

BENICIA EXPEDITE.TXT

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CITY OF BENICIA COUNCIL MEETING

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VIDEO TRANSCRIPTION OF THE BENICIA COUNCIL MEETING FOR

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THE CITY OF BENICIA

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BENICIA EXPEDITE.TXT

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18 DATE: MARCH 15, 2016

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21 REPORTER: Sally Bronner

22 Certificate No. 7090

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24 JOB NO. 7212

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BENICIA EXPEDITE.TXT
TUESDAY, MARCH 15, 2016

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MAYOR PATTERSON: This is an announcement that

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we are not going to start on time due to technical

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difficulties. I have always wanted to say that. I've

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heard that a lot on television and radio.

7

So just continue chatting and hopefully it

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will be solved quickly. Thank you.

9

I understand.

10

The Benicia City Council is called to order.

11

So thank you very much for your patience. I'm

12

going to make a couple of announcements as you quiet

13

down.

14

The first is what we are doing, we are doing

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what we always do which is record the meetings. Our

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technical difficulty was in terms of streaming it for

17 those who are watching at home, including a few
18 reporters who called me who were going to watch it from
19 home.

20 so if you have the ability to text friends or
21 associates or whoever, that is not being streamed, but
22 the meeting has started. That would probably help a
23 lot for them to understand what's going on.

24 we will probably try to post something on the
25 screen, but right now they are scrambling to get it up

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1 so it's steaming because a lot of --

2 MR. KILGER: Excuse me, Mayor.

3 MAYOR PATTERSON: -- people have relied on --

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4 MR. KILGER: My understanding is that it is
5 now steaming.

6 MAYOR PATTERSON: You just got that text
7 message?

8 MR. KILGER: Just got it.

9 MAYOR PATTERSON: Hallelujah. Okay. You
10 know, one time you could applaud.

11 so we are called to order. And we will have a
12 roll call, please.

13 FEMALE SPEAKER: Council Member Campbell.

14 MR. CAMPBELL: Here.

15 FEMALE SPEAKER: Hughes.

16 VICE MAYOR HUGHES: Here.

17 FEMALE SPEAKER: Schwartzman.

18 MR. SCHWARTZMAN: Here.

19 FEMALE SPEAKER: Strawbridge.

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20 MS. STRAWBRIDGE: Here.

21 FEMALE SPEAKER: Mayor Patterson.

22 MAYOR PATTERSON: Here.

23 And would the city attorney lead us in the
24 pledge of allegiance, please.

25 ALL SPEAKERS: I pledge allegiance to the flag

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1 of the United States of America. And to the Republic
2 for which it stands, one nation, under God,
3 indivisible, with liberty and justice for all.

4 MAYOR PATTERSON: A plaque stating the
5 fundamental rights of each member of the public is

6 posted at the entrance to this meeting room for Section
7 4.04.030 the Benicia open government ordinance.

8 If you require special assistance in order to
9 participate for a hearing or if we turn the fans on for
10 some reason then the light is distracting. If you
11 would approach a staff member, we'll see what we can do
12 tonight to make reasonable accommodations.

13 And in the future for future meetings, if you
14 could call about 48 hours ahead of time to 746-4200, to
15 let folks know and we will try to make reasonable
16 accommodations because our goal is that you can
17 participate in here.

18 And let me tell you, don't feel that this is
19 awkward for you because we have a real hard time
20 hearing up here. The acoustics in the room are
21 reversed, so I just wanted to let me know I can hear

22 people in the back, but I have a hard time hearing
23 folks up here. So if you have -- if you can't hear,
24 it's perfectly understandable.

25 And my voice is the way it is because of

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1 allergies, not because I'm sick; I'm just a cranky,
2 crotchky person.

3 So for announcements we have openings on
4 boards and commissions. Community sustainability
5 commission, we have two full terms. Historic
6 preservation and review commission, one full term.
7 Planning Commission, one full term. Sky value open
8 space committee, two full terms.

9 The application date -- due date is until we
10 fill since the -- those seats have either been vacated
11 or have or have expired.

12 So if you want to know more information about
13 what these commission and committees do, I encourage
14 you to contact me. I'd be happy to talk to you about
15 it. We are always eager to have new faces and new
16 folks on our commissions; they're hard working.

17 For the first step, you can go to
18 www.ci.benicia.ca.gov, and then under the new government
19 tab select boards and commissions. It tells you who is
20 on, when they meet, how often, what they do and so
21 forth.

22 And I maintain open office hours every Monday
23 from 6:00 to 7:00, no appointment is necessary.

24 Occasionally I'm not there because I'm at a meeting or
 Page 9

25 I have some other obligation. And other times during

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+

1 the week can be arranged by calling 746-4200. As work
2 permits me, I'll try to meet with you at a convenient
3 time.

4 And let me see. We have no closed session.

5 Do we have an update this evening on the
6 arsenal?

7 MS. McLAUGHLIN: So the update on the arsenal
8 is that I will be meeting with some of the property
9 owners attorneys tomorrow to see if we can move a path
10 forward. And also, we've got an extension of time from

11 DTSC to respond to the amended order on the historic
12 arsenal property so our time to respond initially is
13 March -- no, April 14th.

14 MAYOR PATTERSON: All right. Any questions?

15 All right. The -- we have no proclamations
16 appointments or presentations, so the next item on our
17 agenda is the adoption of the agenda.

18 MALE SPEAKER: Move to approve.

19 MALE SPEAKER: Second.

20 MAYOR PATTERSON: Call the roll, please.

21 FEMALE SPEAKER: Councilman Campbell.

22 MR. CAMPBELL: Yes.

23 FEMALE SPEAKER: Hughes.

24 VICE MAYOR HUGHES: Yes.

25 FEMALE SPEAKER: Schwartzman.

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1 MR. SCHWARTZMAN: Yes.

2 FEMALE SPEAKER: Strawbridge.

3 MS. STRAWBRIDGE: Yes.

4 FEMALE SPEAKER: Mayor Patterson.

5 MAYOR PATTERSON: Yes.

6 You know, in my eagerness to get going, I
7 really should have noted the extraordinary effort by
8 our staff. So won't you join with me and say thank you
9 for our staff to solve a very difficult, technical
10 problem. They are up there (indicating).

11 So the next item on our agenda is the public
12 comment. And this is the opportunity for you all to
13 talk about anything that's not on the regular agenda.

14 So if there is something that you would like
15 to announce, that is appreciated, or simply have an
16 opinion or comment, we welcome that.

17 I have some cards and so I'm going to try to
18 clarify what I think these cards are because it's a
19 little unclear.

20 We want you to feel comfortable in making
21 the -- your public comments. We ask you that keep it
22 within five minutes. And we do ask that -- we have an
23 actually an excellent reputation in this city for
24 stability and practicing a Code of Conduct of respect
25 to one another. And so we simply ask that you join

1 with us in continuing to do that.

2 If others have already made a comment -- this
3 is for non-agenda items -- if others have already made
4 a comment, you can simply say that you agree with that
5 comment and then go on.

6 If it's new information, we always eager to
7 hear that. If appropriate, actually, a person on an
8 item that's not on the agenda and a group is
9 interested, you may present the views of entire group.

10 Speakers may not make personal attacks on
11 council members, staff or members of the public or make
12 comments which are slanderous or which may invade an
13 individual's personal privacy.

14 And that really means calling people names as
15 well, so just be careful. As I've said, it's really,

16 from my experience for I don't know how many years, 12
17 or so, it's really been exemplary. And I just wanted
18 to remind you that we want to continue in that
19 tradition.

20 So for -- I have under Andres Soto for the --
21 this is public comment. I'm just going to call these
22 names, and if you didn't want to make public comment at
23 public comment time, then you need to let me know.

24 Amy Mashadu. Did I get that correct? Okay.
25 so you can just come in after Andres Soto. This is a

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1 public comment, not on the agenda. Is that correct?

2 FEMALE SPEAKER: (No audible response.)

3 MAYOR PATTERSON: Okay. Great.

4 And then Jim McDonald. You checked an item
5 opposition of the proposal. There's no public comment
6 tonight on proposal, Jim, so unless you had -- wanted
7 to talk in public comment, I'm just going to put your
8 card aside.

9 And then Dwayne Wiler. And you also checked
10 that you are in favor of the proposal. And again,
11 there's no public comment on that so I'm going to set
12 that card, and I assume those cards will be called at
13 the first public comment?

14 MS. McLAUGHLIN: Correct. On the 4th.

15 MAYOR PATTERSON: Did I get that correct?

16 And you don't have to support a card if you
17 wish to make a public comment on any item that's not on
18 the agenda.

19 So Andres.

20 MR. SOTO: Good evening, Madam Mayor, members
21 of the Council.

22 My name is Andres Soto from here in Benicia.

23 And you know, tonight there's some primaries going on.

24 This is a very unique electoral year in my lifetime.

25 I first got involved in an electoral politics

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1 when I was four years old when my parents were out
2 campaigning for Kennedy. And so I've seen a lot of
3 elections. And the rise of Donald Trump has worried a
4 lot of people, scared a lot of people, as has the rise
5 of Bernie Sanders; two candidates who are really kind

6 of coming from the same place in the sense that they
7 are addressing the people who are alienated from
8 mainstream political organizations.

9 And I think that's a healthy thing for
10 democracy even though clearly I completely disavow
11 anything that Donald Trump is standing for.

12 That being said, I think what's brought back
13 to me is that, you know, the old saying from Tip
14 O'Neill, all politics are local.

15 And by that it means that when you boil it
16 down, it's what each community does politically that
17 adds up to the macro picture in our electoral process.

18 So that means the power really rests at the
19 local level. And while we see the Super Pacs spending
20 literally millions of dollars. It's expected to be

21 over a billion dollars in each party to try to
22 influence the outcome because the stakes are so high in
23 the decisions that are going to be made over the next
24 four years.

25 Just look at the U.S. Supreme Court. That

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1 when we boil back down, that pyramid starts here at the
2 local level. And that's why we at the local level will
3 look to you, our elected officials, to look out for our
4 best interests. And we hope that you keep that
5 paramount in your mind as you move forward through all
6 your decisions. And that remember that, you know, all
7 power being local is that, you know, we will look to

8 you to do the right thing for our community. And come

9 November, we will have a lot of choices to be made.

10 Thank you.

11 MAYOR PATTERSON: Thank you very much.

12 Are there any questions for Mr. Andres Soto?

13 I see none.

14 Okay. The next card then is Amy. And I'm not

15 sure I pronounced your name correctly. Did you want to

16 correct me?

17 MS. MASHDO: So it's Amy Mashdo.

18 MAYOR PATTERSON: Mashdo. It's beautiful.

19 MS. MASHDO: Thank you.

20 So I e-mailed every City Council member this

21 weekend. I'm here because my cousin died.

22 MAYOR PATTERSON: You need to speak to --

23 FEMALE SPEAKER: Oh, sorry.

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24 Okay. I'm here because my cousin died. He
25 just turned 21.

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1 I came to Benicia at the age of 15. I came
2 from Alto Loma, California, and I never really wanted
3 to leave. Had to leave for college. Spent 13 years
4 away. Came back.

5 I grew up with my cousin Benicia. We grew up
6 together like brother and sister.

7 There is a horrible drug problem going on
8 right now in Benicia with heroin. And it's going on
9 between the youths. And I don't know if how older
10 people are doing it, but I know when I was in high

11 school in Benicia, the worst thing that I had to worry
12 about were suicide.

13 Before my sophomore year it was two people who
14 committed suicide. Junior year I know one person who
15 died in a car accident, drunk driving. But it was
16 never heroin. It was never.

17 we've talked to the police department. And
18 they just said people like to turn (inaudible) and die.
19 They don't like to think it can happen to them.

20 we are upper middle class. We're well
21 educated. There were no signs. There was nothing.
22 And he's gone. Just happened all of a sudden after
23 coming back to Benicia.

24 And I'm begging everyone here, I'm going to go
25 before the Valero City Council as well and I want to

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1 see people pull together and make sure that this can't
2 happen because you don't know. It could be anyone in
3 this room that has a child that it could happen to.
4 And the pain that we're feeling now we should never
5 feel. Ever.

6 And so you all have my phone number and the
7 e-mail I sent. You know how to contact me. I know you
8 can't address me. I'm on (inaudible) in Valero so I'm
9 aware of the Brown Act. But I just hope that somehow
10 we can stop this pain. We're trying to get (Inaudible)
11 back over here to talk to people. We're trying to do a
12 lot of things and -- like, I don't know what to do.

13 MAYOR PATTERSON: well, thank you very much,

14 Amy. You know, obviously, there are no words that I

15 can find that would take your pain away, but I really

16 do appreciate your coming to us and saying that.

17 That's a great public service.

18 And I'm going to ask the chief to address some

19 of the things that we are undertaking now. It is on

20 the national dialog; I have seen many, many things that

21 need to be done. I would like to see more, of course,

22 in California.

23 People like you, particularly with your great

24 loss, are huge in being able to move forward. I have

25 probably just violated the law on public conduct

1 because I'm not suppose to discuss it you with. So --
2 but I do want to encourage you to go forth. And let's
3 ask -- Chief (inaudible) isn't here. Who do we have
4 tonight?

5 MR. KILGER: Mayor, if I may begin.

6 MAYOR PATTERSON: Yeah, Mr. Kilger.

7 MR. KILGER: Yeah. The chief was called away.
8 He will be attending a few meetings in the future.

9 But I want to say that I concur. We work very
10 closely with the school district. We have been working
11 with the new teen center. We have a liaison community
12 with the school district.

13 So I agree. I cannot tell you how sorry I am.
14 You know, I've had that experience in my own family,
15 it's -- you never can recover from that.

16 But I can tell you one thing. My years being
17 here, the youth are important to this Council and this
18 community. And we will do everything we possibly can.
19 And I'll ask that the -- I hadn't seen your e-mail, but
20 forward it to us and the chief will take special
21 interest in working with you on this.

22 MS. MASHDO: We are -- we did speak to
23 officer -- Kamada -- but, yeah.

24 MR. KILGER: Sergeant Creado?

25 MS. MASHDO: Creado, yeah. We did speak to

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1 him and he's aware. And he worked really closely with

2 BENICIA EXPEDITE.TXT
my cousin. Like Benicia is just a wonderful community.

3 And everyone thinks it won't happen, and it actually
4 does. And I mean we watch Intervention. Everything on
5 Intervention that you think it looks like, it doesn't
6 look like. Nothing. You would have never guessed.

7 MAYOR PATTERSON: Frontline had a great
8 program on last week and it was showing just what
9 you're describing, that frustration and the origins of
10 the whole problem.

11 So probably what we'll do is I'll work with
12 city manager and with Council's concurrence we'll set
13 up a task force and we'll just get a dialog going. It
14 will probably be two members of the Council and so
15 forth and so on.

16 So before I get much more into trouble, just
17 letting you our thoughts about what we can do and thank

18 you so very much for bringing it to our attention in
19 this platform and taking advantage of the public
20 awareness here.

21 MS. MASHDO: Thank you so much.

22 MAYOR PATTERSON: Thanks, Amy.

23 All right. So that's all the cards I have.

24 Anybody else wishing to address the Council on
25 any item that's not on the agenda?

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1 MS. CARRIAGE: Good evening. Very difficult
2 to follow that speaker.

3 I'm -- this is a on a totally different
4 subject.

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5 I want to invite everybody in Benicia and the
6 surrounding communities to the Benicia Mini Makers Fair
7 which is going to be April 16 at the Benicia Middle
8 School. There's a huge variety of exhibits there; a
9 lot of interactive stuff; a lot of kids -- things for
10 kids to do.

11 One of the exhibits is going to be on clean
12 transportation which is being sponsored by the
13 Community Sustainability Commission. And we are going
14 to be featuring all different kinds of electric
15 vehicles.

16 So we'll have an electric bus there. We'll
17 have an electric bike. We'll have several different
18 models of electric cars. So it will be a great chance
19 to learn about electric vehicles and to see a lot of
20 different types of vehicles, including, I think, we'll

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21 have a Tesla there. And you'll also have a chance to
22 see a little short video on why we really drive
23 electric. So please come.

24 Thank you.

25 MAYOR PATTERSON: Thanks.

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1 Are there any questions of Miss Carriage?

2 All right. Thank you very much for that
3 announcement.

4 Anybody else wishing to address the Council on
5 any item that's not on the agenda?

6 MS. BUTELL: Yes, please. Constance Butell,

7 BENICIA EXPEDITE.TXT
1501 Shannon Court.

8 Just a quick reminder and request is that
9 earlier we talked about the arsenal update, and we used
10 the acronym DTS-something -- C.

11 And I wonder, many people don't -- haven't
12 followed this arsenal issue, ongoing for 15 or more
13 years or whatever, but it would be nice to have a
14 little identification of what the arsenal project is
15 and what the acronym stands for.

16 Thank you.

17 MAYOR PATTERSON: Thank you for that reminder.

18 DTSC is the Department of Toxic Substance
19 Control and the arsenal issue is pollution that many of
20 us allege was caused by the Army a long time ago and it
21 needs to be cleaned up.

22 Anybody else wishing to address the Council on

23 any item that's not on the agenda?

24 MR. WILER: Mayor Patterson, Council members

25 and staff and Benicia residents .

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1 My name is Dwayne wiler and I've been a

2 Benicia resident for 47 years.

3 MAYOR PATTERSON: Mr. wiler, did you a submit

4 a card, a green card?

5 MR. WILER: Yeah, but that's for a different

6 topic.

7 MAYOR PATTERSON: Okay. So you are just going

8 to say -- you're talking about something that's not on

9 the agenda.

10 MR. WILER: Yeah, it's not on the agenda.

11 MAYOR PATTERSON: Okay. Thanks. Sorry for
12 the interruption.

13 MR. WILER: I just want to mention, the city
14 is currently reviewing a number of exciting projects
15 that create significant and economic benefits for
16 Benicians. Projects and scope, they range quite a
17 different scope -- ranges in scope.

18 But they bring a lot of financial benefits to
19 Benicia. And I think they are vital for the fiscal
20 health of Benicia. Of course opportunities face
21 opposition and there's outside interests and we have
22 heard, you know, in the recent -- in the recent past
23 here.

24 But local communities, I think, need to stand
25 up to outside interests, make sure that we make sound

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1 decisions around Benicia's financial future.

2 2014 joint meeting between the finance meeting

3 and the City Council discussed the general fund,

4 ten-year plan. Many commented on the need for economic

5 activity to buy up the Benicia's finance.

6 So without a lot of activity there's going to

7 be shortages in the future.

8 So continue to -- development will protect

9 Benicia's economy, maintain our current quality of life

10 and good paying jobs for Benicia, strong base, tax

11 revenues and vital services. Benicia Police Department

12 is top of the line, and so is the fire department, and
13 that takes money to keep that up.

14 So going ahead, think of Benicia in the
15 housing values. Right now the housing in Benicia is
16 higher than the surrounding communities, and we have
17 good economic stability that will even push them
18 higher.

19 Thirty percent of the population of Benicia's
20 19 years are under, and we need to have good economic
21 plans for the future for their continued success in the
22 future.

23 So wrapping it up, Benicia is fortunate to
24 have a number of economic strong projects, and we must
25 always be driven by the desire to focus on the daily

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1 lives of Benicians and not bowing to political or
2 personal agendas of outside interests.

3 Thank you very much.

4 MAYOR PATTERSON: Thank you.

5 Are there any questions of Mr. Wiler?

6 MR. WILER: Pardon me?

7 MAYOR PATTERSON: Seeing none. Thank you.

8 I was asking if there were any questions from
9 the Council.

10 MR. WILER: Okay.

11 MAYOR PATTERSON: There are none.

12 MR. WILER: Okay.

13 MAYOR PATTERSON: Okay. Thank you.

14 Anybody else wishing to address the Council on

15 any item that's not on the agenda?

16 All right. I don't see anyone coming forward.

17 So I also want to announce that a copy on information

18 that is relevant to the meeting after the Council copy

19 is prepared is copied and made available to the public

20 on the side table against the wall. This side table

21 here, (indicating).

22 Tonight there are two handouts. One is an

23 e-mail from a resident, Susan Doblis. And the other is

24 crude by rail power project presentation.

25 So the next item on the agenda is the consent

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1 calendar. And this is the time we talk about ex parte
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2 contact.

3 As a reminder, members of the Council should
4 share substantive information that is relevant to
5 matters being considered by the Council if that
6 information was received outside of the public decision
7 process.

8 And this is basically a transparency moment.
9 And so as we go through our items, our business items
10 or any consent item that's polled, we would need to
11 tell you what information we got that is not in the
12 packet and advice that might have been given if it was
13 specific advice so that would be for the public record.

14 Items listed on the consent calendar are
15 considered routine and will be enacted, approved or
16 adopted by one motion unless the request for removal or

17 explanation is received from a Council member staff or
18 member of the public. Items removed from the consent
19 calendar should be considered immediately following the
20 adoption of the consent calendar.

