

CONTINUED SPECIAL MEETING OF THE
BENICIA CITY COUNCIL

REPORTER'S TRANSCRIPT OF RECORDED PROCEEDINGS
IN RE VALERO CRUDE BY RAIL PROJECT
HEARING AND DISCUSSION

Date and Time: Tuesday, April 19, 2016
7:00 p.m. - 9:42 p.m.

Transcribed By: Annie Doezie, CSR No. 8478
Certified Shorthand Reporter

Job No. 7360

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A P P E A R A N C E S

BENICIA CITY COUNCIL:

- MAYOR, Elizabeth Patterson
- VICE MAYOR, Mark C. Hughes
- COUNCILMEMBER, Tom Campbell
- COUNCILMEMBER, Alan M. Schwartzman
- COUNCILMEMBER, Christina Strawbridge

- CITY ATTORNEY, Heather McLaughlin
- CITY SPECIAL COUNSEL, Bradley R. Hogin
- ESA CONSULTANT, Janna Scott
- CITY MANAGER, Brad L. Kilger
- COMMUNITY DEVELOPMENT DIRECTOR, Christina Ratcliffe
- POLICE CHIEF, Erik Upson
- FIRE CHIEF, Jim Lydon
- CITY CLERK, Lisa Wolfe

1 BENICIA, CALIFORNIA; TUESDAY, APRIL 19, 2016; 7:00 P.M.

2

3 MAYOR PATTERSON: Okay? Are we ready?

4 Thanks.

5 Can we have roll call, please?

6 THE CLERK: Councilmembers Campbell?

7 COUNCILMEMBER CAMPBELL: (No audible response.)

8 THE CLERK: Hughes?

9 VICE MAYOR HUGHES: Here.

10 THE CLERK: Schwartzman?

11 COUNCILMEMBER SCHWARTZMAN: Here.

12 THE CLERK: Strawbridge?

13 COUNCILMEMBER STRAWBRIDGE: Here.

14 THE CLERK: And Mayor Patterson?

15 MAYOR PATTERSON: Here.

16 Could we have Chief -- Chief Lydon give us
17 the Pledge of Allegiance, please -- lead us in the
18 Pledge of Allegiance.

19 (Pledge recited)

20 MAYOR PATTERSON: A plaque stating the
21 fundamental rights of each member of the public is
22 posted at the entrance to this meeting room,
23 per Section 4.04.030 of the Benicia Open Government
24 Ordinance.

25 Also, if you are having a hard time

1 hearing -- the sound system isn't perfect, but if you
2 actually can't really hear, please let our staff know,
3 and we'll make every effort we can. And, also, the
4 fans, as I have mentioned before, sometimes cause
5 problems with the lights or others, and do let staff
6 know about that.

7 And then in the future, you can call about
8 48 hours ahead of time, at 746-4200, and we'll make
9 reasonable accommodations.

10 Tonight is a continuation of our hearing on
11 the Valero crude-by-rail land use permit, and so we
12 don't have any announcements, proclamations,
13 appointments, presentations, but we do have the
14 adoption of the agenda.

15 Mr. Kilger?

16 MR. KILGER: (Inaudible.)

17 VICE MAYOR HUGHES: Move to approve.

18 COUNCILMEMBER STRAWBRIDGE: Second.

19 MAYOR PATTERSON: Call the roll, please.

20 THE CLERK: Councilmembers Campbell?

21 COUNCILMEMBER CAMPBELL: Yes.

22 THE CLERK: Hughes?

23 VICE MAYOR HUGHES: Yes.

24 THE CLERK: Schwartzman?

25 COUNCILMEMBER SCHWARTZMAN: Yes.

1 THE CLERK: Strawbridge?

2 COUNCILMEMBER STRAWBRIDGE: Yes.

3 THE CLERK: And Mayor Patterson?

4 MAYOR PATTERSON: Yes.

5 The next item on the agenda is the
6 opportunity for public comment. This is the time that
7 the public can come to the podium and speak about any
8 item that's not on the agenda.

9 You have up to five minutes. If you can say
10 what you need to say in less time, it's always
11 appreciated.

12 And we just ask that you not make personal
13 attacks on councilmembers, staff, or members of the
14 public or make comments which are slanderous or which
15 may invade an individual's personal privacy.

16 In addition to the public comments that we'll
17 start in just a second, there are items that we have
18 received after the packet was prepared.

19 And in particular, written comments that were
20 submitted today prior to 3:00 p.m. are available on
21 the back table -- oh, back table or side table?

22 MS. RATCLIFFE: Side table.

23 MAYOR PATTERSON: Side table. Okay.

24 And they -- and then actually all the written
25 comments are also on the City's website. So I won't

1 read all of them that we have received.

2 I do not have any cards for public comment on
3 any item that's not on the agenda.

4 COUNCILMEMBER SCHWARTZMAN: There's someone
5 right there.

6 MAYOR PATTERSON: If you would like to come
7 forward, you can do so. You actually don't need a
8 card, but if you have a card, that's always
9 appreciated.

10 MR. GREBE: Good evening. My name is Nick Grebe.
11 I'm the vice commodore of the Benicia Yacht Club.

12 I would just like to take a quick opportunity
13 to thank Mayor Patterson, Manager Kilger, and
14 Fire Chief Lydon for planning to attend our opening
15 day this Saturday, April 23rd.

16 And I would just like to point out that this
17 is one of the very few days that the yacht club is
18 open to the public, and it's our biggest fun event of
19 the year.

20 So we would like to extend the invitation to
21 the entire community, and we hope to see you all
22 there.

23 Thank you very much.

24 MAYOR PATTERSON: And -- and we have good
25 sailing weather?

1 MR. GREBE: We hope so. The weather was a
2 little dicey on Friday, and we're hoping it will clear
3 up by Saturday and be a beautiful day.

4 MAYOR PATTERSON: Okay. Great. Thanks.

5 MR. GREBE: Thank you.

6 MAYOR PATTERSON: Anybody else wishing to
7 address the council on any item that's not on the
8 agenda?

9 Seeing no one come forward, then we close
10 public comment.

11 Then the next item, it would be the consent
12 calendar, but we don't have any consent items.

13 So the next item is the business item, and
14 that is the --

15 COUNCILMEMBER SCHWARTZMAN: Closed session?

16 MAYOR PATTERSON: Pardon?

17 COUNCILMEMBER SCHWARTZMAN: Closed session
18 (inaudible).

19 MAYOR PATTERSON: Actually, that's really a
20 good point, and it's not on my script.

21 So why don't we talk about what we did at
22 closed session. We basically discussed personnel
23 issues and continued the performance evaluation.

24 So now, into business items, this is the
25 point where I talk about "ex parte," which is the word

1 that we use for letting you know certain -- the
2 contacts that we've had, conversations, written
3 material that we might have received that you haven't
4 seen, and so this is the opportunity to tell you that
5 so you have the same information that we have when we
6 make a decision.

7 And anybody that wants to provide that
8 information can do so now.

9 Starting to my left?

10 COUNCILMEMBER CAMPBELL: No.

11 COUNCILMEMBER SCHWARTZMAN: Again, I'll
12 repeat that I had a conversation with a staff attorney
13 at STB, Surface Transportation Board, and I will talk
14 about our discussion at some point this evening.

15 MAYOR PATTERSON: All right.

16 And I had a conversation with an attorney at
17 the Attorney General office.

18 COUNCILMEMBER STRAWBRIDGE: Nothing.

19 VICE MAYOR HUGHES: Nothing since last time.

20 MAYOR PATTERSON: Okay. Great.

21 So this is the continuation of considering
22 the request for a continuance and the appeal of the
23 planning commission decision to not certify the
24 Final Environmental Impact Report and to deny the
25 use permit for the Valero Crude By Rail Project.

1 And part of what we had ended on last night
2 was getting some information on transportation and
3 traffic issues, because that is a major concern, and
4 we had some answers.

5 We have a point of order issue that has
6 arisen, and that is that we received information that
7 heretofore the public had not seen.

8 So I'm going to turn to our illustrious
9 attorneys and have a response to that point of order
10 request.

11 MS. McLAUGHLIN: So the point of order was
12 regarding the PowerPoint that was played last night
13 from the Fehr & Peers representatives.

14 So the question is is whether this is, under
15 our rules, substantial supplemental new information,
16 and it's my opinion that it is not.

17 Oh, here's my agenda.

18 So under our rules, Benicia Municipal Code
19 Section 408.050, subdivision B, in Benicia, if we have
20 supplemental information that's added after the agenda
21 is published, we have certain rules that we have to
22 follow.

23 If it's information received from the
24 applicant or member of the public less than 72 hours,
25 then the city council either continues the item to the

1 next regular meeting or to a special meeting, or they
2 decide that there was adequate notice to allow
3 consideration of the additional information.

4 Substantial supplemental information,
5 according to our code, is written information that
6 could not have been said or read within the oral
7 public comment period;

8 "B" is, according to a majority vote of the
9 council too technical or wordy to be readily
10 understood; and "C" is new information not discussed
11 in prior staff reports or documents previously
12 provided to the body.

13 It's my belief that this information is not
14 substantial supplemental new information. It was
15 merely explaining how the representative arrived at
16 his conclusions, which are included in the voluminous
17 EIR documents, but it's something you all should take
18 a vote on.

19 MAYOR PATTERSON: So I have a different take
20 on what the request and the concern was, and that was
21 there is no opportunity for the public to comment on
22 the methodology and the information that was provided
23 in that video.

24 It wasn't so much that, as I understood the
25 point of order request, that it was because it was new

1 information after the -- or new information,
2 substantially new information.

3 It was really giving the public an
4 opportunity to comment on something that pertains to
5 an environmental document.

6 MS. McLAUGHLIN: Under that interpretation,
7 it would be a never-ending process. Whenever the
8 council asked a question, somebody could claim it's
9 new information.

10 Here, when it was directly related to the
11 reports provided in the EIR, I don't think it's new
12 information. The gentleman was merely explaining how
13 he arrived at the conclusions and walking you all
14 through it.

15 MAYOR PATTERSON: Okay.

16 Any discussion on that? Any -- and we don't
17 have to take any action on the point of order request.

18 Okay. So we have before us -- I have --

19 COUNCILMEMBER SCHWARTZMAN: Actually, I guess
20 maybe it's a point of order.

21 I mean, if we just let that be the way it is,
22 then we are about ready to, I think, from last night,
23 to have an opportunity for council to ask U.P.
24 questions, which leads me to the same potential point
25 of order question about depending on what questions

1 and answers are, could be construed as new
2 information.

3 So now I'm not sure if we should be asking
4 U.P. questions.

5 MAYOR PATTERSON: Well -- and that's actually
6 a very good point, because we've had a back and forth
7 with information with Phyllis Fox and with MRS and
8 ESA.

9 And in a way, I sort of thought what the city
10 attorney was saying was kind of covering all of that.
11 It's information that is supplemental to what has been
12 put in the public documents and commented on.

13 But it is a judgment call. So after we ask
14 the questions of Union Pacific, you always have the
15 choice of reopening the public hearing.

16 COUNCILMEMBER SCHWARTZMAN: Okay.

17 MAYOR PATTERSON: Okay. Now, I did suggest
18 that tonight I wanted to put it in context of what I'm
19 doing because I'm not sure the order of asking
20 Union Pacific will there be additional questions that
21 we'll want to examine, like air quality, and what have
22 you, and then at what point do we decide that on the
23 issue that we decide now or do we decide later about
24 the adequacy of the EIR?

25 So the question before us is on the delay, is

1 that do we decide now about the Final EIR or do we
2 decide later? That is the essence of the question
3 before us on the delay.

4 So we'll go ahead and take the questions on
5 Union Pacific, and then we need to grapple with that
6 question of do we decide tonight or do we decide later
7 about the adequacy of the Final EIR?

8 COUNCILMEMBER SCHWARTZMAN: Okay. So you're
9 saying U.P. questions first?

10 MAYOR PATTERSON: I'm suggesting that that
11 makes sense to me. I'm not the only person up here.

12 COUNCILMEMBER SCHWARTZMAN: Okay. So I -- I
13 don't know about my colleagues.

14 I mean, I've got questions, but then I -- I
15 wonder -- I'm looking at the questions, and I'm
16 wondering if some of that, depending on the answers,
17 could be construed as new information, which means
18 that's -- then we have to make a decision about
19 opening it up to public comment.

20 MAYOR PATTERSON: Correct. Okay.

21 COUNCILMEMBER SCHWARTZMAN: So I'm not sure
22 how everybody else feels.

23 MAYOR PATTERSON: Well, why don't -- why
24 don't we get started, unless there's an objection.

25 Okay.

1 COUNCILMEMBER SCHWARTZMAN: Okay. So I'm the
2 one that wanted to ask the questions, so here we go.

3 Mr. U.P., may I borrow you with the -- with
4 the --

5 VICE MAYOR HUGHES: (Inaudible.)

6 COUNCILMEMBER SCHWARTZMAN: What's that?

7 VICE MAYOR HUGHES: (Inaudible.)

8 COUNCILMEMBER SCHWARTZMAN: No. I thought it
9 was okay to ask questions --

10 MAYOR PATTERSON: Yeah.

11 COUNCILMEMBER SCHWARTZMAN: -- that was the
12 idea.

13 MAYOR PATTERSON: Exactly.

14 COUNCILMEMBER SCHWARTZMAN: Are you feeling
15 not? I mean that's what I'm trying to gauge.

16 VICE MAYOR HUGHES: (Inaudible.)

17 COUNCILMEMBER SCHWARTZMAN: Okay.

18 Thank you for being here, by the way.

19 MR. CASTILLO: No problem. I'm --

20 COUNCILMEMBER SCHWARTZMAN: I appreciate you
21 coming here.

22 MR. CASTILLO: -- Francisco Castillo, with
23 Union Pacific Railroad.

24 COUNCILMEMBER SCHWARTZMAN: Okay. Thank you.
25 And I'm hoping you'll be able to answer these

1 questions.

2 And -- so one of the things, and this goes to
3 the traffic issue, that one of the things that you
4 heard last night was that the traffic study was done
5 primarily using the hours of 2:45 to 3:45 for the
6 study of the trains, and everything else.

7 And it was indicated that Valero had asked,
8 if I get this correct -- correct me if I'm wrong,
9 Valero -- Valero had basically asked U.P. to -- if
10 it's possible for trains not to come during the peak
11 hours, 8:15, 9:15, 12:00 to 1:00, whatever those hours
12 are, and that the answer was that U.P., I -- I'm
13 paraphrasing, would do their best to accommodate that
14 schedule.

15 And so based on that, the traffic study now
16 is using 2:45 to 3:45.

17 So my question is, can U.P. guarantee that
18 these trains will not be on those tracks in that area,
19 Park Road and everything else, during those peak
20 hours, 8:15, 9:15, 1:00 to -- 12:00 to 1:00, and
21 whenever that is?

22 That's Question No. 1.

23 MR. CASTILLO: Okay. Thanks, Councilmember.

24 You know, U.P. makes -- we'll make every
25 effort to avoid dispatching a train during congestion

1 hours, particularly with peak hours.

2 Our passenger trains are our priority. So as
3 you know, there's peak hours between 6:00 and 9:00 a.m.
4 and 4:00 to 6:00 p.m. on weekdays. So we'll
5 definitely make every effort to not dispatch trains
6 during those peak hours.

7 COUNCILMEMBER SCHWARTZMAN: So -- okay.

8 But what you're saying is there's no
9 guarantee, you'll make your best efforts, which tells
10 me that there could be opportunity -- times that could
11 be that, oops, okay there's a train down here that's
12 already been discharged -- I mean dispatched, it's
13 already on its way, and something happens at the
14 refinery, for whatever reason, that's going to cause a
15 delay.

16 So what happens in that circumstance?

17 MR. CASTILLO: Well, I think the last thing
18 we want to do is dispatch a train that contributes to
19 the congestion and results in, obviously, delayed
20 deliveries, delayed train schedules for passenger
21 train, and we take that into consideration.

22 As I said, the passenger trains take
23 priority, and we make every effort to accommodate
24 that. So we're not going to dispatch a train and
25 delay our schedule or delay a train being delivered or

1 arriving late because of that.

2 COUNCILMEMBER SCHWARTZMAN: No, I understand
3 your best efforts. I get that part.

4 But help me -- maybe I need to understand how
5 the communication between Valero and U.P. works as far
6 as, you know, when you're ready to discharge a --
7 dispatch a train.

8 So -- I'm making this up because I don't know.

9 So is U.P., you know, Train A, the morning
10 train, is about ready to be dis- -- dispatched, and
11 somebody from U.P. gets on the phone to Valero who
12 says, "Hey, guys. We're about ready to dispatch," and
13 Valero says, "Yeah, we're good," okay, or do you just
14 send them?

15 I mean, how does that work?

16 MR. CASTILLO: Well, I could speak on -- I
17 could speak on behalf of U.P., but we have a
18 dispatching center that's based in Omaha, Nebraska,
19 that manages all the train traffic that goes through.
20 So we don't have a set schedule, per se, as it relates
21 to when the train will leave Roseville.

22 We base that based on the traffic that's
23 going on throughout the day, and that's how we make --
24 you know, the dispatch center works with --
25 communicates with Valero, to be able to dispatch a

1 train at a specific time.

2 So there's no set schedule as it relates to
3 when a train would leave Roseville. It could be
4 different times throughout the day. So...

5 COUNCILMEMBER SCHWARTZMAN: But there is
6 somewhat of a set schedule as to when they have to be
7 dispatched so that they're down here and get through
8 to Valero in the nonpeak hours.

9 MR. CASTILLO: Correct.

10 COUNCILMEMBER SCHWARTZMAN: So there is some
11 scheduling that --

12 MR. CASTILLO: We -- like I said, we make
13 every effort to not dispatch trains during peak hours.
14 Recognize that's a busy line and passenger trains take
15 priority.

16 I know you're trying to, you know -- I'm
17 trying to get at your question here.

18 So we're not going to dis- -- we're going to
19 make every effort not to dispatch trains during those
20 6:00 to 9:00 and 4:00 to -- 4:00 to 6:00 hours.

21 (To Mr. Howe) Do you have (inaudible)?

22 COUNCILMEMBER SCHWARTZMAN: Well, is it okay
23 for him to --

24 MAYOR PATTERSON: I'm not really sure that's
25 appropriate at this time.

1 COUNCILMEMBER SCHWARTZMAN: Yeah.

2 Hang on. Hang on, Mr. Howe.

3 Okay. So I -- the answer is, okay, the deep
4 bottom-line answer, there's no guarantee.

5 That's the answer?

6 MR. CASTILLO: Correct.

7 COUNCILMEMBER SCHWARTZMAN: Okay. Got that.
8 Thank you.

9 Can you maybe comment, because I know it came
10 up somewhere in either comments or EIR, about track
11 inspections?

12 How often does U.P. inspect the tracks?

13 MR. CASTILLO: So we inspect tracks twice a
14 week throughout our system, and --

15 COUNCILMEMBER SCHWARTZMAN: "Throughout the
16 system"?

17 MR. CASTILLO: Throughout our system.

18 So that means in the Roseville and Martinez
19 subdivision is -- that track is inspected twice a week.
20 So it could have been inspected this past week in this
21 particular subdivision. I don't have the exact date.

22 But we inspect tracks twice a week, in
23 addition to different -- different technologies that
24 we use throughout the year that supplements the visual
25 inspections that we do.

1 COUNCILMEMBER SCHWARTZMAN: Okay. And is
2 it -- so you're talking about "technological,"
3 meaning, I think, there's stuff attached to trains or
4 if something goes wrong --

5 MR. CASTILLO: Yeah. So we have -- we have a
6 train that goes through and that detects the
7 imperfections on a -- on a track, for example.

