

**CALENDAR ITEM
C24**

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12/06/16
PRC 4769.1
V. Caldwell

ASSIGNMENT OF LEASE AND REVISION OF RENT

LESSEE/ASSIGNOR:

Plains Products Terminals LLC

ASSIGNEE:

Valero East Bay LLC

AREA, LAND TYPE, AND LOCATION:

14.04 acres, more or less, of filled and unfilled sovereign land in Suisun Bay and Pacheco Slough, adjacent to Waterfront Road, near the city of Martinez, Contra Costa County.

AUTHORIZED USE:

Continued use and maintenance of an existing marine oil terminal (Martinez Terminal) consisting of a 40-footwide by 100-foot long concrete wharf connected to land by a 1,700-foot-long trestle supporting an 11-foot-wide roadway and pipe rack; an existing 12-inch-diameter petroleum pipeline; filled land along Waterfront Road; and annual dredging of up to 6,000 cubic yards of material.

LEASE TERM:

20 years, beginning January 1, 2005.

CONSIDERATION:

This lease provides that the Commission may modify the rent periodically during the lease term. Pursuant to this provision, staff conducted a review of the rent under this lease and recommends that rent be revised from \$308,447.05 per year to \$330,210 per year with an annual Consumer Price Index adjustment, effective January 1, 2017.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, 6501.1, and 6503.5; California Code of Regulations, title 2, section 2000, subdivision (b).

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Public Trust and State's Best Interests Analysis:

The Lessee/Assignor owns the uplands adjoining the lease premises. The Assignee will own the uplands adjoining the lease premises at the close of purchase, but no later than March 31, 2017. The close of purchase is currently anticipated to occur around December 30, 2016; however, due to the nature and complexity of this type of transfer staff recommends allowing additional time for the close of purchase to occur.

On August 8, 2005, the Commission authorized a 20-year General Lease – Industrial Use to Shore Terminals LLC for the existing Martinez Terminal ([Calendar Item C47, August 8, 2005](#)). The lease will expire December 31, 2024. At the same meeting the Commission authorized the assignment of the lease to Pacific Atlantic Terminals LLC (Pacific) ([Calendar Item C49, August 8, 2005](#)).

When the lease was assigned to Pacific, Pacific was a subsidiary of Pacific Energy Partners, L.P. Subsequently, pursuant to a Purchase Agreement, Pacific Energy Partners, L.P., Pacific Energy GP, LP, and Pacific Energy Management LLC entered into an Agreement and Plan of Merger dated June 11, 2006, with Plains All American Pipeline, L.P., Plains AAP, L.P., and Plains All American GP LLC. The effective date of the merger was November 15, 2006, and was authorized by the Commission ([Calendar Item C41, June 24, 2008](#)). Pacific was subsequently renamed Plains Products Terminals LLC (Plains).

The proposed Assignee is a newly formed Delaware limited liability company which is a wholly-owned subsidiary of Valero Terminating and Distribution Company (VTDC), an indirect subsidiary of Valero Energy Corporation (VLO). However, VTDC may transfer its membership interest in the Assignee to Valero Partners Operating Co. LLC (VPOC), a wholly-owned subsidiary of Valero Energy Partners LP (VLP). As part of the assignment review process, staff performed a financial review of the Assignee's assets, in addition to the assets of the two proposed parent organizations, to ensure its performance of the terms of the lease. Staff determined that both proposed parent organizations (VLO and VLP) carry sufficient assets to guarantee the performance of the terms of the lease. Both VLO and VLP have been made aware that a parent guarantee will be required of the parent company upon the close of purchase to guarantee payment of all obligations of the Assignee under the lease.

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The affiliates of the Assignee are experienced operators of marine oil terminals in the State of California, including facilities under lease from the Commission in Benicia and on granted lands in Benicia and in the Port of Los Angeles.

Upon closing of the purchase, the Assignee intends to operate the upland and leased facilities in the same manner as they are currently being operated. The Assignee will adopt and continue to implement the Assignor's operations manual for the Martinez Terminal, subject only to minor changes to reflect the change in ownership. The same oil spill prevention training and certification programs will continue to be implemented as they have under the Assignor. The Assignee has agreed to extend offers of employment to all of the Assignor's employees at this Martinez Terminal. Additionally, the Assignor and Assignee will enter into a transition service agreement whereby, the Assignor will provide certain transition services related to the operation of the Martinez Terminal to the Assignee, for a period of up to six months following the close of purchase date which will help provide continuity, safety, and a smooth transition.