21 And Council Member Campbell comment on the
22 consent calendar or --

23 MR. CAMPBELL: Ex parte.

24 MAYOR PATTERSON: -- ex parte.

25 would you like to comment.

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1 MR. CAMPBELL: No. You said now for the

2 ex parte, so --

3 MAYOR PATTERSON: well, you can wait for the

4 item. So if it's on the business item, then wait for
5 that. We will just get through the consent calendar
6 unless somebody pulls something and you have an extra
7 ex parte on that.

8 MR. CAMPBELL: Okay.

9 MAYOR PATTERSON: Okay. So, in other words, I
10 will read the items that are on the consent calendar
11 and if a Council member wishes one poll, they will so
12 indicate. And then if you do, it's a little funny, but
13 just stand up and say you wish to have it pulled.

14 The first item is approval of the minutes of
15 the February 23, and March 1, 2016 City Council
16 meeting. The second item is extension of contract for
17 vegetation management services. Item C is Award of
18 Contracts for the 2016 Sewer Collection System Cleaning
19 and Closed Circuit Television Inspection. Item D is

20 Amend Utility Agreement and Approve an Agreement for
21 the Relocation of the City's water Line necessitated by
22 the I-680 red top road interchange improvement project
23 within the City of Fairfield.

24 Item E is approval of the construction
25 management task order for the bus hub project. And

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1 Item F is reject the bids for the First Street
2 Promenade rail project.

3 And items to be polled? Seeing none. Seeing
4 none. Then I look for a motion to approve the entirety
5 of the consent calendar.

6 MALE SPEAKER: So moved.
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7 FEMALE SPEAKER: Second.

8 MAYOR PATTERSON: Call the roll, please.

9 FEMALE SPEAKER: Council Member, Campbell.

10 MR. CAMPBELL: Yes.

11 FEMALE SPEAKER: Hughes.

12 VICE MAYOR HUGHES: Yes.

13 MR. SCHWARTZMAN: Yes.

14 FEMALE SPEAKER: Strawbridge.

15 MS. STRAWBRIDGE: Yes.

16 FEMALE SPEAKER: And Mayor Patterson.

17 MAYOR PATTERSON: Yes.

18 So I'm just going to read a little prolog and

19 then we will go around. I'm just going to work from my

20 left to my right on ex parte. I suspect it applies to

21 everyone up here.

22 The instruction for this appeal will be as
23 follows. Staff will give a presentation followed by
24 Valero's presentation. And then we will be time for
25 Council's question.

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1 As noted in the staff report, the public
2 comment portion of this appeal is scheduled for
3 April 4. Under the Council rules, the public hearing
4 should not exceed one hour in length, but we expect
5 this hearing to continue for a couple of meetings.

6 So I'm only going to ask for questions of
7 clarification because this is a little different than
8 what we usually do.

9 Are there any questions of the Council on the
10 process?

11 Vice Mayor Hughes.

12 VICE MAYOR HUGHES: I just want to make sure I
13 understand the expectations for the questions from the
14 Council after the staff report.

15 Are we looking for process type questions or
16 are we looking for detailed questions?

17 MAYOR PATTERSON: Right now my question for
18 clarification is merely on the process. You'll have a
19 presentation on the staff report and a presentation by
20 the applicant, the appellant, and a presentation by the
21 chair of the Planning Commission.

22 And then either after that or some time in
23 between there if you need to ask a question, the
24 Council will be asking questions.

25 VICE MAYOR HUGHES: That's fine. And I

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1 understand that.

2 But after all the presentations it's an
3 opportunity for us to ask very specific project related
4 questions as opposed to just process related questions?

5 MAYOR PATTERSON: Correct.

6 VICE MAYOR HUGHES: Very good. Thank you.

7 MAYOR PATTERSON: Okay. Does the public
8 understand the process that we're using for this
9 meeting? Any questions? So this is just -- okay. Was
10 that a yes?

11 UNIDENTIFIED SPEAKER: (Inaudible.)
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12 MAYOR PATTERSON: Okay. Can you stand up,
13 again, please? And then you can come forward. And
14 this is a question of clarification only for the
15 process, not for the project.

16 MS. BURNT: My name is Karen Burnt.

17 MAYOR PATTERSON: Karen what?

18 MS. BURNT: Karen Burnt.

19 MAYOR PATTERSON: Okay. Thank you.

20 MS. BURNT: Thank you.

21 And I guess I'm addressing the Council.

22 My concern is that in the past we weren't
23 given appropriate notifications of what takes place as
24 far as meetings and when we're actually allowed to
25 speak and present.

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1 So this is a major concern because as I see
2 it, Valero, this is a huge issue that impacts the
3 entire city. And I'm just wondering, and I don't know
4 if this is the proper place to bring this concern up,
5 but how do you see the communication process working?

6 MAYOR PATTERSON: So let me -- I -- but you
7 are not confused about what tonight is, is that
8 porrect?

9 MS. BURNT: To be honest, I had to search the
10 website.

11 MAYOR PATTERSON: Okay.

12 MS. BURNT: I found the project information
13 under projects. I found City Council meetings, under

14 City Council.

15 MAYOR PATTERSON: Okay. So I understand the
16 comment, but you don't have any problem about what
17 we're doing tonight. Is that clear what we're doing
18 tonight?

19 MS. BURNT: I have the agenda here, yes.

20 MAYOR PATTERSON: Okay. Great.

21 So in terms of the other things, do you mind
22 talking to staff afterwards?

23 MS. BURNT: Okay.

24 MAYOR PATTERSON: And we will make sure that
25 your name shows up on the notification process and that

26

1 you are adequately notified.

2 MS. BURNT: Okay.

3 MAYOR PATTERSON: Okay. Thanks very much.

4 MS. BURNT: Okay. Thank you.

5 MAYOR PATTERSON: Thank you very much.

6 Anybody else needing to have a clarification
7 of what we're doing tonight? Okay.

8 So I'm going to start --

9 MALE SPEAKER: (Inaudible).

10 MAYOR PATTERSON: No. If you have a process
11 question now.

12 MR. CAMPBELL: Yeah. It's a pretty basic one.

13 And, you know, okay. We are doing a de novo appeal.

14 So that means anything can be brought in now. And

15 that's the first part.

16 The second part is, you know, I -- I have some
Page 49

17 concerns about the -- the Planning Commission's
18 decisions. However, you know, we can at some point
19 just say we agree or disagree with them or we can bring
20 in a completely different decision based on the de novo
21 process, right?

22 Because it worries me that, you know, I mean
23 they brought in something on preemption; you know, a
24 couple of them did. Well, that worries me.

25 But, you know, if we wanted to, you know, say

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1 we are either going to accept it or reject it and throw
2 out part, we can't do this under the processing system

3 BENICIA EXPEDITE.TXT
we have now for an appeal.

4 MS. McLAUGHLIN: That's correct. The hearing
5 that we'll do over the next couple meetings is a fresh
6 start, so it's de novo new. So you can everything
7 that's been presented to you. You can take into
8 consideration the evidence of the Planning Commission
9 or you can just disregard it.

10 MR. CAMPBELL: So ultimately this isn't really
11 necessary a vote on -- or the appeal of the Planning
12 Commission's decision. We can come up with just -- we
13 can put that completely aside and come up with our own
14 conclusions --

15 MS. McLAUGHLIN: Yes.

16 MR. CAMPBELL: -- under this particular
17 process.

18 MS. McLAUGHLIN: Yes. You can come up with

19 your own conclusions as long as it's based on the facts
20 in front of you.

21 MR. CAMPBELL: Okay.

22 MAYOR PATTERSON: Okay. So then that requires
23 a clarification.

24 Does that mean that somebody has to indicate
25 that all the record is incorporated by reference for

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1 this meeting?

2 MS. McLAUGHLIN: So if -- if it appears that
3 we have forgotten something, then yes, indicate that.

4 I think we incorporated the staff -- the Planning

5 Commission meeting in the transcripts. I think that's

6 all before you. But if there's something outside of
7 that that you want into the record, then it should be
8 cited.

9 MAYOR PATTERSON: Okay. Thanks for the
10 clarification.

11 UNIDENTIFIED SPEAKER: (Inaudible.)

12 MAYOR PATTERSON: On process only.

13 UNIDENTIFIED SPEAKER: (Inaudible.)

14 MAYOR PATTERSON: I'm sorry, but you will need
15 to come to the microphone so this is recorded.

16 MALE SPEAKER: (Inaudible) and what Tom
17 Campbell just asked. And I was wondering if -- is the
18 commission -- are you asking -- is the Council able to
19 usurp the Planning Commission's decision, the unanimous
20 decision? That's sort of what I was asking.

21 Because I was hearing that you can set it
Page 53

22 aside. If you can set it aside than you are usurping
23 that basic commissions.

24 Yes or no?

25 MAYOR PATTERSON: So why don't I have the city

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1 attorney respond.

2 MS. McLAUGHLIN: So yes, the City Council can
3 get aside the Planning Commission's decision. The
4 Planning Commission --

5 MALE SPEAKER: Set aside is that you usurp?

6 MAYOR PATTERSON: I'm sorry. You need to be
7 respectful and not --

BENICIA EXPEDITE.TXT
8 MALE SPEAKER: I'm just asking.

9 MS. McLAUGHLIN: Yes. So the City Council can
10 set aside the Planning Commission's decision. The
11 decisions the Planning Commission only final unless
12 they are appealed to -- they are only final unless they
13 are appealed to the City Council. In which case if
14 they are appealed to the City Council, it's this
15 Council's decision.

16 MAYOR PATTERSON: So the Planning Commission
17 is final unless it's appealed to the City Council. And
18 then obviously we rely on the record and we -- and you
19 heard the discussion earlier about incorporating by
20 reference if it's not cited in the staff report and
21 other reference points. So we have all the information
22 that has gone before us.

23 All right. Thank you.

24 Any other clarifying question on the process?

25 MR. CAMPBELL: Yeah.

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1 MAYOR PATTERSON: Yes, Council Member

2 Campbell.

3 MR. CAMPBELL: Just a real quick one.

4 At the last meeting before -- when the
5 Planning Commission voted, there were several documents
6 that were presented that aren't in, you know, these
7 right here, (indicating), and I haven't been able to
8 find them. You know, for example, the Stanford Mills
9 does (inaudible) as a matter of fact, was presented and
10 we got a copy of that. But there were a couple of

11 other things, something like 200 pages that was alluded
12 to that was presented on the last day and I was just
13 wondering --

14 MS. MCLAUGHLIN: Okay. I think we had a note
15 in the staff report referencing these documents are
16 available on the web. If we printed out all that for
17 you it would have been 20 feet of paper or something
18 close to that.

19 MR. CAMPBELL: Okay.

20 MAYOR PATTERSON: It is a problem because a
21 lot of them are not indexed so you have to go through
22 the long list, and I'm sure all of you appreciate how
23 hard that is. So recognized.

24 All right. So again, we're going to go,
25 starting with my left, we are going to talk on the

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1 information that we've received that's substantial or
2 advice that we've given that is substantial to the
3 project.

4 So starting on my left is with Council Member
5 Campbell with an ex parte.

6 MR. CAMPBELL: Okay. Well, I tried -- you
7 know, to talk to a lot of groups. No one would have
8 anything to do with me.

9 The only group I actually talked to was the
10 Benicians for a safe and healthy community and I had to
11 talk to them twice because the first time I was there
12 and they weren't. But that's the only group that I had

13 any contact with and pretty much the only people I've
14 had any contact with.

15 MAYOR PATTERSON: And did you -- did you give
16 information or did you receive information that is not
17 part of the record?

18 MR. CAMPBELL: No.

19 MAYOR PATTERSON: Really.

20 MR. CAMPBELL: It was basically information
21 that was, you know, part of, you know, the record that
22 had been produced for the Planning Commission.

23 MAYOR PATTERSON: Okay.
24 Council Member Shwartzman.

25 MR. SCHWARTZMAN: I have not had any

1 conversations with anybody on this particular topic.

2 I've been very careful to try to stay out of those

3 conversations so I could remain as impartial and

4 open-minded as possible.

5 MAYOR PATTERSON: So I can't walk into a store

6 without somebody talking to me. I have had no

7 substantive conversation with anybody nor have I given

8 advice that it would not be part of what's going on

9 here.

10 MS. STRAWBRIDGE: Okay. Let's see. This has

11 been going on a long time.

12 There have been several meetings at Valero,

13 but it was more updates on other things that the -- the

14 refinery is doing.

15 There was discussion about the crude by rail

BENICIA EXPEDITE.TXT

16 at that time, probably two different times. I also did
17 talk probably a year and a half ago with Mr. Soto, Jan
18 Cox Gulivich on their concerns about the project.

19 Having now read the volumes of the EIR and the
20 staff reports and that, there wasn't anything new that
21 came from those discussions.

22 MAYOR PATTERSON: Vice Mayor Hughes.

23 VICE MAYOR HUGHES: I was invited also to meet
24 with the Benicians for safe and healthy community. I
25 think we met a couple three weeks ago. And we had a

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1 great discussion. I was more in the listening mode
2 than anything else. And my understanding, my belief,
Page 61

3 is that the information that they shared with me was
4 clarification but is reflected in the public record.

5 MAYOR PATTERSON: Okay. So there you have it.

6 The -- the next item is one further thing,
7 just as an instruction, is we have learned by -- with
8 an excellent example of our Planning Commission. If
9 you are in agreement with something that you have
10 heard, you can raise your hand. And then any other
11 expression: No applause, no booing, no hissing because
12 it's very distracting and intimidating.

13 So again, the -- just if you agree, you can
14 raise your hand. I know that there's some veterans
15 back there because I saw them raising their hand when
16 Amy was at the podium.

17 So the rest of this is going to be set up by

18 BENICIA EXPEDITE.TXT
our staff. And who would like to start that off?

19 MR. KILGER: I will turn that over to Miss
20 Million.

21 MS. MILLION: Hi. Good evening.

22 So I wanted to start off tonight just
23 introducing the Council members to the consultants that
24 we have here who will help me giving some of the
25 presentations as well as being able to respond to some

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1 of the questions that you might have later this
2 evening.

3 So to my right we have Janice Scott and Cory
4 Barringhouse, both with ESA.

5 Across the dais we have Brad Hogin. He's a
6 contract attorney.

7 Sitting in the front row we have two members
8 of ESA. The first is Tim Rimpo. He is the consultant
9 for Air Quality and Greenhouse Gas Emissions. We also
10 have Jack Hutchinson of ESA with traffic. And Steve
11 Radis with MRS who conducted the risk analysis.

12 And then scanning earlier, I did see that
13 Valero had brought a few consultants that prepared some
14 of the reports tonight to just bring to your attention.

15 We have a representative from Fehr & Peers as
16 well. Fehr & Peers did the traffic study and ERM did
17 the health risk assessment.

18 So with that said, I will get started.

19 So as we mentioned, the appeal hearing
20 outline, so I had originally -- had outlined that the

21 staff would give a presentation and the Council could,
22 of course, question -- ask questions of staff before
23 the applicant gave their presentation and then the
24 Council's questions of the applicants here.

25 You can do that way or you can do it as talked

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1 about previously which is wait for both presentations
2 and then, of course, ask your questions.

3 MAYOR PATTERSON: So let's take a pause there.

4 MS. MILLION: Okay.

5 MAYOR PATTERSON: And let's poll the Council.

6 what would you prefer? would you like to

7 after the staff presentation ask your questions, or do
Page 65

8 you want to hear the whole thing and then ask questions
9 after that?

10 Preference?

11 UNIDENTIFIED SPEAKER: (Inaudible).

12 MAYOR PATTERSON: Go through everything.

13 we have one that's one Councilman Campbell in
14 agreement.

15 Okay. Yeah. Concurrence on the Council that
16 we will go through everything and then we will
17 backtrack with our questions.

18 MS. MILLION: Okay. Great. I think that
19 missions -- this process in one more slide, so
20 disregard that.

21 So this appeal hearing outline is essentially
22 for the entire process. So, of course, after all of

23 the questions from the Council we will have the public
24 comments, open and close and then Council deliberation
25 and decision.

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1 So for tonight's agenda we're going to be
2 focusing just on the staff presentation, the applicant
3 presentation and then, of course, Council questions and
4 then the Council will be selecting the future hearing
5 dates.

6 Public comment, as we mentioned, will not be
7 open tonight and will be open at the next meeting on
8 April 4th.

9 I apologize. A little cutoff on the top.

10 So there's four parts -- four major parts to
11 the presentation by staff tonight. I'm going to be
12 providing an overview of the project and an analysis in
13 the staff report.

14 The city's environmental consultants ESA will
15 be providing an overview of the EIR in the
16 environmental process.

17 The city's attorney will be providing an
18 overview of the project's legal issue surrounding
19 preemption.

20 I will then conclude with an overview of the
21 appeal. And then we will have the Chair of the
22 Planning Commission here who will be giving a
23 presentation on behalf of the Planning Commission's
24 decision. And then we will quickly bring it back to
25 staff for a quick recap.

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1 So I'll go ahead and get started.

2 The refinery is centrally located in the
3 Benicia Industrial Park. And the main office is
4 located off East Second Street giving the property the
5 3400 Second Street address.

6 The project site is where the location of the
7 new unloading rack and rail spurs will be is located on
8 the northeast side near Park Road and Sulphur Springs
9 Creek.

10 The project's main components are a change in
11 the shipment method of up to 70,000 barrels per day of
12 crude oil to be delivered by rail cars rather than by

13 Marine vessel.

14 Installation of a new 1500-foot long unloading
15 rack capable of off-loading two rows of 25 crude oil
16 tank cars. Construction of two parallel off-loading
17 rail spurs to access the tank car and loading rack
18 along the parallel departure track to store tank cars
19 in preparation for departure.

20 A total of 8,880 track feet of new track will
21 be placed on the refinery property. There will be the
22 installation of approximately 4,000 linear feet of
23 16-inch diameter of crude oil pipeline, all of which
24 will be above ground; an associated components of pump
25 infrastructure between the loading rack and existing

1 crude oil supply piping.

2 There will be a removal of 1800 feet of
3 earthing containment berm and replacement with a new
4 eight-foot wall concrete berm approximately 12 feet
5 west of the existing berm.

6 Relocation of existing fire wall pipeline,
7 compressor station and associated railroad
8 infrastructure. Relocation and removal of an existing
9 ground water monitoring well along Avenue A, and
10 construction of a service road adjacent to the proposed
11 unloading rack.

12 So to orient yourself to this slide, Park Road
13 and Interstate 680 would just be to the -- on the left
14 side of that image. And Sulphur Springs Creek runs

15 along the bottom edge.

16 The next four slides that I am presenting are
17 going to be in the same orientation. I just wanted to
18 help you understand where the new switching action will
19 take and where the new unloading rook will be.

20 So, again to kind of help orient you. What
21 I've done is I've created an aerial photograph. And
22 then the next slide will be a set of the plans.

23 Obviously, the set of plans are very large and
24 so they are a zoomed in version, so I was trying to
25 help orient you, sort of what the plans are trying to

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1 show and where on the side they are trying to show

2 them.

3 So the first area of the refinery, which is in
4 the blue box on this corner, is where the existing
5 tracks are. It shows the area of the tracks -- track
6 improvements necessary to handle the switching activity
7 for the unloading rack.

8 So there are three existing tracks currently
9 used for Valero's operations for butane and propane
10 unloading. A new track is added to this area to
11 accommodate all switching activity associated with the
12 unloading of crude oil cars on site.

13 The second -- the second area is the area for
14 the new unloading rack for the untank cars. Sorry that
15 didn't switch.

16 So that will be that blue -- the new blue box.

17 And as you can see from where the new unloading rack is
 Page 73

18 going in right here, there is a new pipeline that will
19 be installed and then it will connect to the existing
20 pipeline.

21 so that's the plan view of this.

22 All this new track is associated with the
23 unloading rack. There will essentially be two tracks
24 on either side of the unloading rack, and we'll move to
25 an elevation which helps explain that a little bit

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1 better.

2 so the unloading rack platform walkway will be
3 approximately 13 feet above grade and is located near

4 the northeastern property line adjacent to Sulphur

5 Springs Creek as shown on the previous slides.

6 The 1500-foot long unloading rack would

7 consist of 25 60-foot long segments. The unloading

8 rack and new track would allow for the 50 car train to

9 split into two with 25 tank cars on either side of the

10 unloading rack.

11 Talk a little bit about the new lighting.

12 So each 60-foot long segment would have an

13 aluminum pole with four LED lighted lights mounted 12

14 feet above unloading rack platform walkway, and two LED

15 pendant fixtures mounted underneath the platform eight

16 feet above the grade.

17 Walkways extending over the rail spur would

18 include six station mounted LED fixtures along the

19 walkway and stairs, and four at the stairway landings

20 at each end of the unloading. Eleven stantion mounted
21 LED lights would be mounted eight feet above the 11
22 monitoring stations that would evenly spaced along the
23 length of the unloading rack.

24 Eight stanchion mounted at eight feet above
25 grade would be installed at the pumping station. In

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1 addition, two pole mounted LED lights would be located
2 18 inches above grade to light the track.

