

TRANSCRIPTION OF THE VIDEOTAPED
BENICIA SPECIAL PLANNING COMMISSION MEETING

Date: Tuesday, February 9, 2016

Transcribed By: Susan H. Caiopoulos
Certificate No. 8122

Job No. 7075

1 * * * * *

2
3 CHAIRMAN DEAN: Take a seat, please. We'd like
4 to get started.

5 Good evening. Welcome to this special meeting
6 of the Benicia Planning Commission. Will you rise and
7 join me in the Pledge of Allegiance.

8 ALL PRESENT: I pledge allegiance to the Flag
9 of the United States of America, and to the Republic for
10 which it stands, one Nation under God, indivisible, with
11 liberty and justice for all.

12 CHAIRMAN DEAN: Welcome back everybody.
13 Could we have the role call of the Commission,
14 please.

15 RECORDING SECRETARY: Commissioner Birdseye?

16 COMMISSIONER BIRDSEYE: Here.

17 RECORDING SECRETARY: Commissioner
18 Cohen-Grossman?

19 COMMISSIONER COHEN-GROSSMAN: Here.

20 RECORDING SECRETARY: Commissioner Oakes?

21 COMMISSIONER OAKES: Here.

22 RECORDING SECRETARY: Commissioner Radtke?

23 COMMISSIONER RADTKE: Here.

24 RECORDING SECRETARY: Commissioner Young?

25 COMMISSIONER YOUNG: Here.

1 RECORDING SECRETARY: Chair Dean?

2 CHAIRMAN DEAN: Here.

3 This is a reference to the fundamental rights
4 of the public. There is a plaque stating the
5
6 fundamental rights of each member of the public, and
7 it's posted at the entrance to this meeting room per
8 Section 4.04.030 of the City of Benicia's Open
9 Government Ordinance.

10 We don't have an agenda tonight. It will just
11 be a continuation of the meeting we started last night
12 on the Valero Crude by Rail Project. Public comment?

13 PLANNER MILLION: There is no public comment
14 tonight, because it's a continuation of the hearing.

15 CHAIRMAN DEAN: Okay. Very good.

16 And any additional information you need to
17 provide the staff before we reopen the public --

18 PLANNER MILLION: Yes. Thank you.

19 I just wanted to point out to the Commissioner
20 that we did receive eight additional public comments.
21 Some of those were submitted last night during the
22 meeting, so we stamped them in and made copies for you,
23 and then some were provided today throughout the day.

24 So hard copies were provided to the Commission,
25 and then additional copies are available on the side
table. So anything date-stamped February 9th was not

1 provided yesterday.

2 CHAIRMAN DEAN: Okay. Thank you.

3 So with that, I'm going to reopen this public
4 hearing. It's on the Valero Crude By Rail Project
5 environmental impact report and use permit. Last night
6 we were in the middle of comments by the Commission.
7 And we will start right where we left off last night.

8 So commissioners who would like to make
9 comments, ask questions of staff? Commissioner Young.

10 COMMISSIONER YOUNG: I'd like to start by
11 responding to a notice that came out from Valero today
12 that said, "Thanks for taking the time to show your
13 support, and we hope you can come back to speak.
14 Unfortunately, no public comment was allowed during the
15 first evening of the hearings project. Opponents have
16 attempted to drag out the hearing process and discourage
17 participation."

18 I don't think that's really fair. I think I
19 said last night that I was only speaking at length
20 because this was my only time that I was going to be
21 allowed to speak on this issue, and that I was happy to
22 hold off until after the public comment. And again I
23 will say that. But we have an agenda that has been
24 adopted, and that calls for all the Commission to make
25 their public comments first.

1 I will not go nearly as long tonight as I did
2 last night. I'm sure people will be happy to hear that.
3 But I do want to get to a couple of issues that I didn't
4 get to last night. And that is -- the first is on the
5 economic impacts of the project.

6 The staff is asking us to certify the EIR and
7 approve the project. And to do that, however, we have
8 to make findings that the benefits of the project
9 override the substantial and unmitigated environmental
10 impacts of the project.

11 Since we can't say that the significant and
12 unavoidable impacts to the environment have been
13 mitigated, because of the opinions that were given on
14 indirect preemption, we're being asked to accept -- I'm
15 sorry, that opinion that we're being asked to accept.
16 The only remaining way under CEQA that we can certify
17 the project is to argue that the project has overriding
18 economic benefits to the City. So that's what I would
19 like to focus on.

20 The first economic benefit talked about is tax
21 revenue. Valero has been advertising fairly heavily
22 about the economic benefits of the project. And when
23 they first started advertising in Benicia Magazine, they
24 promised millions of dollars in additional tax revenue.

25 In July that advertising was changed to say the

1 City is losing \$36,000 a month due to delays in
2 approving the project, and that would be enough to pay
3 for four police officers.

4 According to the City budget, the actual cost
5 of a police officer, including benefits and overhead, is
6 closer to \$160,000 a year. So it's more accurate to say
7 that the extra taxes would pay for two, not four, police
8 officers. Not insignificant, but -- you know, we'd like
9 to see more police officers. But it's important that we
10 are accurate in what we're talking about here.

11 The source of the new tax revenue, I'm
12 guessing, because it's not really spelled out, and
13 perhaps when Valero speaks tonight they can speak to
14 this question, is -- I'm guessing it's increased
15 property tax.

16 Now, many people have rightly complimented and
17 thanked Valero for their charitable contributions. And
18 they have made generous contributions to the community.

19 The staff report says the project will increase
20 the assessed value of the refinery by \$55 million, which
21 is the cost of the project. Now, the City gets about a
22 third of the property tax payments. The rest goes to
23 the schools and other -- the county, and other tax
24 districts.

25 According to the Fairfield Daily Republic,

1 Valero has challenged \$1.6 billion of their assessments
2 since 2012. According to the county assessor's office,
3 in 2004 Valero had their assessment reduced from
4 \$864 million to \$674 million on an appeal. And they
5 were successful, but that appeal cost the City about
6 \$600,000 a year.

7 In 2005, after the Valero improvement project
8 was completed, the assessed value went up to
9 \$963 million, but it was reduced on another appeal
10 \$848 million. And that appeal cost the City about
11 \$300,000 a year.

12 Now, the current assessment is \$900 million.
13 But Valero is appealing that, saying that the refinery
14 is only worth \$100 million. So if Valero is successful
15 again in reducing their tax bill from \$9 million to
16 \$1 million, the City would lose nearly \$3 million on an
17 annual basis.

18 Now, it's common practice and understandable
19 for businesses to try to save on taxes however they can
20 and wherever they can. And Valero has done that by
21 appealing, successfully, their property tax assessments
22 every year since 2012. But every time they successfully
23 challenge their assessment, it costs the City
24 significant levels of taxes, and it outweighs the level
25 of their charitable giving in Benicia.

1 So we need to look at these promises of tax
2 benefits with more than a little skepticism, unless
3 Valero is willing to guarantee that they will no longer
4 take any action that will further damage the City's tax
5 base. And perhaps they will speak to that when they
6 make their presentation.

7 In the staff report, on the section on economic
8 impacts, reference is made to a report commissioned by
9 Valero from the Andrew Chang Company. And on page 35 of
10 the staff report, which talks about the basis for
11 approving a statement of overriding consideration -- and
12 that's what you need to have to approve an EIR when a
13 project's significant and unavoidable impacts cannot or
14 will not be mitigated.

15 That staff -- that statement -- I'm sorry. The
16 report from the Chang Company estimates the project will
17 generate \$2 million in one-time sales taxes to the City,
18 based on the sales of construction materials. That's on
19 page 35 of the staff report. So I need to understand
20 how that \$2 million figure was arrived at.

21 This is my understanding of how sales tax
22 works. The sales tax rate in Solano County is 7.625
23 percent. According to the City web page, the City
24 receives about 1 percent of that 7.6 percent.

25 Now, sales tax is collected on the sales of

1 materials or products made in Benicia or sold by Benicia
2 companies.

3 Valero has estimated that the cost of the
4 project, including labor, materials and engineering, is
5 \$55 million. But to generate \$2 million in sales tax
6 there would have to be sales in Benicia, of construction
7 materials, of \$200 million.

8 And I don't know if Mr. Chang is here, or
9 somebody from the City can correct me if my analysis is
10 not correct, but that's how I understand it. So I think
11 that number is greatly inflated and should not be relied
12 on for something as important as a statement of
13 overriding considerations.

14 On the issue of jobs, that same report says
15 that there will be up to 20 permanent new jobs at the
16 refinery as a result of this project. But through a
17 multiplier effect, the economic analysis turns that 20
18 jobs into 1,000 jobs in the Bay Area. So if somebody
19 can explain to me how that happens, how you move from 20
20 jobs to 1,000 jobs, I would be happy to hear that.

21 But again, this is -- these are some of the
22 basis on which they are asking us to make these
23 findings. And for me, at least, I don't think the math
24 adds up. But I'm happy to be corrected.

25 Finally, the new jobs at Valero, would they be

1 offset by jobs that would be lost at the port, or by
2 crews on the tugboats that accompany the tankers into
3 the port? How many jobs would be lost as a result of
4 fewer tankers unloading? And was that factored in -- is
5 that 20 jobs a net number or a gross number?

6 And finally, since crude can now be exported,
7 much of the crude brought in could be exported and not
8 refined, or refined and exported. So hopefully Valero
9 will answer the question of whether or not they intend
10 to export any crude oil. Because if they do, now they
11 would have to be exporting it through tankers. Tankers
12 then would be generating their own emissions, and all
13 the presumed benefits of switching from rail to -- I'm
14 sorry, from tanker to rail would be lost.

15 Finally, on the economic -- on the general
16 economic development front, I think we, as a commission,
17 need to look at whether this project would harm the
18 development of the industrial park or would it help the
19 development of the industrial park.

20 Extra traffic tie-ups caused by trains would
21 conceivably put a constraint on the attractiveness of
22 the park to new businesses. The City is spending a good
23 deal of money on a new bus hub right at the corner of
24 Park and Bay Shore, which would be sort of the nexus,
25 the central location, that would be affected by the

1 Crude By Rail Project from a traffic perspective.

2 So given the public safety risks and the health
3 impacts of the project, I think we had to ask whether
4 the image of the City in the industrial park would be
5 helped or hurt by this project.

6 Thank you. And that's all I have.

7 CHAIRMAN DEAN: Okay. Comments from other
8 commissioners? Commission Radtke.

9 Yeah, we'll continue with the questions until
10 we make sure the Commission has its questions answered
11 before we go to the public hearing.

12 (Inaudible question.)

13 CHAIRMAN DEAN: That will be part of the public
14 hearing.

15 Yeah, so -- please.

16 COMMISSIONER RADTKE: Okay. So I wanted to
17 follow up on Commissioner Birdseye's comment yesterday
18 about perception and house values.

19 Several years ago we decided, when the interest
20 rates went down, we decided to renew our mortgage. And
21 one of the things we had to do was sign a disclosure
22 statement. And on this disclosure statement, right next
23 to, "You're near the Green Valley Fault," and all this
24 other stuff, it said something, "You are located in an
25 area that recently had an incident."

1 We're sitting there looking at it going, "What
2 are they talking about?" They were talking about the
3 San Bruno pipeline explosion. And this was in a
4 disclosure statement on a house in Benicia.

5 So my question, then, is if anything -- this
6 project goes through, and anything happens anywhere on
7 the rails, and the press is saying these trains were
8 heading towards Benicia, or it happens within Benicia,
9 does the preemption law keep the realty and title
10 companies from putting information on this issue on
11 disclosure laws for our houses?

12 ATTORNEY HOGIN: Mr. Chair, if I might address
13 that.

14 CHAIRMAN DEAN: Yeah, please.

15 ATTORNEY HOGIN: The answer is no. Preemption
16 applies to some type of -- different types of regulatory
17 action taken by state or local governments, that
18 attempts to or purports to manage or govern rail
19 operations, or has the effect of doing so.

20 It does not apply to a disclosure requirement
21 or obligation with respect to a title company or real
22 estate agent as to something that may have happened. It
23 does not impose any type of gag order, if you will, on
24 persons that are involved in real estate transactions.

25 CHAIRMAN DEAN: Any questions, questions for

1 staff? Yes. Commissioner Birdseye.

2 COMMISSIONER BIRDSEYE: Well, it's regarding
3 local air emissions. So I'm sure -- I'm sure the ESA
4 consultants can address it.

5 So first of all, I want to thank everybody for
6 turning out. Because there's a lot of folks that are
7 returning tonight. And I know we had a late night last
8 night. So thank you.

9 The public hearing process is really important
10 to us. And I've learned so much from reading all the
11 comments, and I know I'll learn a lot more by listening
12 to all your comments tonight.

13 Because the staff report and the EIR instructs
14 us to evaluate only local impacts, I'm going to try to
15 keep it local here and not get into the preemption
16 stuff.

17 So yesterday, when we arrived at the hearing,
18 we received a 200-plus memo from the law firm of Adams,
19 Broadwell, Joseph & Cardozo. And I got around to
20 reading it today. And on page 26 through 28 it talks
21 about the need. "The local Bay Area Air Quality
22 Management District's CEQA guidelines make clear that
23 the District's intent is that both daily and annual
24 thresholds be used to determine a project's operational
25 emissions." My question is: Did we do that in our

1 report?

2 And, "The guidelines clearly state that when
3 analyzing a project's unmitigated emissions, an agency
4 should sum the estimated emissions for the area, mobile
5 and stationary sources if any, for each pollutant, as
6 explained above, and compare the total average daily and
7 annual emissions to each criteria pollutant and their
8 precursors with the thresholds of significance
9 determined by the lead agency." Did we do that?

10 ESA CONSULTANT SCOTT: It's a very technical
11 question, and I wish that our air expert were here this
12 evening to address that. We understood that the
13 technical questions would be addressed last night. I
14 would like to make sure that you get an appropriately
15 technical or appropriately responsive answer to your
16 question. I'm not even going to attempt it. I would
17 like to take your question back to our air quality
18 expert and provide you with a response tomorrow if that
19 would be acceptable.

20 COMMISSIONER BIRDSEYE: That would be great.

21 ESA CONSULTANT SCOTT: I would be happy to do
22 that.

23 COMMISSIONER BIRDSEYE: I have a personal
24 interest in this. Because when we first moved to
25 Benicia, I was going back to school, and one of my

1 concentrations was air quality issues in my home town of
2 Benicia. And so I wrote thesis papers and all of that.

3 So please, any information. Because I read
4 through what we have, more than 1,000 pages, and I
5 couldn't find it. So any help you can give me on that
6 would be most appreciative.

7 ESA CONSULTANT SCOTT: Happy to do that. We
8 looked very carefully at the requirements of the Bay
9 Area Air Quality Management District, I know that,
10 because Benicia is within their jurisdiction. We also
11 looked at air quality -- potential air quality impacts
12 outside the Bay Area Air District when we expanded the
13 geographic scope of review.

14 COMMISSIONER BIRDSEYE: Mm-hmm.

15 ESA CONSULTANT SCOTT: But since your question
16 is specifically with respect to Backman (phonetic), I'm
17 going to make sure you get a good answer.

18 COMMISSIONER BIRDSEYE: Great. Thank you.

19 ESA CONSULTANT SCOTT: Mm-hmm.

20 COMMISSIONER BIRDSEYE: I have some questions
21 regarding the choices we have for the alternatives. And
22 our discussion last night made it seem like it was
23 either no project or this project.

24 And the memo that we received yesterday on
25 pages 37 -- 36, 37, 38, outlines some factors that

1 really could have been considered. And I just wonder
2 was there any consideration into additional
3 alternatives, or because of the preemption -- I mean,
4 why weren't more alternatives included?

5 ESA CONSULTANT SCOTT: The City requested input
6 regarding particular areas of environment concern and
7 potential alternatives during scoping, renewed that
8 request at the public comment period after the draft,
9 but none were proposed to us.

10 We evaluated potentially significant -- or
11 potentially feasible alternatives in compliance with
12 CEQA. And as we discussed last night, the issue of
13 preemption evolved, and what that means in the context
14 of this project, not only for mitigation measures, but
15 also for alternatives. And the development of that
16 thinking is what you see in the final EIR. Which, as
17 you point out, is the first time it's disclosed that
18 some of the alternatives are, in fact, infeasible due to
19 preemption.

20 COMMISSIONER BIRDSEYE: Okay.

21 ESA CONSULTANT SCOTT: So they were potentially
22 feasible because no determination had yet been made at
23 the time of the draft.

24 COMMISSIONER BIRDSEYE: Mm-hmm.

25 ESA CONSULTANT SCOTT: And that's where we were

1 by the final. If other potential alternatives had been
2 proposed, we certainly would have looked at them. None
3 were.

4 COMMISSIONER BIRDSEYE: Okay. Thank you. I'm
5 done.

6 COMMISSIONER YOUNG: Could I follow up on that?

7 CHAIRMAN DEAN: Yes. Commissioner Young.

8 COMMISSIONER YOUNG: I'm looking at that same
9 article, or that same letter from the law firm. And it
10 said that in the revised draft EIR, Dr. Fox, who is a --
11 sort of an expert on refineries and emissions, described
12 two alternatives to the staff or to the consultant that
13 would have reduced many of the impacts to less-than-
14 significant levels. And one of those was to utilize the
15 crude terminals in Bakersfield as an alternative.

16 There is something called the Alon Terminal and
17 the Planes Terminal. And right now these two terminals
18 receive about 70,000 barrels a day of the same kind of
19 crude that's being suggested would be used in this
20 project. Well, it says, "70,000 barrels per day of
21 crude oil from North American sources," which is the
22 same language we're hearing now. But that those two
23 terminals together are permitted to receive over 300,000
24 barrels a day.

25 And what's more, those terminals are connected

1 by pipeline, through a variety of pipelines, but
2 connected to Valero from Bakersfield. Oil flows from
3 Bakersfield to Valero.

4 So it seems that that alternative was feasible
5 and should have been looked at. And so, I guess, that's
6 the question, is why it wasn't, and shouldn't it be
7 considered?

8 ESA CONSULTANT SCOTT: We are aware of her
9 credentials, and we certainly gave her comments and
10 suggestions due consideration. We provided written
11 response in the final EIR. And if you'll give us a
12 moment, we'll be able to direct you to a specific page.
13 I don't have the page number memorized, but I'll get it
14 for you.

15 COMMISSIONER YOUNG: Okay.

16 CHAIRMAN DEAN: Additional comments for the
17 staff? Commissioner Oakes.

18 COMMISSIONER OAKES: Last night the -- I think
19 part of the conversation was around the increase of
20 traffic based on the trains. It was like a 1 percent
21 increase, and it was considered not significant in the
22 report. Did I summarize that correctly? So there was
23 an average of 10 trains a day currently, and that four
24 additional would only be about a 1 percent increase.

25 And when I went back and I looked at that, I

1 tried to figure out how many minutes in a day there
2 were, and how you could break that up as what percentage
3 of the day the average 10 was, and I got to a lot more
4 minutes than were in a day.

5 So I wonder if you could lay it out like that,
6 and answer something like what was the baseline for the
7 delay, you know, from the 10 average now, and then
8 what -- basically percentage of total minutes a day
9 available, and then add the incremental.

10 Because if I used your math, and it's very,
11 very literal, it was like 376 trains with full load out,
12 and that's over 3,000-some minutes, based on the
13 four-minute average that you guys were talking about.

14 I'm confused about that. So just if you'll get
15 the nutshell, percentage of days -- hours available in a
16 day, or minutes available.

17 ESA CONSULTANT SCOTT: Our senior traffic
18 engineer was here last night.

19 COMMISSIONER OAKES: I know.

20 ESA CONSULTANT SCOTT: And so was the
21 applicants. The technical questions about methodology
22 and what went into their analysis, they would be able to
23 give you a much better answer than I can.

24 COMMISSIONER OAKES: Sure.

25 ESA CONSULTANT SCOTT: Let me take that back to

1 them, or to our traffic engineer --

2 COMMISSIONER OAKES: Absolutely.

3 ESA CONSULTANT SCOTT: -- and make sure you get
4 an answer.

5 COMMISSIONER OAKES: So, yeah, I liked the
6 other comment.

7 I had another question. The loading rack --
8 the offloading rack, I'm sorry, at the project, I'm
9 assuming that those tanks are not -- when they're
10 offloading, that they're not vented to the atmosphere,
11 right? Yeah, so it's a closed system, and that's why it
12 takes so long to offload that? Okay.

13 And the fire protection system that's going to
14 be installed in the project, as part of the project, is
15 there foam included in that as well? Excellent.

16 Okay. Thank you. Good. That's all I have.

17 CHAIRMAN DEAN: Comments? Commissioner
18 Cohen-Grossman? Commissioner Young.

19 COMMISSIONER YOUNG: I was going to help out
20 the consultant here. The letter does give the response
21 from the consultant to Dr. Fox. It's in her letter.
22 The response, "The final EIR stated it is unclear how
23 the Alon and Planes All American projects could serve as
24 an alternative to the project. The purpose of the
25 project is to allow the Benicia refinery to receive up

1 to 70,000 barrels per day of crude oil from North
2 American sources."

3 But as we just said, those two terminals in
4 Bakersfield could easily received 70,000 barrels of oil
5 from the same sources and pipe it to Valero. So it
6 seems a little dismissive to say it simply can't be
7 done.

8 CHAIRMAN DEAN: Okay. Other questions from
9 commissioners for staff?

10 I have a question for Mr. Hogin. This whole
11 issue of rail preemption has become a major part of our
12 discussion here. And following your presentation or as
13 part of your presentation yesterday about the breadth of
14 this preemption issue, I have to say, you know, I'm
15 surprised at how broadly it's been interpreted here.

16 And I know that there are other Crude By Rail
17 Projects. I don't know if you're familiar with those.
18 But there is a Phillips 66 project in San Luis Obispo.
19 I know that they have taken a different tack in terms of
20 their approach to this preemption issue and mitigation
21 measures, and they've kind of turned it around and said,
22 "If there are mitigation measures possible, and these
23 are preempted because of the ICCTA, then we therefore
24 can use that to say that these are significant and
25 unavoidable impacts, and use that as findings for denial

1 of the project." That's clearly not the tack that we've
2 taken here.

3 So I know each project is individual. But if
4 you're familiar with the facts of that case, how does
5 that project differ, and how would they be taking a
6 different approach than we?

7 ATTORNEY HOGIN: Yeah, I'm not familiar --
8 well, I'm familiar generally with the project. I have
9 not reviewed how they presented the project to the
10 County Board of Supervisors in connection with project
11 approval. However, I assume we're not going to be done
12 tonight. So I will look at that before tomorrow night,
13 and I will be prepared to answer that question.

14 CHAIRMAN DEAN: That would be great. Thank
15 you.

16 Any other comments from the Commission to the
17 staff before we go to the public hearing? Public
18 comment, thank you.

19 PLANNER MILLION: Through the chair, you'll
20 want to make -- the next step is applicant presentation.

21 CHAIRMAN DEAN: Yes.

22 PLANNER MILLION: And then commission
23 questions.

24 CHAIRMAN DEAN: Okay.

25 COMMISSIONER COHEN-GROSSMAN: That's what --

1 yeah, thank you.

2 CHAIRMAN DEAN: I've been corrected. Thank
3 you.

4 All right. So next we'll go to the applicant
5 for a presentation. And typically we give the applicant
6 15 minutes. Hi. Good evening.

7 CHRIS HOWE: Chair Dean and Members of the
8 Commission, I wanted to speak to the issue. Andrew
9 Chang, our economic consultant, is scheduled to be here
10 tomorrow. We're working hard to have him here and be
11 able to answer specifically the questions that were
12 presented.

13 I would like to make one point on the issue of
14 the property tax, since I was involved in the appeals
15 and settlement back in 2004, 2006.

16 There is a difference in the process that the
17 County uses today as compared to the situation that
18 existed in the past. Historically, in 2004, when those
19 appeals occurred, the tax dollars that we paid --
20 because during the course of the appeal you pay the full
21 amount of property tax. Those full amounts were
22 disbursed to all the entities in the County that drew
23 those taxes. That's what required, when it got settled,
24 to have some of that money come back. So it was an
25 impact on those folks who had spent the money that they

1 had previously been distributed.

2 The County's process today, and I would ask you
3 to speak to the County assessor, is to escrow, if you
4 will, a portion of those funds that are under appeal, so
5 that situation doesn't occur again. And the dollars
6 that flow to all the entries that receive property tax
7 dollars aren't necessarily the full amounts, because
8 there is a portion of those under appeal.

9 The process is intended to avoid the need to
10 reach back and draw back dollars that otherwise would be
11 at issue in a settlement. So just --

12 CHAIRMAN DEAN: Do you want to introduce
13 yourself? I don't believe you did.

14 CHRIS HOWE: Oh, I'm sorry. Chris Howe, I'm
15 the health, safety, environment, government affairs
16 director for Valero in Benicia.

17 CHAIRMAN DEAN: And thank you very much.

18 CHRIS HOWE: Yes.

19 CHAIRMAN DEAN: Are you ready for a
20 presentation?

21 CHRIS HOWE: Yes.

22 CHAIRMAN DEAN: Okay. Good evening.

23 DON WILSON: Good evening. Thank you Chris.

24 My name is Don Wilson, and I am the Valero
25 refinery manager. I'm proud to represent 450 employees

1 in our refinery, where I started my career with Valero
2 as an operator trainee back in 1984.

