

CONTINUED SPECIAL MEETING OF THE
BENICIA CITY COUNCIL

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

Date and Time: Monday, April 18, 2016
7:01 p.m. - 11:19 p.m.

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

Job No. 7359

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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; MONDAY, APRIL 18, 2016; 7:01 P.M.

2

3 MAYOR PATTERSON: The Benicia City Council is
4 called to order.

5 I always wonder if I should call exactly on
6 time or wait for councilmembers to come.

7 COUNCILMEMBER STRAWBRIDGE: There he is.

8 COUNCILMEMBER SCHWARTZMAN: He's right there.

9 MAYOR PATTERSON: Right under the wire.

10 Excellent.

11 So could we have a roll call, please?

12 THE CLERK: Councilmembers Campbell?

13 COUNCILMEMBER CAMPBELL: Here.

14 THE CLERK: Hughes?

15 VICE MAYOR HUGHES: Here.

16 THE CLERK: Schwartzman?

17 COUNCILMEMBER SCHWARTZMAN: Here.

18 THE CLERK: Strawbridge?

19 COUNCILMEMBER STRAWBRIDGE: Here.

20 THE CLERK: And Mayor Patterson?

21 MAYOR PATTERSON: Here.

22 And let me see. We're -- we didn't have a
23 closed session. So we are convening an open session.
24 We're going to do Pledge of Allegiance to the flag.

25 And could we have Chief Upson lead, please?

1 (Pledge recited)

2 MAYOR PATTERSON: A plaque stating the
3 fundamental rights of each member of the public is
4 posted at the entrance to this meeting room,
5 per Section 4.04.030 of the Benicia Open Government
6 Ordinance.

7 And if you require special assistance in
8 order to participate tonight, such as with hearing
9 because the sound system is a bit shaky, or because
10 the fans are distracting, we've had some complaints
11 about that, could you let staff know, and we'll try to
12 make reasonable accommodations for tonight?

13 And in the future, just call 746-4200 about
14 48 hours ahead of a meeting, and we'll make reasonable
15 accommodations so that you can participate as fully as
16 possible.

17 So because this is a continuation of the
18 hearing on Crude by Rail, the Valero land use permit
19 issue, we're going to -- we don't have announcements,
20 proclamations, appointments, presentations, but we do
21 have the adoption of the agenda.

22 Mr. Kilger?

23 VICE MAYOR HUGHES: Move to approve.

24 COUNCILMEMBER STRAWBRIDGE: Second.

25 MAYOR PATTERSON: Call the roll, please.

1 THE CLERK: Councilmembers Campbell?

2 COUNCILMEMBER CAMPBELL: Yes.

3 THE CLERK: Hughes?

4 VICE MAYOR HUGHES: Yes.

5 THE CLERK: Schwartzman?

6 COUNCILMEMBER SCHWARTZMAN: Yes.

7 THE CLERK: Strawbridge?

8 COUNCILMEMBER STRAWBRIDGE: Yes.

9 THE CLERK: And Mayor Patterson?

10 MAYOR PATTERSON: Yes.

11 So this is the opportunity for a public
12 comment on any item that is not on the agenda.

13 And we're eager to hear from you, if you have
14 a comment to make about something that's not on the
15 agenda. You have up to five minutes. You don't have
16 to take the full five minutes.

17 And we're prevented by state law from
18 actually discussing the comment. We may ask
19 questions, and we may recommend that the -- the
20 speaker talk to staff and maybe we take some future
21 action.

22 We do ask that speakers not make personal
23 attacks on councilmembers, staff, or members of the
24 public, or make comments which are slanderous or which
25 may invade an individual's personal privacy.

1 And in addition to the public comment that
2 will start in just a second, we also have written
3 comments, and written comments submitted prior to
4 3:00 p.m. are available on the back table.

5 And we haven't made a list, which -- is that
6 an indication that there are a lot?

7 Is that a nod?

8 MS. RATCLIFFE: There -- there are -- there's
9 a packet that has a list of what's been submitted.

10 MAYOR PATTERSON: Okay.

11 THE CLERK: (Inaudible) right now.

12 MAYOR PATTERSON: Okay. Fine.

13 So -- so for public comment, I'm going to
14 read the ex parte contact when we actually start the
15 business item, in case anyone is following my script.

16 So anybody -- I don't have any cards for
17 public comment on any item that's not on the agenda, I
18 don't think.

19 Did I have any cards?

20 No.

21 Anyone wishing to address the council on any
22 item that's not on the agenda?

23 Seeing no one come forward, then we're going
24 to close the public comment.

25 And we have nothing on the consent calendar.

1 So our next item is our business item, and this is
2 when I talk about "ex parte," which is a term that we
3 use, which really expresses our desire to be as
4 transparent as possible, to let you know who we've
5 talked to and met with, gave advice or asked for the
6 questions or got more information, so that you know
7 all the decision [sic] that we have -- that we're
8 making a -- a decision in the future.

9 It's not the legal ex parte that some people
10 have referred to, because we're not that kind of
11 agency. So that -- so we don't do it that way.

12 (Councilmember Schwartzman passes
13 cards to Mayor Patterson)

14 MAYOR PATTERSON: And I'll just start to my
15 left with ex parte comments.

16 COUNCILMEMBER CAMPBELL: I don't have any.

17 COUNCILMEMBER SCHWARTZMAN: I'm not sure if I
18 should do it now, or should I do it when the item
19 comes back?

20 It has to do -- I did have a discussion with
21 STB. So I'm not sure if it's pertinent now or later.

22 MAYOR PATTERSON: "STD." B? D? A?

23 COUNCILMEMBER SCHWARTZMAN: "B," state
24 transportation board --

25 MAYOR PATTERSON: Okay.

1 COUNCILMEMBER SCHWARTZMAN: -- Surface
2 Transportation Board. Excuse me.

3 MAYOR PATTERSON: Right.

4 Well, you can share that, that you had that
5 contact, and then go on to --

6 COUNCILMEMBER SCHWARTZMAN: I had that
7 contact, and we'll do it later.

8 Thank you.

9 MAYOR PATTERSON: Okay.

10 COUNCILMEMBER STRAWBRIDGE: Nothing to
11 report.

12 VICE MAYOR HUGHES: Nothing.

13 MAYOR PATTERSON: I had a longish meeting
14 with Rachael Koss and explaining the latest submittal
15 on April 4th and answering some of my questions and
16 clarification.

17 And I had a longish meeting with -- at
18 Ruszel Woodworks today, getting kind of another
19 refresher on the tour of the area and seeing what some
20 of the issues were with traffic, and that discussion.

21 And if I think that I have something I'm --
22 any share -- anything that we've shared, I'll bring
23 that up when the issues come up.

24 So the item before us tonight is the -- oh, I
25 guess I haven't been prepped on this.

1 So are we going to go for the appellant who's
2 presenting a PowerPoint presentation?

3 My preference, actually, was to do something
4 else.

5 MS. RATCLIFFE: I believe that we were going
6 to continue the public hearing, and then the applicant
7 has a five-minute rebuttal after that at the -- at
8 the -- when everyone else is done.

9 MAYOR PATTERSON: Okay. Perfect.

10 So what I -- unless there's an objection from
11 council, is what I am going to ask is that we
12 entertain council questions first.

13 There hasn't really been -- with some
14 exception, there hasn't really been a robust set of
15 questions asked, and I think the public is interested
16 in what the concerns are and what some of the issues
17 might be.

18 And because of the staff report, I think that
19 that's helpful. I think it's kind of highlighted some
20 of the things that could be addressed.

21 If this takes a long time, up to, but not --
22 no later than 9 o'clock, we will definitely go into
23 public comments.

24 So this council has a couple of hours. I
25 don't -- I have a feeling it probably won't take a

1 couple of hours, but who knows?

2 So starting to my -- let me say, starting to
3 my left -- left last time, starting to my right.

4 VICE MAYOR HUGHES: My preference would be go
5 right to public comment. The public's been waiting
6 long enough. Some of them have been here -- this is
7 their third meeting that they've been to, that they
8 might not have had the opportunity.

9 So I'd rather go right to them. We'll have
10 an opportunity at the end to ask questions, if we'd
11 like to.

12 MAYOR PATTERSON: So let me rephra- --
13 rephrase it.

14 The public is in the dark about what some of
15 the concerns and issues we have, and what was really
16 beneficial at the planning commission was the
17 extensive amount of questions that were asked by the
18 planning commissioners.

19 That allowed the public to kind of hone their
20 questions, if they still felt that they hadn't been
21 answered.

22 So I'm simply asking that you can ask a few
23 questions that would help the public understand what
24 your concerns are.

25 You are -- you did ask a few at the last

1 meeting, and that was very helpful, and staff
2 responded, which was also very helpful.

3 So that's the purpose of that.

4 VICE MAYOR HUGHES: Okay.

5 MAYOR PATTERSON: Any questions?

6 VICE MAYOR HUGHES: No. I'd still like to
7 hear public comment first.

8 MAYOR PATTERSON: Okay.

9 Councilmember Strawbridge?

10 COUNCILMEMBER STRAWBRIDGE: I would like to
11 hear from the public as well.

12 MAYOR PATTERSON: Councilmember Schwartzman?

13 COUNCILMEMBER SCHWARTZMAN: Well, I think at
14 the -- I think we left it at the last meeting that we
15 were going to continue the public comment to this
16 meeting, and so it seems only fair to do the public
17 comment.

18 MAYOR PATTERSON: Okay. And then --

19 COUNCILMEMBER CAMPBELL: (Nods head
20 affirmatively.)

21 MAYOR PATTERSON: -- Councilmember --

22 COUNCILMEMBER CAMPBELL: Yeah --

23 MAYOR PATTERSON: -- Campbell?

24 COUNCILMEMBER CAMPBELL: -- I (inaudible).

25 MAYOR PATTERSON: Okay. So we won't have any

1 questions that were revealing of our thoughts and
2 concerns. We'll go directly to public comment.

3 And the way that's going to work is I have
4 remainder names on -- I'm sure, on the -- one of these
5 attachments here.

6 Did you guys give me the printed list?

7 MS. RATCLIFFE: It's --

8 COUNCILMEMBER SCHWARTZMAN: The list is --

9 MAYOR PATTERSON: Okay.

10 MS. RATCLIFFE: It's attachment 11, page 263 --

11 MAYOR PATTERSON: Okay.

12 MS. RATCLIFFE: -- of the staff report.

13 MAYOR PATTERSON: Yeah, I don't have a
14 printed staff report. So it -- it's much easier to --

15 COUNCILMEMBER STRAWBRIDGE: Here.

16 (Councilmember Strawbridge passes
17 document to Mayor Patterson)

18 MAYOR PATTERSON: Thanks.

19 COUNCILMEMBER SCHWARTZMAN: And we need to --

20 MAYOR PATTERSON: Okay. So -- thank you so
21 much, Councilmember Strawbridge.

22 So these -- I'm going to call the names of
23 the people that submitted cards but did not speak.
24 So, in other words, if you submitted a card at the
25 first meeting and went away, this is your opportunity

1 to speak. I will then call the names of the cards
2 that have been submitted this evening.

3 In some cases, it appears that we actually
4 may have some people who have already spoken, and I
5 will clarify that when I call your name, to let you
6 know that you don't get another bite of the apple.

7 So the first name that had been submitted,
8 but not commented, is Charles Davidson.

9 Oh, and I also -- while he's coming forward,
10 I also -- thanks to our planning director, she
11 mentioned to me that we have several people in the
12 commission room, and we also have people in the
13 Conference Room 1.

14 So sometimes it takes a little while for
15 people to come forward, and I will actually call
16 additional names after Mr. Davidson.

17 And I just want to recognize that there are a
18 lot of people here, and I do appreciate the folks who
19 are in the overflow room. It's not always easy to
20 follow everything when you're over there.

21 So, Mr. Davidson?

22 MR. DAVIDSON: Greetings. My name is
23 Charles Davidson. Thank you for giving me the
24 opportunity to speak.

25 I live in Hercules, and I'm here as a citizen

1 and scientist concerned with the planned influx of
2 tar sands to the Bay Area and its refineries.

3 We all need to ask, and carefully answer,
4 what is tar sands exactly? And why is its processing
5 and transport a unique threat that could last for
6 decades if Valero's project is approved by the
7 Benicia City Council?

8 Valero's recent Valero Improvement Project,
9 or "VIP," was designed to facilitate the processing of
10 much higher sulfur and heavier crudes than the
11 refinery's former crude oil input or slate.

12 The VIP permitted the refinery to process
13 heavier high-sulfur feed stocks, 60 percent of its
14 total supply up from only 30 percent prior to the VIP.

15 And the project would raise the average
16 sulfur content of the imported raw materials from past
17 levels of about 1 to 1-1/2 percent sulfur up to new
18 levels of about 2 to 2-1/2 percent sulfur.

19 Because the Valero Crude By Rail Project,
20 combined with the -- the VIP, are related parts of an
21 expanded heavy oil project, the Crude by Rail Project
22 could only be for the delivery of tar sands and
23 bitumen.

24 That has distinct qualities that render it
25 both more toxic and difficult to process, that is

1 energy-intensive than even so-called extra heavy oils,
2 such as from Venezuela.

3 Tar sands and nearly solid material mined in
4 Alberta, Canada, is an inexpensive substitute for
5 liquid petroleum for making gasoline.

6 And West Coast refineries are expected to
7 increase their tar sands usage eightfold by 2030,
8 especially in the Bay Area, which has the highest
9 percentage of heavy crude refining capacity in the U.S.

10 And, importantly, tar sands contain far more
11 noxious sulfur and toxic heavy metals than traditional
12 crudes, containing 21, 11, and 5 times more vanadium,
13 nickel and lead, respectively, according to a
14 U.S. Geological Survey report.

15 And in order to refine tar sands into
16 gasoline, vastly greater amounts of heat and
17 energy-intensive hydrogen production are required to,
18 one, remove the sulfur found at a greater percentage
19 level than in any other crude worldwide;

20 And, two, to break the bonds in heavy
21 complex molecules not normally found in traditional
22 liquid petroleum.

23 And the high amounts of sulfur and acidity
24 found within tar sands tend to accelerate the
25 corrosion of pipe metal, which, according to the

1 U.S. Chemical Safety Board, led to the 2012 Chevron
2 fire in Richmond.

3 And, moreover, a recent Carnegie Endowment
4 study of a wide range of global crudes, entitled,
5 quote, "Know Your Oil," towards a global climate oil
6 index, have determined that refining tar sands
7 produces the most global warming greenhouse gases.

8 And tar sands refining will, invariably,
9 release into frontline communities more local toxic
10 air pollutants, the principal cause of asthma and
11 implicated in cancer.

12 Moreover, in order to flow into railroad tank
13 cars, pipelines and refinery equipment, tar sands must
14 be diluted with lightweight flammable hydrocarbon
15 solvents.

16 So there's actually a diluted bitumen, called
17 "dilbit," and for dilbit to be delivered to California
18 refineries, primarily by mile-long trains of railroad
19 tanker cars not constructed to carry this volatile
20 cargo, it must travel through cities, over aquifers
21 and delicate ecosystems.

22 And a dilbit spill penetrates deeply into
23 water and soil, tending to remain far underground, and
24 is virtually impossible to adequately remediate, as
25 evidenced by the 2010 Kalamazoo River and Bridge

1 pipeline spill that has cost over \$1 billion, to date.

2 And a tar sands railroad derailment fire
3 would release a dense, heavy-metal-laden toxic cloud
4 of smoke that would contaminate nearby homes, schools,
5 and all along the rail line.

6 And, currently, no mandated mitigation
7 measures at either the state or federal level
8 adequately address the above-mentioned public health
9 and safety risks of dilbit refining or railroad
10 transportation beyond a small percentage of that
11 vastly increased risk.

12 Thank you.

13 MAYOR PATTERSON: I have a question to ask
14 you, Mr. Davidson.

15 Have you had a chance to read the
16 recirculated Draft EIR or the Draft EIR --

17 MR. DAVIDSON: Uh-huh.

18 MAYOR PATTERSON: -- to see if your concerns
19 on the effects of spills were addressed?

20 MR. DAVIDSON: Uh-huh.

21 MAYOR PATTERSON: Were they?

22 MR. DAVIDSON: Well, they have not been in
23 Michigan. In -- in Michigan, because of the dilutant,
24 it's a very lightweight solvent. So it tends to go
25 many feet into the ground, up to 12 feet.

1 So they've been digging down and down and
2 down, and the area of the Kalamazoo River probably
3 will never be remediated.

4 If it should spill in the Suisun area or
5 anywhere along the delta or Feather River Canyon, it
6 could be disastrous for aquifers and for any attempts
7 to remediate, in my opinion.

8 MAYOR PATTERSON: Okay. Thanks very much for
9 your comments. I'm going to --

10 MR. DAVIDSON: Thank you for the time.

11 MAYOR PATTERSON: Thanks.

12 I should have asked, if there are any other
13 questions?

14 Okay. So I'm going to read a series of
15 names, and, hopefully, you can get here. You can line
16 up in the back. It's allowed.

17 So where is that -- I can't see. The police
18 officer is back there. Just line up with him.

19 Jack Fleck, Roman LoBianco, Monica Brown,
20 Ron Write, Doug McLoin [sic].

21 I'm going to mark here.

22 COUNCILMEMBER STRAWBRIDGE: Okay.

23 MAYOR PATTERSON: Thank you.

24 Yes. Okay.

25 Anina Hutchinson, Steve McClure, Susie Wong,

1 Donna Wapner, Richard Gray, Karen Jacques,
2 Richard Lentz, JoAnn Fuller, Daniel Adel, Simone Cardona,
3 Elizabeth Crowley, Larry Fullington.

4 COUNCILMEMBER STRAWBRIDGE: Steve McClure is
5 right there.

6 MAYOR PATTERSON: Who is it?

7 COUNCILMEMBER STRAWBRIDGE: Steve McClure is
8 right there.

9 MAYOR PATTERSON: Oh.

10 Okay. Steve, come -- come on forward,
11 please.

12 MR. McCLURE: Good evening. My name is
13 Steve McClure, and I'm the chairman of the board for
14 the Benicia Chamber of Commerce.

15 And earlier this month, we submitted a letter
16 to the council in support of Valero's Crude By Rail
17 Project that I trust you all have read. It was turned
18 in before the first meeting.

19 I'm not going to read that again tonight
20 because I think most of those comments have been said,
21 and I don't want to -- to use up that time.

22 There have been several speakers at past
23 meetings that have made excellent points in favor of
24 this project, and we agree with those points.

25 I also know there's been many speakers from

1 out of town who have come to these public hearings,
2 asking that you not overturn the planning commission's
3 decisions regarding the EIR, the use permit, and crude
4 by rail, in general.

5 And I ask that you all keep in mind that
6 those speakers, you know, they don't support our town
7 with their purchases or taxes as they do in the cities
8 where they live.

9 And so, you know, they -- they come here and
10 they talk about what's best for -- for our city, or
11 maybe what's best for them, but we're the supporters
12 of this city, and we're the tax base that -- that you
13 need to listen to.

14 Also, they're probably not aware of Valero's
15 safety record. They -- Valero's maintained a very
16 responsible corporate partner in our town.

17 In my various conversations regarding
18 Valero's request, I have said Valero Benicia refinery
19 is probably the safest refinery on our planet, and I
20 think they deserve your support as well.

21 So I thank you for your time.

22 MAYOR PATTERSON: Thanks, Steve. Thanks for
23 your letter as well.

24 Any questions?

25 Okay. I'm going to go back, make sure that

1 people that have been called had to come from the
2 commission room.

3 Roman Lo- -- LoBianco, Monica Brown,
4 Ron White -- Write, Anina Hutchinson.

5 There she is.

6 MS. HUTCHINSON: Hello. Thank you for
7 listening to me.

8 The first thing I'd like to say is Valero
9 seems to get a lot of congratulations for doing what
10 they're supposed to be doing, and I won't take up a
11 lot of time.

12 I'm against crude by rail. I think that
13 there are many, many reasons not to approve this
14 project, and I think it would just be silly. I think
15 it's -- it would be narrow-minded to approve the
16 project.

17 I only see that Valero is actually profiting
18 from the approval, and it -- it is forward-thinking to
19 put a stop to this. We need to go in the other
20 direction.

21 Thank you.

22 MAYOR PATTERSON: Thank you for your
23 comments.

24 Susie Wong, Donna Wapner, Richard Gray,
25 Karen Jacques, Richard Lentz, JoAnn Fuller, Daniel Adel,

1 Simone Cardona, Elizabeth Crowley, Larry Fullington.

2 Elizabeth.

3 MS. CRAWLEY: Good evening. My name is
4 Elizabeth Crowley. I'm a resident of Benicia.

5 The process is broken, and I've been let
6 down. I spent many nights here away from my family,
7 who lives in Benicia.

8 And I'm con- -- concerned because you decided
9 to allow first comment by people who are not Benicians
10 and let them speak before residents, like me, who you
11 were elected to represent.

12 You know, for politicians, Lincoln was not
13 afraid of how he would be remembered when he supported
14 industry and the railroad that connected the
15 United States and made our country and economy strong.

16 Leaders find solutions and do not default to
17 fear. Do not fear this project that would be operated
18 by professionals in a safe manner.

19 I support the project. Please make an
20 informed decision.

21 Good night.

22 MAYOR PATTERSON: Thank you, Elizabeth.

23 Any questions? Okay.

24 Larry Fullington, Nick Despota, Richard Crawford.

25 MR. DESPOTA: Good evening, Councilmembers.

1 My name is Nick Despota, and I am a resident of
2 Richmond.

3 And after attending the first night of this
4 council -- city council hearing and many more nights
5 of the planning commission meetings, I think it's fair
6 to say that city staff and consultants have taken a
7 lot of heat from the public over the recommendation to
8 approve the Valero project.

9 Last week's letter from the Attorney General
10 and an editorial in the "Chronicle" last weekend only
11 intensifies that heat. I think that criticism is
12 unfair. Staff has done its job, to the best of their
13 ability, their job as they understand it.

14 I'm not being facetious. Most of us in this
15 room would agree that their job is to permit or
16 recommend land uses that promote prosperity and
17 enhance the quality of life and protect public safety.

18 Nothing wrong with that.

19 There's a hitch, though. Up until a few
20 years ago, the strategy of aligning land use decisions
21 with the interests of the biggest corporation in town
22 made a lot of sense. The benefits were large, and the
23 risks, well, if not small, were not as significant as
24 we know them to be today.

25 And until recently, this grand bargain

1 worked. Those reaping the benefits would downplay or
2 pretend not to notice the risks as long as the returns
3 were large. But that bargain is breaking.

4 The number of railcars carrying oil has
5 increased from 9500 cars in 2008 to an estimated
6 400,000 in 2013. That's more than a 4,000 percent
7 increase. So it's little wonder that significantly
8 more oil spilled in U.S. rail incidents in 2013 than
9 in the previous 40 years.

10 So consider the possibilities.

11 All this while the demand for transportation
12 fuels in California is declining. All this while the
13 consensus on the disastrous effects of rising
14 greenhouse gases is growing ever stronger every day.

15 So while staff has done their best job, their
16 jobs to the best of their ability, the understanding
17 of what that job entails has changed.

18 Promoting prosperity and quality of life no
19 longer equates with decisions supporting the interests
20 of the City's largest taxpayer, and the assessment of
21 public safety no longer ends at the city limits.

22 But even if staff recognizes all of this,
23 even if they look ahead and see the breakup of the
24 grand bargain, they may not feel free to act
25 differently.

1 They work in a cultural environment that
2 constrains their choices, a bureaucracy that
3 communicates expectations that are, sadly, out of
4 date, and, like most bureaucracies, notoriously slow
5 to adapt.

6 Employees and contractors do what's expected
7 of them, and, in turn, they expect to be rewarded,
8 like all of us. I'm not blaming them.

9 So I think you should thank your staff for
10 doing their jobs to the best of their ability but also
11 take advantage of this opportunity to help them do
12 their jobs better, by affirming a new understanding of
13 prosperity, quality of life, and public safety.

14 Your unanimous denial of Valero's appeal
15 demonstrates that new understanding. That's your
16 opportunity. That's your obligation.

17 Thank you.

18 MAYOR PATTERSON: Are there any questions of
19 Mr. Despota?

20 Seeing none.

21 Thank you very much.

22 I think most of you have been here before,
23 but I heard a slight little flutter. So we don't have
24 clapping, booing, hissing, or other noises that your
25 mother would not approve of.

1 And the reason we do that is because it's
2 intimidating, and the idea here is to foster public
3 comment, not make people feel like they can't come
4 forward and express themselves.

5 So if you could respect that. I think all of
6 you have done a commendable job. You should get a
7 gold star.

8 The next names I have are Richard Crawford,
9 Walt Quillin, Dean Lloyd, Patrick Costello,
10 Heather MacLeod, Mike Reagan.

11 That's the end of the list for what was
12 not -- the cards that were submitted earlier but did
13 not speak.

14 Thank you, Councilmember Strawbridge. I
15 think staff has done this.

16 (Mayor Patterson hands document to
17 Councilmember Strawbridge)

18 MAYOR PATTERSON: So now I'm going to go to
19 the newly submitted cards, and the first one I have is
20 Renee Harper-Vacek. Did I get that right, sort of?
21 "V-a-" I think it's "c-e-k." I can't read it.

22 She must be in another room.

23 Okay. I'll just go through some names, and
24 then, again, you can line up on the back wall if your
25 name is called.

1 Dick Shafer, Ralph Dennis, Nancy Rice [sic],
2 and then Tracy McCarthy.

3 So, Renee, come forward, please.

4 MS. HARPER-VACEK: I hope I can reach that.
5 I'm kind of short.

6 MAYOR PATTERSON: Well -- okay.

7 MS. HARPER-VACEK: My name is Renee --

8 MAYOR PATTERSON: We can hear you so far.

9 MS. HARPER-VACEK: So far so good.

10 My name is Renee Harper-Vacek, and I split my
11 time between Benicia and Sacramento. I have lived in
12 Benicia for ten years, and we just recently moved to
13 partially live in Sacramento, and I partially live
14 here.

15 I'm going to give some qualifications of
16 mine, specifically, so that you know that I am coming,
17 not from an emotional standpoint, but something that I
18 have well researched.

19 I just finished a double major program in
20 October, getting my degrees in journalism and
21 political science. I graduated with a 4.0,
22 summa cum laude.

23 Most of my research for journalism
24 investigative reporting was this issue. So I have
25 done research. So I'm not coming from emotional

1 standpoints; although, I do feel emotional about it.

2 I am currently working on my MBA with a focus
3 on public administration, local government. Go figure.

4 There are some things that I really want to
5 address, and I'm using my iPad so that I don't forget
6 my points.

7 First of all, there was -- there -- there
8 have been some things said that I don't want to go
9 over, but I do want to address, and that is this
10 taxpayer base.

11 I had a business on 1st Street for several
12 years, and it was very successful. I closed it
13 because the -- of the lack of local support.

14 I remember in those days how we were focusing
15 on bringing people in from these very communities --
16 Sacramento, all around the Bay Area, all around
17 Vacaville, Dixon, Davis, all of the communities
18 involved in this -- to bring and spend their moneys
19 for the tourism trade and to support local small
20 businesses.

21 However, when you have one large taxpayer and
22 that's the only focus of bringing taxpayer money in,
23 small businesses fail and, as Nick Despota said, so
24 does the prosperity of the community. It fails.

25 Because if you cannot maintain a solid local

1 small business taxpayer base, you will not sustain the
2 community. There -- research backs that up. You can
3 look anywhere for it. You will not sustain a
4 prosperous community. It's not possible.

5 Second, my children happen to live in
6 Sacramento, close to Roseville, around the Natomas
7 area, which is greatly affected. My son-in-law
8 commutes to Vacaville and works for a major credit
9 union in the area in that location.

10 So not only am I affected by working and
11 living here, but my children are affected in that
12 area. So, yes, it matters when people from other
13 areas come in to speak against this project.

14 Yes, you have an obligation to the local
15 residents, but you also have an obligation to the
16 human community and the community in the areas that
17 come and spend their money here as well. They are
18 just as important, if not more so.

19 All of that being said, what I wanted to go
20 to is the article that was submitted by our
21 Attorney General, Kamala Harris, and this is really
22 important, and this is something that has come up in
23 my research over and over.

24 As a matter of fact, in my report, my teacher
25 challenged me to prove differently. I had to argue

1 the opposite, Valero's side. So -- and guess what?
2 All the research I found didn't support it.