3 As detailed in the staff report and will be
4 explained later along in the presentation, the city is
5 preempted from regulating the railroad due to federal
6 preemption. Therefore, the city is legally prohibited

7 from denying the Use Permit based on rail related
8 impacts.

9 As such, staff has reviewed the proposed
10 project for consistency with the zoning ordinance, the
11 general plan and Use Permit findings with those
12 parameters, and focused on the onsite improvements.

13 The property is located in the general
14 industrial zoning district. The general industrial
15 zoning district requires a Use Permit for oil and gas
16 refinery including major alterations to an existing
17 refinery such as the crude by rail project.

18 Construction associated with the proposed
19 project will be within the existing development area of
20 the refinery near the northeast edge.

21 The development portion of the project which
22 includes the unloading racks, the tracks, the

23 containment wall will all meet the setback and height
24 requirements of the Benicia zoning ordinance.

25 The height of the new unloading racks lighting

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1 and walkway measure 23 feet above grade which is well
2 below the 75-foot height limit for the IG zoning
3 district.

4 The proposed project does not require
5 additional parking and the refinery has ample parking
6 to accommodate both the permanent employees and
7 contractors associated with this project.

8 The addition of approximately 20 permanent

9 workers or contractors as part of this project will not
10 change these determinations.

11 The refinery is located also in the general
12 industrial land use category of the general plan. The
13 general plan states that the general industrial land
14 use category is the least restrictive of the three
15 industrial categories is intended to allow a great deal
16 of flexibility for industrial development.

17 Over half of the Benicia Industrial Park is
18 designated general industrial. This includes nearly
19 all of the Industrial Park north of interstate 780,
20 east of East Second Street. This category includes
21 manufacturing, assembling and packaging of goods and
22 product from extracted raw materials previously
23 prepared and related industrial and commercial
24 services.

25 Staff identify 11 general plan goals which

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1 covered a wide variety of topics that are important to
2 the city and which are applicable to the project.

3 These goals encourage the protection of existing
4 industrial businesses, encourage new industrial
5 businesses and at the same time encourage community
6 health and safety through the use of buffer zones
7 between industrial and residential uses as well as
8 making planning policy decisions based on protecting
9 and enhancing public safety.

10 The goals often pertain to protection of the
11 scenic view and maintaining a certain level of service

12 on all Benicia streets.

13 The project does not need to be consistent
14 with every policy of the general plan to still be found
15 consistent with the general plan.

16 The project must only be in harmony with the
17 applicable plan and be consistent with that plan.

18 Because the policies of the general plan reflect a
19 range of competing interests, staff and the city
20 Council must weigh the balance of the plan's policies
21 in applying them.

22 The project must be consistent with the plan's
23 purpose. Staff finds the aspects of the project in
24 which the city has the authority are consistent with
25 the purposes of the general plan.

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1 The draft resolutions provided to you by staff
2 identify 14 conditions of approval. Nine of the
3 conditions are associated with compliance with the
4 applicable regulations for construction operations
5 including compliance with the Benicia Municipal Code,
6 building code and storm water management.

7 This also includes compliance with the
8 mitigation measures and the mitigation monitoring and
9 reporting program.

10 In addition, there are conditions of approval
11 associated with the compliance with the city's
12 operational aid agreement for emergency responses, as
13 well as supporting emergency response to the

14 installation and maintenance of a life via video camera
15 at the Park Road rail crossing.

16 This will provide a feed directly back to
17 emergency dispatch. The purpose is that in a chance
18 that a 911 call is received at the exact same time that
19 a train is crossing Park Road, dispatch can direct
20 emergency responders to use an alternative route.

21 As with any Use Permit the Council must be
22 able to make required findings for a Use Permit. The
23 refinery as a use that manufacturers fuel by processing
24 raw materials is consistent with the purposes of the IG
25 zoning district, and that the project will enhance the

1 refinery's ability to fulfill that purpose.

2 The project would consist of changes and
3 improvements to an existing industrial use in an
4 existing industrial district.

5 The project's improvements would be constructed
6 within the existing refinery footprint, and as
7 mitigated a condition would not -- would meet the
8 city's established performance standards.

9 The project would support the refinery's
10 ability to maintain competitive in the marketplace and
11 into the future. It would provide an estimated 120
12 temporary construction jobs and approximately 200
13 permanent full-time jobs thereby strengthening the
14 city's economic base.

15 The addition of no more -- I'm sorry. I'm not
16 going to repeat that question. Sorry. I'll move on.

17 As outlined in the staff report and noted
18 early, staff found that the project would be consistent
19 with all applicable goals and policies of the general
20 plan.

21 For areas of impact within the city's purview,
22 the project would not be detrimental to the public's
23 safety, health and welfare because the project -- the
24 impacts of the project would be mitigated by measures
25 that are incorporated into the project or that are

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1 required by conditions of approval.

2 So before I hand it over to the consultants, I

3 just wanted to talk a little bit about environmental

4 review in general.

5 This list, obviously, is a very simplified
6 outline of the environmental process. So in the State
7 of California we have the California Environmental
8 Quality Act referred to as CEQA.

9 So the first step in CEQA is determining
10 whether or not a project is a project. And CEQA
11 defines what constitutes a project and what is subject
12 to CEQA.

13 So once you determine that a project is a
14 project under CEQA and CEQA applies, essentially your
15 next step is to determine whether or not it is eligible
16 for an exemption.

17 So an exemption is typically used for small
18 projects where projects can be asserted, that they will

19 be seeing little or no environmental impacts.

20 The next step is an initial study. If it
21 can't be exempt, an initial study, essentially what it
22 does, it identifies potentially significant impacts.

23 The environmental impact report is the final
24 stage in the CEQA process if it's required.

25 Essentially the environmental impact report is --

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1 remained is necessary if a potential significant effect
2 remain. If the applicant does not agree to mitigations
3 which were identified through the initial study process
4 or that there a fair argument, there is substantial
5 evidence that the project may have a significant

6 effect.

7 So that is CEQA 101 and three bullet points.

8 So I'm just going to provide a quick overview
9 of the environmental review timeline for this
10 particular project.

11 So the city retained ESA, an environmental
12 planning firm to prepare an initial study. A mitigated
13 declaration was a result of that study, and it was
14 circulated for 30 days in June of 2013.

15 In review of all the public comments that were
16 received during that time based on a couple factors
17 including the fair argument standard that I had just
18 mentioned, the city decided to prepare an EIR.

19 The city held a scoping meeting and a scoping
20 session through August, September 2013 and then
21 prepared a Notice of Preparation which was sent to the

22 State Clearing House.

23 The State Clearing House is a division of the
24 governor's office of planning and research and also
25 sent that to state and regional agencies listing their

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1 input on environmental document.

2 So after the scoping, what was next is we
3 prepared the draft EIR. The draft EIR was released on
4 June 17, 2014. It was circulated for 90 days. The
5 Planning Commission heard verbal comments during three
6 regular meetings in July, August and September of 2014.

7 Based on the comments received on the draft
8 EIR, the city circulated a published revised draft EIR,

9 and I'm not going to go into the specifics of that
10 because ESA is going to include some of that detail as
11 to what happened between the draft EIR and the revised
12 draft EIR.

13 So the revised draft EIR was released on
14 August 31, 2015 for 60 days, and the Planning
15 Commission heard public comments on that as well.

16 The final EIR was released on January 5 of
17 this year, and the Planning Commission over four
18 nights, from February 8 to February 11, heard public
19 comments and, of course, made a decision which brought
20 us here tonight.

21 So with that I will turn it over to ESA for
22 review of the environmental.

23 MR. BARRINGHOUSE: Thank you, Amy.

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My name is Cory Barringhouse. I'm with ESA.

24

25 And as Amy indicated, ESA has been supporting the city

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1 in preparation of the EIR for the Crude by Rail
2 project.

3 Tonight we will be presenting an overview of
4 the findings made in the final EIR. Before getting
5 into the details of the environmental analysis, this
6 slide -- I'm sorry. This slide represents the EIR's
7 conclusions regarding the potential impact of the
8 proposed project.

9 Simply stated, there are eight potential
10 impacts identified in the EIR that could be reduced to

11 a less than significant level through incorporation of
12 mitigation measures.

13 There are 11 other impacts which are all
14 related to the rail transport of the crude oil to the
15 refinery that are determined to be significant and
16 unavoidable.

17 Amy describes in detail the proposed physical
18 construction of the unloading rack and other
19 improvements on the refinery property.

20 The EIR analyzed the potential impacts of the
21 project there in the vicinity of the refinery, as well
22 as along the rail route between the refinery and a
23 crude oil trains point of origin which is referred to
24 as uprail in the EIR.

25 Based on information provided by Valero, the

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1 EIR assumed for purposes of analysis that all project
2 related crude oil would be routed through Roseville.

3 Accordingly, the analysis focused on the lines
4 leading from Roseville toward the California border and
5 to points beyond along one route to the north through
6 Oregon which is the red line, and two routes to the
7 northeast through Nevada, the blue and purple lines on
8 the slide.

9 The route from Roseville to Benicia is shown
10 as the green line. A little bit hard to see.

11 This figure shows the primary rail trans --
12 primary rail transportation network in California. The
13 blue lines are routes under Union Pacific ownership,

14 and the red lines are owned by BNSF. This figure shows
15 additional rail routes that connect to Roseville from
16 the south.

17 On the basis of federal preemption, neither
18 the refinery nor the City of Benicia has the authority
19 to dictate or limit routes selected by Union Pacific.

20 Therefore, it is possible that project related
21 crude oil could reach the refinery through Roseville
22 using routes from southern California which was also
23 considered in the analysis.

24 This figure shows the Union Pacific Crude Oil
25 Transport Network extending beyond California to the

1 rest of the United States. The blue lines are tracks
2 owned by Union Pacific, and the other colors are lines
3 owned by BNSF, Canadian Pacific and Canadian National.
4 The brown areas represent important shell formations
5 where crude oil is located.

6 Crude oil shipments from these sources are
7 more likely to use Union Pacific's crude transport
8 system for two main reasons.

9 Number one, Union Pacific already provides
10 rail access to the refinery. And two, Valero has
11 indicated that Union Pacific would serve the project.

12 However, it is theoretically possible due to
13 track sharing agreements between freight railroads,
14 that crude oil could be transported to the refinery on
15 tracks owned by other companies in North America.

16 This slide shows the extent of the North
17 American freight rail system. Union Pacific is shown
18 in yellow, has an extensive network in the western
19 United States. Other lines in western North America
20 include those mentioned before, BNSF and Canadian
21 National and Canadian Pacific.

22 The EIR identified eight potentially
23 significant impacts, all of which are non-rail related.
24 It could be reduced to a less than significant level by
25 the application of mitigation measures described in the

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1 EIR.

2 For example, impacts to air quality during

3 construction of the project at the refinery would be
4 reduced to less than significant through implementation
5 of standard Bay area Air Quality and Management
6 District Control Measures.

7 Regarding biological resources. Nesting birds
8 are unlikely to occur in the project area; however,
9 they could exist in the adjacent Sulphur Springs Creek
10 corridor, and construction of the project may adversely
11 affect these birds.

12 Mitigation has been identified to avoid
13 construction activities during the nesting season, if
14 feasible. And if not, protective buffers would be
15 implemented to prevent disturbance of any nesting
16 birds.

17 Regarding potential seismic impacts.

18 Mitigation would require Valero to design the rail spur

19 to reduce affects related to (inaudible) of underlying
20 soils during an earthquake.

21 Valero also would be responsible for regular
22 track inspection and monitoring after incidents with
23 the potential to damage the tracks.

24 Preparation of a storm water management plan
25 would reduce water quality effects during project

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1 construction to a less than significant level.

2 The EIR also determined that implementation of
3 the project would result in 11 significant and
4 unavoidable rail related impacts. Five in air quality,

5 two in greenhouse gas emissions, one in biological
6 resources, and three in hazards and hazardous
7 materials.

8 MS. SCOTT: Let's dive into some of the
9 specifics about those 11 significant unavoidable
10 impacts that Cory and Amy both have mentioned.

11 As Cory mentioned, there are five significant
12 unavoidable impacts, all of which are related to rail.
13 Transport that affect air quality.

14 Project emissions within the Bay area basin
15 would be less than significant. Emissions from
16 locomotives transporting crude oil tank cars would
17 exceed thresholds of other air districts located along
18 potential rail routes farther away from the basin.

19 The exceedances of criteria pollutants in
20 ozone precursors including knox, also would result in

21 cumulatively considerable impacts in those uprail air
22 districts and conflict with their respective air
23 quality plans.

24 Tim Rimpo is here this evening. Tim has 30
25 years of experience evaluating air quality and GHG

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1 impacts. He's the senior technical lead for the air
2 quality and GHG sections of the EIR for this project,
3 and he would be happy to answer questions about air
4 quality and GHG.

5 Speaking of greenhouse gas emissions.

6 Emissions of greenhouse gases would exceed the
7 threshold level of 10,000 metric tons of carbon dioxide

8 equivalence per year. Again, this would be related
9 primarily to locomotive transport.

10 Greenhouse gas exceedance also would trigger
11 another significant unavoidable impact because the
12 project would not be consistent with greenhouse gas
13 emission reduction targets set by the state.

14 Regarding biological resources as shown on the
15 figures presented earlier, possible project related
16 crude oil train routes extend throughout North America.
17 The increased frequency of trains along these possible
18 routes would result in increased potential for wildlife
19 collisions, potentially resulting in injuring or
20 mortality, especially in sensitive areas where habitat
21 is particularly likely to attract wildlife species.

22 Many of the comments on the draft EIR focused
23 on concerns about possible impacts to people during a

24 train accident. In order to evaluate potential project
25 related risks to the public, a quantitative risk and

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1 consequences analysis was prepared.

2 This analysis concluded that impacts would be
3 significant for Valero's proposed tank cars as well as
4 for the tank cars that were required by the U.S.
5 Department of Transportation regulations that were
6 issued last year. These impacts would also be
7 significant under cumulative conditions.

8 Potential wild land fire impacts which could
9 result from derailment in remote areas along the

10 potential rail routes also were determined to be
11 significant unavoidable.

12 Further, the EIR determined that significant
13 unavoidable secondary effects resulting from train
14 incidents or accidents involving a release such as a
15 spill, fire or explosion, would occur biological
16 resources, cultural resources, geology and water
17 quality.

18 Steve Radis is here this evening as well.
19 Steve has more than 30 years of experience, including
20 expertise in risk and consequence analysis, fire and
21 explosion dynamics and hazard evaluation. And he would
22 be happy to answer any questions you have about the
23 hazards analysis.

24 Because traffic and potential effects of the
25 project on local conditions in emergency access are of

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1 particular concern to the community, we wanted to
2 discuss briefly the conclusions that the EIR on these
3 important topics.

4 The project would add up to four train
5 crossings of Park Road per day. Two inbound with crude
6 oil and two leaving. Each crossing with Park Road
7 would last approximately eight minutes.

8 The delay caused by these trains would be less
9 than the delay caused by existing trains under baseline
10 conditions. Although vehicles could back up on Park
11 Road to Bay Shore Road and on to the I-680 off-ramp
12 during a project train crossing, cues would not extend

13 on to the main line portion of I-680. Therefore, the
14 EIR determined that this impact would be less than
15 significant.

16 Jack Hutchinson is with us this evening as
17 well. Jack is a senior transportation engineer, a
18 registered traffic engineer in the State of California,
19 and has 39 years of experience, including and planning
20 project related impact analysis.

21 Jack was a senior technical lead for the
22 traffic analysis and the EIR for this project and can
23 answer questions that you might have about traffic.

24 Regarding emergency access to areas in the
25 vicinity of the refinery, there's a low probability

1 that an emergency incident would occur in the areas
2 northeast of Park Road intersection during a project
3 train crossing.

4 The draft EIR recommended mitigation to
5 address this potential impact. However, this was
6 superceded by an operational agreement -- an
7 operational aid agreement that was executed by the city
8 and Valero in December.

9 The operational aid agreement includes a
10 forcible actions that would reduce impacts to a less
11 than significant level.

12 Response by Valero's Fire Department to all
13 off site emergencies during a train blockage of Park
14 Road as required by the agreement would help keep

15 response times to the Benicia Industrial Park to
16 acceptable levels.

17 In summary, the EIR identifies significant
18 unavoidable impacts to 11 of the topics addressed in
19 the CEQA guidelines Appendix G which we used as
20 significance criteria for this project.

21 However, because each results from a rail
22 transport related impact, potential mitigation measures
23 to reduce the effects are preempted by federal law.

24 According to CEQA guidelines section 15364,
25 feasible means capable of being accomplished in a

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1 successful manner within a reasonable period of time

2 taking into account economic, environmental, legal,
3 social and technological factors.

4 Further, if the lead agency determines that a
5 mitigation measure cannot legally be imposed, the
6 measure need not be proposed or analyzed.

7 Instead, the EIR may simply reference that
8 fact and briefly explain the reasons underlying the
9 lead agencies determination.

10 Mitigation measure that are beyond the lead
11 agency's powers to impose or enforce are illegally
12 infeasible.

13 Here, because of federal preemption, the
14 mitigation measures that could reduce the rail related
15 impacts were determined to be legally and feasible.

16 Because no feasible mitigation is available, the rail
17 related impacts costs by the project remain significant

18 and unavoidable.

19 Thank you.

20 MS. MILLION: Thank you, Jan and Cory.

21 At this point, I'm going to turn it over to
22 the city attorney, Miss McLaughlin.

23 MS. McLAUGHLIN: All right. So I am going to
24 introduce Brad Hogin who is our outside counsel
25 assisting us with this project.

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1 I just wanted to take a few words here and
2 remind folks that we hired Mr. Hogin through a
3 (inaudible) process. We submitted an RFP had a bunch
4 of attorneys respond to it and we selected him based on
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5 him being the most capable to advise us in this
6 project.

7 And I think maybe that got a little bit lost
8 in the Planning Commission hearing and some people
9 were, I think, a little bit abusive. So can we remind
10 people not to abuse the person, but contest the ideas
11 if they feel the need.

12 So with that, I'd like to introduce Brad
13 Hugin. He will talk to you about preemption.

14 MR. HOGIN: Good evening, Madam Mayor, members
15 of the City Council.

16 I'm going to talk about the preemptive effect
17 of Interstate Commerce Commission Determination Act and
18 its application of preemption to the project that is
19 before you.

20 BENICIA EXPEDITE.TXT
I am -- do I have my slides up? There we go.

21 No, that's not it.

22 FEMALE SPEAKER: Look forward. Point it on
23 the -- there you go.

24 MR. HOGIN: Okay. Where do I have to point
25 it? Toward that computer there?

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1 FEMALE SPEAKER: Yeah.

2 MR. HOGIN: Okay. I'm going to talk about the
3 staff's conclusion and how we got there. The
4 conclusions are, as you see on the slide in front of
5 you, that is to say CEQA does apply to the onsite
6 operations of the proposed project by Valero,

7 specifically the unloading rack that Valero proposes to
8 construct and operate.

9 The city has decided to disclose impacts from
10 rail operations under CEQA. And as can be seen from the
11 EIR and from the discussion, there has been extensive
12 analysis of impacts that would result from rail
13 operation in the areas of air quality, safety,
14 hazardous materials, noise and so on.

15 However, we have concluded that any attempt by
16 the City to impose mitigation measures that are
17 designed to reduce or void any impacts from rail
18 operations would be preempted by the ICCTA, also known
19 as ICCTA.

20 And, finally, by the same token, the City
21 Council cannot deny the permanent application based on
22 the rail impacts.

23 So those are the basic principles and
24 conclusions that we have reached. I think that there
25 are some lawyers that have submitted some comments to

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1 the Planning Commission during that process that have
2 attempted to muddy the waters to some degree.

3 I don't think that the key issues here are
4 unclear. I think they are rather clear and straight
5 forward and easy -- easy to grasp.

6 So first, just the two slides -- two or three
7 slide overview of preemption under ICCTA.

8 ICCTA says that the Surface Transportation
9 Board, which is federal agency, has exclusive

10 jurisdiction over rail operations.

11 And what that means is that the City of
12 Benicia cannot regulate rail operations. And rail
13 operations -- and any other city or state government
14 because the Surface Transportation Board's ability to
15 regulate is exclusive.

16 The jurisdiction is very broad, but it covers
17 not only rail operations by which I mean the actual
18 operation of a train on rail lines. It also covers the
19 operation of ancillary facilities which would include
20 things like warehouses, transloading facilities whereby
21 goods are transferred from a train to another form of
22 transportation such as a truck, docks and so on, as
23 long as those ancillary facilities are operated by the
24 railroad.

BENICIA EXPEDITE.TXT
And there have been many, many cases since

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1 ICCTA was adopted in 1996 to consider the scope of
2 preemption under ICCTA and the provision that I just
3 described.

4 And this particular quote has come up time and
5 time again in 22 separate published -- separate
6 decisions, published decisions. It's difficult to
7 imagine a broader statement of Congress' intent to
8 preempt state regulatory authority over railroad
9 operations.