The engineering, inspection and maintenance of the Martinez Terminal are regulated primarily by the Commission through the Marine Oil Terminal Engineering and Maintenance Standards (MOTEMS), codified in the California Building Code, Chapter 31F – Marine Oil Terminals (24 CCR § 3101F et seq.). In order to prevent oil spills and protect public health, safety and the environment, these comprehensive standards contain requirements for assessment of the structural, mechanical and electrical systems at marine oil terminals, including, audits, above water and underwater inspections, structural evaluation, seismic analyses, berthing and mooring, geotechnical, fire prevention, detection and suppression, piping/pipelines, mechanical and electrical equipment, and electrical systems.

Since MOTEMS became effective in 2006, the Martinez Terminal has completed three MOTEMS audit and inspections cycles to evaluate the fitness-for-purpose of the facility. Several deficiencies were identified during these audits and inspections, which have been corrected or are in the process of being addressed for compliance purposes.

As a condition of issuing the current lease in 2005, the Martinez Terminal has been required to adhere to a mitigation monitoring program. As of

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December 2016, the facility is compliant with the requirements of that program.

Assignment of the lease to the Applicant does not significantly alter the land or alienate the State's fee simple interest, nor does it permanently impair public rights. The assignment is limited to the remaining term of the lease. The lease requires the payment of annual rent to compensate the people of the State for the use of public land. The lease requires the Assignee to insure and indemnify the State for any liability incurred as a result of the Assignee's activities thereon. The assignment also requires a parent guarantee to further ensure the complete performance of all lease terms.

The impacts of sea-level rise, including increased wave activity, storm events, and flooding, are not limited to the open coast. The Martinez Terminal is located in the Carquinez Strait within a region identified as tidally-influenced; the Martinez Terminal is, therefore, at higher risk of flood exposure given future projection scenarios of sea-level rise. By 2030, California's coast could see up to one foot of sea-level rise (from year 2000 levels), two feet by 2050, and possibly more than five feet by 2100 (National Research Council 2012). In addition, as stated in Safeguarding California (California Natural Resources Agency 2014), climate change is projected to increase the frequency and severity of natural disasters related to flooding, drought, and storms (especially when coupled with sea-level rise).

Tools exist to actively monitor the changing conditions brought about by climate change and sea-level rise. Approximately 1.25 miles to the west of the Martinez Terminal are National Oceanographic and Atmospheric Administration tide and current monitoring stations that track the speed of the current and sea state, including high tides and king tide conditions. These monitors are used to make tidal predictions and can be viewed at <http://tidesandcurrents.noaa.gov>, station ID 9415102. Data from these stations are archived for use in monitoring trends and in considering improvements to the Martinez Terminal as well as vessel mooring and loading limitations.

Under Section 3103F.5.3.4 of MOTEMS, terminal operators are required to consider the effect of sea-level rise on the Martinez Terminal over the expected life of the facility. Representatives of the Assignor have indicated that and sea-level rise data and projections are factored into current and

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ongoing projects at the Martinez Terminal. In addition, regulations under the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (Pub. Resources Code, § 8570 et seq.) require the Martinez Terminal to operate safely and ensure that crude oil and refined product conveyances remain above the waterline at all times. Compliance with these regulations will minimize the effects of sea-level rise on the Martinez Terminal and its operations.

For the reasons stated above, Commission staff believes approval of the assignment of this lease is consistent with the common law Public Trust Doctrine and in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. The Martinez Terminal operations are regulated primarily by the Commission through its lease and a Mitigation Monitoring Program adopted by the Commission in August 2005, Commission regulations (Cal. Code Regs., tit. 2, § 2300 et seq.), and the Marine Oil Terminal Engineering and Maintenance Standards (MOTEMS).
2. Staff conducted the rent review called for in the lease, and recommends annual rent be increased as provided in the California Code of Regulations, title 2, section 2003.
3. This activity is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction and Strategy 2.2 to ensure timely receipt of revenues and royalties from the use and development of State lands and minerals.
4. Approving the revision of rent and authorizing the assignment of the lease are not projects as defined by the California Environmental Quality Act because they are administrative actions that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

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EXHIBITS:

- A. Land Description
- B. Site and Location Map
- C. Proposed Parental Guarantee

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the assignment of the existing lease will not substantially interfere with the Public Trust needs and values at this location at this time, is consistent with the common law Public Trust Doctrine, and is in the best interests of the State.