8 COUNCILMEMBER SCHWARTZMAN: Uh-huh.

9 MR. CASTILLO: And that we do on an annual
10 basis throughout our system.

11 And so that's an additional technology that
12 we -- that we use, that's the side detectors as well,
13 to be able to detect any -- any issues that, you know,
14 a locomotive wheel would have, for example, as well.

15 And so in addition to the visual inspections
16 that we do, we have technology that we use on an
17 annual basis that supplements that as well.

18 So we inspect our tracks more often than
19 what's required by the federal regulations.

20 COUNCILMEMBER SCHWARTZMAN: And you said
21 twice a week.

22 MR. CASTILLO: Uh-huh.

23 COUNCILMEMBER SCHWARTZMAN: Okay. And -- and
24 is there -- is -- does that mean one is visual every
25 week and the other one is the technology every week?

1 MR. CASTILLO: There's two visuals every
2 week.

3 COUNCILMEMBER SCHWARTZMAN: Oh, two visuals
4 every week.

5 MR. CASTILLO: Yeah, two visuals every week.

6 COUNCILMEMBER SCHWARTZMAN: Okay.

7 MR. CASTILLO: And at the same -- and at the
8 same time, throughout the year, we use the technology
9 that we have on the tracks, whether it's the high
10 rail, it's -- I believe it's -- it's in the EIR as well.

11 But I can give you some information here as
12 well that talks about specifics on the technologies
13 that we use to be able to detect the imperfections on
14 our railcars.

15 COUNCILMEMBER SCHWARTZMAN: I remember there
16 was something in the EIR --

17 MR. CASTILLO: So, for example, I mean,
18 it's -- technology has advanced from decades ago;
19 right? We've come a long way as it relates to
20 technology.

21 And so it detects things like a small
22 fracks -- fracture that's in the center of a track,
23 for example, that we won't be able to catch visually
24 by visually inspecting the tracks, and that allows us
25 to take note of where that is and -- and make that

1 correction as soon as possible.

2 COUNCILMEMBER SCHWARTZMAN: Okay. So you
3 were talking about -- so -- okay.

4 So that's ins- -- you said from Roseville
5 down.

6 MR. CASTILLO: Yes.

7 COUNCILMEMBER SCHWARTZMAN: What about
8 Roseville up?

9 MR. CASTILLO: Throughout our -- throughout
10 our system --

11 COUNCILMEMBER SCHWARTZMAN: All --

12 MR. CASTILLO: -- we have --

13 COUNCILMEMBER SCHWARTZMAN: -- (inaudible)
14 the track?

15 MR. CASTILLO: -- 3200 miles of track in
16 California, and they all are with the same
17 standards --

18 COUNCILMEMBER SCHWARTZMAN: They're all
19 visual inspection --

20 MR. CASTILLO: -- as it relates to --

21 COUNCILMEMBER SCHWARTZMAN: -- twice a week.

22 MR. CASTILLO: -- our visual -- our
23 inspection process in California and our other 22 states.

24 COUNCILMEMBER SCHWARTZMAN: Okay.

25 I remember a discussion, maybe EIR or

1 somewhere in the discussion, somewhere about Class I
2 track, Class II track, and so on, and there was a
3 comment somewhere along the lines about areas of route
4 that I think are Class III and below?

5 MR. CASTILLO: So can I explain that a little
6 bit just so --

7 COUNCILMEMBER SCHWARTZMAN: Yeah.

8 MR. CASTILLO: -- you guys can --

9 COUNCILMEMBER SCHWARTZMAN: Please.

10 MR. CASTILLO: -- understand that?

11 So I think it's important to know what --
12 what mean -- what is -- what is a track -- track
13 classification, how that's determined.

14 And there's various factors that come into
15 play when they actually determine a class -- a track
16 classification. That's the road bed, track geometry,
17 track structure, the track appliances and track-ready
18 devices, inspections.

19 That -- all that is taken into consideration
20 in determining the classification for that particular
21 track.

22 So as it relates to the Martinez subdivision,
23 for example, we have Class IV and V track, which --
24 which has maximum freight speed as high as 80 miles
25 per hour.

1 As you know, U.P. does not operate trains at
2 80 miles per hour, but we're able to -- that's --
3 that's the type of track and the type of condition
4 that we maintain that track for.

5 So, for example, a crude oil train that goes
6 through there won't exceed 50 miles per hour, for
7 example.

8 And we do have a class -- you know, the
9 section that you're talking about is -- is a Class I
10 track, and that's on a third mainline that's
11 connecting the Martinez subdivision to the Sacramento
12 subdivision. So it's a steep curve.

13 And the only reason why it's a Class I is not
14 necessarily because of the condition of the track, but
15 because of the curvature of the track in that area.

16 So the classification doesn't necessarily
17 define the condition of the track at -- at times. So
18 there, in that particular area, it's a Class I because
19 of the curvature of the track.

20 COUNCILMEMBER SCHWARTZMAN: Okay. So does
21 curvature, generally speaking, lower the -- lower
22 the --

23 MR. CASTILLO: Yes.

24 COUNCILMEMBER SCHWARTZMAN: -- class?

25 MR. CASTILLO: Because you have to go a lot

1 slower --

2 COUNCILMEMBER SCHWARTZMAN: Right.

3 MR. CASTILLO: -- and the track
4 classification is obviously based on speed, and that's
5 one of the things that have been taken into
6 consideration.

7 So a Class I, for example, will go, I think
8 it's 10 or 20 miles per hour on that particular --

9 COUNCILMEMBER SCHWARTZMAN: Sure.

10 MR. CASTILLO: -- on that particular
11 curvature.

12 COUNCILMEMBER SCHWARTZMAN: Do you have a
13 sense on -- on -- on all of your mileage?

14 I'm mostly concerned about the routes that
15 these trains could be on, whether it's from
16 northern California east to wherever it is, a
17 percentage of not curved Class I/II but straight
18 Class I/II, which is condition of track.

19 MR. CASTILLO: I don't have a percentage.
20 I -- I don't have that as -- that defined in terms of
21 a percentage --

22 COUNCILMEMBER SCHWARTZMAN: Okay.

23 MR. CASTILLO: -- of our 3200 miles of track
24 in California that has specific classifications.

25 COUNCILMEMBER SCHWARTZMAN: Okay. Thank you.

1 Okay. So this kind of came up in
2 discussions, and this is -- this is a concern, I'm
3 sure, and this has to do with if there's an event,
4 whether it's a -- and now I'm talking just a
5 derailment. I'm talking a major spill, or worse, and
6 who's actually responsible.

7 So if it's --

8 MR. CASTILLO: Sure.

9 COUNCILMEMBER SCHWARTZMAN: If it's rail
10 related, can you talk about who's responsible, and can
11 you also talk about insurance coverages and what --

12 MR. CASTILLO: Sure.

13 COUNCILMEMBER SCHWARTZMAN: -- is U.P.'s
14 situation, and how much coverage does U.P. have in
15 relationship to what they could --

16 MR. CASTILLO: Sure.

17 COUNCILMEMBER SCHWARTZMAN: -- pay?

18 MR. CASTILLO: So U.P. is self-insured, and
19 our net worth is \$21 billion, and so --

20 COUNCILMEMBER SCHWARTZMAN: 21 billion?

21 MR. CASTILLO: The company has about
22 \$52 billion in U.S. assets.

23 And the reason I say that is because -- and
24 by the way, this information is filed with the
25 Securities and Exchange Commission.

1 And so with that said, U.P. has sufficient
2 assets to pay for the worst-case scenario, if it's
3 liable for causing the spill.

4 And we've actually submitted the Inland oil
5 spill contingency plan and also an application for
6 Certificate of Financial Responsibility with the State
7 of California. And once that's certified, we can
8 actually provide a copy to the City as well so you
9 have that.

10 But we will pay for any event that is deemed
11 responsible by the railroad.

12 COUNCILMEMBER SCHWARTZMAN: Okay. So --

13 MR. CASTILLO: And that's going to depend on
14 the -- on the investigation, obviously, of that
15 particular incident. So it's not something that we
16 can -- you know.

17 COUNCILMEMBER SCHWARTZMAN: Okay. So in any
18 event that would happen along the rail, short of
19 terrorism, obviously, or some -- well, I don't know.

20 Okay. If -- if -- and I'm -- you know,
21 again, I'm not trying to make this alarmist --

22 MR. CASTILLO: Yeah.

23 COUNCILMEMBER SCHWARTZMAN: -- okay? I'm
24 just trying to pick up on some concerns that people
25 have brought up.

1 So let's say a truck plows into a train,
2 okay, and causes an explosion.

3 Okay. So I know you're not -- well, maybe
4 you are an attorney.

5 MR. CASTILLO: I'm not an attorney.

6 COUNCILMEMBER SCHWARTZMAN: Who would be
7 responsible?

8 Would -- would -- would the insurance of the
9 truck carrier or would U.P.?

10 MR. CASTILLO: Again, you know, it's going to
11 depend on the investigation; right?

12 It's -- it's not as simple as saying, "U.P.
13 hit the truck, and the train explodes. U.P. is
14 responsible for paying that." There's a lot that goes
15 into an investigation to determine what the actual
16 cause was.

17 It could be the fact that, you know, they
18 inspect -- for -- I guess -- back it up a little bit,
19 explaining what goes into an investigation so you
20 understand what we take into consideration; all right?

21 So we inspect the locomotives during the
22 investigation. We interview the crews. We inspect
23 every tank car to make sure that every tank car is up
24 to standards that need -- that -- that -- the
25 condition that they need to be in while we're

1 delivering this -- this particular crude.

2 We inspect the tracks in that sub- -- on that
3 subdivision in that area where the train was going,
4 you know. We also interview any witnesses, any --
5 any -- any idea about that will give us in terms of
6 what occurred with that particular truck.

7 So there's a lot of factors that come into
8 play when determining what caused the particular
9 derailment or incident.

10 So it's not as -- you know, if it is our
11 track that was damaged, for example, and -- and the
12 investigation found that that was the case, U.P. would
13 pay for that particular event.

14 COUNCILMEMBER SCHWARTZMAN: Okay. Backing up
15 for one second, if I heard you correctly, U.P. has
16 21 billion in assets.

17 MR. CASTILLO: Yeah.

18 COUNCILMEMBER SCHWARTZMAN: And did you say
19 52 million?

20 MR. CASTILLO: 52 billion in U.S. assets.

21 Our net -- our net worth is 21 billion. Our
22 assets is 51 billion.

23 COUNCILMEMBER SCHWARTZMAN: Okay.

24 So I guess the next question is, I mean, if
25 there was a major event, okay, how much is liquid?

1 In other words, I know you're self-insured,
2 but you're self-insured against your assets.

3 So, in other words, it's a big deal if you
4 were considered responsible, but, conceivably, you
5 might have to sell assets to cover the cleanup, or
6 whatever the issue is.

7 Would that be correct?

8 MR. CASTILLO: Well, again, you know, under
9 the definition that's defined by the State of
10 California -- and I don't have it in front of me,
11 which is under the worst-case scenario --

12 COUNCILMEMBER SCHWARTZMAN: Okay.

13 MR. CASTILLO: -- and I wish I had that
14 definition in front of me, but that's to define --
15 it's defined by the State of California.

16 -- we have the financial resources to be able
17 to deal with the worst-case scenario.

18 COUNCILMEMBER SCHWARTZMAN: And do you
19 remember what that number was, ballpark?

20 MR. CASTILLO: You know, I don't have that,
21 but I can get that -- I can certainly get that to you.
22 I can make --

23 COUNCILMEMBER SCHWARTZMAN: Well, was it like
24 10 million, 15 million, a billion?

25 MR. CASTILLO: I don't know what the

1 definition -- I don't have that in front of me, but I
2 can get that to you.

3 COUNCILMEMBER SCHWARTZMAN: Okay. Thank you.

4 MR. CASTILLO: But even if it's over a
5 billion, we have plenty of resources to be able to pay
6 for a derailment, if it were to occur, an incident --

7 COUNCILMEMBER SCHWARTZMAN: All right.

8 MR. CASTILLO: -- we'd take care of it.

9 COUNCILMEMBER SCHWARTZMAN: Well, thank you
10 for -- for sharing and -- and answering my questions.

11 That's all that I have.

12 MAYOR PATTERSON: Okay. I have --

13 MS. RATCLIFFE: Mayor Patterson?

14 MAYOR PATTERSON: Thanks.

15 I have three questions.

16 MR. CASTILLO: Sure.

17 MS. RATCLIFFE: Mayor Patterson?

18 MAYOR PATTERSON: Okay -- yes?

19 MS. RATCLIFFE: Sorry. I just wanted to have
20 a quick clarification follow-up on one of
21 Councilmember Schwartzman's questions?

22 MAYOR PATTERSON: Yes.

23 MS. RATCLIFFE: You were asking about the
24 train issue in peak periods, and I think that was in
25 reference to what the Fehr & Peers consultant, who

1 is -- who is Valero's consultant, said last night.

2 And I just wanted to clarified that in the
3 Draft EIR, ESA did analyze the peak traffic periods,
4 and Janna Scott will talk to that, if that was
5 something you wanted to follow up on.

6 COUNCILMEMBER SCHWARTZMAN: Well, let's be
7 clear; okay? Did they analyze trains during the peak
8 periods?

9 MS. SCOTT: Yes -- excuse me. Yes.

10 COUNCILMEMBER SCHWARTZMAN: Because I don't
11 know (inaudible) --

12 MS. SCOTT: Yes, they did.

13 COUNCILMEMBER SCHWARTZMAN: Excuse me?

14 MS. SCOTT: In the Draft EIR, Impact 4.11-1,
15 and the revised Draft EIR, we looked at the issue of
16 a.m. and p.m. project train-related impacts on area
17 intersections in Impact 4.11-6.

18 And then again in the Final EIR, we clarified
19 in response to questions about a.m. and p.m. period
20 impacts relating to project trains.

21 COUNCILMEMBER SCHWARTZMAN: I'll have to go
22 back and look at it.

23 Thank you.

24 MAYOR PATTERSON: So I've been asked to -- I
25 can't hear. I guess I have -- my hearing isn't so

1 good. So I'm going to take a little commercial break.

2 This is a reminder that we're not -- we ask
3 that you not talk or whisper in this room, and the
4 reason is not because we're really harsh. It's
5 because the sounds out there really carry forward.

6 We can hear you better than you can probably
7 hear us, and it's -- and so even though you think
8 you're really whispering carefully, it's actually
9 coming up here, and it does bother some folks.

10 And the other thing, this is just another
11 friendly reminder, no hissing, booing, clapping, and
12 try to contain your laughter.

13 You've done a really great job. Those that
14 have been here have just been fantastic, and your
15 responses with when you agree with somebody speaking,
16 you raise your little fans, I guess I'll call them.

17 So any questions anyone has on that?

18 Okay. Thanks.

19 So I did have a follow-up question, and I
20 appreciate Councilmember Campbell letting me go for
21 this, and I have three questions.

22 The -- the issue with the -- or -- fast
23 forward (sounds like).

24 The issue with the conflict with potential
25 bay traffic causing traffic jams that back up on the

1 freeway has been discussed, weighed, and you were here
2 last night for that discussion.

3 One of the questions that came up toward the
4 end was, "Well, what happens if you have a delay on
5 the offloading and can't quite get the job done, and
6 it happens to conflict with that peak traffic,
7 regular, not train peak traffic, but regular traffic;

8 And it could start backing up onto the
9 freeway and that it could cause problems with cars and
10 trucks running into the back of traffic because
11 it's off to the shoulder?

12 So the issue -- so the issue wasn't really
13 addressed. It was -- it was sort of like, "Well, we
14 don't expect that to happen," and that didn't seem a
15 really satisfactory answer.

16 The other question related to that was what
17 do you do if you've already dispatched a train and you
18 know that there's going to be this conflict now?

19 So an hour and a half later, the train got
20 dispatched. It's on its way. But now you've been
21 informed -- or Omaha has been informed that there's a
22 conflict.

23 So you have the opportunity to park trains,
24 to take them off the mainline and put them in the
25 industrial park, and that could avoid that blockage of

1 a road at the time of peak traffic travel.

2 Correct?

3 MR. CASTILLO: Correct. We have sidings that
4 we have along our lines --

5 MAYOR PATTERSON: And you've improved some of
6 those sidings for exactly that purpose; is that
7 correct?

8 MR. CASTILLO: Correct.

9 MAYOR PATTERSON: And do you have a map of
10 those easements?

11 Because, as I understand it, if you have an
12 easement, you can park those trains wherever you want
13 to park those trains, regardless of what's in the
14 trunk -- tank car, train car, or what it's adjacent
15 to; is that correct?

16 MR. CASTILLO: Well, there's certain
17 regulations -- there's strict regulations as it
18 relates to parking tank cars.

19 So we can have them on a siding for a short
20 period of time, but it's -- it's not like something we
21 can park there overnight, for example.

22 There's strict regulations at it relates to
23 tank cars or moving a particular train that's for --
24 that's fully loaded. We can't just leave it,
25 obviously, for security -- Homeland Security purposes.

1 We can't just leave a train on a siding for a long
2 period of time.

3 MAYOR PATTERSON: So if you have a 50-car
4 unit train that has gotten caught up in this
5 offloading delay, where are you going to put that
6 50-car unit train?

7 MR. CASTILLO: Well, I think -- I think
8 that's the purpose of our dispatch center in Omaha.
9 That's -- that's -- so things like that, an incident
10 like that, won't occur.

11 And so we make every effort, as I mentioned
12 earlier, to not dispatch a train during congestion,
13 during hours of -- of peak time, particularly because
14 we understand that there are train -- passenger trains
15 that go on that particular line.

16 And so we don't want to get in the situation
17 where we would dispatch a train and then it causes
18 delays, the schedules get screwed up, and so we want
19 to avoid that, which is why I said we make every
20 effort not to dispatch trains during that time.

21 So we com- -- our dispatch center is very
22 good at doing this throughout our 23-state network,
23 and we have agreements with passenger trains
24 throughout California, as you know, and we work very
25 well with them as it relates to prioritizing passenger

1 trains and making sure that traffic does not get
2 congested on any of our lines.

3 MAYOR PATTERSON: In Point Richmond, there is
4 an intersection on Cutting and -- I can't remember
5 the -- Canal Road, and the trains back up and forth in
6 that intersection on a fairly constant basis, morning,
7 noon, and night, and it can really jam the traffic.

8 So if you know the area, you know that you
9 can actually turn around and go onto the freeway and
10 then get off on another exit. There are no choices
11 like that in the industrial park, for the most part.

12 There are a couple of choices we saw in the
13 video last night. Cars coming -- approaching Park Road
14 could just turn around and go back on Park Road, but
15 if you're coming off the freeway, you can't do that.

16 So that's my concern.

17 I'm assuming that you have a protocol -- that
18 you have operating protocols.

19 Is it possible that -- that that is a
20 protocol that could be highlighted for Benicia, to
21 give that added protection for potential conflicts
22 with the Caltrans freeway and then the industrial park
23 roads?

24 MR. CASTILLO: We'd be sure and make every
25 effort, but it's not something I can commit to

1 tonight.

2 MAYOR PATTERSON: So I know that we can't
3 require you to do that.

4 I recall reading in the "New York Times"
5 about the fact that California has the highest number
6 of at-grade crossing train accidents, and we have a
7 lot of trains coming across California, and we have a
8 lot of at-crossing potential here in Solano County.

9 Do you have special protocols that you are
10 looking at because of the proposed unit train cars
11 coming through Solano County, to protect the --
12 in fact, because I was involved in -- I was on the
13 Capitol Corridor many years ago when we hit a van.