3 My 32-year career has been focused heavily on
4 safety, including serving as safety manager, and setting
5 the stage for our ongoing Cal-OSHA Voluntary Protection
6 Program Star site designation. We're very proud of
7 that.

8 I want to start by thanking the hundreds of
9 Benicia community members that have shown their support
10 for this project for over three years now. It's amazing
11 to see so many of them here again tonight.

12 I would also like to thank the City staff,
13 attorneys and consultants for the immense amount of work
14 that has gone into the review and analysis of this
15 project. With over three years of review, we are
16 pleased to see the staff recommendation for
17 certification and approval.

18 Finally, thank you to the members of the
19 Planning Commission for the many hours you have spent
20 reviewing this project. I am here tonight to ask for
21 your certification of the final EIR and approval of the
22 condition use permit.

23 Many of the concerns raised last night focused
24 on rail transportation and up-rail impacts. And we
25 agree with the City's attorney regarding the application

1 of federal preemption.

2 To set the record straight on the facts about
3 this project:

4 Number one, this project will dramatically
5 reduce greenhouse gas emissions. The project also helps
6 the City achieve its greenhouse gas reduction goals
7 under its climate action plan. We are not aware of any
8 other project proposed for the City that would even come
9 close to the potential reductions related to this
10 project.

11 Number two, this project strengthens the City's
12 economy, including creation of 120 construction jobs,
13 and 20 permanent full-time positions at our refinery.

14 And that is net, Mr. Young.

15 It will also generate over \$360,000 in tax
16 revenues every year, dollars that are vitally needed for
17 local services. We know that Benicia needs projects
18 like this to ensure its continued fiscal health. This
19 is good for all of our residents. It means good jobs,
20 local services, tax revenues, and healthy home values.

21 In fact, since the permit application for this
22 project was submitted in 2012, the average sales price
23 of Benicia homes has increased from \$300,000 to
24 \$500,000. The continued economic health of the City is
25 a major part of protecting those home values.

1 Number three, we have also demonstrated our
2 safety commitment and emergency preparedness with a
3 newly-signed and updated mutual aid agreement with the
4 City. This enhances our current mutual aid capability
5 in the surrounding region, which ensure we are able to
6 provide and receive aid from companies and agencies in
7 case of an emergency. We believe in our strong
8 partnership with the Benicia Fire Department, and want
9 to see that continue to grow.

10 Number four, this project does not change the
11 way we operate. This project does not result in any
12 increased emissions from refinery operations. This
13 project does not install any facilities that would allow
14 us to process more crude or export crude. In fact, both
15 of those scenarios would require a separate permit.

16 Number five, we have voluntarily agreed to
17 avoid train deliveries during commute windows.

18 Number six, this project will help ensure the
19 refinery can compete locally and continue to provide
20 fuel to California families.

21 This project simply allows us to build an
22 offloading rack on the existing refinery site. It will
23 provide more flexibility for efficient operations and
24 reduce marine deliveries.

25 While there was a lot of discussion last night

1 about rail safety and up-rail impacts, regulation of
2 rail operations is committed, by law, solely to the
3 federal government.

4 As noted in the final EIR, great strides have
5 been made to improve federal regulatory standards to
6 ensure safe rail transport. The EIR includes 12 pages
7 about the regulations that have been added since our
8 review process began. This includes notable state
9 efforts, such as additional funding for rail safety
10 inspectors to inspect every rail in the state every
11 year.

12 It also includes the addition of a 6-1/2 cent
13 per-barrel fee for crude oil brought into California by
14 rail. This fee will fund the expansion of California's
15 Office of Spill Prevention and Response, OSPR, for
16 prevention, emergency response preparedness, and cleanup
17 and enforcement measures. The staff recommendation
18 accurately notes that our project alone could contribute
19 up to \$1.6 million per year for these efforts.

20 I see a lot of opponents here from other cities
21 and regions. Many of them are solely focused on the end
22 of petroleum at all costs. They would like few things
23 more than to see our refinery closed, with no care for
24 the local community or Californians that rely on the
25 transportation fuels we provide.

1 As a reminder of local strong support, we have
2 over 95 additional cards and over 40 emails from local
3 residents in support of this project. This adds to the
4 more than 1,200 local letters, emails and the cards of
5 support we have seen throughout this process.

6 We appreciate the time our supporters have
7 taken out of their busy schedules to be here with us and
8 speak in support of this project, and we are confident
9 they represent the broader community.

10 We are proud to be part of the Benicia
11 community, and we hope to be community members for
12 decades to come.

13 I urge you to follow the staff recommendation
14 to certify the final EIR and approve the conditional use
15 permit.

16 Now I'd like to introduce Don Cuffel, he is our
17 manager of environmental engineering, to expand on the
18 information I've provided, and respond to additional
19 questions that you might have. Don Cuffel. Thank you.

20 CHAIRMAN DEAN: Thank you.

21 DON CUFFEL: Thank you. Good evening,
22 Commissioners, City staff, and members of the public.
23 I'm happy to be here to answer questions and to further
24 expand on the understanding of this project.

25 First I'm going to respond to specific

1 questions that were asked about the possibility of
2 exporting crude.

3 Number one, this project does not install any
4 facility whatsoever that would support exporting crude.
5 But more specifically, if that was an operation that we
6 wanted to undertake, we would have to go to the Bay Area
7 Air Quality Management District and get a permit. So
8 it's not something that's going to happen in the dark of
9 night or in any kind of cloak-and-dagger fashion. That
10 is a public process, if, in fact, we wanted to export
11 crude.

12 Once again, this project is merely a third
13 means of getting crude to the refinery, in addition to
14 the pipeline, in addition to shipping. That's the
15 objective.

16 On the greenhouse gas question, there was much
17 confusion last night. So I would like to try to help
18 everybody understand what the truth is about greenhouse
19 gases, especially when you're comparing rail transport
20 to marine transport.

21 Let's remember what the comparison is. As
22 Commissioner Young said, it's not trains to Vacaville.
23 It's not ships from the Golden Gate to Benicia. It's
24 the entire journey.

25 We're going to replace international voyages of

1 ships, that average about 7,300 miles, with a
2 continental trip by trains that are expected to be about
3 1,500 miles. That's the comparison.

4 The confusion comes in when you look at it
5 through the lens of the Air District. They only look at
6 the air shed under their jurisdiction. When you look at
7 it through CEQA, you're only looking at the State of
8 California. But that's not the project.

9 The project isn't merely transporting rail --
10 or transporting crude from the state line or from the
11 Golden Gate Bridge to Benicia. It's from the origin to
12 Benicia.

13 So when you make that comparison, the
14 locomotives emit a great deal less greenhouse gas than
15 the ships. In fact, 225,000 tons per year. Now, that's
16 on Table 4.6-7. Now, I commend ESA for this analysis.
17 It's thorough, the arithmetic is correct, and it
18 identifies the maximum reduction we can expect.

19 Well, let's put 225,000 tons per year in
20 context. Of our stationary source greenhouse gas
21 emissions inventory that is certified to the California
22 Air Resources Board every year, that's about 8 percent
23 of our inventory. It's a tremendous reduction, and it's
24 not an opportunity that comes along very often.

25 So just so you're clear, we're comparing the

1 entire journey of the train to the same amount of crude
2 delivered by a ship.

3 Now, there was some question last night by
4 Commissioner Young about, "Well, where did that 7,300
5 miles come from?" The baseline period looked at every
6 single shipment to the refinery by marine vessel for
7 three years, and it took into account of volume-weighted
8 average of that distance. In other words, a larger ship
9 would have more benefits than a smaller ship traveling
10 over that same distance because it delivers more crude,
11 presumably, with less emissions per barrel delivered.

12 All of those data were provided to the City
13 under confidential business information, and ESA
14 verified the math. So again, you don't take Valero's
15 word for it. ESA has verified that that's the right
16 number, and that it's true and complete. So once again,
17 greenhouse gas emissions reductions are real and
18 significant.

19 By the same token, if you compare criteria
20 pollutant emissions, locomotives to trains --
21 locomotives to ships, you get significant reductions
22 across the board. And that's in your EIR on table
23 4.1-6. In every instance, organic compounds, nox, CO,
24 SO2 and particulate matter, every pollutant is reduced
25 when you compare the two. Again, this is an opportunity

1 that doesn't come across very often.

2 You've been asked about rail and traffic.
3 And one thing that hasn't been said yet, in addition to
4 voluntarily asking UP not to have trains arrive or
5 depart between 6:00 and 9:00 in the morning and 4:00 and
6 6:00 in the afternoon, we also agreed to put in a video
7 camera so dispatch has a 24/7 feed.

8 It doesn't matter if it's our train or someone
9 else's train. If the Park Road crossing is blocked, we
10 want emergency responders to know which way to go.
11 That's in everyone's best interest.

12 And Commissioner Oakes, you asked about what
13 other mitigations are there. Valero has also agreed to
14 voluntarily provide Opticon devices, which gives
15 emergency responders control over the signal lights, for
16 both pads to the industrial park, and for all the City
17 vehicles that don't yet have those devices. That's our
18 goodwill. That's our faith. We are partners with you
19 in making sure that emergency response is complete.

20 I do have one more comment about crude
21 purchases, and I imagine there will be additional
22 questions from the Commission.

23 We did highlight over 30 potential crudes that
24 we could be buying. We don't know from day to day what
25 that will be. And why is that? Every day the crude

1 market changes. Every day the pricing and the
2 availability of crude changes. Crude that's being
3 purchased today for Valero Benicia will arrive perhaps
4 in 45 days. That's about the typical length of time it
5 takes.

6 We don't know -- I can't predict what that will
7 be. So it's not that we won't tell you, but we simply
8 don't know. We've given you a range of the kinds of
9 crudes we expect. And we've explained in considerable
10 detail that crudes have to be blendable into the box of
11 sulphur and gravity that we can refine.

12 Remember, this refinery is designed and tooled
13 around a very specific range of gravity and sulphur
14 content. For a crude to be a candidate for us to
15 refine, it has to be blendable into that box. If it's
16 not blendable into that box, we can't refine it.

17 Finally, in my minute and 54 seconds left
18 I'd like to address the pressure question. The Bay Area
19 Air Quality Management District has a lot of regulations
20 that apply to our facility. One of those regulations is
21 Regulation 85, the storage of organic liquids. Crude is
22 stored in a floating-roof tank, and the maximum vapor
23 pressure that you can have for anything in a
24 floating-roof tank is 11 PSI.

25 So discussions or speculation about Valero is

1 going to bring in 13.5 PSI Bakken is simply not true.
2 That's not a material that we can store in a compliant
3 manner. And we always plan for compliance. That's the
4 bottom line. We always plan for compliance.

5 So I'm sure there will be additional questions.
6 I have a team of folks here, as mentioned by Mr. Howe.
7 The author of the economic analysis will be here
8 tomorrow evening; that's the best we could do.

9 So with that, I will close and take your
10 questions. Thank you.

11 CHAIRMAN DEAN: Okay. Thank you, sir.

12 It seems like there were a number of questions
13 from the Commission last night for the applicant. Who'd
14 like to start? Commissioner Cohen-Grossman.

15 COMMISSIONER COHEN-GROSSMAN: So I wanted to go
16 back to the comment -- and I'm not a technical expert.
17 So I'm sure I'll use the terms wrong. But you said --
18 I'll just repeat what you said. "The crude has to be
19 blendable into a certain box." I understand that. I've
20 read a lot of reports, and there's a term that someone
21 used that -- I can't remember the term.

22 But basically what I think I want to tease out
23 of you is you're saying that the starting point has to
24 be within a certain box. But that's not what you said.
25 You said the crude has to be blendable into a certain

1 box.

2 So it's kind of a two-part question. How
3 extreme -- and I'm not just talking about sulfur, and
4 I'm not just talking about specific gravity. In terms
5 of all of the qualities of the oil that you can start
6 with. You know, because, obviously, you have to do some
7 mixing to make it to the product that you want. How
8 wide ranging is that?

9 DON CUFFEL: Well, you're right, it's not as
10 simple as gravity and sulfur. There are many, many
11 attributes in crude oil -- can you hear me?

12 COMMISSIONER COHEN-GROSSMAN: Just barely.

13 DON CUFFEL: Oh, I'm sorry. Is this better?
14 Okay. I apologize.

15 There are many attributes of crude oil that are
16 considered when selecting a crude oil. There are
17 documents called Crude Assays that give you the
18 breakdown of many, many attributes of that crude oil.
19 The principal ones that we use to characterize crude oil
20 are gravity and sulfur. So that's the ones that are
21 most easily understandable when we're trying to
22 graphically represent how this process works.

23 The physical boundary of this box, however,
24 does reflect the hardware we have. This refinery was
25 built around medium to heavy sour crudes, because that's

1 what was available in the '60s. San Joaquin Valley is a
2 very heavy sour crude. Alaskan North Slope is a medium
3 sour crude. That's what was available. So our
4 equipment is designed to handle those specific kinds of
5 crude oils.

6 Now, having said that, how extreme can it be?
7 In the EIR, Figure 3-11 shows the whole West Coast range
8 of crudes that were available at that time. There are
9 many, many. There must be hundreds on this document, on
10 this page.

11 You'll see a heavy sour crude, like the
12 Canadian Cold Lake, is well outside the box. Has the
13 Benicia refinery successfully run Cold Lake? Yes.
14 You'll see Bakken, also a topic of much discussion, to
15 the light and sweet edge of the axis. Have we
16 successfully run Bakken? Yes.

17 Now, I'm not going to say that it's necessarily
18 Bakken and Cold Lake that blend inside the box. But
19 that gives you the sense of the kinds of ranges that
20 we're talking about.

21 In fact, on this graphical representation
22 you'll see triangles that indicate crudes run by Valero.
23 And that gives you a sense of just how much variability
24 there can be.

25 Our refinery doesn't have, really, a steady

1 diet of anything. When it was an Exxon facility, we
2 tended to run a lot of the Alaska Slope crude, because
3 that was readily available through the Exxon system.

4 Valero does not produce crude. We don't
5 explore for it. We don't drill for it. We buy it on
6 the world market. So we were not virtually integrated
7 with our own internal supply.

8 So we have to go out on the open market and
9 find out what can we purchase that will be compatible
10 with our equipment, that we can store in a compliant
11 manner, that we can safely run and blend into the box,
12 and that meets all of the conditions and limits in our
13 operating permit by the air district.

14 And that's a continuous process. As I said,
15 they're buying crude today that we'll see in 45 days.

16 COMMISSIONER COHEN-GROSSMAN: So just a short
17 following question. Last night we heard from the Union
18 Pacific Railroad representative that they don't
19 transport Bakken.

20 DON CUFFEL: Francisco.

21 FRANCISCO CASTILLO: Good evening,
22 Commissioners.

23 So while we don't currently move Bakken in
24 California, it doesn't mean that we can't move Bakken in
25 California. Because we're a common carrier, as long as

1 it is handed over to us and packaged to us in compliance
2 with federal regulations, then we're required to move
3 it.

4 CHAIRMAN DEAN: Do you want to state your name
5 for the Commission, please.

6 FRANCISCO CASTILLO: Sure. It's Francisco
7 Castillo.

8 CHAIRMAN DEAN: Thanks very much.

9 DON CUFFEL: So you might wonder, then, how did
10 we refine Bakken. It came in a ship.

11 CHAIRMAN DEAN: Okay. Questions for the
12 applicant? Commissioner.

13 COMMISSIONER YOUNG: I have a question for
14 Mr. Cuffel, as well as Mr. Wilson.

15 You just said that the Bakken that you get
16 comes from a ship. Where does that ship come from?

17 MR. CUFFEL: I don't know.

18 COMMISSIONER YOUNG: Really?

19 MR. CUFFEL: I believe it -- what I recall of
20 that --

21 Do you recall where it came from?

22 It was a distressed cargo, which meant it was
23 sold on the water. So ownership of crude cargoes can
24 change while the ship is en route to its designation.
25 Which meant someone couldn't take it. It was for sale.

1 And we purchased it and we refined it.

2 COMMISSIONER YOUNG: You are regularly refining
3 Bakken in the refinery now?

4 MR. CUFFEL: I wouldn't say it's regular.

5 COMMISSIONER YOUNG: Okay.

6 MR. CUFFEL: But it has been done successfully.

7 COMMISSIONER YOUNG: It was mentioned at a
8 previous hearing that Bakken was brought in by barge.
9 Do you know where that barge would have emanated from?

10 (Inaudible comment from audience member.)

11 COMMISSIONER YOUNG: Same one.

12 MR. CUFFEL: Okay. So when I say "ship," I
13 mean at our dock, which is to distinguish it from
14 pipeline or any other means of transport.

15 COMMISSIONER YOUNG: So you're not currently
16 bringing Bakken in by any other means of transportation?

17 MR. CUFFEL: To my knowledge, we are not now.

18 COMMISSIONER YOUNG: Okay.

19 MR. CUFFEL: But again, I'm not in the crude
20 supply part of the business. I'm in the compliance part
21 of the business.

22 COMMISSIONER YOUNG: On the -- I think at one
23 of the first meetings that we had, you said that this is
24 a simple logistics project, and that it would provide
25 Valero with additional flexibility in how you -- it

1 would give you an alternate way of receiving oil. Is
2 that still your belief?

3 MR. CUFFEL: That's true. That is true.

4 COMMISSIONER YOUNG: Okay. So it's not the
5 only way you get oil; it's an additional way you can get
6 oil?

7 MR. CUFFEL: It would add a third means of
8 receiving oil, in addition to marine ships and pipeline.

9 COMMISSIONER YOUNG: But if you didn't get a
10 permit to receive crude by rail, it wouldn't stop Valero
11 from operating or refining oil?

12 MR. CUFFEL: Well, that depends on the
13 economics, doesn't it?

14 COMMISSIONER YOUNG: Okay. So on the GHG
15 question.

16 MR. CUFFEL: Mm-hmm-hmm.

17 COMMISSIONER YOUNG: You said that you had
18 provided this information to the City, or to the
19 consultant, under confidential business information.

20 MR. CUFFEL: That's true.

21 COMMISSIONER YOUNG: But you never said it was
22 confidential business information until very recently;
23 isn't that right?

24 MR. CUFFEL: No, it was marked as confidential
25 business information when it was provided.

1 And the reason for that is very clear. If our
2 competitors had records of every crude receipt that we'd
3 had for three years, they would really be able to
4 reverse-engineer our business and our strategy.

5 So it's not only a problem from a competitive
6 position, but it's also a problem for antitrust.
7 Because if you're familiar with antitrust laws or the
8 notion of conclusion, we could be accused of signaling
9 the market that this is where we buy our oil, and people
10 could buy futures in that oil, and it would potentially
11 be a very nasty economic situation and not a lawful one.

12 So that's why it may frustrate folks that they
13 can't have those details, but the reality is we cannot
14 discuss our crude shipments, what kind of crude it is,
15 how much it is, or where it came from, because that is
16 confidential business information which is protected by
17 the antitrust laws.

18 COMMISSIONER YOUNG: Okay. On the vapor
19 pressure, I want to make sure I understand this. You're
20 telling me that your tanks can only hold oil that has a
21 vapor pressure of less than 11 PSI?

22 MR. CUFFEL: That is the regulation. And it's
23 11 PSI at the storage temperature. So as you might
24 expect, that's different in summer than it is in winter.

25 COMMISSIONER YOUNG: From what I read, the

1 testing of the Bakken in North Dakota at the well head
2 came in at about 11 or 12 PSI, but that when it was put
3 on a railcar it jumped to as high as 30 PSI. So if
4 that's true, that would seem to mean that you couldn't
5 take any Bakken.

6 MR. CUFFEL: That would not be a compliant
7 cargo for the Benicia refinery. It's very similar. If
8 it's above 11 at storage temperature, it is not a
9 compliant cargo for our facility.

10 COMMISSIONER YOUNG: So does that mean we
11 should not worry that you're going to be bringing Bakken
12 in?

13 MR. CUFFEL: Again, not every oil well is the
14 same. So what's being characterized as Bakken, my
15 understanding -- and you may know more than I do on
16 this. It's a very large region, and different oil
17 coming out of different wells may have different
18 characteristics.

19 So the key is every shipment has to be a
20 complaint shipment. And that's the verification process
21 that's required.

22 COMMISSIONER YOUNG: Does Valero have plans to
23 degasify the oil before it's shipped?

24 MR. CUFFEL: That step would be done by the
25 operator of the well, before the --

1 COMMISSIONER YOUNG: But it would be done at
2 your request, would it not?

3 MR. CUFFEL: We would not purchase oil that is
4 not compliant, that we cannot safely store and refine.
5 It's a nonstarter, Commissioner.

6 COMMISSIONER YOUNG: So we don't need to worry
7 that high-end gases would be in this oil that was being
8 transported?

9 MR. CUFFEL: If your definition of "high-end"
10 is greater than 11, that's a true statement. 11 at
11 storage temperature.

12 COMMISSIONER YOUNG: Could it be shipped at a
13 higher PSI?

14 MR. CUFFEL: I'm not familiar with the
15 packaging process.

16 Francisco, do you have any data on that?

17 I'm sorry, I'm not aware of how the shipping is
18 done exactly.

19 COMMISSIONER YOUNG: All right. Does somebody
20 want to break in?

21 CHAIRMAN DEAN: Yes, a follow-on question from
22 Commissioner Birdseye.

23 COMMISSIONER BIRDSEYE: You keep on repeating
24 "at a storage temperature." Can you define what you
25 mean by that?

1 MR. CUFFEL: Yes. When it's hot things tend to
2 be at a higher pressure. So when you boil a teakettle,
3 you're raising the vapor pressure of the water until it
4 becomes steam.

5 So in summer, even in Benicia, it can be quite
6 warm, and tanks can get an ambient temperature of 100
7 degrees sitting out in the sun. Those big yellow tanks
8 you see out there by 680, that's the crude field. In
9 winter it's likely that the ambient temperature is
10 closer to 60 or 70, even on a sunny day. So identical
11 contents, on a summer day versus a winter day, would
12 have different vapor pressures.

13 The regulation doesn't care what season it is.
14 The regulation says, "You shall not store material with
15 a vapor pressure greater than 11," and they qualify it
16 with "at storage temperature," because they want to take
17 that into account. As opposed to measuring it at night,
18 on a cool day, and then having a hot day and having more
19 emissions.

20 COMMISSIONER BIRDSEYE: But would that storage
21 temperature apply to the railcar? I understand what
22 you're doing, what you're -- you know, where you're
23 storing it on your facility. But coming across America.

24 MR. CUFFEL: The railcar is sealed.

25 COMMISSIONER BIRDSEYE: Okay.

1 MR. CUFFEL: The tank is not. The tank has a
2 floating roof. And there are two sets of seals around
3 the perimeter of the roof as it flows up and down. The
4 idea being you want to keep the contents in the tank,
5 okay.

6 But as you drain a tank, and the roof floats
7 down, there is a wetted surface inside that tank wall,
8 and that material evaporates. And that's one of the
9 sources of tank emissions that we're accountable for.
10 So the lighter the material, the more you'd have to go
11 by the seals and evaporate to the atmosphere. Does that
12 make sense? Okay.

13 So the Bay Area has said the way we're going to
14 control this is putting a limit on the vapor pressure,
15 at storage temperature, to take all of those things into
16 account. And that's how our emissions are controlled.

17 By the way, just so you know, just as we're
18 evaluating a project here for 70,000 barrels a day,
19 right, the Air District does the exact same thing in
20 terms of evaluating the emissions, because you permit
21 for the maximum throughput.

22 So if we build this project, and there is no
23 economical crudes to get by rail, and we don't operate
24 the rail system, we don't have these greenhouse gas
25 reductions, because we'll continue to receive crude by

1 marine vessel. But as the economy drives us to and away
2 from rail transport, it could be as much as 225,000 tons
3 per year. That's the maximum benefit. It's not a
4 guaranteed benefit every single year.

5 COMMISSIONER BIRDSEYE: So how many railcars
6 would fit in a tanker? Because it seems to me that one
7 big, huge ship would take more than four trains a day,
8 or two trains a day.

9 MR. CUFFEL: Depending on the size of the
10 tanker.

11 What's a nominal? 350.

12 Pardon me while I do some arithmetic.

13 So it could be nominally 500 cars, 500 railcars
14 potentially would be similar to a typical tanker that
15 comes to Benicia. We can't handle the real big ones,
16 but we handle those that have a draw of -- a draft of up
17 to about 38 feet.

18 COMMISSIONER BIRDSEYE: Three tankers coming in
19 a week?

20 MR. CUFFEL: Typically that's true.

21 COMMISSIONER BIRDSEYE: Wow.

22 DON CUFFEL: And I think we're seeing up to 80
23 percent of those could be eliminated if we're at full
24 capacity on the rail.

25 COMMISSIONER BIRDSEYE: And we have two trains

1 coming in per day.

2 DON CUFFEL: But not all tankers are the same
3 size. So the arithmetic won't be linear like that.

4 COMMISSIONER BIRDSEYE: All right.

5 DON CUFFEL: Yeah.

6 COMMISSIONER BIRDSEYE: All right. I'm going
7 to do some math on my own.

8 DON CUFFEL: Okay.

9 CHAIRMAN DEAN: Back to Commissioner Young, you
10 yielded to --

11 COMMISSIONER YOUNG: Yes.

12 COMMISSIONER BIRDSEYE: I just had a follow-up
13 question.

14 COMMISSIONER YOUNG: I think both you and
15 Mr. Wilson said that you would ask -- you would sort of
16 voluntarily ask UP to not deliver railcars during rush
17 hour. But you would agree that this is strictly a --
18 we're going to ask them, but they don't have to do it?