3 What it supported was that the platform that
4 was requested to be made was to bring the train in.
5 It has nothing to do with the route of the railroad.

6 Because unless something strange is going on,
7 the railroad is not going through Valero property.
8 That's something that needs to be realized, and that's
9 something that Kamala Harris wrote about.

10 She specifically said that federal interstate
11 commerce law preempts the city from turning Valero's
12 proposal down because it would indirectly tell
13 Union Pacific what it can and can't do.

14 That's not true. That is an end point, not a
15 travel-through point.

16 So I would just urge the city council to pay
17 attention to that. Don't let threats of closure,
18 threats of losing jobs, threats of pulling money out
19 affect your decision for the community.

20 Thank you.

21 MAYOR PATTERSON: Thank you very much.

22 Are there any questions?

23 All right. Thanks.

24 So let me see. Dick Shafer, Ralph Dennis,
25 Nancy Price, and Tracy McCarthy.

1 MR. SHAFER: Good evening. My name is
2 Dick Shafer. I currently live in Lincoln, California,
3 but I lived in Benicia for 27 years. So I have an
4 abiding interest in Benicia, and I have a daughter and
5 granddaughter who still live here.

6 This is somewhat reminiscent of some things
7 that happened back when I was living here.

8 The night that Walter Cronkite opened the
9 6 o'clock news with, "There's a hot potato in Benicia
10 tonight," and the news helicopters were orbiting, and
11 the city council chambers were crammed with news media
12 people.

13 And what was the issue?

14 It was a pipeline that goes from the
15 waterfront to the refinery, and there was proposed
16 housing adjacent to that pipeline, and the concern of
17 safety came up.

18 Did we solve that problem? Yeah, as far as I
19 know. We covered the pipes, we do periodic
20 inspections for corrosion and erosion to ensure the
21 integrity of the pipes, and they've been doing fine
22 ever since.

23 Another safety issue arose about 1990, as I
24 recall, and that dealt with Robert Semple school, and
25 the loaded gas trucks that were coming from the

1 refinery passed the school to get on the freeway.

2 That was a simple solution. We just sent all
3 the trucks north to Lake Herman Road, and it added a
4 few miles to some of their routes, but it got them
5 from passing by the school.

6 We also put up a fence along East 2nd Street
7 by the school to increase its safety, too.

8 So how are we going to mitigate the current
9 situation?

10 Well, it's always been my experience that if
11 people work together instead of at odds that they can
12 solve almost all problems.

13 I don't know what the concerns are, and I
14 wish, in a way, you had kind of reviewed earlier this
15 evening what the issues were.

16 But if, for example, derailment might be an
17 issue, then inspection of the tracks to ensure their
18 integrity and -- and safety might be the solution
19 there.

20 I worked at Maryland Naval Shipyard for a
21 couple of years, and they brought nuclear reactor
22 fuel rods into the shipyard, and one could argue about
23 the seriousness if they had a spill of that versus a
24 spill of crude oil.

25 But they inspected the tracks there routinely

1 and ensured their integrity and mitigated the -- the
2 possibility of a disr ailment [sic] there.

3 But what I'm concerned about is if we don't
4 start doing something about building pipelines and
5 refineries, we're going to be in a heap of trouble.

6 And things like the Keystone Pipe and -- I
7 can't even remember when the last refinery was built.

8 And the timeline in the United States is a
9 real long one, as opposed to other countries, and the
10 process we're going through, this issue right now,
11 demonstrates that.

12 I remember a story that the manager of the
13 Exxon refinery at the time told that the Japanese
14 wanted to buy some Coke from the refinery, and they
15 wanted to have enough stored so that when they sent a
16 ship over, it would be a full shipload, and so they
17 had to add a couple more silos down at the waterfront
18 to -- to house the Coke.

19 And the Japanese management brought their
20 plans here and laid them out in front of Exxon, turns
21 to Exxon, and said, "Could you have those built by
22 about June?" and this was like in January.

23 And the manager said, "What year would you
24 like to have those built?"

25 So we're talking in terms of years. You

1 know, they talk in terms of months.

2 It kind of reminds me of the 1970s, early
3 '70s, when we had a gas shortage, and I personally had
4 to wait as long as six to eight hours to get gas for
5 my automobile at that time.

6 And there was a cartoon that was published
7 that really kind of described it all.

8 It showed a Volkswagen microbus, and it's
9 covered with slogans, like, "Don't Drill Offshore,"
10 "Don't Do This." It, today, would probably say,
11 "Don't Do Any Fracking."

12 And there's this hippy guy with hair, you
13 know, a beard and his head stuck out the window, and
14 he's saying, "What do you mean we don't have any
15 gasoline?"

16 That's where we're headed.

17 Thank you.

18 MAYOR PATTERSON: Thanks for that reminder of
19 history in Benicia.

20 Ralph Dennis, Nancy Price, Tracy McCarthy,
21 and Michelle Fernandez.

22 MR. DENNIS: Thank you for the opportunity to
23 provide comments this evening.

24 My name is Ralph Dennis. My wife and I -- my
25 wife Vicki and I live at 2140 Via Media Court here in

1 Benicia. We're immediately across from St. Dominic
2 Cemetery on the other side of Hillcrest, in case that
3 helps -- helps you picture the location where we're
4 at.

5 And, of course, on the north side, on the
6 other side of St. Dominic's, on the north side of the
7 hill, there's Valero.

8 So while we're not in the 500-foot blast zone
9 area where a -- a potential accident -- explosion from
10 a potential accident could occur, we're pretty close
11 to it.

12 We oppose the Valero Crude By Rail Project as
13 Benicia residents, for two principal reasons: safety
14 and property values. There are other reasons to
15 oppose the project, reasons that impact communities
16 and reasons beyond Benicia.

17 But as residents of Benicia, I want to focus
18 these comments tonight on the direct impacts of the
19 proposed project on those of us who live in Benicia,
20 especially on the north side -- north and northeast
21 side of town.

22 But before I mention that, let me briefly
23 give you a background of where I'm coming from.

24 While we're -- we're residents, and there is
25 some emotion attached to the issue, I also have spent

1 quite a bit of time in the energy industry issues,
2 25-plus years on the regulatory side before my wife
3 and I decided to move to California;

4 And then since 2000, more on the consulting
5 side, working with a large natural gas energy retailer
6 who provides natural gas services of large commercial
7 and industrial energy users.

8 So the issues of all -- all industry issues
9 and -- and electric and natural gas issues I've worked
10 with for quite a long time and have a general
11 understanding of the oil industry and various
12 improvements they've made over the years, as far back
13 as the mid-'80s, in terms of developing -- you know,
14 doing their business.

15 In fact, I remember back in Kentucky in the
16 mid-'80s, folks were trying to convince folks in the
17 Marcellus Shale areas, in the eastern -- on the
18 Appalachian Mountains, in Alabama in particular,
19 trying to convince the industry to go after shale, to
20 extract gas and oil from shale.

21 And it wasn't economical way back then, but
22 now it's, I guess, improved, obviously, where
23 economics, perhaps, makes some sense. Their a little
24 (indecipherable) to talk to, though.

25 And let me briefly add, our next-door

1 neighbor, Connie Mulholland, has also asked to be
2 noted as -- as supporting these comments.

3 So the first of two concerns is safety.

4 Without rehashing, restating, what is already
5 in the record concerning safety concerns over the
6 project, simply put, Bakken crude oil is too volatile
7 of a product to be offloading into railcars at the
8 Val- -- Valero terminal.

9 Bakken is, simply, more volatile than other
10 crude presently being processed, and the level of risk
11 is too high.

12 The impacts from the explosion that could
13 occur from an accident during the process of up- --
14 offloading are too great to allow Valero to proceed
15 with this project.

16 The history of Bakken crude being handled
17 across the North American continent is full of
18 incidents that have led to explosions.

19 Valero can continue to operate its refinery
20 as it has been doing and continue to earn a profit and
21 maintain the job that it has and it could -- without
22 the Crude By Rail Project.

23 Offloading Bakken crude from railcars at the
24 Valero refinery presents unacceptable and unnecessary
25 risks to Benicia's residents.

1 Our second concern is property values.

2 There already have been provided many
3 comments by Benicia residents expressing concerns
4 about the negative impact approval of the project
5 would have on residential property values. I wish I
6 had the following note.

7 We bought our house on 2140 Via Media Court
8 in August of 2014. We knew that the Valero refinery
9 was located in Benicia, and we knew about the proposed
10 Crude By Rail Project, but when asked, our realtor was
11 not aware of the project.

12 And when prodded further, our realtor was not
13 aware of any comments or concerns expressed about the
14 project among other realtors.

15 I was surprised, having some general
16 knowledge of Bakken crude and the process of moving
17 them by railcars, et cetera, but I was surprised --
18 but we went ahead and bought the house, obviously,
19 because we liked it, and we liked Benicia.

20 I say this not to complain about the realtor,
21 but to make the following point.

22 Realtors in Solano County see the Crude By
23 Rail Project as an issue now, and I say that because
24 councilmembers and planning commission staff members
25 have been provided a copy of the Solano County

1 Disclosures and Disclaimers Advisory --

2 MAYOR PATTERSON: So, Mr. Dennis, you have to
3 wrap up.

4 MR. DENNIS: Oh, okay.

5 -- prepared by the Solano Association of
6 Realtors.

7 The document -- we signed that document in
8 2014. It had -- it did not include the issue of crude
9 rail -- Crude by Rail Project. That issue is now on
10 the revised April 15th document.

11 MAYOR PATTERSON: So we have a copy of that,
12 and feel free to submit anything else you have in
13 writing, and we'll take it under consideration. It
14 will be part of the record.

15 MR. DENNIS: Okay.

16 Thank you very much again.

17 MAYOR PATTERSON: Thank you very much.

18 Okay. Nancy Price, Tracy McCarthy,
19 Michelle Fernandez, I think I'm pronouncing that
20 correctly, and Allen Carroll.

21 All right. Nancy.

22 MS. PRICE: Yes.

23 Good evening. I'm Nancy Price from the
24 up-rail community of Davis, California, where the
25 railroad comes right through our city and downtown.

1 Thank you for this opportunity to speak.

2 In her letter dated 14, 2016 -- April 14,
3 2016, to Amy Million, on the matter of crude by rail
4 before you, California State Attorney General
5 Kamala Harris emphasized, "With this and other
6 projects like it, California is faced with a dramatic
7 increase in the amount of fossil fuels transported by
8 rail into the state for domestic processing and/or
9 shipment abroad, including highly flammable crude oils
10 from North Dakota and coal from Utah."

11 She also stated, "As the Final EIR
12 recognizes, these rail shipments will have significant
13 and unavoidable im-" -- "unavoidable impacts on
14 California's citizens and environment, including
15 adverse impacts on air quality and the potential for
16 an accident, causing death or severe personal injury."

17 Indeed, she highlights, as we all know, that
18 over the past years, there have been a large number of
19 crude-by-rail crashes in the U.S. and Canada that have
20 had catastrophic consequences, including derailment in
21 downtown Lac-Megantic, Canada, that killed 47 people.

22 The danger she highlights is because this
23 project is not just a simple expansion of the rail
24 facility as it is more or less represented.

25 Rather, this project is intended to

1 facilitate bringing ten -- 100 or 120 tank cars of
2 crude oil per day into California and to Valero on the
3 rail lines.

4 Even though trains from Roseville to Benicia
5 may be reduced to 50 cars at a time, twice a day, we
6 do expect this much larger trainload of crude oil by
7 tanker.

8 I want to draw your attention to the comments
9 of Davis resident Lynne Nittler that she submitted to
10 Amy Million, dated March 31, and presented at the
11 April 4 city council meeting and the further comments
12 submitted by her on April 5th.

13 I hope you have really read these and taken
14 the -- seriously her comments.

15 In these materials, she provides reference to
16 her PowerPoint presentation and to specific documents
17 on what she based her concerns about significant
18 pollution extreme hazards and potential of your
19 up-rail neighbors, such as myself living in Davis, of
20 being expendable as collateral damage.

21 Her remarks are based on the Oil by Safety --
22 Oil by Rail Safety in California Report, released in
23 June of 2014, that includes a map highlighting four
24 crude-by-rail areas' concerns.

25 As you are aware, this report provides a

1 final analysis of Governor Brown's interagency working
2 group on the dangers of introducing crude-by-rail
3 transport into California.

4 The importance of the map shows that -- shows
5 all the routes into California and around California,
6 and that, in fact, shows in red the many significant
7 stretches of high hazard rail over and parallel to
8 critical rivers, such as the Feather River Canyon
9 and -- and the Sacramento River, areas that if there
10 were to be a spill would be catastrophic, both in
11 terms of potentially contaminating water sources as
12 well as potentially igniting a -- a fire.

13 And there are various -- there are not very
14 many hazmat units posted in those areas to attend to
15 those accidents.

16 I think it's important to realize that our
17 objection to this is not a matter of fear. It's a
18 matter of reality.

19 As one of your speakers noticed, we have
20 reached a new understanding. More than that, we've
21 reached a tipping point where we actually must get off
22 fossil fuels. We must leave them in the ground.

23 We must recognize that more fossil fuels --
24 more -- energy based on fossil fuels means that local
25 communities, like Davis, Benicia, and the state, will

1 not be made -- be able to meet their climate action
2 plans as more carbon is in the air and as we
3 experience more global warming and catastrophic
4 extreme weather events.

5 I think it's very important that you realize
6 that your jurisdiction -- or the impact of your
7 decision is much broader than Benicia, as some of the
8 speakers have already highlighted.

9 So the question here is really a broad
10 question, not just about the Valeria -- the Valero
11 project, but what really is your civic and moral duty
12 to not only Benicians, but to the up-rail communities.

13 Is it acceptable to make your up-rail --
14 up-rail neighbors potential collateral damage victims?

15 Thank you very much.

16 MAYOR PATTERSON: Thank you, Ms. Price.

17 Any questions? Okay.

18 The next card is Tracy McCarthy.

19 MS. McCARTHY: Good evening. I'm -- I live
20 at 626 Hillcrest Avenue in Benicia. So I'm two houses
21 away from Francesca Park and the armory, which -- so I
22 listen to trains from time to time. It doesn't
23 disturb me, particularly.

24 And I do want to say that I have great
25 respect and appreciation for employees of Valero that

1 have volunteered times in the school districts here in
2 Benicia to help out at all levels.

3 I've lived here almost 40 years, raised my
4 daughters, two grandsons that are off to college, and
5 I've got two granddaughters at middle school and high
6 school.

7 So I really thank Valero for all of the
8 incredible support they've given to Grad Night, and
9 all that kind of stuff. So there's no question that
10 they benefit our community in many ways.

11 However, there are two words in the report
12 that I cannot shake from my head. One of them is
13 "significant," and the other one is "unavoidable."

14 That we are talking about significant and
15 unavoidable negative consequences, negative impacts,
16 because of the proposition for bringing in the crude
17 oil, and that, to me, is -- there's nothing else to
18 say: significant unavoidable negative consequences
19 that have been supported by outside resources that are
20 saying this is what we are facing.

21 So to me -- we moved here to Benicia because
22 it was safe. I've been here all these years because
23 it was safe, and I had -- I never even thought about,
24 like, environmental safety.

25 I'm a high school teacher. I teach

1 biological sciences and I have for years and years and
2 years. So I totally understand the bigger picture
3 about environmental impact.

4 And I'm just saying I urge you to be really,
5 really careful here. I do not -- I cannot in any way
6 support the idea that we are going to accept
7 significant and unavoidable consequences to the health
8 and safety of our community. Unacceptable.

9 So thank you.

10 MAYOR PATTERSON: Thank you very much.

11 Michelle Fernandez, and Allen Carroll will be
12 next, Ilonka Zlatar, I think I just destroyed
13 that last name, and then Nick Despota.

14 UNIDENTIFIED SPEAKER: It's okay.

15 MS. FERNANDEZ: Hi.

16 MAYOR PATTERSON: Hi.

17 MS. FERNANDEZ: My name is Michelle. I'm
18 12 years old, and I live in Benicia.

19 Because I'm only 12 years old, I can't vote
20 yet. So, no, you don't have to worry about my vote
21 this coming election --

22 (Laughter)

23 MS. FERNANDEZ: -- but there's a bigger worry
24 that you will face in the long term. It will be your
25 grandchildren, your nephews, your nieces, or your

1 friends' kids.

2 You will have to look them --

3 MAYOR PATTERSON: So --

4 MS. FERNANDEZ: -- in their eyes --

5 MAYOR PATTERSON: Okay. So I -- a couple
6 things. One, I need to put you on the clock, but the
7 other is can you just lean forward a little bit into
8 the microphone?

9 You're speaking just fine, but it's just a
10 little hard to hear.

11 MS. FERNANDEZ: Oh. Okay.

12 UNIDENTIFIED SPEAKER: Do you want this a
13 little lower?

14 MS. FERNANDEZ: Oh, no. It's fine.

15 You have to look them in their eyes and tell
16 them how good your decision was.

17 I have a right to vote, but I can't use it
18 yet, but my parents and my friends do. You also have
19 a duty to protect our health and safety, and that's my
20 future.

21 I want to live in a safe town where I don't
22 have to worry about global warming or any emissions
23 that are going to hurt me or Mother Earth.

24 So, tonight, I'm asking you, you seem to care
25 so much and know about the money Benicia would lose if

1 the project didn't pass, but can any of you tell me
2 what are you going to do for my future?

3 MAYOR PATTERSON: Thank you so much,
4 Michelle.

5 Any questions?

6 MS. FERNANDEZ: No.

7 MAYOR PATTERSON: Okay.

8 Michelle -- I'm sorry.

9 Allen Carroll, Ilonka Zlatar, and when I
10 called Nick, he'd already spoken. He was on the other
11 list. So, so noted. Thanks.

12 And then Russell Hands and then after
13 Russell Hands --

14 Chris Brown, I have your card, but you've
15 already spoken.

16 Where are you?

17 You want to -- are you here?

18 He spoke at the last one. So, so noted.

19 Okay. Allen Carroll.

20 MR. CARROLL: Good evening, Mayor Patterson
21 and Members of the Council.

22 My name is Allen Carroll, and I live in
23 San Jose. So I'm down rail from you, but there's a
24 similar project that would send oil trains through
25 San Jose on their way to a refinery in San Luis Obispo

1 County.

2 My home is about a hundred yards from a
3 rail line that would be used by those trains. So I do
4 have a personal interest in these proceedings, and I
5 want to add my voice to those opposing the Valero
6 oil-by-rail project.

7 Foremost, of course, is the issue of safety.
8 I worry not only about the statistical probability of
9 a serious accident, but also that these pipelines on
10 wheels will attract terrorists intent on incinerating
11 vulnerable parts of any city through which such trains
12 would pass.

13 The rail right-of-way is hardly protected at
14 all. It's not hard to see that a dump truck or a
15 backhoe driven onto the rails, or who knows? An
16 improvised explosive device, could cause a derailment
17 and explosion, with major loss of life.

18 I recall comments after the 9/11 attack, that
19 although there were sufficient clues in advance, law
20 enforcement authorities couldn't connect the dots and
21 prevent the attack.

22 Well, here's your dot. Please feel free to
23 connect it.

24 Second, I feel that there is a need to
25 assertively uphold cities' rights to regulate land use

1 decisions within their jurisdictions and not, by
2 neglect, concede any authority to agencies, such as
3 the Surface Transportation Board.

4 Appeals to preemption are completely
5 spurious, and you should emphasize this in your
6 decision to support the planning commission's
7 recommendation and reject the project.

8 On a larger scale, because of greenhouse gas
9 pollution and global warming, it is clear that
10 California, and the nation as a whole, should be
11 spending greater effort to diminish our use of fossil
12 fuels and reduce or even eliminate further buildout of
13 fossil fuel infrastructure.

14 It is through government action at all
15 levels, most particularly at the local level, that the
16 transformation of our energy system to a low-carbon
17 system must be pursued.

18 We're quite accustomed to making the
19 sacrifices needed to help our children go to college
20 or get started in a home.

21 Why should we hesitate when it comes to the
22 actions needed to ensure that they can inhabit a
23 livable planet?

24 Besides, the Valero project is probably a bad
25 investment.

1 It's time to do the right thing. The cost of
2 "business as usual" in this environmental struggle is
3 far too high.

4 For all these reasons, on behalf of myself
5 and the members of 350 Silicon Valley, I urge you to
6 respect the planning commission's recommendation and
7 reject the Valero project.

8 Thank you.

9 MAYOR PATTERSON: Thank you very much.

10 Any questions of Mr. Carroll?

11 All right. Thank you so much.

12 The next card is the name that I keep
13 mispronouncing, I'm sure, Ilonka Zlatar.

14 And you're going to correct me when you come
15 up here?

16 MS. ZLATAR: Sure.

17 Hi. My name is Ilonka Zlatar, and I'm an
18 environmental scientist living in Sacramento, and I
19 come here today in opposition of the Valero proposal.

20 My office, the home I share with my loved
21 ones and my adorable four-month old puppies are all
22 along the rail tracks and within the blast zone, and
23 I'm very concerned with the very real possibilities of
24 a disaster along the rail lines.

25 Please consider the concerns that have been

1 brought before you by the Attorney General regarding
2 both the validity of the legal arguments presented and
3 the weaknesses of the environmental report --
4 environmental impact statements and possibilities for
5 remediation.

6 Consider the denial of similar projects in
7 nearby communities, like San Luis Obispo, and
8 throughout the country.

9 Consider the voices and concerns of your
10 citizens and of communities, like Sacramento and other
11 up-rail communities, that will be affected with the
12 air quality and horrible possibilities for derailment
13 and explosions in our neighborhoods.

14 Consider the short-term benefits and
15 long-term disaster possibilities that would come with
16 this project.

17 Please deny this short-sighted investment
18 that will cause more harm than good. I urge you to
19 deny this dangerous project for the sake of your
20 community and mine and for the earth's climate.

21 Thank you.

22 MAYOR PATTERSON: Thank you very much.

23 Okay. Russell Hands and Spence Rundberg,
24 Phyllis DeBois.

25 MR. BROWN: Hi, your Honor. I heard you call

1 my name?

2 MAYOR PATTERSON: I did, and because you've
3 already spoken, you don't get another bite of the
4 apple.

5 MR. BROWN: Okay. Well, I wouldn't be biting
6 the same apple. If you'll recall, I was asked to come
7 up and introduce a group from Sacramento, which I
8 did --

9 MAYOR PATTERSON: Uh-huh.

10 MR. BROWN: -- but I didn't get to make my
11 comments.

12 We had quite a bit of an exchange that night,
13 and I thought I heard you all saying, "Well, he can
14 always come back as an individual later," and, thus, I
15 came back.

16 MAYOR PATTERSON: So that's why your card was
17 in the stack of cards.

18 MR. BROWN: Tonight.

19 MAYOR PATTERSON: That sounds reasonable. If
20 there's no objection, I will have you speak.

21 Okay.

22 MR. BROWN: Okay.

23 Well, speaking just as an individual -- and
24 thank you for the opportunity to introduce the folks
25 from the last time, but this time I'm just going to

1 say what I came to speak the last time and didn't get to.

2 I became aware of the risk of all trains due
3 to the horrible catastrophe that happened in
4 Lac-Megantic, Canada, a couple of years ago and have
5 been studying the issue since then.

6 I have spent a career as an environmental
7 consultant and a person who's considered an expert in
8 areas of water conservation, but I've also read more
9 than my fair share of EIR documents over a 30-year
10 career.

11 The document that you have in front of you
12 says very clearly that the risks of this project are
13 significant and unavoidable, and under California CEQA
14 law, that means that your options are to turn it down
15 or to find some reason to override those risks.

16 The staff's recommendation has been to say
17 that essentially it has to do with the inability to
18 evaluate that. In my concluding remark, I will
19 directly address that.

20 But before that, I want to say that over the
21 last two years, since the disaster in Lac-Megantic,
22 there have been more than a dozen similar explosions.
23 Fortunate for all of us, they haven't cost nearly so
24 many lives.

25 But they have caused things like a mile-wide

1 evacuation in Columbus, Ohio; residents of the
2 community of Gainford, Alberta, evacuated; flames
3 300 feet high in Alabama; an evacuation of over a mile
4 in New Brunswick, Canada.

5 Four lanes of U.S. Highway 98 were closed in
6 Mississippi. Approximately, 50 homes were evacuated
7 and Highway 5 shut down in Saskatchewan, and so on.

8 These are not accidents that are small. They
9 cause large consequences. Some of them have had fires
10 that have burned on for days or more than 24 hours.
11 There -- there's a reason that the document says
12 they're significant and unavoidable.

13 All of these trains were run by professionals.
14 It's not a question of the professionalism of Valero
15 or the way the rail line is done safely. It's a
16 question of putting very heavy materials into railcars
17 that are not designed for these loads.

18 The DOT-111 car is not designed -- and even
19 the new cars that have been -- they're supposed to be
20 more safe, have been involved in the most recent
21 accident in North Dakota, which, again, a crude oil
22 fire which burned for -- for several days and forced
23 the evacuation of nearby residents. That was with the
24 safer cars. And that's what we're looking at here.

25 And the staff came to the right conclusion,

1 but then they said due to the advice they got from
2 their attorney that you can't do the one thing CEQA
3 says that unless you have an overriding concern, you
4 have to accept that and turn down the project.

5 They said, "Oh, you don't get to make that
6 decision to turn it down," because, legally, you know,
7 you can't make that decision, which seems a very
8 strange thing to do because California law is set up
9 so that you are responsible for enforcing the laws of
10 the state here in the community of Benicia.

11 All of us are dependent on you, as we are
12 anytime we go into any town, that their local law
13 enforcement is enforcing the laws of the state.

14 It's part of being in this great republic of
15 ours, that we trust local communities to enforce the
16 safety of all of us, that -- as we go through those
17 communities.

18 I've enjoyed lunch down here at your nice
19 little docks at Sailor Jack's and -- and know that you
20 have a community that's worth promoting as a tourist
21 location, not just as a place for Valero.

22 But they're basically saying you don't get to
23 make the choice of looking at it that way, of looking
24 at it as safety, and, you know, "This is too high a
25 risk project, and, therefore, we turn it down."

1 But, in fact, the most senior attorney in the
2 state of California wrote you a letter and said, yes,
3 you do. And I would take that under her advisement,
4 that as that most senior attorney, the State Attorney
5 General has the authority to understand the laws that
6 you are responsible for enforcing.

7 And I thank you for listening to those of us
8 who are up rail. It's so important that you recognize
9 that these impacts are far beyond simply the gates of
10 Valero.

11 Thank you very much.

12 MAYOR PATTERSON: Thank you very much, Chris.

13 Any questions?

14 Okay. Russell Hands?

15 MR. HANDS: Hello, I'm Russell Hands. I'm a
16 28-year resident of Benicia. I am also the chief of
17 surgery for Kaiser in Vallejo and Vacaville and the
18 founding trauma director for our Level II trauma
19 center in Vacaville.

20 I've also raised two children who have been
21 through Benicia schools and now are proudly on
22 on their -- on their lives on their own, and now I'm
23 an empty nester living in this town.

24 I really appreciate this town. I think it's
25 a terrific place to live, but I have my concerns.

1 Valero has been a good partner for the City
2 in many ways, and it has provided jobs. It's provided
3 an opportunity for the city coffers to swell. I
4 suspect maybe even some of that money has found its
5 way into some campaign war chest.

6 (Laughter)

7 MR. HANDS: But at the same time, I want to
8 say that -- that there's an inherent risk in this type
9 of industry that we cannot mitigate to zero.

10 And I want to put a face on, as a person who
11 has taken care of injured oil refinery workers, that
12 this risk not only is to the city of Benicia and to
13 the property values and to the children and to our
14 reputation, but it's also going to be to the workers
15 of Vallejo -- or Valero.

16 As it turns out, I wound up taking care of a
17 burn victim from a terrible fire that occurred in
18 Contra Costa County, and you may remember a few years
19 ago, a tower caught fire and -- while workers were on
20 it doing some work at that time.

21 And I wound up somewhat later in the -- in
22 the illness taking care of one of the burned workers
23 who had been in the hospital almost two months at that
24 point, sustained multiple, multiple operations, very
25 painful rehabilitation, but was a survivor. This was

1 going to be a survivor of this, but, certainly, life
2 would never change again.

3 So as we hear this testimony about bringing
4 in new types of crude oil that are volatile, where we
5 cannot make sure and guarantee the risk is zero, we
6 have to say "no" to crude oil by rail for Benicia.