10 I should say, also, it's important -- I think
11 it's very helpful to understand the purpose of the

12 ice -- the ICCTA's preemption provision. It's
13 basically to avoid a situation where a railroad which
14 operates all over the country is going to be subject to
15 different requirements in every individual jurisdiction
16 that it goes through.

17 So a railroad, you know, doesn't want to be
18 subject to one requirement in the state of New Jersey
19 and another in New York and another in Albuquerque,
20 New Mexico, and another in Sun Valley, Idaho or, for
21 that matter, Benicia, California.

22 So that's the basic purpose. And I think
23 whether one wishes the city had authority over rail
24 operations or not, at least one can understand the
25 basic purpose and how Congress arrived at its decision

1 to give the Surface Transportation Board exclusive
2 authority over rail operations.

3 There are two general types of preempted
4 regulations. The first one is the imposition of a
5 permitting scheme on rail operations.

6 And that's what we have here. Valero has
7 applied for a permit to conduct operations that will
8 involve the use of railroad and delivery of materials
9 to Valero's refinery by railroad.

10 And CEQA is related to that. CEQA is
11 triggered by the decision on the permit requirement.

12 The second type is -- I'll just briefly
13 mention requirements that have the effect of governing
14 or managing rail operations.

15 And so this would be a case where the city
16 wanted to adopt an ordinance that would regulate the
17 extent to which grade crossings could be blocked by
18 trains or the city wanted to adopt an ordinance that
19 would regulate noise from trains and its impact on
20 residents. Or the city wanted to adopt an ordinance
21 that would regulate emissions from locomotives.

22 Those fall in the second category. But here I
23 want to be clear that we're talking about preclearance
24 requirements or put another way, permitting -- the
25 permitting scheme that the city has set up under the

1 BENICIA EXPEDITE.TXT
Municipal Code and required a Use Permit.

2 So that's the very brief overview of the
3 ICCTA.

4 Now I'm going to talk about the conclusions
5 that we have reached after looking at this very
6 carefully.

7 First conclusion. Valero took the position,
8 among others, during the process before the Planning
9 Commission that the city is preempted even from
10 reviewing or permitting onsite operations.

11 And that is incorrect. We do not agree with
12 that and think it is not consistent with the principles
13 and cases that have applied the ICCTA preemption
14 provision.

15 It only applies -- preemption only applies to
16 ancillary facilities that are owned or operated by the

17 railroad or a private party is acting as an agent for
18 the railroad in operating the ancillary facility.

19 Here Valero is going to own and operate the
20 unloading rack onsite; therefore, the city's permitting
21 process and the California Environmental Quality Act
22 properly apply to the unloading rack.

23 Now let me be -- give some specific examples
24 of what I mean by that.

25 If the city were to determine that the

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1 operation of the unloading rack onsite would impose
2 undo noise impacts on neighbors across the street, the
3 city could regulate that through its permitting

4 process.

5 Or if the city determined that the operation
6 of the unloading rack would impose toxic air emissions
7 on residents across the street, the city could regulate
8 those impacts pursuant to its permitting scheme.

9 However -- so in this case, it is Valero's --
10 at least that particular view expressed by Valero is
11 not correct.

12 So the environmental analysis here has
13 proceeded to analysis onsite impacts and presented to
14 the -- present the issues to the Planning Commission of
15 the City Council in a way that assures that the city
16 does have the authority to address any impacts from
17 onsite operations.

18 However, to the extent that the city wants to
19 use its permitting scheme to regulate and control

20 impacts from rail operations, from the operation of the
21 railroad, all of those efforts would clearly be
22 preempt.

23 For example, the city cannot impose mitigation
24 measures or require alternatives that are designed to
25 reduce or avoid impacts from rail operations.

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1 Specifically those impacts would be air quality impacts
2 from locomotive emissions, safety and hazardous
3 materials impacts based on the accidental prospect of
4 an accidental release, fire and explosion of crude oil
5 from one of the trains that Valero -- that will travel

6 to the Valero refinery, noise impact from rail
7 operations and so on.

8 In addition, the city would be preempted from
9 denying the permit based on rail operations, which is
10 the same corollary because that would have the effect
11 of imposing regulatory authority on rail operations.

12 And finally to the extent that CEQA requires
13 the city to adopt the statement of overriding
14 considerations before approving a project that will
15 have significant unavoidable effects, the application
16 of that requirement would be preempted as well.

17 So, in other words, the city has before it an
18 EIR. All of the significant unavoidable impacts
19 identified in the EIR relate to rail impacts. So the
20 city would be preempted from saying we're not going to
21 approve this project because we find that the benefits

22 of the project do not outweigh the significant and
23 unavoidable impacts.

24 so basically in a nutshell, the city can't
25 base really any of its decisions on a desire or an

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1 attempt to control or regulate any impacts that result
2 from rail operations.

3 Now the project components and particularly
4 some of the lawyers have taken the position that well,
5 unlike many cases under ICCTA, the applicant here is
6 Valero, a private party. The applicant here is not
7 Union Pacific who is a rail carrier.

8 But that doesn't make any difference. If you

9 look carefully at the case law, you will see that the
10 city is preempted from regulating rail operations
11 either directly by attempting to impose permitting
12 requirements on a rail carrier, like Union Pacific, and
13 also the city is preempted from regulating impacts from
14 rail operations indirectly by imposing a permitting
15 scheme on a shipper -- which is what Valero is the
16 context of the ICCTA, Valero is considered a shipper --
17 the city would be preempted from regulating rail
18 impacts indirectly by imposing requirements on Valero
19 in a permitting scheme and thereby indirectly
20 attempting to regulate rail impacts.

21 So let me give you some specific examples from
22 the cases. And these are -- these are the two key
23 cases holding that the cities may not attempt to impose
24 requirements -- attempt to regulate rail impacts by

25 imposing requirements on shippers as opposed to rail

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1 carriers.

2 In the Alexandria case the city attempted to
3 impose a permitting scheme on a private trucking firm
4 that was serving a transloading facility that it was
5 owned and operated by the railroad.

6 MAYOR PATTERSON: So Mr. Hogin, I -- just as a
7 clarification.

8 So the one -- is that a court decision and is
9 there a citation to that, and then, STB, the Surface
10 Transportation Board an opinion?

11 MR. HOGIN: That is correct.

12 MAYOR PATTERSON: 35749?

13 MR. HOGIN: That is correct.

14 These -- both of these, the Alexandria

15 decision is a court decision. I don't have the

16 citation off the top of my head. It is in the EIR, the

17 full citation to that case; it's in the appendix that

18 discusses preemption.

19 And the winchester case is a decision issued

20 by the Surface Transportation Board. And it does not

21 have the same precedential effect that a court decision

22 would have; however, it is considered very persuasive

23 authority under federal law because the courts give

24 strong deference under the Chevron -- the well known

25 Chevron doctrine established by the Supreme Court a

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1 long time ago that agencies will defer -- I'm sorry --
2 courts will defer to reasonable interpretations made by
3 an agency of the statute that they are intrusted with
4 implemented.

5 okay. So it's not as strong precedence as a
6 court decision would be, but it is very strong
7 precedent.

8 Does that answer the question?

9 MAYOR PATTERSON: (No audible response.)

10 MR. HOGIN: So in the Alexandria case, the
11 court considered an ordinance that regulated private
12 trucks that were coming and going from a transloading
13 facility that was owned and operated by the rail

14 carrier, and the court found that even though the
15 requirements were imposed on the private trucking firm
16 rather than the rail carrier, they were still preempted
17 because they represented essentially an indirect
18 attempt to affect and regulate what the rail carrier
19 was doing.

20 Similarly, in the winchester case, a city
21 tried to exercise land use authority over a section of
22 rail track that a shipper owned on its own property
23 that was connected to the rail system. And the city
24 attempted to justify that regulatory authority on the
25 grounds that that length of track was owned by the

1 shipper, the private property, not the rail carrier,
2 and the court rejected that and said what matters that
3 you are regulating rail impact. It doesn't matter
4 whether the requirements fall on shippers or whether
5 the requirements fall directly on the rail carrier as
6 long as you are attempting to regulate rail impacts,
7 impacts from rail operations that is preempted.

8 So here is a quote from the winchester
9 decision and get the -- so you can read it.

10 The winchester decision citing and
11 characterizing the Alexandria decision. And for the
12 proposition -- and this is about five lines down from
13 the top of the highlighted excerpt.

14 The city cannot seek to regulate interstate
15 commerce indirectly by regulating trucks that would use

16 the carriers transload facilities; otherwise, states
17 and localities could engage in (inaudible) regulation
18 in the interstate freight rail network under the guise
19 of local regulations directed at shippers who would use
20 the network and thereby create the patch work of
21 conflicting local regulations that Congress sought to
22 avoid in the Interstate Commerce Act.

23 I think that's a good, concise summary of the
24 principle and the concern.

25 So, these are the cases that were cited by the

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1 lawyers who, in my view, muddied things up. These were
2 cases where courts and/or the Surface Transportation

3 Board upheld a regulation by a local agency that was
4 imposed on a shipper as opposed to a rail carrier, but
5 what makes these cases different from the last -- the
6 prior cases that I cited, is that in these cases, the
7 city was not attempting to address rail impacts, the
8 cities were attempting to address local impacts.

9 So, for example, the West Palm Beach case the
10 court held that a zoning ordinance that prohibited a
11 particular type of facility in a residential zone,
12 which was intended to ensure land use compatibility
13 between the facility and the neighborhood was not
14 preempted. But in that case they were not attempting
15 to regulate or permit or address in any way impacts
16 from rail operations.

17 In the Babylon case, same thing. The
18 Newington case, same thing. And the Newington case was

19 a Surface Transportation Board decision so you can see
20 that the project components have also cited Surface
21 Transportation Board's decisions as being, you know,
22 very persuasive authority in having a certain type of
23 precedential effect.

24 But in the Newington case, the railroad tried
25 to argue that even though the city is applying this

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1 zoning to our -- to the shippers transloading facility,
2 they are only doing that as a pretext. And really what
3 they're concerned about are the fact that a lot more
4 trains are going to be rolling through their city.

5 And the court did not buy that. The court
Page 133

6 said on its face, this is the zoning regulation that is
7 attempted to ensue land use compatibility between the
8 onsite transloading facility operated by a shipper and
9 the neighborhood.

10 So, again, these cases stand for the
11 proposition -- these case do not stand for the
12 proposition that the city can address and regulate rail
13 impacts through a permitting scheme, these case stand
14 for the proposition that the city could regulate
15 impacts from the unloading rack here in Benicia on the
16 Valero site.

17 The final issue that we need to address is --
18 and this is -- this one -- of all the issues, this one
19 is -- is not necessarily black and white. It's not
20 necessarily been clearly decided.

21 And the issue is does everything I've said so
22 far mean that the city cannot impose CEQA's disclosure
23 requirement on Valero in applying for this permit to
24 the extent that it would require disclosure of impacts
25 from rail operations.

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1 And we looked at this and we decided that
2 there is no court -- or that it may well be the case
3 that the disclosure requirement is also preempted along
4 with any attempt to impose mitigation measures or
5 denies the Use Permit based on rail impacts.

6 But because this project is of such
7 significance and of such interest to the City Council,

8 the Planning Commission, members of the public, not
9 just here in Benicia, but certainly all the way up the
10 rail corridor to Sacramento and Roseville and beyond,
11 that staff wanted to interpret the law in a way that
12 would maximize the authority that the city would have
13 over this project to at least address rail impacts in
14 some way.

15 And so the city to date has required as a
16 condition of Valero obtaining its permit that these
17 impacts be -- the impacts from rail operations be
18 disclosed.

19 And like I said, that -- that is not
20 entirely -- that issue is not entirely decided. It may
21 well be that the disclosure aspect of CEQA is also
22 preempted, but the city here located to require has
23 elected to require disclosure nonetheless.

24 Now, good question here is what have other
25 agencies done that have faced this issue recently in

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1 California?

2 And there are two projects that are very
3 similar in the extent -- to the extent that they are
4 both Crude by Rail projects, had existing oil
5 refineries involving modifications that will allow the
6 refineries to receive crude oil by rail whereas
7 previously they were not able to receive crude oil by
8 that method of transportation.

9 One is in San Luis Obispo county involving the
10 Phillips 66 project, and the second one is in Kern

11 county involving the Alon Crude by Rail project.

12 It's basically -- short summary San Luis
13 Obispo took exactly the same approach that the city
14 staff here in Benicia took, and Kern county took an
15 even broader view of preemption than the city staff
16 took here in the sense that in Kern county they decided
17 that even the disclosure requirement of CEQA was
18 preempted as to a similar crude by rail project.

19 So briefly just to summarize, what they did in
20 San Luis Obispo county, like here, San Luis Obispo
21 decided to apply to CEQA -- decided that CEQA does
22 apply to onsite operations, that rail impacts are going
23 to be disclosed, but that mitigation rail impacts is
24 preempted and that the permit cannot be denied based on
25 rail impacts.

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1 There is a factual difference with San Luis
2 obispo which is that unlike here, the San Luis Obispo
3 county EIR for Phillips 66 project found that had that
4 there were significant and unavoidable impacts from
5 onsite operations.

6 So that project has not finally been decided,
7 but they have the ability really to avoid the
8 preemption because they can deny the project based on
9 the onsite significant and unavoidable impacts whereas
10 the City Council would have -- would not at least have
11 that particular fact that they are significant and
12 unavoidable onsite effects that are clearly within its

13 jurisdiction.

14 So I have here -- I'm not going to read these
15 in any great detail -- but here are the key excerpts
16 from the San Luis Obispo EIR that talk about
17 preemption.

18 In this slide federal law would like to limit
19 the ability of the county to regulate the type and
20 design of locomotives since they are owned and operated
21 by UP -- Union Pacific and because it would therefore
22 likely interfere with Interstate Commerce.

23 Due to federal preemption, implementation and
24 mitigation measures to lessen the class one impacts on
25 the main line, meaning rail impacts within San Luis

1 Obispo county and the state are infeasible and argued
2 by the applicant.

3 since it is unlikely these mitigation measures
4 will be implementable due to federal preemption and it
5 is uncertain; if the other air districts could require
6 emission reduction credits, the air (inaudible) impacts
7 associated with man line, rail operations would remain
8 significant and unavoidable.

9 Again, this is the county. It does not have
10 the ability to enforce any measures to mitigate
11 off-site impacts to populations along rail lines.

12 The Bay Area Air Quality Management District
13 sent a letter to the Planning Commission on the eve of
14 the Planning Commission hearing that suggested that
15 San Luis Obispo county had reached a different

16 conclusion regarding mitigation measures.

17 And I think it's important to point out that
18 that is not the case. That the approach that San Luis
19 Obispo county took is essentially the same view of
20 preemption as city staff has done here. Really the
21 only difference is that San Luis Obispo county in their
22 EIR went on to identify really more mitigation measures
23 that could mitigate rail impacts before concluding that
24 none of them would be feasible where at some point in
25 the preparation of this EIR, the consultant and the

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1 city staff decided that that at some point, you know,

2 based on CEQA authority, that at some point it
3 doesn't -- a lead agency is not required to develop
4 mitigation measures if ultimately it doesn't have the
5 authority to adopt those mitigation measures.

6 Finally, a Kern county approach to mitigate to
7 preemption. As I mentioned, Kern county concluded that
8 all aspects of CEQA are preempted as to rail impacts,
9 not just the ability to impose mitigation measures, not
10 just the statement of overriding considerations
11 requirement and not just the decision to issue use
12 permit, but including the disclosure requirement.

13 And the Kern county EIR was approved and
14 adopted without discussing in any way the facts that
15 would arise from rail operations.

16 So that concludes the presentation. I'll
17 just, I think, summarize what the staff has done, where

18 the staff stands in relation to others.

19 The staff view of preemption is narrower than
20 the view presented by Valero, narrower than the view
21 presented and pursued by Kern county, and the same as
22 the view pursued by San Luis Obispo county.

23 I'm not aware of any agency in recent --
24 recently in California on a Crude by Rail project that
25 has taken a narrower view of preemption than the staff

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1 here. And I'd be happy to answer any questions --

2 MAYOR PATTERSON: Okay. You will when we get
3 there.

4 So the next is the appeal process.

5 MS. MILLION: Yes. Brad, if you could forward
6 to the next slide which is the appeal, I'll go ahead
7 and get started.

8 Great. Thank you.

9 So as mentioned, the Planning Commission took
10 action on this project on the 11th of February. The
11 appeal was filed on the 29th in accordance with the
12 Benicia Municipal Code.

13 As mentioned previously, that this is a
14 de novo hearing. Meaning that the appeal shall consist
15 of a new hearing on the matter based on any relevant
16 evidence, including staff reports submitted at the time
17 of the prior decision at -- prior to the decision at
18 this hearing and also findings and decisions of the
19 Planning Commission.

20 So the appeal for the convenience sort of
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21 broke into two parts. The first part of the appeal is
22 essentially the first three pages of the document
23 provides information to address some of the issues
24 Valero found to be outstanding or in error.

25 The appeal outlines the scope of Valero's

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1 application for a Use Permit to construct and operate a
2 train car unloading facility, the federal government's
3 authority over the railroad, the opposition's
4 misleading legal arguments and the refinery's emissions
5 stating that the project would not increase refinery
6 operating emissions.

7 The remaining portion essentially from page 4
8 forward discusses issues specific to the Planning
9 Commission's decisions and actions which staff has
10 widdled down into four major issues.

11 The appeal contends that the Planning
12 Commission's decision to deny certification of the
13 final EIR and to deny the Use Permit was, and I quote,
14 based on grounds that are preempted by federal law
15 contrary to governing federal, local and/or state law,
16 unquote, which also includes inconsistent with CEQA and
17 not supported by substantial evidence in the record,
18 end quote.

19 In addition, the appeal states that the
20 Planning Commission violated the Benicia Code and
21 Conduct. I will refer the Council back to the staff
22 report as far as going into the individual details of

23 this issue. I realize that we are slide 55 at this
24 point and it is a de novo hearing so I'll kind of
25 provide just a general overview.

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1 Staff does concur with the Planning Commission
2 that there are significant unavoidable impacts from the
3 rail components of the Crude by Rail project.

4 However, it is staff's determination as
5 explained more thoroughly by Mr. Hogin that the city is
6 preempted from regulating railroad operations due to
7 federal preemption.

8 Therefore, the city is legally prohibited from
9 denying certification of the final EIR or the Use

10 Permit based on rail related impacts.

11 Staff believes that the final EIR is complete
12 and adequate under CEQA.

13 Other than the Planning Commission taking
14 action which is federally preempted by law, the
15 Planning Commission adhered to the city's Code of
16 Conduct.

17 The City Council is charged with considering
18 any relevant evidence including staff reports,
19 environmental documents, public comments submitted up
20 through the time of the appeal hearing.

21 So briefly the recommendations for this
22 evening.

23 Staff is recommending to Council, hear the
24 presentations by staff, the applicant, ask questions
25 and then continue this item to the April 4th meeting to

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1 follow up for a public comment.

2 At this meeting the Council will be also be

3 confirming any future dates beyond April 4th.

4 So at the following meetings, just to give the

5 people a preview, staff is recommending that the City

6 Council open the public hearing, consider all

7 appropriate documents and testimony and then consider

8 the following three actions.

9 First is to deny the appeal and uphold the

10 Planning Commission's decision to deny certification of

11 the EIR and deny the Use Permit.

12 Second is to decline to certify the EIR. If
13 Council declines to certify the EIR, the Council should
14 provide staff with specific comments on the
15 deficiencies of the EIR and direction on what needs to
16 be improved in the EIR.

17 The Council would then remand the EIR back to
18 staff to correct the specific deficiencies. If you
19 uphold the appeal you could adopt a resolution
20 certifying the final environmental impact report
21 adopting the CEQA findings for the project, adopting
22 the statement of overriding considerations and the
23 mitigation monitoring reporting program. Uphold the
24 appeal and adopt a resolution approving the Use Permit
25 for the Valero Crude by Rail project and the findings

1 enlisted in the resolution.

2 If Council wishes to approve the project, the
3 Council must first take action on the EIR.

4 If the Council certifies the EIR, the Council
5 may then act to approve the project for the Use Permit.

6 If the Council fails to certify the EIR, the Council
7 may not approve the Use Permit.

8 Just quickly wanted to outline that in order
9 to certify the EIR, the City Council is finding that
10 the EIR was completed in compliance with CEQA
11 essentially saying that it is legally sufficient. That
12 the EIR reflects the city's independent judgment and
13 analysis.

14 And that as part of the EIR certification, the

15 City Council is also adopting the mitigation monitoring
16 reporting program which is the mitigation measure
17 implementation tool. It outlines the responsible
18 parties time frames and required action for
19 noncompliance.

20 So at this time that ends the -- yeah. Turn
21 your mike on.

22 MS. RATCLIFFE: So, yeah. We just wanted to
23 say it's again, a little unusual tonight. The Chair of
24 the Planning Commission, Chair Dean, is going to make a
25 presentation to the Council on the Planning

2 turn it over to Chair Dean.