AUTHORIZATION:

1. Approve the revision of rent for Lease No. PRC 4769.1 from \$308,447.05 per year to \$330,210 per year with an annual Consumer Price Index adjustment, effective January 1, 2017.
2. Authorize the assignment of Lease No. PRC 4769.1, a General Lease – Industrial Use, of sovereign land as described on Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof, from Plains Products Terminals LLC, to Valero East Bay LLC; effective on the close of purchase but no later than March 31, 2017.
3. Approve the Parental Guarantee of Valero Energy Corporation or Valero Energy Partners LP, whichever is the parent company of Valero East Bay LLC, in a form substantially similar to that set forth in the attached Exhibit C.

Exhibit "A"

Description of Lands Covered by Lease No. PRC 4769.1

Real property situated in Contra Costa County State of California described as follows:

Parcel One:

A parcel of tide and submerged land lying within Suisun Bay, near the city of Martinez, being more particularly described as follows:

COMMENCING at a 2" X 2" hub numbered 29, as shown on that Record of Survey recorded January 26, 1954 in Book 16 of Licensed Land Surveyors' Maps at page 14, Contra Costa County Records; thence South 79° 09' East along the northern line of Swamp and Overflow Survey No. 424, 83.16 feet to the TRUE POINT OF BEGINNING, said point also being on the line common to Sections 8 and 9, Township 2 North, Range 2 West, Mount Diablo Base Line and Meridian; thence North 00° 51' 00" East along said section line 2789.00 feet; thence leaving said section line North 71° 51' 00" East, 35.00 feet; thence North 10° 00' 00" West, 27.21 feet; thence North 33° 10' 09" West, 1490.20 feet; thence South 62° 47' 18" West, 259.56 feet; thence South 79° 58' 49" West 235.64 feet; thence North 27° 12' 42" West, 180.00 feet; thence North 62° 47' 18" East, 995.00 feet; thence South 27° 12' 42" East, 180.00 feet; thence South 45° 55' 59" West, 240.21 feet; thence South 62° 47' 18" West, 226.89 feet; thence South 33° 10' 09" East, 601.81 feet; thence North 56° 49' 51" East, 40.00 feet; thence South 33° 10' 09" East, 85.00 feet; thence South 56° 49' 51" West, 40.00 feet; thence South 33° 10' 09" East, 840.00 feet; thence North 71° 51' 00" East, 4.53 feet; thence South 00° 51' 00" West, 2841.06 feet to the northern line of said Swamp and Overflow Survey No. 424; thence North 79° 09' 00" West along the northern line of said Survey No. 424, 101.54 feet to the TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM any validly patented interest in that land covered by Tideland Survey No. 207 patented to J.M. Keith pursuant to that certain Tideland Patent recorded November 22, 1901 in Book 4 of Patents, page 402, Contra Costa County Official Records.

Parcel Two:

A parcel of tide and submerged land lying in the bed of Pacheco Creek (also know as Walnut Creek), approximately 2 miles northeast of the City of Martinez, Contra Costa County, State of California, being more particularly described as follows:

COMMENCING at State Lands Monument "AVON" having CCS 27, Zone 3 coordinates of X=1,545,386.26, Y=561,570.34; thence North 18° 39' 30" West, 231.00 feet; thence South 71° 20' 30" West, 239.53 feet to the ordinary high water mark of the east bank of Pacheco Slough and being the TRUE POINT OF BEGINNING; said ordinary high water mark being described in Boundary Line Agreement No. 7 between Tidewater Associated Oil Company and the State Lands Commission as recorded on March 15, 1951, in Volume 1732, page 35, Official Records of Contra Costa County; thence along said boundary line North 59° 02' 55" West, 65.65 feet; thence leaving said boundary line South 71° 20' 30" West, 141.64 feet to the ordinary high water mark of the west bank of the Pacheco Slough; said ordinary high water mark described in Boundary Line Agreement No. 8 between the United Towing Company and the State Lands Commission as recorded on March 15, 1951, in Volume 1732, page 37, Official Records of Contra Costa County; thence along said boundary line South 64° 08' 41" East, 71.32 feet; thence leaving said boundary line North 71° 20' 30" East, 133.33 feet to the TRUE POINT OF BEGINNING.