14 And -- and, fortunately, nobody was killed.
15 It just chopped half of the van off, and everybody was
16 in the front part of the van. So it was -- it wasn't
17 a tragedy; although, it could have really easily been
18 a tragic -- tragedy.

19 But that was -- it was hard for the
20 conductors to deal with, and it certainly was hard --
21 it just stopped the traffic for a long time for that
22 investigation. That's why --

23 MR. CASTILLO: Absolutely.

24 MAYOR PATTERSON: -- there was a three-hour,
25 four-hour investigation.

1 So the -- the -- the point is is that
2 California has the highest number of at-grade train
3 accidents.

4 So is there special precautions that are
5 going to be considered and adopted by Union Pacific
6 for coming across, particularly in Solano County,
7 which I care a whole lot about?

8 MR. CASTILLO: Well, we believe that all of
9 our crossings are safe, and less than 1 percent of the
10 derailments happen because of an incident at a
11 crossing.

12 And so a lot of times, you know -- as you
13 know, that's -- that's a big issue, not just in
14 California, but across our 23-state network with U.P.
15 and any other railroad. Every three hours, an
16 individual or a car is hit by a train, and that
17 includes at a crossing as well.

18 So we have a robust education awareness
19 campaign that we do in communities, and it's certainly
20 something that we can do in Benicia as well.

21 But we do that throughout the state of
22 California, where we have our U.P. police working
23 closely with local law enforcement to help educate the
24 community about the hazards associated with trains.

25 And a lot of times it also happens, not just

1 at crossings, but trespassing. I mean, you -- if
2 you're -- if you get on a train on the Martinez
3 subdivision, you see people walking along the tracks
4 or even attempt to beat a train, crossing over the
5 tracks. So it's not just a crossing.

6 The majority of the incidents that occur
7 happen because an individual is trespassing and tries
8 to beat a train to try to get across to the other side
9 of the tracks.

10 But we have a robust education awareness
11 program and a campaign that has definitely helped
12 bring that awareness to communities, and it's
13 something that we can certainly do in Benicia.

14 MAYOR PATTERSON: So I love trains, and I
15 know that you are saying that you want to do the right
16 thing, and in some ways, it's a little frustrating
17 conversation since we've been advised that we can't
18 tell you anything to mitigate or to adopt a safety
19 regulation.

20 But the State of California recently adopted
21 rail safety regulations that attach to the -- the oil
22 spill prevention act that provided for -- there were
23 several things.

24 One is to develop an oil spill, from trains
25 on land, prevention and a spill cleanage program to

1 clean up the spilled oil and that it would be similar
2 to the -- like what we have with the clean bay.

3 It was sued by Union Pacific, but the
4 decision, as I understand it, was that it wasn't ripe
5 for a decision because the regulations haven't been
6 written. It's new legislation, about a year and a
7 half old, and it takes a while for the regulations to
8 be written.

9 So on the one hand, you know, I want to -- I
10 want to take your earnest comments and responses to
11 these hard questions with some level of comfort, but
12 on the other hand, that particular lawsuit didn't give
13 me a lot of comfort.

14 MR. CASTILLO: Well, I think it's important
15 for us to have uniform regulations across our system,
16 and we try to prevent patchwork regulations that occur
17 and that can possibly occur in a particular state.

18 We prefer to have regulations -- uniform
19 regulations that are not just one state -- are in one
20 state versus another. So the regulations that we
21 follow are obviously the federal regulations, which is
22 the entity that regulates the railroads.

23 And as you know, I think there's been a lot
24 of discussion about the fact that in last May, the --
25 the federal -- the FRA presented even more strict

1 regulations as it relates to railroads when
2 transporting crude.

3 So they took into account the speed, the
4 braking system, and -- and another point that I'm
5 forgetting at the moment, to be able to -- oh, and
6 tank car standards, to be able to make that safer.

7 And so we follow, and many times we exceed,
8 those federal regulations in California.

9 And in California, you know, we do have a
10 member that's -- that we -- we do have an individual
11 that's a member of the hazardous material committee
12 that's -- I believe that's probably the one you're
13 referring to.

14 That's out of OES. That's based out of a
15 bill that was passed last year in the State as it
16 relates to hazardous fees.

17 MAYOR PATTERSON: Well, it's -- I think
18 you're talking about the Governor's Office of
19 Emergency Response?

20 MR. CASTILLO: (No audible response.)

21 MAYOR PATTERSON: And so thank you very much.

22 As I said, we don't have jurisdiction on
23 this, and so I'm counting on you to do the right
24 thing, regardless of how this decision goes, for any
25 train traffic.

1 One last question and then I'll call on
2 Councilmember Campbell.

3 Can we have a map of all the easements that
4 you have in the industrial park?

5 MR. CASTILLO: I'm sorry. Can you repeat
6 your --

7 MAYOR PATTERSON: Can we have a map of all
8 the easements that you have in the industrial park?

9 MR. CASTILLO: Sure. I can check with our
10 real estate. I don't have that, obviously, off the
11 top of my head now, but I can pass that on to you and
12 communicate that with our team, in turn.

13 MAYOR PATTERSON: All right. Thank you very
14 much.

15 Council- -- Councilmember Campbell and then
16 Vice Mayor Hughes?

17 COUNCILMEMBER CAMPBELL: Yeah, mine -- mine
18 is a pretty quick question. I think it's for you, but
19 I'm not absolutely sure.

20 These tank cars, you know, when they're
21 empty, are they "empty" empty, or is there still some
22 residual there?

23 Where I'm going with this is if you've got a
24 full tank car, there's not much vapor pressure,
25 there's not much gas there, I would assume, you know,

1 because you want the thing full, and then when you
2 empty it, you know, Valero, I assume, wants all of it
3 out they can.

4 But do you clean it out afterwards, or is it
5 sitting there with some amount of, you know, benzenes
6 or soluble -- what's the word I want? -- organic
7 sol- -- organic solutions, that, you know, can build
8 up a pressure in there?

9 Because that, I think, would actually worry
10 me a little bit more than a full tank, because,
11 you know, if you have something go off when it's a
12 gas, it's going to go off. When you're talking about
13 a liquid, it's going to sort of burn.

14 MR. CASTILLO: Yeah.

15 COUNCILMEMBER CAMPBELL: So what -- what -- I
16 mean, what do you do, you know?

17 MR. CASTILLO: I wish I could answer that
18 question, Councilmember Campbell.

19 I -- you know, we don't -- Union Pacific
20 doesn't own the tank cars. We simply pull the train
21 and those -- in this instance, the 50 tank cars to the
22 facility. We don't even unload the tank car.

23 So it's not something that we just -- I'm not
24 probably the right person for that particular
25 question, but maybe an emergency response personnel or

1 a -- or maybe a Valero --

2 (Overlapping voices)

3 COUNCILMEMBER CAMPBELL: Maybe someone can
4 answer that.

5 MR. CASTILLO: Yeah, maybe the Valero fire
6 chief or someone else can --

7 COUNCILMEMBER CAMPBELL: Okay. You see the
8 thing I'm worried about, you know, actually -- I'm
9 actually a little more worried about an empty tank car
10 rather than a full one myself.

11 Because if you've got them stacked up there
12 and, you know -- you know, I would think there would
13 be more risk of an empty tank car because there's,
14 you know, some residual gas.

15 It catches on fire. Then it's a domino
16 series where it catches on fire, then the next one
17 catches on fire, then one that's actually full, which
18 might be close enough, catches on fire, and then --
19 you know, then you've got the tanks nearby.

20 Well, you know -- you know, I could be
21 totally wrong. I'm just sort of curious.

22 MR. HOWE: So -- Chris Howe with Valero.

23 COUNCILMEMBER CAMPBELL: Uh-huh.

24 MR. HOWE: Any residual material that remains
25 in the car would have, effectively, the same vapor

1 pressure that the original car did. You've got liquid
2 that will equalize to a level of --

3 COUNCILMEMBER CAMPBELL: Well --

4 MR. HOWE: -- pressure that will --

5 COUNCILMEMBER CAMPBELL: -- I'll go along
6 with that.

7 You know, say -- again, benzene, since I
8 guess it's used in a solvent for some of the
9 tar sands -- you know, you're right.

10 The vapor pressure doesn't change whether
11 you're talking about an ounce or, you know, 50 gallons;
12 it's the same vapor pressure. It's just that the
13 volume that it's going to fill is going to be a lot
14 bigger, you know.

15 So that, you know -- you know, the vapor
16 pressure is -- you know, it's a property of the
17 particular organic solvent.

18 But, in turn, the amount you have and the
19 ability for it to spread out is going to depend on
20 the -- the -- what's the word I want? -- atmospheric
21 pressure that it's posed up against.

22 MR. HOWE: So these railcars are not
23 pressurized, unlike an LPG, "liquified petroleum gas,"
24 car, where the contents are held under pressure so
25 that they maintain the liquid form.

1 These cars are not pressurized. They would
2 only achieve the pressure that liquid material, vapors
3 itself, could produce in that container.

4 Yes, they will be in the car, but --

5 COUNCILMEMBER CAMPBELL: Yeah.

6 MR. HOWE: -- they're not at -- over what
7 they were originally.

8 COUNCILMEMBER CAMPBELL: I don't think I'm
9 getting my point across.

10 Okay. You've got a full tanker car, and
11 maybe there's only -- let's just use a number.
12 There's only maybe like five liters or three liters
13 left of actual air space in there.

14 Well, that's going to fill up with some sort
15 of organic compound, because, you know, the vapor
16 pressure of it and the boiling point of it's going to
17 be high enough that it will give off some gas. So
18 maybe you're talking about two liters, three liters.

19 But if you've got, like, an entirely empty
20 tanker, then you're talking about maybe having, I
21 don't know, you know, 50 liters of some level of,
22 you know, potentially flammable gas in there.

23 And so that -- I mean, for me, that -- that's
24 sort of something I'm a little bit worried about, if
25 there's, you know, actually, you know, much residual

1 organic liquid in there, you know.

2 And, I mean, I don't know, do you clean the
3 things out beforehand, or do you just suck them dry?

4 MR. HOWE: I'm not sure.

5 You want to take another stab at it with --

6 COUNCILMEMBER CAMPBELL: Yeah.

7 MR. HOWE: -- Mr. Radis, who provided some of
8 the evaluations of those situations, actually?

9 COUNCILMEMBER CAMPBELL: Thank you.

10 MR. RADIS: Mayor Patterson, Members of the
11 City Council, there is residual oil in the tanks, and
12 the tanks are full of flammable vapors --

13 COUNCILMEMBER CAMPBELL: Okay.

14 MR. RADIS: -- but they're at an extremely
15 low pressure, which basically means that if you'd open
16 up the top, it's not like a bunch of vapors come
17 flying out under pressure.

18 COUNCILMEMBER CAMPBELL: It just kind of
19 floats out a little bit?

20 MR. RADIS: It kind of floats on out, doesn't
21 go very far.

22 And one thing we found in the data is that
23 when you're transporting the empty tank cars, the --
24 they're a lot lighter, obviously. So the derailment
25 rates are lower, and the initial -- or inertial energy

1 is lower. So if there is a derailment, it cannot fail
2 during an accident.

3 So we did look at small spills in the risk
4 analysis, and what we find is they don't really
5 contribute much to the overall risk.

6 COUNCILMEMBER CAMPBELL: And they're pretty
7 well sealed or they just -- and they're kind of a
8 little bit --

9 MR. RADIS: The tanks are sealed? So they --
10 they shouldn't be venting while they're empty.

11 COUNCILMEMBER CAMPBELL: Okay.

12 Because -- and so to me, you know, one of the
13 things that I kind of also -- you know, besides the --
14 the fact that -- you know, it seems like if you've got
15 it as a vapor -- an organic solvent as a vapor,
16 you know, it seems like there might be a little more
17 risk of something catching on fire.

18 The other is if you have some of this vapor
19 kind of -- oh, what did they call it? -- fugitive gas,
20 I think that might have been it.

21 Well, you know, okay, a little on a given
22 car, but you're talking about a 300 -- 36,500 cars a
23 year, if you're doing this 100 cars, you know, a day,
24 365 days a year, which, you know, I would assume
25 that's what you're going to do, you know, because you

1 don't want to have days off.

2 So any amount you have given off is going to
3 be multiplied by a factor 36,500.

4 MR. RADIS: Right. The issue, though, is
5 that vapor is compressible. So even if you were to
6 heat up a railcar, the vapor will compress within the
7 pressure levels that the car can withstand.

8 And if it really got bad, then it would vent
9 a bit, but at that point, that would -- you would have
10 to already have a big fire going.

11 COUNCILMEMBER CAMPBELL: Uh-huh.

12 MR. RADIS: And one thing we found is that
13 when you have empty railcars, even though there's
14 residual oil, there's not enough liquid spilled to
15 cause a pool fire of sufficient heat to cause a levy
16 or a thermal tear of an adjacent car.

17 So there isn't that big explosion risk like
18 you've seen in many of the accidents.

19 COUNCILMEMBER CAMPBELL: Okay. Well, it's
20 not necessarily the big explosion all along that seems
21 like it might be a possibility.

22 It's just all you've got to do is ignite it
23 someplace and then worry about, you know, can it
24 spread faster than you can put it out, you know.

25 And as it moves to, you know, from a gaseous,

1 you know, organic solvent to, you know, a liquid
2 crude, then, you know, it's not going to necessarily
3 blow up.

4 It's just going to -- you know, you just --
5 you know, you start something kind of spinning. You
6 get a snowballing effect, I guess.

7 MR. RADIS: Right. The actual presence of
8 vapor in crude oil storage tanks is -- is fairly
9 normal for a fixed route tank.

10 And so this is something that in many
11 facilities exists all the time.

12 COUNCILMEMBER CAMPBELL: Okay.

13 MAYOR PATTERSON: So there --

14 COUNCILMEMBER CAMPBELL: All right.

15 MAYOR PATTERSON: So, Councilmember Campbell,
16 just for clarification, are you going in the -- sort
17 of in the direction of the example that was given with
18 the Pemex explosion in Mexico, Mexico City, outside of
19 Mexico City?

20 COUNCILMEMBER CAMPBELL: No. I happened to
21 have a couple degrees in organic chemistry. I guess I
22 should have mentioned that. And so the -- the --

23 (Laughter)

24 COUNCILMEMBER CAMPBELL: -- the point I'm
25 going at is, you know, an organic solvent, you know,

1 it's -- it's more dangerous, actually, than a big
2 chunk of liquid solvent because you've got that,
3 you know, gaseous part there.

4 So any sort of little spark can start
5 something off, and once it starts off, if you've got a
6 bunch of railcars, you know, sort of kind of next to
7 each other, then you get one and then -- you can get
8 another, and then you could get a problem, you know,
9 as far as it goes.

10 That -- that's sort of a little bit where I'm
11 going with on this. It's just, for me, I'm a little
12 bit more nervous about, actually, an empty railcar
13 than a full one, because, you know, static electricity
14 and a little sort of sparks could have a faster effect
15 than it could on a -- a big chunk of liquid.

16 MAYOR PATTERSON: But they said -- but I
17 thought that was what the Permex experience was. It
18 was a spark caused it, connected with a vapor, and
19 then -- and then it blew up.

20 COUNCILMEMBER CAMPBELL: Okay. Well, I'm --
21 you know, I'm not actually all that familiar with that
22 particular one there.

23 MAYOR PATTERSON: Oh, okay.

24 And then did you want to ask Chief Lydon if
25 he wanted to weigh in on this discussion?

1 COUNCILMEMBER CAMPBELL: I think I've got
2 enough information, you know, as far as it goes here,
3 but -- but thanks, you know.

4 CHIEF LYDON: Okay.

5 MAYOR PATTERSON: Okay.

6 Anything else?

7 COUNCILMEMBER CAMPBELL: No.

8 MAYOR PATTERSON: Okay.

9 Vice Mayor Hughes?

10 VICE MAYOR HUGHES: Thanks.

11 Just a quick follow-up with Mayor Patterson's
12 question about the offloading delays, because I think
13 I asked a similar question last night.

14 And -- and my concern was -- and the staff
15 report response to one of the questions was that it
16 was going to take 12 hours to unload the 50-car train.

17 And if it's going to take 12 hours and
18 something doesn't go according to plan, you're going
19 to have the other 50-car train showing up and perhaps
20 blocking traffic.

21 Mr. Howe -- and so let me make sure I
22 understood the response.

23 I thought Mr. Howe said that, first of all,
24 it's not likely 12 hours. It's probably closer to 7
25 and the 12 hours is -- it's -- it's gone.

1 But I pressed him and said anything can
2 happen. So things can happen.

3 My recollection is that you said that the
4 rail configuration inside the plant can accommodate
5 two 50-car trains?

6 Can I get clarification on that --

7 MAYOR PATTERSON: Sure.

8 VICE MAYOR HUGHES: -- from the chair?

9 MR. HOWE: Yeah. So the procedure that's
10 being used is -- let's start with the scenario of an
11 empty unloading rack. Two parallel tracks are going
12 to hold 25 cars each.

13 The 50-car train comes in, nonstop from
14 Roseville, through the gate at Park Road, on a track
15 to the loading rack. That 50-car train gets split
16 into two 25-car sections at the rack. It gets
17 offloaded.

18 And as I said last night, call that total
19 time from the time it enters the gate to that complete
20 offloading to be six and a half, seven hours.

21 That train will get moved in the refinery and
22 reconstructed as a 50-car train again on a departure
23 track, a third track in the refinery, that is all
24 switching, doesn't ever impact any operations on
25 U.P.'s current trackage.

1 The rack is available. No -- no trains are
2 there. That's when Valero calls, requests a train to
3 be dispatched from Roseville, and that train comes on
4 down.

5 So the likelihood of it backing up because of
6 a train that's stuck at the rack is pretty low. I
7 mean, that's -- our idea is not to request a dispatch,
8 nor does U.P. want to deliver a car -- a train that
9 they can't bring right into the refinery to that rack.

10 MR. CASTILLO: And just to add,
11 Vice Mayor Hughes, U.P. will not dispatch a train, a
12 50-car tank car train, if there's no place to unload
13 it; for example, the space is full.

14 So we will wait until that's complete before
15 we dispatch a train to be able to go into the
16 refinery.

17 VICE MAYOR HUGHES: Okay.

18 And I think the follow-up question last night
19 was, follow me on this, you're unloading one of the --
20 the trains, and towards the end of the unloading, you
21 run into an issue where now it's going to go beyond
22 12 hours.

23 Wouldn't you have already called U.P. to
24 dispatch that train?

25 MR. HOWE: We probably would have called them

1 and told them not to expect a request to deliver a
2 train.

3 VICE MAYOR HUGHES: So are they not going to
4 deliver a train prior to -- so you're not -- you're
5 not going to request dispatch of a train prior to the
6 complete unloading of the first train?

7 MR. CASTILLO: (Nods head affirmatively.)

8 MR. HOWE: That's -- that's our plan, and
9 that's the operational agreement that Valero and U.P.
10 will have for the operation of this rail delivery
11 system.

12 VICE MAYOR HUGHES: Okay. Got it. Thanks.

13 MAYOR PATTERSON: Follow-up question from --

14 COUNCILMEMBER SCHWARTZMAN: I have a
15 follow-up.

16 MAYOR PATTERSON: -- Councilmember Schwartzman
17 and then Councilmember Strawbridge.

18 COUNCILMEMBER SCHWARTZMAN: Yeah, thank you.

19 So on that note, so what's the -- well, kind
20 of on that note, piggybacking with it, what's the --
21 the travel time from Roseville onto Valero's property,
22 ballpark?