19 DON CUFFEL: Well, ultimately UP schedules all
20 of their trains.

21 COMMISSIONER YOUNG: Right.

22 DON CUFFEL: Including the -- what are there,
23 40 now on the corridor between here and Sacramento every
24 day. And they're responsible for all of those
25 logistics.

1 I would think that they don't want to
2 jeopardize the on-time performance of their other
3 trains. So they have verified that they can schedule
4 these in between their existing train movements, and
5 still respect our request to not be here during 6:00 to
6 9:00 a.m. and 4:00 to 6:00 p.m.

7 COMMISSIONER YOUNG: But if there were an
8 incident on the rail, all that could be out the window?

9 DON CUFFEL: That's always the case. I mean,
10 when the Cosco Busan ran into the Bay Bridge and leaked
11 fuel oil in the bay, that changed everything that day.

12 COMMISSIONER YOUNG: Is it true that Valero,
13 over the last few years, has operated about 60 percent
14 of capacity, in terms of what you find?

15 DON CUFFEL: Our capacity is driven entirely by
16 market demand. And I would say it's probably not
17 difficult to deduce that in the last several years
18 market demand has not been what it was before 2008. It
19 has gone up, but it's not returned to 2008 levels.

20 COMMISSIONER YOUNG: But is 65 percent a good
21 guess?

22 DON CUFFEL: Um, I can't really say. I don't
23 have those data in front of me.

24 COMMISSIONER YOUNG: Well, I read it somewhere.
25 And I guess my question is: The EIR talks about the

1 permitted level of emissions, what the Air District will
2 allow operating at full capacity. But you're not
3 operating at full capacity, you're not approaching those
4 numbers. So we're talking about a baseline that doesn't
5 currently exist.

6 And I guess my concern is that if your
7 production ramps up, and you go from 65 to 95 percent of
8 capacity, emissions will increase substantially, would
9 they not?

10 DON CUFFEL: Well, let me put your mind at ease
11 about that. The Valero improvement project, which
12 you've heard described as the VIP, that was first
13 permitted in 2002, and again in 2008, and resulted in
14 our flue gas scrubber being installed. The installation
15 of that scrubber permanently reduced our emissions by
16 thousands of tons per year, permanently. And it was
17 because of that scrubber that we were able to increase
18 our permitted capacity from 135,000 barrels a day to
19 165,000 barrels a day.

20 So I think the takeaway, Commissioner, is
21 whether or not we used all or half of that capacity,
22 those emissions reductions are real and ongoing. And
23 independent of this project, that full-capacity scenario
24 has already been more than fully offset by real
25 emissions reductions that the Bay Area enjoys every day.

1 COMMISSIONER YOUNG: Okay.

2 DON CUFFEL: So this project doesn't impact
3 refinery operations at all. We're not changing how we
4 run the refinery, only how we take receipt of the crude.

5 COMMISSIONER YOUNG: I've got a question for
6 Mr. Wilson, if I may.

7 DON WILSON: Yes, sir.

8 COMMISSIONER YOUNG: You started off by saying
9 that you're happy to agree with the City's attorney's
10 opinion on preemption. But I think we established
11 yesterday that it was actually UP that first made this
12 argument, Valero that then concurred in that agreement,
13 and only very recently did the City come around to your
14 point of view.

15 So I think it's more accurate to say that the
16 City agrees with your opinion, rather than you agree
17 with the City's opinion.

18 CHAIRMAN DEAN: The City attorney, you wanted
19 to weigh in on that?

20 ATTORNEY WELLMAN: Yes.

21 It's inaccurate to say that. Federal
22 preemption has been raised by the City from the very
23 beginning, and --

24 COMMISSIONER YOUNG: But not the indirect part.
25 The indirect part didn't come up until the Final EIR.

1 ATTORNEY WELLMAN: Well, we didn't have to get
2 into the details of it. But federal preemption has been
3 an issue that has been discussed, and we've been aware
4 of it from the very beginning. So I think you're
5 mischaracterizing the City's position.

6 COMMISSIONER YOUNG: Well, actually, I'm going
7 to have to disagree with you there. Because the Draft
8 EIR, the revised Draft EIR, spoke to preemption, and it
9 did speak to the issue of not being able to regulate
10 railroads. But there was never any talk about that
11 preemption extending to Valero, and it was only until
12 the Final EIR that argument had been made.

13 ATTORNEY HOGIN: Again, I mean, we're just
14 retreading old ground. As I said yesterday, my
15 recollection is that there's an appendix in the revised
16 DEIR that addressed the preemption issues in some
17 detail.

18 COMMISSIONER YOUNG: Okay.

19 ATTORNEY HOGIN: I can pull that document up,
20 if that's helpful.

21 "Revised Draft EIR, Appendix G, Preemption of
22 CEQA by the ICCTA." There's a one, two, three, four,
23 five, six single-spaced page discussion there.

24 COMMISSIONER YOUNG: Okay. We'll get back to
25 the whole preemption question, I'm sure, a little later.

1 The other thing is that you said that a lot of
2 the people from out of town, you believed, were
3 interested in closing the refinery. And I just want to
4 say that I've been into this project for three years
5 now, and I haven't heard anybody, either in Benicia or
6 outside Benicia, call for the closure of the refinery.

7 MALE SPEAKER: I have.

8 COMMISSIONER YOUNG: And finally, a question
9 for Mr. Howe on the assessment issue. Was my
10 characterization of what happened accurate in terms of
11 what Valero asked for in terms of a reassessment and
12 what happened?

13 MR. HOWE: Uh, I believe so. Yeah, I'm not
14 familiar with the detailed numbers, but basically a
15 homeowner or an industry or business can seek an appeal
16 of the assessed value of their properties.

17 In this particularized case the sale of the
18 Carson refinery in California to Tesoro set a new sales
19 baseline for refineries here in the state.

20 COMMISSIONER Young: Okay. Thank you.

21 CHAIRMAN DEAN: Yeah, one more. Commissioner
22 Radtke.

23 COMMISSIONER RADTKE: Okay. So my questions
24 starting out had more to do with the actual location and
25 construction of the offloading facility. And I tried to

1 find it again in the documents, and I don't have
2 Commissioner Young's patience for going back through
3 documents.

4 How far from the edge of the project area to
5 the edge of Sulfur Creek Springs?

6 DON CUFFEL: In my mind's eye, our refinery
7 fence line is about 25, maybe 30 feet.

8 COMMISSIONER RADTKE: From the edge of the
9 creek?

10 DON CUFFEL: From the edge of the creek.

11 And the rail offloading facility, as you saw in
12 the diagrams, will replace the road that currently runs
13 along that fence line. So it will be -- that's why each
14 segment of the offloading facility is a self-contained
15 sump, in case of a spill or a leak or a hose failure or
16 an earthquake.

17 And that's why that whole area has undergone
18 extensive geotechnical analysis, to make sure that we
19 understand how that earth will behave in the event of a
20 large earthquake. That was one of the initial
21 feasibility steps we had to take before we even applied
22 for the project.

23 COMMISSIONER RADTKE: Okay. It's also located
24 in the special flood zone, 100-year flood zone. And I
25 know maybe four years ago Lake Herman hit the spillway.

1 And did it flood that area? Have you ever seen that
2 area flooded?

3 DON CUFFEL: I have not. Downstream of that
4 area, on the other side of 680, where our wastewater
5 plant is, that has flooded. Sulphur Springs Creek has
6 flowed over the dike and into our wastewater plant. But
7 that's at a considerably lower elevation than where the
8 offloading facility will be.

9 COMMISSIONER RADTKE: Okay. So it also said
10 that you had to design it to withstand flooding. And it
11 is located below an old earthen dam, Lake Herman Dam
12 itself. How do you design this differently than you
13 would an offloading facility somewhere else, so that it
14 could withstand inundation from a dam break?

15 DON CUFFEL: Well, the design parameters for
16 anywhere in the country are driven by the local
17 topography and the weather. So we don't design for
18 hurricane, as our brothers and sisters do down in the
19 Gulf Coast. We design for earthquake. That would be an
20 example.

21 So all the parameters that went into the civil
22 engineering of the individual rail segments, the
23 foundations, all of that work was based on local
24 building code requirements.

25 I don't recall seeing a particular analysis

1 about catastrophic failure of Lake Herman Dam, but
2 perhaps that's in there.

3 COMMISSIONER RADTKE: Okay. So I guess my
4 question, and this is just a knowledge question, how do
5 you insure something if it's in a flood zone? Does it
6 hit the federal insurance level, or is it totally
7 different than, like, houses?

8 DON CUFFEL: I don't think we know the answer
9 to that question.

10 COMMISSIONER RADTKE: Okay.

11 DON CUFFEL: But we will find out.

12 COMMISSIONER RADTKE: I would love to know
13 that.

14 DON CUFFEL: Okay. Thank you.

15 COMMISSIONER RADTKE: Okay. So that's that
16 question. Let me head to another question that I have,
17 as soon as I find the piece of paper I wrote it on.

18 Okay. So I had another question about the
19 Benicia Industrial Park in general. As you know, we've
20 been working a lot on how to improve the industrial
21 park, what's better for the businesses, how can we
22 attract more businesses to come in.

23 I guess we were talking yesterday, we're
24 creating more hazardous situations for some of the
25 employees, where they might not be able to get emergency

1 access because they're on the wrong side of a parked
2 railroad train.

3 Is there going -- you know, if we target so
4 that the trains don't come in during main traffic hours
5 for staff, then we're actually probably targeting that
6 the trains would come in during primary business working
7 hours for a lot of the businesses out there.

8 And then we're looking at is this going to
9 change any of the insurance costs for the companies that
10 are out there.

11 And I know the companies -- there's, what, I
12 don't know, 3-, 400 different -- a lot of different
13 companies, a lot of different varieties of companies out
14 there. Definitely you guys are, by far, the largest
15 company. What's in it for them? What is the benefit of
16 this project for all of these other businesses that are
17 out there?

18 DON CUFFEL: Well, Valero does have a
19 multiplier effect. I don't know what the exact number
20 is that Commissioner Young was looking at. But if you
21 think about all of the money we spend, not just on
22 building materials, but support staff, contractors,
23 consultants, even going out to lunch, I mean, Benicia's
24 environment, including the business environment,
25 benefits from the presence of the refinery, at least

1 economically.

2 And certainly we've been -- tried to be good,
3 responsible corporate citizens by volunteering our time
4 with everything from tutoring kids in high school to
5 children's golf charities.

6 So what's in it for them is we're being part of
7 the society, we're being part of the corporate culture
8 and the family culture of Benicia.

9 COMMISSIONER RADTKE: And talking about the
10 family culture, I think probably everybody who lives in
11 Benicia has benefited from, or our kids have benefited
12 from, Valero donations.

13 DON CUFFEL: And tutoring. Don't forget
14 tutoring.

15 COMMISSIONER RADTKE: And tutoring, and support
16 of different projects, and, you know --

17 DON CUFFEL: When you help an eighth grader
18 through an algebra problem, and they see the light, let
19 me tell you, that is gratifying.

20 COMMISSIONER RADTKE: And I'd like to know how
21 you're dealing with the Core Curriculum questions, but
22 we'll do that another time.

23 So, I guess, you know, realizing that Valero's
24 headquarters is not in California, and having spent more
25 than half my life in the state of Texas, and knowing

1 that you guys have to keep going back to a corporate
2 that may not understand how ya'll out there in
3 California do things --

4 DON CUFFEL: You said that correctly.

5 COMMISSIONER RADTKE: How is Valero -- if, on
6 the chance that we don't authorize the permit -- I'm
7 going to ask the question. On the off chance we don't
8 authorize the permit, or we change it drastically, would
9 Valero be pulling most of their support of nonprofits
10 and such in Benicia?

11 DON CUFFEL: Oh, gosh. I don't believe that
12 we're that kind of citizen at all.

13 But what I will say to you -- and I think you
14 hit on a really key point. We think about our
15 competitors in the Bay Area. And that's true. We're
16 competing with Tesoro and Shell and Chevron and Phillips
17 66.

18 But what I've told our district directors, and
19 what I ask you to consider, especially with your
20 perspective on Texas, is that to get investment in the
21 Benicia refinery I'm not competing with Shell and
22 Tesoro, I'm competing with other Valero refineries. And
23 the most beneficial way that we can be and continue to
24 be a responsible member of this community is by making
25 investment, improving our operations, not allowing it to

1 be status quo.

2 So the challenge is if the Texas executives
3 don't perceive us as viable, those investment dollars
4 are really hard to come by. And that's kind of death by
5 1,000 cuts. Because if you don't sustain and invest and
6 improve your facility, you are not competitive.

7 So it's not any one little thing that might
8 cause Valero to be less viable here than we are
9 elsewhere. It's the aggregation of all of those things.

10 The Crude by Rail Project is an opportunity for
11 us to invest, for us to remain competitive and flexible,
12 not knowing how the crude market is going to change in
13 the coming years.

14 Who would have predicted \$25 crude, when a year
15 ago it was over \$100, or a year and a half ago it was
16 over \$100. Who would have predicted that the Saudis
17 would continue to flood the market. We don't know
18 what's coming next. I don't think anybody does.

19 But our commitment is to be able to produce
20 California fuels, which, as you know, are different than
21 the fuels in the other 49 states. California is an
22 island. There is no pipeline bringing fuels into this
23 state.

24 And if you import California-formulated fuels
25 from overseas, you just increased your emissions by a

1 whole lot. Because now not only is it being produced in
2 a refinery that doesn't meet California emissions
3 limits, but it's being shipped here, with tons of
4 greenhouse gases going into the environment. That's not
5 a good outcome for anybody.

6 So how do I answer your question? I want to
7 continue to be a viable member of this community. I
8 want to be able to compete with my other Valero
9 refineries for investment. And this is the one we're
10 facing right now.

11 COMMISSIONER RADTKE: I'm still not quite sure
12 that totally answered my question. Because my question
13 was how do you perceive the Valero corporate
14 headquarters being supportive of donations to the City
15 of Benicia if this were not passed?

16 DON CUFFEL: Our donations are largely decided
17 locally, not entirely, but largely.

18 COMMISSIONER RADTKE: All right.

19 DON CUFFEL: Do you want to add anything to
20 that?

21 DON WILSON: Commissioner, I mentioned that
22 I've been doing this for 32 years. The first 25 years I
23 was here at the Benicia plant, and then I was shipped
24 out to Texas, and I was in Texas for three years, and
25 then in Oklahoma for another three years. And, you

1 know, they're great people out there, Texans and
2 Oklahomans are great people, great Americans.

3 Our corporate personnel are very good people,
4 and the core values of Valero are that we support the
5 community we do business in.

6 I'm a little distressed to hear the charitable
7 giving equated to the project. I hope that you don't
8 equate that at all.

9 We will continue to be a good corporate
10 citizen. We will continue to enjoy working with the
11 fire and police departments here in Benicia. This is an
12 awesome community for us to work in.

13 If we don't get this project, we will continue
14 to refine oil, environmentally friendly, safely, and
15 we'll do the best job we can to stay competitive. That
16 much we can promise you.

17 But I want to defend my corporate executives
18 here, which a lot of it came through this plant.
19 There's -- I think the last count was 47 executives in
20 San Antonio came from the Benicia plant. Because this
21 is a model refinery. This is a very good refinery.

22 So anyway, I hope that answers your question.

23 COMMISSIONER RADTKE: Thank you.

24 CHAIRMAN DEAN: Yeah, follow on. Commissioner
25 Birdseye.

1 COMMISSIONER BIRDSEYE: I've lost a lot of
2 friends to San Antonio. I've become dear friends with a
3 lot of Valero employees. And I've learned not to get
4 very close, because they move around a lot.

5 But really the only time I've ever heard
6 anybody talking about the threat of the refinery closing
7 was from Valero employees. Because it seems like
8 there's this threat internally that if this project
9 doesn't go through, they're going to lose their jobs, or
10 their family is going to have to move, or the refinery
11 is going to shutter.

12 And I just -- I want to ask, is that part of
13 the corporate culture that's going on?

14 DON WILSON: Absolutely not. Our employees
15 love working here. We just hired a class of 13
16 operators, and, you know, several of them were
17 contractors that worked in the plant and made it through
18 the hiring process. Several of them are retired
19 military. They just love working in our refinery.

20 We're the preferred refinery to work at, of the
21 five here. Because people like Benicia, they like our
22 safety focus, and they like Valero.

23 We do hear about the comments of folks wanting
24 to shut down oil refining in general, and specifically
25 in California. And for us it's in Northern California.

1 If our employees feel that not getting this
2 project is going to close the gates, that's not the
3 messaging that we're sending.

4 CHAIRMAN DEAN: Other comments for -- yeah,
5 Commissioner Oakes.

6 COMMISSIONER OAKES: Thank you.

7 First of all, let me talk about the EPP program
8 that you guys have obtained. And I have some experience
9 with that, and I know it's not that old of a program,
10 but it's been built up year, after year, after year, to
11 be more precise and more requirements based on that.
12 And to have that is laudatory. Good job, and keep it
13 up.

14 DON CUFFEL: Thank you. And we've recertified
15 three times.

16 COMMISSIONER OAKES: Yeah, I heard that.

17 DON CUFFEL: And each time the hurdle is
18 higher.

19 COMMISSIONER OAKES: Yeah.

20 One of the things that you mentioned was that
21 to -- and this is in the air here. But if you decided
22 to export, it would require an Air District permit.
23 Would that require a City building permit as well?

24 DON CUFFEL: It would depend on the cost of the
25 project.

1 I'm jumping here, Amy, but isn't the trigger
2 somewhere in the mid-20 million range, that's what
3 triggers the use permit?

4 PLANNER MILLION: Yeah, there's language in the
5 code that talks about expansions of uses, like the
6 refinery, and there is a monetary threshold associated
7 with that.

8 COMMISSIONER OAKES: Okay. I was concerned
9 about the -- Mr. Young was commenting on, and the
10 attorney talked about, the definitions of the -- and it
11 was way back in the appendix that this -- that the
12 legal -- indirect, yeah, impact, was way back in an
13 appendix. And I find that exceedingly frustrating, that
14 you would bury something like, that has so much
15 importance to this project and our consideration, in an
16 appendix, for what it's worth.

17 And I have concern that the comments were made
18 that the net 20 percent increase in employees had an
19 overweighted effect on the other people in the
20 industrial park. And you've talked about the escalation
21 effect of all your employees. But you're talking about
22 really a net-20 additional employees. The effect is
23 already in place. So the 20 additional employees, in
24 possibly the construction period, is what we're talking
25 about.

1 And to cut off access to the other businesses
2 for a net 20-employee increase, and even adding the
3 multiplying factor, I find very disconcerting. And I
4 think that we need to talk about how do we make those
5 people whole. And I need to keep that in front of this
6 consideration as we go forward. Thank you.

7 CHAIRMAN DEAN: Other comments for the
8 applicant, or questions for the applicant? No? Okay.

9 Thank you very much, sir.

10 DON CUFFEL: Thank you very much. If
11 additional questions arise, a team of us are here to
12 help out. So I would appreciate that you invite us back
13 to the microphone. Thank you.

14 CHAIRMAN DEAN: Okay. Let's see, with that I'd
15 like to open the public comment portion of the meeting.
16 And we have a list. We're going to go right down the
17 list.

18 And just to remind people that we do have a
19 code of conduct. Each speaker will have a maximum of
20 five minutes. If others have already expressed your
21 position, you may simply indicate that you agree with
22 the previous speaker. You don't necessarily need to
23 take up your whole five minutes.

24 Speakers are requested not to make personal
25 attacks on commission members, staff, or members of the

1 public, or make comments which are slanderous or which
2 may invade an individual's personal privacy.

3 In order to facilitate the process and ensure
4 fairness, we request that there be no clapping, cheering
5 or booing. Instead, if you agree with a speaker, we'd
6 ask that you please raise your hand, so that the
7 Commission knows you're in agreement with the speaker.

8 And I know that people have been doing that
9 already. We appreciate that. The Commission does take
10 account of that. So thank you very much for being
11 considerate.

12 So we're going to start calling speakers. If
13 you could line up. We've been asked to keep the center
14 aisle clear. So we'll call a number of speakers at one
15 time. And if you could line up in the back where there
16 is an orange cone, back by the door to the council
17 chambers.

18 And with that, the first speaker is Bob Livesay,
19 followed by Bill Pinkman or Pinkham, Constance Buetel,
20 Pat Toth-Smith, and then Judy Sullivan.

21 Mr. Livesay, are you ready to go?

22 BOB LIVESAY: Good evening.

23 CHAIRMAN DEAN: Good evening.

24 BOB LIVESAY: My name is Bob Livesay. I am a
25 resident of Benicia. I am a homeowner. And I am in

1 favor of the Valero project.

2 CHAIRMAN DEAN: Do you want to use your
3 microphone, lean into the microphone a little bit?

4 BOB LIVESAY: Sure. I'm sorry. Can you hear
5 me?

6 CHAIRMAN DEAN: Yes.

7 BOB LIVESAY: I am for the Valero project, and I
8 would like to see it certified. I call it the FEIR,
9 because there is an F there. I think it's the Final
10 EIR. So it is the FEIR. And I would like to see that
11 approved. I would also like to see the project itself
12 approved. It is on Valero's property.

13 And I see -- and I'd like to thank everybody
14 here. I think that the City of Benicia did an
15 outstanding job, and I thank you very much. I think you
16 did very, very well. I think all the questions that
17 were asked by the Commission were fully answered, and I
18 think that that was also quite good. And I see no
19 reason why we cannot move forward with this and go ahead
20 and approve it.

21 I take a look at it a little bit differently
22 maybe than what we're seeing here. Because I was born
23 and raised in this area. I was born around two
24 refineries. My father worked at both refineries. My
25 mother was the very first woman ever hired at Shell

1 during the war, knowing that she wouldn't be there after
2 the war. So I'm very familiar with that.

3 And I've always know the support that all the
4 refineries have given. The four across the bay have
5 been there for 100 years. The one in this town is
6 approaching 50 years.

7 If it was not for refineries, and the bridges,
8 and fossil fuel, you wouldn't be seeing what you have
9 right here. We would not be sitting here.

10 That bridge was built in '62. The refinery
11 came in '59. The growth of the area in 1970, in this
12 city, was 7,000 people. And the refinery was already
13 built. As we moved forward, within 20 years is where
14 the huge growth went. Regardless of whether the
15 refinery was here or not, they came. And they came, and
16 it didn't matter whether the refinery was here.

17 The bridges, the fossil fuel and the refineries
18 have made for the growth of the Bay Area. If you go
19 back and you look at the bridges in San Francisco, you
20 look at this bridge out here, built in '62, double
21 (indiscernible) straight bridge now has two things, the
22 Richmond-San Rafael Bridge, this is what made this area.
23 And those five refineries contributed an awful lot.

24 Fossil fuel -- and as we all know, we're moving
25 toward, and possibly sometime maybe in our lifetime we

1 won't see fossil fuel again.

2 But what they've done, and the answers that
3 they've given tonight, and the questions that have been
4 answered, and what they did here, tells me that this
5 must be approved, because I think that they've done a
6 good job.

7 And we rely on this refinery. Think about the
8 fact of 1970, when there was 7,000 people in this city.
9 Think about what has happened since then, with the
10 amount of money that's come into this city. This
11 library that's open seven days a week, a wonderful
12 swimming pool. Sure there are lots of other things we
13 can do. Wonderful schools.

14 My son-in-law is teacher of the year, by the
15 way. So I'm proud of these schools. And I have
16 grandchildren that have graduated from these schools,
17 and I have two more that will graduate from these
18 schools.

19 So I have a great deal of interest in this
20 city, and a great deal of interest in the whole Bay
21 Area, of what the contributions were. It goes more than
22 just this one project. It goes into a very, very deep
23 thought for a long time.

24 I remember coming to Benicia, and I played in
25 this gym over here in 1949. That's how old I am.

1 But -- I don't look it; I know that. But regardless of
2 that, I played in that gym in 1949. Came over here on a
3 yellow bus. There was no bridge. That bridge quit in
4 1962. Without that bridge, Benicia was nothing.

5 The bridge and refinery and the fossil fuel
6 that crosses over all these bridges, buses, trucks and
7 cars, made it what it is today. And we must consider
8 that. It's very, very important.

9 And I'm very, very proud to be a resident of
10 this city, born and raised in Martinez. And I think
11 that -- I sure hope that you take into consideration all
12 the progress that has been done.

13 And that scrubber, I guess the largest in the
14 world, has reduced greenhouse gasses dramatically, and
15 it will continue to do it.

16 I think that Valero has been a good neighbor,
17 and I think that's why they call that the Good Neighbor
18 Fund. I think you're very good neighbors. And I'm
19 very, very proud of them, and I think you should, too.
20 And I encourage you to certainly move forward on this.
21 And I thank you very much. And I think we should give
22 the City of Benicia --

23 CHAIRMAN DEAN: Can you wrap up, sir?

24 BOB LIVESAY: Pardon me?

25 CHAIRMAN DEAN: You've run out of time.

1 BOB LIVESAY: Well, you're throwing me off the
2 court. I was actually going to ask you for the three
3 hours they had last night. But you wouldn't give it to
4 me, I don't think.