3 MAYOR PATTERSON: And after this, what we are
4 going to do is take a five-minute break so just to let
5 the audience know.

6 CHAIR DEAN: Okay.

7 MAYOR PATTERSON: Welcome Chair Dean.

8 CHAIR DEAN: Okay. Thank you. Mayor
9 Patterson, members of the Council; Donald Dean, Chair
10 of the Planning Commission.

11 Thank you for the opportunity to speak
12 tonight. I know this is an important project for
13 everybody. It's been going on for a long time in the
14 case of the Commission for three years, so I just want
15 to give you a little background, kind of our thinking
16 over the last few years and probably that will be -- we

17 haven't had a chance to debrief fully since the vote
18 that we took on this to -- not to certify the EIR and
19 to deny the planning -- or the Land Use Permit so some
20 of it will be filtered through my experience being
21 Chair and what I was thinking through this whole
22 process and then adding in how I saw the rest of the
23 Commission, their comments and their discussion over
24 this whole period of time.

25 so to start, there's really -- as been

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1 mentioned before you are hearing this item de novo so
2 that you can look at the entire process and not just
3 the findings and the tail end of the process which is

4 mentioned so prominently in the appeal.

5 And I think that's a very good idea because
6 the findings of the very -- just the very last part of
7 the process, and this has been a long process through a
8 number of environmental documents with a lot of public
9 testimony.

10 So really to go to the heart of this project
11 there's really three things to consider.

12 The first is EIR. The second is the Land Use
13 Permit. And the third is this whole issue of federal
14 preemption. And I'd like to address those one at a
15 time.

16 So in terms of the EIR, just that you remember
17 the flow of this whole process. The city issued a
18 mitigated declaration in May of 2013, and in there they
19 said that there is no significant impacts that can't be

20 mitigated, so essentially no very serious impacts.

21 There is really a lot of controversy about
22 that. The city went back and said okay, we'll do a
23 draft EIR. A draft EIR came out about a year later,
24 and in the draft EIR there was impacts related to the
25 project, but all those project impacts could be

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1 mitigated so again, there are no significant and
2 unavoidable impacts.

3 And following that draft EIR there is really a
4 blizzard public comment, not just from concerned
5 neighbors but also some public agencies.

6 And because the draft EIR -- although -- it
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7 identified impacts, but no significant and unavoidable
8 impacts. And as a result of that comment, the city was
9 forced to go through another round of environmental
10 review which was the revised draft EIR.

11 So just -- so that you understand kind of the
12 breath of the comments on the first draft EIR, there's
13 a -- not only did we get comments from the community
14 and from individuals and from groups, but from a lot of
15 public agencies. And just to name a few: Yellow
16 County; City of Davis; Sacramento Air Quality
17 Management District; SACOG, which is the Sacramento
18 area Council of government; Bear area Air Quality
19 Management District; Yellow Solano Air Quality
20 Management District; and not but -- last, but not
21 least, California Attorney General's office.

22 So the gist of those comments was that the EIR
23 analysis of the project impacts needed to go beyond the
24 boundary of the refinery and actually beyond Benicia.

25 For instance, the letter from the state

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1 attorney general listed a whole variety of issues. And
2 just to give you a sense of the breath of the comment,
3 those issues included hazardous materials released, air
4 emissions, geographic scope of the analysis, cumulative
5 impacts related to Crude by Rail transportation, and
6 definition of trade secret. So that was just one
7 letter.

8 So the city did a revised draft EIR,

9 recirculated that. That came out in August of 2015.

10 That identified new impacts and not just impacts that
11 could be mitigated, but a series of significant and
12 unavoidable impacts based on the fact that these
13 impacts could not be mitigated.

14 Those included air quality, greenhouse gases,
15 biology and significant hazards to the public.

16 And I would say probably the one that got the
17 most attention was the most disturbing was the
18 significant hazard to the public which were due to the
19 transportation of crude oil by rail. The analysis
20 stated that the risk was relatively low. If there were
21 to be an accident along the rail corridor, the results
22 could be catastrophic.

23 That risk cannot be mitigated. And then there
24 was another wave of comments, many from the same

25 agencies raising the same issues as before on that

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1 revised draft EIR.

2 So if you sense a trend here, is that for each
3 new and more rigorous round of environmental review,
4 the evaluations revealed more issues, not fewer issues.

5 And the issues related to the project appeared to be
6 getting more severe, not less severe.

7 So then we come to the final EIR which was
8 just published this past January, a couple of months
9 ago. And normally a final EIR is supposed to respond
10 to and resolve the questions on the earlier draft
11 documents.

12 However, there were substantial comments on
13 the final EIR. And many of the issues were the same
14 that had been raised in letters on the previous draft
15 documents.

16 Mitigation -- and just to tell you what some
17 of those were, some of the more important ones.

18 Issues were available -- or excuse me --
19 mitigation measures were available for significant rail
20 related impacts, and those should be identified.

21 Analysis needs to include those mitigation measures.

22 In other words, the EIR analysis needed to include
23 those mitigation measures. And the city's
24 interpretation of federal preemption was too broad.

25 Also, there were many comments that said the

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1 EIR -- the final EIR didn't respond to comments, that
2 it was too dismissive of many of the comments and many
3 of the letters.

4 So the Commission was receiving letters on the
5 final EIR from the public right up to the final night
6 of the hearings. And letters were not just coming from
7 concerned neighbors or environmental groups, you know,
8 groups that you would -- you may expect would oppose
9 the project, but from public agencies.

10 And these public agencies were professional
11 staffs, that you would not be prone to going out on a
12 limb to oppose the project without ample justification.

13 Just to give you give you an example, we had

14 the planning manager from the Solano Yo-lo Air District
15 who spoke on the third night of the meetings. And I
16 have to say, worked in the public sector for probably
17 30 years.

18 There's not many times when you see a staff
19 member who will show up for a night meeting to comment
20 on a project. And he commented in opposition to the
21 project, let alone sit through a number of night
22 meetings in order to make his comment.

23 So clearly the public agencies, and these are
24 our public agencies, the ones that we're looking to
25 protect our best interests thought that was something

1 fundamentally missed -- fundamentally amiss with our
2 process.

3 So how does the Commission determine the
4 adequacy of the EIR? There are a number of significant
5 and unavoidable impacts. And for rail impacts, the EIR
6 didn't identify mitigation measures due to the
7 preemption issues which you've heard so much about
8 tonight.

9 Stating a federal law prevents this. And yet
10 federal preemption seems subject to debate.

11 The issue of federal preemption aside, many of
12 the commissioners still had questions about the
13 adequacy of the EIR document, would the project
14 actually reduce the greenhouse gases to the degree that
15 was discussed.

16 was the traffic analysis adequate? what about
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17 maintaining access to existing businesses and first
18 responders. What were the risks of first responders?
19 What about the site design? Was the loading platform
20 too close to the creek? What about the potential for
21 (inaudible) to the creek?
22 What about the platforms location and the
23 hundred year flood plane? How would sea level rise
24 playing into that? What about accident liability? Who
25 would pay to clean up spills? Would insurance or Union

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1 Pacific Railroad's self insurance be adequate? Were
2 the estimates of economic benefits realistic?

3 So those were just a few of the topics. There
4 were others we discussed also, but those are the ones
5 that come to mind from the last night of the meeting --
6 or the last couple nights of the meeting.

7 There's also the discussion of alternatives,
8 that they seem too limited. No changes to the size or
9 configuration of the loading platform were considered.
10 Two of the three listed alternatives were infeasible
11 due to railroad preemption, and the third would need a
12 separate environmental analysis if you wanted to look
13 at that with any seriousness. That just didn't seem
14 adequate for a project to this importance.

15 Then the other -- the next topic I wanted to
16 talk to you is the issue of federal preemption. I know
17 you've heard a lot of about that already.

18 Federal preemption certainly played a central

19 role to this whole discussion. And as you've heard,
20 the federal government regulates the railroads and no
21 one else does.

22 No one on the Planning Commission took issue
23 with this. It makes sense that the railroads are
24 regulated by the government and by not every
25 jurisdictional along the tracks.

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1 But the question was how broad does the
2 preemption go? The city staff's position is that the
3 preemption is broad and removes consideration of any
4 railroad related impacts from the discussion even
5 though they appeared to be the most serious impacts

6 that we had to deal with.

7 There are plenty contradictory testimony about
8 the preemption. We heard from attorneys from
9 environmental groups who you might expect to oppose the
10 project, but there were also letters from regional
11 agencies like SACOG and the Bay Area Air Quality
12 Management District who repeatedly said that federal
13 preemption was not as broad as the city was
14 interpreting it; we should be considering some of the
15 railroad impacts and mitigating those with measures
16 that don't affect railroad operations.

17 Just to give you a couple of examples of what
18 they talked about in their letters. One was mitigating
19 air emissions from trains but buying pollution credits.
20 That doesn't affect railroad operations in any way.

21 A second example would be making dollar
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22 contributions to provide increased training and
23 equipment for first responders in case of an accident.
24 That doesn't appear to affect railroad operations in
25 any way.

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1 Those types of mitigations were not something
2 the EIR considered or evaluated, although it was
3 mentioned numerous times in agency letters and comments
4 in both the draft EIR and the revised draft EIR.

5 To compound matters, the Crude by Rail project
6 is going through a similar approval process in San Luis
7 Obispo county. That was referred to earlier by

8 Mr. Hogin.

9 The fact that the San Luis Obispo case were
10 not exactly the same as the Valero case. Nobody has
11 said that they are, but I think the important point is
12 that county staff in San Luis Obispo took a much
13 different, and I would say more narrow interpretation
14 of preemption doctrine.

15 So in the San Luis Obispo approach, they said
16 that because preemption prevented any mitigation
17 measure for rail related impacts, that that was a
18 reason to consider the railroad related impacts
19 significant and a reason to deny the project.

20 To make a long story short, there was
21 considerable disagreement about how broadly could we he
22 interpret the preemption doctrine. As I recall, one of
23 the commissioners saying during the meetings th issue

24 of preemption as it relates to the Valero project is
25 murky at best.

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1 Speaking myself -- for myself, I wasn't aware
2 of the full extent of the federal preemption until very
3 late in the process. And it wasn't until I read the
4 staff report going into the final round of meetings
5 that it was apparent that the city's interpretation of
6 preemption would limit the Commission to consider --
7 what it could consider when it came time to make the
8 findings on the Land Use Permit.

9 So, finally, one more quick preemption issue
10 with more (inaudible) related to making CEQA findings.

11 And again, this was referred to earlier tonight, making
12 CEQA findings in a statement overriding considerations.
13 In order to approve a project, the Commission must
14 adopt a statement that the benefits of the project
15 outweigh any significant and unavoidable impacts, were
16 advised by staff that we couldn't consider the
17 significant rail related impacts in making CEQA
18 findings, but that's in contradictory to the public
19 route disclosure intent of California environmental
20 law.

21 Because the Commission didn't approve the
22 project it didn't have to deal with this issue.
23 However, this is an issue that counsel would have to
24 consider if you do choose to approve the project.

25 So the last of the three things I wanted to

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1 talk about was th Land Use Permit. That's the most
2 fundamental task that the Planning Commission has, and
3 that's to regulate land use. The Commission is
4 required to make finding as part of any of Land Use
5 Permit.

6 So there's three findings that the Commission
7 has to make, but the second one is most pertinent. And
8 that reads -- I'm just going to read it to you from the
9 Benicia City Code.

10 It says the proposal location of the
11 conditional use and the proposed conditions under which
12 it will be operated or maintained would be consistent

13 with the general plan. It will not be detrimental to
14 public health, safety or welfare of persons residing or
15 working in, or adjacent to the neighborhood of use or
16 detrimental to the properties or improvements in the
17 vicinity or to the general welfare of the city.

18 So staff's position is that the Commission
19 could not consider the rail related impacts in making
20 those findings, only the onsite, meaning the non-rail
21 impacts.

22 I didn't think, and I said so at the time,
23 that I personally could make the determination that the
24 project would not be detrimental to the public health,
25 safety or welfare of the community.

1 For me the definition of the community goes
2 beyond the boundaries of the city. I felt that given
3 the many questions over the federal preemption, I
4 couldn't dismiss the potential Crude by Rail impact to
5 Benicia, the Industrial Park, the people who work in
6 the Industrial Park and the uprail communities.

7 Evidently the rest of the Commission felt the
8 same way or at least I hope they did.

9 And then the Commission also needed to make
10 findings related to the general plan. However, the
11 project seemed inconsistent with the number of general
12 plan policies. I'm just going to read you a number, a
13 couple here that I think are relevant.

14 The first is Goal 2.5, facilitating and
15 encourage new uses in development, would provide

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16 substantial and sustainable fiscal and economic
17 benefits to the city and to the community while
18 providing health, safety and quality of life.

19 Goal 2.6. Attract and retain a balance of
20 different kinds of industrial uses to Benicia.

21 And goal 4.1. Make community health and
22 safety a high priority for Benicia.

23 Goal 4.7. Ensure that existing and future
24 neighborhoods are safe from risks and public health
25 that could result from exposure to hazardous materials.

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1 Goal 4.10. Support improved regional air
2 quality.

3 That was directly to the letters from the
4 different air districts that we received on the draft
5 on the EIR documents.

6 So the Commission has a conundrum. We have a
7 project that has significant and unavoidable impacts,
8 some potentially life threatening, and a project not
9 consistent with general plan policies and we are being
10 asked to make a finding that it won't be detrimental to
11 the health, safety and welfare of the city.

12 That's a finding that I don't think we could
13 make in good conscience. In addition, one of the
14 commissioners reminded us that the Use Permit runs with
15 the land not with the application. That means that the
16 Use Permit would also go to next owner of the refinery
17 if there ever is one who may not be so safety conscious

18 as Valero. So for practical purposes, the Land Use

19 Permit is permanent and cannot be rescinded.

20 Given all that, the doubts about the EIR, the

21 questions about the preemption in the significance of

22 the impacts, the Commission felt it couldn't certify

23 the EIR and couldn't approve the Land Use Permit.

24 It's been a long process for the Commission,

25 so I hope the Council will benefit from our -- I think

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1 hard work and many hours of testimony. And I hope that

2 your learning curve is a little faster than ours.

3 So that concludes my report. Thank you for

4 your attention.

5 MAYOR PATTERSON: Thank you very much, Chair
6 Dean.

7 I have a request that you submit your written
8 comments so that it actually gets the complete paper
9 that you prepared. If you would do that, please.

10 CHAIR DEAN: Okay. I will.

11 MAYOR PATTERSON: And also it's easier for us
12 to read it rather than transcribe it.

13 And then secondly, I do want to thank you for
14 the service. I think we all watched from the
15 television or on DVDs, and we could see you're working
16 really hard and we learned some lessons from what you
17 did.

18 So partly the reason that we do have the
19 schedule that we have set up is that you guys worked
20 hard, looked exhausted. I think the staff was

21 exhausted. The applicant was exhausted. The public
22 was exhausted. So that's why we have decided to do the
23 different dates. That doesn't take away from all the
24 work that you've done and thank you very much.

25 CHAIR DEAN: All right. Thank you, Mahaim.

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1 MAYOR PATTERSON: Okay. We are going to take
2 a five-minute break which means we will be back here at
3 9:20 on the dot. Thank you.

4 (Break taken.)

5 MAYOR PATTERSON: The Council has called to
6 order.

7 I need to have you take your seats. So let me
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8 see if I count to five that you can be in your seats
9 and quiet.

10 One, two, three, four, five.

11 when I started out as a teacher I had a
12 classroom trick where I used a coffee can. And when
13 the class wouldn't quiet down, I dropped the coffee
14 can. Unfortunately, there's carpet right here so it
15 doesn't do any good, but counting does work.

16 All right. We have a further report from our
17 planning director Miss Ratcliffe. And then we will
18 have a report by Valero and then we will have questions
19 from the Council and then we will adjourn to April 4th
20 after we give direction for the remainder of the
21 minutes.

22 MS. RATCLIFFE: And just very briefly, because

23 I know it's a long night.

24 We wanted to note that it's a little bit of an

25 unusual situation here because Planning Commission and

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1 staff have different views on some things.

2 we both agree that there are significant and

3 unavoidable impacts from this project, from the rail

4 related issues on this project.

5 where the differences come is in the

6 preemption question. And that's something that the

7 Council will be hearing a lot of different views, will

8 be evaluating in considering in making in your

9 decision.

10 Just also wanted to review real quickly the
11 potential Council actions on the project, deny the
12 appeal, decline to certify the EIR and remand back to
13 staff, uphold the appeal and adopt the draft resolution
14 certifying the final EIR, the statement of overriding
15 considerations and mitigating monitoring the reporting
16 program, and adopt the draft resolution approving the
17 Use Permit.

18 Also, just to be clear, you cannot approve the
19 Use Permit without first certifying the EIR. You do
20 not necessarily have to approve the Use Permit if you
21 do certify the EIR.

22 So -- and that is the final wrap up, and I
23 know that the applicant is available and has a
24 presentation.

25 MR. CUFFEL: Good evening Mayor Patterson,

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1 members of the Council and staff and guests.

2 My name is Don Cuffel and I'm the
3 environmental engineering manager at the Valero-Benicia
4 refinery.

5 I have worked there for over 34 years and I
6 have been involved with the environmental permitting of
7 many major projects, including the Valero improvement
8 project or VIP in 2003 and 2008.

9 I want to start by thanking the hundreds of
10 Benicia residents from the community members who have
11 shown ongoing support for this project for over three
12 years now.

13 And I'm glad to see many of my fellow
14 employees who are -- who are here tonight as well. In
15 particular I'd like to recognize city staff and the
16 attorneys and consultants for the immense amount of
17 work that has gone into the review and analysis of this
18 project.

19 Many of the concerns raised at last month's
20 Planning Commission hearings focused on rail
21 transportation and uprail impacts. And you have heard
22 that again this evening.

23 Valero agrees with the city's attorney's
24 opinion in the Commission staff report regarding the
25 federal preemption. My colleague John Flynn will speak

1 to that in more detail in just a few minutes.

2 I would like to set the record straight on a
3 couple of facts about the project.

4 Replacing Marine deliveries with rail
5 deliveries of crude oil will reduce greenhouse gas
6 emissions, period. It will. The air district only
7 looks at what happens within their air district. CEQA
8 only looked at what happened within state lines,
9 California.

10 But the real question is what about the total
11 voyage of the ship and the total journey of the train?

12 when you compare those two, there's an actual
13 reduction in greenhouse gas emissions. In fact,
14 there's a reduction in all of the air emissions.

15 And it can be as high as 25,000 tons of
16 greenhouse gases per year. This would help the city
17 reach its greenhouse gas reduction plan as defined
18 under your Climate Action Plan.

19 And we're not aware of any other project
20 proposed that could have kind of impact and benefit to
21 the city's action plan.

22 As has been stated the project does help the
23 city's economy, including the creation of 120
24 construction jobs and 20 full-time positions at the
25 refinery. It will generate hundreds of thousands of

2 local services. We know that Benicia needs projects
3 like this to remain vital and to provide services for
4 all of our residents.

5 The third point I'd like to make is we are
6 committed to the safety and emergency preparedness and
7 we have signed and updated mutual aid agreement with
8 the city. This enhances our mutual aid capability to
9 both deliver and receive response in case of emergency.

10 we like our strong relationship with Benicia
11 Fire and we'd like to see that grow. We have
12 voluntarily agreed to not have trains arrive during
13 commute hours.

14 Now, to be real clear the project does not in
15 any way change the way we operate. The project does
16 not result in increased emissions from the refinery.
17 It does not increase the amount of crude we can run.

18 It does not provide facilities for exporting crude.

19 Those are all speculations and untrue ideas presented

20 by our opponents.

21 Contrary to what the opponents have asserted,

22 the project does not provide facilities for heated cars

23 to import Tar Sands, nor does it provide for the

24 importation of high vapor pressure crudes. Remember

25 that the Bay Area Air Quality Management District, the

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1 regulations for the storage of crude oil is the

2 backstop so that high vapor pressure crudes cannot be

3 brought in and stored or processed.

4 The project will help ensure that the refinery
5 can compete locally and continue to provide clean fuels
6 for California residents. About one in ten cars
7 powered by gasoline is powered by gasoline from our
8 facility right here in Benicia. This project simply
9 allows us to build an off-loading rack on the existing
10 refinery site.

11 It will provide more flexibility for efficient
12 operations and reduce Marine deliveries. There was a
13 lot of discussion in the Planning Commission about rail
14 impacts, rail safety, uprail rate impacts even though
15 the regulations of rail operations is committed by law,
16 solely to the federal government. So you've heard that
17 a number of times this evening.

18 But I would like to make an important
19 distinction when we use the word significant and

20 unavoidable. That's a term of art for CEQA. What that
21 means is some impact was found to exceed a threshold as
22 defined in CEQA. So locomotive emissions for uprail
23 communities, uprail counties that may exceed a local
24 standard by definition is a significant impact. It's
25 unavoidable because of a preemption.