23 MR. HOWE: If you have a -- I want to say
24 it's an hour and a half.

25 COUNCILMEMBER SCHWARTZMAN: Okay. An hour

1 and a half. Okay.

2 And so if I heard you correctly, Mr. Howe,
3 the dispatch only is operational when Valero picks up
4 the phone and says, "I want to" -- I think I heard
5 what you say, that that empty train has been
6 reconnected to 50 on your third track. So not before.

7 So when it's together and it's ready to get
8 out the door is when you call them, and, roughly, an
9 hour and a half, an hour and 45 minutes later, that
10 new train is now upon Valero property, split, and then
11 that other one goes?

12 MR. HOWE: Right. The engineers that
13 actually brought the new train down, put it on the
14 rack, actually get off that train, get on the
15 locomotives that are still on the --

16 COUNCILMEMBER SCHWARTZMAN: Attached to
17 the others?

18 MR. HOWE: -- attached to the cars and drive
19 them back to Roseville.

20 COUNCILMEMBER SCHWARTZMAN: Thank you.

21 MAYOR PATTERSON: Councilmember Strawbridge?

22 COUNCILMEMBER STRAWBRIDGE: Thank you.

23 That was one of my questions, is how it
24 works, the locomotive coming into Valero's property.

25 U.P. engineers stay with the locomotive, they

1 put the cars on the rack, and then they move to where?

2 MR. HOWE: They would get off the train they
3 just delivered and walk over to the train that had
4 been assembled on the departure track, get on that
5 engine and drive that back to Roseville.

6 COUNCILMEMBER STRAWBRIDGE: Okay.

7 So U.P. is on Valero's property, as far as
8 personnel --

9 MR. HOWE: Yes.

10 COUNCILMEMBER STRAWBRIDGE: -- during this
11 process?

12 MR. HOWE: Yeah.

13 COUNCILMEMBER STRAWBRIDGE: Does anybody from
14 Valero ever get involved with the movement of these
15 cars? It's always U.P.?

16 MR. HOWE: Right. Not -- not on our refinery
17 property. There is an agreement between Valero and
18 U.P. to operate on the sidings in the refinery that
19 allow us to actually reassemble that track, or those
20 trains, into a 50-car train that they will then remove
21 from the refinery.

22 So there is a different person -- a different
23 set of personnel that operate when it's on the
24 refinery --

25 COUNCILMEMBER STRAWBRIDGE: And what do --

1 MR. HOWE: -- property.

2 COUNCILMEMBER STRAWBRIDGE: How do you do
3 that? Do you do that manually, or how do you switch
4 cars on the train track switching --

5 MR. HOWE: Engineers in the -- or operators
6 in the locomotives.

7 MR. CASTILLO: (Inaudible) --

8 MR. HOWE: Yeah.

9 MR. CASTILLO: -- back there.

10 MR. HOWE: Yeah.

11 Rebecca Sgambati, our technical director at
12 the refinery, has been engaged in this process from
13 the beginning and actually was familiar with some of
14 the operational agreements.

15 COUNCILMEMBER STRAWBRIDGE: Okay.

16 MS. SGAMBATI: So we have a drawing that I
17 think would be really helpful for you guys, where we
18 can walk you through the procedure of how we receive
19 the trains and then who's involved.

20 Would that be helpful?

21 COUNCILMEMBER STRAWBRIDGE: Yes.

22 MAYOR PATTERSON: You can give it to staff
23 and --

24 MS. SGAMBATI: Do you have copies of that?

25 MR. COSTILLO: Yeah.

1 MAYOR PATTERSON: Has this been entered into
2 the public record prior to tonight?

3 COUNCILMEMBER SCHWARTZMAN: She can just
4 describe it, as far as I'm concerned.

5 MAYOR PATTERSON: So is it in the Draft EIR,
6 the recirculated Draft EIR, or the Final EIR?

7 COUNCILMEMBER SCHWARTZMAN: Or is it
8 brand-new?

9 MR. HOWE: No. The map -- the drawing of the
10 track is in with some additional references, but it's
11 the same drawing, presentation of --

12 UNIDENTIFIED SPEAKER: Will you speak in the
13 microphone, please?

14 MR. HOWE: Sorry.

15 It's -- it's the same base drawing that's
16 shown in the Draft EIR.

17 MAYOR PATTERSON: Right. Yours just has
18 colors on it, and the one that's in the document is
19 hard to read.

20 MR. HOWE: Yeah, this would be a clearer
21 copy, with some of the track references on it.

22 MAYOR PATTERSON: Okay.

23 MS. SGAMBATI: And if it's okay with you
24 guys, I'd like to give you this. We can take them
25 back so that you can just follow along with me.

1 MAYOR PATTERSON: Say that again?

2 MS. SGAMBATI: There's a piece of paper I
3 have here that talks about the movement. So that way
4 you can listen to me and you can read it, because it's
5 a lot of different movements, and I want to make sure
6 that it's clear and that we answer your questions.

7 MAYOR PATTERSON: Okay.

8 MS. SGAMBATI: It's pretty -- it's pretty
9 straightforward. It's just we're talking about
10 something that we don't talk about every day. So I
11 want to make sure we all understand it.

12 MAYOR PATTERSON: And just to be sure that
13 this is part of the record --

14 And it will be put on the City's website;
15 correct?

16 MS. SGAMBATI: Correct.

17 MAYOR PATTERSON: I've got a couple copies
18 here.

19 Okay?

20 MS. SGAMBATI: All right. So everybody
21 should have two copies. One is of the drawing, and
22 then one is of the procedure.

23 And so if you can see on the drawing, there's
24 a line that's green, as you -- well, it's red as it
25 comes in from the left side of the paper, and then it

1 turns green and it's labeled "Track 700." That is the
2 track that U.P. comes into the refinery on.

3 So all -- all trains that come into the
4 refinery come in through that track. It's a single
5 track.

6 So the 50-car train with the locomotives, it
7 will have locomotives on both ends of the train, will
8 come into the refinery on Track 700. Then you'll see,
9 as you proceed down the middle of the page, there's a
10 "Track 732."

11 Does everybody see the Track 732?

12 It will go down to the Track 732, and then it
13 will split into two 25-section trains onto Track B,
14 which is in the middle of the three tracks at the far
15 right side of the page, in the middle, and then
16 Track C.

17 So is there will be 25 cars and a locomotive
18 on Track C and 25 cars and a locomotive on Track B,
19 and those are full cars.

20 So once those full cars are positioned, then
21 we will have a contractor -- and those are some of the
22 jobs that we talked about that would be created with
23 this. There will be a contractor that will hook up
24 the loading and the load -- the offloading hoses to
25 that, and then they'll offload the crude oil.

1 And then once the offloading is complete,
2 that same contractor will then take those two 25-car
3 sections and they will start by, first, moving the
4 cars, 25 track cars, from B, which is the middle
5 track.

6 They'll move those -- they'll move -- push
7 those down, back towards Track 732, and then they will
8 pull them back on Track D, which is the bottom track
9 of the three green tracks in the middle of the page.
10 That's the departure track.

11 So that -- that will be 25 cars on Track D,
12 and then the cars from Track C, the 25, will be pulled
13 out and then pushed back so that you have cars on
14 Track D and then on Track A, which is the departure
15 track. Those two tracks together make up the
16 departure track.

17 Once that's complete, then the -- U.P. will
18 be contacted to dispatch from their Roseville yard.
19 So they will not dispatch from Roseville until we have
20 Tracks B and C empty. So there will always be a place
21 to receive the next 50-car train.

22 So then the next 50 cars come into the
23 refinery. They'll split it into two trains again, the
24 two 25's on Tracks B and C. Those drivers will get
25 out of the full train and get onto the empty train and

1 take that back to Roseville.

2 MAYOR PATTERSON: Okay. And these are yet to
3 be constructed?

4 MS. SGAMBATI: Yes, correct.

5 MAYOR PATTERSON: And this is the issue of
6 clearance from the creek, that -- is that correct,
7 along here?

8 MS. SGAMBATI: What was the issue?

9 MAYOR PATTERSON: There has been an issue
10 raised in the comments about the proximity, both to
11 the tanks and to the easement?

12 MR. HOWE: Yeah.

13 MS. SGAMBATI: Right. So these are adjacent,
14 as you mentioned, to the creek.

15 MR. HOWE: Yeah. The -- the drawings that
16 were -- we're working on a reference that shows that
17 25-foot setback for all the improvements that are made
18 by this project to the stream bank in the area of
19 Sulpher Springs Creek. That's not shown on here.

20 MAYOR PATTERSON: Okay.

21 MS. SGAMBATI: This is meant just to
22 illustrate the track movements.

23 MAYOR PATTERSON: I -- I --

24 MS. SGAMBATI: This is not intended to
25 illustrate --

1 MAYOR PATTERSON: Right. I just wanted to
2 clarify that.

3 And then when you all are through with your
4 follow-up on the questions, I have a follow-up on that
5 question.

6 COUNCILMEMBER STRAWBRIDGE: Okay.

7 So where on this is -- are the road -- the
8 racks, the loading racks?

9 MS. SGAMBATI: So the rack is between Track C
10 and Track B. So it's one rack down the center between
11 Tracks B and C. Where the two 25-car trains are
12 positioned, it's in the middle of those two 25-car
13 sections.

14 COUNCILMEMBER STRAWBRIDGE: Okay.

15 And then the "700" seems to dip down and go
16 to the front of the property or to the back of the
17 property. There seems to be several lines along
18 there.

19 What's that all about?

20 MS. SGAMBATI: So that is not our property.
21 That's U.P.

22 So do you want to speak to that, Francisco?

23 MR. CASTILLO: Sure.

24 That's -- those are tracks that are existing
25 there, and they're existing customers that we deliver

1 commodities to.

2 So the red lines are an existing track that's
3 already there. That will not be used for this
4 particular project, aside from Track 700, which would
5 lead into 732.

6 COUNCILMEMBER STRAWBRIDGE: Okay. And have
7 those -- those -- those are already there?

8 MR. CASTILLO: Yeah.

9 COUNCILMEMBER STRAWBRIDGE: Yeah.
10 But the green has not been built?

11 MR. CASTILLO: Correct.

12 COUNCILMEMBER STRAWBRIDGE: Okay. I think
13 those are my questions on that.

14 So maybe going back to U.P., some questions
15 on as far as the engine -- the locomotives and what
16 U.P. is -- your fleet is made up of.

17 I tried to get some more current information
18 on some of the things that U.P. is doing as far as
19 looking at more effective lower emissions and -- and
20 that.

21 You know, I saw that there was the "Green
22 Goal" (sounds like) it was called that was supposed to
23 be the -- a big change in diesel, electricity.

24 You know, a lot of our concerns are the
25 emissions that the locomotives are going to be

1 emitting, and with the standards of California, which
2 is different from anyplace in the world, and since
3 we're becoming the world's center of all of this, I'd
4 like to see what U.P. is doing, you know, to increase
5 their fleet and to -- in this.

6 MR. CASTILLO: Sure.

7 So in California, and specifically -- well,
8 we're moving towards -- I guess -- to back up a little
9 bit.

10 So we have Tier 1, Tier 2, Tier 3, Tier 4
11 locomotives. Tier 4 are the cleanest locomotives, or
12 the G locomotive, General Electric, and it's
13 90 percent reduction in diesel emissions in those
14 particular locomotives. So those are the cleanest and
15 the newest technology as it relates to locomotives.

16 So in California, we have about -- and --
17 and -- another thing to explain about locomotives is
18 the fact that they don't necessarily stay in one
19 state, because they travel throughout the country as
20 it relates to a particular -- the route of a specific
21 locomotive.

22 But in California, we're starting off last --
23 in December, we brought online 100 GE locomotives,
24 Tier 4 locomotives, that are the cleanest locomotives
25 that we have, and this year, mid this year, we have

1 another 100.

2 So we'll have 200 that are starting in
3 California. They're the cleanest locomotives out
4 there as it relates to the issue and concern that you
5 addressed -- you mentioned.

6 So they'll start off in California. They'll
7 be back and forth, you know, throughout the state, but
8 we'll eventually transition to Tier 4 locomotives.

9 COUNCILMEMBER STRAWBRIDGE: Okay.

10 In -- in doing some more sort of discovery,
11 looking at the Federal Railroad Administration, there
12 seems to be a lot of money out there, especially
13 directed to transporting hazardous materials.

14 And there's one that's called the "Positive
15 Train Control Implementation" of 25 million, and it's
16 not just for railroads themselves, but it's for state
17 and municipalities.

18 So I'm wondering what -- what's -- what's
19 U.P. looking at as far as all of this grant money
20 that's out there?

21 There's also one that was just awarded
22 \$10 million to a Willmar rail connector in Willmar,
23 Minnesota, and similar concerns as far as rail
24 network, eliminating the need for seven to ten trains
25 daily to pull into a rail yard in downtown Willmar.

1 So, obviously, there's lobbying going on in
2 order to get this kind of attention, this kind of
3 money.

4 But is U.P. being very aggressive in looking
5 at what the Federal Railroad Administration is doing?
6 Because this is, you know -- it's a big topic out
7 there. It's a big concern.

8 MR. CASTILLO: Are you referring to positive
9 train control?

10 COUNCILMEMBER STRAWBRIDGE: Yes.

11 MR. CASTILLO: So positive train control,
12 U.P. doesn't get grants from the Federal Government.
13 We pay --

14 COUNCILMEMBER STRAWBRIDGE: I didn't hear
15 what you said.

16 MR. CASTILLO: U.P. does not get any federal
17 funding as it relates to positive train control.

18 The railroad itself pays for that
19 particular -- the development of that technology and
20 the installation of the technology and the
21 implementation of that technology for positive train
22 control.

23 So just to give you an idea of what that
24 means is, we've invested, so far, \$2 billion in
25 positive train control, \$2 billion in positive train

1 control, and that's a current estimate of a total of
2 2.9 billion that we're going to invest across our
3 system.

4 And we've already started to implement
5 revenue demonstration service with positive train
6 control technology in locomotives in southern
7 California. That was a priority for Union Pacific as
8 it relates to where this technology would begin.

9 And in 2016, it's going to move them up north
10 to the Pacific Northwest as well, and by the end of
11 2018, we expect to have positive train control
12 implemented on our lines throughout our system.

13 And that's -- and that's -- the 2018 deadline
14 is a deadline that's set by the Federal Government.

15 As you know -- as you recall, there was an
16 extension of railroads, requested by the
17 Federal Government. It was supposed to be implemented
18 this past year, but it's a new technology, and it's
19 more complicated than -- than people thought it was
20 going to be.

21 But we've come a long way as it relates to --
22 to implementing that technology, and -- and as a
23 result, the Federal Government extended the extension
24 for railroads to implement positive train control
25 throughout their systems, and by the year 2018 -- the

1 end of 2018, we expect to have that system up and
2 running.

3 COUNCILMEMBER STRAWBRIDGE: In 2018?

4 MR. CASTILLO: 2018.

5 COUNCILMEMBER STRAWBRIDGE: Okay.

6 I think that's all the questions I have right
7 now.

8 COUNCILMEMBER SCHWARTZMAN: Can I just follow
9 up, just on that one, just to clarify something?

10 MAYOR PATTERSON: Sure.

11 COUNCILMEMBER SCHWARTZMAN: So I just wanted
12 to make sure I understood.

13 Positive train control is being rolled out in
14 southern California on U.P. tracks --

15 MR. CASTILLO: Right.

16 COUNCILMEMBER SCHWARTZMAN: -- but by the end
17 of this year, will be through northern California?

18 MR. CASTILLO: The -- the idea is to -- by
19 the end of 2016, we'll have revenue demonstration
20 service and move it up north to northern California
21 and the PNW. So that includes Oregon and Washington.

22 COUNCILMEMBER SCHWARTZMAN: Okay.

23 So help me. What does "demonstration
24 service" mean?

25 MR. CASTILLO: It's pretty much the

1 inoperability, to make sure that the technology works
2 between the railroads.

3 Because as you know, positive train control
4 is a technology that not -- it's not just going to be
5 used by the railroads as it relates to freight, but,
6 also, we have to develop technology that's inoperable
7 and be able to communicate with passenger trains.

8 So it's pretty much the system and having the
9 system in place to test that technology with the
10 passenger trains and its inoperability.

11 COUNCILMEMBER SCHWARTZMAN: Okay.

12 So following up on that, though, so when
13 would -- because positive train control, is that on
14 the tracks or is that on the trains?

15 MR. CASTILLO: That's on the tracks and
16 trains.

17 So there's ways -- there's equipment that's
18 installed along the tracks throughout the state --
19 throughout the state of California, actually,
20 throughout our network, our 23-state network. There
21 are certain locations that require -- we committed to
22 installing positive train control.

23 And then there's technology that also needs
24 to be installed on the locomotive itself, because the
25 locomotive itself is what's going to be able to

1 communicate with another, you know, locomotive, from a
2 passenger train, for example, that's, you know, along
3 that same line, if there was to be an incident.

4 COUNCILMEMBER SCHWARTZMAN: So when do you
5 expect positive train control to be on the routes that
6 any of these trains might be on?

7 MR. CASTILLO: Well, in California, we're
8 expected to have positive train control revenue
9 demonstration service implemented by 2016, the end --
10 by the end of 2016.

11 COUNCILMEMBER SCHWARTZMAN: Okay. But when I
12 hear "demonstration," I just think, hey, you --

13 MR. CASTILLO: We need -- we need to certify
14 the technology by the Federal Government, and there's
15 a process in place.

16 But in the meantime, the Federal Government
17 allows us to be able to operate and implement the
18 technology on a revenue demonstration service, and
19 once it gets fully certified by the Federal
20 Government, then that's when it becomes final.

21 COUNCILMEMBER SCHWARTZMAN: And any idea how
22 long the certification process takes?

23 MR. CASTILLO: It's a -- I -- I don't know
24 the answer to that question, but I can certainly find
25 out.

1 COUNCILMEMBER SCHWARTZMAN: Thank you.

2 MAYOR PATTERSON: So one of the things, I
3 want to follow up on that, is that the reason that
4 southern California is in place is because of the
5 accident that occurred?

6 MR. CASTILLO: Correct.

7 MAYOR PATTERSON: And it was local funding
8 that actually got that put together, because -- not to
9 sound like a critic, but I am being critical, was
10 because of the slowness of the industry in responding
11 to the federal legislation for doing positive train
12 control.

13 And it was supposed to be in place and active
14 this year, 2016?

15 MR. CASTILLO: Correct.

16 MAYOR PATTERSON: And it was through the
17 budget negotiations to finally get a long-term highway
18 bill passed that this was negotiated to give two more
19 years to the industry.

20 And then in addition to that, the Capitol
21 Corridor is dependent on federal funding in order to
22 take advantage of positive train control, and they
23 don't have the funding to do that.

24 So it's a bit of a mess, and it's something
25 to look forward to --

1 MR. CASTILLO: Sure.

2 MAYOR PATTERSON: -- because it's -- it's
3 really overdue --

4 MR. CASTILLO: Yeah.

5 MAYOR PATTERSON: -- and this gives us some
6 level of confidence with the freight trains.

7 MR. CASTILLO: Yeah.

8 MAYOR PATTERSON: So that -- that's a more
9 positive end note on that discussion and I --

10 MR. CASTILLO: And with all due --

11 MAYOR PATTERSON: Go ahead.

12 MR. CASTILLO: I'm sorry, Mayor.

13 With all due respect, I don't agree with the
14 statement that we use public funds to be able to
15 implement the line in southern California.

16 I think Metro Link, as a -- as a public
17 agency, is able to use public funds, but Union Pacific,
18 we own -- we own a lot of the tracks, obviously, in
19 California, and we're required to pay that ourselves
20 as it relates to the industry.