5 Thank you very much.

6 CHAIRMAN DEAN: Thank you.

7 BOB LIVESAY: Viva Valero.

8 CHAIRMAN DEAN: Next speaker, please.

9 BILL PINKHAM: Good evening, commissioners.
10 Thanks for hanging in during this long haul for all of
11 us.

12 My name is Bill Pinkham, and I live in
13 Richmond. Some might consider me a carpetbagger of some
14 kind. But in Richmond, we are no strangers to crude oil
15 accidents.

16 The fire and explosion at Chevron in 2012 sent
17 15,000 people to the hospital. The National Chemical
18 Safety Board found Chevron willfully negligent for not
19 replacing a pipe that their own people flagged for
20 replacement 10 years earlier. This, and other
21 incidents, have made it hard to trust them and the other
22 refineries.

23 Now all we have -- we all have to worry about
24 an accident of similar scale that could occur if an oil
25 train derails, especially when carrying Bakken or tar

1 sands crude.

2 Personally, I live about a quarter mile from
3 the tracks, and well within the blast zone, which is
4 usually considered to be a radius of one mile. So it
5 makes me a little nervous.

6 Not counting a fire that got completely out of
7 control, wherever it happened in the Bay Area, an
8 accident with that footprint would put many people in
9 peril, and would pretty much level Benicia if there were
10 a major explosion like in La Catique (phonetic).

11 The City attorney has said that disclosures and
12 their possible consequences, about regulating operation
13 of the railroad itself, are preempted by law from
14 consideration. But since I haven't been preempted, I'd
15 like to disclose some pertinent and critical data facts
16 about railroads in the U.S.

17 Of the 31 derailments of trains carrying
18 ethenol or crude oil since 2013, about two-thirds of
19 those have resulted in fires, spills and/or explosions.
20 The USDOT anticipates about 10 similar accidents per
21 year for the foreseeable future.

22 There were 9,500 carloads delivered in 2008.
23 In 2013 that increased to 435,560. It increased about
24 46 times. Another stat I found was that there has been
25 an 18-fold increase in the number of trains from 2010 to

1 2014.

2 There are about 2,000 collisions between trains
3 and motor vehicles at railroad crossings every year.
4 Last year it was 1,898, and in 2014 it was 2,300 or so.
5 The most recent was this year, on January 4th in
6 Florida, when a train collided with an stalled garbage
7 truck. It derailed, and 20 people were injured.

8 The biggest cause, as you probably know, of
9 derailments, about 59 percent of the time, is track
10 failure. Most of our rail network is old, very old, and
11 suspect because it fails a lot, and the repairs are
12 mostly piecemeal.

13 Tank cars are especially heavy and cause faster
14 deterioration of the rails. Each one of the DOT-111
15 cars, most of the current fleet, can carry a maximum of
16 34,500 gallons of crude. The average weight of a gallon
17 is over 7 pounds, and the average dry weight of a tank
18 car is 65,000 pounds. So a full car can weigh 306,500
19 pounds. Oil unit trains are often 100 cars long. Which
20 means there would be 30,650,000 pounds passing over any
21 given section of track, however weak it was. Of course,
22 if it was 50 percent shorter or lighter, it would be
23 only 15 million pounds.

24 Last year in Richmond we had a conference of
25 union railroad workers and concerned citizens. When the

1 workers told us -- what the workers told us had us
2 shaking our heads in disbelief. We learned that almost
3 all trains are operated by only two workers. Many
4 railroad companies want to reduce that to one.

5 What happens if that employee has a heart
6 attack or falls asleep? Well, falling asleep is
7 pertinent, because workers are required to take a train
8 whether or not they have had enough sleep. After
9 working late the night before, they can be woken up in
10 the wee hours and called to work again. They do that
11 because they can be fired if they refuse to take just
12 two such assignments.

13 I hope you will consider these scary facts and
14 reject this scary proposal. Thank you.

15 CHAIRMAN DEAN: Thank you, sir.

16 Next speaker, please. Hi. Good evening.

17 CONSTANCE BUETEL: Good evening Chair Dean and
18 commissioners. I'm Constance Buetel, the former chair
19 of the Community Sustainability Commission.

20 I want to, as many others have mentioned, as a
21 citizen, to acknowledge and thank you, no matter the
22 outcome for this project, for your dedication and
23 commitment to serve our community. I fully understand
24 the effort you have given this.

25 In the opening statement of the City's guiding

1 document, the general plan, it says, and I quote, "It is
2 vital that Benicia's future be managed wisely to
3 preserve and enhance its many attractive qualities."

4 Valero has been providing the City and the
5 citizens of Benicia with a lot of numbers and statements
6 about the Crude by Rail Project, and capping their
7 numbers with the statement, "It's good for Benicia."

8 But is it?

9 As Commissioner Young noted on Monday and again
10 tonight, there are many statements and conclusions
11 drawn, with little backup to source references and
12 access to those documents.

13 You will need to base your decision on
14 verifiable and substantiated data, that fits with your
15 task of ensuring Benicia's future be managed wisely to
16 preserve and enhance its many attractive qualities.

17 I have a list of questions I know you have been
18 considering, and I'd like to just say them and state
19 them out loud.

20 Do you have verifiable and substantiated data
21 on the following: Valero's corporate economic
22 contributions to the City of Benicia, not just tax
23 dollars. The evaluated cost of economic impact versus
24 environmental impacts, mitigations, and damage control.
25 Corporate trends and realities related to the number of

1 jobs and profits for the past five and ten years, and
2 the current actual income to the City in the form of
3 taxes and development funds.

4 Have you verified the employee and contract
5 employee numbers claimed by Valero with Valero's payroll
6 and other accounting documents? Have you verified
7 Valero's tax records with the Solano County Tax
8 Assessor's? Have you reviewed health and social
9 services death data for cancer, heart, and chronic lung
10 conditions in Benicia?

11 Have you verified the number of Valero
12 employees living in Benicia? Have you reviewed the
13 Solano County Economic Development said core (phonetic)
14 data related to Benicia and the impact this project
15 would have on it?

16 According to the Solano County Assessor's
17 office, what is the actual potential assessed value on
18 the Valero project, and does it equate with the claimed
19 \$30,000 monthly tax contribution?

20 Your historic decisions related to this project
21 will affect the future for generations to come, not
22 merely 10 or 20 years.

23 Benicia's climate Adaptation Plan must be
24 considered, as Valero and other businesses will continue
25 to be impacted by sea level rise caused by all the

1 fossil fuel greenhouse gas being produced.

2 Please don't drown us in a vat of crude oil.
3 Do not certify the Final Environmental Impact Report,
4 and do decline the project. Thank you.

5 CHAIRMAN DEAN: Thank you.

6 Next speaker, please. Hi. Good evening.

7 PAT TOTH-SMITH: Hi. I'm Pat Toth-Smith,
8 Benicia resident, small business owner, RN, and
9 homeowner.

10 First I'd like to thank the planning commission
11 for a very thorough investigation of this process
12 yesterday. I feel like I really learned a lot.

13 I am recommending that the Final Environmental
14 Impact Report, the FEIR, not be certified. There are
15 serious inaccuracies contained within it, especially the
16 limited traffic study and the absence of many mitigation
17 measures.

18 On August 4th, 2014, I sat in the council
19 chamber and saw a video, presented by Ed Rosell, of cars
20 backed up from the Bay Shore Road exit, onto I-680
21 North, caused by a train crossing at the Park Avenue
22 intersection. Clearly the cars were backed up the exit
23 lane of I-680 onto the the freeway's third lane, which I
24 will call the merge lane.

25 This merge lane is where cars coming from I-780

1 East merge into one lane from two lanes, and then merge
2 into the main traffic of I-680 coming from the Benicia
3 bridge. This merge lane becomes the Bay Shore Road exit
4 lane if you do not funnel into the I-680 bridge traffic.
5 Smartly, many cars in the video had pulled onto the
6 shoulder of I-680 merge lane to prevent an accident.

7 I commented on the Draft Environmental Impact
8 Report, the DEIR, about this potential serious problem.
9 Not only did the FEIR not address my comments, but they
10 threw out the whole issue. They replied to my comment
11 with the statement, "The Rosell video didn't show cars
12 backed up onto the two main lanes of I-680 Freeway. So
13 they were not backed up onto I-680."

14 Apparently the third merge lane I cited
15 previously and the shoulder of I-680 does not count in
16 the FEIR reviewer's eyes as being part of I-680.

17 With the new Department of Transportation rules
18 of slower speeds in populated areas for crude oil
19 trains, and the 50 to 100 tank cars coming in and out of
20 the refinery four times a day, as I read the traffic
21 study, it did not accurately address the amount of time
22 the Park Avenue intersection will be blocked.

23 The longest car train in the flawed study,
24 captured the week of the study, was a 35-car train. The
25 majority of the times captured during this week were not

1 the morning or evening commute times.

2 Unfortunately, with the 50 or more tank cars
3 and their four-times-a-day frequency, the backup onto
4 I-680 could evolve into a serious traffic hazard,
5 because there is only so much shoulder and so much merge
6 lane on I-680 that the cars can pull onto before they
7 are blocking the I-780/I-680 merge lane.

8 The other serious hazard not addressed by this
9 flawed study is the businesses whose driveways would be
10 blocked as the trains slowly snake past, most notably
11 Russell Woodworks and Ironworkers union building. The
12 blocked driveways effectively trap people from leaving
13 their businesses, and also prevent access to their
14 businesses. Thankfully, this was addressed very
15 thoroughly by the Commission yesterday. So I appreciate
16 that.

17 Again, to reiterate, this is serious, because
18 of the potential need for an emergency response in the
19 case of an industrial accident, a heart attack, and/or a
20 fire. And as an RN, I know how fast you have to get to
21 the hospital to prevent dying.

22 The Park Avenue crossing times need to be as
23 accurate as possible to evaluate how safe this proposal
24 is for the industrial park and for the emergency
25 responders.

1 The study needs to be redone, of the Park
2 Avenue intersection, to include 50 or more train cars
3 going at the speeds recommended by DOT, and focus more
4 on the morning and evening commute times.

5 A comparable area to the Park Avenue
6 intersection should be used when the study criteria is
7 not met. This is important. Because of Union Pacific's
8 preemption clause, UP can schedule trains at any time of
9 the day, and any amount of tank cars that they deem
10 necessary for their continued profits, not Valero's
11 profit.

12 This all has to be done, before the
13 certification of the FEIR, to protect the people and the
14 businesses on Bay Shore Road and the drivers on I-680
15 and I-780 from a potentially fatal, reasonably
16 foreseeable accident.

17 Finally, the FEIR states that the no project
18 alternative, not going forward with the project, is the
19 environmentally superior alternative.

20 The FEIR also states that there are significant
21 hazards to the public through a reasonably foreseeable
22 accident. And I could not find any substantial
23 mitigation measures presented in the FEIR to prevent
24 these foreseeable accidents.

25 So again I'm recommending the FEIR not be

1 certified, because this is very personal to me. My
2 husband drives the 780 to 680 merge daily during the
3 morning commute time. Thank you.

4 CHAIRMAN DEAN: Thank you.

5 COMMISSIONER YOUNG: Question.

6 CHAIRMAN DEAN: Yeah, a question for the
7 speaker. Ma'am, could you -- Pat Toth-Smith, could you
8 return to the podium? Thank you.

9 PAT TOTH-SMITH: Oh, sure.

10 CHAIRMAN DEAN: Question.

11 PAT TOTH-SMITH: Uh-huh.

12 COMMISSIONER YOUNG: I remember the video of
13 the cars backing up on the 780. And what you said was
14 that you made a comment to the -- on the Draft EIR.

15 PAT TOTH-SMITH: Uh-huh.

16 COMMISSIONER YOUNG: And the response was?

17 PAT TOTH-SMITH: The response that they had --
18 well, first I had to find it. I had to go through two
19 other people's comments to find it, which was very hard.
20 But when I did find it, they had commented on Ed
21 Rosell's video, and they basically said what I quoted
22 you, that it didn't show the cars backed up onto 680.
23 And then they said specifically the 680 is the two
24 lanes. And there's three lanes on 680.

25 And I can get you where I found that. It will

1 take me a while, but I can.

2 COMMISSIONER YOUNG: Yeah, I thought I had read
3 everything there was to read on this, and I missed that.

4 PAT TOTH-SMITH: Yeah, what I could do is email
5 you where it is specifically.

6 COMMISSIONER YOUNG: Well, I'm going to ask the
7 consultant, do you remember this exchange at all?

8 ESA CONSULTANT SCOTT: I will find you the
9 response to comment. We disagree that it was ignored.
10 Our traffic engineer used Caltrans data regarding the
11 freeway lanes and how they are designated. We're happy
12 to point you to the response. She certainly was not
13 ignored.

14 PAT TOTH-SMITH: No, I was ignored. I'm sorry.
15 Because I looked for it, and it basically said to me,
16 because it wasn't backed up onto 680, they didn't
17 respond to it.

18 CHAIRMAN DEAN: This is not the time for a
19 debate.

20 PAT TOTH-SMITH: I'm sorry, yeah.

21 CHAIRMAN DEAN: If there's an additional
22 question, maybe you could -- Commissioner Young could
23 get his answer from staff on that.

24 PAT TOTH-SMITH: Sure. And I'll forward you
25 the exact place in the FEIR it is.

1 CHAIRMAN DEAN: Thank you.

2 PAT TOTH-SMITH: I'll email it. Thank you.

3 ATTORNEY WELLMAN: Chair Dean, if I may just
4 interject here.

5 CHAIRMAN DEAN: Yes, please.

6 ATTORNEY WELLMAN: If the Commission has
7 questions after public comment, you need to write them
8 down and ask them later. But this is not the time to be
9 asking questions of the speaker. It's a time for public
10 comment.

11 CHAIRMAN DEAN: Thank you.

12 We have a couple more -- I'd like to get on
13 with the speakers. Next is Judy Sullivan, followed by
14 Greg Euhaus, then Benicians for a Safe and Healthy
15 Community, followed by Kate Black and Rebecca Ramos.

16 COMMISSIONER YOUNG: Could I follow up with
17 what Kat just said? I want to -- what you're saying is
18 that if somebody makes a comment, and we have a
19 question, we have to write it down and --

20 ATTORNEY WELLMAN: We have a procedure. If you
21 look at the Commission rules, we have the way that
22 we conduct public comment, is the public comes up and
23 they make their comments. We don't engage -- the
24 Commission does not engage in a dialogue with the person
25 who is giving public comment.

1 If you have concerns or questions about things
2 that are raised, you can make note of them and you can
3 ask them at another time. But it's not the time, during
4 public comment, to ask those questions, and especially
5 not of the speaker.

6 COMMISSIONER YOUNG: Even for clarification?

7 ATTORNEY WELLMAN: I think if you needed to ask
8 a question for clarification, you should. But we were
9 getting into more than just a clarification at this
10 point.

11 COMMISSIONER YOUNG: Okay.

12 CHAIRMAN DEAN: Okay. Sorry. You're up next.

13 JUDITH SULLIVAN: Okay. I'm Judith Sullivan,
14 and I'm a Benicia resident, and I'm also a homeowner.

15 You've answered most of my questions. I
16 actually rewrote what I was going to say, based on what
17 you hadn't said last night, and you've actually done it
18 today. So I have very little to add.

19 I want to thank the Commission. I've been very
20 impressed with your due diligence. I so much appreciate
21 how seriously that you've taken this, and what you've
22 shared with us last night and today.

23 CHAIRMAN DEAN: Could you lean in and use your
24 microphone a little bit more?

25 JUDITH SULLIVAN: Okay. Is this okay?

1 CHAIRMAN DEAN: That's better, much better.

2 JUDITH SULLIVAN: Okay. I just wanted to thank
3 the Commission for you doing the due diligence. I was
4 very impressed with what you shared last night and
5 today. You've actually answered a whole list of the
6 questions that I was going to bring up, so -- and I
7 rewrote, last night and this morning, what I was going
8 to do for today, and you've already answered those. So
9 I just have a short piece to share.

10 It seems essential to this evaluation process
11 to remember that Valero is the applicant, and UPRR is
12 not the applicant. Valero is not a railroad. Valero
13 makes the choice of how to transport their product and
14 how much to transport. They are under no obligation to
15 the railroads for this purpose, nor are they controlled
16 by UPRR regarding how much profit to be transported by
17 them.

18 In addition, the railroad has no obligation to
19 transport product for Valero, unless Valero decides to
20 contract with the railroad to do so. I think this is an
21 important point, because Valero has other alternatives
22 for product transportation that involve much less risk
23 to health and safety for our community and those uprail.

24 Many communities have opposed this project due
25 to the safety hazards in their areas. There are

1 millions of people who live within a mile of the blast
2 zone, all up and down California and beyond, to sources
3 of the origin of this crude that could be transported.

4 The use of a railroad, although desired by
5 Valero for transport, does not need to be part of their
6 solution for delivery.

7 Pipeline, marine vessel transport -- it was
8 very interesting when they were saying that -- Don
9 Cuffel was saying that 500 tank cars could fit on one --
10 I mean 500 tank cars could fit on one tanker. I
11 questioned the GHG on that. I would think the GHG would
12 be better for the tanker than the tank cars in that kind
13 of a scenario.

14 I recommend voting for the no project
15 alternative. I have a different opinion than the City
16 does on preemption. And the consultant actually
17 suggested that this is a superior environmental
18 alternative. It would avoid many of the risks imposed
19 upon the City if the City were to allow this project to
20 go forward.

21 I've done a lot of writing and speaking about
22 this before. So I'm not going to go over my comments
23 that I've already made. I stand by them. Thank you.

24 CHAIRMAN DEAN: Thank you.

25 Next speaker, Greg Euhaus.

1 FEMALE SPEAKER: He submitted his comments in
2 writing. He couldn't be here to follow up today.

3 CHAIRMAN DEAN: I'm sorry, say that again.

4 FEMALE SPEAKER: Greg is traveling out of the
5 country today. He provided his comments yesterday in
6 writing, because he didn't get a chance to speak.

7 CHAIRMAN DEAN: Okay. Great. Thank you.

8 Next speaker is Benicians for a Safe and
9 Healthy Community.

10 And you're speaking on behalf of a community
11 organization?

12 MARILYN BARDET: Benicians for a Safe and
13 Healthy Community. We've been responding officially
14 since 2013.

15 CHAIRMAN DEAN: Okay. And I know you've
16 requested 15 minutes to speak as a group. So you have
17 it.

18 MARILYN BARDET: Good evening Chair Dean and
19 commissioners. My name is Marilyn Bardet. I appreciate
20 your service to the community during this arduous CEQA
21 process and the difficulties and pressures of your duty
22 now.

23 I also appreciate all those who have made the
24 effort, a tremendous effort to testify and study the
25 documents, including Benicians, uprail folks, and

1 environmental organizations.

2 In these hearings your deliberations on the
3 Final EIR, a serious and difficult task, must determine
4 if this document passes the CEQA test for adequacy. The
5 judgments of this commission will be far-reaching and in
6 perpetuity.

7 The project will put at risk tens of thousands
8 of Californians and populus in other states, 365 days a
9 year, in rural, suburban and urban communities. It will
10 put at risk wildlife, precious wetlands, waters and
11 forests, spectacularly vulnerable landscapes. It has no
12 end date. And once in place, may continue for
13 generations.

14 CEQA is imposed in this process because of the
15 risks to health, safety, and the environment. It is the
16 City's responsibility to get this decision right.

17 As a local old-timer has aptly remarked, not
18 since World War II has a decision made in Benicia been
19 as important as the ones being made about this project.

20 And the first decision to be resolved in this
21 process is the CEQA issue. You must analyze the
22 adequacy of the EIR not by your standards, but by the
23 standards imposed by CEQA. That is the law.

24 I urge you to put aside any personal opinion on
25 the validity of the project moving forward. CEQA is not

1 about a pro and con on the project. The standards for
2 certification reside with CEQA.

3 I, and many of the public, have determined that
4 the EIR fails this test. I am confident that upon your
5 careful examination, each of you will reach the same
6 conclusion.

7 The Final EIR fails, as previous drafts failed.
8 The FEIR cannot be certified as is. The FEIR's flaws
9 remain striking and fundamental. The majority of the
10 responses refute, reject, or evade commenter's concerns
11 by reasserting stock claims, limited analysis, and
12 narrow conclusory arguments provided in the Draft EIR
13 and RDEIR.

14 Most damaging are the lead agency's and
15 Valero's legal opinions on the scope and breadth of
16 federal preemption and trade secret law. Those opinions
17 undermine the legitimacy of the FEIR under CEQA and
18 cause its ultimate failure.

19 Such opinions are deployed throughout the
20 discussions as fact, intended to settle public concerns.
21 The impact of these opinions leave the City with no
22 feasible project alternative, let me repeat, with no
23 feasible project alternative, and no feasible
24 enforcement mitigations, and leave the City decision
25 makers without options to regulate significant aspects

1 of the project.

2 Those same legal opinions force an
3 all-or-nothing choice up or down upon it, as a choice
4 between the project as is and no project alternative.

5 The FEIR does not support how the project,
6 overall, reflects Benicia's general plan goal for
7 sustainable development, nor how the project comports
8 with California's Global Warming Solutions Act AB 32.

9 Let's talk about the one environmental benefit
10 of the project, a purported GHG reduction. However,
11 those claimed savings are not based on full facts. The
12 analysis did not account for the number of ship
13 deliveries eliminated by the project. It didn't measure
14 GHG emissions resulting from the refinery's processing
15 of the oils imported by the project. Project-related
16 GHG emissions from all sources, direct and indirect,
17 must be calculated, and were not.

18 On top of the erroneous GHG calculation,
19 Valero's future intended use of its port has a serious
20 consequence for emissions. When you take away a number
21 of ships coming into Valero that would be eliminated by
22 importing crude by rail, you would open up the port and
23 shipping lanes for outbound ships exporting refinery-
24 finished product.

25 Such a shipping enterprise envisioned for

1 exporting product overseas, including gasoline, would be
2 dependent on freeing up significant port capacity, which
3 a rail project would achieve.

4 This must be analyzed with respect to the EIR's
5 misleading project objectives 1 and 2, which appear to
6 narrowly stress the desire to access North American
7 source crudes. I could say much more about this. I
8 want to be able to give time to Andre to have his piece.

9 But I propose that you all look very carefully
10 at the Petra Pless (phonetic) letter submitted as an
11 attachment B of the Adams, Broadwell law firm submission
12 written on behalf Safer California. That's FEIR page
13 3.5 117. I urge either commissioner to go back and
14 carefully read the Pless letter because it is crucial.

15 Remember that Valero had applied and received
16 permission to be designated a free trade zone in 2010,
17 awarded by San Francisco.

18 Other failures to disclose included projects in
19 planning stages that would foreseeably contribute a
20 cumulative impact to the project.

21 The Seeno development plans for 527 acres north
22 of the refinery have been on the City's radar since at
23 least April 2015. The staff had received an application
24 for -- a formal application to initiate a process for a
25 zoning amendment to permit residential as part of a

1 mixed-use business project.

2 The Orcem development application for a cement
3 plant at Mare Island in Valero is now under a CEQA
4 review with an EIR, and that has traffic implications
5 for I-680 and 780.

6 Why weren't these projects discussed and
7 identified as contributors, potential contributors to
8 cumulative impacts?

9 I'll basically summarize what is missing in
10 this EIR.

11 Failure of misleading and limited project
12 objectives that do not disclose all the reasons or
13 intentions of the project, and thus undermine everything
14 else that flows from them.

15 Failure of the project description, causing all
16 other claims, evaluations, and conclusions of impact
17 analysis to fail.

18 Failure to provide feasible, effective
19 enforceable mitigations for all the reasons we've talked
20 about.

21 Failure to disclose specific information
22 crucial to assessing potential risks and impacts
23 resulting from the project's operations, rail transport
24 of oil, and indirectly, the processing of project-
25 related change crude slates, potentially impacting local

1 and regional air quality and public safety.

2 Failure to provide feasible and reasonable
3 project alternatives that would effectively reduce the
4 direct and the indirect impacts, as well as considerable
5 cumulative impacts.

6 And then, finally, failure to discuss urban
7 blight owing to perceptions of the industrial park
8 becoming a rail yard, a local undesirable land use, with
9 increased risk, affecting other surrounding businesses,
10 and driving other prospective businesses.

11 Thanks for your attention and consideration.

12 CHAIRMAN DEAN: Thank you.

13 ANDRE SOTO: Good evening. My name is Andre
14 Soto, and I'm with Benicians for a Safe and Healthy
15 Community. But I'm also with Communities for a Better
16 Environment in Richmond, and also representing the
17 Richmond Environmental Justice Coalition.

18 So Benicians for a Safe and Healthy Community
19 came together as a group of concerned residents to help
20 Benicia in 2013 when the word got out that Valero was
21 proposing a massive dangerous Crude by Rail Project.

22 This coincided with the time when a train
23 derailment in Lac-Mégantic, Quebec, Canada resulted in
24 47 people being killed, some of whom their bodies were
25 never found because they were vaporized.