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1 The real question is, is that a health risk?
2 Is that a concern for the public? And I would ask you
3 to look at the EIR carefully, study the health risk
4 assessment, and you'll see that in no case do the
5 locomotive emissions rise to the level of a significant
6 health impact. At the end of the day that's what

7 matters is the health impact, not the term of art of
8 insignificant and unavoidable.

9 The EIR also includes about 12 pages on the
10 regulations for railroads that have been added since
11 this analysis began three years ago.

12 There are notable state efforts which improve
13 the funding so that every foot of rail in this state
14 will be inspected, and it includes a six-and-a-half
15 cent per barrel fee for crude oil brought into
16 California by rail to fund the California office of
17 spill prevention in response, something we call OSPER
18 for prevention, emergency response preparedness and
19 cleanup enforcement measures.

20 The staff recommendation accurately notes that
21 the project alone can contribute up to 1.6 million
22 dollars annually for these efforts.

23 I would like to end my remarks tonight by
24 introducing John Flynn, an attorney that we have been
25 working with on the Crude by Rail project. John is

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1 here tonight to provide some additional insight on
2 federal preemption.

3 Thank you.

4 MR. FLYNN: Mayor Patterson and members of the
5 Council, I'd like to --

6 MAYOR PATTERSON: So wait. Can I stop for a
7 second?

8 we had -- my understanding -- well, let me

9 stop this -- is that we had 15 minutes for Valero. And
10 so is Mr. Flynn part of that 15 minutes and is that
11 consistent with our procedures? Because I -- I
12 wasn't --

13 FEMALE SPEAKER: (No audible response.)

14 MAYOR PATTERSON: Okay. So we can split the
15 applicant as well the organized opposition?

16 MS. RATCLIFFE: Yes. And we have
17 traditionally done that before.

18 MAYOR PATTERSON: Okay. Great. Thanks.
19 Sorry about that. You didn't lose a minute.

20 MR. FLYNN: Not a problem.

21 Mayor Patterson and members of the Council, my
22 name is John Flynn as Mr. Don Cuffel just indicated.
23 I'm an attorney assisting Valero with its application
24 for Use Permit for construction and operation of a rail

25 car unloading facility at Valero's existing refinery.

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1 As you know the Planning Commission recently
2 denied Valero's permit application and we are now
3 before you on appeal from the Planning Commission's
4 denial.

5 As you no doubt have learned by now the
6 governmental regulations of railroads is committed
7 solely to the federal government. You've heard that a
8 number of times and that's an inarguable principle.

9 we decided as a nation many decades ago that
10 the seamless movement of goods and people around the
11 country was essential to the common national good. For

12 that very reason the nation as a nation has also
13 preempted cities, counties and states from regulating
14 the railroads. The nation includes all of us.

15 The reason for that is nearly self-evident. A
16 different set of rules, as Mr. Hogin pointed out
17 earlier, in every city, county and state would negate
18 the good that we are trying to achieve by running the
19 railroads according to a single set of rules.

20 Preemption, therefore, is essential to the
21 common good of the nation. It is too often in these
22 proceedings before the Planning Commission, it's been
23 depicted only as a negative force, free of the goods
24 and the good that we are trying to achieve by virtue of
25 preemption.

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1 Just as importantly, preemption is the law.
2 It's a law that binds all of us. During the Planning
3 Commission hearings that took place last month, your
4 own attorneys clearly and correctly advised the
5 Planning Commission on preemption. And advised the
6 Planning Commission accordingly that the Commission had
7 no power to deny Valero's permit application because of
8 the impacts of rail operations.

9 Valero also wrote letters providing the same
10 clear and correct advice on the scope of preemption and
11 provided to the Commission a copy of the letter to the
12 very same effect from Union Pacific.

13 Project opponents by contrast submitted

14 incorrect and highly misleading arguments to the
15 Planning Commission, urging the Commission to ignore
16 the federal limits on the Commission's discretion
17 arguing in effect that your own lawyers did not really
18 understand preemption and that the city is free to
19 either deny Valero's application on the basis of rail
20 impacts or impose mitigating restrictions over and
21 above those already imposed by the federal government.

22 The Planning Commission unfortunately took the
23 bait, deemed itself free to deny the application on the
24 basis of rail impacts citing in part the so-called
25 ambiguity of the law of preemption. There should be no

1 doubt about preemption given its clear application to
2 Valero's Crude by Rail project.

3 Nevertheless, the opposition on legally and
4 indefensible grounds have disagreed with your attorneys
5 on the issue. Our confidence in our position and the
6 position taken by your own lawyers, however, is so high
7 that we intend to submit the matter for a decision by
8 the Surface Transportation Board; the federal agency
9 that is authorized by law to issue declaratory orders
10 concerning the scope of preemption.

11 Specifically the question to be submitted to
12 the Surface Transportation Board is whether the
13 preemption imposed by the Interstate Commerce
14 Commission termination act applies to Valero's Crude by
15 Rail project.

16 The direction provided by such an order would

17 be a significant benefit to everyone involved in these
18 proceedings regardless of where they stand on the
19 project itself.

20 we, therefore, recommend that you continue
21 these hearings until after the Surface Transportation
22 Board takes an action on our petition for a declaratory
23 order.

24 That's all I have. I'm happy to answer any
25 questions you might have.

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1 MAYOR PATTERSON: Okay. We might have some
2 questions so stay around.

3 MR. FLYNN: I will.
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4 MAYOR PATTERSON: And that concludes the
5 Valero presentation, I guess.

6 Mr. Cuffel, are you done?

7 UNIDENTIFIED SPEAKER: (No audible response.)

8 MAYOR PATTERSON: All right.

9 Staff, you want to wrap up now?

10 MS. RATCLIFFE: So we are done with staff
11 presentations and the applicants and now happy to take
12 questions from Council either to staff or the
13 applicant.

14 MAYOR PATTERSON: Okay. Thanks.

15 So let me start a question with that last
16 comment about continuing the hearing.

17 Can you describe some of the legal potholes
18 that we might have?

19 MS. MCLAUGHLIN: All right. Continuing the
20 hearing in light of the Surface Transportation board
21 petition?

22 MAYOR PATTERSON: Yeah.

23 MS. MCLAUGHLIN: So I think what we should do
24 is not continue the hearing until we get a little bit
25 more information on that like an estimated time and

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1 because of the fact that we have scheduled public
2 comment until the 4th.

3 MAYOR PATTERSON: Right.

4 MS. MCLAUGHLIN: So it --

5 MAYOR PATTERSON: Your response then after the

6 close of the public comment?

7 MS. MCLAUGHLIN: Yes, or at least until you
8 can get public comment on continuing it beyond the date
9 anticipated for the Surface Transportation Board.

10 MAYOR PATTERSON: Okay. Thanks very much. So
11 I'm going to start --

12 UNIDENTIFIED SPEAKER: (No audible response.)

13 MAYOR PATTERSON: Sure. Council Member
14 Schwartzman.

15 MR. SCHWARTZMAN: Okay. Wouldn't it be
16 helpful if we could get an idea of how long that
17 process might take, when the submission might go and
18 what the anticipation -- anticipated time would be?

19 MS. MCLAUGHLIN: Yes, that would be helpful.

20 MR. SCHWARTZMAN: I would like to ask that
21 question if somebody would know the answer.

22 MAYOR PATTERSON: I think that's the
23 research -- I don't need to speak for the city
24 attorney. Why don't you --

25 MALE SPEAKER: I'm not sure. Maybe the

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1 applicant would have an idea.

2 MS. MCLAUGHLIN: Yes, so let's ask the
3 applicant and then we can also do some research
4 ourselves.

5 MAYOR PATTERSON: And Mr. Hogin might be able
6 to weigh in on his educated guess?

7 MR. HOGIN: -- I don't know how long it would
8 take, but I would guess it would be months, not weeks

9 and not years. Some matter of months.

10 I did want to point out that the action that
11 Mr. Flynn's talking about would be a petition for a
12 declaratory order from the Surface Transportation
13 Board.

14 I just want to make sure everyone understands
15 that the Surface Transportation Board has the
16 discretion to issue such an order but it's not required
17 to. It's not like appealing a lower court decision to
18 an appellate court where there's an appeal of right.

19 So one possible outcome could be that the
20 Surface Transportation Board would decline to issue a
21 ruling on that.

22 UNIDENTIFIED SPEAKER: Could I --

23 MAYOR PATTERSON: Council Member Campbell.

BENICIA EXPEDITE.TXT
MR. CAMPBELL: Real quick follow-up. Okay.

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25 You know, they're presenting that petition. Shouldn't

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1 we be presenting our reason for why we think we have
2 jurisdiction? I mean, you know, we shouldn't just sit
3 there and let the thing go one sided. I mean, you
4 know, that's why we hired, for example, you.

5 MR. HOGIN: I think it's a very good point
6 and, you know, I take direction from, you know, the
7 city attorney and the City Council at this point, so
8 I -- I don't know that we -- it would make sense --
9 that we necessarily need to file our own petition or
10 join with Valero, but I sure don't want to join

11 valero's petition because our views are not identical.

12 But I think if Valero files a petition, it

13 might make sense for the city to submit a statement

14 with its own views.

15 MAYOR PATTERSON: So I just want to remind the

16 audience, if you can, reframe from kind of commenting

17 with laughter or other things. It really is

18 distracting.

19 Thank you.

20 MR. FLYNN: May I make a couple of comments to

21 add to those --

22 MAYOR PATTERSON: After I finish with hearing

23 from Council Member Schwartzman.

24 MR. FLYNN: Certainly.

25 MR. SCHWARTZMAN: Well, what I would like to

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1 hear from Mr. Flynn through the chair is when the
2 anticipated submission is going to take place and what
3 your understanding is of some type of decision, whether
4 it's a denial or action.

5 Any idea how long?

6 MR. FLYNN: You know, I think we would be
7 submitting the petition itself. It's probably going to
8 take us 30 days to get it put together and submitted to
9 the Surface Transportation Board.

10 My understanding of the time that it would
11 take once we've submitted the petition is very similar
12 to Mr. Hogin's. I think it's probably on the order of
13 three to six months. It's going to be in that

14 neighborhood. I can't give anybody -- and I don't
15 think anybody here can either, give you a rock solid
16 guarantee on the of timing, but I think it's in that
17 neighborhood.

18 Mr. Hogin is right. The Surface
19 Transportation Board could say well, we decline to give
20 you a declaratory order at all on one set of the issue
21 or the other.

22 But it's my understanding based on a lot of
23 experience that our firm has with the Surface
24 Transportation Board that if they decide that they
25 don't want to issue a declaratory order, at the very

1 least they will provide some guidance for the applicant
2 for that order.

3 So you are going to get some kind of guidance
4 from the Surface Transportation Board even if it is
5 not -- if it doesn't go so far as a declaratory order.

6 MAYOR PATTERSON: We have a follow-up
7 question?

8 MR. SCHWARTZMAN: So can you, perhaps,
9 characterize in as few words as possible or concisely
10 without a bunch of legalizes, if possible, what it is
11 that you would be submitting. You know, what would you
12 be saying to them based on the decision of the Planning
13 Commission, the breath and the scope of their analysis.

14 I mean kind of where would you be coming from?
15 Just curious.

16 MR. FLYNN: Well, we will be presenting the
17 Planning Commission's decision and the grounds upon
18 which the Planning Commission stated its decision. We
19 will be asking -- and again, it's -- it's very
20 difficult right now to describe what the precise scope
21 of the issue that we are going to present to the
22 Surface Transportation Board will be.

23 But the purpose is to get a determination from
24 the Surface Transportation Board in the form of a
25 declaratory order on the scope of federal preemption,

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1 federal ICCTA preemption as applied to this project and
2 the arguments that have been made, not only by the

3 Planning Commission in support of its decision by -- by
4 some of the opposition as well.

5 So we expect if we do obtain this declaratory
6 order, it is going to answer -- it should answer -- at
7 least we will be seeking an answer to the most
8 important questions that have been posed by both sides
9 on the issue of preemption.

10 MR. SCHWARTZMAN: Thank you.

11 MAYOR PATTERSON: Council Member (inaudible).

12 UNIDENTIFIED SPEAKER: (Inaudible).

13 MAYOR PATTERSON: Council Member Campbell.

14 MR. CAMPBELL: Okay. This is for the city
15 attorney.

16 we have a hold harmless clause with Valero for
17 this whole EIR, right?

18 MS. McLAUGHLIN: Correct.

19 MR. CAMPBELL: So if they do this, they are
20 going to be paying our attorney too, you know, since
21 this is part of the process? In other words, they are
22 going to be paying both sides.

23 MS. McLAUGHLIN: It's a good question whether
24 it's really part of the process or not. I would assume
25 that they are going to pick up our cost, but it's a

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1 discussion I'll have with them.

2 MR. CAMPBELL: Part of the process since this
3 is based on at least in part the Planning Commission's
4 position, right?

BENICIA EXPEDITE.TXT
UNIDENTIFIED SPEAKER: If I could follow up

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6 and just maybe -- it's also voluntary on their part.

7 MS. MCLAUGHLIN: Right.

8 MR. FLYNN: It is. And I'm not prepared right

9 now to say that our obligation goes so far as to cover

10 the attorney's fees that might be expended by the city

11 in this -- in this case if we go to the surface

12 Transportation Board and the City decides to involve

13 itself in some way.

14 I'm not ruling it out either. I think it's

15 something that we would have to -- we would have to

16 have some discussion between -- between lawyers in

17 order to determine what the scope of Valero's

18 obligation is in this circumstance.

19 MAYOR PATTERSON: So I would suggest that you

20 include in your discussion with Valero and management

21 that there are additional costs to the cities, just not
22 the city attorney and Mr. Hogin's fees, it's also the
23 city's staff time and all of that.

24 So please do take under consideration that
25 delay does cost the city an additional processing,

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1 discovery, providing information, all of that is a cost
2 to the city.

3 MR. FLYNN: Understood.

4 MAYOR PATTERSON: Okay. And I think we have
5 some follow-up.

6 I don't -- can I have -- I have a specific
7 follow-up on the indemnification question.

8 Can you hold? So I have heard from others and
9 chitchat around town that there is some discussion
10 about the extent of indemnification, that no matter
11 what happens, if the city approves the project and
12 there's a lawsuit, that we are indemnified. That seems
13 to be crystal clear in the paperwork.

14 But the question has come up also that if the
15 city denies and Valero sues that they still pay for our
16 legal cost.

17 MS. McLAUGHLIN: I don't think they do.

18 MAYOR PATTERSON: Well, I had asked you that
19 question previously on a one-to-one. And I'm just
20 wanting it on the record.

21 MS. McLAUGHLIN: On the record I do not
22 believe that they have to pay the cost in that
23 circumstance.

24 MAYOR PATTERSON: Okay. Thanks very much.

25 Now, there were a bunch of lights, so I'm

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1 going to start with Council Member Christina

2 Strawbridge because she hasn't had a chance to ask a

3 question.

4 MS. STRAWBRIDGE: Okay. Question, why now?

5 why didn't we -- why didn't Valero go and do this a

6 year ago or even two years ago?

7 And then the other question is, is this the

8 highest as far as place to go to get a -- advice on

9 this, or is there another level of oversight?

10 MR. FLYNN: In the federal government this is
11 the highest level that you can go to for an order on
12 this question, yes.

13 And as to the timing, the issue to us has
14 always been a clear one. There's never been any doubt
15 about the scope of preemption and its application to
16 this project.

17 It's been clear to us. It's been clear to
18 your attorneys. It's been clear to your staff. We
19 were shocked, frankly, when the Planning Commission, as
20 I said, took the bait that was presented to them by
21 some project opponents on the basis of some highly
22 misleading, very misleading argument, legal arguments
23 presented to the Planning Commission during the
24 Planning Commission hearings.

25 Those arguments were dead wrong. And yet it

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1 served the purpose of the project opponents at the time
2 to try to confuse the issue enough so that the Planning
3 Commission would feel that it wasn't restricted by
4 federal preemption in deciding on Valero's Use Permit
5 application.

6 So that shock, that event has induced us, has
7 motivated us to go to the Surface Transportation Board.
8 You've heard from us. You've heard from your own
9 lawyers. If you still feel like -- and apparently the
10 Planning Commission did -- that that's not enough and
11 that the opposition, that their legal opinions are
12 deserving of some credit, then let's take it away from

13 the lawyers and give it to the Surface Transportation
14 Board.

15 MAYOR PATTERSON: Council Member Schwartzman.

16 MR. SCHWARTZMAN: Thank you. My -- my -- I
17 think my comment or question is for staff.

18 So if I understand correctly, Valero is asking
19 for a continuance, correct? Is that what I understand?

20 MR. FLYNN: We're recommending.

21 MR. SCHWARTZMAN: They are recommending it.

22 Now, we don't have to accept that. We can
23 proceed, am I correct?

24 MS. McLAUGHLIN: Correct.

25 MR. SCHWARTZMAN: So I mean I can certainly

1 understand Valero's perspective, and maybe it is a good
2 idea to get a ruling, hopefully declared a ruling from
3 the surface board because it would produce whatever
4 ambiguity there is. I get that are part.

5 But, supposing we decide we want to move on.
6 What are the -- are there ramifications and what would
7 they be?

8 And the second part of my question would be if
9 we decide to -- there's two parts -- move on. How do
10 we proceed? Is it just exactly the way we are going?
11 And two, if we decide to agree to the continuance, how
12 do we proceed? So those are my questions.

13 MS. MCLAUGHLIN: So if you decide to proceed
14 then the ramifications would happen later on, perhaps,

15 if the court decides we were wrong about the
16 preemption.

17 MR. SCHWARTZMAN: well, we don't know how
18 Council is going to come out on the end.

19 MS. McLAUGHLIN: Exactly.

20 MR. SCHWARTZMAN: we don't know.

21 MS. McLAUGHLIN: So we don't know to proceed
22 because we have scheduled public hearing -- public
23 comment on April 4, you shouldn't make your decision
24 until we've had input from the public on whether to
25 continue to allow this.

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1 MR. SCHWARTZMAN: well, except we are moving

2 along just normally -- deciding to plod along, correct?

3 MS. MCLAUGHLIN: For everything.

4 MR. SCHWARTZMAN: Regardless of whether we
5 accept or not. Okay.

6 MS. MCLAUGHLIN: Right.

7 MR. SCHWARTZMAN: So process is the same.

8 MS. MCLAUGHLIN: Process is going to be the
9 same until we get to April 4.

10 MR. SCHWARTZMAN: Okay.

11 MS. MCLAUGHLIN: So at that point then you
12 could decide that you want to continue it. If you give
13 us indications that you are leading that way, then we
14 can do a little bit more research and provide that for
15 you and the public on April 4th.

16 MR. SCHWARTZMAN: Okay. In light of that, I'm
17 not sure how we are going to go, so are we still up for

18 getting to ask other questions tonight?

19 MAYOR PATTERSON: Absolutely. we're just

20 proceeding --

21 MR. SCHWARTZMAN: Okay. I'll wait until

22 (inaudible). Okay.

23 MAYOR PATTERSON: Proceeding as normal.

24 MR. SCHWARTZMAN: Okay.

25 MAYOR PATTERSON: Councilman Campbell, further

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1 comment on this?

2 MR. CAMPBELL: Yes. Just on last comment.

3 This is for Mr. Hogin.

4 I read your resume. Pretty impressed. You

5 know, you must have had something a little bit along
6 this line somewhere.

7 The STB -- okay. They come back with a
8 decision one way or the another. At that point can
9 we -- you know, then go to like the district court, for
10 example, and say we don't agree with STB's decision and
11 then just grind it up through the entire appellate
12 court at which point Valero might wind up with not
13 being able to get an answer on this for two, three,
14 four years.

15 I mean, you know, it could -- this is one of
16 those where it seems like this could go all the way,
17 you know.

18 MR. HOGIN: well, I don't think so. But to
19 answer your question, you're asking if before the City

20 Council takes any action could the City Council appeal

21 the Surface Transportation Board's decision to a court.

22 And I think the answer is probably not. The

23 court's are very reluctant to issue what they describe

24 as advisory opinions. It's the nature of a court's

25 power that it's not a legislature that can make rules,

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1 you know, to apply to different situations, but rather

2 a court supply rules to concrete controversies between

3 two parties.

4 And until -- in the vast majority of cases.

5 And until -- unless until the City Council takes some

6 action, the court is probably going to say I don't have

7 a concrete controversy rule on it yet.

8 MR. CAMPBELL: In other words, we could just
9 ignore the STB, come back, have our public hearing, do
10 a vote. You know, Valero says we can't do that and
11 then, you know, game on? You think that -- because
12 then it's like right? Is that the right word?

13 MR. HOGIN: That is the word exactly. And
14 yeah, I think it would be right at that point. Yes.

15 MAYOR PATTERSON: So if I were Valero, I
16 would do exactly what they are asking to do because
17 what it does is it gets the STB decision before it
18 would be decided. And then whatever the -- if
19 there's -- let's say the Council approves the project,
20 in other words, denies -- upholds the appeal and
21 approves the project, you have on record -- if there's
22 a lawsuit against that Council action, you have on

23 record from the STB an opinion.