21 And the -- and the delay was not necessarily
22 because we're acting slow, but more because it's a new
23 technology that needs to be developed. And I think --
24 I don't think when they set that -- when they set that
25 deadline that they realized how difficult it was to

1 come up with this technology.

2 And by the year -- by the end of 2015, we had
3 already invested over -- almost \$2 billion on the
4 technology.

5 And so it's not like we're acting slow. It
6 takes time to convert the locomotives to that
7 particular technology, and we don't just have 100; we
8 have over 4,000 locomotives, and not just install it,
9 but actually come up with the technology and develop
10 and create the technology to make that work.

11 MAYOR PATTERSON: I appreciate that
12 explanation. I also read a lot.

13 Councilmember Campbell?

14 COUNCILMEMBER CAMPBELL: Well, just -- just a
15 quick -- this is almost like a comment.

16 So these tracks that are supposedly going in
17 either got an easement on them or -- but you're going
18 to use them at your -- your trains; right?

19 MR. CASTILLO: The tracks that are going --
20 yeah, we have an easement.

21 COUNCILMEMBER CAMPBELL: Okay. Okay.

22 Well, you may want to sit down for a minute
23 because the next question is for Mr. Hogin here. I'll
24 give you a break on -- on that.

25 And, Mr. Hogin, you know, we actually sort of

1 talked about that for a second yesterday.

2 Since this is U.P.'s running into Valero, the
3 crossing, I assume you're going to tell me, is
4 preempted, and then the whole traffic issue, then,
5 that's preempted, too?

6 MR. HOGIN: Yes, that's right.

7 There have been many cases where states and
8 local jurisdictions have tried to impose restrictions
9 on grade crossings in terms of the length of the -- of
10 a train crossing and -- and the time of day, and so
11 on. In every case, it has been determined that that
12 was preempted.

13 COUNCILMEMBER CAMPBELL: Okay. Well, I --
14 I've got another question for you that I thought
15 about.

16 You know how they always say it's seven degrees
17 of separation between someone knows [sic] -- oh, what
18 is his name? -- Kevin Bacon and you?

19 (Laughter)

20 COUNCILMEMBER CAMPBELL: So the point is --

21 MR. HOGIN: It's six degrees of separation --

22 COUNCILMEMBER CAMPBELL: Six, seven, yeah.

23 MR. HOGIN: -- Councilmember Campbell.

24 COUNCILMEMBER CAMPBELL: Maybe he'll come in
25 and say something.

1 But what I want to know is -- okay. Let's
2 move one degree of separation from that and just say
3 that, you know, you're going to have a traffic
4 problem, maybe, on this, and it's going to maybe
5 affect the marketability of the industrial park.

6 Now, that's just traffic, in general. You
7 know, it's not saying specific for the Park Road
8 intersection. But maybe this gums up the, you know,
9 the marketing of the industrial park because of
10 traffic issues.

11 Now, is that preempted, too? Because you're
12 moving away from that particular intersection and
13 moving away from -- you know, the actual movement of
14 the trains through there. It's the marketing of an
15 entire industrial park.

16 MR. HOGIN: Any -- any type of regulation
17 that you're trying to impose on Union Pacific is going
18 to be preempted.

19 It would -- it would be up to the City,
20 working with the property owners in the industrial
21 park area, to come up with some solution, like --

22 COUNCILMEMBER CAMPBELL: Well, in that
23 case --

24 MR. HOGIN: -- more paths or what have you.

25 COUNCILMEMBER CAMPBELL: Okay. Because the

1 question that I'm not asking is to, you know, affect
2 U.P. in any way, shape, or form.

3 The question I'm sort of asking is, the
4 marketability of an industrial park, you know,
5 regardless -- you know, without having any effect on
6 U.P.'s ability to move in and out of Valero is
7 somewhat of an issue, but it's completely separate
8 from governing -- or trying to do a regulation to say
9 U.P. cannot come in or out.

10 What you're basically doing is you're
11 acknowledging U.P. can come in and out, you know,
12 however they want to do it, and you're actually -- and
13 you're totally ignoring that.

14 You're just saying that the traffic patterns
15 of an entire industrial park --

16 MAYOR PATTERSON: Can --

17 COUNCILMEMBER CAMPBELL: -- may be muddled a
18 little bit. So --

19 MAYOR PATTERSON: Let me take a crack at that
20 because I kind of share your thinking and where you're
21 going with that.

22 So I think what you can do is you link that
23 to the land use. If you say this land use is going to
24 create these problems, you can't regulate the rail.
25 You can't affect that. But you can make a decision

1 about the land use and its potential impact of the
2 economic activity in the remainder of the park.

3 So you -- you sort of need to derail the
4 connection of the rail operations and look at the land
5 use.

6 COUNCILMEMBER CAMPBELL: Thank you.

7 MR. HOGIN: That sounded really good. I'm
8 not sure if it's right, but --

9 COUNCILMEMBER CAMPBELL: You know --

10 MR. HOGIN: -- you know, I'm just -- I'm just
11 kidding.

12 COUNCILMEMBER CAMPBELL: -- it does have a
13 ring to it, doesn't it?

14 But -- you know, but that's -- you know,
15 that's what I was wondering about, you know.
16 You know, the rail itself, I -- I go along with it,
17 you know, on preemption there, you know.

18 But, you know, there is -- there's another
19 degree that you're moving away from, as far as it
20 goes, "a degree of separation" I like to describe it.

21 And that's dealing with, you know, things of
22 involving marketability of an industrial park, the
23 retention of businesses, which is a little separate
24 and doesn't really -- you aren't really, you know,
25 trying to affect the way U.P. runs its --

1 MR. HOGIN: Right.

2 Well, I mean to -- I mean, Mayor Patterson is
3 correct, that if you have a -- let's say you have a
4 new use coming into the industrial park and they're
5 going to add traffic to the area, then you can take
6 that into account and issue a use permit to that new
7 facility.

8 And if, let's say, that new facility's
9 traffic is going to cause an increase in the level of
10 service, or now we have a new standard, vehicle miles
11 traveled, above the significance threshold, then you
12 can require mitigation.

13 MAYOR PATTERSON: Well, it also goes to the
14 question -- I think it goes to the question that of
15 Bakersfield, as the example, with the Walmart.

16 And the issue was that as CEQA doesn't
17 provide that we look at economic impacts or social
18 impacts, although, I always thought -- well, I won't
19 go there. So the economic impacts were not
20 considered.

21 But it was the effect of the Walmart taking
22 the jobs away and the businesses away from the two
23 sections in town, and, therefore, they wouldn't be in
24 business, and the place would fall apart because there
25 wouldn't be the maintenance of the buildings, they

1 would be empty, they would be attractive nuisances,
2 and the whole bit.

3 And so that nexus has to be created.

4 I think what is being suggested here in this
5 questioning is that if the traffic -- train traffic is
6 so bad, that the -- the small margin that businesses,
7 the independent businesses, have in the industrial
8 park aren't enough to absorb the impact because of
9 that adverse activity of that land use.

10 And it's that adverse activity of that land
11 use that causes the blight for the industrial park.

12 I think that -- that's the framing of the
13 question that many have asked.

14 MR. HOGIN: Okay. Now I -- I understand
15 exactly what you're asking.

16 The -- I think it's -- it's highly
17 speculative on the facts that we have here to suggest
18 that any train traffic is going to put businesses --
19 put existing companies out of business in the
20 industrial park.

21 Although, Mayor Patterson is -- is absolutely
22 correct, that CEQA is not concerned with economic
23 impacts, except to the extent that you can trace a
24 chain of cause-and-effect from an economic impact to a
25 physical impact on the environment.

1 Like if you're going to change traffic
2 patterns and traffics or -- and -- and traffic is no
3 longer going to go to a mall, and because traffic is
4 not there, the tenants are going to move out, and then
5 the area is going to become dilapidated.

6 So, theoretically, you can follow that chain.

7 I have not seen very many analyses, if any,
8 that successfully, during a -- a connection, it's a
9 difficult thing to draw a connection between an
10 economic impact and a resulting physical impact on the
11 environment. That doesn't happen very often.

12 MAYOR PATTERSON: It doesn't happen very
13 often.

14 I was a consultant my early days with doing a
15 local landfill, and I wanted it to be a first-rate
16 environmental assessment, and one of the things we
17 were concerned about was a locally undesirable land
18 use, known as a "LULU."

19 And landfills tend to be regarded as "LULUs,"
20 and so there is a cost to the community for being
21 identified with a LULU, a "locally undesirable land
22 use."

23 And we were able to put in to -- and it
24 was -- it was a mitigation measure -- it was not a
25 mitigation measurement. It was a -- a -- you could go

1 do a good business measure, if you will, of a host
2 community fee that was paid for.

3 In fact, there's the Crockett Cogin
4 (phonetic) is a really good example of that, too.

5 The Crockett Cogin was considered a locally
6 undesirable land use for Crockett, and there were a
7 couple of factors there that made it easier to get the
8 host community fees paid to the town of Crockett.

9 And one was because part of the -- of the --
10 the -- the facility was built -- was proposed to be
11 built on State lands property.

12 So it's not a regulatory agreement. It's
13 simply a use of land agreement. But that was, I
14 think -- I think that was around \$350,000 a year
15 because it was a -- they were hosting a locally
16 undesirable land use.

17 So some people have testified and commented
18 and have written that they consider this a locally
19 undesirable land use, one which has been beneficial to
20 the community and one which many people admire because
21 they're a really top rate -- first-rate refinery.

22 But nonetheless, it does have that imprimatur
23 on the City, and -- and so that's kind of that
24 connection. It's the other side of that light
25 discussion.

1 And there is woefully no discussion. It --
2 it's just very thin. The fact is I don't even
3 remember coming across a thorough discussion of that
4 in the EIR.

5 I read a lot of comments, but I didn't see --
6 I think maybe it was dismissed or it just said that it
7 didn't apply for CEQA, but it does merit some
8 discussion.

9 So would there -- would that be considered a
10 deficiency in the Final EIR?

11 MR. HOGIN: No. I -- I don't see, remotely,
12 any evidence on the facts here of a physical -- of
13 a -- of an economic impact at all, let alone one
14 that's going to ultimately culminate in a physical
15 impact in the form of -- of blight or some sort of an
16 urban blight.

17 I don't see that at all.

18 MAYOR PATTERSON: Okay. Thanks.

19 Councilmember Schwartzman?

20 COUNCILMEMBER SCHWARTZMAN: Yeah, one last
21 question.

22 I -- Mr. Howe, you might be the best one to
23 answer this.

24 When we were talking about engineers and
25 who's driving the trains down and who's driving trains

1 back, I think I heard you refer to inside -- so let
2 me -- so let me rephrase the question.

3 So U.P. engineers are going to bring your
4 trains down onto Track 700 onto 732. They're
5 splitting the train, and they're the ones that are
6 taking it to the -- to the racks?

7 MR. HOWE: Correct.

8 COUNCILMEMBER SCHWARTZMAN: Okay.

9 They're leaving; okay? Actually, they're
10 going to go across, and they're going to take back
11 the -- the reassembled train.

12 But I thought I heard you say that when the
13 empty trains are reassembled, it's not U.P. engineers
14 doing it; it's somebody else?

15 MR. HOWE: Correct. They --

16 COUNCILMEMBER SCHWARTZMAN: And who is that?

17 MR. HOWE: It's my understanding the folks
18 who we will contract with for that service actually
19 are certified to do that work by U.P., but they're
20 under --

21 COUNCILMEMBER SCHWARTZMAN: They're your
22 contractors, certified by U.P.?

23 MR. HOWE: Yes.

24 COUNCILMEMBER SCHWARTZMAN: Thank you.

25 MAYOR PATTERSON: Okay. Back to Sulpher Creek.

1 So we had comments -- Mr. Hogin, the
2 consultants, you guys, we had comments, and it was
3 responded to in the memo to the city council regarding
4 the potential impacts of -- to Sulpher Creek and
5 the -- and the habitat.

6 And the issue was the proximity of the
7 track -- of the proposed tracks to Sulpher Creek and a
8 potential spill and the inadequacy of the space to
9 provide an adequate berm for a containment.

10 The response was that there was no problem,
11 and then there was another response which, "You
12 haven't looked at the calculations correctly, and
13 here's why it doesn't work," and there were some
14 additional calculations done, in terms of capacity, to
15 contain a spill as -- a spill.

16 So it would be like a full car. I think that
17 was 30,000 gallons, is that correct, for a train car?

18 VICE MAYOR HUGHES: Point of order.

19 MAYOR PATTERSON: Yes?

20 VICE MAYOR HUGHES: Yeah. Point of order.

21 I thought we were -- we agreed we were going
22 to -- going to focus just on the traffic issues.

23 MAYOR PATTERSON: No, we didn't agree to that
24 at all. We agreed that last night we had the traffic
25 people --

1 VICE MAYOR HUGHES: Right.

2 MAYOR PATTERSON: -- that we would talk to
3 them, and today we knew that we had the Union Pacific,
4 but we had additional discussion on the memos that
5 have been written and response to the questions that
6 have been raised by the city council.

7 So I'm pursuing a line of questioning that
8 I'm not particularly satisfied with the responses that
9 we've received.

10 VICE MAYOR HUGHES: Okay. That was not my
11 understanding, but if it's the understanding of the
12 rest of the council, then that's fine.

13 COUNCILMEMBER SCHWARTZMAN: I -- I -- I'm not
14 opposed to the questions, personally.

15 MAYOR PATTERSON: So the question is the
16 proximity of the tracks to the Sulpher Springs Creek,
17 which goes into Suisun Marsh, which is a protected
18 marsh under the Suisun Marsh Protection Act, which is
19 part of the jurisdiction of the Bay Conservation
20 Development Commission, which reports to the coastal
21 zone management act -- or, actually, to the Coastal
22 Commission that reports for them, on the basis of
23 fulfilling the -- those requirements.

24 So that's federal requirements and state
25 requirements and regional requirements.

1 And I did read the document for that
2 discussion, and I did not find it satisfactory. I did
3 read the comments that came in later, and I believe
4 they were submitted yesterday, and they're -- they're
5 dealing with the issue of noise and light, as well as
6 the spill.

7 And the original document is -- does not
8 treat that subject adequately, and the -- so the
9 comments were it didn't treat it adequately.

10 And then the -- and then the response to the
11 latest comment was -- actually, there was no response.
12 It -- it was the first letter that came to us for the
13 meeting on the 18th. Then there was a response from
14 SAFER, and so that's what I'm addressing is that
15 response from SAFER.

16 Do you have any response to that response?

17 MR. RADIS: Mayor Patterson, I think there's
18 a lot of confusion on kind of how we arrived at the
19 risk of the railroad loading facility. So I'll go
20 through a few points.

21 The first is we did not rely on the PIMSA
22 database to calculate probabilities of accidents. We
23 actually rely on --

24 MAYOR PATTERSON: I'm not talk- -- I'm sorry.
25 I'm just talking about probability of accident. I --

1 the first -- I'm -- let's segregate the questions.

2 MR. RADIS: Okay. Because there's a bunch of
3 comments in that.

4 MAYOR PATTERSON: So there's a issue of
5 potential spill and the effect that it would have on
6 the Sulpher Springs. So I'm -- I'm not looking at
7 the -- if you want to look at that --

8 MR. RADIS: Okay.

9 MAYOR PATTERSON: -- probability -- I'm just
10 looking at the potential spill into Sulpher Springs
11 and --

12 MR. RADIS: So --

13 MAYOR PATTERSON: -- how it could be
14 contained.

15 MR. RADIS: I think there's also confusion
16 over how the spill containment works.

17 The unloading facility is designed to draw
18 crude oil away from the railcars, and that particular
19 sump is about 30,000 gallons, so about one railcar.

20 Then there's the issue of if there's a
21 pipeline failure between the unloading facility and
22 the storage tanks, how that would be contained, and
23 there's a couple things that happen.

24 One is that there would be the ability, with
25 the wall on the -- between Sulpher Springs and the

1 unloading facility, to contain more oil than
2 30,000 gallons.

3 And the pipeline also processes several
4 containment areas on the way up to the tank farm.

5 So a spill that would occur, say, you know,
6 halfway between the unloading facility and the tank
7 farm would actually be contained in a different berm
8 and would actually not flow back down to
9 Sulphur Springs.

10 So it's hard to see it, and the way it's
11 described is that it kind of goes up towards the road
12 and -- and up to the tank farm. Well, it's crossing
13 bermed areas that will contain spills at various
14 locations.

15 MAYOR PATTERSON: So the containment has the
16 capacity for what?

17 MR. RADIS: It's more than we expect would
18 ever spill.

19 MAYOR PATTERSON: More than what?

20 MR. RADIS: More than we would expect would
21 ever spill from the pipeline.

22 MAYOR PATTERSON: So --

23 MR. RADIS: So if you had a spill from a
24 railcar and you had a failure from the pipeline, that
25 would be contained within each of the containment

1 structures, and it exceeds the capacity of what we
2 looked at as a worst-case spill.

3 MAYOR PATTERSON: Okay. Well, I need to be a
4 little bit more comfortable with specifics.

5 So are we talking about it has the capacity
6 to handle, let's say, a one tank car that has spilled
7 and then it's captured and it's in this pipeline, and
8 that -- but that doesn't work. So we have that spill.

9 Is that a one tank car worth of spill
10 capacity?

11 MR. RADIS: That would be contained within
12 the sump area --

13 MAYOR PATTERSON: Okay.

14 MR. RADIS: -- which is lower than the
15 containment wall around the entire unloading facility.

16 MAYOR PATTERSON: So can you help me
17 understand, then, how often is -- if it's just one
18 tank car that spills, for whatever reason, will --
19 you know, never mind the cause, it just happens.

20 Is it more often one tank car, or can it be
21 like in Martinez recently, where it's three or four
22 tank cars that spilled?

23 MR. RADIS: Are you talking about the
24 Martinez --

25 MAYOR PATTERSON: Yeah, it wasn't --

1 MR. RADIS: -- gas (inaudible)?

2 MAYOR PATTERSON: -- an oil spill. It was
3 different.

4 MR. RADIS: The tanks just fell over?

5 MAYOR PATTERSON: Right, right.

6 MR. RADIS: And there wasn't a spill, but...

7 We actually went through the -- the National
8 Response Center database from 1990 to the present, in
9 addition to the PIMSA database, and the National
10 Response Center database collects everything that
11 would be reported to EPA.

12 And there are no spills of single tank cars
13 on record in -- well, since 1990. So it's something
14 that hasn't been happening within unloading terminals.

15 I'm not saying it couldn't happen, but it
16 would take a very unusual event for that to occur, and
17 it has yet to occur, especially during the heavy
18 traffic period of the last five years.

19 MAYOR PATTERSON: So we had a similar
20 understanding with Kinder Morgan when they realigned
21 the pipe to get it out of the Suisun Marsh because of
22 the problems with corrosion and other issues.

23 Besides, the pipe didn't belong in the Suisun Marsh.

24 And -- but nonetheless, there was a spill,
25 and it was a lucky incident that somebody actually was

1 able to be on site and be there and to deal with it,
2 but it took a very long time to get the right
3 materials and to help clean up that spill.

4 In this case, because it's so close to
5 Sulpher Springs, which also goes into Suisun Marsh,
6 does it make sense that there would be a requirement
7 to make -- and I don't think it's related to rail.

8 So I think I can ask this to be a mitigation
9 measure or a Condition of Approval, if one were to go
10 forward, is that there would be material on site to --
11 like, waddles, and that sort of thing, to capture any
12 of the spill that might farfetchedly wind up in the
13 creek.