7 Thank you.

8 MAYOR PATTERSON: Thank you very much.

9 Vice Mayor Hughes, did you want to pursue
10 that? I'd just let it go, frankly.

11 VICE MAYOR HUGHES: No. I just --

12 MAYOR PATTERSON: If it happen -- if it
13 happens again, I'll -- I'll take --

14 VICE MAYOR HUGHES: I would appreciate it. I
15 think it's disrespectful.

16 Thanks.

17 MAYOR PATTERSON: I -- I know, but it does
18 happen from time to time.

19 Spence Rundberg, Phyllis DeBois, James McDonald.

20 And while Spence is coming forward, I'll call
21 some more names.

22 Carol Dalton, Reverend Will McGarvey,
23 Sharon McAdams.

24 Spence.

25 MR. RUNDBERG: Hello.

1 Mayor, Councilmembers, I appreciate the
2 opportunity to be able to address you today on this
3 extremely important issue.

4 You probably haven't seen me here in a long
5 time because I'm retired now. I used to come here and
6 talk to you about programs that we ran. Not tonight.

7 Tonight I'm here because of a major concern
8 that I have, and that is the -- the thought that you
9 are considering the fact that you might not be able to
10 make a decision on this, that maybe this I- -- is it
11 ICCTA; is that with the board? -- that Valero is -- is
12 approaching to try and preempt this.

13 And I have read the letter from Kamala Harris,
14 actually, from Scott Lichtig on her behalf, and I -- I
15 think she has handled every issue that you are
16 presented with and handled it very well and said, "No,
17 this is your decision."

18 And the -- the part that scares me the most
19 is that if you were to not listen to these people
20 behind me, if you were not to listen to the concerns
21 that have been expressed, to the -- to the issues that
22 are out there regarding this project and the dangers
23 that are involved with it;

24 And the fact that the planning commission was
25 a nine -- or excuse me, a unanimous decision -- there

1 are not nine of them. I'm sorry.

2 -- a unanimous decision, and they listened
3 very carefully. A lot of testimony. I listened to a
4 lot of that, not as much as all of you, I'm sure.

5 But I just wanted to -- I -- I brought a
6 piece of the -- the letter, that I wanted to make
7 sure -- I know all of you have had the chance to read
8 it, but I would just like to read this into the
9 record.

10 That "Union Pac-" -- "Union Pacific," this is
11 at the very end of the letter, "has no vested right in
12 the completion of Valero's project, and denial of
13 Valero's project would not prevent or unreasonably
14 interfere with Union Pacific's rail operations."

15 So it's not -- it has nothing to do with any
16 other board at all. This has to do with you saying,
17 "I don't want that danger in my community. It's --
18 it's too much."

19 They are a wonderful operation. They've been
20 doing fine. A lot of the time I'm very happy with it,
21 but I'm not happy with this thought of -- of bringing
22 a hundred railcars a day full of dangerous crude into
23 our community and then having it processed right here.

24 And I'm asking you all to vote your
25 conscience and to listen to what's being said. This

1 is really important.

2 If you ever say -- if -- if you say "yes" to
3 this, it will change our community, in a negative way,
4 forever. Well, there's no going back at that point.

5 So, please, please, listen and say "no."

6 And thank you very much.

7 MAYOR PATTERSON: Thanks, Mr. Rundberg.

8 Any questions? Okay.

9 The next one is Phyllis DeBois and then
10 James McDonald, Carol Dalton, Reverend Will McGarvey,
11 and Sharon McAdams.

12 MS. DeBOIS: Good evening -- good evening,
13 Mayor Patterson and City Councilmembers.

14 I am Phyllis DeBois. I have lived in Benicia
15 for over 38 years, the longest I have lived in any
16 city, and after all this time, I can say that this is
17 my home.

18 There are many things -- many reasons I love
19 Benicia. I love the water, the history, the artist
20 community, the feeling that we are a small town, a
21 small town where we take care of ourselves and each
22 other.

23 In the Attorney General's letter of
24 April 14th, she responds to Valero's appeal of the
25 planning commission's decision.

1 Attorney General Harris disagreed with
2 Valero's assertion that ICCTA prohibits the City from
3 considering the rail-related impacts and public safety
4 risk when deciding whether to approve or deny the
5 Crude By Rail Project.

6 She says, "A local agency is vested with
7 discretionary authority to determine whether to
8 approve a project within its jurisdiction.

9 "California law requires the agency to
10 analyze and disclose the full scope of the project's
11 foreseeable environmental impacts.

12 "This requirement ensures that the agency is
13 fully informed of the consequences of its action and,
14 thus, that any discretionary action is ultimately in
15 the public interest.

16 "This legal duty is not circumscribed by
17 ICCTA for this project. In fact, for Benicia to turn
18 a blind eye to the most serious of the project's
19 environmental impacts, merely because they flow from
20 federally regulated rail operations, would be contrary
21 to both state and federal law."

22 The Final EIR recognizes that these rail
23 shipments will have significant and unavoidable
24 impacts on people and the environment.

25 The city staff concluded that the project's

1 benefits do not outweigh the risks, but city staff
2 claimed that federal preemption prohibits Benicia from
3 considering these risks when determining whether to
4 approve this project.

5 Valero agrees and asserts that your hands are
6 tied by the law of federal preemption; however, the
7 Attorney General does not agree.

8 "We disagree that the City is prohibited from
9 considering the project's 11 significant and
10 unavoidable rail-related environmental impacts when
11 exercising its local land use authority."

12 In her letter, she discusses the scope of
13 preemption under ICCTA and concludes that denying
14 Valero's project would not interfere with
15 Union Pacific rail operations, clearly refuting
16 Valero's assertion that your hands are tied.

17 Based on all the documents, questions and
18 answers, public comments and your own wisdom, I urge
19 you to deny Valero's request for a delay and to uphold
20 the planning commission's unanimous decision.

21 Thank you for your time and your attention.

22 MAYOR PATTERSON: Thanks very much.

23 Any questions? Okay.

24 James McDonald and Carol Dalton,

25 Reverend Will McGarvey.

1 I wonder if they're coming from the other
2 room.

3 Okay. Carol -- is Carol here? All right.

4 Rev- -- Reverend Will McGarvey, Sharon McAdams.

5 MS. McADAMS: Good evening. My name is
6 Sharon McAdams, and I've been a resident of Benicia
7 for 25 years.

8 I've kind of been following this issue from
9 afar for several years, kind of keeping informed, but
10 also knowing that we're lucky here in Benicia that we
11 have some wonderful groups of involved citizens who --
12 who I pretty much trust to -- to -- you know, to -- to
13 do the right thing and research these different
14 things.

15 It takes -- it takes so much time and effort
16 to do that. So that's one of the reasons I haven't
17 been down here before.

18 But I did decide it was time that I -- I do
19 my civic duty and -- and get educated. I watched the
20 planning commission meetings, all, I think I was, four
21 nights of them for, you know, five hours. I commend
22 them for going through all that.

23 So I wanted to say, I -- I -- I can't talk in
24 a lot of detail on this, but I did want to come down
25 and express my concerns on several issues.

1 I really feel like if we're not a part of the
2 solution, we're a part of the problem, and I couldn't,
3 in -- in good conscience, let this opportunity go by
4 without, you know, giving you my opinion on this.

5 Benicia is my home. We raised our family
6 here. We're in the process of doing a major home
7 remodel, and we'll likely retire here and, hopefully,
8 some day, have grandchildren coming here to visit.

9 It's so important to me that this community
10 remain safe and free from unnecessary risk, and that
11 is what I think the Crude by Rail Project is,
12 unnecessary risk.

13 My closeness to this project, I actually work
14 in the industrial park. I pass the track multiple
15 times every day. I've sat at the intersection at
16 Bayshore and Park Road.

17 I, every day, come off the off-ramp there at
18 Bayshore off the freeway, and there's rarely a day
19 anymore that goes by that when I do that, I don't
20 think about the crude by rail and -- and the possible
21 blast zone. In fact, I -- I think our office is
22 probably within that blast zone.

23 I also want to thank all the community
24 volunteers, the Benicians for a Safe and Healthy
25 Community. I feel like you have represented a lot of

1 us who haven't been coming down here to these
2 meetings. I really appreciate you diving into these
3 issues and know that you represent a lot of our
4 concerns.

5 And to the planning commission, it was very
6 obvious by watching those meetings that they'd all
7 taken hours of time, thorough questions and
8 deliberations.

9 And I -- I really think, you know, they gave
10 it wholeheartedly their -- their best shot, and they
11 took courage and -- and made the right decisions for
12 the citizens of Benicia and up rail.

13 They considered all aspects of the project,
14 the process and the law. And most importantly, I
15 think they used their common sense and conscience to
16 make sure the human side of the issue was not
17 overlooked.

18 So I now want to just talk a little bit about
19 the risks and benefits, both the economical and
20 environmental, as I -- as I see them.

21 Supposedly, your reason for approving this
22 project would be if there was some benefit to Benicia.

23 Well, as far as -- Valero has been trying to
24 claim that this is good for Benicia, and I did listen
25 to the analysis about potential of bringing jobs in.

1 And from what I heard, it -- it -- it's not,
2 you know, not the best analysis. There might be some
3 short-term jobs. I really don't believe that that's
4 necessarily going to be an economic benefit.

5 I do think that there's a huge detriment to
6 other businesses in the industrial park and to
7 homeowners, as far as traffic, safety, and just the
8 reputation of the community, and I just don't think we
9 need the crude by rail for Benicia's economic success.

10 I personally would rather see us pay higher
11 taxes or have fewer services in town as opposed to
12 crude by rail.

13 Valero, I know, has a good safety record, and
14 I think that's great, and I -- I think the good things
15 I did hear about the interagency training between the
16 fire departments, and things, that's to be commended.
17 There's lots of talk about them being prepared for
18 disasters.

19 What I did not hear was any talk about
20 preventing disasters. I don't think anybody can
21 really do that. I think you can be prepared to handle
22 them, but...

23 Some of the reasons given to lessen some of
24 the safety problems was that we have federal
25 regulations for tracks, railroads, things like that,

1 but those regulations are largely influenced by the
2 rail and oil industries, and a lot of the stricter
3 standards are just being phased in.

4 So my suggestion would be that if we decide
5 at some point in time that this is a project that we
6 want to approve, it should be at the point in time
7 when the -- when the federal regulations are there so
8 that we can assure everyone's safety.

9 Yes, Valero is a good neighbor. I think --
10 you know, it's a shame that people think that maybe if
11 we're opposed to this project we're somehow against
12 Valero or fossil fuels. That's definitely not me.

13 I appreciate all they've done for the
14 community, their donations and the schools, but in my
15 mind, that's irrelevant to this particular issue.

16 I understand it's Valero's job to try and
17 increase their profits, and I, you know, can't really
18 fault them for bringing the project up initially, but
19 the Negative Declaration in the beginning was clearly
20 deceptive and not in the best interests of this
21 community.

22 And now that the community and planning
23 commission have spoken so strongly, a good neighbor
24 would respect these views and not be pursuing this any
25 further.

1 Yes, there's money to be made, but at the
2 cost of our health and safety, it's not worth it.

3 And as Mr. Hands stated, I think if there's
4 any percent risk in this type of project, it's not
5 worth it to our community.

6 So in conclusion, I'd like to ask you to deny
7 the project and to re- -- and deny the request for
8 delay.

9 I just don't see any -- listening to comments
10 tonight, I failed to hear from anyone who is in favor
11 of the project how it's going to benefit our community
12 in any way, and certainly the -- the detriments are
13 there, both economically, both environmentally.

14 So I urge you to look out for the safety and
15 well-being of the Benicia citizens. Use your common
16 sense. Don't be intimidated by some of these legal
17 arguments, which we're finding, as has been said, the
18 top attorney in the coun- -- in the state has said
19 that's not an issue to worry about.

20 So from a purely analytical standpoint, I
21 find it very hard that you could justify approving
22 this project.

23 MAYOR PATTERSON: Thank you, Ms. Adams [sic].

24 The next card is James McDonald and
25 Reverend William McGarvey and then Bodil Fox, Sue --

1 is it Sue Kibb [sic]? I can't read the...

2 Hello.

3 REVEREND MCGARVEY: Good evening, Mayor,
4 City Councilmembers.

5 I'm the Reverend Will McGarvey. I'm the
6 executive director of The Interfaith Council of
7 Contra Costa County. I'm also a pastor at a
8 Presbyterian United Church of Christ congregation in
9 Pittsburg, California, downwind of the Valero
10 refinery.

11 How many of you serve on the Bay Area Air
12 Quality Management District?

13 MAYOR PATTERSON: I did for a very short
14 while. I was removed because we didn't meet the
15 population requirements, but now Mayor Davis from
16 Vallejo is representing the cities of Solano County.

17 REVEREND MCGARVEY: Thank you.

18 I think one of the goals that they've been
19 setting for themselves is that by 2030, they're trying
20 to decrease the emissions to 80 percent of 1990
21 levels. There's -- I might have the numbers off
22 there.

23 But in order to meet those Bay Area regional
24 goals in a region with five refineries, each refinery
25 needs to start decreasing the amount of oil that

1 they're refining to 60 to 70 percent of what they're
2 doing now in order to clean our air and to address the
3 real risk of climate change and sea level rise that
4 are expected to occur worldwide.

5 Some of the estimates of sea level rise that
6 we have seen with the last reports from the
7 international protocol on climate change have been
8 deemed too conservative because of the rapid melting
9 of Greenland and the western Antarctic shelf.

10 And there are now estimates that between --
11 over the next hundred years, we may see between 50,
12 70, or 100 feet of sea level rise.

13 If we don't start to address now, as soon as
14 possible, the amount of emissions from carbon
15 emissions and refining -- and our agriculture makes up
16 25 percent of carbon emissions in our -- in our
17 culture. There's a -- a huge number of other
18 industries that contribute to this.

19 But we have to start addressing it in the
20 refineries first to be able to make the jump to a
21 renewable economy.

22 Dr. Mark Jacobson at Stanford has pointed out
23 and has actually looked at a plan and made a plan for
24 each and every state, that -- that they can become
25 100 percent renewable by 2030 or 2040.

1 The plan, based on our sunlight and wind and
2 geothermal resources in California, says that we could
3 become 100 percent renewable by 2030.

4 This is going to cause an investment carbon
5 bubble that we're starting to see in the coal industry
6 as six coal -- huge coal companies have gone bankrupt
7 in the last year and -- because we've figured out that
8 we need to keep that coal in the ground if we're going
9 to be able to make it to any of the goals, regionally
10 or nationally, to be able to make the change necessary
11 to decrease the adverse effects of climate change.

12 So I really encourage you to think about our
13 city as a part of this whole region and to also think
14 about the health disparities that we can decrease
15 downwind, as well as up rail, by decreasing the amount
16 of petroleum and other products that are being refined
17 here and set an example for the other cities in the
18 Bay Area that we can take the step forward.

19 Each of these companies need to start
20 decreasing the amount of oil that they're refining,
21 and each one of these companies are going to their
22 city and their county trying to beat the other ones to
23 be able to ensure that they're able to stay afloat
24 and -- and make it a competition between these
25 refineries.

1 Maybe we need to ask each of them which one
2 of them is going to survive, because eventually, when
3 we get to a -- a carbonless economy, we're not going
4 to need as much oil products.

5 Maybe every two or three years we need to be
6 encouraging one of these refineries to close as we
7 move to a -- an electric and a renewable economy.

8 So I encourage you to -- to be
9 forward-thinking, to think about how -- what we can do
10 here in Benicia can set an example for Richmond and
11 Pinole, for Martinez and for Concord, and how we can
12 start moving towards this carbon-free economy that is
13 so necessary to protect our own waterfront.

14 I really like going to our historic downtown,
15 but as we continue to let Valero and other refineries
16 do what they're doing, we're putting our own downtown
17 at risk, based on the sea level rise estimates that
18 are coming from the best scientists in the world.

19 Thank you.

20 MAYOR PATTERSON: Thank you very much.

21 Any questions? All right.

22 Next card is Bodil Fox.

23 So -- Bodil is first.

24 MS. KIBBE: Mayor Patterson --

25 MAYOR PATTERSON: Excuse me.

1 MS. KIBBE: -- City Council --
2 MAYOR PATTERSON: I'm sorry. Excuse --
3 MS. KIBBE: -- thank you for listening. I'm
4 Sue Kibbe --
5 MAYOR PATTERSON: Okay. Well, I called --
6 MS. KIBBE: -- of Highlands --
7 MAYOR PATTERSON: -- "Bodil" first.
8 Do you want to -- do you guys mind if you
9 switch?
10 MS. FOX: No.
11 MAYOR PATTERSON: Okay, fine?
12 MS. KIBBE: Oh, I don't care.
13 MAYOR PATTERSON: Sue? Go ahead.
14 MS. KIBBE: You did call my name. It's
15 just you didn't --
16 MAYOR PATTERSON: Go ahead.
17 MS. KIBBE: -- pronounce it correctly.
18 I want to add my voice of opposition to both
19 Valero's request for a delay and to the proposed
20 offloading construction project at the refinery.
21 The petition to the Surface Transportation
22 Board by an oil company is invalid and designed to
23 keep the City thinking that all is preempted.
24 And as the California Attorney General has
25 pointed out, it is within your discretionary authority

1 to make a decision in the public interest, taking all
2 risk factors into account.

3 There is certainly ample justification to
4 deny this project, based on its environmental impacts
5 here in Benicia alone.

6 As numerous previous speakers have pointed
7 out, and as Dr. Phyllis Fox has written, "The impacts
8 to air quality from onsite fugitive and locomotive
9 emissions would be far more than they are estimated in
10 the EIR."

11 But I want to talk about the unintended
12 consequences. The law of unintended consequences
13 states that "Actions of people, especially of
14 governments, always have effects that are unan- --
15 unanticipated or unintended."

16 Economists have acknowledged this power for
17 centuries, and for just as long, politicians have
18 largely ignored it.

19 So for the sake of argument, let's pretend
20 for one horrifying moment that you disregard the
21 planning commission's unanimous findings and all the
22 expert testimony and give Valero its permit.

23 During construction that will last at least
24 25 weeks, there will be increased noise, traffic
25 delays, and air pollution.

1 Construction takes much longer, however,
2 because, let's be frank, the industrial park was never
3 designed for heavy rail traffic, and the
4 infrastructure is woefully inadequate.

5 Finally, the trains roll in, carrying one of
6 the most toxic and flammable chemicals on the planet,
7 and the entire industrial park is within the blast
8 zone, as well as a large residential section of the
9 city.

10 Property values go down, property taxes go
11 down, and the City, which was at one time concerned
12 that 20 percent of its revenue was dependent upon one
13 industry, finds itself even more dependent upon one
14 industry, and an unsustainable one at that.

15 Now, pollution from these trains, such as
16 benzene and fugitive emissions from reactive organic
17 gases, which are ozone precursors, from the unloading
18 of crude oil are nonstop, 24 hours a day, 365 days a
19 year.

20 Valero is cited for air quality violations
21 and pays a small fine, but Mayor Patterson's allergies
22 keep getting worse.

23 (Laughter)

24 MS. KIBBE: Traffic delays on Park Road and
25 Bayshore Road from these 3,200-foot-long trains are

1 daily aggravations, until there is a traffic accident
2 due to the backup or a fatality within the industrial
3 park due to the inability of first responders to reach
4 the scene, and the City is sued.

5 Well, the industrial park is not so
6 attractive these days to new businesses given the poor
7 air quality, noise, traffic delays, and menacing
8 presence of these tank cars coming through four times
9 a day, and there are more and more vacant buildings.

10 Then there is Benicia's reputation, much
11 tarnished as the city responsible for these ominous
12 trains that are polluting the air and threatening the
13 environment, the lovely faith thriving arts community
14 by the bay becomes known as simply "BOB," or "Big
15 Oil's B-i-t-c-h."

16 (Laughter)

17 MS. KIBBE: Dooms Day, you say. None of this
18 is likely to happen? Well, perhaps not all, but like
19 most folks, you ignore the law of unintended
20 consequences at your peril.

21 As the editorial in San -- Saturday's
22 "San Francisco Chronicle" stated, quote, "The city
23 council must use its legal authority to do the right
24 thing for Benicia and the planet. Deny the permit,"
25 end quote.

1 Thank you.

2 MAYOR PATTERSON: Thank you very much.

3 Try to remember to contain yourselves.

4 Ms. Bodil?

5 And then next is Bete Bruell (phonetic),
6 Don Stork, Jackie Prange.

7 Ms. Fox.

8 MS. FOX: Good evening, Mayor Patterson and
9 Councilmembers. I'm Bodil Fox. I'm a Benicia
10 resident.

11 This is the first time I'm speaking to you,
12 but I've been here, coming to the crude by rail, for
13 the last two, three, years to listen because I like to
14 be informed on both sides, to hear what -- what's
15 really going on and to understand them.

16 But so here's what I found.

17 I found that in the past, it seemed like the
18 oil was pumped easily out of the earth; however, now
19 it is much more labor-intensive and dangerous to reach
20 and to transport. It seems like we are now scraping
21 the bottom of the barrel.

22 In North Dakota, we're fracking to getting it
23 out of the earth. In Alberta, Canada, we're adding
24 benzene to get it into a train and then sending it
25 along on an aged American railroad system, traveling

1 through towns and endangering everyone along the way.

2 Each of these steps are wrong.

3 So with all this wrong, what is right for
4 Benicia?

5 As I look around, I see the Bay Area is the
6 forefront of new renewable energy. There are
7 windmills out in the hills. There are solar panels on
8 the roofs. If you look at the parking lots out here,
9 they're full of hybrids and electric cars.

10 As of last week, the Tesla company received
11 325,000 orders for their new fast electric car.
12 People are excited about the new energy, and they want
13 to be part of this, and we can be part of this.

14 What's right for Benicia, though, is
15 diversity. Like all good investors, we need to
16 diversify. We need to have our revenues come from
17 many different areas, different sources.

18 And we know that the oil is running out in
19 the not-too-distant future. So it's not -- so let's
20 not put our efforts into that stream of revenue.

21 Let's diversify it by focusing in on our
22 industrial park, support new businesses there, both
23 local and those in Silicon Valley that have outgrown
24 their facilities.

25 Let's provide high-speed internet, good

1 route, create good jobs out there. Let's not lose
2 valuable time or money for their employees to be
3 sitting at the train tracks while the dangerous
4 trails -- trains roll by.

5 Let's show them that their time and their
6 safety is important, and let's move forward, embrace
7 the future and support -- and do not support an old
8 technology.

9 So I urge you to support the planning
10 commission's decision and reject the Valero expansion
11 permit and to think big and look to the future with
12 open arms, because it's going to be here in a blink of
13 an eye.

14 We don't want to be the city that sat on our
15 hands watching the oil industry and our revenues
16 dwindle and wonder why we were left behind.

17 Thank you.

18 MAYOR PATTERSON: Thank you very much.

19 Any questions?

20 Okay. Bet -- Bete Bruell or Bet Bruell,
21 Don and I think it's S-t-o-c-k -- you guys got to work
22 on your printing here -- Jackie Prange, Jessa Moreno.

23 MR. STOCK: I will work on my printing.

24 Sorry about that.

25 My name is Don Stock. I'm a resident of

1 Benicia. I've worked in Benicia for 35 years. I've
2 lived here for 28 years.

3 And, frankly, it frustrates me when I come to
4 the planning commission meetings and come to these
5 meetings and I hear people from outside our community
6 coming in and wanting to tell us how to run our
7 community.

8 I'm always intrigued when they say, "Deny
9 this," that "Preemption isn't" -- you know, "isn't in
10 play here."

11 You know, Karmela Harris [sic], you know, is
12 she willing to come down here and represent our city
13 when we're sued because we denied this project?

14 I hear the -- I hear things -- so many
15 ramblings by the people against this project. I heard
16 "Tesla, 350,000 car orders." I think they make
17 150,000 cars a year.

18 You know, to meet the -- the guidelines of
19 the -- the new Assembly bill, I think we have to put
20 another 13 million electric cars on the road in the
21 next five or ten years. It's just -- it's just not
22 feasible.

23 California, I -- I think, is the No. 3
24 energy -- petroleum energy user in the world. You
25 know, China is No. 1, United States is No. 2,

1 California is No. 3. So, you know, it would be nice
2 to get rid of petroleum, but it's just not going to
3 happen.

4 You know, I -- I mean, we see the -- the
5 amount of people moving to the city of Benicia, you
6 know, and you look around the rest of the state,
7 and -- and it's a much higher percentage.

8 I mean, to think that we're going to
9 eliminate one of the refineries is what I heard one
10 person say? This is -- this is foolish thinking.

11 You know -- you know, I'm -- I knew there was
12 a refinery here in Benicia when I moved here. I
13 accepted that. They've been a good neighbor.

14 I -- I'm amazed that people live here and
15 think that we shouldn't have a refinery here. It's
16 just amazing to me. You know, if -- if you don't like
17 the refinery, don't live here. I mean, my gosh.
18 They're a great neighbor, you know.

19 And property values? You know, I helped my
20 son buy a house three years ago. It's -- it's almost
21 doubled in value. I mean, to hear that property
22 values are -- are going down, that's foolishness.

23 I -- I think it's -- it behooves you to help
24 grow our local businesses. You know, I've never -- I
25 haven't heard of -- of any of the local businesses --

1 I shouldn't say "any." There's probably one or two --
2 that are against this project.

3 People out in the industrial park, they're
4 for this project. They believe in it. They believe
5 in Valero as a neighbor.

6 You know, to think that we can't work out
7 whatever few minor problems?

8 Traffic? I mean, if I'm going down there and
9 it's during the day, there's -- there's three or four
10 different routes you can take. It's not like you have
11 to drive up and park at those rail tracks and wait
12 there.

13 You know, I -- I heard someone saying, you
14 know, we shouldn't be bringing this -- this crude in
15 by rail. So where -- what do we do? We buy it from
16 Venezuela? People -- people that -- that -- that send
17 paratroopers in on democracy?

18 You know, get oil from Saudi Arabia? you know,
19 places where they don't let women vote, you know,
20 where they -- where they murder homosexuals?

21 I mean, I could go through all the other
22 countries -- Iran? -- you know, countries that -- that
23 hate the United States. I would think we should be
24 trying to improve our domestic oil use.

25 You know, the -- the oil companies, you know,

1 know that the oil is going to -- they want to see
2 alternative energy systems. They're not against it.
3 Chevron's got a thermal and solar -- solar company
4 that they've got out there.

5 So -- you know, I had so many notes because I
6 kept trying to say, "Well, I want to cover this."

7 You know, the EIR was commissioned by the
8 City. The EI- -- EIR recommended this project. The
9 city staff recommended this project. For you guys to
10 vote against it, you're wasting my tax dollars.

11 You know, if you will vote against it, I have
12 no doubt that we're going to see this in court. You
13 know, let Karmela Harris [sic] come down here and
14 represent us when that happens.

15 I don't want to see my city tax dollars used
16 for that. I want to see you guys try to save our tax
17 dollars, try to improve on how you use them.

18 I just got a -- a thing in the mail about my
19 water and sewer, that you're wanting to raise my taxes
20 on that, where, my gosh, I can't believe how high they
21 are right now.

22 Why don't we look on trying to save money
23 here, you know, trying to improve our budget, trying
24 to help our local community businesses grow and --
25 and -- and -- and not just listen to all the -- this

1 rambling that other people do?

2 Thank you for your time.

3 Any -- any questions?

4 MAYOR PATTERSON: Thanks very much.

5 Apparently, not.

6 MR. STOCK: Thank you.

7 MAYOR PATTERSON: So don't take this
8 personally, but this hearing is for discussing three
9 things, and that is whether or not to continue the
10 project as requested by Valero, whether or not to
11 uphold the decision by the planning commission, or
12 make a decision in favor of the Valero land use permit
13 and certification of the EIR.

14 So your comments on those points are very
15 much appreciated, and I think that it would be
16 informative.

17 So as I said, don't take it personally. Just
18 that -- that I wanted to kind of remind people that
19 your -- your --

20 MR. STOCK: I am sorry if I --

21 MAYOR PATTERSON: That -- that's fine.

22 MR. STOCK: -- didn't cover the things.

23 MAYOR PATTERSON: Jackie Prange and
24 Jessa Moreno.

25 I called -- is -- is it Bet or Bete Bruell?

1 and I don't see her. So I'm going to put her card
2 aside, and that list will be as what we've done in the
3 past.