24 And you said earlier, Mr. Hogin, that the

25 court considers the STB's opinions very carefully and

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1 takes them very seriously. So I think that that is a

2 very good strategy if I were Valero.

3 On the other hand, I'm not Valero. I am the

4 City of Benicia. And so I would like to proceed.

5 Thank you very much for your ideas and feel free to

6 answer other questions that we might have.

7 I do have one question on the letter that you

8 did submit. I -- maybe you just didn't think -- I'm

9 not really sure why it's in here. It says there is no

10 agency in the United States better informed and better
11 equipped than the Federal Railroad Administration.

12 And is that in reference to -- because there
13 isn't an aadsync to that, and maybe you're just
14 assuming that that means for rail? But I'm not sure
15 you are not assuming that means for any other agency
16 that operates in the United States federal government?

17 MR. FLYNN: No. Of course not.

18 what I'm talking about is the implication that
19 I think has -- has underlaying a number of the
20 arguments presented to the Planning Commission in
21 writing and orally as well.

22 And that is that the City of Benicia, the
23 State of California, other non federal agencies are
24 somehow endowed with a greater wisdom or greater

25 experience or more expertise that enables them to make

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1 better, and better informed and wiser decisions about
2 the operation on the railroads.

3 My point about the federal agencies who are
4 charged with that responsibility is that they take
5 their responsibility seriously. The rules and
6 mitigations that they require are intended for the
7 public safety and to mitigate for impacts of the
8 operations of the railroads. And that that is
9 exclusively their authority. Not only as a matter of
10 law, but as a matter of experience and expertise.

11 They are the ones who are in the best position

12 again, not only as a matter of law, but practically
13 speaking on the benefit -- on the basis of experience
14 and expertise to be deciding how the rails are to be
15 regulated. It's not the city. And I say that with all
16 due respect to your prerogatives as a city.

17 But it's not the city who is better positioned
18 to make the decisions about how the rails ought to be
19 operated.

20 MAYOR PATTERSON: Okay. Thanks for that
21 clarification.

22 MR. SCHWARTZMAN: I have a follow-up. May I?

23 MAYOR PATTERSON: Yes. Council Member
24 Schwartzman. Is that on point of Vice Mayor Hughes?

25 UNIDENTIFIED SPEAKER: (No audible response.)

1 MAYOR PATTERSON: Okay.

2 MR. SCHWARTZMAN: Okay. So I just want to
3 follow up because you hit on something which I agree
4 with and then -- I don't think you finished the thought
5 and I'm not sure if I'm going to finish your thought or
6 not for you. But we'll try.

7 So I understand Valero's perspective just like
8 you do (indicating). If I were Valero, it makes sense
9 to me to try to get a ruling from the STB. But I also
10 think it's a benefit to the city and that's what I
11 don't think thought got communicated.

12 And the reason is, if we decided to proceed
13 and go down this path -- you alluded to it earlier, I
14 think, Mayor -- that if we ended up denying, then

15 obviously it would be a right for a lawsuit as came
16 from Council Member Campbell.

17 But on the other hand, if we wait for a ruling
18 and the ruling -- I don't mean to say it like in our
19 favor, but the ruling is more along the lines of what
20 the staff is proposing, then it gives us a lot
21 stronger, a more authoritative perspective and it could
22 prevent us from maybe making decisions that would get
23 us into a lawsuit.

24 So I think it probably benefits both sides to
25 get this ruling and hopefully we'll get a ruling.

BENICIA EXPEDITE.TXT
MR. FLYNN: I would agree.

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MAYOR PATTERSON: Okay. And then Vice Mayor

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Hughes.

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VICE MAYOR HUGHES: Thanks. So let's just for

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fun fast forward.

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So you can ahead and submit this to the STB

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and they come back with their decision. And let's

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assume that their decision is consistent with Valero's

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argument and the city attorney's argument. That

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preemption argument is strong and solid.

11

How do we prevent -- and this goes to what I

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think Council Member Campbell was saying -- how do we

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then prevent others, whether it is the City Council,

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the city, or opposing groups from looking at your

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submission and picking it apart saying, well, of course

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you got that answer because you -- because of the way

17 that you phrased the questions, or you didn't include
18 all of the arguments that were brought up either from
19 opposing groups or from opposing attorneys?

20 How do we -- because I could see us going down
21 this route. And on the surface it sounds like a good
22 idea, but I just don't want to get into -- get to the
23 point where now we have the ruling and we're spending
24 the next six months arguing back and forth what was
25 included in your submission and what wasn't.

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1 MR. FLYNN: I think that's a good question and
2 I think there's a good answer.

3 The answer is that -- at this point I think

4 we're pretty familiar with almost all of the arguments
5 that have been presented by the opposition on the issue
6 of preemption.

7 It's not -- I think that we are completely in
8 agreement with you Vice Mayor Hughes about what the
9 impact of a declaratory order could be if we don't
10 present the issues in a manner that will address some
11 of the arguments, the main opposition arguments, that
12 were presented to the Planning Commission and no doubt
13 will be presented to you.

14 So we're -- we have as much interest in
15 getting answers to all of those questions or as many of
16 them as humanly possible as you do so that we don't --
17 nobody can accuse us of having formulated the issue in
18 such a way that there's really been no sufficient
19 answer or any answer to some of the main arguments that

20 have been presented by the opposition.

21 VICE MAYOR HUGHES: Okay.

22 MR. FLYNN: We want it to -- we want it to
23 serve a good purpose. We want it to result in guidance
24 as Council Member Schwartzman said.

25 If we get a declaratory order, whatever it

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1 happens to say or do, it's going to provide help and
2 guidance to everybody who is involved in deliberating
3 on this project. Whether it's members of the public
4 for the project, members of the public against it, for
5 valero, for you, I think everybody is going to be well

6 served by having that guidance before you make a
7 decision about the project.

8 MAYOR PATTERSON: Okay. Mr. Hogin, I want
9 to -- Mr. Hogin who is trying to weigh in here and you
10 can't see him. So --

11 MR. HOGIN: Yes. I think that was a very good
12 question from Council Member Hughes and my response and
13 I agree generally with what Mr. Flynn said, but I would
14 just add that in my view it's very unlikely that the
15 STB would issue an opinion that is unclear or that is
16 subject to a lot of different interpretations.

17 The STB is very, very familiar with the
18 preemption provision, all of cases that have
19 interpreted it and applied it, all of their own
20 decisions that have interpreted it and applied it.

21 The STB is familiar with CEQA. They have

22 issued an opinion as to the application of CEQA to a
23 rail project. They have considered the application of
24 many laws across the country that are just like CEQA or
25 similar to CEQA to rail projects including the

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1 application of such laws to shippers as opposed to the
2 application of them directly to railroads.

3 So I -- I think in my view it's extremely
4 unlikely that the STB would not be very clear in what
5 their ruling is.

6 MAYOR PATTERSON: And so I wanted to ask you
7 what the process is.

8 So there's a petition for the STB to make a

9 ruling. And then what is that -- is there a public
10 process that others weigh in on -- their suggestions or
11 advocacy for an opinion?

12 MR. HOGIN: That is a great question. I do
13 not know the answer as I sit here right now. We can
14 look at that and report back to the Council.

15 I do not know what process the STB has. I
16 don't know if Mr. Flynn can comment on that.

17 MR. FLYNN: I think there may be an
18 opportunity for participation by others. I'm not a
19 hundred percent sure about -- about number one, that
20 question itself. And number two, what the procedure is
21 for that kind of participation. But that is something
22 I can discuss with Mr. Hogin.

23 MR. HOGIN: Yeah. And it's difficult for me
24 to believe that the STB would not receive comments from
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25 anyone, whether they have the formal, you know, notice

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1 and comment process set up or whether it's -- I doubt
2 the Administrative Procedure Act applies, but it's hard
3 for me to believe that they would not accept comments
4 and, you know, give some period of time for people to
5 provide comments. But we will identify that process
6 and report back to the Council.

7 MAYOR PATTERSON: Okay. Council Member --

8 VICE MAYOR HUGHES: Could I have a follow-up
9 to mine?

10 MAYOR PATTERSON: Okay. Vice Mayor Hughes.

11 VICE MAYOR HUGHES: Thank you. Okay. So as

12 you heard we are going to proceed forward with the

13 August 4th meeting, public hearing.

14 UNIDENTIFIED SPEAKER: (Inaudible).

15 VICE MAYOR HUGHES: What did I say?

16 MAYOR PATTERSON: April.

17 VICE MAYOR HUGHES: April. I'm sorry.

18 So my expectation at that date with that, you

19 would be able to answer some of the questions that we

20 have today with respect to the process.

21 Do you expect to have additional information?

22 MR. FLYNN: Oh, absolutely.

23 VICE MAYOR HUGHES: -- on the submission of

24 the petition?

25 MR. FLYNN: Yes.

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1 VICE MAYOR HUGHES: Because, you're -- we're
2 caught off guard tonight. And again while it sounds
3 like a reasonable thing to do on the surface, I just
4 want to make sure -- you know, sometimes the devil is
5 in the details and I just want to make sure there's
6 not -- and that we're clear. If we're -- if we are
7 going to vote on it on a continuance, I want to make
8 sure that it's --

9 MR. FLYNN: Sure.

10 VICE MAYOR HUGHES: -- that it's an informed
11 vote.

12 MR. FLYNN: No. We are going to be ready to
13 answer any questions that you have at that time.

14 VICE MAYOR HUGHES: Okay. Thank you.

15 MAYOR PATTERSON: And Council Member

16 Schwartzman.

17 MR. SCHWARTZMAN: Yeah. One last thing on

18 this.

19 I just want to -- I know you'll report back
20 and I appreciate all that part. And Mr. Hogin I'm sure
21 you'll have input on that matter and the city attorney
22 too. But I just feel that it's incumbent upon us to
23 assure and do whatever investigations we need to do to
24 make sure that our perspective is presented and make
25 sure that Planning Commission findings and so on and a

1 lot of the opposing at least gets into the record with
2 STB and just so that they have a complete picture.
3 That's all.

4 MAYOR PATTERSON: And I wanted to add to that,
5 Mr. Hugin. I'm somewhat aware of the fact that the STB
6 has gone so far as to say that if CEQA delays a
7 transportation project too much that they -- pardon the
8 word -- they trump CEQA. And actually that's a pretty
9 good word to describe what they do.

10 And the -- sorry about that.

11 The -- so what we're asking for is kind of a
12 clarification of how muddy the whole subject and topic
13 is and that --

14 MR. HOGIN: Absolutely.

15 MAYOR PATTERSON: -- it's being challenged and

16 that it's not settled and that it is going on with the
17 state of California. It's just not our case and that
18 there are other cases that are all around us so it's --
19 it's really quite a challenge.

20 MR. HOGIN: Absolutely.

21 MAYOR PATTERSON: Okay. Thank you.

22 And then Council Member Campbell.

23 MR. CAMPBELL: I just want to make sure I
24 understand what we're heading towards doing.

25 At that April 4 meeting are we going to have

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1 public testimony on the Crude by Rail project or are we
2 going to come back after Mr. Hogin and our city

3 attorneys have looked at this and say well, okay, we
4 have decided to discontinue the meeting. Exactly where
5 are we going with this?

6 MAYOR PATTERSON: Great question.

7 My understanding from the city attorney is
8 that we have to wait until April 4 because it is public
9 comment time and this has -- this is a new issue. And
10 at that time we will have guidance from staff. And so
11 we kind of need to wait for the public comment and also
12 for the staff to provide us clarity about where we are
13 going with this because it could be very complicated.

14 We have an ongoing process. And we now have a
15 changed request. How much public notice do we need to
16 give for that?

17 There are a host of questions to ask about --
18 you are absolutely spot on, that there are a lot of

19 questions that we need to have answered.

20 So we are going to get most of the answers on
21 April 4th and not take any action until after public
22 comment.

23 MR. CAMPBELL: Okay. Because my
24 interpretation of Mr. Flynn here is he's put a gun in
25 front of us and asked us whether we are going to blink

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1 or not. And that's my personal interpretation of what
2 you are doing here, you know.

3 MR. FLYNN: Did you say a gun?

4 MR. CAMPBELL: Yes. I want to make that
5 clear. You know, that basically I think this is an
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6 out-and-out threat. That what you are doing is saying
7 if you hold the meetings involving the public testimony
8 and we take a vote, that basically you are going to
9 take us to court.

10 MR. FLYNN: No. We've said no such thing.

11 And I apologize if I've created --

12 MR. CAMPBELL: That to me --

13 MR. FLYNN: -- in any mind up there on the
14 dais, that we are going to take you to court if you
15 don't continue the hearings.

16 Is that what you understood me to say?

17 MR. CAMPBELL: That is exactly the way I
18 interpreted it.

19 MR. FLYNN: Then I apologize for creating that
20 misimpression. What we're -- what we're recommending

21 -- it's a recommendation, a request, if you will, that
22 you continue the hearings so that we can go to the
23 Surface Transportation Board and get direction for
24 everybody on how preemption applies to this project.

25 But by no means are we presenting to you any

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1 kind of a threat to take you to court if you decide to
2 go forward with the hearings in spite of the fact that
3 we're submitting this petition to the Surface
4 Transportation Board.

5 MAYOR PATTERSON: Mr. Flynn, I'm not going to
6 put words in your mouth, but this is what I heard you
7 say.

8 I heard you say that to strengthen a Council
9 decision maybe one way or the other, it would be handy
10 an opinion from the Surface Transportation Board.

11 That's all I heard you say. And I didn't hear
12 a threat in that and I didn't hear anything else. I
13 just heard you say you thought a stronger opinion would
14 be a stronger support system of a decision by the City
15 Council would be provided by some opinion from the
16 Surface Transportation Board because in your
17 observations in looking at the public comment and what
18 you consider the Planning Commission's reaction, that
19 you think it would be helpful to have that
20 clarification. That is what I'm hearing.

21 I think it's good strategy. I'm not telling
22 you whether I agree with it or not. It's just that if
23 I were -- as I said, if I were Valero, that's a pretty

24 smart move.

25 MR. FLYNN: You have perfectly captured what

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1 my intent was.

2 And Council Member Campbell, if I've said
3 anything to cause any confusion on your part or created
4 a misimpression through some fault of my own, I do
5 apologize.

6 MAYOR PATTERSON: Okay. Let's see if we can
7 have some other questions. You might stand down for
8 now.

9 MR. FLYNN: All right.

10 MAYOR PATTERSON: And we'll see what happens.
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11 All right. Shall we go on with other
12 questions starting with Council Member Schwartzman.

13 MR. SCHWARTZMAN: Sure. Thank you.

14 well, first of all, before I actually start
15 asking a few questions, I want to say publicly that I
16 commence staff on the job that they've done on a very
17 difficult and complicated and controversial issue.

18 I also want to commend the public, whether you
19 are for or against this project, to -- to step up, come
20 out, sending letters, e-mails, being here, being vocal,
21 I really appreciate that.

22 And mostly -- well, I shouldn't say mostly,
23 but very much so, I want to also thank the Planning
24 Commission for your diligence, your questioning through
25 a very arduous, complicated issue that is being

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1 presented to all of us.

2 And I want also to kind of say thank you
3 because you did a lot of our work. And Chair Dean, you
4 kind of sort of alluded to that, I believe. And you
5 did, by asking a lot of those questions, I think we
6 don't have to ask some of those questions because
7 they've been asked and answered.

8 So thank you for that, and all of you.

9 So I won't get into the preemption because we
10 just are where we just were.

11 I don't know if UP is here or not? I mean
12 they are not here.

13 So where do I start with questions? I guess

14 Valero.

15 So Mr. Cuffel, you might be the best one to
16 ask maybe. I'm not sure. And these are not process,
17 these are substance questions that we can ask, correct?

18 MAYOR PATTERSON: You can ask anything.

19 MR. SCHWARTZMAN: Anything. Okay.

20 MALE SPEAKER: I'll do my best and have some
21 colleagues to help out or ESA.

22 MR. SCHWARTZMAN: Sure. And I might be going
23 off to different areas of this.

24 MAYOR PATTERSON: So let me make a suggestion.
25 why don't we start off by directing the

1 question to staff and then they can --

2 MR. SCHWARTZMAN: Okay. Sure.

3 MAYOR PATTERSON: -- choose as they go
4 forward. Is that all right, Mr. Cuffel?

5 MR. SCHWARTZMAN: well, this one is
6 specifically for Valero. I know the staff cannot
7 answer it.

8 MAYOR PATTERSON: He wanted to.

9 MR. SCHWARTZMAN: Mr. Cuffel, you've got to
10 come back. This is a Valero question. I'm sorry.
11 okay.

12 It has to do with the tank cars and it has to
13 do with, I believe I understand, that Valero has
14 committed to the 1232 or better cars.

15 MR. CUFFEL: Yes, that's true.

16 MR. SCHWARTZMAN: From the inception, from the
17 very first train.

18 MR. CUFFEL: Yes.

19 MR. SCHWARTZMAN: Okay. So you are -- you're
20 in a position to be able to have those -- the 1232 or
21 better cars from the very first train if this project
22 goes forward.

23 MR. CUFFEL: Correct.

24 MR. SCHWARTZMAN: Okay. I'll try to keep
25 my -- my specific questions -- because I want to -- I

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1 think it was the last Planning Commission meeting.

2 Maybe it was -- I don't remember which one because
3 believe me, there's a lot.

4 You were talking about Bakken; you were
5 talking about 11 PSIs versus 13 and a half PSIs and at
6 storage temperature. Okay.

7 So you remember that discussion.

8 MR. CUFFEL: Uh-huh.

9 MR. SCHWARTZMAN: So if I understand
10 correctly, I think you -- I understand that the
11 Bay Area, BAQD; Bay Area Quality District, okay, has a
12 threshold limit of 11 PSIs at storage temperature here
13 in California in your tanks.

14 MR. CUFFEL. That's true.

15 MR. SCHWARTZMAN: Okay. So -- but I also said
16 that that's going to vary between the time of year. So
17 if it's warmer then, of course, you've got a floating

18 top -- I get that -- so PSIs go up, top goes up.

19 Right?

20 MR. CUFFEL: No, the roofs floats up and down

21 based on putting liquid in the tank or taking it out.

22 MR. SCHWARTZMAN: Okay. So --

23 MR. CUFFEL. That's not a function of the

24 temperature.

25 MR. SCHWARTZMAN: Okay. But -- okay. But if

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1 I understand correctly, the higher PSIs, does that

2 relate to volatility?

3 MR. CUFFEL: Not directly. The vapor pressure

4 limit is designed to control emissions. So floating

5 roof tank with its seal system on that floating roof,
6 the maximum true vapor pressure that it can safely
7 contain in compliance with Bay Area regulations is 11
8 PSI.

9 Can you hear me okay?

10 MR. SCHWARTZMAN: Yes.

11 MR. CUFFEL: Okay. Because I can't hear
12 myself out here so -- 11 PSI is maximum that you can
13 have in a floating roof tank in this air district --

14 MR. SCHWARTZMAN: Okay, but --

15 MR. CUFFEL: -- regardless of the season.

16 MR. SCHWARTZMAN: Yeah. I get that. But
17 temperature variances could affect the PSIs.

18 MR. CUFFEL: They do. That's -- that's why
19 the measurement is made at storage.

20 MR. SCHWARTZMAN: So help me out here. When

21 you say storage temperature, is there a consistent
22 storage temperature?

23 MR. CUFFEL: No, it varies.

24 MR. SCHWARTZMAN: Okay. So let me get back to
25 it.

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1 So if I understand you correctly and again,
2 you know, I'm learning this, okay. I don't live it
3 like you do.

4 So in your tank your crude comes in, you put
5 it in there, it's at 11 PSI. And now it's in the
6 middle of the summer and we get a 105-degree day.

7 Is there a suggestion that the PSIs can
8 increase?

9 MR. CUFFEL: Well, let me explain how the
10 crude would be verified in the first place.

11 we would not receive a cargo that we could not
12 safely store or store in a compliant manner. And if
13 it's too close to that threshold it would not be
14 accepted, it would not be shipped to us in the first
15 place.

16 MR. SCHWARTZMAN: But I'm not sure if that's
17 answering my question. I get that part. Whatever you
18 bring in you want to meet guidelines.

19 MR. CUFFEL: You always have a margin of
20 compliance so if your question is do we take delivery
21 at 11 and then it goes above 11? we would be out of
22 compliance with barrier rules, and we do not plan to be

23 out of compliance ever. So we always have a margin of
24 compliance in all of our operations.

25 MR. SCHWARTZMAN: I understand that, but let

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1 me ask the question again. Okay.

2 You get a compliant tank car, whatever. It's
3 put into the tank. Okay. It's at 10.8. Okay, which
4 is under threshold.