14 MR. RADIS: That -- that would be reasonable.

15 MAYOR PATTERSON: That would be reasonable?
16 Is that in the EIR?

17 MR. RADIS: I don't know if it's in the EIR
18 or if we just relied on --

19 MAYOR PATTERSON: Yeah --

20 MR. RADIS: -- the existing --

21 MAYOR PATTERSON: -- I didn't see it, either,
22 but you're probably more familiar with it than I am.

23 The second thing -- so then that's that one
24 issue, and then the other issue that I had was the
25 issue of light and noise.

1 Now, we're told that we cannot deal with
2 noise that's related to the rail operation, but -- is
3 that your understanding, that -- because that's a rail
4 operation?

5 MR. RADIS: Well, you know, I -- I worked on
6 the San Luis Obispo EIR as well, and we took a
7 different approach, that to a certain extent, we do
8 require certain measures to be taken, for example,
9 light. There are lighting requirements.

10 Noise, as it relates to rail movements,
11 there's a couple ways you could look at it. One is
12 you really can't do anything about what U.P. does in
13 terms of when they deliver their railcars.

14 But I think you heard tonight that you have
15 onsite contractors moving rail around within a private
16 terminal.

17 We probably would take an opportunity to add
18 mitigation of appropriate -- we work with Phillips 66
19 on additional noise mitigation, which was mainly
20 putting a higher berm around the facility to try and
21 reduce noise attenuation.

22 So it's a little bit different in how
23 San Luis Obispo dealt with Phillips 66 in terms of
24 trying to get concessions from them and not
25 necessarily mitigation.

1 So we consider it applicant-proposed
2 mitigation that they're committed to.

3 MAYOR PATTERSON: So is that a function of
4 both staff and the company as well as the consultants
5 all kind of figuring that out?

6 MR. RADIS: Yeah. We've had many discussions
7 with the County, Phillips 66, and EIR.

8 Consultants and, you know, Phillips has seen
9 the writing on the wall on a certain -- on a few
10 issues, and they came in last week and are now
11 proposing DOT-117 cars. It's a commitment they've
12 made.

13 And so, you know, applicants are more than
14 welcome to commit to things above and beyond what
15 could be required.

16 MAYOR PATTERSON: Okay. Thanks. That's very
17 informative.

18 And then I -- the last area that I have
19 concerns about is air quality, and this relates to the
20 document -- this is your -- someone's response to
21 the -- the comments, and I'm starting on page 9 of
22 the --

23 MR. RADIS: Yeah, I think we have an air
24 quality person who actually did that work.

25 MAYOR PATTERSON: Okay.

1 MR. RADIS: Probably better than me trying to
2 explain it.

3 MAYOR PATTERSON: So this is not going to be
4 hard, because I am -- I'm not a technical person when
5 it comes to air quality, except that I understand a
6 few aspects about it.

7 But I did want to get clarification on a
8 number of comments about the difference -- and I'll
9 just read this.

10 So the question was, "Why is there a
11 difference between San Luis Obispo and the City of
12 Benicia in regard to the Environmental Impact Report
13 evaluation of toxic air contaminants, in addition to
14 oxides of nitrogens, that cause smog or contribute to
15 smog?"

16 That's my question at the -- whenever that --
17 March 15th meeting, I think it was, and the response
18 goes in to explaining the different jurisdictions and
19 all of that thing.

20 However, the response, also, is relying on a
21 standard, which is not, as I understand it under CEQA,
22 what is considered the appropriate baseline.

23 And so let me tell you what I understand
24 about how you -- how you use baseline for determining
25 air quality, and then you -- you can correct me.

1 That -- baseline is -- it's a -- first of
2 all, the impact is a physical impact to the
3 environment. So in order to assess that physical
4 impact, you need to have current conditions. That's
5 the only way you can assess that physical impact.

6 You may have a standard in place, that after
7 you assess that physical impact of today, that that
8 standard can mitigate that to a level that is livable.

9 In this particular case, in several places
10 the constant baseline is used on a permit that was
11 granted years ago and then some additional
12 regulations, but that is not baseline since the impact
13 is the physical impact to the environment.

14 So can you help sort that out?

15 Why did we make the baseline a permit
16 standard when, in fact, CEQA says the baseline are
17 existing conditions?

18 MR. FLYNN: Well, I can explain how -- you're
19 talking specifically about NOx emissions, then? Is
20 that kind of --

21 MAYOR PATTERSON: Any --

22 MR. FLYNN: -- what you're getting at?

23 MAYOR PATTERSON: -- of the air quality
24 assessments.

25 MR. FLYNN: Because for -- for NOx and ROG,

1 which are precursors to ozone, the EIR looks at the
2 net change in emissions from baseline.

3 And that's the decrease in emissions within
4 the Bay Area associated with reduced marine vessel
5 activity and the increase in train traffic and the
6 emissions from locomotives within the Bay Area. So we
7 did that analysis for the Bay Area itself.

8 The assumption is there's no changes at the
9 refinery itself, in terms of the processing emissions,
10 because there's no proposed changes to permits, except
11 for the rack unloading permit. That's the only new
12 permit that's going to be issued.

13 So that's -- that's how we did it in the Bay
14 Area.

15 For up-rail emissions, we just looked at the
16 train, because there was no marine emissions to
17 subtract out, and for each of those calculations, we
18 compared it to the relevant thresholds established by
19 each of the air districts.

20 MAYOR PATTERSON: So the onsite air quality,
21 was that measured?

22 I -- I understand the premise is that there
23 are no change in operations, and there is a fair
24 dispute, a difference of opinion between parties, but
25 let me just see if I can understand that.

1 Was there any air monitoring data that was
2 utilized to establish what the existing conditions
3 are, regardless of what the permits are or what the
4 standards, or what have you?

5 MR. FLYNN: Yeah. What we did was -- in the
6 EIR, it looks at the health risks, the localized
7 emissions of air toxic -- or toxic air contaminants
8 from both the locomotives at the refinery and from
9 fugitive emissions from the rack unloading.

10 So those emissions were calculated and the
11 health risks associated with those, but the acute,
12 chronic, and carcinogenic health risks were calculated
13 and compared to the thresholds established by the
14 Bay Area air district.

15 MAYOR PATTERSON: But you didn't look at the
16 existing air quality of the current operation and then
17 add -- and then add the train activity, the land --
18 which is associated with the land use?

19 MS. SCOTT: If I may?

20 MAYOR PATTERSON: Yeah.

21 MS. SCOTT: I'd like to point the mayor to
22 the Draft EIR section of 4126, which describes the
23 project baseline used in the air quality analysis, and
24 as you aptly note, relies on actual physical
25 conditions on or about the time of the NOP. The

1 actual conditions looked at an average over a
2 three-year period from the facility emissions.

3 So we did look at actual emissions averaged
4 over a three-year period.

5 MAYOR PATTERSON: And I -- I missed the last
6 part.

7 And the -- and the data came from where?

8 MS. SCOTT: It's in the EIR.

9 MAYOR PATTERSON: The Draft EIR?

10 MS. SCOTT: Yes.

11 MAYOR PATTERSON: Okay.

12 MR. FLYNN: And I think your additional
13 question about the health risks, we looked at just the
14 health risks from the project toxic air contaminant
15 emissions.

16 We also looked at cumulative emissions. That
17 included the project, plus other sources of toxic air
18 contaminants in the area.

19 MAYOR PATTERSON: Okay. So that probably
20 will do it.

21 There -- there are a series of -- of -- there
22 are a series of -- just a second -- a series of
23 references to air quality, and I found it -- I found
24 it fairly consistent that the response was always the
25 existing permit was the baseline.

1 So I just -- I guess for the record, I just
2 want to make it clear that -- that that is not an
3 appropriate, to my experience and practice, not an
4 appropriate baseline to use.

5 And we can address that when -- when we make
6 findings.

7 MS. SCOTT: We agree with you. The "CDE vs.
8 South Coast Air Quality Management District" expressly
9 disagrees with any suggestion that it would be
10 appropriate to use a maximum permitted limit, and we
11 did not do that in this document.

12 MAYOR PATTERSON: Okay.

13 Councilmember Strawbridge?

14 COUNCILMEMBER STRAWBRIDGE: Thanks.

15 Just a point of order on this.

16 You were comparing this to Phillips 66 in
17 San Luis. There -- there is a different -- either a
18 threshold difference in their air quality standards
19 there and is the project itself adding more refinery,
20 more refinery of the crude.

21 There seems to be a difference in actually
22 what they're doing in San Luis, from the standpoint
23 they're getting right now their crude, not by,
24 obviously, by marine vessel, but by pipeline.

25 So is -- is -- by the fact that they're

1 trying to bring this in by rail going to increase
2 their refinery?

3 MR. FLYNN: Uh --

4 COUNCILMEMBER STRAWBRIDGE: And maybe the
5 other gentleman can...

6 MR. RADIS: That -- that's kind of a loaded
7 question. The intent of their rail project, when they
8 applied, was to not increase their refining capacity
9 or the amount of actual refining.

10 However, since that point, the Plains All
11 American Pipeline ruptured near Refugio in
12 Santa Barbara County and is not going to be in service
13 for quite a -- quite some time.

14 So now Phillips 66 is basically getting some
15 crude oil via pipeline from local suppliers, mainly
16 the Point Pedernales project, or Platform Irene, and a
17 majority of the oil that they've getting is delivered
18 to the Santa Maria pump station via truck, and they
19 will probably increase those deliveries.

20 So right now, their throughput is diminished
21 because they've been cut off from the main supply of
22 the Santa Barbara Channel oil projects.

23 COUNCILMEMBER STRAWBRIDGE: And -- and the --
24 the first question, are the air standards different in
25 San Luis from the Bay Area?

1 MR. RADIS: So they -- they have some
2 different different thresholds that they use for
3 "significance," and -- and one that we've been
4 grappling with is they actually define a significance
5 threshold for diesel particulate matter, which the
6 project exceeds and was considered significant impact
7 for onsite operations.

8 COUNCILMEMBER STRAWBRIDGE: Okay. Thanks.

9 MAYOR PATTERSON: And the -- right.

10 And the comment that we received was that the
11 "significant" threshold isn't appropriate for here
12 because it isn't based on a baseline assessment, where
13 the -- the thresholds that are used in Santa Barbara
14 are constructed out of the conditions in
15 Santa Barbara, and other coastal communities, because
16 it's a -- it's more than just the Santa Barbara area.

17 And so there are quite a bit of differences
18 between the regions?

19 MR. RADIS: Yeah, and, you know, the other
20 thing we did a little different is our health risk
21 assessment includes everything at the refinery.

22 So it includes refinery emissions, it
23 includes all their emissions associated with trucking,
24 their existing rail operations for petroleum COPE
25 removal and sulfur removal, as well as the rail

1 project.

2 So we took a bit of a different approach in
3 terms of how we considered every source there and not
4 just the incremental increase, for example, of just
5 rail.

6 MAYOR PATTERSON: So we had a lot of comments
7 on this problem, and thank you for your opinions and
8 advice on -- on that.

9 Are there any other questions?

10 I submitted in front of you, for your
11 consideration, is the question for tonight is decide
12 now or decide later, which goes to the question of
13 delay.

14 So we still have to answer if the Final
15 Environmental Impact Report is adequate, and so since
16 we still have to answer it, it seems to me the
17 question is, "When?" And so -- and then I provide a
18 few scenarios that are choices for us.

19 And so if you will indulge me, let me go
20 through this, and then we can discuss what you would
21 like to do.

22 The -- we could discuss the Valero request
23 for a delay, and it's kind of a can of worms. I was
24 trying to think about what we do and what comes first
25 and what comes next, and so here's where -- why I

1 think it's kind of a can of worms.

2 So if we vote "yes" for a delay, and let's
3 say we provide, as staff recommends, a date certain,
4 can -- however, let's say, for reasons that I'll go
5 into in just a moment, the delay can go on indefinitely,
6 perhaps, for a variety of reasons, they say.

7 My question, then, would be, is there a
8 public right to a decision at some time?

9 So -- and then the second question is, what
10 exactly is being asked?

11 The city's staff and consultants do not
12 disagree with federal preemption, they've been really
13 clear about that, on the rail operations.

14 The main distinction about our Final EIR and
15 the San Luis Obispo is that there are no mitigation
16 measures offered, and there's some disagreement about
17 whether that's required, but that's the main
18 distinction.

19 What Valero seems to want to do is to
20 petition the Surface Transportation Board on the
21 extent of indirect preemption, meaning that -- that it
22 goes beyond just the rail operations. It goes to land
23 use itself, and -- and so they would be asking for
24 that indirect preemption.

25 And once Valero files a petition on that

1 point, and that's an assumption that that's the point,
2 there will be numerous parties, cities and states,
3 because a state right issue, which would be really big
4 for many states, interested in weighing in, and that
5 could delay the Surface Transportation Board decision.

6 Or the Surface Transportation Board could do,
7 as they did in SEA-3, and say that the land use
8 decision is not affecting rail operations, and that's
9 subject to an opinion for them or preemption.

10 The Surface Transportation Board could just
11 simply say such an opinion is not ripe. That is also
12 their choice.

13 The City has no control over the timing of
14 the petition nor the framing of the question. The
15 staff has recommended a time certain date to take
16 action on the appeal. September is recommended.

17 If the Surface Transportation Board is still,
18 quote, working its way through the petition and all
19 the parties weighing in on it and, therefore, not
20 ready to write an opinion, then what is gained by the
21 City with a delay? More delay or a decision about the
22 adequacy of the Final EIR without the opinion?

23 If there is "no" on the delay by the council
24 majority, then Valero can still file a petition
25 seeking that clarification. They may be motivated to

1 do so if their appeal is denied.

2 Regardless of the "yes" or "no" for delay,
3 should the council continue discussion of the Final
4 EIR and land use permit tonight?

5 So should there be further discussion?

6 And Option A is, yes, while documents are
7 fresh in mind, so -- consultants are here, so I was
8 taking advantage of that, and delay -- and to delay
9 could cause twice or more the work necessary to
10 address these issues.

11 Option B is, no, finish with the date certain
12 in September. In other words, don't finish asking
13 questions if there are many -- or questions. Just go
14 on and wait, if the council majority votes for a date
15 certain in September.

16 So if "yes" on delay and finishing discussing
17 issues raised for the Final EIR council action is
18 unclear, does this mean that in September more issues
19 could be raised?

20 So after the Surface Transportation Board
21 raises -- or provides an opinion, then that comes back
22 to the City. I don't have an answer for this, and I'm
23 hoping for some professional advice.

24 Does that mean that more public comment is
25 necessary?

1 If "yes" on delay or "no" on date certain and
2 "no" on finishing answering and discussing the
3 Final EIR, then this could be revisited at a future
4 date with a new staff, new councilmembers, and
5 changing circumstances.

6 So the question for tonight is decide now or
7 decide later.

8 How would the council like to proceed with
9 that question?

10 Councilmember Schwartzman?

11 COUNCILMEMBER SCHWARTZMAN: Okay. So I
12 thought there's two questions in here. One is
13 deciding now or later, and according to what you're
14 saying, we need to -- if delay, you still have to
15 answer if the FEIR is adequate.

16 So I want to get that answered first, and I'm
17 wondering if Madam City Attorney has any thoughts on
18 that.

19 So if, by chance, we go through a continuance
20 and it's a delay, are we required to still work
21 through the FEIR, or is a continuance a continuance?

22 MS. McLAUGHLIN: So I'm not sure I understand
23 your question.

24 COUNCILMEMBER SCHWARTZMAN: Well, according
25 to -- this is what Mayor Patterson put in, first page,

1 decide now or later -- "decide later," question mark,
2 "If delay, still have to answer if FEIR is adequate.
3 So when?"

4 So I've been trying to get that answer. We
5 still have to do that. I get that.

6 But if we're doing a continuance, it seems
7 like we would answer those questions when we come back
8 from the continuance, but --

9 MS. McLAUGHLIN: Yes, you could --

10 COUNCILMEMBER SCHWARTZMAN: -- I'm looking
11 for --

12 MS. McLAUGHLIN: -- do it that way, or you
13 could just make all the decisions tonight as well,
14 so -- or tomorrow or the next day.

15 But, yes, you can either continue it and then
16 pick up the discussion of the FEIR and the project
17 later, or you could do it tonight, or somewhere in
18 between.

19 COUNCILMEMBER SCHWARTZMAN: Okay.

20 Well, then, if I can move along and continue?

21 MAYOR PATTERSON: Okay. Did --
22 Councilmember -- I mean Vice Mayor Hughes, did you
23 have a question on --

24 VICE MAYOR HUGHES: No.

25 MAYOR PATTERSON: -- his question? Okay.

1 Schwartzman?

2 COUNCILMEMBER SCHWARTZMAN: Okay.

3 So first of all, I want to start by saying
4 that I -- I certainly understand Valero's desire to
5 remain profitable and for a lot of reasons that have
6 probably been mentioned throughout these last three
7 years. And I also -- I actually do commend them for
8 trying to put forth the best project that they can.

9 I, also, certainly, value the input of the
10 citizens. There's been a lot of great comments and
11 concerns that have come out.

12 And I also want to, again, put out to the
13 planning commission how much I appreciate their time,
14 input, expertise in everything that they were doing.

15 But I want to say that the -- for all
16 practicality, the decision -- since this has been
17 appealed up to council, the decision that the planning
18 commission did, for all practicality, has no legal
19 precedence, but our decisions do.

20 And so I'm -- I need to -- if I'm going to
21 make a vote on something that could ultimately cost
22 the City a lot of money, I'm going to want to make
23 sure, as much as I can, that the decision is
24 defensible and winnable, to the degree that that's
25 possible.

1 So what I did, and this goes to the ex parte,
2 is on April 8th I called Surface Transportation Board,
3 STB, and interestingly enough, spoke to the same staff
4 attorney that Mr. Soto did, and my questions probably
5 were different because I got different answers.

6 So I did ask about -- a question about a
7 request for a Declaratory Order, and so on, by a
8 nonrail entity.

9 And the initial answer was, "Possibly, if the
10 entire -- if the entity was considered a common
11 carrier," but in his opinion at that particular point
12 it was probably not because Valero was -- if -- it was
13 not probably in this case, if Valero was asking purely
14 about preemption on Valero property, but that if it
15 was off-line and had to do with rail, that that might
16 be more likely considered.

17 So we also discussed the planning commission
18 decision and that the denial included a statement
19 regarding staff's interpretation of preemption related
20 to rail operations, which was broad, too broad, in
21 that there was no inclusion of mitigation for up-rail
22 impacts.

23 And so I -- my question was, "If a request by
24 Valero was -- for the Declaratory Order was based on
25 aspects of the denial, would that most probably be

1 heard?"

2 And he said, yeah -- "Yes, that most probably
3 would be heard."

4 So then I went further to ask about the
5 timing, and he said that requests for declaratory
6 orders, and so on, have taken anywhere from four
7 months to -- for straightforward kind of issues to
8 years for very complex, but in his opinion, this might
9 be on the order of four to six months.

10 I then asked again about his best guess
11 regarding the issues outside Valero property, and I --
12 and I was corrected on this last night about,
13 you know, the -- the preemption has to do with rail
14 impacts, not necessarily on or off Valero property.

15 So I want to make that out there -- put that
16 out there.

17 But I asked about his best guess regarding
18 issues outside of Valero property being covered under
19 preemption.

20 And he said, and this is pretty much quote,
21 he's not a member of the board, but denial based on
22 issues outside of Valero property would be preempted,
23 meaning going to rail-related issues.

24 And I further asked, "So I understand your
25 not being on the board, but you're familiar with cases

1 that have come to the STB.

2 "And with your many years of service, are you
3 saying that, in your opinion, is that everything
4 related to rail activities off Valero property would
5 be preempted?"