4 And you must be Jackie Prange.

5 MS. PRANGE: Yes, I am.

6 MAYOR PATTERSON: Okay.

7 MS. PRANGE: Good evening, Counselors. I'm
8 Jackie Prange. I'm an attorney with the National
9 Resources Defense Council.

10 There's no reason at all to dispute here that
11 the City has legal authority to deny this project.
12 Various lawyers from many different NGOs, nonprofits,
13 law students from the Stanford law clinic, multiple
14 local agencies, regional agencies, including the
15 Sacramento Area Council of Governments and the County
16 of San Luis Obispo, have all stated that.

17 The Attorney General, who's the chief legal
18 officer of the state, has reviewed this project and
19 found, first, that the City has authority to deny it;
20 and, second, that the environmental review is not
21 adequate.

22 So basically, that's the conclusion of every
23 attorney, except for Valero's attorneys and your
24 contract city attorney, and that's because the law is
25 clear. It does -- does not apply here because the

1 project is proposed by a nonrail carrier.

2 It's really that simple.

3 The description -- and I want -- I just want
4 to mention that the description of the SEA-3 case
5 that's in the staff report is very misleading.

6 It says, basically, "Here are the facts," and
7 that the Surface Transportation Board declined to
8 issue an order in that case because the law was clear.

9 What was the law clear about? It was clear
10 that when the project proponent is not a rail carrier,
11 as is the case here, that the situation -- quote,
12 "Situation does not reflect undue interference with
13 transportation by rail carriers."

14 So, accordingly, the STB found that
15 preemption did not apply, the, basically, identical
16 facts here.

17 And there's a reason that Congress drew the
18 line there. If ICCTA applied to every project in
19 which rail tangentially, or even a tiny bit, touched
20 the project, then we'd have preemption all over the
21 place, and it would drastically reduce the amount that
22 local governments could control what goes on in their
23 cities.

24 And that's why the City has a broader
25 interest here. This is not just about this project,

1 but it's about many other future projects that you
2 will consider that involve rail impacts, and I think
3 that's important -- important for you to know.

4 So you've heard from all of your constituents
5 why you should not approve this project, and I'm not
6 going to repeat those statements here, but I do want
7 to talk about why you cannot and must not approve this
8 project.

9 The first reason is that the EIR is legally
10 inadequate. I just want to highlight two issues, both
11 of which were touched on by the AG in her first
12 letter.

13 First is the refinery emissions. The EIR
14 uses the wrong baseline. We keep hearing about how
15 the air por- -- air permit here is not changing. The
16 actual refinery itself is not changing.

17 But we know that the refinery is not
18 operating at its max, or we think that because the EIR
19 still refuses to disclose what the actual physical
20 baseline emissions are, and that's the relevant legal
21 point under CEQA.

22 There could be increases, both from quality,
23 changes at the refinery, and from quantity, increases
24 in quantity of crude being refined at the refinery.

25 The EIR also fails to discuss feasible -- and

1 include feasible mitigation measures for up-rail
2 impacts that are not preempted, for example, emission
3 reduction -- reductions credits imposed on Valero or
4 reductions in the size of the -- of the project,
5 again, imposed on Valero as not a rail carrier and,
6 thus, not preempted.

7 There are many other deficiencies, such as
8 the lack of environmental justice ap -- environmental
9 justice analysis and the piecemealing from the VIP
10 project.

11 Valero also said that significant impacts,
12 such as ozone pollution in up-rail communities, are
13 not really important, even if they're significant
14 under CEQA, but that's not true.

15 The reason we have CEQA is because its
16 significant and unavoidable impacts are important to
17 people who live on the ground. That -- those words
18 mean something.

19 So if the city council were to deny this
20 project, it's very important that the findings say a
21 few -- a few things.

22 First of all, obviously, the rail impacts are
23 huge, but it's also important that there are many
24 significant and unavoidable impacts, onsite impacts,
25 such as the refinery emissions and the impacts on

1 Sulpher -- on Sulpher Creek -- Sulpher Springs Creek,
2 and other onsite impacts.

3 Those are separate and independent bases for
4 the City to deny this project, and you could look to
5 the San Luis Obispo proposed findings as an example
6 there.

7 And, again, the staff should help the City
8 draft legally defensible findings. That's their job.
9 You are the decision-makers, and they work at your
10 service.

11 Finally, this community is not going to
12 abandon the City. We urge the council to make the
13 decision on the merits and not because of some threat
14 of a lawsuit by Valero.

15 But if the City denies the project and Valero
16 sues, the City will win in court, for the same reasons
17 that we've been talking about all along, that
18 preemption does not apply here.

19 Many of the groups here will stand
20 shoulder to shoulder with the City in defending the
21 City. For those reasons, we hope -- I ask you, I urge
22 you, to deny this project.

23 Thank you.

24 MAYOR PATTERSON: Thank -- thanks very much.

25 Any questions? Okay.

1 Jessa Moreno, Jim Kushera, Jon Van Landschoot,
2 Donna Wapner -- again?

3 Okay. "Called earlier but wasn't here." Got it.
4 And -- and John Ruszel.

5 MS. MORENO: Hi. Good evening. My name is
6 Jessa Moreno, and my mother, father, brother, sister,
7 and nephews are all Benicia residents, Benicia
8 small -- small business owners and members of the
9 local arts community that draw business to Benicia
10 from across the region and beyond.

11 I, myself, am a resident of Richmond,
12 California, who's felt first-hand the impact of oil
13 passage by rail and the refining process, from poor
14 air quality to waiting for rails to pass on my way to
15 home from work daily, sometimes over an extra half an
16 hour's wait to get home to my family and children for
17 dinner.

18 This daily inconvenience, however, is nothing
19 in the wake of potential disaster, which like the
20 Crude By Rail Project would impact and potentially
21 destroy the health and welfare of families across the
22 entire bay.

23 In addition to being a local concerned
24 citizen, I'm also a sixth-generation Californian,
25 California taxpayer, and voter.

1 Our California State Attorney General, our
2 elected official whose sworn duty is to ensure that
3 the laws of the state are uniformly and adequately
4 enforced, has recently penned a letter I ask you to
5 take seriously, from a legal perspective.

6 From Attorney General Harris, "City staff has
7 concluded that the project's benefits do not outweigh
8 its significant and unavoidable environmental
9 impacts";

10 "Where, as here, an oil company proposes a
11 project that is not subject to STB regulation and over
12 which a public agency retains discretionary permitting
13 authority, it would be a prejudicial abuse of
14 discretion for that agency to not consider all of the
15 project's foreseeable impacts in exercising its
16 authority";

17 "For Benicia to turn a blind eye to the most
18 serious of the project's environmental impacts, merely
19 because they flow from federally regulated rail
20 operations, would be contrary to both state and
21 federal law."

22 I'm going to repeat that.

23 The State Attorney General has stated, "To
24 turn a blind eye to this project's environmental
25 impacts would be contrary to state and federal law."

1 The Attorney General continues, "State law
2 requires the City to analyze and disclose the
3 project's direct and indirect environmental impacts
4 and, thus, to be fully informed of the consequences of
5 its action."

6 The City has done that here, and its action
7 has not interfered with federally regulated
8 activities. Valero's assertion that the planning
9 commission's action was illegal is without merit.

10 Thank you to the City of Benicia for your
11 initial decision to oppose this backwards proposal.

12 Please do not land on the wrong side of
13 history when our children and grandchildren ask why we
14 did not do all we could to slow environmental disaster
15 locally and globally when we had the chance.

16 Thank you.

17 MAYOR PATTERSON: Thank you very much.

18 Any questions? Okay.

19 Jim Kushera, Jon Van Landschoot, Donna Wapner,
20 and John Ruszel.

21 MR. KUSHERA: Thank you very much. My name
22 is Jim Kushera. I live on East "L" Street, just
23 outside the blast zone.

24 I'd like to speak to point No. 2, but in
25 support of the planning commission's work, their three

1 years of -- of work, working towards a -- a decision.

2 And my concerns are that the -- the project
3 has some -- some inherent infrastructural problems
4 that can't be mitigated, and I'm -- and I'm concerned,
5 specifically, with the rail track itself.

6 And it -- the -- the rail track is what's
7 called "CWR." It's "continuously welded rail." So
8 these sections are joined at -- at -- at short
9 intervals and -- and then put into service.

10 And it -- it's -- it's -- it's so difficult
11 to determine when one of these tracks are going to
12 fail. You -- you can inspect them, but what happens
13 is under -- under extreme loading, welds can fail.

14 In -- in general, a -- a weld will -- will
15 hold up and can be stronger than the surrounding
16 metal, but when they're subjected to extreme stresses,
17 specifically overloading, then you have a problem.

18 And we're talking about -- by bringing in
19 these -- these railcars, we're -- we're talking about
20 adding, literally, millions of tons a year to these
21 tracks and to the weld joints.

22 And throughout the country, we've had
23 these -- we've had these derailments. Sometimes they
24 happen because of weld failure. And these welds occur
25 because there are splice plates on both sides of the

1 weld joint, and then the weld is added. Sometimes the
2 splice plates fail; sometimes the welds fail.

3 You can't be driving x-ray machines over
4 these continuously welded rail tracks 24/7. The fails
5 and the fatigues can happen suddenly.

6 So by introducing this -- this excessive and
7 extreme way that the -- that the project is planning
8 to do, you're -- you're making a situation that really
9 can't be mitigated.

10 There was a -- a terrible derailment caused
11 by rail track failure in -- in Minot, North Dakota,
12 some years back when a huge release of anhydrous
13 ammonia polluted the entire area, and that was a --
14 a -- specifically, a weld failure.

15 Now, that track had been tested, but like I
16 said before, these things can't be tested 24/7.
17 The -- the -- the fatigues can occur suddenly.

18 And in going back, once again, to this
19 extreme loading that we're talking about putting on
20 these old, aging rail sections exacerbates the
21 problem. So these weld failures can happen.

22 There can be -- there can -- there can be a
23 number of factors that can cause a weld to fail,
24 but -- you know, it can -- it can occur, operator
25 failure, you can get atmospheric contamination while

1 you're welding.

2 But -- but I think, in general, welds can be
3 strong, but with putting -- putting the welds to
4 such -- such a test is -- is -- it's asking for
5 trouble and can't be mitigated.

6 And I think -- I think the work that the
7 planning commission did in sorting through the safety
8 issues was very thorough. Three years of work was --
9 I -- I thought they -- I thought they were fair and
10 impartial in just looking at -- at -- at safety
11 issues. So...

12 And there -- there have been other weld --
13 there have been other weld failures that happened,
14 Bridgeport, Connecticut, a few years back.
15 Unfortunately, it was a passenger train. 69 people
16 were -- were injured, but that was a track failure
17 caused by a -- a failed weld -- weld joint.

18 And so quite often, these derailments occur
19 because of rail track welding failures. So I just
20 wanted to bring this piece of information out.

21 And we saw what happened in San Bruno when
22 that gas pipe failed. Those were weld issues. And
23 that's a very difficult thing, to -- to test these
24 welds all the time, and they weren't able to do it
25 with that pipeline.

1 And here we have this project poised to
2 introduce, as I said at the beginning, you know,
3 literally, millions of additional tons of stress
4 per year on -- on these track sections.

5 So I -- I just feel that without redesigning
6 the entire thing, it's -- it's difficult to mitigate,
7 and I -- I urge you to support the planning
8 commission's decision and to vote as representatives
9 of the people of Benicia.

10 Thank you.

11 MAYOR PATTERSON: Thanks for your information.

12 Donna Wapner and -- oh, actually,
13 Jon Van Landschoot. I'm sorry.

14 MR. VAN LANDSCHOOT: (Inaudible.)

15 MAYOR PATTERSON: Okay.

16 MR. VAN LANDSCHOOT: (Inaudible.)

17 MAYOR PATTERSON: Okay.

18 Is a little negotiation going over there?

19 MS. WAPNER: Yeah.

20 Hello.

21 MAYOR PATTERSON: Thanks.

22 MS. WAPNER: My name is Donna Wapner. I'm a
23 16-year resident of Benicia, a public health educator
24 and a public health advocate and someone who wants to
25 urge you to deny -- to deny both Valero's request for

1 a delay, deny their appeal, and let stand the Benicia
2 Planning Commission's unanimous vote to deny Valero's
3 use permit for crude by rail, because it is a danger
4 to health, safety, and welfare of Benicia and up-rail
5 communities.

6 There are enough significant local onsite
7 hazardous impacts to allow this council to deny a
8 permit. All you need do is take a look at Dr. Fox's
9 April 4th letter stating numerous local concerns
10 related to Valero's appeal or to her rebuttal letter,
11 dated today, to recognize that many of the local health
12 and safety concerns that are still not addressed
13 adequately.

14 I will not take my five minutes to restate
15 all the evidence presented in her rebuttal letter
16 today or other material presented by experts, lawyers,
17 and other elected officials, on the negative impacts.

18 And I won't even spend my time commenting on
19 Valero's latest appeal to reduce their tax bill, which
20 if approved, would cost the City general fund an
21 additional 3 million per year.

22 But I do find it interesting, however, that
23 Mr. Radis of MRS, Marine Research Specialists, that's
24 in a letter that is in your packet tonight, uses
25 incident information from the Pipeline and Hazardous

1 Materials Safety Administration, known as "PHSMA"
2 [sic], to conclude that the accidents at crude oil
3 unloading facilities are quite rare, when, in fact,
4 that agency stated itself that incidents need only be
5 reported to them by a rail carrier if something
6 happens during, quote, "transportation."

7 And they do not consider loading and
8 unloading incidents by a private consignee, companies
9 like Valero, to be included in incident report
10 filings.

11 They go on to say that they have little or no
12 risk data on both loading and unloading of rail tank
13 cars. And in their own review of their 2007 data,
14 they estimated they were missing 60 to 90 percent of
15 all the hazmat incidents that did occur.

16 Somehow, I find it difficult to understand
17 why city consultants would continue to use such flawed
18 data to assert a rebuttal at this point in our
19 knowledge and discussions on this subject.

20 This is only one example of my concerns
21 related to city consultants and consulting lawyers
22 that keep providing city staff with information of
23 support for this proposal, despite mounting evidence
24 to the contrary.

25 Another document in your packet tonight is

1 the 2013 city attorney recommendation for a
2 significant increase of funds for the contract of
3 services with Bradley Hogin of Woodruff, Spradlin &
4 Smart, one of the many statements in the document at
5 that time, it was 2013, and much earlier in this
6 discussion.

7 They had supported them as a good choice,
8 saying that, quote, "They have handled challenges to
9 federal, state, and local environmental regulations in
10 the areas of air quality, water quality, and oil
11 production," and that quote actually comes from their
12 website.

13 But all you have to do is to look at their
14 website under examples of "Environmental Law,
15 Counseling, and Litigation Matters," and you will see
16 that when you look at the nine examples listed, most
17 of the cases had been defending or supporting property
18 owners, city oil industry trade associations, or
19 school districts who are trying to reduce their
20 responsibility related to questioned environmental
21 impact reports, costs recovery related to
22 environmental damages, reduction of environmental
23 regulations that impact corporate operations, or
24 defending those charged with negligence related to
25 environmental impacts.

1 In other words, most of their experience are
2 examples of practicing anti-environmental law, not
3 environmental law.

4 Benicia's staff has concluded that the
5 project's benefits do not outweigh its significant and
6 unavoidable environmental impacts.

7 However, they have been advised by the City's
8 consulting attorneys that federal preemption prohibits
9 Benicia from considering the project's rail-related
10 impacts in determining whether to approve the project.

11 They have asserted that Benicia is legally
12 prohibited from denying the project based on
13 rail-related impacts enclosed in the revised Draft EIR.

14 Last week alone, you've heard that a letter
15 from the staff, our Attorney Kamala Harris, has stated
16 that is not the case, and you've been hearing tonight
17 over and over from lots of people on what is put in
18 that letter.

19 And there's a few quotes that I'm going to
20 say also because I was just so glad and also
21 flabbergasted how opposite her point of view is from
22 the consultants you have had on this the whole time.

23 She stated, "Federal preemption does not
24 apply because Valero's project involves constructing
25 ancillary" --

1 MAYOR PATTERSON: Yeah --

2 MS. WAPNER: -- "refinery infrastructure" --

3 MAYOR PATTERSON: Your -- your time is up --

4 MS. WAPNER: Oh, it is?

5 MAYOR PATTERSON: -- and we have heard the
6 letters, and we do have the letters.

7 MS. WAPNER: Okay.

8 So I just -- I just want to say one last
9 thing that's just very personal to me --

10 MAYOR PATTERSON: Oh. Okay.

11 MS. WAPNER: -- and I -- and I think is what
12 a lot of people are saying here.

13 I, personally, as a resident, will find it
14 very hard to continue to live here. And I think it's
15 not only people who might not want to move here, but
16 it will be people who will leave here because of your
17 decisions that you may make.

18 Thank you.

19 MAYOR PATTERSON: Okay. Thanks, Donna.

20 Jon Van Landschoot and John Ruszel.

21 MR. VAN LANDSCHOOT: Hi. Jon Van Landschoot.

22 I live here in town. In fact, in about two weeks,
23 I'll have moved in 30 years ago, and I drank a big
24 bottle of champagne all by myself, woke up the next
25 day with a big headache, but I love this town.

1 (Laughter)

2 MR. VAN LANDSCHOOT: On that point, I -- I --
3 listening to on the television last week, or the week
4 before, and a little bit tonight, I don't think this
5 needs to get personal with people calling other people
6 "outsiders" or that they haven't lived in town long
7 enough or they don't know what they're talking about.
8 I think that's not right.

9 We all have a voice. Some voices are bigger
10 than others, but they're the same voice, and they mean
11 for people, who live in this town, they have that
12 feeling, and I'm glad that you're hearing it.

13 Anyway, sometimes it takes a terrific
14 challenge and/or a horrific threat to our way of life
15 to discover just how good and noble we can be. I see
16 this council as good and noble folks.

17 I believe all of you have concerns about the
18 following, maybe big concerns, maybe small concerns,
19 but I'm -- I'm sure back in your head you have a
20 concern about this:

21 The volatility and the nature of the dilbit
22 and the tar sands, "boom"; the destructive power when
23 it explodes, the damage to our environment and human
24 life it causes; the safety of the railcars, no matter
25 what number they got or what design they got, they

1 still tip over and go "boom";

2 The safety of the rails upon which these cars
3 travel, a lot of the rail traffic goes over really bad
4 roads;

5 The bridges over which they cross, the cities
6 and towns through which they traverse, the traffic
7 mess that even Caltrans said is going to happen out on
8 680 and in the park;

9 The concerns of hundreds of thousands of
10 people up rail, down rail, all over California, that
11 should not be something you say, "Well, they don't
12 live in town."

13 This -- I believe you know all those things I
14 just mentioned. You have heard lots of people in --
15 in Benicia with knowlable -- knowledgeable folks in
16 our area. Also the State of California has twice just
17 recently cautioned you to deny the FEIR and the
18 project itself, and I hope that you do that.

19 This is not the first time that councils have
20 had to make a difficult decision on behalf of our
21 citizens. We have a rich history in our town. In
22 fact, I love that: a full citizen involvement on the
23 issues.

24 Citizens led the following initiatives:
25 the G Pock (sounds like) back in the early 1990s.

1 In fact, some of you were on that; the HPRC,
2 Measure K, Tom, where we stopped folks from building
3 out on Lake Herman Road.

4 And all this time, folks would be yelling at
5 us, like, "What are you trying to do? Why are you
6 doing this?" We're trying to save the town, this --
7 this rich heritage we have in this town and the
8 safety;

9 Measure C, Sue Street, saving the green.
10 They wanted to put four- to five-story buildings, a
11 boutique hotel, on the marina green. That would mean
12 that you couldn't have this next week the car show for
13 the band. You couldn't have a lot of activities down
14 there. Main Street, what would they do?

15 The downtown mixed use master plan; the
16 sustainability and arts cultural commission; open
17 government commission;

18 We're a tree city and have a tree
19 commission -- committee, and the downtown business
20 alliance.

21 All of those were things that people came
22 into this Senate chamber -- or into this chamber and
23 said, "This is for the good of the country" -- or, "of
24 our city."

25 The folks that are here and were here last

1 week and were at the city -- or at the planning
2 commission are here to say, "This is not a good
3 thing," and I think, in your hearts, you know that.

4 I think you might be hung up on this
5 preemption thing, and a lot of folks talked about it
6 today, so I won't.

7 But let's say that you do go 5-0, just like
8 the planning commission did, 6-0. Let's say Valero
9 sues. Who's going to come and help us? Everybody.

10 Everybody. We're going to have Tom Sire
11 (phonetic), who's got money up the yin-yang. We're
12 going to have Kamala Harris. We're going to have
13 Jerry Brown. We're going to have the City of
14 San Francisco, Sacramento, a whole bunch.

15 Also, let's say -- let's look at the jury
16 trial. Where is it going to be? It's going to be in
17 California, probably in Sacramento or somewhere maybe
18 in the Bay Area or San Francisco.

19 What do you think that jury is going to do?

20 Or let's say it's a three-to-five judge in
21 the -- in the appeals court in the Ninth District,
22 San Francisco or L.A. You know where they're going to go.

23 Let's say it goes to the Supreme Court --

24 MAYOR PATTERSON: Jon, you need to wrap up.

25 MR. VAN LANDSCHOOT: -- the spot is still

1 allowed, and I think it's going to be a liberal
2 person.

3 Thank you. Don't do this to us, please.

4 MAYOR PATTERSON: Thanks.

5 MR. VAN LANDSCHOOT: Thank you.

6 MAYOR PATTERSON: So -- thank you so much.

7 I have three more cards, and so -- and it's
8 after 9:00, and I really do think that we need to get
9 some fresh air and move our muscles.

10 So unless I hear an objection from council,
11 we're going to take a seven-minute break. That means
12 it gives you enough time to go get some water, to get
13 some fresh air, and to be back here.

14 And make my life easy by coming back in seven
15 minutes. Thanks.

16 (Recess taken)

17 MAYOR PATTERSON: Thank you for ending your
18 conversations, and we're going to reconvene our public
19 hearing comment.

20 (Indiscernible chatter)

21 MAYOR PATTERSON: I'm asking for you to be --
22 stop talking. That includes some of my friends.

23 (Continued chatter)

24 MAYOR PATTERSON: Thank you very much.

25 So the next cards I have, I'm going to call

1 them again, and that will be the -- so far, the end of
2 the cards.

3 John Ruszel, Carol Dalton, Betty or Bete
4 Bruell (phonetic); James McDonald, and Susan Berry.

5 MR. RUSZEL: Hello. My name is John Ruszel.
6 I have lived in Benicia for 20 years, which is
7 two thirds of my life.

8 I don't currently live in Benicia, but I do
9 work in Benicia. I drive over the railroad tracks
10 twice a day to work. The only way in or out of work
11 is over those railroad tracks.

12 And today, I was reviewing the EIR, and I can
13 place no value on anything in that document. So I
14 have one example that I want to present.

15 Benicians for a Safe and Healthy Community's
16 comment letter, B8, they -- they make a comment that
17 the CBR cars will have to be placed in sidings
18 occasionally.

19 And the response to that in the EIR, B8-114
20 referenced from B8-118, is that those cars would never
21 be placed in sidings and that the commenter had -- the
22 commenter had no evidence to suggest that they ever
23 would.

24 And then consider Baykeeper's letter,
25 San Francisco Baykeeper's letter, B5, and they make

1 the comment that the EIR does not address hold times
2 for CBR cars outside of Valero's facility, crude by
3 railcars.

4 The EIR response is, and this is a direct
5 quote, B5-5, "UPRR retains unfettered authority
6 regarding the movement of trains on its tracks;
7 therefore, project trains could be temporarily placed
8 in sidings as part of normal operations."

9 How can the EIR state that cars will never be
10 placed in sidings while admitting it -- that it could
11 be, quote, "a part of normal operations"?

12 Baykeepers also questions the number of CBR
13 cars that Valero intends to bring in per day. The EIR
14 response, B5-2, states, "50 cars of -- cars of crude
15 will be processed every 12 hours and that every 12
16 hours another 50 cars will arrive."

17 If there is ever a delay in the system and
18 the next 50 cars can't be processed, where will those
19 50 cars sit and wait?

20 So according to the EIR response, B8-114,
21 Valero will never, ever let this happen. And
22 according to the EIR, Response B5-5, when it does
23 happen, some cars will be placed in sidings. And
24 according to the EIR, Response 5-5 also, Valero has
25 absolutely no control over this matter.

1 How can all of these be answers to that one
2 question in one document? How can that be presented
3 as factual truth -- truth?

4 How can any educated sound-minded adult see
5 this as a good document to base any decisions on, let
6 alone something with such broad implications as we see
7 here?

8 You must deny the EIR -- EIR, you must deny
9 the use permit, and you must deny the continuance.

10 And I want to continue speaking. That's what
11 I had prepared to say.

12 But I also want to mention that in the -- the
13 traffic documentation that was put together by
14 Fehr & Peers, they use a lot of num- -- a lot of
15 numbers, and they say the trains would be 8 --
16 8 minutes and 50 seconds long, and that will be
17 different than the average -- or -- or that will be
18 longer -- excuse me.

19 Let me start the section over.

20 The railroad crossing at Park Boulevard, as
21 brought up by Fehr & Peers -- and they come up with a
22 base value for that crossing of 11 minutes and 50 seconds
23 when their own calculations for the average crossing
24 at that point is two and a half minutes -- 2 minutes,
25 50 seconds currently.

1 So where does this 11-minute-and-50-second
2 number come from? It's nowhere in any of that
3 documentation, except where they just say, "It's 11
4 minutes and 50 seconds now."

5 So 8 minutes and 50 seconds, that's less,
6 right, when their own baseline stated in their
7 documentation the rest of the time is two and a
8 half -- 2 minutes, 50 seconds.

9 So I would -- I would love to hear answers to
10 those two questions, and I really hope that you can
11 see -- can see the truth of the matter here and will
12 listen to the people who are speaking to you tonight.

13 Thank you so much for your time.

14 MAYOR PATTERSON: Thank you very much,
15 Mr. Ruszel.

16 Any questions? Okay.

17 The next card, then, is Carol Dalton. I've
18 called the name several times. So this is it.

19 Last call.

20 Bete Bruell? James McDonald?

21 MR. McDONALD: Good evening.

22 James McDonald, 274 Pebble Beach, Pittsburg,
23 California, a former school board member, Pittsburg,
24 California; a founding member of Californians for
25 Renewable Energy, Incorporated.

1 I'm also a retired certified instructor for
2 the State of California in emission control systems.
3 So I do know about hydrocarbon combustion.

4 I'm going to try to make this brief. Some of
5 the -- some of the -- my issues were discussed by some
6 of the other presentators but...

7 The Johnston-Baker-Andal-Boatwright Delta
8 Protection Act of 1992 has a lot of stipulations in
9 it. It's a mandate from the State legislature.

10 Mandate from the State legislature, Mandate E:
11 "Every citizen has a responsibility to contribute to
12 the preservation and enhancement of the environment."

13 Now, there's a very impressive document that
14 was put out by -- and I'm sure I'm going to pronounce
15 his name wrong. He -- he's a structural engineer --
16 Amir Faraz, talking about the structural instability
17 of the area.

18 And in the Environmental Impact Report,
19 Valero acknowledges that if there is an earthquake,
20 there will be liquefaction and there will be --
21 settling will occur during this earthquake.

22 Now, I heard just rumors that you guys aren't
23 going to have earthquakes. Well, the fact is there's
24 a 98.51 probability of a 5.0, a 74.37 percent
25 probability of a 6.6, and a maximum of an 8.3 within

1 the next 50 years.

2 Now, the reason you don't know a lot about
3 this earthquake fault is it likes to sit dormant for
4 about 150 years to 200 years, building up pressure --
5 it would actually be nicer if it just let you know
6 along the way -- and then it goes "snap."

7 So you possibly could see an 8.3 earthquake.

8 And Valero does acknowledge this report,
9 everything in this report.

10 Now, I could go into a terrorist attack and
11 what's going to happen during this earthquake, but the
12 bottom line is, an airfield detonation is one of the
13 strongest detonations that there is. Everything that
14 you've seen on TV is just the stuff burning. It's not
15 an airfield detonation.

16 That is why the Department of Transportation
17 has this map. In that inner map area is basically,
18 "Don't even bother looking for survivors"; okay?

