday, February 15, stating that the appeal period for the Planning Commission's decision would end on February 29, 2016.

**XIII. COMMUNICATIONS FROM COMMISSIONERS**

None.

**XIV. ADJOURNMENT**

Chair Dean adjourned the meeting at 11:39 p.m.