6 Emphatically, his answer was emphatically
7 "yes."

8 So here's my dilemma.

9 My original, I guess, inclination was to move
10 on and get this thing decided because his emphatically
11 saying "yes," in essence, supports staff's conclusion
12 on the issue, on the broad interpretation of the
13 preemption issue.

14 And, of course, there was the recent decision
15 in Kern County which kind of goes to support that,
16 also, but then, of course, we have opposition
17 attorneys citing differences of opinion.

18 We -- in the staff report that came out for
19 last night, specifically, the SEA-3 issue, and some of
20 the cases cited in there basically led, in my mind, to
21 uncertainty as to the issue of preemption in our case.

22 And, of course, then there's the
23 Attorney General feeling differently.

24 So my frustrate -- I'm really frustrated with
25 the whole preemption issue and the notion that we

1 cannot mitigate any activities -- or any rail
2 activities, especially outside of Valero property,
3 because I'm pretty clear, not rail-related, but just
4 on site, the project itself, we have every right to be
5 able to do mitigations.

6 But I want to know if -- if there's an
7 opportunity to narrow that preemption issue, gosh,
8 darn it, I want that opportunity, because that is
9 something that we may be able to hang our hat on
10 downstream, if we can narrow that.

11 And unless that question is asked and unless
12 the STB makes a ruling on it or we get some type of
13 feedback, we're never going to know.

14 So I know this is an emotional issue, okay, I
15 get that part, and I am very concerned about a lot of
16 the issues that have been brought up.

17 But in my mind, at this particular point,
18 there's a lot of uncertainty, and I'm personally
19 feeling it's prudent to wait for results for the
20 request of the Declaratory Order.

21 Now, we've waited three years. I'm not sure
22 what another four to six months will do, if we can
23 maybe arrive at a more definitive answer, one, on the
24 preemption question, because a couple things can
25 happen.

1 One, if they -- if they just don't even --
2 if, as the mayor had in her thing, it's not ripe, it
3 gives very clear direction as to the preemption issue.

4 Okay. If they take it up, okay, and they
5 give us an answer that supports staff's contention and
6 the broad interpretation, it gives us very clear
7 direction on what it is we can or can't do.

8 If they end up narrowing it, it may give us
9 an opportunity -- or a window of an opportunity to add
10 some mitigation.

11 So that's my inclination is to go ahead and
12 go along with the continuance, because in the
13 meantime, there's no project and just status quo,
14 nothing's coming in and out by rail, and Valero is
15 taking a gamble.

16 They're gambling that the EIR becomes stale,
17 which we talked about last night, and that new
18 information may come up that might require
19 recirculation, okay, or that the -- of course, that
20 the interpretation of "preemption" could be narrow.

21 So I'm inclined towards doing that.

22 Now, I want to bring up something else, and
23 this has to do with the contention that a continuance
24 is just an election issue; it makes it an election
25 issue.

1 Well, I'm not up for reelection; okay? So I
2 don't have that. I'm -- I get the opportunity to be
3 able to watch all of this.

4 And the reality is it's an election issue. I
5 don't care what you -- what we decide to do, it's
6 going to be an election issue. Whether prospectively,
7 retroactively, it is an election issue.

8 And so -- and then it really gets to the
9 ethics of everybody up here, and I got to tell you
10 that I believe my -- my colleagues are extremely
11 ethical, and they're going to vote what is best for
12 the City, whether it's now or whether it's later, and
13 not what's best for an election, as it should be.

14 And I do want to point out that if someone is
15 going to make an argument that maybe this becomes now
16 an election issue -- continuance an election issue,
17 whether we do it now or later, if I'm not mistaken, I
18 think our Attorney General is running for election for
19 a different thing, and, of course, she's weighed in on
20 this, also.

21 My vote is to -- for my conscience right
22 now, I need more information. If I'm going to make a
23 decision, one way or the other, that is going to have
24 an effect on potential litigation on this -- on this,
25 or, okay, potential other ramifications for potential

1 events, okay, I want more information.

2 So I'm moving towards the continuance. My
3 question is going to be, "How long?"

4 And that's what I have to say.

5 MAYOR PATTERSON: Vice Mayor Hughes?

6 VICE MAYOR HUGHES: Thanks. I had to take it
7 all in. So...

8 So I'll just give my opinion, and we'll see
9 how far off we might be.

10 I want to talk, first of all, about whether
11 we would discuss -- if we decide to move forward or
12 authorize the continuance, the request for
13 continuance, would we then continue discussing the
14 project itself, the EIR certification and the use
15 permit?

16 And I -- I would say, no, we don't.

17 I think we heard last night numerous times
18 that it's possible that based on the STB's decision,
19 it could have an effect on the EIR.

20 Well, if that's a possibility, then why would
21 we talk about the EIR now when we're going to have to
22 redo that whole -- have this same discussion with some
23 additional information in three months, six months,
24 nine months, whenever it's going to be?

25 So I -- for me, I would think it would be a

1 waste of time, not only -- not just on staff, I think
2 the public as well, and on the city council.

3 So that's -- that's where I -- what I feel
4 about that.

5 Similar to I think what Councilmember Schwartzman
6 said, I'm not a fan of federal preemption. I'm not at
7 all. I don't like the fact that we -- we don't have
8 some control -- or somebody is telling us we don't
9 have control over what goes on in or near our city.

10 But the fact is this isn't about whether I
11 like federal preemption or not. The question is
12 whether it applies to this project or not.

13 Here's where I'm at with this.

14 There -- there certainly is no shortage of
15 opinions about whether federal preemption applies or
16 not. We've heard lots of it in the last three to four
17 meetings. We've received hundreds of correspondence
18 on this issue.

19 Here's where I'm at with it.

20 I -- we have the city attorney and our
21 outside counsel telling us that it definitely applies,
22 and they're saying that with confidence and
23 conviction.

24 We've had other attorneys, outside attorneys,
25 whether they're from environmental groups or other

1 groups, that with the same conviction and confidence
2 are telling us that it doesn't apply.

3 We have the Kern County Superior Court
4 decision that is indicating that it does apply.

5 And we have Attorney General -- most recently
6 Attorney General's opinion that it does -- it does not
7 apply.

8 All right. So I'm trying to figure out
9 whether it does or whether it doesn't, and I know
10 a lot of you are convinced, one way or the other; I'm
11 not, and, unfortunately, I'm one of five that need to
12 make this decision.

13 And I -- I think Mayor Patterson asked last
14 night what would be the benefit of the -- for the --
15 for the public to delay this any further, because the
16 public is worn out about this -- with this issue?

17 And I think the benefit is that the
18 councilmembers will be able to make the best informed
19 decision --

20 Point of order here.

21 There are signs that are being thrown up
22 there that I think are so disrespectful, and I'm going
23 to say what the sign said.

24 I'm giving my opinion. You can agree or
25 disagree with it, but you're holding up signs that say

1 "bull doo-doo." Very immature, very unprofessional,
2 and very -- very disrespectful. You can continue to
3 do it, but you're not helping your cause at all. It
4 really is disrespectful.

5 Let me continue on.

6 So in my mind -- and, again, one of five that
7 are voting, I still have some questions on it.

8 Is the STB's decision -- or opinion going to
9 be the end-all for me? No, but it's going to be
10 another data point that I will factor into my personal
11 decision on this.

12 And I would think -- again, the benefit to
13 the public is, and I would -- I would hope that you
14 would expect us to make the -- the -- a decision that
15 is the most informed as possible.

16 For me, and it might be different than some
17 of my colleagues, I need that information. So I think
18 it's -- it's important for me to have that.

19 As far as the -- the date certain, I know
20 that's -- that's an issue, and I know staff has
21 recommended it, and I'm -- I'm not sure why, other
22 than what we've talked about last night, was the
23 possibility that the EIR might become stale or there
24 might be something that comes up from the opinion from
25 the STB that results in us having to revisit or

1 recirculate the EIR.

2 I'm not -- we have no control over the STB's
3 schedule. If we do authorize or approve the
4 continuance, the request for a continuance, what we're
5 saying -- and maybe not each of us individually, but
6 what we're saying as a council is, "This information
7 is important to us. We -- we need this information as
8 part of our decision-making."

9 And so let's say we set it for September 1st,
10 a deadline for September 1st, and now September 1st
11 comes and goes and we don't have that.

12 Do we make a decision based on what we have?

13 I would say "no." It's important for me to
14 get that information. So if it takes two weeks,
15 two months or six months, or beyond, I want that
16 information.

17 And I -- I -- again, I would hope that --
18 that the public would look at the city council and --
19 and expect us to gather all the information necessary
20 to make an informed decision.

21 So that's where I'm heading right now, and
22 I'd be interested to hear from my colleagues on this.

23 MAYOR PATTERSON: Okay.

24 Councilmember Campbell?

25 COUNCILMEMBER CAMPBELL: (Inaudible.)

1 MAYOR PATTERSON: Councilmember Strawbridge?

2 COUNCILMEMBER STRAWBRIDGE: Thanks.

3 I have a couple of comments and questions on
4 the mayor's questions for tonight.

5 Under "B," it's saying that Valero would
6 petition the STB on the extent of indirect preemption
7 for local government and land use.

8 That was not what I thought was being asked.
9 I thought that we were asking about the preemption
10 outside of Valero's property.

11 So that's one question, possibly, for Valero.

12 One of the other -- on letter F, was, "City
13 has no control over timing of petition nor framing of
14 the question."

15 And I don't know if -- if that has been
16 decided. I was not aware that that had been decided,
17 that there was not going to be any input into this.

18 And this gets to the letter we received from
19 the Attorney General. I'm -- I'm still not sure where
20 that came from, who requested that, and what was
21 given, as far as point of reference, in -- for her to
22 reply to that.

23 So, you know, it -- this -- this process has
24 been very eye-opening. I've had threats of going to
25 jail, to Hell, and not be reelected.

1 And you know what? I -- I'm not going to be
2 bullied into making this decision, making a decision
3 tonight, when I don't think we have all the facts.

4 There's a lot of outside interests in this.
5 Before I came to the council tonight, I got a phone
6 call from a survey doing -- asking mostly about the
7 supervisors race, but in the midst of those questions,
8 it was about the Valero Crude by Rail.

9 So we're already getting our citizens out
10 there, you know, with -- with a lot of these
11 questions.

12 The Adams, Broadwell, Joseph & Cardozo
13 company, Attorney at Law, I don't know whether all of
14 you are aware of that, but it's being funded by a
15 union.

16 And so, you know, we're -- we're being, I
17 don't want to say "set up," but we're being looked at
18 as Ground Zero here to make this decision, and I don't
19 think we have enough information here yet.

20 We don't have a -- a clear preemption. We
21 have a lot of other cases out there, like San Luis
22 Obispo.

23 I don't think it's fair that Benicia has to
24 be the one to make this decision tonight. I'm not
25 afraid of making a decision, but I think we need more

1 information.

2 So that's where I'm coming from.

3 COUNCILMEMBER SCHWARTZMAN: Can I -- can I
4 have a follow-up; do you mind?

5 MAYOR PATTERSON: Well, let's see if
6 Councilmember Campbell minds.

7 COUNCILMEMBER CAMPBELL: Go ahead.

8 MAYOR PATTERSON: Okay.

9 COUNCILMEMBER SCHWARTZMAN: This has to do
10 with Councilmember Strawbridge's question regarding
11 what you have in your hand. The City has no control
12 over timing of the petition and framing of the
13 question. I get that part.

14 Here's the question.

15 Okay. It's a public process. I mean, I
16 confirmed that with the staff attorney. And so to the
17 extent it's a public process, I'll bet there's people
18 here that might submit some stuff.

19 But can't we, as a city, submit information
20 requests for questions?

21 MS. McLAUGHLIN: Yes, we can certainly file
22 information with that.

23 COUNCILMEMBER SCHWARTZMAN: Okay.

24 Well, I -- I think that's something that -- I
25 mean, if this is going to go that path, I think it's

1 something we seriously need to consider doing and give
2 our input to the STB.

3 Maybe we have a shot at narrowing --
4 you know, narrowing the preemption issue.

5 Anyway. Thank you.

6 MAYOR PATTERSON: Well...

7 Councilmember Campbell?

8 COUNCILMEMBER CAMPBELL: Mine will be a
9 little shorter comments.

10 I respect all of you. I think you did an
11 excellent job. And for Valero, it may be
12 uncomfortable some of the comments that are made about
13 Valero and the employees.

14 That said, also, I didn't sort of like some
15 of the treatment that was done by our contract
16 attorney. I agree with him on preemption on all the
17 points.

18 And STB, for me, I think they're going to
19 come back, because of all the cases throughout, and
20 rulings they've had, they're going to say that the
21 rails are off-limits, and I think they're probably
22 going to say Valero's claim that the project is
23 off-limits is probably going to be wrong.

24 So for me, I -- I was elected to make votes,
25 you know, whether it's right or wrong, and for me,

1 also, every vote I make, in my mind, I couldn't care
2 less about elections. I make it as if it's the last
3 vote I'm ever going to make, because it's me, and what
4 I think with every vote is a little part of me.

5 So that said, I -- I really don't see this to
6 be coming back with anything that will change what
7 we've already brought up. So I -- I'm opposed to
8 continue this. I think we should vote.

9 And for me, also, when it comes to this EIR,
10 I'm going to certify it because I've got enough
11 information to make a decision on the -- the actual
12 project, which, unfortunately, I'm opposed to, and for
13 a series of reasons, all I give if we ever get around
14 to voting on that.

15 So those are my three votes, and I'm not
16 going to ever change them. So, you know, STB can come
17 back with what they want, but that's the way I'm going
18 to vote on all three of them.

19 So...

20 MAYOR PATTERSON: So I --

21 COUNCILMEMBER CAMPBELL: That's it for me.

22 MAYOR PATTERSON: -- I agree with the issue
23 that we've had now from the staff and the attorney
24 about preemption, and so I am confused about what is
25 it that STB is being asked about what we don't

1 understand about preemption.

2 We get that. On or off property, preemption
3 rules when it comes to rail operations.

4 What remains to be asked of STB?

5 And my understanding is that in the letter
6 that was sent to the city, and it's in Appendix --
7 help me on that. Is it H? -- says that in addition to
8 all the rail activity that is subject to federal
9 preemption, for which we have no disagreement and
10 complete alignment with what San Luis Obispo has
11 stated as well, the additional issue that Valero
12 raises is that other land use opinions, decisions, are
13 affected by indirect preemption.

14 And, frankly, I don't know what in the hell
15 that means.

16 We have local land use decision-making. That
17 is a very precious decision-making ability that we
18 have as a City, and I wouldn't give that up easily.

19 And I'm -- and so if STB -- if we're asking
20 STB, "Oh, gosh. Could you advise us on whether or not
21 we have opinions and can make decisions on land use
22 decisions that aren't connected with rail activities
23 on or off site?" I -- I -- I will go down fighting.

24 So why would we want to ask STB to confirm
25 what we agree, that the preemption rules the day when

1 it comes to rail transportation, but that it does not
2 rule the day when it comes to land use decision?

3 I can -- I -- I don't understand what we're
4 asking STB. We, as a City, could weigh in, if the
5 agreement is -- I mean, it isn't really actually
6 matter, delay or not delay. Valero could file a
7 petition, just to get a clarification in their minds
8 for some reason that they want.

9 And so we could file a comment, but that's
10 what we would be doing, is filing a comment.

11 And how have you felt about commenting on a
12 document that you've had no control over, you haven't
13 framed the question, and you have been reacting for
14 the last three years?

15 And that's exactly the position that the City
16 would be put in.

17 Now, it's just not the City of Benicia. You
18 heard that long list of jurisdictions, air districts,
19 and cities and county, I believe, the -- SACOG, the
20 Attorney General, all weighing in. Whether we agree
21 with them or not, that's not the issue. The fact is
22 they've weighed in.

23 Guess what they're going to do if there's a
24 petition? And how long do you think that is going to
25 take?

1 So in my series of scenarios, sure, we could
2 say, "Well, we would like to have this continued to
3 September because we have other things that we need to
4 get done, and so that makes a lot of sense, and we
5 won't have a stale EIR, and we'll still have some
6 staff that's familiar with the process," and blah,
7 blah, blah.

8 But if the response is so awesome that STB
9 says, "We're going to need more time," that is a
10 possibility.

11 Do we want to live with that?

12 One of the things that I -- I knew when I
13 started out planning is I was told by a city manager
14 many, many years ago is, "Just keep having meetings
15 because you're going to wear out the public, and you
16 get your project."

17 And is that what we want to do, wear out the
18 public and not be responsible?

19 We can't -- we have enough information to
20 make a decision tonight. We may not agree on that
21 decision, but we do have enough information to make a
22 decision, and it seems to me that that is fair to the
23 public. It also certainly tells Valero what -- what
24 that is, and they can proceed from there.

25 Right now it doesn't really matter, I

1 suppose, because of change economics when it comes to
2 transporting of oil, but it does matter to the City of
3 Benicia and its staff.

4 And I do want to say that -- well, I
5 always -- I usually say at the beginning of the
6 meeting how much I appreciate everybody, Valero,
7 Valero's employees, the public, people from other
8 places that are concerned about their homes and
9 everything, and I always want to come back to staff.

10 They have -- they work hard and they have
11 done their job, and -- and I really respect that.

12 So -- so -- but we have other things we want
13 to do in this city, and we have limited people,
14 limited time, limited energy, and it's being sucked
15 out of the city, dealing with this issue.

16 I really care a lot about doing other things
17 than talking about Valero.

18 And to quote Bernie Sander -- Sanders, "The
19 damned e-mails," it's sort of a "Damn Valero." I'm
20 just tired of it. I want to move on. We have things
21 to do in the -- in the city.

22 Valero is going to be in business tomorrow.
23 We know that. It's good for the city, but we need to
24 move on.

25 So I am confused about what you expect to get

1 clarified by the Surface Transportation Board.

2 COUNCILMEMBER SCHWARTZMAN: May I answer?

3 MAYOR PATTERSON: Yes.

4 COUNCILMEMBER SCHWARTZMAN: Precisely the
5 indirect parts of it --

6 MAYOR PATTERSON: So --

7 COUNCILMEMBER SCHWARTZMAN: -- that's
8 precisely the indirect aspects of the preemption
9 issue. That's what I want to see if we can get an
10 answer on, because that would give me a lot more
11 clarity.

12 And with that answer, I would feel complete,
13 as far as what I need to know to move forward in
14 making a decision on this issue, because that's the
15 only area that we -- there might be wiggle room, and
16 that's what I'm looking to get an answer on.

17 MAYOR PATTERSON: But they don't have the
18 last word.

19 COUNCILMEMBER SCHWARTZMAN: Okay. And if it
20 goes to court, it goes to court. I get that part.
21 But they're the place to start.

22 MAYOR PATTERSON: Okay.

23 So any further discussion?

24 I'm looking for a motion to delay and the
25 conditions of that motion.

1 COUNCILMEMBER SCHWARTZMAN: Okay. Well, let
2 me just say that I -- I -- I don't think I want to go
3 forever and just on and on and on and on. I think a
4 date certain is the thing, also, that we need do. I
5 mean, there's only so long I'm willing to wait.

6 And, you know, from talking to the staff
7 attorney, there's no guarantee. Just like there's no
8 guarantee on -- on the trains and all that other
9 stuff, but anyway.

10 There's no guarantee on the timing. It seems
11 reasonable that within a six-month time period this
12 should happen. So I'm okay with September.

13 I mean, I'm okay with that as a date certain.
14 I think that, you know, there can be correspondence to
15 give them an idea.

16 Somewhere along the lines, I'm not sure, I
17 don't think it was with STB when I spoke with them,
18 but some correspondence, maybe it was Mr. Hogin, I
19 don't remember where it was, but that councils can
20 actually give their input to try to move the process
21 along because a decision is waiting on it.