Parcel Three:

A parcel of submerged land lying in the bed of Suisun Bay, near the city of Martinez, being more particularly described as follows:

COMMENCING at the most westerly corner of the above described parcel one, thence South 62° 07' 14" West, 74.38 feet to the TRUE POINT OF BEGINNING; thence North 27° 01' 01" West, 165.00 feet to a line parallel with and 150 feet Southeast of the Bullshead Channel Centerline; thence along said parallel line North 62° 58' 59" East, 1187.50 feet; thence leaving said parallel line South 27° 01' 01" East, 160.00 feet; thence South 25° 44' 31" West, 210.00 feet; thence South 62° 54' 38" West, 896.06 feet; thence North 72° 15' 29" West, 175.00 feet to the TRUE POINT OF BEGINNING.

Parcel Four:

All that sovereign land lying in Parcels "F" and "H" of AD 238, recorded March 14, 1996 in Document Number 96 46533 of Contra Costa County Recorders Office, and more particularly described as follows:

A strip of land eight (8) feet wide, the centerline of which is an existing 12 inch diameter petroleum pipeline, said existing pipeline lying parallel with and 46 feet northerly of the south lines of said Parcels "F" and "H".

The sidelines of side strip shall be extended or shortened so as to terminate at the northeasterly line of Parcel "F" and the southwesterly line of Parcel "H".

END OF DESCRIPTION

Parcel One revised by the California State Lands Commission Boundary Unit December 15, 2004.

Parcel Two prepared by the California State Lands Commission Boundary Unit, 1998.

Parcels Three and Four prepared by the California State Lands Commission Boundary Unit July 19, 2004.

The above described Parcel Three was based on "Hydrographic Survey of Shore Terminals Martinez, CA. Pier". Surveyed 03-06-2004. Prepared by Connexsys Eng. Inc. Richmond, CA. The survey is on file with the California State Lands Commission.