19 An airfield detonation will cause a 20 --
20 20 times over-pressurization long duration
21 pressuration [sic] wave.

22 What does that mean?

23 There's 14.7 pounds per square inch on your
24 body, times 20, times the number of square inches on
25 your body, and you can see the type of pressure that

1 your body will have to endure. Bones turn to Jell-O.

2 The only other weapon, explosive, that can
3 create this type -- according to the BBC, is a small
4 tactical nuke. In fact, they say, "All the advantages
5 of a small tactical nuke, without the radiation."

6 On my school board, when I was on there,
7 \$85 million budget, I think, three law firms, lots of
8 people trying to sue us.

9 Zero got past the Intent to Sue, including
10 one of the biggest, meanest ones around with a very
11 impressive list of hundred-million-dollar-plus
12 settlements. I'll give you a hint. They took down
13 Kaiser. They didn't get past the Intent to Sue.

14 The first thing that these lawyers would
15 always ask us about, all the time, due process, due
16 process, due process, due process, due process.

17 That's the first thing they'd ask us, did we
18 file a due process? Because that's a totally separate
19 lawsuit. It doesn't have anything to do with the
20 other issue at hand.

21 They always would tell us if there's one
22 thing that a conservative judge -- an extremely
23 conservative judge believes and an extremely liberal
24 judge, if there's only one thing that that judge is
25 going to -- that those two judges are going to agree

1 on, it's going to be due process.

2 So there's a bunch of stuff about federal
3 regulations. Well, it's -- if, in fact -- if our
4 federal regulations apply in this, then you have to
5 follow Title 14 of CEQA, which is due process. CEQA
6 is due process; okay?

7 You should have gone to that agency, got
8 their input. It should be in the document so that we
9 all can discuss it and say, "Is this and that there?"
10 It's not there. It's never happened.

11 Let's say you go to court and you actually
12 found a judge that said, "Okay. There's federal
13 regulations. Well, you didn't follow Article 14.
14 You've lost due process."

15 And you're going to go -- you're going to
16 lose big; okay?

17 The Attorney General is already telling you
18 that you've totally goofed up CEQA, and I don't know
19 if you know her reputation and I don't know if you
20 know of Pittsburg's reputation.

21 We like to say that "Any law that's on the
22 book to stop a city from doing something, it's there
23 probably because of Pittsburg."

24 When you see -- when you see oil sheen and
25 your eyes are burning, they say, "Mr. McDonald, that's

1 the look and smell of money."

2 And she wrote our city a letter, and that
3 project is gone; all right? And these guys don't back
4 down from anything, and -- and they backed down from
5 her.

6 MAYOR PATTERSON: Okay, Mr. McDonald --

7 MR. McDONALD: I just want you to know --

8 MAYOR PATTERSON: -- time is up.

9 MR. McDONALD: Thank you.

10 MAYOR PATTERSON: Thank you so much.

11 Are there any questions? All right.

12 Susan Berry.

13 MS. BERRY: Hello. I know there's been a lot
14 of people with a lot of the details, and I'm glad
15 because I don't feel like I'm maybe up on every --
16 every little detail.

17 But I -- I live in Vallejo. I've been in the
18 Bay Area all my life, and I just want to talk about it
19 a little in the perspective of how everything is
20 connected.

21 I -- I lost my mother this year, but when I
22 was a kid, she had us out fighting for the -- saving
23 the bay, and she knew Sylvia McLaughlin and the ladies
24 who started Save the Bay and when nobody had thought
25 that something like the bay mattered and they were

1 about to turn it into a -- you know, a rotting ditch.

2 And she and her friends didn't get any
3 commemoration, but they started Save the Albany Bay.

4 And they -- and they -- you know, when I was
5 12 and I stood -- and I talked to my class about
6 saving the Albany Bay, the mayor stood up in -- in the
7 city council, as my only claim to fame, and said, "The
8 communists are taking over the schools," because
9 that's the way they thought about any kind of things.

10 This is a battle over time, and it took
11 them -- I have to thank all the people who are
12 fighting each of these little battles because it took
13 them 10 or 20 years, but they totally turned over the
14 very corrupt system in that little town.

15 But every little one of these battles,
16 you know, matters, and we keep forgetting them over
17 time. We -- we -- we forgot -- we -- we fought for
18 the -- for the delta back then, and now they're -- now
19 they're taking the water away again.

20 But the water connects us, too. You know,
21 like, I may not be in Benicia, but how many minutes is
22 it until whatever oil goes, you know, into the -- if
23 the oil goes into the water, minutes until it's in
24 Vallejo.

25 I stood out there in Bolinas a couple years

1 ago. We waited for five days for that oil, and
2 there's less preparation for oil in the water now than
3 there was 30 years ago when some hippies in Bolinas,
4 you know, actually managed to put a -- put a -- you
5 know, a -- something off to try to save the oil from
6 coming into their wetlands.

7 There's -- there was nothing this time, and
8 it's not gotten any better. So it goes. It takes
9 minutes. It goes up. It's the heart-blood of the
10 state. You know, the water goes up the rivers. It
11 goes down. It goes out.

12 And it takes -- nothing stops it, except for
13 unless it blows up and kills a lot of people,
14 you know, instead of putting oil in the water, which
15 is, like, not a whole lot better; right?

16 You know, I think of -- I've been told that
17 in Richmond, where I used to teach, that there's
18 18 schools, I understand, that are in the blast zone.
19 You know, if -- if -- if this oil, you know, goes here
20 or goes there and blows up -- I taught in most of
21 those schools.

22 I mean, we're all connected here, and,
23 you know, think of yourselves in the context of
24 history, you know, and your grandkids, you know.

25 What do we want to preserve of the beauty of

1 this place?

2 Is -- and of -- and -- and of all the other
3 people who have come before and after, you know, to
4 fight for the beauty of life that's natural here.

5 That's just what I wanted to say.

6 Thank you.

7 MAYOR PATTERSON: Thank you very much.

8 Okay. So I've gone through all the cards.
9 What I'd like to do is, obviously, take more public
10 comment, if it's desirable, but I want you to focus on
11 things that we haven't heard.

12 So if you want to address the council, do
13 think about the three points that I said earlier that
14 we are focused on, which is, should we grant Valero's
15 request for delay for an opinion by the Surface
16 Transportation Board?

17 And then depending on that decision, should
18 we certify the EIR and approve the land use permit or
19 support the planning commission's decision?

20 So if you need to come forward, provide some
21 new information, hopefully factually based, that's
22 always helpful, and then we have a -- a couple of
23 consultants here tonight.

24 We have a representative from the Union Pacific,
25 and we have a representative for the traffic

1 consultant, and he's only here for tonight.

2 So think about giving us an opportunity to
3 ask the traffic consultant some clarifying questions
4 or more information, because that is a significant
5 issue.

6 Now that I've said all of that, who would
7 like to come forward and address the council on this
8 issue?

9 I see I've really intimidated you.

10 Okay. So back to the council --

11 COUNCILMEMBER SCHWARTZMAN: (Inaudible.)

12 MAYOR PATTERSON: One person, hand up.

13 COUNCILMEMBER SCHWARTZMAN: Obviously, he
14 hasn't spoken before.

15 MAYOR PATTERSON: What?

16 COUNCILMEMBER SCHWARTZMAN: Obviously, has
17 hasn't spoken before.

18 MAYOR PATTERSON: Yeah.

19 MR. THIELVOLT: Hi. I'm Gordon Thielvolt. I
20 live in Benicia, and I've been around here since 1968,
21 when I first came and worked at the refinery. I know
22 that may prejudice me a little bit, but...

23 On the issue of the extension of time the --
24 for other officials to examine what's going on with
25 the application, I was here when the first -- first

1 meeting with the planning commission, and an extension
2 was asked for and was kind of begrudgingly given, and
3 it went from a 60-day to a 90-day. It ended up being
4 three years later, we're still discussing the issue.

5 So I think if the Valero folks want an
6 extension for another agency to look at something,
7 then it should be granted.

8 Thank you.

9 MAYOR PATTERSON: All right. Thank you.

10 Anybody else wishing to address the council
11 on this matter?

12 Okay. So we're going to bring it back to
13 council.

14 The first question is -- to ask, do you want
15 to close the public comment, or do you want to have
16 the questions, have some discussion, and then keep the
17 public comment open?

18 Councilmember Schwartzman?

19 COUNCILMEMBER SCHWARTZMAN: Well, somewhere
20 along the lines we have to kind of move things
21 forward.

22 I'm -- I'm okay. I think we've -- we had a
23 lot of public comment, and we could have closed public
24 comment after the last meeting. We elected to keep it
25 open for this meeting.

1 Here we are, it's 9:30, we have an hour and a
2 half left, and it looks like there's no more public
3 comment.

4 So I'm okay in closing public comment and
5 moving on.

6 MAYOR PATTERSON: Okay.

7 So we have -- and I -- do we need to take a
8 motion to close the public comment?

9 MS. RATCLIFFE: Right.

10 MAYOR PATTERSON: So we'll consider that a
11 motion.

12 Is there a second and discussion?

13 COUNCILMEMBER CAMPBELL: Second.

14 MAYOR PATTERSON: Any discussion?

15 Call the roll, please.

16 THE CLERK: Councilmembers Campbell?

17 COUNCILMEMBER CAMPBELL: Yes.

18 THE CLERK: Hughes?

19 VICE MAYOR HUGHES: Yes.

20 THE CLERK: Schwartzman?

21 COUNCILMEMBER SCHWARTZMAN: Yes.

22 THE CLERK: Strawbridge?

23 COUNCILMEMBER STRAWBRIDGE: Yes.

24 THE CLERK: And Mayor Patterson?

25 MAYOR PATTERSON: Yes.

1 Okay. The first question, then, before us is
2 the consideration of the request for a delay for
3 seeking an opinion by the Surface Transportation
4 Board.

5 However, before we get into that, maybe what
6 we should do is see if there are questions of
7 councilmembers, particularly for the consultants who
8 are here, which involves -- traffic is the first one,
9 and then the representative from Union Pacific, as I
10 understand, is here both today and tonight.

11 So let me suggest that we actually go in and
12 take advantage of the consultant dealing with the
13 traffic, unless there is a motion to make a decision
14 on the continuation, or not, now.

15 (Staff member indicates)

16 MAYOR PATTERSON: We're having a light issue.
17 So -- so --

18 COUNCILMEMBER STRAWBRIDGE: Sorry.

19 Are you suggesting --

20 MAYOR PATTERSON: Yeah. So I'm suggesting
21 that we do hear from the traffic consultant.

22 So it's -- it's a -- let's try to be a little
23 organized on this, where we direct our questions on
24 traffic first and not stray off into other areas, and
25 I'll start with -- since I started on --

1 COUNCILMEMBER SCHWARTZMAN: Point of order?

2 MAYOR PATTERSON: -- my right -- yeah. Sure.

3 COUNCILMEMBER SCHWARTZMAN: Just a question.

4 So we are going to be given an opportunity to
5 ask F&P some questions?

6 MAYOR PATTERSON: Yeah.

7 COUNCILMEMBER SCHWARTZMAN: I just wanted to
8 make sure.

9 MAYOR PATTERSON: Yeah.

10 COUNCILMEMBER SCHWARTZMAN: Thank you.

11 MAYOR PATTERSON: My -- so it's -- you know,
12 it's kind of an issue here, where we have questions to
13 ask, and would it be -- does it pertain specifically
14 to the continuation, but, in a sense, it's a back and
15 forth kind of decision.

16 So what I'd like to do is go forward with our
17 questions and even beyond the traf- -- traffic issues
18 and beyond the Union Pacific potential questions, and
19 then if we still have time, we can then deliberate
20 whether or not to consider the continuation or just do
21 that tomorrow and --

22 MS. McLAUGHLIN: (Inaudible.)

23 MAYOR PATTERSON: Well, they're five minutes,
24 and that would come after we ask all our questions.

25 So we're probably not going to get to that

1 decision tonight, then, because I -- I have a host of
2 questions, and I suspect that our councilmembers do,
3 too.

4 So I'm going to start to my left with a
5 question on traffic, unless you have a clarificating --
6 clarification.

7 VICE MAYOR HUGHES: Yeah, I have a
8 clarification.

9 So I would think that we would want to ask
10 questions, specifically, about the continuance first,
11 since that's what we're going to be ruling on first or
12 voting on first, rather than opening it up to
13 everything, because -- which we could.

14 If we decide to deny the continuance, then
15 it's open to everything, and then we can -- then we
16 can ask all the questions.

17 If the decision is we're going to approve the
18 request for continuance, then we stop. And when the
19 decision or opinion comes back from the Surface
20 Transportation Board, then we would open it up.

21 So I'm not sure why we -- we'd be doing it
22 twice.

23 MAYOR PATTERSON: Well, it's an excellent
24 point, and that was what I was trying to get at, is
25 that if you're comfortable going forward with

1 discussing whether or not to grant the continuation
2 without getting clarification on some other questions
3 that cross over into the EIR, into the land use
4 permit, that's a decision we can make, and it's a
5 reasonable decision.

6 But there could be an omission of information
7 that would guide that decision, and I just wanted to
8 be doubly careful that we have all the information we
9 need to have in order to make the decision about the
10 continuation.

11 So it really is council comfortable with
12 tackling a decision on continuation first? And then
13 depending on that, we either just wait and dismiss
14 everybody and see what happens with the request from
15 the Surface Transportation Board, or we continue
16 asking our questions.

17 Councilmember -- and so that traces the
18 council's -- Councilmember Campbell?

19 COUNCILMEMBER CAMPBELL: Yeah, I -- I wanted
20 to ask the city attorney a quick question.

21 Did we close our public testimony just a hair
22 early, that Valero, as part of the public testimony,
23 was supposed to have their last five minutes, then we
24 close?

25 Because we got in trouble with something like

1 that a couple years ago on the billboards.

2 MS. McLAUGHLIN: Well, I could run and look
3 at my rules, but you've certainly got to have their
4 rebuttal before you take action. So...

5 COUNCILMEMBER CAMPBELL: So -- okay.

6 Since I voted to close public testimony, then
7 I'd like to make a motion to reconsider to let Valero
8 have their five minutes to close it up. Then we close
9 public testimony after that.

10 MAYOR PATTERSON: So if I could word the
11 motion, it's to -- to open the public comment for
12 Valero's due process rebuttal.

13 COUNCILMEMBER SCHWARTZMAN: Second.

14 COUNCILMEMBER CAMPBELL: Okay.

15 MAYOR PATTERSON: Okay?

16 Call the roll, please.

17 THE CLERK: Councilmembers Campbell?

18 COUNCILMEMBER CAMPBELL: Yes.

19 THE CLERK: Hughes?

20 VICE MAYOR HUGHES: Yes.

21 THE CLERK: Schwartzman?

22 COUNCILMEMBER SCHWARTZMAN: Yes.

23 THE CLERK: Strawbridge?

24 COUNCILMEMBER STRAWBRIDGE: Yes.

25 THE CLERK: And Mayor Patterson?

1 MAYOR PATTERSON: Yes.

2 So this is the five-minute rebuttal time for
3 Valero.

4 MR. FLYNN: Thank you.

5 Good evening, Mayor Patterson, and Members of
6 the Council. My name is John Flynn. I'm an attorney
7 working with the Valero on the processing of this
8 permit application and the EIR.

9 The first thing I want to do is -- is thank
10 everybody. I want to thank the members of -- of the
11 staff, the consultants, the experts, all of those who
12 have worked so hard and poured blood, sweat, and tears
13 into the preparation of this Environmental Impact
14 Report.

15 I also want to thank the planning commission
16 for helping us to think more about the project, and I
17 want to thank you for your patience and graciousness
18 in listening to everything that everybody has had to
19 say about this project.

20 I also want to thank the project opponents,
21 believe it or not, because they've also helped us to
22 sharpen and refine our thinking about the project.

23 So I have a lot of "thank you's" to say
24 tonight.

25 Having said those, I think it's fair to say

1 that as a result of all of that work, you have before
2 you now an outstanding Environmental Impact Report,
3 one of the best that I've seen in many years, and I've
4 been doing this for 30 years now.

5 I think it's helpful in this context to
6 remember the way the courts have described the
7 standard by which to measure the validity of an EIR.

8 Quote, and this is taken from a Court of
9 Appeals decision, "CEQA requires an EIR to reflect a
10 good-faith effort at full disclosure. It does not
11 mandate perfection, nor does it require an analysis to
12 be exhaustive."

13 In this case, you have before you an
14 exhaustive Environmental Impact Report, but remember
15 the standard by which the Environmental Impact Report
16 will be judged.

17 There is at this point in this record
18 overwhelming evidence to support approval of this
19 project and no substantial evidence to support a
20 denial.

21 As for the AG's letter, I'm going to choose
22 my words very carefully because I have a lot of
23 respect for Kamala Harris and I have a lot of respect
24 for her office, but that letter on the issue of
25 preemption is dead wrong.

1 Your attorney -- the advice that you've been
2 given by your attorney is exactly right. If you
3 follow the advice that's been given to you by
4 Kamala Harris, you'll be making a terrible mistake, a
5 terrible legal error.

6 Somebody has suggested that Valero, because
7 it's a -- it's a refinery, doesn't have any standing
8 to ask for a Declaratory Order from the -- from the
9 Surface Transportation Board. That, also, is dead
10 wrong.

11 You don't have to be a railroad to get a
12 Declaratory Order from the Surface Transportation
13 Board, and that's been proven on many occasions as a
14 result of the fact that the Surface Transportation
15 Board has, in fact, issued a number of declaratory
16 orders as the result of requests made by nonrail
17 carriers.

18 Valero is a shipper. A "shipper" is a term
19 of art under federal law. So we do have standing to
20 request that Declaratory Order.

21 And now what I'd like to do is hand it off to
22 Don Wilson, who is a vice president and general
23 manager of the Valero refinery.

24 Thank you.

25 MR. WILSON: Good evening, Mayor and Members

1 of the City Council. I'm Don Wilson, plant manager.
2 Thank you for your tenacity and your patience.

3 I, too, want to thank the city staff and all
4 of the experts involved in the review of our project,
5 as well as our supporters and employees.

6 Thank you all for your diligence and the
7 thoroughness of your work on this CEQA review.

8 As Mr. Flynn noted, we believe city staff,
9 ESA, and Valero have gone -- gone above and beyond
10 what is required of CEQA. The record of review for
11 this project is one that the City should be proud of.

12 This project's record contains more than
13 sufficient evidence to support approval, and,
14 importantly, does not contain sufficient substantial
15 evidence to support a denial.

16 In closing, I do want to respectfully
17 acknowledge the residents of Benicia who have engaged
18 in this process. We are confident that we can
19 continue to operate safely here in Benicia.

20 I hope you can also recognize some of the
21 voices of opposition here, a well-funded and
22 orchestrated chorus intent on opposing anything
23 associated with our industry. It's clear these state
24 and national opposition campaigns have targeted our
25 project here in the city of Benicia.

1 I urge you to consider the facts and follow
2 the staff recommendation to overturn the planning
3 commission's decision, certify our Final EIR, and
4 grant a use permit for our project.

5 Thank you.

6 MAYOR PATTERSON: Thank you.

7 Are there any questions of Mr. Flynn or
8 Mr. Wilson?

9 Councilmember Campbell?

10 COUNCILMEMBER CAMPBELL: For Mr. Flynn, just
11 a real quick one.

12 On that STB declara- -- Declaratory Order,
13 have you guys actually submitted anything yet?

14 MR. FLYNN: No, not yet. No, we have not.

15 COUNCILMEMBER CAMPBELL: Why? I mean --

16 MR. FLYNN: It's not ready yet.

17 COUNCILMEMBER CAMPBELL: It's not ready?

18 MR. FLYNN: That's -- that's correct. The
19 petition is not yet ready to be submitted to --

20 COUNCILMEMBER CAMPBELL: Do you have to
21 wait --

22 MR. FLYNN: -- (inaudible).

23 COUNCILMEMBER CAMPBELL: -- for us to make
24 some sort of vote or movement or something?

25 MR. FLYNN: I -- I think that it -- it may

1 have -- the decision whether to submit, it may have
2 something to do with the -- the decision made by the
3 council. It's certainly going to be an important
4 factor in making that decision.

5 You want to --

6 MR. HOWE: (Nods head affirmatively.)

7 MR. FLYNN: Yeah.

8 I think that's -- that's the correct way to
9 say it.

10 COUNCILMEMBER SCHWARTZMAN: Follow-up?

11 COUNCILMEMBER CAMPBELL: So --

12 MAYOR PATTERSON: Yeah.

13 COUNCILMEMBER CAMPBELL: Go ahead.

14 COUNCILMEMBER SCHWARTZMAN: No. Go ahead.

15 COUNCILMEMBER CAMPBELL: Well --

16 MAYOR PATTERSON: Councilmember Schwartzman?

17 COUNCILMEMBER CAMPBELL: -- just -- just a --
18 just a little bit more on that.

19 You know, okay, so are you saying, then, if
20 we vote to continue it, then you will submit the
21 Declaratory Order?

22 I mean, you know, it's not like --

23 MR. FLYNN: Well, of course --

24 COUNCILMEMBER CAMPBELL: -- you've got to do
25 something before you --

1 MR. FLYNN: Certainly, we will, yes. Yes,
2 absolutely.

3 COUNCILMEMBER CAMPBELL: Okay.

4 But then the -- the flip side of that is if
5 we vote not to continue this, then you won't,
6 you know, file a Declaratory Order?

7 Because you're saying we have to do some
8 action before you will do an action. I assumed these
9 were two independent issues here.

10 MR. FLYNN: Well, I want to -- I want to be
11 sure that I get this -- this right, and I want to be
12 sure that I'm speaking correctly on behalf of my
13 client.

14 If you continue the matter so that we can
15 obtain a -- a Declaratory Order from the Surface
16 Transportation Board, then, of course, we're certainly
17 going to submit that petition.

18 If you don't continue it and go ahead and --
19 and make a decision, the decision you make may have an
20 impact. I won't say it right as I'm standing here
21 right now, but it's going to have a decisive effect.

22 But it may have an impact, the outcome of the
23 hearing process, on the decision whether to go forward
24 with the -- the petition.

25 COUNCILMEMBER CAMPBELL: Because it looks

1 like what you're saying to me is that if we vote not
2 to continue the thing, then, you know, there won't be
3 a Declaratory Order until we make a final decision.

4 Is that -- you know, because that -- that
5 sure sounds like what you're saying, in which case
6 you're saying the two are really sort of independent
7 of each other.

8 MR. FLYNN: I -- if there is a -- and again,
9 I feel like I'm treading on thin on ice here, but --

10 COUNCILMEMBER CAMPBELL: Well, I don't want
11 to put you too much on the spot but --

12 MR. FLYNN: No, no.

13 COUNCILMEMBER CAMPBELL: -- of course, you
14 know --

15 MR. FLYNN: I -- I understand that, but I --
16 I -- at the same time --

17 COUNCILMEMBER CAMPBELL: -- you're a lawyer.

18 MR. FLYNN: -- I'm going to try --

19 COUNCILMEMBER CAMPBELL: You're better than me.

20 MR. FLYNN: -- I'm going to try my best to
21 answer your question.

22 COUNCILMEMBER CAMPBELL: Yeah. Okay.

23 MR. FLYNN: I think if -- if the project is
24 approved, that may provide a disincentive because it's
25 no longer going to be an issue as between Valero and

1 the City as to the scope of preemption and the impact
2 that it has --

3 COUNCILMEMBER CAMPBELL: Yeah, that's true.

4 MR. FLYNN: -- on this project.

5 COUNCILMEMBER CAMPBELL: That's true.

6 MR. FLYNN: So -- and -- and if the -- the
7 application is denied, then it -- it increases the
8 urgency for getting that clarification from the
9 Surface Transportation Board.

10 So there is some contingency to it. I -- I
11 think that there is a high likelihood that we're going
12 to go forward with it, but I can't guarantee that at
13 the moment.

14 COUNCILMEMBER CAMPBELL: Okay. Because it
15 looks like, to me, there's the STB can do two things,
16 regardless of whether we vote "yes" or "no" on the
17 CEQA, EIR, or the use permit.

18 You know, if we vote, you know, one way or
19 the other, they either can come back and say we didn't
20 have jurisdiction, in which case, whatever we did is
21 thrown out.

22 Or they can come back and say we did have
23 jurisdiction, in which case whatever vote we said,
24 "yes" or "no," would have, you know, I guess you could
25 say, precedence. You know, it would -- it would be a

1 legitimate vote at that point in STB's opinion.

2 So it -- so if we vote -- if we continue --
3 if we don't continue this and we just vote, then the
4 STB is either going to say, "You're wasting your time
5 voting," or, "Your vote stands," in which case, if
6 someone wants to go to court and dispute our vote,
7 then, you know, we -- we've done our part, and it's
8 moved on to the next step.

9 You see -- does that make sense to you?

10 You know, first of all, am I making sense?
11 Because the STB looks like they've only got one of two
12 choices, either to say we have jurisdiction or we
13 don't, in which case we -- whatever vote we do would
14 either be totally out or totally in.

15 MR. FLYNN: I think that's correct, yes.

16 COUNCILMEMBER CAMPBELL: Okay.

17 MAYOR PATTERSON: Councilmember Schwartzman?

18 COUNCILMEMBER SCHWARTZMAN: So just on that
19 matter, I -- I -- I'm wondering if there's another
20 option for STB.

21 Yes, they could decide they have jurisdiction
22 and -- and deny even looking at it, but they can also
23 say they've got jurisdiction but not hear the case
24 because there's overwhelming preponderance of,
25 whatever it is, as the cases before that would support

1 whatever it is, the preemption or not, or whatever.

2 So I'm thinking there might be three options,
3 but that's my personal opinion.

4 So a follow-up, let's say that we vote to
5 continue. How soon is it going to be for you to
6 submit your request to STB?

7 MR. FLYNN: I would think that we'd take --
8 we could have it submitted within 30 days.

9 COUNCILMEMBER SCHWARTZMAN: Which is what I
10 heard back when you first brought this up on
11 March 15th, and I'm thinking, in my mind, you would be
12 getting it in within 30 days from then.

13 So now I'm hearing that it's 30 days from, on
14 one hand, a vote to continue.

15 Okay. So you clarified that. I appreciate
16 that --

17 MR. FLYNN: Yes.

18 COUNCILMEMBER SCHWARTZMAN: -- at least a
19 clarification.

20 MR. FLYNN: You're welcome.

21 COUNCILMEMBER SCHWARTZMAN: So if we vote not
22 to continue, then it sounds like you would wait,
23 obviously, until there's some type of decision on the
24 EIR and the use permit.

25 And if it is -- if we vote in favor and we

1 pass it to move forward, there's really no need
2 because -- there's just no need to get a Declaratory
3 Order because your project has been approved.

4 On the other hand, if we vote to deny, then
5 you're going to feel -- I'm trying to paraphrase or
6 just make sure I'm clear, that you would at that point
7 feel that you would need to also submit the -- to the
8 STB to get a ruling at that particular point on
9 preemption issues, if, in fact, the denial has issues
10 within it or denial aspects of it have to do with
11 preemption.

12 MR. FLYNN: Correct.

13 COUNCILMEMBER SCHWARTZMAN: Because it's
14 conceivable that if we did vote to deny, it wouldn't
15 be on any preemption issues, just on local impacts
16 within the boundaries of Valero.

17 So I think I'm correct, if that -- and I'm
18 not saying that's the case, by the way, but if that
19 were the case, then I'm thinking that there would be
20 no -- I mean, you might still submit for a request for
21 a Declaratory Order.

22 But it would seem, to me, by judging from
23 some of the stuff that I've seen, if it's physically
24 on your property, then it sounds like the jurisdiction
25 isn't within STB.

1 Now, I -- you're the attorneys. I'm not.
2 That's my impression.

3 However, now my other question, so --

4 MAYOR PATTERSON: Well, can I -- can I -- I
5 just wanted that clarified, because I think the -- the
6 way it's been stated by Councilmember Campbell is that
7 they -- if the council decides tonight not to
8 continue -- to, I mean, sorry -- right, to deny your
9 request for a delay and then we continue the process,
10 that what Councilmember Schwartzman is saying is that
11 there is the option where after we don't certify the
12 EIR, for instance, and deny the project, or some
13 mixture of that, that you would then file for --
14 petition for the Surface Transportation Board.

15 Why -- you could do that, but why wouldn't
16 you just sue? Because, ultimately, the decider about
17 the decision by the council will be held by the
18 courts, and the STB board really just opines. They
19 don't have that jurisdictional authority.