1 All of us were already concerned about issues,
2 such as the cumulative impacts of living at the end of
3 the line of the Bay Area refinery corridor, the risks of
4 flooding to parts of Benicia from sea level rise, and
5 the future world we will leave our children and
6 grandchildren.

7 As we undertook this effort we had to
8 continuously educate ourselves about a wide range of
9 issues, and simultaneously engage in a civic process
10 that is our right and responsibility as citizens.

11 Along the way we have learned many things about
12 Valero: The strengths and weaknesses of Valero's
13 business model. Valero's record of repeated violations
14 of Bay Area Air Quality Management District rules.
15 Valero's collusion with other Bay area refiners to
16 staunchly oppose any regional emissions regulations to
17 slow global warming and improve health impacts.
18 Valero's repeated challenges to their property tax
19 assessments that have cost Benicians in Solana County
20 millions of dollars of revenue over the years we deserve
21 for our communities.

22 Valero's whisper campaign to leave Benicia, if
23 Valero does not receive permission to build this
24 project, has created a palpable fear in many members of
25 our community, leading to such racist comments and

1 classist comments as "We do not want to be become
2 another Valero."

3 We also learned about Benicia's city staff.
4 The staff has a bias in favor of this project. From the
5 outset, staff recommended a negative declaration,
6 mitigated negative declaration. Meaning the project
7 would have such a minimal environmental impact, that no
8 CEQA review was necessary. This has been shown to be a
9 completely unsupportable conclusion. And now they want
10 us to heed their advice on approving this absurd
11 project, despite numerous CEQA errors.

12 The Benicia Planning Department recommendation
13 to approve Valero's Crude by Rail Project is completely
14 out of step with other communities that have had to
15 confront these dangerous types of projects. Look at
16 Pittsburg, Richmond, and now San Luis Obispo.

17 Now we have here, in the final stretch in this
18 public process that residents -- that few states have,
19 public hearings in front of members of our community
20 selected to determine sound development strategies for
21 the future of our community. This is the benefit of
22 having the CEQA.

23 Even the consultant hired by the City of
24 Benicia has determined, after reviewing numerous
25 alternatives, the environmentally superior alternative

1 is the no-project alternative.

2 Unfortunately, the Environmental Impact Report
3 development process has shown the people of Benicia that
4 the City staff is consistently engaged in activity that
5 stretches the limits of credulity, at best. And thus,
6 the staff recommendations should be completely
7 disregarded as legally, environmentally, and politically
8 unsupportable.

9 Scientific and legal allies have articulated a
10 multitude of very shortcomings of the FEIR in almost all
11 area of consideration. We demand that this completely
12 inadequate FEIR not be certified, and the land use
13 permit application be denied.

14 We have also learned that Valero has, for
15 years, been using its considerable political and
16 economic clout to wage a war of attrition against the
17 tax assessor of Solano County to reduce its property
18 taxes, costing our community millions of dollars, while
19 lining the pockets of their shareholders and its
20 Texas-based executives.

21 This, in addition to the hundreds of thousands
22 of dollars Valero has paid out in fines to the Bay Area
23 Air Quality Management District seriously undermines the
24 slick ads Valero has placed in Benicia Magazine and
25 mailers, designed to mislead people about how clean and

1 safe Valero is.

2 Benicia, just like San Luis Obispo County and
3 its Phillips 66 Crude by Rail Project, have been put in
4 the unenviable position of being responsible for
5 assessing the risk of Valero's project and at present --
6 presents to uprail communities, and whether or not we
7 have a responsibility to consider the risk to these
8 communities for a project in Benicia. Fortunately,
9 these communities have decided they can speak for
10 themselves, and you should listen to them.

11 Benicians for a Safe and Healthy Community is
12 deeply disturbed by the FEIR (indiscernible) assessments
13 of the risk of derailment. That is shockingly
14 incredible, even after numerous critiques of the
15 misleading math.

16 Here in Benicia, the Benicia Industrial Park
17 and all the businesses there are placed at particular
18 risk by this ludicrous project.

19 And then kudos to all the planning
20 commissioners, and particularly Steve Young, for the
21 thorough analysis and serious questions of this deeply
22 flawed application.

23 Union Pacific Railroad insulted Benicians by
24 sending an uninformed PR person to represent them at the
25 meeting. And the other consultants were nearly as

1 insulting.

2 The people promoting this project do not have
3 children or grandchildren living in Benicia. We do.
4 The people who stand to make most of the money off this
5 project do not live in Benicia. We do.

6 The people whose homes and livelihoods would be
7 destroyed by human or mechanical error live in Benicia.
8 Valero's executives do not. The people whose children
9 go to schools located in the blast zone live in Benicia.
10 Valero's executives do not.

11 Suisun Marsh and Carquinez Straight would be
12 seriously damaged or destroyed by the wrong decision in
13 Benicia.

14 We in Benicia know the Federal Railroad
15 Administration and the Service Transportation Board are
16 regulatory agencies entirely captured by the railroad
17 companies, and have been for the better part of the past
18 120 years. Thus, we cannot count on them to protect us.
19 Only you can.

20 Benicians will not succumb to extortion tactics
21 of Valero. Valero cannot move to another town. Valero
22 will not build a new refinery somewhere else. The
23 California market is too valuable to Valero for them to
24 move.

25 Valero has chosen to be one of the highest-

1 priced gasolines in the Bay Area and California. Valero
2 can always sell the refinery to someone else, just as
3 they bought it from Exxon.

4 Benicians are watching this decision very
5 closely and will remember who did what when it comes to
6 the November elections.

7 Valero and society will have to make some hard
8 decisions as we ween ourselves off the fossil fuel
9 industry, that is killing our planet, to a new and more
10 just economy based on renewable fuel energy.

11 What will your children say to their children
12 when their children ask, "What did Grandma and Grandpa
13 do to protect us when the climate was changing?"

14 Benicians for a Safe and Healthy Community
15 urges you to not certify the FEIR, and to reject the
16 land use permit application. Please send this bad idea
17 to the dustbin of history, where it deserves to be, and
18 save Benicia and the planet for future generations.

19 And we'd be glad to answer any questions.

20 CHAIRMAN DEAN: Okay. Thank you.

21 And with that, there's been a request for a
22 break on the Commission. So we're going to take about a
23 10-minute break, and we'll come back. And when we come
24 back we'll be asking Kate Black, Rebecca Ramos, and
25 David Lockwood to step up and speak.

1 (Recess.)

2 CHAIRMAN DEAN: Will people take a seat. We'd
3 like to start. We have a lot of speakers. Thank you.

4 Next group of speakers, Kat Black, Rebecca
5 Ramos, David Lockwood, Benjamin Guy.

6 Hi. Good evening.

7 KATHERINE BLACK: Good evening.

8 Good evening Chair Dean and planning
9 commissioners. My name is Katherine Black. Can you
10 hear me okay?

11 CHAIRMAN DEAN: Yes.

12 KATHERINE BLACK: Okay.

13 CHAIRMAN DEAN: Thank you.

14 KATHERINE BLACK: And I'm the steering
15 committee chair for Benicians for a Safe and Healthy
16 Community.

17 First I just want to publicly recognize the
18 members of the steering committee and all of the
19 volunteers and supporters of Benicians for a Safe and
20 Healthy Community's position. We are a group of very
21 few, with very little funds, standing up to a multi-
22 billion-dollar predatory capitalist corporation, Valero.

23 Although we believe this battle is likely not
24 over at this stage, it does mark a milestone. Two and a
25 half years of hard, unpaid, thankless, relentless work.

1 We have experienced theft and vandalism of our
2 property, repeated vicious personal attacks in social
3 media and in the Benicia Herald, vicious assaults,
4 verbal assaults at our farmers' market tables and other
5 venues, and many smear campaigns on our position.

6 Which, I might add, include the email that
7 Valero sent out this morning. As Commissioner Young
8 pointed out they said, quote, "Project opponents have
9 attempted to drag out the hearing position and
10 discourage participation," end quote, in relation to the
11 hearing last night. Which is a complete lie, as we all
12 well know.

13 It's not like we don't have anything better to
14 do. To the contrary. We all have interests, projects,
15 school, jobs and family. During this time many of us
16 had endured various life challenges. I personally have
17 lost both of my parents during this time.

18 But we are so committed to the idea that
19 Benicia does not need this project, that we persevere,
20 even with the increased difficulties and stresses that
21 this work points on our lives. We are not going away.

22 I am honored to work with all of them, and I
23 just want to thank them for their courage, heart and
24 soul that they put into this work. Thank you, my
25 colleagues.

1 I'm nervous. Sorry.

2 I can't even put into words just how appalled I
3 am with City staff, of their recommendations to certify
4 and approve this project, knowing that the project would
5 increase emissions and put the City at higher risks.

6 The EIR itself cites the superior alternative
7 is to not have the project at all; that so many
8 governmental and public agencies, community
9 organizations and experts who have thoroughly studied
10 the EIR cite legal reasons that the project violates
11 CEQA, legally cannot be certified, and request that this
12 project not be approved.

13 Clearly the overriding monetary considerations
14 show yet again Valero has successfully bullied this town
15 into submission. It was horrendous last night to hear
16 that the staff blindly accepted Valero's position
17 related to the issue of this indirect federal
18 preemption. This clearly shows the relationship is far
19 too cozy between City staff and Valero.

20 Given circumstances both in -- similar
21 circumstances both in San Luis Obispo and Pittsburg, who
22 had or have had Crude By Rail projects before them, the
23 project in Pittsburg was removed from consideration due
24 to public opposition. And more recently, San Luis
25 Obispo city staff recommended not to approve that

1 project.

2 What's wrong with Benicia's city staff that
3 they do not have the insight or courage to do what these
4 towns have done?

5 We, as citizens of Benicia, rely on decision
6 makers to ensure that their primary objective is to
7 provide the safe and healthy environment, not to
8 override that objective for the sake of profits. Our
9 health and safety come first.

10 If anyone listening to me can receive one thing
11 from what I say, it is this: Valero already receives
12 Bakken crude via marine delivery. The only reason they
13 are wanting to do this project is to get this crude into
14 their yard faster, thus maximizing the throughput of
15 this less-expensive crude, and maximizing their profit
16 margin.

17 It would be business as usual for Valero if
18 this project were not approved. It has nothing to do
19 with the benefits to the community. Valero would reap
20 all of the benefits, and Benicia would have to endure
21 all of the negative impacts, related to money.

22 Commissioner Young questioned last night if
23 Benicia had stated that the derailment and explosion of
24 these bomb trains were to happen outside their gates.
25 They are not responsible for any of it. They wouldn't

1 pay for emergency response, medical costs resulting from
2 injury, or exposure to toxic chemicals, possible death
3 payment assistance, property damage, property
4 devaluation, none of it. Who would pick up the cost?
5 We would.

6 I urge the planning commissioners not to
7 certify this project.

8 I also want to address the Commissioner
9 Radtke's question about Valero's withdrawal of
10 contribution to charities if the project were
11 disapproved. It's already happened. A nonprofit
12 organization in Benicia, when asking a question on the
13 project, just asking a question, Valero immediately
14 withdrew its support for that organization.

15 Please have the courage to do --

16 CHAIRMAN DEAN: You've run out of time. Can
17 you wrap up, please.

18 KATHERINE BLACK: I am wrapping up right now.

19 Please have the courage to do what the decision
20 makers in San Luis Obispo and Pittsburg did, and as we
21 do, and as I do, to stand up to big oil and let the
22 community know that our health and safety always come
23 first.

24 CHAIRMAN DEAN: Thank you.

25 Next speaker, Rebecca Ramos. Is she here? No?

1 Okay. David Lockwood, followed by Benjamin Guy,
2 followed by Helmut Sheesh. If I'm murdering anybody's
3 name, please correct me when you come forward. Thank
4 you.

5 Next speaker, Rebecca Ramos. Is she here? No?
6 Okay.

7 David Lockwood, followed by Benjamin Guy,
8 followed by Helmut Sheesh. If I'm murdering anybody's
9 name, please correct me when you come forward.

10 MALE SPEAKER: Sorry, Mr. Lockwood, a supporter
11 of the project, too, was unable to make it tonight.

12 CHAIRMAN DEAN: Okay. Thank you.

13 Benjamin Guy. Helmut Sheesh. Larry
14 Fullington. Hi, come forward. Frank Crim. And then
15 David Nacarro.

16 Hi. Good evening.

17 LARRY FULLINGTON: Good evening.

18 I come to you tonight looking forward to this
19 matter being finally resolved this week.

20 With all the hours, years already spent on
21 public comment, I feel due process has been more than
22 served.

23 Over the 15-plus years they have been here,
24 Valero has done many helpful things to assist our City.
25 They've also done it in a responsible way. They won a

1 number of special safety awards that other oil companies
2 just strive for.

3 Aside from all the hype, Valero wants approval
4 for a permit to allow them to improve their processes.
5 This entails two additional trains a day, with no
6 increase in the number of gallons brought in.

7 It means less crude coming by tankers from the
8 Middle East. Less crude from the Middle East is a
9 United States self-sufficiency, as that has been an aim
10 of our country for many years. That is the basic result
11 of this approved permit.

12 Some of the local opposition to the permit has
13 treated this request like it would be the cause of
14 blowing up and killing everyone in town. They
15 continually bring up scare statistics, and especially
16 the terrible train accident -- and it happened again
17 tonight, to no surprise -- in Lac-Mégantic, Canada,
18 where an unattended train got loose, ran down a hill
19 doing 60 or 70 miles an hour, unattended. At the bottom
20 it blew up. It killed 47 people and leveled the town.

21 As horrible as that was, the circumstances
22 there were almost totally irrelevant to the situation
23 here. I'll say again, irrelevant to the situation here.

24 Number one, I believe the record shows there's
25 never been a tank car explosion in the refinery grounds

1 in over the 45 years of its existence. And this permit
2 request relates to the refinery.

3 Number two, the refinery is on level ground.
4 There is no hill to come down, and no chance to reach 60
5 or 70 miles an hour.

6 Number three, the refinery legal limit is 10
7 miles an hour. In Valero's case, they have reduced that
8 limit, some while back, to 5 miles an hour.

9 Number four, if a train were to derail at that
10 speed, it would do exactly what it did do some while
11 back, just drop to the roadbed and come to rest. No
12 overturn. No fire. No explosion. The service was
13 restored and back in business in about half a day.

14 Our city leaders have stated that they need
15 economic development to help balance the City's budget.
16 Obviously this helps to reduce the need for increased
17 taxes and fees on us all.

18 We have a quality company already here to help.
19 This permit will let Valero create 20 new full-time
20 jobs, and 120 different temporary ones. It will
21 generate additional tax revenues for the City, plus
22 other income.

23 And also, as an aside, Valero and its employees
24 have donated over \$13.7 million in the past decade to
25 local charities.

1 Valero is a responsible, safety-oriented
2 company, and we are fortunate to have them as a good
3 corporate neighbor.

4 After three years and counting, I ask you to
5 approve this project, and let's get on with other
6 matters.

7 And I would add one thing, for Mr. Young. I
8 think when the night started tonight, you mentioned a
9 \$36,000-a-month tax saving. I believe you meant to say
10 30,000, not 36. You might want to double-check.

11 CHAIRMAN DEAN: Okay. Thank you, sir.

12 Next speaker, Frank Crim, followed by David
13 Nacarro, then Joseph Rizzo, and Don Stock.

14 MALE SPEAKER: Mr. Crim and Mr. Nacarro are
15 supporters of the project, but were unable to make it
16 back tonight to speak.

17 CHAIRMAN DEAN: Okay. Joseph Rizzo.

18 JOSEPH RIZZI: Rizzi.

19 CHAIRMAN DEAN: Rizzi. Thank you for the
20 correction.

21 JOSEPH RIZZI: Not a problem.

22 I am in support of Crude By Rail, mainly
23 because of the fact that this -- I'm talking to the
24 Benicia Planning Commission, not the United States
25 Planning Commission, not the California Planning

1 Commission.

2 What you really should be looking at is just
3 what's going on in Benicia. That's what your attorney
4 here is talking about, is you're worried about the whole
5 state, and you're not really allowed to, and I agree
6 with that, because of that preemption. You are Benicia
7 Planning Committee. We need to look at what is good for
8 Benicia.

9 They have stated, and staff has stated, the
10 benefits of this project. It is very simple. They want
11 to give more flexibility in what kind of crudes, where
12 they buy it, and try to make it cheaper for all of us.

13 We are all really happy right now because we
14 have cheap gas. Oh, gosh, why? Why, because this extra
15 crude in the United States and in Canada is helping out.
16 And being able to keep those transportation modes of
17 domestic United States crude flowing to California, as a
18 cheap alternative, is imperative for us all, to keep our
19 prices of our gas low.

20 Nobody likes to pay \$4 a gallon for gas. But
21 you go ahead and disapprove this project. And when your
22 gas prices go back up to \$4 a gallon, hey, don't come
23 crawling and screaming about it, because you're putting
24 that burden on all of Benicia. Because it's Benicia who
25 you should be looking at, not all of the country.

1 Yes, there are problems with the train laws and
2 stuff like that. But I beseech you, if you are really
3 that concerned about it, run for public office that
4 actually can effect that, where you actually do have
5 control over those factors.

6 If the people in this audience, that are not
7 Benicians, have that problem, they should be going to
8 their congressman, not to you. They should be going to
9 the proper authorities, not to the Benicia Planning
10 Commission to stop a refinery from doing their business.

11 And yes, I have heard from other people who say
12 that, yes, they would rather not have the refinery
13 altogether. I agree with the fact that we would like to
14 go to a sustainability where we don't have any crude.
15 But we're not there yet. And until we get the
16 infrastructure, the electric cars, the public transit,
17 and everything else to support that, we have what we
18 have.

19 Let's keep the neighbors that we have that are
20 doing a very good job of keeping the greenhouse
21 emissions low, and everything flowing the way we want it
22 to, and let's support our community. Thank you.

23 CHAIRMAN DEAN: Thank you.

24 Next speaker, please. Hi. Good evening.

25 DON STOCK: Hi. My name is Don Stock. I'm a

1 resident of Benicia. I've been in Benicia for 35 years.
2 I've got two sons, one who lives here with two of my
3 grandsons.

4 You know, I believe Valero has been a good
5 neighbor ever since I've been here. I've never had any
6 issues with them. It's a safe, clean refinery. I see
7 that they're always out helping the community.

8 I heard a comment yesterday about -- or maybe
9 it was today, about how our property values are going
10 down. My gosh, my son just finally was able to buy a
11 house four years ago, and I've seen the home almost
12 double in value. So I'm just bewildered how someone
13 could believe that this refinery is affecting our
14 property values.

15 You know, I've seen Valero support our local
16 community, the charities. My belief is that they've
17 committed more to the local charities than any other
18 local business has, and I've seen the help. And I've
19 never seen them say, "Well, if we give you this, you're
20 going to support us on that." I've never, ever seen
21 that. I see them evaluating the charities and donating
22 to them. I've heard people -- I've heard them give
23 money, and people cry. You know, they just didn't
24 expect it.

25 I'm just amazed that people would not want to

1 support a local business. You know, Valero Benicia
2 refinery is a local business. Why wouldn't we want to
3 work with them?

4 You know, the Environmental Impact Report that
5 everyone keeps blasting, shooting holes at, that was
6 commissioned by the City. I mean, Valero had to pay for
7 it, that's the way the law works, but the City chose who
8 they wanted to do that report, and they reviewed it.
9 And if you didn't like what they said, maybe you picked
10 the wrong person. I just don't understand this flawed
11 logic that you have.

12 You know, the company I work for, I heard
13 mention about how this refinery is going to be terrible,
14 it's going to be like Chevron. You know, the company I
15 work for is two miles from the Chevron Richmond
16 refinery. I've worked there for 30 years. I've seen
17 all of these claims of health impacts. You know, we
18 have 100 people in our office. I've never seen one
19 person cough after one of the incidents.

20 So, you know, to say that -- you know, when I
21 hear people say, "Oh, no, people don't really want to
22 have a refinery close," I believe that's wrong.

23 I think there are people from outside the area
24 who actually do want to try to close one of our
25 refineries, and it's just foolish. I'm really -- I

1 don't understand why.

2 I agree with the City's recommendations that
3 this plan be approved, and I hope that you all will vote
4 to approve this plan. Thank you.

5 CHAIRMAN DEAN: Thank you, sir.

6 Bill Darnell, Delana Darnell, David Frank, Joe
7 Bateman, Shannon Walsh.

8 Hi. Good evening.

9 BILL DARNELL: Hi. I'm Bill Darnell. My wife
10 is just too bashful to come. So you'll have to count
11 her out tonight. But she would be a good speaker for
12 you.

13 But I work for Valero. I was born into the oil
14 industry down in Texas and Oklahoma. My dad was a small
15 oil well driller. And his standards were just as tough
16 as the toughest standards today. The quality of the
17 crude that he pursued, different leases, and the
18 treating of the products before we trucked it to the
19 terminals to sell to the major oil companies. I learned
20 very young that my dad was very selective about the
21 quality of the product and the timeliness of the
22 shipment.

23 And one of the things that prevails today in
24 this debate that we're doing is that I think you're
25 comparing different types of capacity, but of

1 businesses. You've got to treat this like something --
2 like a big business. It isn't small. It's a major oil
3 company. You can depend on them.

4 The insurance issue came up the other day. And
5 I work for Valero, and I can guarantee you that they can
6 handle liability. They virtually insure themselves. So
7 you don't have to worry about claims or liabilities that
8 aren't going to be answered to. They're very highly
9 ethical.

10 The company that my dad did a lot of business
11 with eventually was Conoco. And he had to do that,
12 because the small truckers and the crude handlers didn't
13 have the principles that you need to handle a product
14 like crude oil.

15 And it's not necessarily a volatile material
16 standpoint. But you take it out of the ground, and you
17 separate it, different elements. And the product that
18 goes into the railcars is definitely not going to be the
19 most dangerous material you're going to be handling, and
20 other elements that go down the railroad tracks.

21 So I think there is a concept here that needs
22 to be viewed differently from the standpoint that Valero
23 is extremely ethical in the way we treat our employees,
24 our customers.

25 We initiated a lot of the small business

1 enterprises that were -- that are mandated by the State.
2 Highway contractors who make asphalt, and small
3 businesses, and women-owned businesses, and veterans are
4 given very high priority, and Valero is one of the
5 initial companies that started doing business with those
6 minority companies. And I can guarantee you they're
7 very highly ethical. They're dedicated to this
8 community.

9 I was president of the Benicia Industrial Park
10 Association about 15 years ago, and one of the things we
11 knew was the high value of the industrial park to the
12 community, the people and the businesses in the
13 community. And we emphasized that you should encourage
14 industrial park businesses, especially in the geographic
15 area of the park.

16 And it's leaving a little bit. I think you've
17 got to accentuate the positive. You've got a very good
18 company here. You've got a very good city. And this
19 issue will support the City of Benicia and do a great
20 deal of good for it. So I encourage the product.

21 I am an employee of Valero. But I've worked
22 for Conoco, and a couple of other large companies, and
23 this is the best one. You'll be safe with Valero.
24 Thank you.

25 CHAIRMAN DEAN: Thank you.

1 David Frank, Joe Bateman, Shannon Walsh, Jim
2 Jacobs, Mike Smith, Ed Bendicks.

3 MALE SPEAKER: David Frank is a supporter of
4 the project, and was unable to make it again tonight.

5 CHAIRMAN DEAN: Okay.

6 Hi. Good evening.

7 JOE BATEMAN: Hi. It's me again.

8 My name is Joe Bateman. I'm the fire chief at
9 the Valero Benicia refinery. And I'm only going to
10 speak tonight on my areas of expertise, and those are
11 flammable liquid firefighting and what it takes to be a
12 good neighbor.

13 Now, what I will tell you tonight, I didn't
14 read it on the Internet or in a magazine. I was either
15 there or have spoken to the person that was there.

16 I know the story of Lac-Mégantic has been
17 brought up several times in the last few years. But
18 there are probably a few things that not everybody
19 knows. The reason I know these things is I have spoken
20 to the man who was there. His name is Eric Jacques. He
21 holds the same title that I do at the Jean Gaulin
22 Refinery in Quebec. He's the fire chief, the Valero
23 fire chief.

24 He was at that fire. No one called him. No
25 one dispatched him. It wasn't his oil, and it wasn't

1 going to his facility. He and his crew drove three
2 hours to Lac-Mégantic with 8,000 gallons of foam and
3 technical expertise. He spent the next two days doing
4 whatever he could to make a bad situation better. He
5 used 3,500 gallons of foam to put the fire out, and an
6 additional 2,500 to keep it out. He and his crew were
7 good neighbors.

8 Now let's talk locally. Many of you may
9 remember the Big O fire in September of 2007. Benicia
10 and Valero Fire were doing their very best to extinguish
11 a fire that early morning, but they were having
12 difficulty because of the flammable contents of Big O.

13 We brought our Truck 16, many of you might have
14 seen this in the parade on the Fourth of July, and we
15 were able to extinguish that fire within 15 minutes. We
16 used 800 gallons of foam that morning.

17 Now, I've heard Commissioner Young say \$45.
18 For us, I get it for about \$35 a gallon because I buy in
19 bulk. So if you're doing the math at home, that's about
20 \$28,000. Neither Big O or the City of Benicia ever was
21 asked for that money. That's what's being a -- that's a
22 good neighbor.