22 And I don't know if that weighs on STB or
23 not, but it's certainly something that I -- that I'm
24 willing to try to do.

25 So I guess I'll -- I'll put forth a motion

1 to -- to continue this item to a date certain, first
2 meeting in September, and that's the motion.

3 VICE MAYOR HUGHES: Discussion.

4 MAYOR PATTERSON: We'll need to have a
5 second, or the motion dies.

6 COUNCILMEMBER STRAWBRIDGE: I'll second.

7 MAYOR PATTERSON: Okay.

8 Discussion?

9 VICE MAYOR HUGHES: So what if we don't get a
10 decision by that date certain time?

11 COUNCILMEMBER SCHWARTZMAN: We will have to
12 make our -- we will have to come back here again and
13 decide what we're going to do, okay, and I'm -- I'm
14 not waiting forever for this answer.

15 I -- I also do want to get this resolved, but
16 I need this -- I need this for me to feel comfortable
17 to move forward in going through the balance of this,
18 and then I'm -- I'm prepared at that point to go
19 through and make a decision.

20 VICE MAYOR HUGHES: Yeah, I'm with you. I
21 agree with that. I need it, also, to make the
22 decision, but what if we don't get it? Then we're
23 making a decision based on --

24 COUNCILMEMBER SCHWARTZMAN: Then we are where
25 we are now, okay, and, yeah, people will say, "Look at

1 all the time you wasted."

2 I get that part, okay, but I'm willing to
3 take that -- that chance.

4 VICE MAYOR HUGHES: It's a clarification --

5 MAYOR PATTERSON: We have a city attorney --

6 VICE MAYOR HUGHES: Oh.

7 MAYOR PATTERSON: -- with a light on.

8 MS. McLAUGHLIN: Well, it was just a teeny
9 clarification, because the first meeting in September
10 is right after the holiday, staff recommends that you
11 continue it, if you do it to September, to
12 September 20th.

13 COUNCILMEMBER SCHWARTZMAN: Fine with me.
14 I'll amend the motion to the second meeting.

15 VICE MAYOR HUGHES: I'll second.

16 MAYOR PATTERSON: Is the seconder agreeing to
17 the amended motion?

18 COUNCILMEMBER STRAWBRIDGE: That's fine. Yes.

19 MAYOR PATTERSON: Discussion?

20 VICE MAYOR HUGHES: So help me understand,
21 because -- because you said six months and then you
22 said September 1st.

23 COUNCILMEMBER SCHWARTZMAN: Well, I --

24 VICE MAYOR HUGHES: I want to understand.

25 COUNCILMEMBER SCHWARTZMAN: -- okay. So it's

1 not exactly six months. Okay.

2 VICE MAYOR HUGHES: Well, the reason I ask is
3 because I thought I heard Valero say it's going to
4 take 30 days to put together the petition.

5 COUNCILMEMBER SCHWARTZMAN: I -- I'm telling
6 Valero right now, I'm willing to go out to the second
7 meeting in September. I'm not willing to go beyond.

8 So you guys need to figure out how you can
9 move this forward, okay, to get that answer back.

10 And I don't mind, with -- with council
11 concurrence, to send something to try to suggest to
12 STB, "Hey, we've got a decision riding on this. We
13 need you to take a look."

14 VICE MAYOR HUGHES: Okay. I think I
15 understand.

16 MAYOR PATTERSON: Councilmember Strawbridge
17 and then Councilmember Campbell.

18 COUNCILMEMBER STRAWBRIDGE: Okay. One of the
19 things that -- in one of our correspondence today from
20 Ed Ruszel, he -- he mentioned that if this was
21 continued, that this would give the public an
22 opportunity to respond to -- again, to some of the
23 things that's happened tonight and then -- and in
24 between now.

25 I mean, there's a lot of things still that

1 need to be decided on this, as far as mitigation,
2 and -- and -- and I'm not sure how that happens in
3 this time period.

4 So does this all kind of happen at once, or
5 do we set the September -- the second meeting in
6 September and then have the public comment and have
7 the decision, or -- or if STB comes back earlier, then
8 we have the meeting earlier?

9 COUNCILMEMBER SCHWARTZMAN: Sure.

10 COUNCILMEMBER STRAWBRIDGE: Correct?

11 COUNCILMEMBER SCHWARTZMAN: Yes.

12 COUNCILMEMBER STRAWBRIDGE: So --

13 MAYOR PATTERSON: If we --

14 COUNCILMEMBER STRAWBRIDGE: -- so it seems
15 like that gives the public another opportunity to
16 weigh in on this.

17 But, you know, getting back to what the mayor
18 is saying is that, you know, as far as preemption,
19 everything is settled now. We understand the --
20 the -- the feds have control over the railway.

21 But, you know, we've sat here for -- and the
22 planning commission sat here listening to all the
23 people up rail wanting us to make a decision that we
24 can't because we're preempted.

25 So I guess that's why it's very important

1 that we get a higher level of authority in here to
2 give us a finding. If this does and it probably will
3 go to court, we need -- we need that kind of backing.

4 So I -- I just don't understand why you think
5 now it's all been resolved as far as preemption.

6 MAYOR PATTERSON: I just want to get a
7 clarification and then call on Campbell, and then I'll
8 respond to the question.

9 So can there be a hearing -- if we're going
10 to do it to a date certain, can we do anything -- can
11 we have a hearing before that?

12 MS. McLAUGHLIN: We could. We'd have to send
13 out new notices to everyone to inform them of the new
14 date.

15 MAYOR PATTERSON: Okay. So everyone that's
16 testified?

17 MS. McLAUGHLIN: Correct. And --

18 MAYOR PATTERSON: Okay.

19 MS. McLAUGHLIN: -- and I guess I should
20 clarify.

21 You all closed the public hearing. So
22 there's no need to take new testimony, unless there's
23 new information, such as the STB decision and people
24 wanted to comment on that.

25 But everything that's happened thus far

1 doesn't need additional public comment, unless you all
2 chose to open up the hearing again.

3 MAYOR PATTERSON: Okay. Cam- --

4 COUNCILMEMBER SCHWARTZMAN: I'm not sure if I
5 was clear on that.

6 You're saying there would not be a need to
7 allow the public to weigh in?

8 MS. McLAUGHLIN: Well, you would need to
9 allow them to weigh in on anything new. So if the STB
10 issues a decision, you could allow them to comment on
11 that, but if it's just the same as it is now, there's
12 no need for additional public comment.

13 COUNCILMEMBER SCHWARTZMAN: Okay. Because it
14 would be my -- my preference to allow -- I mean, I
15 don't know under what circumstances, allow the public
16 to -- to weigh in.

17 MS. McLAUGHLIN: Right.

18 COUNCILMEMBER SCHWARTZMAN: I'm not sure the
19 context of whatever it is.

20 But, yeah, I mean, I'm -- I'm pushing this --
21 this -- this continuance, but I certainly want them an
22 opportunity to basically come back and give their
23 responses, and so on.

24 So I'm -- I'm -- you know, that's why I'm
25 asking the question.

1 MS. McLAUGHLIN: Right. So related to the
2 "anything new," the new decision.

3 COUNCILMEMBER SCHWARTZMAN: Okay.

4 MS. McLAUGHLIN: So you wouldn't have to go
5 back and rehear all the testimony that everybody's
6 already given over the last several days.

7 COUNCILMEMBER SCHWARTZMAN: Okay. And I know
8 on staff weighs a lot. I get that and I'm sorry, but
9 I -- this is what I feel, for me, I have to do.

10 MAYOR PATTERSON: Councilmember Campbell?

11 COUNCILMEMBER CAMPBELL: I know you've got to
12 do it the way you want to do it, but, you know, you're
13 asking for a date certain in September, and the
14 underpinnings are a date uncertain on when Valero is
15 going to send this out and a date uncertain on when
16 STB is going to respond.

17 So, you know, the likelihood you're going to
18 have a date certain anywhere in that list of things is
19 probably pretty remote.

20 COUNCILMEMBER SCHWARTZMAN: I'm not sure if I
21 agree with you, Councilmember Campbell, not -- not
22 from my discussion with STB, and I think even
23 Mr. Hogin, back a couple meetings ago, commented on --
24 on the turn time.

25 It may be -- may I ask him to weigh in on his

1 opinion on that --

2 MAYOR PATTERSON: Certainly.

3 COUNCILMEMBER SCHWARTZMAN: -- from his
4 experience?

5 MR. HOGIN: I'm sorry. What's the question?

6 COUNCILMEMBER SCHWARTZMAN: Well, I mean, you
7 know, the issues here --

8 MR. HOGIN: Yes.

9 COUNCILMEMBER SCHWARTZMAN: -- okay, and if
10 this is presented to STB, what is your experience with
11 their response time for something like this?

12 MR. HOGIN: Well, the STB -- again, I -- I
13 reviewed a number of STB decisions, and most of the
14 time, they -- if they agree to institute a
15 Declaratory Order proceeding, they will issue a
16 decision within three to six months.

17 There are some cases where they did it
18 faster, some -- some that it took them longer.

19 Some of the petitions I've seen style
20 themselves as petitions for expedited
21 Declaratory Order. I don't think that's a formal
22 creature, but it's an attempt to get their attention
23 that there's something urgent here.

24 And I -- I -- if -- were I Valero, I would
25 certainly send out mine to be expedited -- expedited

1 Declaratory Order.

2 There also have been references, if -- if
3 there is a date of a court hearing, for example, then
4 the petitioner will say, you know, "Please -- please
5 decide by this date. We really need your decision by
6 this date."

7 But I think it might be helpful for the
8 council to set a date certain, whether it ends up
9 sticking to it or not, because that might help the
10 request for an expedited Declaratory Order.

11 COUNCILMEMBER SCHWARTZMAN: Okay. So that is
12 something, in your opinion, we could send off to STB,
13 saying, "This is there, okay, we have to a date
14 certain. Please, we're asking you to make sure you
15 get the decision, if you're going to," whatever,
16 however it's phrased, "back to us by or sooner."

17 MR. HOGIN: That's right. Although, it -- I
18 mean, the -- the initial filing would be Valero's,
19 unless the City wanted to --

20 COUNCILMEMBER SCHWARTZMAN: I get that.
21 Right.

22 MR. HOGIN: -- file -- also file a petition
23 for Declaratory Order -- Order, which it could.

24 But it would be -- rather, it would be Valero
25 saying, "The City has continued this item to -- to a

1 date certain, awaiting for guidance from the STB. So
2 your guidance is urgently needed. Please give us your
3 guidance by September 20th."

4 COUNCILMEMBER CAMPBELL: Can I have some
5 quick follow-up on that?

6 But this is a little different than your
7 standing -- standard Declaratory Order or judgment,
8 because this is going straight at the -- the policing
9 powers, I guess you'd say, of the local government,
10 because this is going at -- at least the way I
11 understood what Valero wants to do, at the zoning and
12 building codes of a community and as such, of a state
13 and county government, the way they're doing it.

14 So this seems like this is one that if they
15 decide they want to rule on it, there's going to be a
16 lot of people who want to throw their two bits in
17 from, the Attorney General of California to -- who
18 knows? someplace in North Carolina for all I know.

19 Because this looks like this is -- this is
20 sort of out of our league is the way I view this
21 particular potential declaratory judgment.

22 I mean, you know, we're just a little
23 community, but this is pretty --

24 MR. HOGIN: We're little, but we're tough.

25 COUNCILMEMBER CAMPBELL: -- this is pretty --

1 it's a pretty big one we're looking at; right? I
2 mean --

3 MR. HOGIN: Crude by rail, in general, has
4 gotten quite a bit of attention. The preemption
5 issue, I think will -- will -- you know, is -- is the
6 biggest part of that.

7 I don't know that the fact that there's a lot
8 of people commenting is necessarily going to delay
9 things beyond three to six months. I don't think the
10 issues are complicated.

11 I think that the relevant people at the
12 Surface Transportation Board could read, you know,
13 some materials that Valero has written, some materials
14 that I've written, the Attorney General letter, and be
15 prepared to rule.

16 It -- it -- it's not going to be -- I don't
17 think it's going to be a difficult one.

18 COUNCILMEMBER CAMPBELL: Okay. Because it --
19 this one looks to me like -- I mean you're the expert
20 on this -- you know, they're pushing the envelope a
21 little farther than where it's ever gone before.

22 MR. HOGIN: I do not agree with that.

23 COUNCILMEMBER SCHWARTZMAN: You don't?

24 MR. HOGIN: No.

25 COUNCILMEMBER SCHWARTZMAN: You don't think

1 this is a --

2 MR. HOGIN: I think it's clear --

3 COUNCILMEMBER SCHWARTZMAN: -- (inaudible)?

4 MR. HOGIN: I think it's clear that the --
5 that this City cannot deny Valero, who is a shipper
6 who has rights under ICCTA --

7 COUNCILMEMBER SCHWARTZMAN: Uh-huh.

8 MR. HOGIN: -- the ability to access the
9 railroad based on a finding that -- that the rail
10 impacts are unacceptable, because that's the STB's
11 exclusive jurisdiction.

12 COUNCILMEMBER SCHWARTZMAN: Right.

13 MR. HOGIN: And under ICCTA, the STB
14 jurisdiction preempts all other remedies, and this
15 would be -- if were -- if you were to say to Valero,
16 "You can't operate," that would be a remedy, and
17 that's preempted. That's -- you can't -- you can't
18 step into their domain.

19 COUNCILMEMBER SCHWARTZMAN: We don't expect to.

20 MAYOR PATTERSON: Councilmember -- I mean,
21 Vice Mayor Hughes.

22 VICE MAYOR HUGHES: So I -- I think I could
23 live with the date certain, as long as when we get to
24 that date certain, if we don't have the information --
25 if we have the information, we move on.

1 If we don't have the information, we make a
2 decision at that time, are we still comfortable moving
3 on?

4 COUNCILMEMBER SCHWARTZMAN: I would expect
5 that would be the case.

6 VICE MAYOR HUGHES: Okay. The only reason I
7 bring it up is because -- but you're saying what I'm
8 saying is we're not comfortable at this point in time
9 to make the decision.

10 And so if we don't get the information, what
11 makes this more comfortable making the decision?

12 COUNCILMEMBER SCHWARTZMAN: I get that, but
13 I'm not willing to wait forever.

14 VICE MAYOR HUGHES: Okay.

15 All right. Well, as long as we can revisit
16 that when the date certain arrives.

17 MAYOR PATTERSON: So to answer
18 Councilmember Strawbridge's comment about what it was
19 that needed to be clarified by the Surface
20 Transportation Board for preemption, the only area of
21 disagreement that I see on the mainline activities of
22 the rail is that our staff and consultants decided not
23 to provide any mitigation measures, which the -- to
24 compare that to San Luis Obispo's staff, they did
25 provide mitigation measures with the understanding

1 that it may be -- and the exact language was, that it
2 may be preempted.

3 The advantage of having the mitigation
4 measures is that, as was described earlier, is it gave
5 some information to the applicant about things that
6 could work and perhaps make it more palatable to have
7 a decision and, also, actually good business and good
8 for the environment.

9 So why would you not want to be informed
10 about that?

11 Where we have an area of disagreement, and --
12 and Mr. Hogin just kind of emphasized that, is that
13 when it comes to things that don't affect rail, but
14 could be associated with impacts on site, that -- that
15 because it's a shipper, that the shipper is immune
16 from -- and I'm using that word. I know I'm putting
17 that word in your mouth -- but the shipper is immune
18 from dealing with some of those impacts.

19 I think the Attorney General is commenting --
20 it's almost like we're talking past each other.

21 I think the Attorney General is commenting on
22 the need to be clear on CEQA. So we did that, more or
23 less. According to Councilmember Campbell, he could
24 live with the Final EIR; okay?

25 But that we -- but she says that we didn't do

1 mitigation measures, and so that's less than
2 adequately informing the public, and that was kind of
3 her point.

4 That's different than saying we had to do
5 those mitigation measures in violation of what we all
6 have said we accept as federal preemption.

7 It's less than clear -- crystal clear, in my
8 mind, about how that affects the land use aspects, and
9 I think that's where it -- where the Surface
10 Transportation Board provided its nonopinion on the
11 SEA-3 decision -- that's S-E-A -- SEA-3 decision
12 because they were saying, "Hey, you know, the law
13 already applies to land use.

14 "We don't need to invent law, write law. It
15 exists, and it refers to a bunch of cases; therefore,
16 we're not going to provide an opinion."

17 So that -- that, really, is, to me, the area
18 of dispute.

19 Now, if you're suggesting that we should
20 allow the Surface Transportation Board to make an
21 opinion about the land use and that they could,
22 in fact, preempt our authority, our "lease powers" is
23 the term of art, and land use, they've got a fight on
24 their hands.

25 And we're just going to sit by while that

1 fight takes place [sic] when, in fact, we have enough
2 information to make an opinion, a decision, about the
3 Final EIR. We have enough information to make the
4 decision about the project.

5 We are not seeking perfection. I don't see
6 how the Surface Transportation Board adds to our duty
7 that we have to make those decisions. I think we're
8 perfectly capable of making those decisions tonight.

9 I would vote "no" on the delay. I would vote
10 "no" on the certification of the Final EIR, because it
11 is actually inaccurate. It does not follow CEQA in
12 terms of the baseline analysis, and that's very clear,
13 and there are a few other small things.

14 I would vote "no" on the project because of
15 our zoning code and what it says in terms of
16 public health and safety.

17 It doesn't -- and then I'm concerned about,
18 because I listened to and I follow all the things that
19 people say about our revenue sources, and that really
20 troubles me. But, apparently, that's not that major
21 of an impact to us, and I'm not going to go into the
22 details on that.

23 But it's "business as usual" with Valero, and
24 that's fine, but we don't need to take this risk on
25 this project.

1 So there we are. That's the discussion. I
2 think it's unfortunate that it looks like the majority
3 is going to vote for a delay.

4 Are you ready to call the vote?

5 COUNCILMEMBER SCHWARTZMAN: I -- can I just
6 make a -- a request to Valero?

7 May I?

8 MAYOR PATTERSON: I'm --

9 COUNCILMEMBER SCHWARTZMAN: Well, it's a
10 hope.

11 MAYOR PATTERSON: -- with a motion on the
12 table, can you make a --

13 COUNCILMEMBER SCHWARTZMAN: -- it's a hope.

14 MAYOR PATTERSON: -- I -- that troubles me,
15 because why not --

16 COUNCILMEMBER SCHWARTZMAN: It's a
17 discussion.

18 Okay. I'm okay. That's all right.

19 MAYOR PATTERSON: Okay.

20 So call the roll, please.

21 THE CLERK: Councilmembers Campbell?

22 COUNCILMEMBER CAMPBELL: No.

23 THE CLERK: Hughes?

24 VICE MAYOR HUGHES: Yes.

25 THE CLERK: Schwartzman?

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COUNCILMEMBER SCHWARTZMAN: Yes.

THE CLERK: Strawbridge?

COUNCILMEMBER STRAWBRIDGE: Yes.

THE CLERK: And Mayor Patterson?

MAYOR PATTERSON: No.

Without objection, we are adjourned.

Thank you.

(End of Reporter's Transcript of Recorded
Proceedings)

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CERTIFICATE
OF
CERTIFIED SHORTHAND REPORTER

* * *

I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing recorded proceedings were furnished via digital medium, reported by me stenographically, and later transcribed into typewriting under my direction; that the foregoing is an accurate transcription of the recorded material.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney or any of the parties.

IN WITNESS WHEREOF, I have subscribed my name this date: May 4, 2016.

ANNIE DOEZIE, CSR NO. 8478