20 MR. FLYNN: They do, and that -- that's a
21 good question, but I think what often happens in -- in
22 federal court, in particular, is that if a federal
23 agency's decision-making discretion is in some way
24 implicated by the lawsuit, very often the courts will
25 express at least an interest in what the agency, the

1 administrative agency, has to say about the particular
2 legal issue.

3 So is the court required to defer to the
4 agency? No. Is the court going to be interested in
5 what the agency would have to say on that particular
6 issue? Yes. And the court might want to have that in
7 hand sooner rather than later.

8 COUNCILMEMBER SCHWARTZMAN: All right.

9 MAYOR PATTERSON: Yes, and I think that point
10 was made by Mr. Hogin a couple of meetings ago, about
11 the advantage of having an STB opinion in the record
12 to strength- -- to strengthen the position.

13 So you're just confirming that that -- that
14 that is a goal that you have for -- to -- getting that
15 STB ruling, whether it be for if we grant the delay or
16 even if the -- the EIR is not certified and the land
17 use permit is denied.

18 You would still go for that STB ruling?

19 MR. FLYNN: Yes --

20 MAYOR PATTERSON: Okay.

21 MR. FLYNN: -- yes.

22 And I think it -- frankly, as I've said
23 before, I think it provides clarity and -- and, in
24 fact, will -- will provide a benefit to everybody
25 involved.

1 MAYOR PATTERSON: Well, I know we have some
2 questions to staff about that, but let's finish up the
3 questions to you with Councilmember Schwartzman.

4 COUNCILMEMBER SCHWARTZMAN: Well, just a
5 follow-up on that last timing issue.

6 So if it went down the path of we didn't
7 approve the continuance and took action and ended up
8 doing a denial, how soon after that would you file?

9 It sounds like within 30 days.

10 MR. FLYNN: Yeah, I think so. Yes.

11 COUNCILMEMBER SCHWARTZMAN: Then my -- my
12 other questions will be for Mr. Hogin on -- on that
13 subject.

14 Thank you.

15 MR. FLYNN: Okay. Thank you.

16 Anything else?

17 MAYOR PATTERSON: Let's see.

18 Councilmember Strawbridge, do you have a
19 question of Mr. Flynn?

20 COUNCILMEMBER STRAWBRIDGE: Yes, I do.

21 On April 1st, we received a letter from you
22 saying that Valero will seek Declaratory Order, even
23 if the project hearing is not continued.

24 So from that, I understood that you were
25 going to move forward whether we continued this item

1 or not, based on this letter from April 1st.

2 So have things changed since then?

3 MR. FLYNN: Perhaps somewhat, yes, and I -- I
4 think it -- it's -- circumstances have evolved
5 somewhat rapidly since we've started this process.

6 And -- and at first, our hope was that the --
7 the hearings would be continued so that we could go to
8 the Surface Transportation Board for that Declaratory
9 Order.

10 I think, in effect, you've -- you've gone
11 ahead with the hearings, which changed our -- our view
12 of how things might unfold a little bit.

13 But while there may be some slight adjustment
14 to our plan, it's not a major adjustment, I wouldn't
15 think.

16 COUNCILMEMBER STRAWBRIDGE: Okay.

17 And then in the same letter, there is
18 point No. 5, that "The California Attorney General has
19 no jurisdiction over railroads."

20 So this goes along with her letters, two
21 letters now that have been put in the record, about
22 the -- the jurisdiction.

23 And, to me, this is -- this is getting down
24 to really -- it's confusing, and I think it's
25 confusing to the public.

1 And I've been watching the planning
2 commission in San Luis Obispo. I own property in
3 Pismo Beach, and so I'm going through what they are
4 also looking at.

5 And this "jurisdiction" keeps coming up in
6 their EIR and says that, you know, the preemption is
7 there. You can maybe mitigate, but preemption,
8 preemption, preemption.

9 So I -- I think what I'm looking for is some
10 kind of clarification that we -- that there is a
11 difference between the applicant and preemption and
12 the rail preemption.

13 So what -- what my question is is -- is the
14 attorney looking at inside Valero's property, or is
15 the Attorney General looking at all of it?

16 Because it seems to me, if we try to mitigate
17 anything with the rail, which was what was suggested,
18 is -- is -- we -- we can't do it.

19 I mean, it was like we can't tell U.P., who's
20 here, what kind of locomotive to use. We can't tell
21 them how fast to go. We can't tell them how many
22 people are on that rail carrier.

23 So I -- I -- that's why I'm -- I'm really
24 looking at for some definitive answers here, and I
25 think the public is. You know, it's like -- and --

1 and I'm -- I'm hoping that if we get to that point of
2 a continuance, that the transportation board might
3 give us some -- some light on it.

4 But, you know, I've -- I've been looking at
5 Representative Mike Thompson, his work on a federal
6 level, trying to make this whole -- whole thing safer.
7 There's just a lot of balls up there.

8 And, quite frankly, I'm -- you know, we're --
9 we were in the editorial of the San Francisco paper on
10 Saturday, that we're making this decision for the
11 world, and -- and you know what? I didn't sign up for
12 that.

13 I -- you know, it's -- it's -- it's -- it's
14 great that we are at this point, and one of the things
15 that they said is because of the small town's
16 important role in addressing climate change, which we
17 have been a forerunner in adopting the Climate Action
18 Plan, going with MCE, you know, a lot of things that
19 we've done here in the city, our solar panels, have --
20 have made us, you know, a forerunner in -- in climate
21 change.

22 So, you know, I think that we need more
23 clarification here. That is what I'm looking for.

24 MAYOR PATTERSON: So before we get --
25 Thank you.

1 COUNCILMEMBER STRAWBRIDGE: Uh-huh.

2 MAYOR PATTERSON: -- too far afield, we do
3 have our attorneys and our staff, and I would like
4 them to comment on this.

5 So we're really asking for questions of
6 Mr. Flynn or Mr. Wilson based on their rebuttal
7 comments and clarification on --

8 And thank you for the clarification.

9 -- on the status of the petition for the
10 Surface Transportation Board.

11 So if there's a specific question to
12 Mr. Flynn or Mr. Wilson, what I'd like to do is move
13 to staff now that the rebuttal is over. We've asked
14 all our questions.

15 Okay. Your light's on.

16 VICE MAYOR HUGHES: (Inaudible.)

17 MAYOR PATTERSON: Okay. Well, let me have
18 staff make some opening comments. You recall that we
19 haven't really had the discussion for at least two
20 meetings, and so it will be brief.

21 For Mr. Hogin and Ms. McLaughlin and
22 Mr. Kilger is that you have a staff recommendation not
23 to grant the request for a delay.

24 Can you provide some context and background
25 for that?

1 COUNCILMEMBER SCHWARTZMAN: I have additional
2 questions of Mr. Wilson, if you don't mind.

3 MAYOR PATTERSON: No, I don't mind.

4 COUNCILMEMBER SCHWARTZMAN: Okay. Thank you.
5 For Mr. Wilson -- and this is a very loaded
6 question. You're going to be mad at me.

7 MR. WILSON: Okay.

8 COUNCILMEMBER SCHWARTZMAN: One of the issues
9 that has been a recurring theme, which I have to tell
10 you that I'm concerned about, also, is -- and I kind
11 of brought it up and Mr. Cuffels [sic] was kind enough
12 to give me some feedback at the previous meeting, has
13 to do with the volatility of some of the -- the
14 additional crude.

15 And so my question is, has Valero even
16 considered the possibility of additives to reduce the
17 volatility?

18 I know it costs more money. I get that part.
19 I have no idea what that is. I know there was some
20 submission that came to us about a process that didn't
21 sound, on the surface, very expensive.

22 But has there been any consideration at all
23 to at least, from your perspective, perhaps do an
24 additive between the -- the ground and rail, before it
25 gets on the cars, to kind of reduce the volatility?

1 And then, obviously, I'm sure that would
2 impact costs, I get that, per barrel, I get that.
3 Personally, I'd pay a little more per gallon. But I
4 don't know about the cost side back here, how to take
5 that out again.

6 So can you help me understand what that's
7 like. Have you considered it? Is there any
8 particular cost to it?

9 MR. WILSON: At this point, we have not
10 considered it because we're buying that oil that --
11 that would be put in those railcars. Remember, we
12 don't own any oil until we purchase it. We don't have
13 control over what goes in that car.

14 But as Mr. Cuffel said to you, we can only
15 store and man- -- and process a certain crude oil
16 anyway. And the Bay Area Air Quality Management
17 District has a very defined graph of what the -- the
18 RVP and sulfur content of those oils are.

19 So it's -- it's public knowledge what types
20 of oil we can refine, but we have not looked at
21 treating railcars before we get them, at all.

22 COUNCILMEMBER SCHWARTZMAN: Okay. Thank you.

23 MAYOR PATTERSON: Are there any other
24 questions of Mr. Wilson?

25 Vice -- okay. So now back to the question.

1 So staff has recommended that we not continue
2 the -- or we not grant the request for continuation
3 for Valero to get an opinion from the Surface
4 Transportation Board.

5 And why?

6 MS. McLAUGHLIN: Well, I might need a little
7 help from this. We need a development director on
8 that one.

9 But the most important thing is if you decide
10 to do it, grant the request for a continuance, staff
11 would like you to have an end date on it so that it
12 would come back to us by the September 1st council
13 meeting, because we don't want to let the thing drag
14 on and on.

15 There's a lot of changes in the law right
16 now. As you mentioned, Mike Thompson is working on
17 things, and the other agencies are working on things
18 as well, and we don't want the document to be stale,
19 and you would not want to start all over again with
20 this.

21 And Christina has something to say.

22 MS. RATCLIFFE: So I think you -- you
23 basically said that it was that we didn't know the
24 length of time it could be postponed. It could be
25 three months. It could be six months. We're not

1 sure; that different regulations for the rails -- for
2 the railroad may come into effect during that time,
3 that some of the studies may go stale during that
4 time, and that we should -- I think that was
5 the -- the basic reason for denying the -- or for
6 recommending denial of the continuance.

7 MAYOR PATTERSON: And then just -- let's have
8 Mr. Kilger and Mr. Hugin, and then we've got a couple
9 of questions from councilmembers.

10 MR. KILGER: No. I would say the primary
11 reason for staff was the validity of the EIR over time
12 and the -- the time limits of the data contained
13 within the EIR. If we come back after six, seven
14 months, you may have to ask us to go back and update
15 some sections.

16 So we just wanted you to be aware of that as
17 a situation you may -- you would have to potentially
18 deal with, if you did continue it.

19 MR. HOGIN: Now, Mayor, I -- I was not
20 involved in the -- the -- formulating the
21 recommendation to -- against the continuance.

22 And in my view, a continuance would be
23 helpful to the City, to get some clear authoritative
24 opinion from the Surface Transportation Board before
25 making this decision.

1 MAYOR PATTERSON: Okay. Thank you.

2 Councilmember Campbell and then Schwartzman,
3 Strawbridge, and Vice Mayor Hughes.

4 COUNCILMEMBER CAMPBELL: Okay, Mr. Hogin.

5 You know, I was actually going to ask this of the U.P.
6 representative, but -- you know.

7 It had to do with the case -- it was a
8 high-speed rail case. I guess it involved
9 Hillsborough. It sounds like it's a market
10 participation case they were calling it, where the STB
11 wanted to be one of the parties, but the judge
12 wouldn't let them, I think, wasn't it?

13 You know, it -- and so they were
14 participating in the -- the court case and some other,
15 you know, sort of, you know, I guess, position, or
16 whatever it is there.

17 So that almost was describing what Mr. Flynn
18 was sort of saying one of the options is, you know,
19 we -- we make a ruling, it goes to court, you know, it
20 never goes to the STB, but the STB then can, you know,
21 weigh in on it.

22 And isn't that sort of what happened with
23 that Hillsborough case?

24 MR. HOGIN: Yeah. I'm not -- I'm not
25 familiar with the -- the issue of the STB. It guess

1 they were -- it sounds to me like they were trying to
2 intervene, and the judge wouldn't let them?

3 COUNCILMEMBER CAMPBELL: Yeah, that --

4 MR. HOGIN: I'm not familiar with that issue.

5 COUNCILMEMBER CAMPBELL: -- that sort of
6 sounds like what happened.

7 MR. HOGIN: But I can tell you that very
8 often in these cases, typically, it comes up where a
9 City adopts a regulation. The rail carrier, or -- or
10 perhaps a transloading facility, thinks that the --
11 what -- what's happened is preempted, that the City
12 overreached its authority.

13 The -- the rail carrier will -- will file a
14 petition with the Surface Transportation Board and
15 file a lawsuit.

16 The Surface Transportation Board decision
17 will typically come out before the case goes -- you
18 know, the -- the court goes -- the court case goes to
19 trial, and that can be helpful to the trial judge --

20 COUNCILMEMBER CAMPBELL: Okay.

21 MR. HOGIN: -- in deciding the case.

22 COUNCILMEMBER CAMPBELL: He can weigh what --
23 what happened.

24 MR. HOGIN: Exactly.

25 COUNCILMEMBER CAMPBELL: Well, could I ask

1 the U.P. person, you know, if they know any more facts
2 on what happened on that one case there?

3 Is he out there somewhere?

4 COUNCILMEMBER SCHWARTZMAN: He's here.

5 MAYOR PATTERSON: I mean, I don't know who it is.

6 And while you're coming forward, U.P. person --
7 are you the U.P. person?

8 MR. CASTILLO: Yeah, I am.

9 MAYOR PATTERSON: Okay.

10 MR. CASTILLO: But I'm -- I'm not familiar
11 with that particular case, Councilmember. I can look
12 into and certainly get back to you on that.

13 COUNCILMEMBER CAMPBELL: Okay.

14 MR. CASTILLO: I'm not sure what I can do
15 but...

16 MAYOR PATTERSON: Okay.

17 COUNCILMEMBER CAMPBELL: Because that's sort
18 of like killing two birds with one stone, you know,
19 that -- as Mr. Hogin said, you know, and, you know,
20 when I get advice from an attorney, I tend to listen
21 to it, you know, that, you know, the STB, you know,
22 could weigh in on a Declaratory Order of its own,
23 you know, if this thing goes to court afterwards.

24 MR. CASTILLO: I'll get you some information
25 for sure.

1 COUNCILMEMBER CAMPBELL: Okay.

2 MAYOR PATTERSON: Councilmember Schwartzman?

3 COUNCILMEMBER SCHWARTZMAN: All right.

4 So, Mr. Hogin, so can you help me out -- or
5 actually help the public out?

6 I read the Attorney General's letter, and I
7 also read your response, but I don't think everybody
8 here read your response.

9 So could you maybe highlight for us the key
10 reasons why you feel the Attorney General is maybe --
11 well, in your opinion, in error in this particular
12 circumstance.

13 MR. HOGIN: Absolutely.

14 The Attorney General letter really missed the
15 point. The issue here is whether a City can regulate
16 rail impacts indirectly by imposing requirements on a
17 shipper that address rail impacts, as opposed to
18 impacts from the shipper's facility, and the
19 Attorney General opinion really doesn't discuss that.

20 The Attorney General opinion only discusses
21 cases where cities were addressing impacts from a
22 transloading facility that was owned and operated by a
23 private party.

24 In none of the cases where -- that the
25 Attorney General cites were any of the cities

1 addressing rail impacts; okay?

2 None of that -- the application of the zoning
3 ordinances in all those cases to the private
4 transloading facility, at no point were any of those
5 cities saying, "We're -- we think -- we think the
6 transportation by rail is unsafe. We think the trains
7 that are coming to this facility are going to generate
8 too much air pollution. We think that the trains
9 coming to this facility are going to generate too much
10 noise."

11 Cities were not doing that in any of the
12 cases that the Attorney General cites.

13 What the cities were doing is they're saying,
14 "Okay. These private transloading facilities will
15 have impacts in the community."

16 Like, there was a case where a private waste
17 transfer station, it's a transloading operation that
18 would take construction debris from trucks, take it
19 off the trucks and put on a train; okay?

20 The -- the City came in and said, "You cannot
21 build that here or operate that here because the waste
22 transfer facility is not permitted under our zoning
23 ordinance"; okay?

24 So the impacts the City is addressing there
25 are the impacts -- are -- are the land use impacts,

1 the land use compatibility between a waste transfer
2 station and the residences across the street; okay?

3 That's a very different thing than if the
4 City said, "We're going to prohibit this facility
5 because we -- we think that the trains that are going
6 to come and go are going to create too much air
7 pollution or too much noise, or they might derail and
8 spill asbestos building materials," or something like
9 that.

10 It's a very -- I mean, this issue has -- in
11 my considered view, this issue has been unnecessarily
12 complicated by a lot of people that don't like the
13 project. I'm going to be very blunt.

14 The Surface Transportation Board has
15 exclusive jurisdiction over the operation of a
16 railroad; okay?

17 That means that there isn't any state or
18 local agency that can tell a railroad how fast it can
19 go, when it can go, how much air pollution can be
20 generated, what safety requirements are acceptable and
21 what are not, and so forth.

22 And that there's a very good reason behind
23 that, because to allow state and local jurisdictions
24 to take that kind of a regulation would create a
25 patchwork of inconsistent regulations all over the

1 country; okay?

2 The -- and -- and it gets a little more --
3 well, to the extent that a -- a City is regulating a
4 privately owned facility, it's not owned by a
5 railroad, okay, and it's not -- it's not -- it's not a
6 locomotive, it's not a railcar, it's not a rail.

7 It's a -- it's an ancillary facility, and
8 it's owned by a private party. The City can regulate
9 those impacts under its zoning ordinance or -- or
10 otherwise.

11 But -- but the City cannot use the occasion
12 of -- of a use permit application from a private
13 transloading facility to attempt to fix everything
14 that the City thinks is wrong with the railroad,
15 because the shippers -- the shippers have rights.

16 A shipper -- the shipper has a right under
17 the -- under ICCTA to request and receive rail
18 service. Union Pacific can't tell Valero, "We're not
19 going to carry your crude oil because we think it's
20 dangerous"; okay?

21 If -- as long as the Surface Transportation
22 Board and the other federal agencies have determined
23 that it's safe to carry crude oil from Bakken, or
24 wherever, Valero has a right to that; okay?

25 So the -- the railroad can't tell Valero what

1 it can and cannot ship; okay? And there are -- there
2 are cases where railroads tried to tell shippers, "We
3 don't want to carry chlorine, we don't want to carry
4 hydrochloric acid," and they've taken that to the STB
5 and the courts.

6 And the courts have said, "You, the railroad,
7 can't tell the shipper what it can ship"; okay?

8 So if the -- if the railroad can't tell the
9 shipper what's safe to ship, then this city can't tell
10 the railroad what's safe to ship.

11 COUNCILMEMBER SCHWARTZMAN: Thank you.

12 MAYOR PATTERSON: Councilmember Campbell?

13 COUNCILMEMBER CAMPBELL: Just one quick
14 follow-up on that.

15 When it comes to a private spur, you know,
16 what -- what is the situation, as far as preemption
17 goes, with that?

18 Because, you know, you've got right at
19 Park Road, you shift over from the Union Pacific to
20 the private Valero spur.

21 Is that preempted, too?

22 MR. HOGIN: Yeah, that's a very good
23 question, and I did want to correct -- I -- I -- I --
24 if I understood what Councilmember Schwartzman had
25 been saying earlier, just to clarify, that the

1 distinction is not between impacts on Valero's
2 property and then impacts off Valero's property.

3 The distinction is between impacts from the
4 tran- -- from the unloading rack in this case and
5 impacts from the operation of rail, in other words,
6 locomotives, railcars, and track.

7 So, in other words, the City does not have
8 the authority to say that while the Union Pacific
9 locomotive is on Valero's property traveling across,
10 even if it's a privately owned track, the City can't
11 regulate emissions or noise or safety relating to that
12 locomotive; okay?

13 Does -- is that clear?

14 It's -- the distinction is between the
15 unloading rack, which is not operated by a railroad
16 and does not involve rail operations, and the
17 operation of the railroad, which is, again,
18 locomotives, railcars, and track, essentially.

19 MAYOR PATTERSON: And to follow up on that,
20 so we had some testimony showing where there was new,
21 improved strengthened track, which exists between some
22 existing businesses, where trains could be parked.

23 And there's no regulatory authority that the
24 City has, or any other operating agency, to control
25 the parking of those cars, whether they be full or

1 empty?

2 MR. HOGIN: That is -- that is correct.

3 As long as -- it's a piece of track which
4 allows a shipper to access the rail network and -- and
5 as long as Union Pacific trains are traveling on that
6 track to and from the shipper's address and other
7 detonations.

8 MAYOR PATTERSON: So regardless of the status
9 and nature of an easement of any track, if it's
10 involved with the transportation of those cars, for
11 the purposes of those cars, they can be placed
12 anyplace within the Benicia Industrial Park?

13 MR. HOGIN: Well, I'm -- I'm -- I -- I --
14 you -- you -- you're -- you lost me in the last part.

15 But the -- the basic principle is that even
16 if a track, a piece of track, is privately owned, then
17 the City cannot regulate the use of that track by a
18 railroad.

19 MAYOR PATTERSON: Well, let me put it another
20 way.

21 There is no track in the Benicia Industrial
22 Park that Union Pacific cannot park a railcar?

23 MR. HOGIN: If there's no track, they can't
24 park a railcar. I don't know how they would -- yeah,
25 I don't know -- how would they park a railcar if

1 there's no track?

2 MAYOR PATTERSON: Well, I mean, just moving
3 the rails around -- moving the cars around. There's
4 lots of tracks there. There are little spurs. There
5 are dead ends, and they can move the cars around in
6 order to accommodate the other traffic that they have
7 going on.

8 So they can do that on any track that exists
9 in the Benicia Industrial Park.

10 MR. HOGIN: Yes. I mean, unless -- again,
11 I -- I want to make sure I understand your question.

12 If there's a -- if there's a length of track
13 that's privately owned, Union Pacific doesn't
14 necessarily have the right to use that piece of
15 private track.

16 MAYOR PATTERSON: So do we know what is owned
17 privately in the Benicia Industrial Park?

18 MR. HOGIN: I have no idea.

19 MAYOR PATTERSON: Okay. That's a question,
20 but let's get back to the subject.

21 I'm trying to remember where we started this,
22 and that is the -- we were talking about the letter
23 from the Attorney General, and you were expressing
24 your different opinion of her take on what the
25 decision is.

1 And when I read the letter, I thought that
2 I -- it was more clear to me in that we had land use
3 authority, that was clear, and that we had an
4 obligation under CEQA to look at the impacts, direct
5 and indirect, and regionally, not just locally or
6 specific to the land use, and -- and to identify the
7 mitigation measures.

8 You are saying that that second part is
9 incorrect?

10 MR. HOGIN: Yes. What I'm saying is that
11 ICCTA, we'll call it, preempts the application of CEQA
12 and the city zoning ordinance to this project, to the
13 extent that the City tries to regulate, either
14 directly or indirectly, rail impacts.

15 And again, I know a lot of this stuff can
16 sound complicated, as legal mumbo jumbo, but again --
17 basically, the City can't tell Union Pacific how to
18 run their rail line.

19 And they can't do so directly by trying to,
20 you know, require a permit from Union Pacific.

21 But they also can't do it indirectly by
22 telling Valero, "We're not going to approve your
23 project because the trains coming and going to your
24 project have acc- -- have impacts that are not
25 acceptable to us."

1 It's not within the City's purview to decide
2 and -- and use its regulatory authority to -- to
3 decide that impacts from rail operations are
4 unacceptable. It's -- it's none of the City's
5 business, you know, what -- what impacts the -- the
6 trains are imposing.

7 I'm trying to put this a different way.

8 It's -- it's -- again, I -- I don't think
9 it's complicated. I think it has been -- the -- the
10 waters have been muddied by those who oppose the
11 project, in my view.

12 (Indiscernible chatter)

13 MAYOR PATTERSON: Come, come, come. Let's
14 not have the hissing.

15 So back on track with, pardon the word --
16 there are so many really good words that have kind of
17 been ruined recently. I used to enjoy saying "that
18 trumps this," and now, you know, "getting back on
19 track," or what have you. It's really frustrating.

20 So I believe Vice Mayor Hughes is next, if
21 I'm correct on that.

22 And this is addressing the issue of the --
23 what we -- we're addressing the issue of the timing of
24 the Surface Transportation Board petition.

25 And the last question we had was if the delay

1 was denied, as recommended by staff, they could still
2 request a petition -- they could still request,
3 through petitioning the Surface Transportation Board,
4 for an opinion while we finish up our work here on the
5 certification, or not, of the Final EIR and the land
6 use permit.

7 I think that's the -- the string that I'm
8 trying to see if you had any comments on that
9 question.

10 Okay. So you're --

11 COUNCILMEMBER STRAWBRIDGE: Okay.

12 MAYOR PATTERSON: But he -- I think he -- you
13 commented. I really think it's his turn.

14 VICE MAYOR HUGHES: (Inaudible.)

15 COUNCILMEMBER STRAWBRIDGE: Well, it's -- it
16 is related to --

17 MAYOR PATTERSON: Okay.

18 COUNCILMEMBER STRAWBRIDGE: -- the continuance.

19 MAYOR PATTERSON: Great.

20 COUNCILMEMBER STRAWBRIDGE: And this is a
21 question for Valero.

22 At the March 15th meeting, when you brought
23 up the continuance, there was discussion about if this
24 goes on, then -- and -- and another EIR has to be
25 done, is Valero going to pay for it?

1 And so I think you were going to -- supposed
2 to get back to us at this meeting to let us know what
3 the situation is here.

4 And -- and a new EIR, obviously, is going to
5 be needed if the Surface Transportation Board turns
6 this down, because everything has been preempted in
7 the current EIR; is that correct?

8 COUNCILMEMBER SCHWARTZMAN: Well --

9 COUNCILMEMBER STRAWBRIDGE: Yeah?

10 COUNCILMEMBER SCHWARTZMAN: Uh --

11 MAYOR PATTERSON: No. I --

12 COUNCILMEMBER SCHWARTZMAN: I'm not sure if I --

13 MAYOR PATTERSON: That's not -- it's not an
14 inclusive umbrella on the question that's being asked
15 about preemption.

16 And so I don't see a need for redoing the EIR,
17 let's say, in a month if the Surface Transportation
18 Board weighs in with what the staff has recommended
19 and agrees with that.

20 COUNCILMEMBER STRAWBRIDGE: Right.

21 MAYOR PATTERSON: So if they don't agree with
22 that --

23 COUNCILMEMBER STRAWBRIDGE: Right.

24 MAYOR PATTERSON: -- then that -- that's your
25 question?

1 COUNCILMEMBER STRAWBRIDGE: That's my
2 question.

3 MAYOR PATTERSON: Okay. Got it.

4 COUNCILMEMBER STRAWBRIDGE: So if they don't
5 agree with it, then we need to recirculate an EIR, is
6 that correct, a new one?

7 MR. HOGIN: Madam Mayor, I could address
8 that, if --

9 MAYOR PATTERSON: Yeah.

10 MR. HOGIN: -- you'd like.

11 Not necessarily. EIRs do not have some
12 automatic shelf life. There isn't some magic time of
13 three months or six months or a year, or even ten years,
14 when an EIR expires.

15 But what one needs to do, if there's been
16 some period of time between when an EIR was prepared
17 and circulated to when it -- when a -- when it's going
18 to be relied upon to approve a project, you need to
19 consider whether there's been a change in
20 circumstances that implicates a new significant
21 effect or a substantial increase in the severity of a
22 previously identified significant effect.

23 So setting aside those, you know, fancy
24 words, basically, we just have to look at the EIR in
25 seven months, dust it off. We -- it's possible we

1 won't have to change much of anything. We might have
2 to change it a little bit.

3 If there's some dramatic unforeseen
4 development, we might have to change it a lot, but
5 that's not terribly like- -- likely in a -- in a
6 seven- or eight-month time frame, I would not think.

7 MAYOR PATTERSON: Let me see if I can get a
8 clarification on that.

9 So let's say seven months from now -- so
10 let's say that the request for delay is approved by
11 the council. It takes seven months for the Surface
12 Transportation Board to respond.

13 And they respond with that not only do we not
14 have jurisdiction over noise and -- and the other
15 issues pertaining to the operation of Union Pacific on
16 Valero's property, but we also actually don't have
17 jurisdiction over the land use permit and CEQA, which
18 has been alleged in some other cases.

19 And so, then, you're suggesting that when we
20 come back after all that time, after seven months, and
21 we go forward with the certification of the EIR and
22 the consideration of the approval of the use permit,
23 that that would not be challenged?