23 Now we can talk recently. Last summer was a
24 busy one. The Valero Fire Department ran multiple calls
25 with Benicia Fire. Many of you may remember the fire at

1 the mulching facility off of 680. We got the call for
2 assistance that night, and we were there until 2:00 a.m.
3 that morning.

4 We used 300 gallons of Class B foam. Now,
5 normally on a wood fire you use Class A foam. But they
6 didn't have that much locally, so we assisted. We
7 extinguished the fire. That's 300 gallons of foam,
8 \$10,000. The City didn't get a bill, and neither did
9 the City (indiscernible). That's what a good neighbor
10 is.

11 Now, I understand and I appreciate the concerns
12 of the Planning Commission and the public. And we've
13 been talking a lot about maybes and what might bes, and
14 I understand that and I get it. But that's why we train
15 as hard as we do locally. That's why we do more joint
16 training, municipal slash industrial, than anyone else
17 in the Bay Area.

18 Chief Lydon spoke last night about the training
19 his firefighters get each year, and he was being modest.
20 What he didn't mention was that three of his
21 firefighters are adjunct instructors at Texas A&M.
22 Those that don't know Texas A&M, it's a world-renowned
23 training facility that specializes in flammable liquid
24 firefighting, and they train firefighters from all over
25 the world. That's saying something.

1 I can say with complete confidence that I am
2 part of the best-trained industrial fire department that
3 I've seen. I can also say with the same confidence that
4 the City of Benicia has the best-trained municipal fire
5 department. They are top notch.

6 So when you ask the question are we trained to
7 handle a bad situation, my answer is yes. Thank you.

8 CHAIRMAN DEAN: Thank you.

9 Shannon Walsh, Jim Jacobs, Mike Smith, Ed
10 Bendix, Richard Lynn, Sophie Elliott.

11 Okay. Next group, Jon Yomannis, Yomanns, John
12 Yomanns. Stanley Lawson, Lori Bateman, Dan Broadhunter.

13 MALE SPEAKER: Broadwater. He's here.

14 Mr. Bendix and Lori Bateman are both supporters
15 of the project, and are unable to make it back tonight.

16 CHAIRMAN DEAN: Okay. Thank you. Broadhunter.

17 DAN BROADWATER: Good evening. My name is Dan
18 Broadwater.

19 CHAIRMAN DEAN: "Water."

20 DAN BROADWATER: And I'm the business manager
21 of IBEW Local 180, Electricians for Napa and Solano
22 Counties. I currently having several crews working out
23 supporting the Valero staff at their refinery right now
24 during the turnaround.

25 I know a lot of people that have got up here

1 that were proponents of the project had made different
2 comments, and I agree with them all. I'm not going to
3 regurgitate those for you folks.

4 But I do want to hammer one thing home, and
5 that is the safety environment that's expected of you
6 when you go to that plant. I'm expected, even as a
7 guest to go out and visit my men, that I adhere to the
8 same safety that my guys do. They make my people better
9 out there. We're required to have safety certifications
10 to work at that plant that we don't have to have at
11 normal jobsites.

12 I know it's an inherent job, being an
13 electrician, you've got your dangers that you deal with
14 every day. You don't need to worry about the
15 environment around you being hazardous as well. And
16 that's something that they eliminate from the jobsite
17 when you're there.

18 I know that my people, when they go to that
19 place to go work, they're going to go home to their
20 families at night, and they're going to make a living
21 wage.

22 The culture that these people have provided my
23 people have made them better men themselves. The
24 contributions that they've done to the communities is --
25 and we participate in the children's benefit. You know,

1 it really touches you.

2 And, you know, I've heard somebody bring up the
3 fact that, you know, "If we don't approve this project,
4 would you not contribute to certain nonprofits?" And
5 that, to me, is laughable. To make a comment like that
6 or a statement like that means that you don't know these
7 people at all. And you really should. They're good
8 folks. And I've made a lot of friends, great
9 relationships out there, and it is truly an honor to
10 deal with these folks.

11 The hysteria that's been created by all these
12 train accidents all over the country, it's so
13 unfortunate and so untimely. It just is -- it's
14 unfortunate.

15 I hope that you folks take staff's
16 recommendation. Please go forward with this project,
17 and let's get this thing going.

18 Construction in Napa and Solano counties has
19 not caught up to the rest of the Bay Area yet. These
20 are badly-needed jobs. I'll put 25 or 30 electricians
21 on this job for six to nine months. Very important to
22 me. It's very important to this plant.

23 How dare us tell these guys how to do their
24 business, that they can't bring oil in by rail? You
25 know, it just -- it boggles my mind how this CEQA works.

1 You know, if -- it's the smallest project that
2 I've been involved with in 10 years out there, and it's
3 the one that's been taken the most criticism on.

4 That \$700 million scrubber out there, which is
5 a fantastic piece of equipment, didn't get a tenth of
6 the scrutiny that this thing has gotten. It's amazing.

7 But I just hope you folks rely on the facts and
8 not the emotions, and please approve this project.

9 CHAIRMAN DEAN: Thank you.

10 Robert Yarborough, Tim Macaddo, Angie Macaddo,
11 Patrick Haggan.

12 MALE SPEAKER: Mr. Rob Yarborough is a
13 supporter of the project, unable to make it again
14 tonight, and the Macaddos.

15 CHAIRMAN DEAN: Mashado.

16 MALE SPEAKER: Same, supporters of the project,
17 unable to make it tonight.

18 CHAIRMAN DEAN: Okay. Thank you.

19 Rick Haggan, Eddie Yarborough, Pierre Bedaux,
20 Dennis Crawford. You might as well stay close.

21 MALE SPEAKER: I know the other Yarborough is
22 unable to make it. And Mr. Pierre Bedaux is unable to
23 make it tonight as well.

24 CHAIRMAN DEAN: Okay.

25 Dennis Crawford, Heidi Booker, Herbert

1 Forthuber, Rudy Holtaus.

2 MALE SPEAKER: Mr. Crawford is a supporter of
3 the project, and unable to make it tonight.

4 CHAIRMAN DEAN: Okay.

5 Gary Heaton, John David, Jeff Massinham, Sophie
6 Paseebay.

7 MALE SPEAKER: Sophie Paseebay and her husband
8 Rame were here last night, and are unable to make it
9 again tonight. They're supporters of the project.

10 CHAIRMAN DEAN: Okay.

11 Ramegio Paseebay -- oh, you mentioned him.
12 Okay. Lori Matthews, Mario Hymie, Camilla Hymie,
13 Barbara Davis, George Whitney, Robert Gault.

14 MALE SPEAKER: Barbara Davis is a supporter of
15 the project, and unable to make it tonight.

16 CHAIRMAN DEAN: Okay.

17 Donald Glidewell, Helbart Sullivan.

18 MALE SPEAKER: I'm sorry, Mr. Glidewell is a
19 supporter of the project, and not here tonight.

20 CHAIRMAN DEAN: Okay.

21 Mr. Sullivan, I presume?

22 HELBART SULLIVAN: Yes.

23 CHAIRMAN DEAN: Hi.

24 HELBART SULLIVAN: I'm here.

25 CHAIRMAN DEAN: Thank you.

1 HELMBART SULLIVAN: Thank you, commissioners.

2 Oil by -- oil delivered by rail is not the best
3 and safest solution for delivering the crude oil to
4 Valero. There are feasible nondiscriminatory
5 alternatives.

6 As we've found tonight, of course, that I
7 learned more deeply, is that there are oil pipelines
8 already delivering crude to Valero, and oil and gas
9 products to Valero.

10 Oil can be delivered by ship, which is the
11 current methodology. And this is a highly feasible
12 solution that is well understood.

13 In addition to that, oil can be delivered by an
14 additional pipeline, a short pipeline, come perhaps from
15 the middle of the Central Valley, coming up near
16 Sacramento or Fairfield. And that can be monitored
17 seven days a week, 24 hours a day.

18 And I want to point the Commission to the
19 Dakota Access Pipeline Project, which uses feeder
20 pipelines to do this same kind of oil delivery.

21 One of the issues I was going to bring up
22 tonight was the fact that since pipelines are already
23 well known by the industry, it's something that -- and
24 also by Valero, and is well known and well used, that
25 the fact that it's available as an alternative is

1 something that we should really look more into.

2 Also I want to bring up rail integrity. I am
3 concerned that the condition of the railroad tracks is
4 not sufficient to maintain the safe transport of the
5 oil. Anybody who's been on Amtrak recently and gone
6 through different parts of the state, through
7 Sacramento, it's a pretty rough ride. And so I am
8 concerned about the millions of pounds that are being
9 accessed across the tracks by these tank cars, and that
10 does concern me greatly.

11 One area that I haven't heard brought up, and I
12 want to bring up tonight, and not, kind of, raise any,
13 you know, eyebrows or anything, but is terrorism. As
14 many of you are aware, there's been a recent rise in
15 terrorist activity, such as Isis, who are constantly
16 looking for ways to attack the U.S. I am not sure that
17 this project has accounted for the increase in potential
18 terrorist activities.

19 It does seem logical that terrorists would
20 enjoy the proximity of the railcars to the refinery and
21 the City, in hopes of causing a catastrophic explosion.

22 While this problem currently exists, to some
23 extent, with shipping trucks -- shipping products, that
24 is, to the refinery, however, the added daily delivery
25 amounting to over 100 oil tank cars a day greatly

1 increases that risk.

2 The fact that cars may stop along the way
3 between here and the border, and may be easily
4 approached by terrorists, adds to the concern.

5 Thus, unless the railroad cars are continuously
6 monitored, it does seem plausible that terrorists could
7 plant an explosive device on the many railroad cars
8 coming into the refinery.

9 And I don't believe Valero is equipped to
10 handle a terrorist explosive attached to one or more of
11 the railcars, especially since the explosion of just one
12 car could lead to the explosion of other cars inside the
13 refinery, and to an incident at the refinery itself.

14 Currently, since ships are much larger in how
15 they monitor, there seems to be less chance of terrorist
16 bombing being used, and it would require the bomber to
17 come close alongside the tanker.

18 Moreover, there appears to be a much larger
19 buffer zone for the ship loading dock to be inside of
20 the refinery than the buffer zone proposed. Thus, the
21 current buffer zone seems to be inadequate to prevent a
22 refinery incident caused by a terrorist attack if the
23 explosive device is an introduced incident inside the
24 refinery.

25 In further contrast, an underground pipeline,

1 an additional pipeline perhaps, would be much more
2 difficult for a terrorist to use to attack Valero.

3 Interstate commerce and preemption, a big
4 topic. In short, preemption is only invoked provided
5 the rail lines are precluded from delivery of oil along
6 the lines. Preemption would not be invoked for refusal
7 to allow delivery by rail to Valero, as the rail lines
8 are not being precluded from delivering any goods via
9 rail.

10 For example, whether or not this permit is
11 passed does not prevent the rail lines from shipping oil
12 or any legally-shippable materials to other consumers in
13 or out of state. In this case, only the receipt of oil
14 at Valero by tank car would be precluded, receipt.

15 Moreover, the use of data suggesting public
16 safety would be at risk, for example, due to derailments
17 or increased pollution from locomotions, does not invoke
18 preemption, as the City may use any data that they have
19 access to or (indiscernible) the address of public data
20 concern for which the City and the State and
21 commissioners to the vested interest in protecting.

22 Here, with regard to Valero, if the permits
23 were not allowed, Valero would likely sue under the
24 Dormant (indiscernible) Clause, which would additionally
25 end up in federal court.

1 However, with respect to federal legislation,
2 under the Clause the courts have ruled favorably with
3 the legislation that restricts interstate commerce to
4 receivers of goods as long as they are feasible,
5 nondiscriminatory alternatives.

6 In other words, a (indiscernible) regulation
7 may be imposed that effectuates a legitimate local
8 public safety and health concern. Given the effects on
9 interstate commerce --

10 CHAIRMAN DEAN: Sir, you've run out of time.

11 HELBART SULLIVAN: Okay. Thank you very much.

12 Conclusion: I'm opposed to this project, to wait for a
13 better solution. Thank you.

14 CHAIRMAN DEAN: All right. Thank you.

15 Thomas Jacobson, Eric Hoglund, Robert Hayward,
16 Sr., Robert Hayward, Jr., Martin Stostick.

17 MALE SPEAKER: Mr. Jacobson is a supporter of
18 the project, and unable to make it again.

19 CHAIRMAN DEAN: Okay.

20 FEMALE SPEAKER: Chair Dean, point of order.
21 Shouldn't you just call the names and have the people
22 show or not show, rather than indicating whether they're
23 a supporter or a non-supporter of the project?

24 MALE SPEAKER: No.

25 CHAIRMAN DEAN: We'll continue the way we are.

1 It's helpful to the Commission if we know that the
2 people -- not necessarily are supporters, but that they
3 were here, and maybe are not here tonight.

4 FEMALE SPEAKER: Would you be able to call the
5 number out, so the people at home who are watching can
6 come down?

7 CHAIRMAN DEAN: Okay. We can do that. All
8 right.

9 FEMALE SPEAKER: So if we know (inaudible).

10 CHAIRMAN DEAN: Sir --

11 FEMALE SPEAKER: Excuse me, (inaudible).

12 FEMALE SPEAKER: We needs microphones, please.

13 CHAIRMAN DEAN: Do you want to step to the
14 microphone, please.

15 ERIC HOGLUND: Sure. I didn't know if you
16 were still addressing the rest of the crowd, so --

17 CHAIRMAN DEAN: Hang on.

18 FEMALE SPEAKER: (Inaudible).

19 CHAIRMAN DEAN: No, I don't think.

20 FEMALE SPEAKER: (Inaudible).

21 CHAIRMAN DEAN: Hang on, hang on.

22 FEMALE SPEAKER: They're saying that we can't,
23 that's what they're saying.

24 CHAIRMAN DEAN: City Attorney, do you want
25 to -- I see you reaching for your microphone.

1 ATTORNEY WELLMAN: If we're doing it for one
2 side, we should do it for the other, is the way that I
3 would see it. So that if somebody knows that individual
4 is part of the group that has been opposing, then I
5 don't see any reason why you can't say they're not able
6 to be here, if you know that.

7 CHAIRMAN DEAN: Well, maybe it would be easier
8 just if they -- if people are not here, they're not
9 here. We don't necessarily need to have people announce
10 whether they're supporting or not supporting.

11 ATTORNEY WELLMAN: Well, yeah, the thing is we
12 have done this --

13 CHAIRMAN DEAN: It will make it through just a
14 little quicker.

15 ATTORNEY WELLMAN: In the past when we've had
16 this process, we actually have had announcements that
17 somebody was here, and they opposed or they supported
18 and weren't able to be here. I think we've done that in
19 the past, if I'm not mistaken.

20 CHAIRMAN DEAN: Commission, do you have a
21 thought?

22 COMMISSIONER YOUNG: I'm fine with having
23 people say that, you know, someone is not here and they
24 support or oppose the project. But it should work both
25 ways, I agree with Kat on that. Or I'm also fine with

1 simply just passing them by and moving on to people who
2 are here.

3 But I like the suggestion of telling people
4 where we are on the list, so that if they are watching
5 at home, and they want to come down and testify, that
6 they have enough time to do that.

7 CHAIRMAN DEAN: Okay. So I would suggest that
8 we not say if somebody is a supporter or not a
9 supporter. We have not done that in these
10 particularized, I don't believe, the Crude By Rail. And
11 just in terms of efficiency. Okay?

12 All right. And we will announce numbers. So
13 that if people are in the adjoining rooms or at home,
14 they'll have a sense of where we are on our list.

15 So right now, I'm sorry, sir, you are?

16 ERIC HOGLUND: I'm Eric Hoglund.

17 CHAIRMAN DEAN: Mr. Hoglund, and you are
18 number 57.

19 ERIC HOGLUND: Thank you.

20 CHAIRMAN DEAN: Thank you.

21 ERIC HOGLUND: I'm Eric Hoglund. I'm a
22 lifelong resident of Benicia. I'm a business owner
23 here. I would like to think that I'm fairly
24 well-connected in the community. Many of you don't know
25 me, but many of you do. I volunteer quite a bit of my

1 time on various boards and commissions. And my children
2 are sixth-generation Benicians. So I would like to
3 think that I can speak to this issue of community
4 support a bit.

5 One of my things that I do is I coach baseball
6 and soccer, and I'm in contact with many, many people
7 here in town. And when this particular project has come
8 up over the past few years, by and large, and I mean in
9 a large percentage, are people that say, "Yes, we trust
10 Valero." "Yes, we like the project." "Yes, we want
11 this business to continue here." "We would rather have
12 Valero refining crude than another company refining
13 crude." These are the kind of comments that I hear.

14 In addition to that, I'm in real estate now,
15 but my previous life I was an intermodal transportation
16 specialist. I actually have a degree from California
17 Maritime Academy. I ran the Oakland Outer Harbor
18 Terminal for Maersk. I'm very familiar with intermodal
19 transportation, with containerization.

20 There is nothing -- and this is coming from
21 somebody who has actually studied this. There is
22 nothing inherently dangerous about the rail. In fact,
23 it's quite the contrary. The federal government has
24 come forward and said that "We believe that the railway
25 is the preferred method of moving hazardous materials

1 across the nation." It's evidenced by the double-
2 stacked trains that move in and out of this corridor
3 every day, full of tanktainers full of who knows what,
4 because -- and has there been an incident? I can't
5 remember one.

6 And quite honestly, I don't think anybody in
7 this room will be able to say for sure that the crude
8 that is coming in and out of this is more volatile than
9 anything else that's moving up and down the rail.

10 Let's face it. There are some that are
11 opposing this that are against big oil. And that's
12 okay. You can be against big oil. I appreciate what
13 you guys are doing and listening to everything.

14 I also appreciate the fact that we have gone
15 through a very extended two-year process or three-year
16 process, I don't know where we're at now, to have an
17 EIR, and they have addressed every concern that's
18 brought forward.

19 And so in conclusion, as I'm wrapping up here,
20 I highly support business for Benicia. We want to
21 endorse our industrial park, and we want to grow our
22 industrial park. Valero is a big part of that
23 industrial park. There's many ancillary businesses in
24 that industrial park that rely on Valero.

25 And let's face it. They want to refine crude.

1 That's what they do. That's their job. They want to
2 bring in crude and refine it. Whether it comes in on a
3 ship or on a railcar, the output is the same.

4 And I just ask that you, first of all, certify
5 the EIR, and second of all, approve the project. I
6 thank you very much.

7 CHAIRMAN DEAN: Thank you, sir.

8 Number 58, Robert Hayward, Sr. 59, Robert
9 Hayward, Jr. Number 60, Martin Stostick. Number 61,
10 Lisa Crowley. 62, Lionel Largaespada.

11 Hi. Good evening.

12 LIONEL LARGAESPADA: Good evening. Can you
13 guys hear me? Great.

14 So good evening commissioners. I want to thank
15 you all for giving me the opportunity to speak, as well
16 everyone here. I want to thank the staff for their time
17 and objectivity. I want to thank the Planning
18 Commission for their time and their thoughtful and
19 thorough questions. I also want to thank Valero for
20 their time and thoroughly asking every question that's
21 been presented today.

22 My name is Lionel Largaespada. I am resident
23 of Benicia. And I'm also concerned about our future,
24 because I have two children. And for that reason, I
25 support this project. Because I believe that Benicia is

1 the greatest community in all of California, to work, to
2 live, and to raise a family. And I want to make sure it
3 stays that way.

4 Our 10-year forecast prepared by the City
5 indicates that the general fund is on a slow decline,
6 with real risk out on the horizon, risks that should be
7 addressed sooner rather than later.

8 This project, among others, not by itself
9 alone, will provide the revenue we need to hire more
10 police and fire, deliver more resources to students and
11 teachers, and help repair our roads. Public safety,
12 school, roads. Those are the top priority issues for
13 the people that live here in Benicia.

14 In conclusion, I believe that Valero is a good
15 partner, and an employer, that has demonstrated for
16 serious that they put our best interests ahead of other
17 interests. Their safety record, as well as their
18 history of charitable donations, proves that point.

19 I understand the concerns. I understand the
20 risks. But I urge you to be objective and pragmatic.
21 Because the fact -- the reality is that we need this
22 project to ensure Benicia's economic future and
23 prosperity.

24 I urge you to certify the EIR and to issue the
25 conditional use permit. Thank you, and good evening.

1 CHAIR DEAN: Thank you.

2 Next is Thomas Atkinson III, number 63. Number
3 64, Doug LeMoine. 65, Cheryl Trusten. 66, Lynette
4 Munson. 67, Don Wilson. 68, Dr. Richard Lunden.

5 Hi. Good evening.

6 RICHARD LUNDEN: Good evening. Dr. Richard
7 Lunden, resident of Benicia for 40 years, retired
8 general officer.

9 Let's think out of the box just a minute and
10 think positively. This is a cog -- this project is a
11 cog in the giant wheel to making this nation number one
12 in energy. That solves a hell of a lot of problems,
13 like sending less people to monitor and police the
14 Middle East to keep the pipelines open, keep the
15 shipping lanes opening.

16 Okay. We don't want our kids to have to be
17 destined to go there. And I, especially, a soldier,
18 wants peace more than anything. I have 62 years of
19 service to the DOD, as a soldier 40 years, and the rest
20 in civilian life, and as an appointed official of the
21 Army. And I know what I'm talking about. We don't want
22 that to happen.

23 We can become number one without arguing,
24 negativity, everything, having professional people come
25 here and give us their life-long ambition of anti-fossil

1 fuel. And I don't know even where half of them came
2 from, because they did not identify themselves. Maybe a
3 name, quick, but not Benicia.

4 We're the ones that are worried about what's
5 happening. Let's not forecast any terrible devastating
6 event. Let's think out of the box. Let's think to the
7 future. I'm sure Valero has made security arrangements.
8 I got a "yes" nod, gladly.

9 Valero is vital. I have kids, 19, 20, 21 years
10 old, that want to take their lives. I'm also a shrink.
11 And we have to talk them out of it, and provide
12 employment and support for them up at Yountville. It's
13 called The Pathway Home. Because there, but for the
14 grace of God, go I. I snuck through all these years and
15 wasn't hit. But I am very disabled now.

16 I want to thank the union members that came
17 out. These gentlemen give up 50 bucks, and up, an hour
18 and buy the materials to refurbish the building up there
19 at Yountville. And Valero supplies a lot of the money.

20 So let's -- we're thinking about this and that,
21 and schools and this and that, and all this stuff, blast
22 zones. I'm on Mills Drive. Am I in the blast zone? I
23 don't even know. Because I don't care. Because they
24 are very safe, and conduct themselves in this manner.

25 But let's not forget where they benefit, and

1 part of that is the veterans. Never heard the word
2 mentioned tonight, except by one guy that was waltzing
3 around, trying to strike (indiscernible) or something,
4 said, "Those veterans, veterans." And I said, "Show me
5 your papers," and he passed me by.

6 Anyway, please, I support the project. It not
7 only does things for you guys, but it does some for the
8 forgotten men and women who allows for all of this
9 grandeur to happen. So think about them, just a little
10 bit, and please approve the project. Thank you.

11 CHAIRMAN DEAN: Thank you.

12 Number 69, Cassie Messina. Number 70, Jennifer
13 Thornton. Number 71, Steven Cierrios. 72, Bill Mailey,
14 Malei. 73, Brandon VanLoon. 74, Marisol Pacheco
15 Mendez. 75, Rachael Koss. 76 --

16 Ah, good evening.

17 RACHAEL KOSS: My name is Rachael Koss. I'm here
18 on behalf of Safefield Energy Sources California.

19 Our comments on the Draft EIR and Revised Draft
20 EIR included hundreds of pages of detailed technical
21 analyses and calculations from independent air quality
22 and hazards experts with decades of experience working
23 on refinery projects.

24 Our comments show, among other things, among
25 other problems, that the EIR, at every corner,

1 underestimated the project's emissions so as not to find
2 significant air quality and public health impacts.

3 But our comments provide substantial evidence
4 that the project will result in significant air quality
5 and public health impacts, both within refinery bounds
6 and beyond, and within the (indiscernible) of every
7 single uprail air district.

8 The Final EIR largely dismisses our comments.
9 A response in a few pages of unsupported conclusions,
10 basically it says in most sentences, "Oh, just look at
11 our EIR. We did it right there. Our Draft EIR, it's
12 right."

13 The Final EIR doesn't come close to complying
14 with CEQA. Our comments submitted yesterday, once
15 again, provide detailed explanation of the EIR's
16 substantial flaws.

17 But tonight I want to talk about preemption.
18 Last night Mr. Hogin presented his take on the issue.
19 Simply put, Mr. Hogin is wrong. Mr. Hogin incorrectly
20 framed the legal issue in this case. This issue is
21 crucial, and the City has to get it right.

22 Case law says that "Permitting and preclearance
23 requirements that could be used to deny a railroad,"
24 deny a railroad, "the ability to conduct its operations
25 or to proceed with activities the Surface Transportation

1 Board has authorized are preempted."

2 Mr. Hogin argues that the City's permit fits in
3 this box. That the City can't deny the use permit for
4 the project, because that would be the City denying
5 Union Pacific the ability to conduct Union Pacific's
6 operations authorized by the STB.