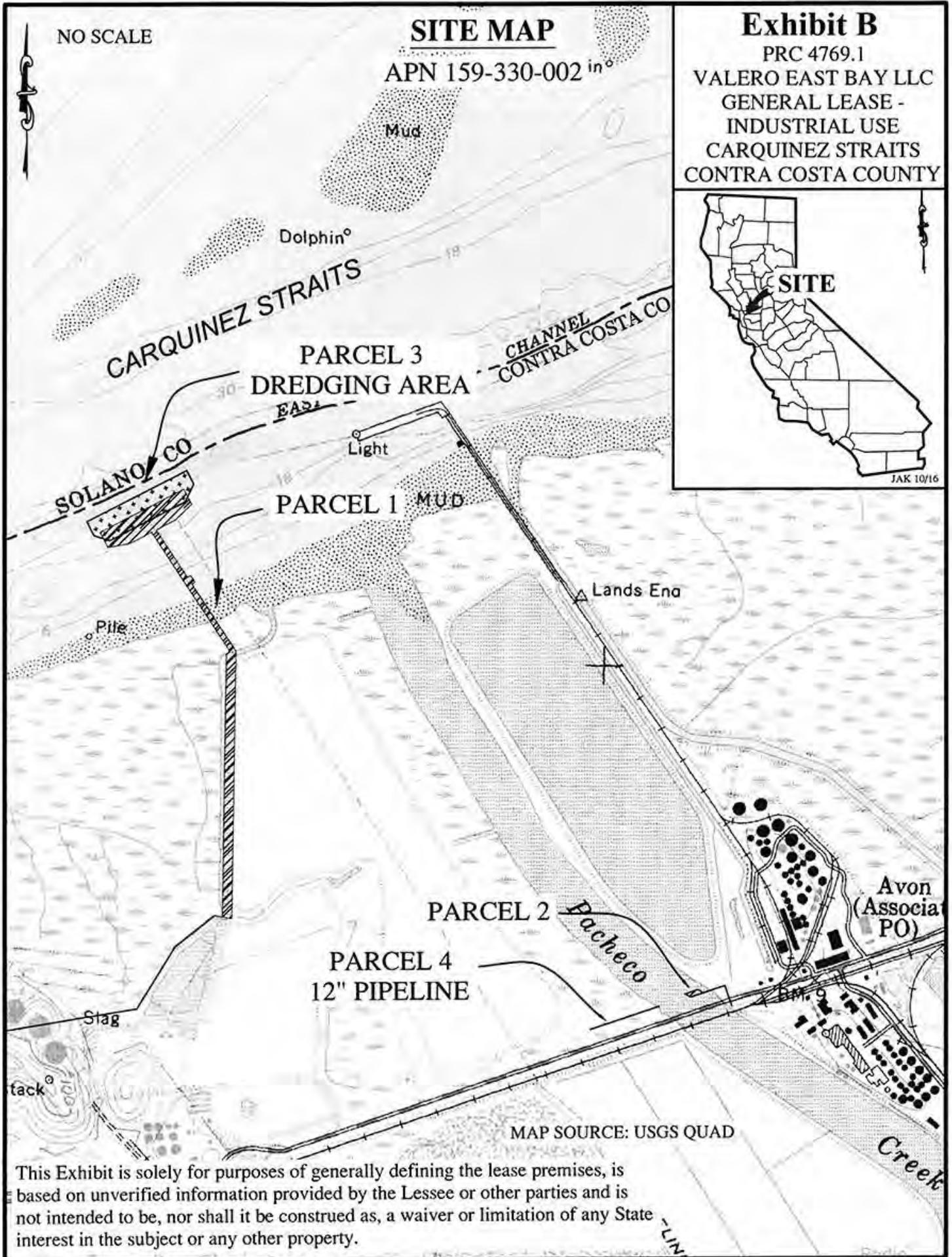


NO SCALE

SITE MAP

APN 159-330-002 in°

Exhibit B
 PRC 4769.1
 VALERO EAST BAY LLC
 GENERAL LEASE -
 INDUSTRIAL USE
 CARQUINEZ STRAITS
 CONTRA COSTA COUNTY



MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

Exhibit C



GUARANTY

This Guaranty ("Guaranty") is made as of _____, 201_ by Valero Energy Corporation, a Delaware corporation ("Guarantor"), in favor of the **State of California, acting by and through the State Lands Commission** ("Lessor").

For value received and in consideration of the credit that Lessor has extended or may hereafter extend to Valero East Bay LLC, a wholly owned indirect subsidiary of Guarantor (the "Lessee") pursuant to that certain Lease Agreement (the "Lease Agreement"), dated as of January 1, 2005, covering the Leased Premises described therein, Guarantor hereby agrees as follows:

1. Guaranty. Subject to the terms herein, Guarantor absolutely and unconditionally guarantees to Lessor, its successors and permitted assigns the prompt payment when due of all amounts payable by Lessee under the Lease Agreement (as such Lease Agreement may be extended, renewed or amended from time to time), including all rent and other fees payable under the Lease Agreement and any obligations of Lessee under the Lease Agreement (collectively, the "Obligations"). This is a guarantee of payment and not of collection. If Lessee fails to pay any Obligation, Guarantor will pay such Obligation directly for Lessor's benefit promptly upon Lessor's demand in accordance with the provisions of this Guaranty.
2. Extent of Liability. Guarantor's entire liability for the Obligations is limited in the aggregate to US \$50,000,000.00 (the "Guaranty Cap"). Guarantor will not be obligated to monitor the amount of the Obligations, and Lessor will bear the risk that the aggregate amount of the Obligations may exceed the Guaranty Cap. Guarantor agrees to pay reasonable attorneys' fees, court costs and other expenses incurred by Lessor to enforce its rights under this Guaranty. Notwithstanding anything to the contrary herein, Guarantor shall not be liable hereunder for special, consequential, exemplary, tort or other damages except to the extent the same comprise Obligations.
3. Term. This is a continuing Guaranty and will remain in full force and effect until the earlier to occur of the following: (a) the date on which the Lessee ceases to be a wholly owned subsidiary of Guarantor (whether owned directly by Guarantor or indirectly through other subsidiaries), or (b) the tenth business day following Lessor's receipt of written notice from Guarantor of Guarantor's intent to terminate this Guaranty. This Guaranty may be terminated only with respect to Obligations arising from transactions entered into under the Lease after the effective termination date of the Guaranty, and will continue in full force and effect with regard to all Obligations arising under the Lease prior to such termination date, and all extensions and renewals thereof entered into prior to the effective date of termination, until full payment of such Obligations.
4. Nature of Guaranty. Guarantor's obligations with respect to any Obligation will not be affected by the existence, validity, enforceability, perfection or extent of any collateral for such Obligations. If any payment made to Lessor for any Obligation is rescinded or must otherwise be returned for any reason, Guarantor will remain liable hereunder for such Obligation as if such payment had not been made. Notwithstanding anything to the contrary herein, Guarantor reserves the right to assert defenses that Lessee may have under the Lease Agreement to the payment of any Obligation, other than defenses arising from the bankruptcy, insolvency, incapacity, dissolution or liquidation of Lessee.
5. Consents, Waivers and Renewals. Guarantor agrees that Lessor and Lessee may mutually modify the Lease Agreement, and Guarantor acknowledges that such modification will not impair or affect Guarantor's obligation under this Guaranty. Lessor may resort to Guarantor for payment of any of the Obligations whether or not Lessor has previously resorted to any collateral security or proceeded against any other obligor principally or secondarily obligated for any of the Obligations. Except as provided under Section 6, Guarantor hereby waives notice of acceptance of this Guaranty and presentment, protest and notice of protest or dishonor of any evidences of indebtedness guaranteed hereunder.



6. Payment Demands. If Lessor elects to exercise its rights under this Guaranty, Lessor shall make a written demand on Guarantor (a “Payment Demand”). A Payment Demand shall: (a) identify the amount of the demand and the related Obligation(s); and (b) contain a statement that Lessor is making such demand upon Guarantor pursuant to this Guaranty.

7. Notices. All notices, waivers and other communications under this Agreement, including Payment Demands, must be in writing and will be deemed given to a party when: (a) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid); (b) sent by facsimile with confirmation of transmission by the transmitting equipment; or (c) received or rejected by the addressee, if sent by certified mail, return receipt requested; in each case to the following addresses or facsimile numbers and marked to the attention of the individual (by name or title) designated below (or to such other address, facsimile number or individual as a party may designate by notice to the other parties):

If to Guarantor:

Valero Energy Corporation
One Valero Way
San Antonio, Texas 78249
Attention: Credit Manager
Facsimile No.: (210) 444-8511

If to Lessor:

California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825
Attention: Chief, Land Management Division
Facsimile No.: (916) 574-1835

8. Representations and Warranties. Guarantor hereby represents and warrants that: (a) it is a corporation duly organized, validly existing and in good standing under the laws of Delaware; (b) the execution, delivery and performance by Guarantor of this Guaranty have been duly authorized by all necessary corporate action; (c) the execution, delivery and performance by Guarantor of this Guaranty do not violate Guarantor’s governing documents; and (d) this Guaranty constitutes the legal, valid and binding obligation of Guarantor, enforceable against it in accordance with its terms (except as enforceability may be limited by (i) applicable bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance and other similar laws affecting enforcement of creditors’ rights generally and (ii) principles of equity affecting the availability of specific performance and other equitable remedies).

9. Miscellaneous. This Guaranty may not be amended except by a written instrument executed by Guarantor and Lessor. This Guaranty shall bind the successors and assigns of Guarantor and inure to the benefit of the successors and assigns of Lessor. Prompt notice shall be furnished to the other party of any such assignment or succession. This Guaranty shall not be deemed to benefit any person except Lessor and its successors and assigns. This Guaranty shall be governed by and construed in accordance with the laws of the State of New York, excluding its principles of conflicts of laws.

(Remainder of page intentionally left blank)



Guarantor has executed and delivered this Guaranty as of the date indicated in the first sentence of this Guaranty.

GUARANTOR:

VALERO ENERGY CORPORATION

By: _____

Name: Donna M. Titzman

Title: Senior Vice President and Treasurer