24 MR. HOGIN: Again, I want to make sure I
25 understand your question.

1 Your question is if the S- -- if the Surface
2 Transportation Board, basically, let's keep it simply,
3 concludes that I'm right and that the City does not
4 have the authority to address rail impacts, then we
5 would come back, and the City would certify the EIR,
6 but really only paying attention to the impacts from
7 the unloading rack.

8 So is the unload- -- is the unloading rack
9 consistent with the zoning? Will the unloading rack
10 have toxic air emissions that will affect people
11 nearby? Will the operation of the unloading rack
12 create noise that exceeds the standard; okay?

13 And it would have -- and it would -- the
14 city council would consider the EIR, just based on
15 those impacts.

16 MAYOR PATTERSON: So is it incorrect for me
17 to read the Valero letter that was submitted, that the
18 indirect preemption applies as well to the land use
19 permit outside of the issues --

20 MR. HOGIN: Ah, I understand -- I understand
21 now.

22 I disagree with Valero in one of the
23 positions they've taken. Valero's -- Valero's
24 position that -- they haven't asserted it in a while,
25 but they took it in their letter back a year and a

1 half ago, whenever that was.

2 Valero said not only is CEQA preempted as to
3 rail impacts, CEQA is also preempted entirely as to
4 the unloading rack as well, because the unloading rack
5 is an ancillary facility, and that -- that is
6 incorrect. That argument is incorrect.

7 Because under the cases cited by the
8 Attorney General, a City does have land use authority
9 over an ancillary facility, like a transloading
10 facility, if that facility is not owned by a rail
11 carrier, if it's privately owned.

12 So in this case, Valero owns the unloading
13 rack. It's not owned by Union Pacific, it's not
14 operated by Union Pacific, and Valero is not operating
15 it as an agent of Union Pacific.

16 So the City does have permitting authority,
17 and CEQA does apply to the issuance of any permit for
18 the unloading rack itself.

19 MAYOR PATTERSON: So if STB came back with an
20 opinion that agreed with Valero, then we would just go
21 on and -- and say that the existing EIR is fine?

22 MR. HOGIN: I -- I think -- I think at
23 that -- I -- I don't think that's going to happen, but
24 if that did happen, in the extremely unlikely event
25 that that did happen, I think Valero would just go

1 build the unloading rack. They wouldn't need any
2 approval from you.

3 But I don't think that's correct.

4 MAYOR PATTERSON: Well, exactly.

5 MR. HOGIN: Yeah.

6 MAYOR PATTERSON: Okay.

7 COUNCILMEMBER SCHWARTZMAN: Can -- can I just
8 do a follow-up on that --

9 MR. HOGIN: Yeah.

10 COUNCILMEMBER SCHWARTZMAN: -- kind of line
11 of thought?

12 So you're asking if -- if we have to re- --
13 so what happens if between now and six, seven months,
14 whatever it is, some other regulation comes down from
15 the federal level, okay, that impacts some of the
16 mitigations in the EIR, maybe things that aren't
17 covered by preemption.

18 Then what?

19 MR. HOGIN: Well, we need to look at them.

20 Again, if the -- if the Surface
21 Transportation Board determines that -- that I'm
22 right -- I'm not talking about Surface Transp- -- I'm
23 talking about some other federal regulations.

24 COUNCILMEMBER SCHWARTZMAN: Oh, oh.

25 MR. HOGIN: Let's say Congress --

1 COUNCILMEMBER SCHWARTZMAN: Okay.

2 MR. HOGIN: -- acts, okay --

3 COUNCILMEMBER SCHWARTZMAN: Right.

4 MR. HOGIN: -- and says whatever. They've --
5 they decided that a particular rail impact needs to be
6 mitigated and corrected, like positive brake controls,
7 or whatever, as --

8 MR. HOGIN: Right.

9 COUNCILMEMBER SCHWARTZMAN: -- an example.

10 Something new comes out that -- that affects
11 a significant unavoidable currently --

12 MR. HOGIN: Okay.

13 COUNCILMEMBER SCHWARTZMAN: -- okay, but
14 might affect that positively or remove that.

15 What happens in that case?

16 MR. HOGIN: Well, we -- we'd have to look at
17 that and -- and determine whether the -- whatever the
18 change is was within the scope of the analysis in the
19 original EIR or whether we need to augment that
20 analysis with some additional analysis and whether
21 that would require a new mitigation measure or make a
22 mitigation measure no longer necessary.

23 I mean, it's just -- there's all -- it -- you
24 start to speculate about what might happen but --

25 COUNCILMEMBER SCHWARTZMAN: Okay.

1 MR. HOGIN: -- basically, we just need to
2 take a look at it. We might need to change the E --
3 the EIR a little bit, we might not need to change it
4 at all, or we might need to change it a lot. It just
5 depends on the facts.

6 MAYOR PATTERSON: So isn't it risky in doing
7 the delay because of the very issue, for instance, the
8 air district concerning Rule 15 and 16, which is
9 establishing a baseline, according to them, which is
10 different, as I understand it from reading the EIR,
11 than what's postulated in our EIR about what the
12 baseline is.

13 So seven months from now, we -- let's say
14 that they've adopted Rule 15 and 16 and that
15 information is there now.

16 Wouldn't that be something that would be
17 challenged, that -- doesn't that put the EIR at risk
18 for being out of sync with the regulatory agency?

19 MR. HOGIN: Yeah, I'm -- I'm -- I'm not
20 familiar with the specific issue you're referring to
21 about the baseline and the -- and the Bay Area AQMD
22 rules.

23 But, again, it's -- it -- it's not terribly
24 likely that seven months from now we would need to
25 dramatically revise the EIR. It's just -- I've done

1 so many of these over 28 years, and, you know,
2 seven -- not much changes, typically, in seven months.

3 MAYOR PATTERSON: Okay.

4 Vice Mayor Hughes?

5 VICE MAYOR HUGHES: Thank you.

6 So if you wait long enough, most of your
7 questions have been asked and answered, but I still --
8 I do have a couple.

9 So that if I understand it correctly, the --
10 the reason that staff is recommending against
11 continuance is the risk that the EIR could become
12 stale if it takes too long.

13 But what I'm hearing and what I was thinking
14 earlier is why is that a bad thing? Because if
15 there's new regulations that are put in place, it's
16 not very likely that those are going to be -- in fact,
17 it's very likely they're going to be stricter
18 regulations.

19 So I'm not sure that that's a bad thing,
20 other than it could require, although, it -- maybe it
21 sounds unlikely, it could require us to revisit the
22 EIR, which requires more staff time.

23 But to get things right, I think that would
24 probably be worth the -- worth the wait and worth the
25 risk.

1 That's just a comment.

2 Mr. Hogin, I have a question for you, and
3 this would be related to federal preemption.

4 If you can comment on the Coun Kerny --
5 there's a -- Coun -- County of Kern.

6 MR. HOGIN: Uh-huh.

7 VICE MAYOR HUGHES: There was a recent
8 decision by a superior court, and it was, I think -- I
9 think it was Eolian Energy, and it sounded, in
10 reading -- reading the case, it sounded very similar
11 to the Valero project.

12 Can you comment on what the decision was
13 related to -- or the opinion was related to the --

14 MR. HOGIN: Ab- --

15 VICE MAYOR HUGHES: -- federal preemption.

16 MR. HOGIN: Absolutely. It was -- it was
17 very similar to this project.

18 It's a crude-by-rail operation that would
19 allow a refinery in Kern County to receive
20 North American crudes that it currently did -- does
21 not have the ability to receive.

22 The Kern County approved the project. Kern
23 County concluded that all CEQA review was -- of rail
24 impacts was preempted, even the disclosure aspect.

25 And what the court held was that Kern County

1 did it correctly, that, in fact, all -- the
2 application of CEQA and -- to the analysis of rail
3 impacts was entirely preempted by ICCTA.

4 MAYOR PATTERSON: Okay.

5 Were you going to comment on -- I thought you
6 had your light on for that.

7 So that's superior court?

8 MR. HOGIN: That is superior court. It is
9 not -- it -- it does not have precedential value as a
10 superior court opinion. It's not something that
11 constitutes the law now that can be cited in court in
12 another case.

13 But it is -- you know, in my view, it's yet
14 another indication that that's the correct
15 interpretation of the law.

16 MAYOR PATTERSON: Okay.

17 Councilmember Campbell?

18 COUNCILMEMBER CAMPBELL: Getting back to this
19 continuation for just a second more.

20 Okay, you know, your take on it, Mr. Hogin, I
21 think, at least the way I understand it, is what
22 Valero wants to do, you'd be highly surprised if they
23 could, you know, basically ignore CEQA for everything,
24 zoning, you know, building codes --

25 MR. HOGIN: Right.

1 COUNCILMEMBER CAMPBELL: -- all that.

2 MR. HOGIN: Right.

3 COUNCILMEMBER CAMPBELL: And on the other
4 hand, you know, the -- all -- just like -- everything
5 is, you know, thrown out because of preemption.

6 So why does it make sense to send this to the
7 STB, you know, because if we stay away from the
8 preemption issues on the railroad, you know, our --
9 our decision should be a valid decision, I would
10 think?

11 MR. HOGIN: Well, I think that's right. I --
12 I think what it -- what it gives you, it -- it
13 resolves whatever doubt may have been raised in your
14 minds by the fact that lots of attorneys for project
15 opponents have told you that I'm wrong, that
16 Kamala Harris has told you, the Attorney General --
17 sitting Attorney General has told you that I'm wrong.

18 To the extent that's created any doubt or any
19 uncertainty, then I think the STB opinion would --
20 would give you comfort.

21 On the other hand, if -- if you're asking
22 me -- if you -- if you take my advice and you decide
23 that I'm right and you approve the project on the
24 grounds that you can't mitigate any rail impacts
25 and -- and you're not allowed to deny the project

1 based on rail impacts, then that's fine with me.

2 COUNCILMEMBER CAMPBELL: Well -- okay. You
3 know -- but, you know, deny or approve the project, if
4 we ignore preemption, you know -- you know, the
5 project stands -- I mean, the -- the decision stands;
6 right?

7 You know, I mean, you're saying -- you know,
8 I -- I don't want to put words in your mouth because
9 they're always doing that to me.

10 You know, are -- you're not saying that we
11 have to approve the project. You know, you're --

12 MR. HOGIN: Right.

13 COUNCILMEMBER CAMPBELL: -- saying that as
14 long as we stay away from preemption, you know, what's
15 left is, you know, what we should be basing our
16 decision on.

17 MR. HOGIN: That is exactly right --

18 COUNCILMEMBER CAMPBELL: Okay.

19 MR. HOGIN: -- and I'm glad you asked that
20 question.

21 What I'm saying, and just to be very clear,
22 is that I'm not saying the City can't deny the
23 project. I'm saying the City can't deny the project
24 based on impacts from railroad operations.

25 COUNCILMEMBER CAMPBELL: Yeah, but we've got

1 enough inf- -- I mean, you know, it looks to me like
2 we've got enough information to make a decision. This
3 is just my opinion.

4 I mean, it's sort of like, you know, if
5 you're running a marathon, you stop in front of the
6 finish line because someone tells you your shoelaces
7 might be untied, and, "We'll get back to you in
8 six months and let you know if they were."

9 (Laughter)

10 COUNCILMEMBER CAMPBELL: You know, I mean,
11 you know, it's -- you know, it seems like we have been
12 given enough information to make a decision, you know,
13 in my opinion, on this continuation. I just don't see
14 it, you know.

15 MAYOR PATTERSON: So in a narrow way, that --
16 about the decision that we could make, as described by
17 Councilmember Campbell, is that we -- and we were to
18 go forward, then Valero could still seek their
19 petition -- my -- for a continue -- for the opinion by
20 the Surface Transportation Board on not only their
21 indirect preemption issues, which we don't agree with,
22 according to you and staff, and possibly council would
23 agree with staff's take on that.

24 However, the -- the concern that I have about
25 the delay, or the continuation, is twofold.

1 One is that we have a small staff, and we
2 have some really nifty things that we'd like to get
3 done, and a lot of them are delayed or slowed down and
4 don't get done because the energy and the time is
5 sucked out of our staff because of this issue.

6 And so delaying this issue is really
7 affecting many good things that could be happening in
8 the city, and -- and -- and I've actually discussed
9 this with staff.

10 So since it isn't a do-or-die decision, if we
11 keep it narrow, as described by Councilmember Campbell,
12 then why would you support a delay?

13 The second aspect about it is that the public
14 is kind of worn out. They've been involved with this
15 for three years.

16 It's an amazing effort for volunteers to do
17 the research, to do all the effort that they're doing.
18 They're not being paid for their time, for the most
19 part. A few attorneys have been here have gotten paid
20 a little bit.

21 But there's a respect that I think is owed
22 the public for having stayed with this process as long
23 as they have.

24 And so what good goes delay do for the good
25 of the public?

1 COUNCILMEMBER SCHWARTZMAN: So -- can I do a
2 point of order?

3 MAYOR PATTERSON: Yeah.

4 COUNCILMEMBER SCHWARTZMAN: I -- I thought --
5 and this seems to be morphing towards us giving our
6 opinions about whether we are feeling we want to go
7 with continuance or not, and I thought we were going
8 to be more specific about questions of Mr. Hogin and
9 staff on particulars about it and which -- and we've
10 gotten a lot of answers on that.

11 Because I really -- I have questions for
12 U.P., and I don't want to get out of here without
13 asking questions of U.P., because they're not going to
14 be here tomorrow, the way I understand.

15 MAYOR PATTERSON: Well, that's just an
16 opinion. It's not a point of order.

17 It's just that --

18 COUNCILMEMBER SCHWARTZMAN: Well --

19 MAYOR PATTERSON: -- I was asking -- I was
20 asking why -- what is it that is so compelling about
21 saying it's okay to continue when, in fact, the
22 impacts to operation of the city are severe?

23 And when you finish that, then we can turn to
24 Councilmember Schwartzman's desire to asking you
25 specific -- some questions.

1 MR. HOGIN: Well, I -- depending on what the
2 city -- if the city council were to act, depending on
3 what they do, the Surface Transportation Board delay
4 could be much shorter than the ultimate delay.

5 In other words, if the city council denies
6 the permit application and then Valero prevails in
7 court and then the matter has to come back to the
8 city council, that's a much longer delay for everyone,
9 for city staff, for the -- the public, and so on.

10 So that's another factor.

11 MAYOR PATTERSON: Well, well-noted.

12 Questions of the Pacific -- they didn't -- he
13 didn't have any questions on the delay question.

14 So he --

15 COUNCILMEMBER SCHWARTZMAN: I get that.

16 MAYOR PATTERSON: -- sat down.

17 COUNCILMEMBER SCHWARTZMAN: I get that.

18 MAYOR PATTERSON: Do you have some additional
19 questions?

20 COUNCILMEMBER SCHWARTZMAN: I have questions,
21 on -- no, not on the delay. I have questions of U.P.

22 MAYOR PATTERSON: Well, okay.

23 COUNCILMEMBER SCHWARTZMAN: Didn't I --

24 MAYOR PATTERSON: (Inaudible.)

25 COUNCILMEMBER SCHWARTZMAN: -- didn't I

1 see -- didn't you say that we want an opportunity to
2 be able to ask questions of staff?

3 We had some -- some people here, experts
4 here, meaning the traffic people and also U.P., okay,
5 and I thought that we were going down that path.

6 First, it's just getting to the continuance
7 issue, because I'm ready to talk about the continuance
8 issue, if that's the will of the council, but we don't
9 get U.P. here all that often, and unless they're going
10 to come back tomorrow night --

11 MAYOR PATTERSON: They are coming back
12 tomorrow, but I understand our traffic consultant is
13 not.

14 COUNCILMEMBER SCHWARTZMAN: Okay. If you're
15 coming back tomorrow, that's a good thing.

16 MAYOR PATTERSON: Right.

17 So the traffic consultant, however, as I
18 understand it, is not.

19 Is that correct?

20 COUNCILMEMBER SCHWARTZMAN: He's try- -- he's
21 nodding "yes." Okay. So that's good.

22 Then we can -- okay. Then -- I get that.
23 I'll defray [sic] my U.P. questions till tomorrow
24 because I think we're coming back tomorrow.

25 MAYOR PATTERSON: Okay. So then that means

1 we can get into making a decision about the delay and
2 still maybe have enough --

3 COUNCILMEMBER SCHWARTZMAN: Oh, I've got
4 traffic questions, too.

5 MAYOR PATTERSON: Okay.

6 (Laughter)

7 MAYOR PATTERSON: I just wanted to clarify.

8 COUNCILMEMBER SCHWARTZMAN: Yeah. Yeah,
9 yeah. Okay.

10 MAYOR PATTERSON: So let's start with
11 Councilmember Schwartzman's traffic questions.

12 COUNCILMEMBER SCHWARTZMAN: Thank you very
13 much.

14 MAYOR PATTERSON: And it would be premature
15 to ask for a motion on the consideration of the delay.

16 COUNCILMEMBER SCHWARTZMAN: I think so,
17 because I think some of this, in my mind, has to do
18 with preemption issues, and that's part of the reason
19 why I'm asking; okay?

20 So, Mr. Traffic Person, I'm going to ask you
21 some questions, so you might just probably just come
22 on up.

23 In going through -- I'm looking at the
24 Benicia train crossing study, and this is what I guess
25 you did Monday, April 15th, through the one week, and

1 I -- I note that -- and this is what I'm struggling
2 with. So I'm asking for your input on this one.

3 There -- you know, the assertion that a
4 50-car train would pass, what is it, 8 minutes and
5 30 seconds, or something like that, give or take a few
6 seconds? Okay.

7 So what I've been struggling with is I see
8 some trains in here -- here's a 16 -- this is on
9 Tuesday, April 16th. It's a 16-car train that did not
10 move back and forth but took 11 minutes and 51 seconds.
11 so it makes me wonder, "Why?"

12 There is another one, a 16-car train -- now,
13 this -- it could be the same train; okay?

14 Now, by the way, that first one was at the
15 Park Road crossing.

16 Okay. It may be the same train in front of
17 the ironworkers, 16 cars; approximately -- it's the
18 same date, ballpark same time, for 17 minutes and
19 38 seconds, okay, no back and forth. So I'm
20 questioning why.

21 Here's one on Wednesday, the 17th. It's
22 31 cars, and this is, yes, back and forth. So I get
23 there's additional timelines there if it's got to go
24 back and forth, but that was 16 minutes and 17 seconds
25 in front of Park Road.

1 And a different train. Now, this is 43 cars,
2 yes, back and forth on ironwork -- on the ironworkers'
3 driveway of 24 minutes and 50 seconds.

4 There is a -- on the Thursday, April 18th,
5 there's a "16-plus cars," I don't know if that means
6 17 or 18, okay, with, yes, back and forth, Park Road
7 crossing, 8 minutes and 22 seconds.

8 And so here's one on the Friday, the 19th,
9 24 cars, Park Road crossing, yes, back and forth,
10 8 minutes and 17 seconds.

11 So my question is, why are those that way,
12 and why would not a 50-car train in this circumstance
13 take more time than 8 minutes and 38 seconds or
14 whatever was in the traffic report?

15 MR. HUTCHISON: I will have to preface my
16 answer with an apology in that -- apology, I guess.

17 The information that you're citing was
18 gathered by Fehr & Peers Associates for their traffic
19 report, their traffic analysis, which served as the
20 original basis for the EIR. There were some
21 interpretations and further analysis in the EIR that
22 went beyond what Fehr & Peers report did.

23 My apology is that I have not seen the
24 videotape. I was not the original gatherer of that
25 information. So it would be total speculation on my

1 part to explain why a shorter train might take longer
2 than a longer train.

3 The only thing -- and so I can stop there
4 if -- because I can't answer your question as to the
5 "why" and the "what for's?" of those trains, other
6 than they were traveling at different speeds.

7 Because as I said, the -- the Valero project
8 train, the analysis was based on a 50-car train with
9 two locomotives, a total of 3200 feet, traveling at an
10 assumed average speed of five miles per hour.

11 COUNCILMEMBER SCHWARTZMAN: Right.

12 MR. HUTCHISON: And so that's where that
13 8 point -- 7.3 minutes, when you add 30 seconds on
14 either side --

15 COUNCILMEMBER SCHWARTZMAN: Right.

16 MR. HUTCHISON: -- to allow the trains,
17 that's the 8.3.

18 So -- so other than that, and I'm looking
19 at -- there was a comment by someone in the public
20 referring to a 34-car -- 35-car train, which we --
21 it shouldn't have been relied on because it wasn't
22 50 cars.

23 And, yet, when I looked at the original data
24 in the traffic report, that 34 -- 35-car train, and I
25 don't have the number in front of me, but the time

1 that it took them to cross it was indicative that they
2 were traveling at 10 miles per hour.

3 So you see what I'm getting at?

4 That -- that -- without seeing the specifics
5 of the video, I can't speak to as to -- as to reasons
6 why, but they have to do with speeds and back and
7 forth.

8 And in the case of Valero, it would not be
9 longer than that, because there would be no need for
10 back and forth. It would just be -- they would be
11 traveling, and they would cross.

12 COUNCILMEMBER SCHWARTZMAN: Okay. Well,
13 thank you for that.

14 Do you have a follow-up on that or...

15 COUNCILMEMBER CAMPBELL: Yeah, I do.

16 COUNCILMEMBER SCHWARTZMAN: Do you (inaudible)?

17 MAYOR PATTERSON: Councilmember Campbell?

18 COUNCILMEMBER CAMPBELL: Yeah, this is where
19 we left off when we got axed last time.

20 Okay. I believe the phrase was "simple
21 math." You were using that.

22 Okay. A train moving, you know, five miles
23 an hour, goes about 433 feet a minute. Your train is
24 3200 feet long, you said, therefore, 7.3 minutes, the
25 gates go up and down, you know.

1 And that -- that's based on, I assume, a flat
2 straightaway, you know, which is not what we have
3 here. It's a curved route with traffic, cars, who
4 knows? jack rabbits, out there.

5 So, you know, what is the theoretical number
6 you're using versus what our Councilman Schwartzman
7 just brought up?

8 You don't have any actual observations of a
9 50-tanker car or train going across there, I assume,
10 because we haven't had one go across there.

11 Is that a safe assumption there?

12 So you don't actually know whether your
13 theory and fact actually match because you haven't
14 been able to verify, given the particular, you know,
15 parameters of that particular rail spur; right?

16 You know, that's -- that's all I'm -- that's
17 all I need to know.

18 MR. HUTCHISON: Okay. And the only thing
19 that -- if --

20 COUNCILMEMBER CAMPBELL: Yeah.

21 MR. HUTCHISON: -- I'm not -- I don't want to
22 extend the night any more. If that was a question, I
23 will try to answer it, but if you're just --

24 COUNCILMEMBER CAMPBELL: Anyway. That's --

25 MR. HUTCHISON: -- (inaudible) --

1 COUNCILMEMBER CAMPBELL: -- that -- that's
2 the only thing I wanted to --

3 MR. HUTCHISON: Okay. If they're --

4 COUNCILMEMBER CAMPBELL: Yeah.

5 MR. HUTCHISON: I mean, obviously, the
6 five -- the extreme five-mile-an-hour, I'm going to
7 defer to --

8 COUNCILMEMBER CAMPBELL: Okay.

9 MR. HUTCHISON: -- my -- my traffic colleague
10 right here.

11 MR. MARTIN: So my name is Francisco Martin.
12 I'm a civil engineer with Fehr & Peers. I'm also the
13 project manager that did the traffic analysis, and the
14 traffic analysis was incorporated into the EIR by --
15 by ESA.

16 So to go to the question regarding the train
17 crossings, the train crossing -- one of the reasons
18 that you have a low number of railcars but a long
19 train crossing is because the off-site capacity to do
20 the -- the switch activity.

21 Currently, the capacity at the Valero site
22 cannot accommodate the switch activity within the
23 site. So one of the project improvements that would
24 be incorporated by the project would be to build that
25 additional capacity off-site so that the switching

1 activity can actually occur at the Valero site and not
2 have to go back and forth on Park Road, because that's
3 what essentially happens now is that you have -- you
4 don't have enough capacity off-site.

5 And through that limited capacity, you have
6 to cross Park Road multiple times to do that switching
7 activity. So that's primarily the reason for the long
8 crossing times.

9 COUNCILMEMBER CAMPBELL: Oh, okay. But you
10 wandered into preemption again, because we can't tell
11 the -- not "we" -- well, actually, "we."

12 You know, Valero, all of us in this room,
13 can't tell the railroad when they're going to schedule
14 these, you know, trains to come in. You make
15 suggestions there.

16 And, you know, you can't tell them how
17 they're going to, you know, operate, you know, on the
18 spurs which are going to be built. You know, they --
19 they basically, at least according to our attorney
20 here, they're preempted. We basically just watch.

21 MR. MARTIN: Point taken, and my comment is
22 that the project will be enhancing the capacity to do
23 rail -- the switching activity off-site and not
24 require crossing Park Road multiple times, as it
25 currently does.

1 COUNCILMEMBER CAMPBELL: Clarify, please.

2 COUNCILMEMBER SCHWARTZMAN: So I just want to
3 clarify, that I'm really clear.

4 So the way it exists now, a lot of the trains
5 needs to go -- because, if I understand correctly, the
6 switching capacity off-site, off Valero's property, is
7 not sufficient so that trains have to go onto Valero
8 property to be able to be switched, okay, to come back
9 off of Valero property to go where they're going to
10 go, where this particular project, in addition to the
11 unloading facility, is going to build and -- and put
12 switching capacity off-site so that there will be --

13 MR. MARTIN: Yeah, that --

14 COUNCILMEMBER SCHWARTZMAN: -- there will be
15 no more back-and-forth trains?

16 MR. MARTIN: That's my understanding, that --
17 I don't know about back and forth, but it does, again,
18 minimize the number of back-and-forth activity.

19 And that's going to maximize the potential
20 for the switching activity to be held off-site without
21 requiring the crossing of Park Road.

22 COUNCILMEMBER SCHWARTZMAN: So there's a lot
23 of material to go through; okay?

24 Is that somewhere in the EIR or a report
25 specific to that question?

1 MR. MARTIN: It should be in the capacity
2 enhancements to the off-site, describing the project
3 description. The -- the cap- -- the off-site capacity
4 should be described.

5 MAYOR PATTERSON: So I didn't see the
6 discussion on where -- the additional new track,
7 reenforced track, that will handle the -- the
8 switching, that -- that has -- some of that's been
9 done. Some of that work has already taken place.
10 Some of the switching hasn't been constructed.

11 But I didn't see the discussion about not
12 just the 50-unit cars but the other storage capacity
13 that Union Pacific may want because of the car
14 offloading that they have and other activities with
15 other clients that they have.

16 I did not see that discussion of that kind of
17 activity in the EIR.

18 MR. MARTIN: Well, the traffic analysis
19 focused on the peak train crossings, which is
20 essentially the peak condition, and that's what was
21 the focus of the traffic analysis.

22 Since the project would improve the off-site
23 capacity, that wasn't essentially factored into the
24 peak operations. That was assumed -- which -- which
25 was an assumption vetted by city staff, as well as

1 ESA, that all the -- all the assumptions that were
2 made for the traffic analysis were vetted by city
3 staff and ESA as well.

4 MAYOR PATTERSON: But when you use the
5 terminology "peak," that's really terminology that's
6 used in traffic that projects generate.

7 MR. MARTIN: Uh-huh.

8 MAYOR PATTERSON: And so the document talks
9 about how it's really awkward to use "level of
10 service" and "peak," and so forth, because of the
11 nature of rail.

12 But in trying to get some understanding of
13 the potential conflicts of -- or impacts of the rail
14 activity on the tracks, you came up with that.

15 But, in fact, there's no control. The
16 so-called not moving the track -- the trains around
17 from, I think, 9:00 a.m. to -- whenever it is, I've
18 forgotten, there's no control for that.

19 The only switching control that exists is on
20 private property and --

21 MR. MARTIN: The traffic analysis was
22 consistent with the -- the hours that are expected to
23 operate.

24 So, essentially, we analyzed -- for our
25 traffic analysis, we looked at the hours that the

1 train would cross, and then we -- within that -- that
2 time range, we identified the highest traffic volume
3 within that -- that -- that time range, and the
4 highest traffic volume that we evaluated was between
5 2:45 and 3:45 p.m.

6 So that was the basis for our analysis.

7 And, actually, I have a presentation that
8 I'd -- I'd love to share with -- with -- with
9 everybody here that essentially breaks down how we
10 approached the traffic analysis and then came to the
11 conclusion.