7 Mr. Hogin is saying that the City's permit fits
8 into a box of something that has already been authorized
9 by the STB. That's not the box we're in here. We are
10 in the City's use permit box. The box where the City
11 must authorize a use permit for Valero's project. This
12 is not UP's project. The STB doesn't authorize Valero's
13 use permit for this project. That's the City.

14 To put it another way, because I really want to
15 make this clear, Union Pacific is not the applicant.
16 Valero is. The use permit for Valero's project is not a
17 permitting or preclearance requirement imposed on Union
18 Pacific, as Mr. Hogin would have it.

19 So the first step in the preemption analysis is
20 does the City have authority over the use permit? Yes.
21 Valero's permit requires a use permit under the City's
22 code, and the City is the only agency with authority
23 over the permit. The City, not the STB.

24 If the City has jurisdiction, and it does, the
25 preclearance inquiry ends right there. The only

1 preclearance requirement is the one placed upon Valero
2 by the City. If Valero doesn't get its permit, Union
3 Pacific goes on, business as usual.

4 The project, at this point, it's just a
5 proposal. It hasn't been approved by any agency. The
6 project is certainly not a part of Union Pacific's
7 existing operations.

8 So now I've established the project is not
9 categorically preempted. The next step in the
10 preemption is to determine whether the City's action
11 would unreasonably interfere with rail operations.

12 And case law clearly shows environmental
13 regulations or similar exercises of police powers
14 relating to public health or safety, unless the action
15 is discriminatory or unduly burdensome, are not
16 preempted.

17 That means cities, like Benicia, can exercise
18 its traditional police powers to protect public health
19 and safety if the operation -- if the regulation does
20 not burden rail operations.

21 So it's the City's right under the
22 constitution, an obligation under CEQA, to protect
23 public health and safety, and the environment, from the
24 adverse effects of this project, so long as the City
25 doesn't (indiscernible) rail operations by its action.

1 That burdened question, it's a factual
2 question, in this case requiring Valero to pay money to
3 offset emissions, has nothing to do with Union Pacific's
4 operations. That's an example. Union Pacific is going
5 to go on, status quo, with its operations.

6 Mr. Hogin doesn't even want you to get to that
7 question. He's saying, off the bat, you can't analyze
8 that factual question.

9 CHAIRMAN DEAN: I'm sorry, you ran out of time.
10 But I didn't catch your name. Would you repeat it?

11 RACHAEL KOSS: Rachael Koss.

12 CHAIRMAN DEAN: Thank you.

13 COMMISSIONER YOUNG: Mr. Chairman?

14 RACHAEL KOSS: May I just have two points of
15 business? One is I just want to put on the record that
16 last night, at the conclusion of the hearing, I
17 submitted a flash drive to Ms. Munion, with exhibits to
18 our comments that were too large to email. I just want
19 that on the record.

20 And the second is if I may answer Commissioner
21 Birdseye's question that staff was not able to answer?

22 CHAIRMAN DEAN: This is a --

23 RACHAEL KOSS: Really quick. I'm just going to
24 point her to pages in the FEIR, and that's it. That
25 will answer her question.

1 CHAIRMAN DEAN: Okay.

2 RACHAEL KOSS: The question had to do with
3 whether the EIR analyzed daily and annual thresholds,
4 significance thresholds, as required under BAAQMD
5 guidelines. The answer is no, it does not. And if you
6 look at response to comments B11-72 and J6-35, you'll
7 see that the City clearly says in there, "No, we don't
8 analyze them," and "We're not convinced that we have
9 to," even though it says so in BAAQMD guidelines.

10 CHAIRMAN DEAN: Okay. Thank you.

11 RACHAEL KOSS: Thank you.

12 CHAIRMAN DEAN: Okay. The next speaker is
13 number 76, Sakkin Rodakar Arishin. 77, Chris Brown.

14 MALE SPEAKER: They're in Sacramento. If they
15 come back tomorrow, they'll have a chance to speak?

16 CHAIRMAN DEAN: Yes.

17 MALE SPEAKER: Okay.

18 CHAIRMAN DEAN: No, hang on. We said last
19 night that if people were on the list and they weren't
20 speaking, and they left before their name was called,
21 they would have an opportunity the next night.

22 ATTORNEY WELLMAN: Just if the public hearing
23 is still open, that was the only caveat.

24 CHAIRMAN DEAN: I'm sorry?

25 ATTORNEY WELLMAN: If the public hearing is

1 still open.

2 CHAIRMAN DEAN: Yes, correct. So there is no
3 guarantee. If we finish tonight, we finish tonight.
4 Thank you for that clarification.

5 77, Chris Brown. 78, Ryan Hayder, Heider. 79,
6 Madeline Koster. Number 80, Amber Manfree. 81, Richard
7 Freeman. 82, Rick Lazeski.

8 FEMALE SPEAKER: Chair Dean, I think I see
9 Ms. Koster back there.

10 CHAIRMAN DEAN: 79, Madeline Koster?

11 MADELINE KOSTER: Hi.

12 CHAIR DEAN: Oh, hi. Good evening.

13 MADELINE KOSTER: Hi. Thanks.

14 Well, "Benicia saving water starts with you."
15 Right? You've got that in our face. So how about look
16 at it and read it.

17 We all know that it takes water to run Valero.
18 They use the same amount of water as everyone else in
19 Benicia. So if they get the super crude, they're going
20 to use more water.

21 And you all know that we are just having so
22 much rain, that it looks like maybe the reservoirs will
23 be even half full by the end of the summer, you know,
24 maybe even a quarter full. And there's even a
25 prediction that when there's these super rains, then the

1 next year is a drought.

2 So it's really a good idea to let Valero use
3 more water, don't you think? Or I don't think so. I
4 don't think so, personally. I think that in enough
5 would be all I need to say.

6 The next question is why does Valero want to
7 get this crude by rail, when they're already getting the
8 same amount of crude by ship and pipeline? Well, it
9 seems to me, just from a business point of view, that
10 it's cheaper, less expensive, okay. So their profits
11 will be higher. And this country is capitalism, so
12 that's not a bad thing.

13 However, why is it cheaper? Because not as
14 many refineries want it. Why don't the refineries want
15 it? Because it takes lots of dangerous carcinogenic
16 chemicals to refine it. And number one, they have to
17 use those chemicals to get it into the rail tanks. Then
18 they have to -- those chemicals are still in there when
19 they unload it here in Benicia.

20 It happens to be my backyard. I happen to be
21 one of those very few people who got the notice from the
22 City that there would be a planning commission, because
23 I live within 500 feet of Valero property.

24 So chemicals like benzene are highly
25 carcinogenic, and they are needed to make the crude flow

1 in and out of pipelines. So currently one pipe from one
2 tank is opened each day from the crude. If the crude
3 comes by rail, 100 pipes would be opened, probably each
4 night, because of the industrial park people and all the
5 traffic things.

6 People weren't mentioning that the middle of
7 the night is a good time for the trains to come. And we
8 can hear them clanking through, and we can hear -- even
9 a Valero employee actually told me, before the trains
10 leave, they all have to clank together so that the
11 engineers know that they're attached. And, of course,
12 the people in my neighborhood east of East Second Street
13 would hear this.

14 And it just happened that yesterday morning, it
15 was 6:30 in the morning, and it was a really warm night
16 Sunday night. I was still in bed, and I smelled
17 something really, really strange. And when I got out of
18 bed and went outside, I could smell chemicals in the air
19 in my backyard.

20 And finally, a couple hours later I called the
21 Bay Area Air Quality Management District, and they told
22 me, "Yes, there's a maintenance turn around." And a
23 third of the refinery was down for cleaning, pipes were
24 open, equipment was open for cleaning, and myself and
25 all of my neighbors could smell it.

1 Okay. Well, what if 100 tanks were opened with
2 carcinogenic chemicals, like benzene, that evaporate on
3 contact with air? How long would myself and my
4 neighbors be alive?

5 So the significant and unavoidable air quality
6 violations, which people say, "Oh, it's just about
7 trains going through the Midwest." You know, "Who
8 cares, it's just grain country, or cattle are out
9 there." The significant and unavoidable air quality
10 violations would be in my backyard. And if you live in
11 Benicia, and I know that not all city staff does, it
12 would be in your backyard too.

13 And you may not even be able to smell it. It
14 might simply be carcinogenic. And it's like if you open
15 a bottle of alcohol, you don't have to have wind blowing
16 it into your face. It just comes into your face. So --

17 CHAIRMAN DEAN: You've run out of time.

18 MADELINE KOSTER: I've run out of time. I just
19 want to mention that if this happened during the night,
20 my property value would drop. All the property east of
21 East Second Street would drop. And unfortunately, I
22 might need a reverse mortgage someday, and I doubt that
23 I could get it.

24 CHAIRMAN DEAN: Yeah, thank you.

25 MADELINE KOSTER: So thanks for listening.

1 CHAIRMAN DEAN: Thank you for your comments.

2 MADELINE KOSTER: Thank you.

3 CHAIRMAN DEAN: So number 80, Amber Manfree.
4 81, Richard Freeman.

5 Mr. Freeman, I presume?

6 RICHARD FREEMAN: Yes.

7 CHAIRMAN DEAN: Hi. Good evening.

8 RICHARD FREEMAN: Good evening. Thank you.

9 Can you hear me?

10 CHAIRMAN DEAN: Yes.

11 RICHARD FREEMAN: I am in opposition of this
12 project. And I'm not opposed to jobs per se. The
13 number of 20 jobs seems a bit low for a project of this
14 scope.

15 It's clear that jobs, more jobs, will be
16 available as the renewable energy fields expands. It's
17 rapidly doing this in other countries, which seem not to
18 matter to most American politicians and leaders. But
19 other countries are moving ahead with renewables. It's
20 not going to be easy, but other countries do it, and I
21 think we can learn from them.

22 We are being asked to pit our literal survival
23 against jobs. That's an untenable choice for all of us.
24 But this is what it's come down to, after roughly 200
25 years of industrialization. And we are the ones alive,

1 at this pivotal movement in history, to decide which
2 road we shall pursue. That is certainly an unenviable
3 task for people who are alive today and thinking about
4 the future generations.

5 It's a fact that the oil industry already has a
6 glut of oil, and prices are very low as a result. The
7 glut comes in large part, if not entirely, from
8 unregulated and seemingly unstoppable drilling. Valero
9 seems to suggest that this is insufficient, and that
10 more is required. But for what? Energy independence?
11 The U.S. already has not indicated that it will cease
12 importing oil from the Middle East. So that's a bit of
13 a red herring.

14 On top of which, if approved, the project will
15 permit the movement of more oil bomb trains through the
16 Bay Area. Which to me suggests potential reckless
17 endangerment of the public by officials in a position to
18 prevent the possibility of train derailments.

19 It's well known also that both the oil and the
20 railroad industries are very barely regulated. And so
21 what about future generations who will have to cope with
22 these increasing droughts, wildfires and flooding.
23 We're already seeing these, and not just in America.

24 The industry remains stubbornly impervious to
25 reality for the sake of a few more ill-gotten dollars,

1 even with our literal survival at stake.

2 So where are our family values in this
3 discussion? Even Pope Francis has recently cautioned us
4 of the danger that we are courting.

5 So I respectfully request that you deny this
6 project. Thank you.

7 CHAIRMAN DEAN: Thank you.

8 Number 82, Rick Slazeski. 83, Adele Poenish.

9 Good evening.

10 ADELE POENISH: Good evening. I'm Adele Poenish,
11 a native Bay Area resident.

12 I spoke with my sister to prepare this
13 statement. She was a chemist at Exxon for 30 years, and
14 heavily involved in ASTM, which is an international
15 standards development organization. Part of her work
16 involved ecotoxicity and biodegradability.

17 She felt she would have to read the entire EIR
18 in order to submit a letter to you. So instead, she
19 read the executive summary, and just gave me some
20 common-sense talking points.

21 Basically there are two topics the EIR must
22 address: the type of vehicle transporting the crude oil,
23 which it does; and the component volatility of the crude
24 oil, which it does not.

25 The executive summary's first area of

1 controversy to be resolved is properties and parameters
2 of crude oil to be transported and refined. As this is
3 not addressed in the executive summary, we assumed it
4 isn't in the EIR either.

5 My sister said, though, that the crude brought
6 in from the Balkans or Alberta will be different from
7 California crude and any other crude brought in by sea.
8 If it weren't true, Valero wouldn't be going to the
9 expense and trouble of getting rail deliveries.

10 The properties of this new crude really must be
11 known before any judgment about mitigations for
12 hazardous materials can be made. Unless data to the
13 contrary is presented, there is no way of knowing if
14 Valero's equipment or their proposed facility
15 improvements are sufficient to handle higher-volatility
16 crude. Valero's prior safety record is irrelevant, as
17 they may be unprepared.

18 This lack of information about the potential
19 hazards of the material releases from an accident cannot
20 be known, examined, or a viable plan made for their
21 consequences. Benicia would be unable to properly train
22 and prepare their first responders.

23 It may be that Valero chooses not to disclose
24 the component hazardous materials for proprietary
25 reasons, or they may feel there's just too many to name,

1 or they may claim, as they did tonight, that they just
2 don't know what those components are. But that is too
3 bad for them. Because an EIR is not about
4 confidentiality or vagueness. It's about honesty and
5 thoroughness.

6 The EIR should address both the vehicle of
7 transport and the volatility of the crude being
8 transported. It does not. Therefore, the Final EIR is
9 incomplete. Your staff needs to acknowledge this
10 serious omission in their recommendation.

11 The Final EIR leaves out important information
12 you need to approve this project. Your only choice, and
13 you can base it on the information you were given, is no
14 project alternative.

15 Thank you.

16 CHAIRMAN DEAN: Thank you.

17 ADELE POENISH: If I have any extra time, I'd
18 like to give it to Rachael, if she still --

19 CHAIRMAN DEAN: No. Sorry, we don't allow the
20 donation of time.

21 84, Kenneth Matsumura. And after that 85, Eric
22 Lee.

23 Hi. Good evening.

24 KENNETH MATSUMURA: Thank you very much for
25 this opportunity to speak. I'm Ken Matsumura. I'm a

1 physician who loves Benicia, and am seriously
2 considering Benicia as a location for a large cancer
3 center.

4 People have been, today, talking about thinking
5 about the future. I've been studying the electric
6 generation with fusion power. Many people thought it
7 was far away. As a scientist, I can see that it is
8 probably seven to 12 years away.

9 Unfortunately, that means that gasoline cars
10 will no longer be a popular thing. So things will be
11 changing. I'm sorry for Valero, who appears to have
12 been a very good neighbor and has supported your city
13 very well. So you have to be kind to them.

14 But, you know, Valero hasn't said that they're
15 going to go out of business if you don't approve this
16 request. And I doubt very much they will go out of
17 business. In fact, with the glut of oil -- I entirely
18 disagree with someone who said that the Bakken oil was
19 causing the lowering of gas prices. It is not. It is
20 the glut of oil from Iran coming on board, and probably
21 the OPEC nations deliberately manipulating to do in
22 Bakken oil, because it's very expensive. And at the oil
23 price, at the barrel price it is right now, it doesn't
24 have much future anyway.

25 So saying no to Valero I think is academic and

1 will not really hurt Valero. I'm sure they can do other
2 things.

3 I think you have to look to the future, what is
4 here. I've been coming here for decades, actually. I
5 love your town. It's a charming place with a beautiful
6 seashore. I think this is a future Carmel in the north.

7 And you have, in my mind, and many who come
8 here to the Union Hotel to stay, there is an image of
9 beauty, tranquility. And I think it would be a shame to
10 destroy such a potential for the City, for other
11 potential businesses and growth.

12 So I am worried about the situation with
13 derailment. I think it's probably academic anyway. And
14 so I urge you to vote against this, frankly, insane
15 idea. And I look forward to being here more and more.
16 I love the dinners here. So I will probably see you on
17 the street here. Thank you very much.

18 CHAIRMAN DEAN: Thank you.

19 Number 85, Eric Lee. 86 Cynthia Papermaster.

20 87, Jane Miller. 88, Charles Davidson.

21 Hi. Good evening.

22 CHARLES DAVIDSON: Good evening.

23 Thank you for letting me speak. I'm Charles
24 Davidson. I live in Hercules near Phillips 66, about a
25 mile and a half away from this, and also along another

1 UP rail line that is involved in a Crude By Rail
2 operation, or plans to be. And I would like to speak to
3 that tonight. Thank you very much. And I'll speak
4 about some of the chemistry of the crude. Thank you.

5 Valero's recently completed Valero improvement
6 project was designed to facilitate the processing of
7 much higher sulphur and heavier crudes than the
8 refinery's former crude oil slate.

9 The Valero improvement project permitted the
10 refinery to process heavier, higher sulfur crude stocks
11 as 60 percent of total supply, up from only 30 percent
12 prior to the Valero improvement project. And the
13 project raised the average sulphur content of the
14 imported raw materials from past levels of about 1 to
15 1-1/2 percent, up to new levels of 2 to 2-1/2 percent
16 sulfur.

17 Valero's proposed Crude by Rail Project is
18 specifically designed for the importation into Valero of
19 so-called mid-continent North American crudes that would
20 only be either very lightweight flammable shale oil from
21 North Dakota, the Bakken region, or extra heavy tar
22 sands from Alberta, Canada, which are on opposite ends
23 of the oil density spectrum.

24 Because the Valero Crude by Rail Project
25 combined with the Valero improvement project are related

1 parts of an expanded heavy oil project, the Crude by
2 Rail Project is most likely for the delivery of tar
3 sands bitumen.

4 The bitumen needs to be heated to well over 500
5 degrees in northern Alberta, Canada, just so that it can
6 be diluted with chemical solvents and made to flow into
7 railroad tank cars.

8 Tar sands is open-pit mined as a solid. It is
9 not actually a liquid petroleum. And it requires three
10 times the energy to refine as traditional crude oil, and
11 produces three times the climate-changing greenhouse
12 gasses, according to the recent Carnegie Endowment
13 study, "Know your Oil Toward the Global Climate
14 Oil-Index."

15 Worse, in 2007, in the U.S. Geological Service
16 Report, it was reported that the tar sands bitumen
17 contains 21 more times toxic vanadium, a heavy metal, 11
18 times more sulfur, 6 times more nitrogen, 11 times more
19 nickel, and 5 times more lead than conventional heavy
20 crude oil.

21 Sulfur and nitrogen oxide pollutants contribute
22 to smog, soot, acid rain and odors that affect residents
23 nearby. Importantly, Benicia would experience an
24 increase in potential local air pollution; and for the
25 refinery's equipment and workers, sulfur corrosion,

1 leading to potential accidents, as documented for the
2 2012 Richmond Chevron fire.

3 The tar sands diluent itself is a risk, as it
4 is highly flammable solvent that tends to separate from
5 the mixture during travel, and could cause an explosive
6 derailment fire with the uniquely hazardous tar sands
7 smoke plume.

8 Because tar sands are diluted, the mixture
9 would tend to sink very rapidly deep into the soil, with
10 the diluent eventually evaporating, and then leaving the
11 tar sands bitumen deep underground.

12 A significant crude oil spill in places like
13 the environmentally sensitive Feather River Canyon, the
14 delta, the Susan Marsh (phonetic), would be impossible
15 to clean up, as proven in Michigan's 2010 Kalamazoo
16 River Enbridge pipeline rupture that will never be
17 remediated, despite spending over \$1 billion to date.

18 Please deny Valero this CBR, the Crude By Rail
19 permit, and help keep the world's absolutely dirtiest
20 oil in the ground. To do so would comply with the
21 express wishes of the Sacramento Area Council of
22 Governments, composed of six counties and 22
23 municipalities uprailand from Valero, who have also asked
24 that this project be denied.

25 Thank you for the time.

1 CHAIRMAN DEAN: Thank you, sir.

2 Next speaker, 89, Francis Burke. 90, Elizabeth
3 Lasensky.

4 Hi.

5 DUANE WEILER: You called Duane Weiler? You
6 called Duane Weiler, the last group.

7 CHAIRMAN DEAN: Duane Weiler. Do you have a
8 number?

9 DUANE WEILER: Uh, no.

10 CHAIRMAN DEAN: Weiler?

11 DUANE WEILER: W-e-i-l-e-r. I think you
12 misspelled it, unless I misunderstood.

13 CHAIRMAN DEAN: I don't see it on our list so
14 far.

15 Hi. Francis Burke?

16 THE WITNESS: No.

17 CHAIRMAN DEAN: Oh, Elizabeth Lasensky?

18 ELIZABETH LASENSKY: I'm not sure if I can do
19 more than one hand at a time, but let's see.

20 Good evening and thank you. Thank you to your
21 staff, and thank you to commissioners. I'm Elizabeth
22 Lasensky from Yolo Move-On and Yolo Climate Action in
23 Davis.

24 And I have a slide show, and I'm not sure I can
25 do more than one thing at a time. So I aim it to there,

1 right?

2 So from Davis to Benicia, our lives are on the
3 line.

4 I don't know where I'm supposed to point.

5 This project has 11 significant and unavoidable
6 impacts. Well, what does that mean for Davis and our
7 area?

8 Here are some -- here is an oil train passing
9 over and near our wildlife refuge, Yolo Bypass. Well,
10 what is the Yolo Wildlife Refuge? It's on Interstate
11 80, between Davis and Sacramento, and it covers 25
12 square miles. It's home to nearly 200 species of birds.
13 It's where the Sacramento River and Feather River flows
14 enter into the Sacramento River Delta. A half a million
15 residents of Contra Costa County get their water from
16 the delta. And you might also. I'm not sure.

17 But this wildlife refuge supports 38
18 special-status wildlife species. And you're welcome to
19 read, so I don't -- sorry, I don't know how do this.
20 There are many other great things about this refuge that
21 would be destroyed should a train go over.

22 So Davis. Davis is in the blast zone. Within
23 a half a mile of the tracks are Interstate 80, many
24 senior and low-income housing projects, convalescent
25 homes, regular residential areas, the Davis Police

1 Department, almost the entire of downtown Davis, some
2 student housing at UC Davis, the Mondavi Performing Arts
3 Center, and the new Shrem Museum, all have increased
4 exposure to air and noise pollution from oil trains as
5 well.

6 Okay. So the tracks run through an area
7 adjacent to the Interstate 80, near all these
8 residential areas and downtown. We have the 10-mile-an-
9 hour crossover switch. And along this is the famous
10 sighting where we don't want these oil trains to be
11 idling.

12 But also along this stretch of track, in 2003
13 two trains going very slowly collided, derailling two
14 cars on that -- on one of the trains. Fortunately, the
15 cars were empty. Had those been oil cars, we would have
16 lost -- there is the blast zone. Oops, sorry. Sorry.
17 There is the blast zone over downtown Davis. We would
18 have lost almost our entire downtown. So -- and
19 Interstate 80. And you know the traffic problems
20 already on Interstate 80.

21 Picnic Day in Davis is a big deal. And you
22 will see, here is the parade from last year, and an oil
23 train passing behind picnic goers, the parade goers.

24 Picnic Day in Davis, it's believed to be the
25 largest student-run event in the nation. It attracts as

1 many as 100,000 visitors to the UC Davis campus. The
2 day's festivities begin with a parade. And again,
3 please see that oil train going right behind all these
4 parade goers.

5 Here are the tracks, the train tracks. There's
6 the campus. There's Interstate 80. Proximity to the
7 Mondavi Performing Arts Center, to student housing, to
8 the new Shrem museum.

9 So I don't need to read these, but these are
10 letters from -- quotes from the letters from the City of
11 Davis, from our Yolo County supervisors, from SACOG.

12 But I want to read to you part of the letter
13 from the SLO staff recommendation on a very similar
14 project for the Phillips 66 project. I was at their
15 hearing. "There is a lack of specific overriding
16 economic, legal, social, technological, or other
17 benefits of the project that outweigh the significant
18 effects on the environment, as would be required to
19 approve the project pursuant to Public Resources Code
20 Section 21081."

21 And this was our oil train protest last year on
22 the anniversary of the Lac-Mégantic train derailment.

23 We are opposed to this project, as are our
24 elected officials. Thank you very much.

25 CHAIRMAN DEAN: Thank you.

1 ELIZABETH LASENSKY: And I want to thank you
2 for your help. And here's your --

3 CHAIRMAN DEAN: Okay. Next speaker, 91, Dana
4 Stokes. 92, Carol Warren. 93, Lynn Nittler.

5 Hi. Good evening.

6 LYNN NITTLER: Good evening. Can I just say
7 that we have other speakers from Davis who were here --
8 all ten of us were here last night. And some can come
9 tomorrow night, who are not here tonight, who couldn't
10 make all of the nights.

11 But we do have copies of her slide show and of
12 all of our presentations, that we'll get to you tomorrow
13 morning. So that you'll have, at least, copies of what
14 we would have said.

15 And you also missed -- yesterday we had -- Eric
16 Lee was the official from the City of Davis, who was
17 here last night. And you also missed hearing from the
18 official from the Yolo Solano Air Quality Management
19 District, who was here last night.

20 And I'm trying to see if they could come
21 tomorrow. But all of that hinges on if you're even
22 hearing people tomorrow. So I don't know how that will
23 turn out.

24 CHAIRMAN DEAN: Well, we'll continue to hear
25 people until we've gone through the entire list. If

1 people who aren't here tonight are here tomorrow night,
2 and we're still taking speakers, they'll have an
3 opportunity to speak.

4 LYNN NITTLER: Yeah, but that's the if. If
5 you're not --

6 CHAIRMAN DEAN: We can't guarantee --

7 LYNN NITTLER: If you get through the list
8 tonight, then you wouldn't -- I had thought the
9 officials would be helpful for you to, you know, hear
10 what -- hear from the officials.

11 CHAIRMAN DEAN: Well, I mean, it looks like
12 we're probably going to be going tomorrow night. I
13 think that's a safe bet.

14 LYNN NITTLER: Oh, okay. So it may work out.
15 Because it's just unfortunate of you not to -- reading
16 the documents is good, but I think hearing voices is
17 useful as well for you.

18 CHAIRMAN DEAN: Okay. So you are Lynn Nittler?

19 LYNN NITTLER: I'm Lynn Nittler from Davis.

20 CHAIRMAN DEAN: And you mentioned you had
21 documentation. You can give that to staff when you have
22 that ready.

23 LYNN NITTLER: Correct.

24 CHAIRMAN DEAN: Okay.

25 LYNN NITTLER: Yeah. Yeah, I think we'll

1 deliver it both -- written copies for you, but also
2 digitally, in case that's easier for your process.

3 Okay. Thank you very much for the opportunity
4 to address you. We very much appreciate the diligence
5 that you've put into a very long process. Many of us
6 have been working on it for the two and a half years as
7 well. And we've been working in many levels, as you're
8 about to find out. And I particularly appreciate that
9 you have put time into listening to the uprail
10 considerations. It's, obviously, mattered very much to
11 us.

12 The Planing Department's staff report suggests
13 that the best recourse left to us uprail residents
14 facing these significant and unavoidable impacts, that
15 are labeled that way now, is to contact our
16 congressional representatives and ask them to pass
17 legislation for our safety.

18 I want to outline for you how very responsive
19 our California and congressional representatives have
20 been in the last two and a half years. How involved we,
21 in the Sacramento area, have been with them directly at
22 that legislative level.

23 It's partly because of that involvement with
24 them that I ask that you not certify the EIR until there
25 have been some improvements, and therefore to deny, at

1 least presently, the Valero Crude by Rail Project.

2 So let me make a few statements. First, in the
3 FEIR the City of Benicia admits having no say over what
4 the railroad does, including details of the Valero
5 deliveries in Benicia itself, as well as any control
6 over the dangers and the impacts the trains of crude oil
7 cause in uprail communities, water sheds, habitat, vital
8 to all Californians. I mean, it's a huge area. You're
9 talking about three different routes in. They can
10 switch and use any of those routes. Your control is
11 relinquished under the federal preemption, as you're
12 defining it presently.

13 The second item, I attended the hearings led by
14 Senator Fran Pavley. Our state passed SB 861 --

15 You alluded to it, Steven, last night.

16 -- June 20th, 2014, with the following --
17 calling for the following items: A tax on each barrel
18 of oil to pay for training of emergency fire workers,
19 worse-case emergency plans to be filed, we don't know if
20 that's happening, and proof of sufficient liability.

21 A reminder, in the Lac-Mégantic accident, the
22 two railroads involved declared bankruptcy within the
23 week and exited the scene. And the public, the
24 government, was left to pay for those over \$2 billion
25 expenses.

1 And the question is should there be an accident
2 uprail, all those routes into California are high-risk
3 rail. Who's going to pay? Who's going to pay?

4 The response from the railroads, by the way,
5 the minute the governor signed that bill into law, was
6 to sue the State of California. I did my homework the
7 other day. And that case has been dismissed, for the
8 time being, because it was not ripe for review. I don't
9 know what that means.

10 Third statement, our state passed SB 730, which
11 requires two crew on every train because of our
12 high-risk rail that those trains will traverse. That
13 did pass.

14 Fourth, our elected congressional
15 representatives from this region all banded together and
16 presented to the Department of Transportation a letter
17 requesting stabilization of Bakken crude in towers, and
18 implementation of stronger railcars and positive train
19 technology. They didn't get results. That included
20 your representative Mike Thompson, as well as Garamendi,
21 who sits on DOT.

22 And fifth statement, John Garamendi's current
23 legislation, which kind of came out of that initial
24 letter, is now languishing since March of last year.
25 But he's requiring stabilization of the crude down to

1 9.5 PSI. You were referring to 11. But actually Bakken
2 crude generally runs between 11.7 and 14.4 PSI. It's
3 very high volatility. And the Lac-Mégantic accident, it
4 was at 9.0 to 9.6 volatility level PSI. So we're
5 dealing with very volatile stuff coming in. And even
6 his 9.5 is not a panacea, obviously.

7 And we also participated --

8 CHAIRMAN DEAN: You're running out of time.

9 LYNN NITTLER: Can I -- well, luckily you'll
10 have my notes. Maybe a moment of my conclusion?

11 CHAIRMAN DEAN: Sorry?

12 LYNN NITTLER: Can I give you my concluding
13 sentence here? Let's see --

14 CHAIRMAN DEAN: Yeah, your concluding sentence?
15 Yes.

16 LYNN NITTLER: Yeah, okay. Um, let's see.

17 Presently your city only gets this vote for the
18 cumulative risk and daily impacts that all the rest of
19 us uprail are going to carry. And I want you to
20 consider the trail of GHG emissions, hazardous risk, air
21 quality degradation, threat to wildlife, that this same
22 project that you're evaluating, maybe on your economic
23 situation, bears for the rest of it. And it's a large
24 number of people and a large area, all the way to the
25 borders of California.

1 And there are some more comments that you can
2 read when you get my statement.

3 CHAIRMAN DEAN: Okay. Thank you.

4 LYNN NITTLER: Thank you.

5 CHAIRMAN DEAN: All right. Next speaker, 94,
6 Brent Posey. 95, Richard McAdam. 96, Kathy Williams.
7 97, Nancy Price. 98, Richard Machezney. 99, Shane
8 Wolf. 100, Ellie Benson. 101, Nancy Riser or Reiser.

9 NANCY REISER: Reiser?

10 CHAIRMAN DEAN: Hi. Good evening.

11 NANCY REISER: Good evening.

12 My name is Nancy Reiser. I'm with
13 Crockett-Rodeo United to Defend the Environment,
14 C-R-U-D-E, C.R.U.D.E. I want to thank you for the
15 opportunity to speak to this body. I'm very
16 appreciative.

17 Last week I spoke at the San Luis Obispo
18 Planning Commission hearing about the Crude By Rail
19 train spur expansion project. I was one of 400 people
20 who filled out speaker cards. After two days of
21 comment, the public hearing was extended to the end of
22 February. But, you know, that's what you get when you
23 propose a project that 26 cities, 20 school boards, five
24 county regional agencies, and two congresswomen object
25 to.

1 Many of the issues associated with both
2 projects are similar, if not identical. Now, it's late,
3 and I'm only going to touch upon three.

4 In San Luis Obispo, like here, residents are
5 concerned about their property values circling the
6 drain.

7 Second, like Valero, P 66 floated the federal
8 preemption argument in an attempt to make, frankly, two
9 thuggish entities, the railroads and the fossil fuel
10 industry, seem bigger and more unstoppable than before.
11 They have been advised, though, that federal preemption
12 does not apply.

13 But it's the last issue that bothers me the
14 most. Both projects will be receiving deeply-discounted
15 volatile crude via 100-car oil unit trains that will
16 snake down the Feather River Canyon and go along the
17 Delta. In either project, if a unit train derails next
18 to the waterways, the fire and the contamination will
19 imperil the drinking water for millions of Californians.

20 Now, what if one of those trains derails in
21 Benicia? Well, if it's tar sands, it's going to sink to
22 the bottom. You'll never be able to retrieve it, while
23 it continues to poison the ecosystem and our drinking
24 water.

25 If it is Bakken crude, it will burn on the

1 water for days. You've heard first responders in the
2 news say that there is nothing you can do. You just
3 have to let it burn out. Well, it's going to burn for
4 days. And as the tide goes out, the fire will most
5 likely float past Port Costa and Crockett on its way out
6 to the bay.

7 The proposal before you, well, Valero is asking
8 you to give them permission to turn California into a
9 sacrifice zone. From our little corner of the world
10 across the river, the people of Crockett, Rodeo and Port
11 Costa are asking you to be on the right side of history
12 and turn down this project.

13 CHAIRMAN DEAN: Thank you.

14 Next speaker, 102, Alan Miller. Hi.

15 ALAN MILLER: I just wanted to have everybody
16 smile here.

17 CHAIRMAN DEAN: Well --

18 ALAN MILLER: Okay. Good. I'm going to be
19 filming myself, because I am incredibly narcissistic.

20 I have a tie on, which is of skeletons. This
21 is my death tie. You may recognize it. I wore it at
22 the last set of hearings, with the irony being that many
23 of the people in Lac-Mégantic, however you pronounce it,
24 were incinerated to the point where there were no
25 remains, not even bones.

1 I had a friend who was a bush pilot in Alaska.
2 Many of his fellow bush pilots -- this is a metaphor.
3 Hang with me. Many of his fellow bush pilots were
4 trying to tell this small airport in the middle of
5 nowhere to remove the fence at the end of the runway.
6 It was a danger. They didn't do it. One day he took
7 off in 30 degrees below zero, his wheel clipped the
8 fence as he lost power in that extremely low
9 temperature, and his plane crashed. Two weeks later the
10 fence was removed.

11 I have seen -- I have worked as an
12 environmental consultant. I have worked with people who
13 do risk. They sit in a cubicle, they look in a book,
14 and they go "37." That's an average, okay. What you
15 have given us for the chance of a derailment is an
16 average.

17 I'm here to tell you that there is a weak point
18 in the rail infrastructure in the middle of Davis. I
19 live right next to it, and I have seen Union Pacific
20 twice almost derail a train there. Scared the living
21 crap out of me, okay. They have done nothing to fix it
22 since.

23 Look online in the Davis Enterprise. I wrote
24 this one-page article. It is absolutely factual.

25 This piece of infrastructure needs to be fixed,

1 okay. You can do this. I know you have no power.

2 That's not true. I don't care what your lawyers say.

3 Some people asked me tonight in Davis, I was
4 speaking in front of some students on this, 50 students,
5 and they said, "Well, we can't get down there tonight.
6 What do we do?" And I thought about it, and I said,
7 "Well, first of all, don't buy Valero gas." I stopped
8 doing that two years ago because of this project. "And
9 second of all, don't go to Benicia, and don't buy
10 anything in Benicia. Maybe they don't understand the
11 safety of uprail towns, but they sure as hell understand
12 economic consequences."

13 And when I say "they," if you were offended by
14 that comment, you are "they."

15 So let me tell you, the reason that Union
16 Pacific should do this is because it is the right thing
17 to do. When I wrote about this in the comments, and I
18 looked at the comments, it said, "Oh, well, there is an
19 insignificant chance." That was the answer to this.
20 Read this article.

21 So let me tell you something. You do not want
22 to be the ones removing that infrastructure in downtown
23 Davis after the wreck. You won't have to, like they
24 took down that fence in Alaska, because that steel will
25 be incinerated. It will be gone.

1 Personally, if you do this for Davis -- and
2 here is how you do it, it's called political pressure.
3 There's massive amounts of money involved here. Pick up
4 the phone. Call Omaha. Say, "Would you fix that in
5 Davis? Because Davis is really pissed at us, and we
6 want to run these trains."

7 Now, personally, I don't want you running these
8 trains. Even with that, I do not want the risk. But
9 you know what, if you get Omaha to fix that crossover, I
10 was told that the First Street Grill is a good place to
11 eat here, and I will come to Benicia and I will eat
12 there. I will not buy Valero gasoline until they stop
13 running oil trains through Davis.

14 Thank you.

15 CHAIRMAN DEAN: Thank you.

16 Next speaker, 103, Claudia Antichia, Antochia.
17 104, Railey Kurtcher. Hi. 105, Will McGarvey.

18 Hi. Good evening.

19 WILL MCGARVEY: Good evening. It's good to be
20 back. My name is Reverend Will McGarvey. I'm a Benicia
21 resident for the last 12 years. I'm a pastor of
22 Presbyterian UCC Church in Pittsburg, California, and
23 part-time executive director of the Interfaith Council
24 of Contra Costa County.

25 We started an Interfaith Climate Action Network

1 last year on Earth Day, and one of the things that we're
2 recognizing is that the health disparities for people
3 that live in West County are about the same as they are
4 for the people that live in West County downwind of this
5 refinery and others.

6 Between 105 and 150 per 10,000 people in both
7 Richmond and in Pittsburg Antioch have had an asthma
8 occurrence or hospitalization. In Martinez and Concord
9 it's between 85 and 95 per 10,000 people. In Lafayette-
10 Orinda it's 17 to 19 people per 10,000.

11 So the health disparities, as we've heard in
12 earlier testimony tonight, will only make it harder on
13 those living downwind of Valero and the other
14 refineries. And this has to be taken into account as
15 you make your deliberations.

16 I'd like you to think with me a little bigger
17 and broader and a little longer term about what the
18 consequences of not asking Valero to decrease their
19 emissions will be.

20 We know that the Bay Area Air Quality
21 Management District wants to significantly decrease the
22 number of emissions in every sector, transportation,
23 agriculture, but especially refineries and
24 transportation, to below 1990 levels. And there is no
25 way you're going to get there if you continue to pass

1 resolutions that allow them to either increase, or even
2 hold steady, the amount of emissions that this refinery
3 puts out in our collective air space, our -- like a
4 watershed, our airshed.

5 So I would encourage you to not pass this FEIR,
6 send Valero back to the study books, and ask them for a
7 proposal that helps them decrease their emissions by at
8 least 20 percent every five years, or we're not going to
9 be able to get the goals met to be able to meet the
10 goals that the state has set for us. And this planning
11 commission needs to be a part of that conversation.

12 What I would like to see is a competition
13
13 between all five refineries to see which one of them can
14 become the cleanest and the lowest emitter in the Bay
15 Area. Give them three to five years, and whoever is the
16 dirtiest after three to five years gets to close, and
17 totally clean up the remediation of their former plant.

18 Because as we move to an electric grid and
19 renewable energy system, we need to start putting
20 pressures on these corporations to be going in the other
21 direction.

22 Dr. Mark Jacobson at Stanford has pointed out
23 how each and every state in the United States can become
24 100 percent renewable, in every sector, by 2030 or 2040,
25 depending on the state.

1 For California, we can become 100 percent
2 renewable by 2030, but we have to start making decisions
3 at this level, in these planning commission meetings, to
4 be able to get there.

5 So I encourage you to start to use your
6 regulatory power, and encourage them to be the clean
7 neighbors that we need them to be. We don't need to
8 send these health disparities down to other communities.
9 And we really need to encourage them to be energy
10 companies first, rather than carbon companies.

11 The refinery, where it is, is going to be brown
12 space for years once it's done. They need to be able to
13 have the funds set aside to be able to clean it up. And
14 we need to start asking them to be energy companies.

15 And why aren't they putting solar panels and
16 using better, safer electricity, rather than from the
17 oil that comes in, but using renewable energy for the
18 power that it takes to actually run the refinery?

19 This -- it's pretty simple, but we have to
20 start making the regulations, and encouraging the
21 companies to become truly energy companies, rather than
22 just carbon companies.

23 Thank you very much.

24 CHAIRMAN DEAN: Thank you.

25 Next speaker, 106, Shashona Wexler.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Hi.

SHASHONA WEXLER: Good evening, and thank you for the opportunity to speak tonight.

Full disclosure, I am a resident of Contra Costa County, home to four refineries. But I was born and raised in Solano County, and I'm back home.

You know, one of the things that really struck me about City staff's support of Valero's Crude by Rail Project is that two and a half years of hearings, of expert testimony, of patient point-by-point critiques of draft after draft of environmental impact reports, protests from uprail communities, warnings by the state attorney general, none of it finally mattered.

The most decisive information for staff seems to be that tax revenue from Valero accounts for 20 percent of Benicia's general fund, and that this big oily corporate neighbor holds 500 jobs at its mercy.

This reminder of Valero's enormous and financial and political clout is made tellingly, I think, at the very beginning of staff's 40-page report under "Budget Information." "The proposed project," the report states as if scientific fact, "will allow the refinery to remain competitive in the marketplace." And that, in the end, is all that apparently seems to matter.

1 Now, all the successive arguments in staff's
2 report about the inevitability of Valero having its way,
3 the hiding behind preemption, the total avoidance of
4 dealing head-on with the myriad of unmitigatable impacts
5 that even an inadequate FEIR points to, all of this
6 reveals an underlying attitude that what's good for
7 Valero is automatically good for Benicia.

8 Now, if the entire State of California had felt
9 that way back in 2010 when Valero sponsored Proposition
10 23, would have passed -- you know, if we had all -- all
11 of California had felt that way, 23 would have passed by
12 a landslide.

13 You remember Prop 23, right? It would have
14 undermined implementation of our state's Global Warming
15 Solutions Act of 2006, with the practical effect of
16 repealing that ground-breaking law. It would have torn
17 up the very foundation of our efforts to take aggressive
18 action on reducing greenhouse gas emissions. But
19 Californians said no to Valero in 2010, and Benicia
20 should say no to Valero now.

21 Let's not kid ourselves. Valero can actually
22 afford to conduct its business like the good neighbor it
23 tells us it is, instead of proposing dirty and deadly
24 projects that increase emissions and imperil the lives
25 of its own workers, as well as those of Benicia

1 residents and people in surrounding and uprail
2 communities.

3 If you deny this project, which I hope you will
4 have the moral courage to do, you can rest assured that
5 those 50 jobs are not at risk -- I'm sorry, that's 500
6 jobs. It's a big difference. You can rest assured that
7 those 500 jobs are not at risk, and that this refinery
8 will not remove itself to Texas.

9 Benicia's budget will not collapse. It is not
10 necessary for us to sacrifice our health and our
11 precious environment to Valero's bottom line, or be
12 dragged down with Valero in its race to scrape the
13 bottom of the barrel. We can do better.

14 Hardworking members of the Planning Commission,
15 please ignore the very poor advice of City staff to
16 certify the FEIR and sign off on this project. Please
17 send the FEIR back to the drawing board, and address,
18 with all the thoroughness and wisdom you can muster, the
19 still unresolved questions that impact the lives of
20 everyone in this room, and generations to come.
21 Thank you.

22 CHAIRMAN DEAN: Thank you.

23 Speaker 107, Jean Jackson.

24 Hi. Good evening.

25 JEAN JACKMAN: Good evening commissioners.

1 Thank you for your endurance and your dedicated public
2 service.

3 My name is Jean Jackman, actually, and I'm your
4 neighbor from Davis. I'm terrified of the prospect of
5 1.5 million gallons of oil rolling through my town twice
6 a day. The people of Benicia should be terrified too.
7 The air pollution will increase cancer death. There's
8 noise pollution. Your water supply is at risk. Imagine
9 the result of an oil spill in the Sacramento River, part
10 of your water source.

11 In 2010 a spill of crude from a pipeline into a
12 small creek in Michigan then flowed into the Kalamazoo.
13 That river had to be closed for 25 miles, and they're
14 still cleaning up the mess six years later, with the
15 cleanup of 1.2 billion. What if that company would have
16 filed bankruptcy? Taxpayers would have had to pay.

17 The trains go right through Davis. You've seen
18 the pictures tonight, right next to residents, downtown
19 Davis, populated neighbors, our U.C. Davis Mondavi
20 Performing Arts Center.

21 And yet we have that dangerous higher-than-ever
22 chance for derailment. Why? Because of that low-speed
23 crossover between the main lines, right next to our
24 Amtrak passenger depot. It's so dangerous that the
25 speed is just 10 miles per hour.

1 And yet the speaker who spoke tonight observed
2 a train passing through the crossover at high speeds,
3 one at 47 miles per hour nearly having an accident,
4 quote, tank cars whipping from side to side on their
5 wheels, unquote

6 I'm certain that weak links, like this
7 10-mile-per-hour crossover, can be found all along
8 routes in our poorly-taken-care-of rail lines if they
9 were investigated properly.

10 I'm a retired teacher. I taught for 14 years
11 in the Vacaville school system in the town of Elmira.
12 At one point we had more than 1,000 students in the
13 building in Elmira, right across from the railroad
14 tracks. There is a private school there now, special ed
15 school, smaller school.

16 But it makes me wonder how many schools,
17 hospitals and environmentally-sensitive areas, like the
18 Susan Marsh, along the routes are threatened by these
19 bomb trains, accidents waiting to happen.

20 Your neighbors in SLO hit the nail on the head
21 when their planning staff said, "Do not believe the
22 economic benefits from the project outweigh the
23 unavoidable negative environmental impacts the project
24 would cause in SLO and elsewhere in California." Thanks
25 to them for thinking of their neighbors.

1 Please go to Wikipedia and look at the
2 increases in train accidents and derailments since 2010.
3 Then imagine those trains were carrying 1.5 million
4 gallons of highly-flammable crude. Is that the future
5 you want?

6 The number of spills here is climbing from 98
7 to 2010 and 182 in 20 -- 98 in 2010 to 182 in 2013,
8 according to the California Office of Emergency
9 Services.

10 And we don't have the emergency response
11 capability. We don't have a nimble railroad agency
12 ready to upgrade trains and tracks. We only have
13 accidents waiting to happen, and increasingly so.

14 Please consider the health of your town of
15 Benicia, but also be good neighbors, moral people, and
16 consider the health of hundreds of thousands of people
17 uprail. Please do not approve this project until,
18 unless, all impacts are mitigated.

19 Thank you.

20 CHAIRMAN DEAN: Thank you.

21 Next speaker, Rick Carpenter, 108. 109, Jaclyn
22 Prange.

23 JACLYN PRANGE: Good evening, commissioners.

24 CHAIRMAN DEAN: Good evening.

25 JACLYN PRANGE: My name is Jackie Prange, and

1 I'm a staff attorney at the National Resources Defense
2 Council.

3 I know it's a late night, so I want to kind of
4 get straight to the point. We have commentated
5 extensively about the inadequacies in the EIR. I'm not
6 going to go through all those. Our latest letter, which
7 we submitted yesterday, is very short and kind of
8 highlights the main problems in the EIR. It's only
9 about five pages. So not too heavy of reading. I know
10 you have a lot to read.

11 Tonight I'd like to focus on the preemption
12 issue, since there's been a lot of confusion and debate
13 and discussion about that issue, and specifically on the
14 Interstate Commerce Commission Termination Act, or
15 ICCTA, those of us who have to deal with this law all
16 the time is referred to.

17 In the staff report on page 35 it states that
18 the benefits of this project do not outweigh the
19 significant negative environmental impacts, but
20 basically that the City's hands are tied, and that it
21 has to approve this project.

22 Quite frankly, I've never seen a conclusion
23 like that in an EIR or in a staff report regarding a
24 project under CEQA review.

25 And we disagree with that analysis. The City

1 can deny this project. Valero is not a rail carrier.
2 And just to quote, that is defined specifically under
3 ICCTA as, "A person providing common carrier railroad
4 transportation for compensation," "a common carrier."
5 Valero is not a common carrier. And I don't think there
6 is any dispute, really, about that. Mr. Hogin admitted
7 that much. And he also agreed that whether or not a
8 project proponent is a rail carrier is a very important
9 distinction. And there is a reason congress drew the
10 line there.

11 Commissioner Young, you brought up the example
12 of a landfill. That's a perfect example.

13 The City retains traditional land use authority
14 to deny a landfill. Joe or Jane Schmoe can't just go in
15 a put a landfill and say, "You can't do anything about
16 it, simply because I am having the garbage shipped here
17 by rail."

18 I think where we differ, in our analysis of the
19 law from what's in the staff report, is the reasons why
20 the City can deny the project. The staff report says
21 the City can only deny the project for non-rail-related
22 reasons. I'm not aware of any authority that constrains
23 the City in that manner. And indeed, your colleagues
24 over in San Luis Obispo came to the same conclusion. So
25 we're not the only ones saying this.

1 But I think the most important point is even if
2 that's true, that you are constrained and you can't cite
3 rail reasons for the reasons for denying the project,
4 there are a lot of other impacts that have nothing to do
5 with rail here. We've outlined a lot of them in our
6 letter, primarily air quality impacts having to do with
7 the refinery. And I know those aren't adequately
8 analyzed in the EIR, so you're a little bit tied up
9 there. But they certainly are and will be significant.
10 Unloading, emissions from unloading and other dangers
11 from unloading the crude. And finally, impacts to local
12 creeks, other impacts that are going to happen on-site.

13 Your attorney has basically given you free rein
14 to look at all of those reasons to deny the project, and
15 I suggest that you do that.

16 So in sum, the City can, should, and indeed
17 must, as a legal matter, deny this project and decline
18 to certify the EIR. Thanks.

19 CHAIRMAN DEAN: Thank you.

20 Well, considering the lateness of the hour,
21 10:57, is this a good point to end the testimony for
22 tonight and continue the meeting?

23 We are currently at number 110. The next
24 speaker would have been Nick Pospada.

25 NICK POSPADA: I'll be here tomorrow night as

1 well.

2 CHAIRMAN DEAN: Okay. Thank you. We'll look
3 forward to hearing from you then.

4 Okay. So we are going to continue this public
5 hearing until tomorrow. The time will be 6:30 in these
6 council chambers, and we will see you then.

7

8 * * *

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the audio recording was listened to and taken down by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: February 24, 2016.

SUSAN H. CAIOPOULOS

CSR No. 8122