12 I think it would definitely answer a lot of
13 the questions that you may have, as well as the
14 public.

15 We do have a PowerPoint presentation where I
16 could go over it, if it's now a good time to discuss
17 that because it -- it talks about a lot of the
18 questions that -- answers that a lot of the questions
19 that you may have.

20 MAYOR PATTERSON: So that's -- go ahead,
21 Councilmember Campbell, and then
22 Councilmember Schwartzman as a follow-up.

23 COUNCILMEMBER CAMPBELL: It's a follow-up to
24 both of yours, and there was one other question I had
25 there, and it was actually in your report, and I'll

1 read it to you here.

2 "In addition to the 8.3-minute project train
3 crossing would increase the average vehicle delay in
4 an hour by .8 seconds."

5 So what? .8 seconds.

6 "However, which is less than the one second
7 threshold of significance when the train crossing
8 currently operates at an LOS F."

9 Now, what I'm getting at is if you guys are
10 off just a little bit in your observations, then it
11 goes from "less than significant" to "significant,"
12 because you're going to an LOS F instead of an LOS E
13 or D.

14 So that -- that's what -- that what worries
15 me. Maybe you've got a presentation that will clear
16 it up for me.

17 MR. MARTIN: Sure.

18 COUNCILMEMBER CAMPBELL: But you don't have
19 to be off very much when you're talking about
20 two-tenths of a second and it goes from "less than
21 significant" to "significant."

22 And so if we're going to argue that the only
23 things we should be looking at in CEQA are significant
24 things, such as traffic, then all of a sudden, it
25 becomes -- that two-tenths of a second becomes

1 "significant."

2 MR. MARTIN: Well, what we did for the
3 evaluation, and, typically, what we do for traffic
4 analyses, we evaluate the level of service.

5 "Level of service" is just a word for
6 "average delay per vehicle that experienced at
7 intersections."

8 And level of service, there's different
9 thresholds set by the Highway Capacity Manual, which
10 is kind of the bible for traffic engineers, and it's
11 consistent with the state of the practices of
12 analysis.

13 So for that -- for that analysis, we looked
14 at an hour period, and we compared the hour period
15 where you would get the -- a train crossing, and we
16 compared it to the highest volume when that train
17 crossing would occur.

18 Then we compared that scenario to the
19 scenario -- the baseline scenario, a scenario where
20 there's no project, but the fact that we did observe
21 train crossings up to 16 minutes on Park Road, it --
22 it does have -- it has a baseline.

23 So if you compare that hour of existing
24 conditions with no project but the existing train
25 crossing, whether it be 16 minutes -- in our traffic

1 analysis, we actually assume a train crossing of
2 11 minutes and 50 seconds, which wasn't the highest,
3 but it was, I believe, the third or second highest
4 crossing on Park Road, and that's what we analyzed.

5 So when you compare the existing condition
6 during that hour to the project condition during that
7 hour, the fact that the train crossing with the
8 project is less than 8 -- 11 minutes and 50 seconds,
9 indicates that the delay and level of service would
10 not be any worse than already occurs under existing
11 conditions.

12 And that's really the basis for the traffic
13 analysis.

14 The traffic analysis is not a cumulative
15 delay total over that 24-hour period. It is
16 essentially a comparison of the peak train crossing
17 periods under no crossing -- under no project
18 conditions versus plus project conditions.

19 MAYOR PATTERSON: Clarification, Coun- -- we
20 want to see the presentation.

21 MR. MARTIN: Sure.

22 COUNCILMEMBER SCHWARTZMAN: Are you going to
23 be here tomorrow night?

24 MR. MARTIN: I'm not planning on being here
25 tomorrow night.

1 COUNCILMEMBER SCHWARTZMAN: How long --

2 MAYOR PATTERSON: Does that mean you can't be
3 here tomorrow night?

4 MR. MARTIN: I can't be. I have some,
5 yeah --

6 MAYOR PATTERSON: Okay.

7 MR. MARTIN: -- schedule conflicts.

8 MAYOR PATTERSON: So I think since he does
9 have a PowerPoint presentation, and I know we're close
10 to 11:00, but I think it would be well worth the
11 council to --

12 COUNCILMEMBER SCHWARTZMAN: Any idea about
13 how long it is?

14 MR. MARTIN: I think that it will answer a
15 lot of the questions that you may have, because I've
16 also been here at previous meetings. I've heard a lot
17 of comments from the public.

18 So I just want to take the time now to kind
19 of give a presentation, hopefully clarify a lot of
20 questions that everyone may have.

21 MAYOR PATTERSON: While the -- while the
22 projector is warming up, I do have a question to ask
23 you, and that is, in your analysis, I didn't see where
24 you analyzed the -- sort of the cumulative impact,
25 which is in complying with the Memorandum of

1 Understanding that Union Pacific has with the State of
2 California and BART and -- for the Capitol Corridor,
3 and all that stuff, is that they have to be careful
4 about having freight trains that cause a delay to the
5 Capitol Corridor.

6 So they need to place trains, and the
7 industrial park with the tracks, and the ones that I
8 described, are available for parking those trains.

9 Did you -- I didn't see that analysis.

10 MR. MARTIN: That's more U.P.-related
11 information we did not analyze. Our focus was
12 analyzing the impacts to intersections and roadways
13 due to the train crossings. That was the focus --

14 MAYOR PATTERSON: Like Valero only?

15 MR. MARTIN: -- of the traffic analysis --

16 MAYOR PATTERSON: Is that so --

17 MR. MARTIN: -- like the train crossing.

18 So we -- we focus on the streets and -- and
19 making sure that the intersections and -- determine
20 whether or not there would be impacts to the
21 intersections adjacent to the train crossing.

22 MAYOR PATTERSON: Now I'm really confused.

23 So you -- so you're -- appropriately, you're
24 looking at the impacts of the project as it relates to
25 the train traffic on the intersections; right?

1 But you would have to understand Union Pacific's
2 operations in order to have a cumulative impact
3 assessment; right?

4 MR. MARTIN: Correct.

5 MAYOR PATTERSON: And was that done?

6 MR. MARTIN: Oh, yes. We -- we did
7 corporate -- incorporate the hours of operation where
8 the train crossing would cross.

9 And for the future analysis -- we actually
10 did the traffic analysis to the year 2035, where we
11 looked at the land use growth in the industrial area
12 and then correlated that with traffic growth at about
13 1-1/2 percent per year, and then we looked at higher
14 traffic volumes in the future.

15 Then we ran the traffic analysis for that,
16 assuming those higher volumes, and then compared that
17 to existing train crossings that were already
18 observed. So --

19 MAYOR PATTERSON: Mr. Howe, did you have a --

20 MR. HOWE: Yeah, just one quick one, and I
21 will be here tomorrow, along with U.P.

22 But I wanted to point out that there are no
23 changes outside of the refinery that add capacity on
24 the rail, but one of the things that is happening is a
25 realignment of some of the switches inside the

1 refinery that facilitate a more efficient move of the
2 crude cars coming in.

3 Those improvements that were necessitated for
4 the crude cars actually help the current situation in
5 avoiding the cutting of cars, the switching back and
6 forth.

7 So the simple relocation of the trackage to
8 make the crude-by-rail unloading project work actually
9 helps the current situation as it relates to the
10 movement of cars.

11 MAYOR PATTERSON: I -- I understand --

12 MR. HOWE: So...

13 MAYOR PATTERSON: -- the switching and the
14 improvements that are being done, but my question is
15 really going to the storage, the parking of cars,
16 which occurs all the time. It's very easy to observe
17 over at Martinez.

18 That's the question I'm getting at.

19 And Richmond is another good example.

20 MR. MARTIN: Yeah, and I -- I can't answer
21 that question. That's a question for U.P.

22 MAYOR PATTERSON: Okay.

23 MR. MARTIN: So for the traffic analysis, I
24 just kind of want to point out, essentially, what went
25 into the analysis.

1 So we did extensive data collection. We
2 actually collected train crossings for a week period.
3 We had a video cameras at Park Road, also the
4 ironworkers' driveway.

5 We also collected intersection counts and
6 roadway counts on multiple times. We collected in
7 January 2013. City staff let us know that the volumes
8 looked pretty low in January.

9 So we went ahead and collected traffic
10 volumes again in September of 2013, which were higher.
11 So we used the higher volumes to go with the traffic
12 analysis.

13 We also observed, you know, intersection
14 traffic controls, whether they're all stop-controlled
15 intersections, signalized intersections, or so on,
16 intersection length configurations of the roadway
17 speeds.

18 And it's -- most importantly, this analysis
19 was done according to the Highway Capacity Manual
20 Level of Service methodology, which is, essentially,
21 the state of the practice for traffic engineering and
22 analyzing traffic impacts.

23 So one of the key -- key data collections for
24 this project was essentially the existing train
25 crossings.

1 And I believe, Councilmember Schwartzman,
2 back in the -- the March 15th meeting, you -- you
3 mentioned that you were stuck at a 12-minute crossing,
4 and that's not -- that's -- that confirms that it is
5 an existing occurrence, that -- those long train
6 crossings would continue to occur with or without the
7 project.

8 So I just want to make that clear. The
9 baseline at our train crossings, on average, you have
10 about eight -- a train crossing of eight minutes or
11 greater per day. So they exist today.

12 Currently, there's a variation of 4 to 18
13 crossings per day along Park Road, and then for -- in
14 terms of the project train crossing, these were the
15 assumptions that were made.

16 These were the hours of operation,
17 essentially during the nonpeak periods. We assume
18 four crossings per day, 50 railcars per -- per -- per
19 train. The railcar length is 60 feet. We've got a
20 2200 feet locomotive. You assume an average travel
21 speed of five miles per hour across Park Road.

22 And once you assume -- make those
23 assumptions, you calculate your average crossing time
24 to be 8 minutes and 18 seconds, also allowing for
25 30 seconds before and after the train to -- for

1 clearance.

2 And then the other key assumption is that we
3 assume that there would only be one train -- project
4 train crossing within the hour. So there would not be
5 other train crossings within the hour.

6 And, again, these -- these assumptions
7 were -- were vetted and approved by city staff, as
8 well as the City's consultant, ESA.

9 And I just want to kind of show you a picture
10 of -- let me see. I've got a video. Let me see if I
11 can figure out how to -- no.

12 Is there somewhere to play straight on the
13 computer?

14 MAYOR PATTERSON: No, but -- for the video?

15 MR. MARTIN: Yeah, for the video.

16 I just want to show you a video of the actual
17 traffic analysis and how we arrived to -- because
18 there's been a lot of questions of how we arrived to
19 delay, how we arrived to queues.

20 So essentially what we do, we build these
21 traffic analysis models where we simulate a train
22 crossing, as well as all the traffic conditions that
23 we collected.

24 So here's a video that we -- that we
25 developed. This is a traffic analysis model. This is

1 using the -- the VISM software.

2 And just to clarify, we also calibrated and
3 validated this traffic analysis model based on
4 Caltrans guidelines, as well as the Federal Highway
5 Administration guidelines for microsimulation models.

6 So as you see here, we have a train
7 crossing -- this is sped up to eight times the speed,
8 but we have a train crossing, and all these counts,
9 all these -- all these vehicles here, are based on
10 traffic counts that we collected.

11 You see the -- you can see the train crossing
12 going across, and then once the train crosses, goes,
13 all the vehicles stop.

14 And you see that there are also trucks on the
15 roadway. We also collected truck counts. The trucks
16 take up more space than your average, you know,
17 passenger vehicle.

18 So -- so we incorporate our truck count, we
19 incorporate our vehicle counts, we analyze the train
20 crossing, again, it's sped up eight and a half -- by
21 eight times. So it's a -- it's relatively quick.

22 Essentially, once you see the train crossing,
23 we see the queues build up over time, and we have
24 microsimulation models that are sensitive enough to
25 estimate delay, average delay, per intersection, as

1 well as the queue lengths.

2 So that's how we arrive at the numbers that
3 are in the traffic analysis.

4 So -- and -- and just to clarify that
5 these -- these -- this type of analysis is not very
6 typical for most EIRs, because this software is really
7 only used for very complex projects, such as train
8 crossings, and this software is also common in a lot
9 of complex Caltrans projects, which we've used on
10 various freeway corridors, and so on.

11 So this is really the best of the best
12 software that we could use and also applying our
13 engineers' critical thinking abilities to assess the
14 analysis and to assess the impacts.

15 So, essentially, once we did the analysis, we
16 compared -- this is the primary significance criteria.

17 And the significance criteria is that if this
18 intersection operates at Level of Service D or better,
19 essentially L -- A, B, C or D, under capacity of
20 operations and if -- under no project conditions, but
21 if the project causes that to go to Level of Service D
22 or F, it's a significant impact.

23 However, if the project -- if -- if the
24 intersection is currently operating at Level of
25 Service F without the project, then adding one second

1 of delay to that Level of Service F condition would
2 trigger an impact.

3 And, again, level of service was evaluated
4 for one hour, the 2:45 to 3:45 p.m. hour, which is the
5 highest traffic volume hour where trains would cross,
6 and we compared that condition to the peak condition
7 of existing train crossings.

8 We could have done the 16-minute crossing,
9 which was observed, but we went ahead and analyzed an
10 11-minute-and-50-second crossing, which was the second
11 or third highest observed during that week,
12 essentially the 95th percentile crossing, and then we
13 compared our -- our analysis results.

14 So on -- on the left side, you have your,
15 essentially, level of service, you know, assuming an
16 11-minute-and-50-second crossing under existing
17 conditions, and comparing that to the eight --
18 8-minute-and-20-second project train crossing.

19 And when you compare that hour, that level of
20 service, and the average delay during the hour, the
21 project train crossing delay is actually lower than
22 was already experienced under existing conditions.

23 So the -- and we did that again for existing
24 conditions as well as Year 2035. The only difference
25 between both scenarios is that 2035 assumes higher

1 traffic volumes. So, essentially, your delay is going
2 to be higher, and your queues will be higher.

3 So, essentially, the conclusions of this
4 study -- you know, we did extensive data collection to
5 do the traffic analysis. Our microsimulation analysis
6 models were validated according to the FHWA and
7 Caltrans guidelines.

8 All analyses, methodologies, assumptions, and
9 significance criteria was vetted and approved by
10 city staff and ESA staff.

11 And then, yeah, the -- the project train
12 crossings would result in lower average hourly delays
13 and queues compared to the nonproject train crossings
14 under existing conditions.

15 So that was the -- the basis of the traffic
16 analysis. And again, it is not -- the delay is not a
17 cumulative total over a 24-hour period, but a
18 comparison of the peak crossing times for one hour.

19 MAYOR PATTERSON: Okay.

20 Vice Mayor Hughes, do you have a question on
21 that presentation? Because your light has been on for
22 a long time.

23 VICE MAYOR HUGHES: Yeah, I have -- I have a
24 question. I'm not sure it's for the -- for you, sir,
25 or for Mr. Howe, and if it's for Mr. Howe, I can

1 ask it, and if Mr. Howe can answer it, I'm fine to
2 wait till tomorrow to get the answer.

3 MAYOR PATTERSON: Oh, okay.

4 VICE MAYOR HUGHES: So -- but it has to do
5 with what -- a concern that was brought up earlier
6 about the time it takes to unload the trains.

7 So -- and I -- I -- I think, there -- you
8 know, there's a lot of discussion about the switching
9 operations, but if it takes 12 hours to unload the
10 train and -- which means everything would have to go
11 perfect as far as operations, and if it doesn't, then
12 that other train is waiting out there, unless there is
13 capacity, track capacity, inside your gates to handle
14 the additional train.

15 MR. HOWE: Yeah. Two sets of trains can be
16 in the refinery without impacting Park Road. You'll
17 have a set at the -- at the rack, 25 and 25 on either
18 side of the -- the unloading rack, and then there's an
19 entire departure track that a full two-engine, 50
20 cars, can be parked on simultaneously.

21 So for the -- for the --

22 VICE MAYOR HUGHES: Okay.

23 MR. HOWE: -- time period that those trains
24 come in, there's -- there is room in the refinery, in
25 the proposed project, to fit that.

1 VICE MAYOR HUGHES: Okay.

2 MR. HOWE: So on the -- the 12 hours, too, is
3 a cumulative. That's an entire time, from the time --
4 the estimated time from entering the refinery to
5 splitting the train at the rack, offloading it,
6 hooking it back up together, and having it prepared
7 for departure.

8 So it's somewhere between six, seven hours of
9 actual unloading, but we're incorporating the time it
10 takes to get the train hooked up to the rack, the
11 contents discharged, the hoses removed from the empty
12 train, connecting the cars back together, and
13 preparing them for departure.

14 That's all 12 hours. It's not just the
15 unloading itself.

16 VICE MAYOR HUGHES: Okay. Understood.

17 But if -- if for some reason something went
18 wrong and it took 14 hours, the other train would not
19 be waiting outside the gates; it would be inside?

20 MR. HOWE: We wouldn't have it dispatched
21 from Roseville.

22 VICE MAYOR HUGHES: Well --

23 MR. HOWE: The idea --

24 MAYOR PATTERSON: Uh --

25 VICE MAYOR HUGHES: -- it would have already

1 been dispatched --

2 MAYOR PATTERSON: Right.

3 VICE MAYOR HUGHES: -- from Roseville --

4 MR. HOWE: Our --

5 VICE MAYOR HUGHES: -- correct?

6 MR. HOWE: Our expectation is we're -- we're
7 going to know enough about what's going on in the
8 operation.

9 But as I said before, if the train hadn't
10 left the unloading rack, you could pull in the full
11 cars. There's trackage in the refinery to allow that
12 to happen.

13 VICE MAYOR HUGHES: Okay.

14 So you could get all 50 cars in there.

15 MR. HOWE: In -- in the refinery.

16 VICE MAYOR HUGHES: Okay.

17 All right. Thanks.

18 COUNCILMEMBER CAMPBELL: Just a follow-up --

19 MAYOR PATTERSON: Councilmember Campbell?

20 COUNCILMEMBER CAMPBELL: -- on -- on this.

21 Well, okay. I'll borrow Councilman
22 Schwartzman's, you know, observed train crossings
23 there, and, for example -- and these are not moving
24 back and forth. They're moving one way.

25 You've got one on April 19th, 25 cars, half a

1 50-car length. It took 6 minutes, 45 seconds, to go
2 across.

3 Got another one the day before. 26 cars, you
4 know, 7 minutes, you know, and -- you know, you've got
5 a 43-car one. That took 24 minutes.

6 How do you explain the difference between
7 your model and, you know, the observed --

8 MR. MARTIN: The --

9 COUNCILMEMBER CAMPBELL: -- (inaudible)?
10 Because -- there are several others. I don't want
11 to --

12 MR. MARTIN: The assumption for the model, we
13 have 50 railcars, 60 feet, 200 feet of locomotive, and
14 the main difference is that we're assuming a
15 five-mile-per-hour drive speed.

16 That's -- that was the assumption that was
17 vetted by -- by all the reviewers, and that's what we
18 assumed for the analysis.

19 COUNCILMEMBER CAMPBELL: Okay.

20 Okay. Again --

21 MAYOR PATTERSON: So -- so the request is --
22 could you say exactly what you said but slower?

23 MR. MARTIN: Sure.

24 Yeah. So assuming the 50 -- 50 railcars,
25 60 feet per railcar, 200 feet of locomotive, and

1 five miles per hour travel speed, you come up with
2 8 minutes and, roughly, 20 seconds.

3 And that also accounts for about a minute
4 buffer time, 30 minute -- 30 seconds before, 30 seconds
5 after, to let the arms clear and everything dissipate.

6 MAYOR PATTERSON: Okay.

7 I had a couple of questions. Did you have
8 follow-up?

9 COUNCILMEMBER SCHWARTZMAN: Yeah, I had a
10 question on the report itself.

11 Do you mind if I ask?

12 MAYOR PATTERSON: No, I don't mind.

13 COUNCILMEMBER SCHWARTZMAN: Okay. So --

14 MAYOR PATTERSON: It's ten after 11:00. So I
15 just want to get a read from the council. We want to
16 take advantage of the traffic consultant.

17 COUNCILMEMBER SCHWARTZMAN: Right.

18 MAYOR PATTERSON: Do you anticipate --

19 MR. MARTIN: I've got nothing else to do.

20 MAYOR PATTERSON: You have nothing else to do?

21 Do you anticipate additional questions?

22 Okay. So we're coming to a close.

23 COUNCILMEMBER SCHWARTZMAN: Right. So --
24 thank you.

25 So -- okay. So you set this up to do your

1 studies at nonpeak times, correct, nonpeak traffic
2 times?

3 According to this, the peak traffic times are
4 7:15 to 8:15 and 4:15 to 5:15; correct?

5 MR. MARTIN: Correct.

6 COUNCILMEMBER SCHWARTZMAN: And that was 2:45
7 to 3:45?

8 MR. MARTIN: Correct.

9 COUNCILMEMBER SCHWARTZMAN: Okay.

10 So -- and I think part of the reason why you
11 did that is because it was determined, or at least it
12 was explained to you, that the -- the railcars would
13 not be coming through during those peak times, 7:15 to
14 8:15, so on and so forth.

15 So my question is really of U.P., but I'm
16 going to ask you this question, and you'll get it;
17 okay?

18 There is no guarantee; okay? I think even
19 Valero understands that there's no guarantee. I know
20 you've requested it; I get that part. And U.P. is
21 saying to you, "Hey, yes, that's our aim to do that.
22 That's our goal to do it," but there is no guarantee.

23 So I'm questioning why this report wasn't
24 done with that in mind, that if, in fact, U.P., either
25 downstream because of all the loads that they've got

1 between Capitol Corridor and all the other stuff, they
2 may need to get a train, even if it's just once, okay,
3 in during those -- those peak hours.

4 I'm really curious as to what that would do
5 to this report, because I was in, okay, that 12-minute
6 backup, and I don't think that was -- that was at
7 10 -- that was about 10:10 in the morning, if I recall
8 correctly, right around there, not a peak time.

9 MR. MARTIN: Okay.

10 COUNCILMEMBER SCHWARTZMAN: So I'm concerned
11 what the -- and I recall, specifically, because I
12 looked in my side-view and rear-view mirror --

13 MR. MARTIN: Uh-huh.

14 COUNCILMEMBER SCHWARTZMAN: -- I saw it
15 backed up to Industrial; okay? So it makes me wonder
16 if it was a longer delay, what that might mean.

17 Now, that's on that side.

18 MR. MARTIN: Uh-huh.

19 COUNCILMEMBER SCHWARTZMAN: Now, if you go on
20 the other side, okay, on the off-ramp, which I have a
21 really big concern about, and I understand your model
22 kind of indicates that, yes, it would back up to the
23 off-ramp, but not onto 680.

24 I'm not very comfortable, okay, if, in fact,
25 a train, for whatever reason, needed to go through

1 there during a peak time and had to stop, for whatever
2 reasons.

3 So I -- you know, I -- I -- I -- I guess it's
4 a question and a statement.

5 I understand you did the report from the
6 information you were given; okay? My concern is is
7 that it doesn't really look at what happened if a
8 train did go through at peak times, because there is
9 no guarantee.

10 I guess that's a statement, not a question.

11 MR. MARTIN: Well, two -- two answers to
12 that.

13 The first answer is we looked at the typical
14 project conditions, and typical project conditions at
15 train crossings are going to cross during the times --
16 the off-peak hours, and within those off-peak hours,
17 the highest volume hour is 2:45 to 3:45 p.m.

18 So we did that analysis. So that's -- that's
19 the main motive for doing that analysis.

20 COUNCILMEMBER SCHWARTZMAN: I get that.

21 MR. MARTIN: The second -- the second answer
22 to your question is that if train crossings occurred
23 during the peak hours, they could also likely occur
24 under existing conditions without the project.

25 So when you compare the project crossing

1 during the peak hour compared to one of these
2 16 minutes, 12 minutes, 10-minute crossings are
3 observed under existing conditions, the average delay
4 and the queuing is going to -- for the project train
5 crossing is going to be less than what's already
6 observed under existing conditions.

7 And given the significance criteria
8 established for this EIR, but also more primarily
9 established by the City of Benicia General Plan,
10 the -- the significance criteria did not consider that
11 as a significant impact.

12 COUNCILMEMBER SCHWARTZMAN: So follow-up on
13 that, if I might.

14 So -- and I don't recall, I'd have to go back
15 into the study again, did you look at traffic during
16 the peak hours?

17 MR. MARTIN: We did not evaluate traffic
18 during the -- we evaluated traffic during the peak
19 hour of project train crossing operations, which for a
20 typical day is going to be -- exclude the peak hour
21 activity. So we --

22 COUNCILMEMBER SCHWARTZMAN: Okay.

23 MR. MARTIN: -- looked at the peak hour
24 within the project train crossing, which is 2:45 to
25 3:45.

1 COUNCILMEMBER SCHWARTZMAN: I get that part.

2 So the answer to the question is, though,
3 there was no analysis done on what peak traffic looked
4 like during peak traffic times and using that as a
5 comparison for traffic between 2:45 and 3:45?

6 MR. MARTIN: We did not do that analysis for
7 a traffic study.

8 COUNCILMEMBER SCHWARTZMAN: Okay. Thank you.

9 MAYOR PATTERSON: So I have a couple of
10 questions.

11 The first one is back to what Chris Howe was
12 saying about the, quote, expectation is that they --
13 that they will have enough warning from Union Pacific,
14 or they can give a warning to Union Pacific, if
15 there's a delay at the racks.

16 And as Vice Mayor Hughes suggests, that the
17 trains will have already left Roseville.

18 So how does that work?

19 And -- in other words, stuff happens with the
20 best of operations at Valero, and there could be a
21 delay. What happens to those trains?

22 MR. MARTIN: That's a question I cannot
23 answer. I don't have the expertise to answer that
24 question.

25 MAYOR PATTERSON: Okay.

1 And then my second question is, why bother?

2 If we are told that everything that affects
3 traffic as a result of a rail is preempted by the
4 Federal Government, why did we do that study?

5 MR. MARTIN: We did that study as part of the
6 CEQA guidelines. It requires a traffic analysis, and
7 we -- we --

8 MAYOR PATTERSON: Oh, I see.

9 MR. MARTIN: -- did the analysis for --

10 MAYOR PATTERSON: So we take a look at --

11 MR. MARTIN: -- CEQA guidelines.

12 MAYOR PATTERSON: -- impacts from -- even
13 though it is preempted by federal?

14 MR. MARTIN: Yeah. It's required by -- by
15 CEQA.

16 MAYOR PATTERSON: Okay.

17 Any other questions of our --

18 MS. SCOTT: Mayor Patterson?

19 MAYOR PATTERSON: -- tonight-only traffic
20 consultant?

21 MS. SCOTT: If I may?

22 MAYOR PATTERSON: Yeah.

23 MS. SCOTT: The EIR analyzed and discloses
24 the impact of the whole of the project. That duty
25 under CEQA to identify potential impacts is separate

1 from the feasibility of implementing mitigation
2 measures.

3 MAYOR PATTERSON: Right. And that's, I
4 think, what I got out of the letter from the Attorney
5 General. I did not get that she was saying that we
6 had to go forward and implement mitigation measures.

7 I think she was saying that it would be nice
8 to know what those mitigation measures are, which is
9 what San Luis Obispo did.

10 It was a staff decision in San Luis Obispo to
11 provide those mitigation measures, with the caveat
12 that they may be preempted because of federal
13 preemption.

14 And I -- and all I got out of that letter
15 from the Attorney General was just that, is that
16 that's what you should do.

17 MS. SCOTT: I'll leave that legal discussion
18 to you and your council, but the conclusion of her
19 letter was that "State law requires the City to
20 analyze and disclose the project's direct and indirect
21 environmental impacts and, thus, to be fully informed
22 of the consequences of its action."

23 The City has done that here.

24 MAYOR PATTERSON: I understood that point as
25 well, but I think where we have a disagreement is that

1 can we make a decision based on those indirect impacts
2 that are preempted by federal -- by the feds?

3 And that's where we don't have agreement;
4 okay?

5 Any other clarification on that?

6 I think we agreed that we would take
7 advantage of the traffic consultant tonight.

8 Thank you so very much.

9 COUNCILMEMBER SCHWARTZMAN: Thank you.

10 MR. MARTIN: Thank you, you guys.

11 MAYOR PATTERSON: And we're going to continue
12 this to tomorrow, at the same time.

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14 (End of Reporter's Transcript of Recorded
15 Proceedings)

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OF
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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.

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