5 We get a 105-degree day. I guess the
6 question -- let me rephrase it.

7 In an example like that, could the temperature
8 increase the PSIs above 11?

9 MR. CUFFEL: The temperature can increase the

10 true vapor pressure providing that's at storage
11 temperature. I would have to look at the absolute math
12 to answer your question directly.

13 MR. SCHWARTZMAN: Okay. So I think you pretty
14 much answered my question, so now I'm going to make a
15 leap to the other end of the spectrum.

16 If the variance, if temperature can vary the
17 PSIs -- and potentially the word used has to do with
18 volatility, whatever it is, okay. In the tank, it can
19 also do it in the tank cars as they are transporting
20 across the nation, correct?

21 MR. CUFFEL: That's true, but the tank cars
22 are designed to contain that at much higher pressures
23 and temperatures than a floating roof tank.

24 MR. SCHWARTZMAN: Okay.

25 MR. CUFFEL: The tank car is a vessel.

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1 MR. SCHWARTZMAN: Okay. I get that part.

2 It's a vessel. I understand that. And by the way, I

3 understand this is all involved in preemption probably

4 because it affects rail, I get that, I think. But I

5 need to ask the question.

6 MR. CUFFEL: That's fine.

7 MR. SCHWARTZMAN: So if we go back to the

8 beginning.

9 Crude comes out at the -- at the wellhead.

10 Okay. And whatever is done, it's put onto a tanker car

11 and it's at 10.8. Okay. And so there's a certain

12 volatility that goes along with that. Okay. And I
13 understand Bakken crude is bit more volatile, a bit
14 more gaseous, whatever, that's, I think, correct?

15 MR. CUFFEL: It can be. I'm not a producer of
16 crude, so I don't have --

17 MR. SCHWARTZMAN: Okay.

18 MR. CUFFEL: -- first hand knowledge.

19 MR. SCHWARTZMAN: Again. I'm not -- I --
20 certainly I don't know, that's why I'm asking the
21 question.

22 what I'm trying to get at, okay, is -- is even
23 if a tank car -- let me back up.

24 what I'm trying to get at, is that if it's
25 true that the volatility index and the PSIs that might

1 relate to the volatility is subject to temperature
2 variations and yes, while a tank car is designed to
3 hold it, it would seem, though, that if inside that
4 tank car as it's coming across the country if there's
5 high temperatures, it could raise the temperature which
6 could theoretically potentially raise the volatility.

7 That's the question I'm asking.

8 MR. CUFFEL: It can raise the vapor pressure.
9 I can't speak to the volatility without knowing the
10 makeup of the crude. You'd have to know specifically
11 what compounds, what materials were --

12 MR. SCHWARTZMAN: Okay. I rest on that one
13 for now. Okay. Thank you for that. Let's see if I
14 have any other specific ones. Oh, okay.

15 So I don't know if -- does Valero now -- and
16 maybe this is a question for you, maybe somebody else.

17 Does Valero get crude currently from either --
18 by rail -- excuse me, not by rail.

19 Do you get crude from Texas, New Mexico or
20 Oklahoma, in addition to everywhere else?

21 I don't think that's a trade secret thing. I
22 don't think so. I mean, if it is trade secret --

23 MR. CUFFEL: I'm looking at my leadership.

24 MR. SCHWARTZMAN: Okay. If you can't answer
25 it, okay. I'll take it.

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2 MR. SCHWARTZMAN: Okay. But perhaps the other
3 two states.

4 UNIDENTIFIED SPEAKER: What are the other two
5 states?

6 MR. SCHWARTZMAN: Oak -- excuse me. Texas or
7 New Mexico.

8 UNIDENTIFIED SPEAKER: I'm not aware of
9 anything.

10 MR. SCHWARTZMAN: Okay. Then my other
11 question doesn't matter.

12 And I'm not sure, Mr. Cuffel, if it was you,
13 but in one of the meetings I think -- if I'm correct --
14 the tank car holds roughly, 30,000 gallons -- 30,000
15 barrels?

16 MR. CUFFEL: 700.

17 BENICIA EXPEDITE.TXT
MR. SCHWARTZMAN: 700.

18 MR. CUFFEL: Tank car holds 700 barrels.

19 MR. SCHWARTZMAN: Oh, okay.

20 MR. CUFFEL: So if you multiply that by 42,
21 that's how you get the gallons.

22 MR. SCHWARTZMAN: Okay. Okay. whole
23 different -- okay. I'm done -- I'm done with my Valero
24 questions. Thank you. The math wasn't computing and
25 now I get it.

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1 MR. CUFFEL: Okay. And may I say I'm not
2 dodging your question on volatility, but I'd like you
3 to think of a margin of compliance this way.

4 When you drive in downtown Benicia you
5 probably allow a half a car length to a car length
6 ahead of yourself. On the freeway presumably you'd
7 allow more than that.

8 MR. SCHWARTZMAN: Uh-huh.

9 MR. CUFFEL: And why? Because the risk of
10 collision is much greater at higher speeds and the
11 reaction time and so forth for braking.

12 Think of that as your margin of compliance.
13 So our refinery has operating limits on practically
14 everything in it. And in every instance we always plan
15 to operate within compliance.

16 And part of that assessment is determining
17 what's an appropriate margin of compliance. Do I drive
18 a foot off the bumper and have 10.9 PSI crude?
19 Probably not. I probably want a bigger margin of

20 compliance than that when I'm importing crude to this
21 facility.

22 MR. SCHWARTZMAN: Okay. Thank you. Thank you
23 very much.

24 I can't ask UP questions so let me talk a
25 little bit about traffic. And I think we have got a

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1 traffic expert here. So let's -- I mean I'll ask
2 staff, okay, and then you can direct me if that's the
3 case. Thank you for reminding me to do that.

4 So this -- I've -- I've got two questions, I
5 guess.

6 On the northbound 680 Bay Shore off-ramp
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7 backup concern, the issue that I -- that I'm kind of
8 stuck on is -- and that picture that came up that was
9 brought out at, I think, the last meeting or something
10 like that which I don't know if it was -- the backup
11 was due to work on the roadway or just because of a
12 backup, I don't know.

13 But my concern is that if the -- the
14 intersections are blocked because of the train, and it
15 is backed up on the ramp, to my knowledge there is no
16 outlet at all. I mean you are stuck on that ramp. And
17 whether or not traffic backs up into the main, and I
18 don't know if that would or couldn't -- I mean I guess
19 it's possible, but even if it didn't back up near the
20 main, there is no outlet there and that concerns me.

21 And so I'm wondering, it would seem to me if

22 it an outlet could be prepared like a right turn only
23 lane, a dedicated right turn lane, that would allow the
24 opportunity for somebody stuck in that lane, for
25 whatever reasons they need to move along, they at least

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1 have an outlet. They can't back up. They could at
2 least go forward, make a right turn. Yes, they will
3 cycle through Bay Shore and, you know, around Main and
4 go through the arsenal area and I mean I get that, but
5 at least it is an outlet. So I just want to get on
6 record, that's a concern of mine.

7 The other side of it is, and I -- I had this
8 experience, this is some months ago, that I was on the

9 other side by the taco truck and it was about 10:08 in
10 the morning.

11 And I think it took about 12 minutes before
12 that -- I was able to get through that intersection.

13 And I guess that's not an unusual time delay.

14 And so -- but I was about -- I'm going to --
15 I'm trying to go from memory. I was probably about
16 eight cars in, eight vehicles in when I stopped, and I
17 could swear that the cars backed up and couldn't now
18 enter the intersection because of the backup. So I
19 have a concern about that. So that's just a statement,
20 not a question, other than what might we be able to do.

21 Is there some type of measure? So that would
22 be the question.

23 MAYOR PATTERSON: well, it should -- I think
24 it should be put -- let me make a friendly suggestion.

25 I think it should be put in a question to the

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1 adequacy of the EIR and that you're feeling that
2 there's not enough information that's been provided or
3 at least you haven't read the information that
4 clarifies that question.

5 MR. SCHWARTZMAN: well, maybe I haven't seen
6 the information that clarifies it, but I know from
7 experientially, that happened to me. And so if it
8 happened to me I think it could happen again.

9 MAYOR PATTERSON: You know, keep in mind the
10 courts are very friendly toward people and traffic and
11 consider them experts, so you are an expert at this

12 point.

13 MR. SCHWARTZMAN: Okay. Wow, thank you.

14 Coming from my Mayor. Thank you. Okay.

15 Okay. So let me go to sales tax.

16 And I think I need to be clear. It's

17 roughly -- I think it's valued at about a 55 million

18 dollar project. Is that about the number I'm hearing?

19 I see a nod. Thank you for the nod.

20 Do we have an idea about how much of that --

21 and it may be in here, but I missed it so help me out.

22 How much of that is dedicated or considered

23 real property towards real property tax valuation? I

24 see a shaking of a head no. I see somebody who is

25 going to give me an answer.

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1 MR. HOWE: Chris Howe from the refinery.

2 I believe it's in Andrew Chang's report, The
3 Economic Analysis, but it would roughly be between
4 175,000 and \$200,000.

5 MR. SCHWARTZMAN: well, you're talking about
6 the actual tax revenue.

7 MR. HOWE: The tax revenue benefit to the City
8 of Benicia as a result of the investment of \$55,000.

9 MR. SCHWARTZMAN: 55 million.

10 MR. HOWE: 55 million. I'm sorry.

11 MR. SCHWARTZMAN: Okay. So that would be
12 ongoing tax --

13 MR. HOWE: Correct.

14 MR. SCHWARTZMAN: Okay. So while you're up
15 here, maybe you can answer the sales tax part.

16 And I think I heard and I think it was
17 Commissioner Young, I think it was during those -- the
18 Planning Commission, there was a reference of city
19 sales tax of 7.625 percent. Okay. Maybe it was
20 county.

21 Ours is 8.625. And so I want to clarify which
22 figure are we using in our economic and sales tax
23 report?

24 MR. HOWE: Again, I would have to refer to the
25 Andrew Chang report and I'm not sure --

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1 MR. SCHWARTZMAN : And it could be because we
2 just passed Measure C, it's still reflecting the old,
3 where the reality is.

4 MR. HOWE: That's what I meant.

5 MR. SCHWARTZMAN : So that's something that
6 needs to be revised.

7 MR. HOWE: Correct.

8 MR. SCHWARTZMAN : Okay. The other part of it
9 is --

10 MAYOR PATTERSON: Can you hold on, because I
11 think there's a follow-up for you.

12 MR. CAMPBELL: In answer to your questions, I
13 asked the finance director exactly what percent of that
14 sales tax we get. We get one percent from Measure C
15 and we get almost one percent from the other 7.65
16 percent we get, so when you do a multiple of, you know,

17 whatever sales tax goes in there, we get two percent
18 roughly.

19 MR. SCHWARTZMAN: Thank you for that
20 information. That was good information.

21 So -- because I think there was discussion
22 about one time sales tax generated from the
23 construction activities, I believe, on the project if
24 I'm not mistaken?

25 MR. HOWE: Correct.

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1 MR. SCHWARTZMAN: Okay. And that would -- I
2 guess there was a -- I think there was a little bit of

3 discrepancy about that, what that really was, so that
4 may be something we need to get clarified unless you
5 have some type of clarification.

6 MR. HOWE: Again, I would have to refer to
7 some of the details that are included in the Andrew
8 Chang report because the revenues that are projected
9 the city to come on an annual basis are a combination
10 of revenues that get generated from this project.

11 One being the ongoing property tax assessment
12 of revenue that comes from that. The other is sales
13 and use tax during the period of construction, somewhat
14 temporary.

15 MR. SCHWARTZMAN: Right.

16 MR. HOWE: And then there is a projection
17 that's an indirect effect of the 20 additional
18 positions that are added, the salaries and wages that

19 those jobs provide to employees in the City of Benicia
20 that then result in sales tax.

21 MR. SCHWARTZMAN: which kind of -- kind of
22 leads to me to a follow-up question.

23 so on the sales tax part, the biggest bang
24 that we are going to get in reality is the one time on
25 the project.

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1 MR. HOWE: Yeah.

2 MR. SCHWARTZMAN: The ongoing, yes, there
3 could be some incremental 12 additional jobs, but in an
4 actual monetary dollar sense it's not going to amount,
5 I don't believe to a whole lot, of ongoing sales tax.

6 MR. HOWE: I'd have to look at the numbers
7 because I think those three or four components may be
8 almost equal.

9 MS. MILLION: Just to help the conversation.
10 I'm looking at page 409 of your -- of the entire
11 packet.

12 It talks about the two million dollars and the
13 one time sales tax revenue. Again, this is from the
14 Andrew Chang report, and then a 200,000 annual sales
15 tax annually. Those are the numbers that were
16 provided.

17 MR. SCHWARTZMAN I'd have to go back to and
18 review that report. I'm a little suspicious about the
19 200,000 ongoing, how that's arrived at. But I've got
20 to go look at it again.

21 MAYOR PATTERSON: So remember that Rob Sousa
Page 285

22 had projected the benefits of the VIP project for a
23 certain segment and we had plugged that into the budget
24 and it turns out that you guys get a break with the
25 Board of Equalization because it's considered something

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1 that is good for business or for the environment, or
2 whatever it was. It was a good practice break and it
3 really made a significant difference for the City of
4 Benicia.

5 So we're a little sensitive about the
6 projections of sales tax. And the property tax
7 troubles me a little bit because I know that -- or at

8 least it's my understanding that you have a petition to
9 reduce the current assessed evaluation by the county
10 for the property -- and I don't remember the figures;
11 it's like from 200 and some odd million down to 110
12 million or something like that.

13 So what does this 55 million actually mean?
14 so all of that seems to be a little murky. And I think
15 it would be helpful to get a clarification of what is a
16 solid number because there's so much that rests on that
17 information.

18 MR. HOWE: I'd be glad to, probably in
19 writing, provide that kind of detail. But it should be
20 clear that this project is considered a strategic
21 project for the refinery. And as such, the full value
22 of the project is added to our assessed value, unlike
23 one of the examples that the Mayor was suggesting,

24 there were some projects that the refinery designed and
25 implemented that were for environmental control

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1 purposes specifically and those had a discounted
2 value -- discount in the assessed value that was added
3 to the roll, unlike the Crude by Rail project which
4 will be a hundred percent added to the assessed value.

5 On the issue of appeals that the refinery has
6 made on our property taxes, much like you would do as a
7 home owner, if you make an appeal you don't reduce the
8 payment of your taxes immediately, you continue to pay
9 those taxes until that issue is resolved.

10 One of the situations that the City and Valero

11 got into in the early 2000s was the payment of taxes,
12 the distribution of the revenues from those taxes, an
13 appeal and then a settlement of the appeal that went in
14 favor of Valero and required a return of those revenues
15 to Benicia -- I'm sorry -- to Valero.

16 Unfortunately, some of those had been
17 allocated, distributed and spent. The situation that
18 the assessor operates under right now is that we make
19 full payment of our property taxes up to the current
20 value. Even though it's under appeal, he does make a
21 distribution of all those taxes, actually withholds
22 some into escrow for this type of consideration where a
23 settlement would finally release those funds to
24 whichever party was successful in their appeal. So we
25 continue to pay taxes on the bills that we're receiving

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1 despite the fact that appeals are underway.

2 MR. SCHWARTZMAN: Since you brought that up.

3 I think that were some -- I believe there was
4 some misunderstanding or misquotations on the amounts
5 of monies that the city either paid back or could
6 conceivably have to pay back. But, you know, that's an
7 appeal. It's really not a part of this discussion, but
8 you brought it up.

9 I think -- the other questions that I have, I
10 think I'm going to ask some of them. They are UP
11 questions; I know they are not here. But I'd like to
12 get them on the record because they may need some time

13 to -- Christina, I sent some of them to you earlier and
14 these are some questions that I'd like answered at a
15 future date. So thank you.

16 So I'm wondering if -- and I'm just trying to
17 get an overall perspective. I know these are UP
18 questions, I know it's rail. I know we got the
19 preemption issue. I get that. I understand that.

20 But there's a reason why I'm asking.

21 In the last five years nationally, is it
22 possible to get an idea how many total derailments of
23 freight trains there have been; how many involved
24 trains carrying crude; of those carrying crude, how
25 many involve just spills; and how many would have fires

1 and explosions; and also what are the approximate
2 number annually of total freight train trips.

3 I'm just trying to get an idea about things.

4 Some of the other things that were asked at
5 Planning Commission I want to revisit with UP when they
6 get back when we have the opportunity, and I also want
7 to learn a little bit about derailments in general.

8 And I have some air quality stuff too, but
9 I've taken a lot of time. Some other people want to
10 talk.

11 MAYOR PATTERSON: You can finish it.

12 MR. SCHWARTZMAN: No I'm good for now.

13 MAYOR PATTERSON: Okay. Vice Mayor Hughes.

14 VICE MAYOR HUGHES: Thank you.

15 well, let me first echo the recognition that

16 Council Member Schwartzman gave to staff and the public
17 and the Planning Commission.

18 And you know what, whether you agree with the
19 recommendation from staff or whether you agree with the
20 Planning Commission's vote, I don't think there's any
21 disagreement that the work that you did was incredible.

22 And unfortunately for staff it's going to have to
23 continue being incredible good forward.

24 But it really has helped us a lot. Don, you
25 asked the question or you made the statement hopefully

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1 it benefitted us. And as Alan mentioned, it really
2 has, and I appreciate you being here. I appreciate all

3 the commissioners being here tonight. So thank you.

4 So I have -- I also have a laundry list of
5 questions, but I'm going to try and narrow it down to a
6 few here.

7 So the first one is, and this is probably for
8 our city attorney or Mr. Hugin.

9 If we -- if the city felt so strongly about
10 preemption, why did we go out with the recirculation of
11 the DEIR knowing that that was focused -- I won't say
12 primarily, but -- well, primarily on rail issues?

13 MR. HOGIN: well, again, as staff looked at
14 all preemption issues very carefully and decided there
15 was at least a (inaudible) argument that the disclosure
16 in itself might not be preempted.

17 with the other ones it's, you know, to the

18 extent that the city is going to impose permit
19 conditions, they are intended to reduce or avoid
20 impacts from rail operations, that is very clearly
21 preempted in our view.

22 But at least there's an argument to be made
23 that as far as a disclosure alone, preemption does not
24 apply. And so the city staff, you know, provided the
25 view that that particular issue is not entirely

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1 decided, that it wants to because of the public
2 interest in this, not only in the City of Benicia but
3 all the way up the rail corridor and elsewhere, that it
4 wanted to -- the staff wanted to maximize the city's

5 potential ability to address these issues if just by
6 disclosure alone then that, you know -- that that would
7 be appropriate.

8 VICE MAYOR HUGHES: Okay. All right.

9 The other question is I know that the -- I
10 recall the states attorney general weighing in on the
11 draft EIR.

12 Has she weighed in all on the argument of
13 preemption?

14 MR. HOGIN: No.

15 VICE MAYOR HUGHES: Not at all?

16 MR. HOGIN: No.

17 VICE MAYOR HUGHES: Okay. And the next one
18 has to do with rail cars, and I thought this was where
19 Council Member Schwartzman was going.

20 So Valero did --

21 MR. HOGIN: I'm sorry. I'm sorry.

22 VICE MAYOR HUGHES: That's okay.

23 MR. HOGIN: Vice Mayor Hughes, can I just add

24 one thing to that?

25 VICE MAYOR HUGHES: Yes.

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1 MR. HOGIN: The attorney general did not weigh

2 in here on the issue of preemption. The attorney

3 general has weighed in on the issue of preemption in

4 the Atterton case which is a different project that

5 involves the application of CEQA directly to a rail

6 carrier. And the attorney general's view in that case

7 was that any attempt to pose CEQA on a rail carrier in
Page 297

8 the construction and operation of the railroad was
9 preempted under ICCTA.

10 VICE MAYOR HUGHES: Okay. Thank you.

11 with respect to the rail cars, Council Member
12 Schwartzman indicated Valero's commitment to using the
13 1232 cars. And now the next generation is the 117R and
14 117J.

15 I don't know the availability of those yet or
16 in the near future. But this is a question for Valero
17 through the Chair. That if those -- if this project
18 goes through and those cars are available in the
19 quantity necessary, would you make the same commitment
20 to transition to those cars?

21 UNIDENTIFIED SPEAKER: Absolutely.

22 Absolutely. We want this project to --

BENICIA EXPEDITE.TXT
MAYOR PATTERSON: I'm sorry. The question was

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24 recorded so we need to have the answer recorded. If

25 you could step up to the microphone, please.

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1 MR. WILSON: Sorry about that. Don Wilson,

2 Plan Manager of Valero.

3 Absolutely. We want this project and we want

4 to operate it as safely as possible. We will operate

5 this project with the safest cars available.

6 VICE MAYOR HUGHES: I have a follow-up

7 question.

8 So do we -- do we know when those cars will be

9 available or are some of them available now in

10 quantity?

11 MR. WILSON: That I don't know.

12 MAYOR PATTERSON: So maybe you can expand on
13 that.

14 How do we know when it's feasible? When you
15 tell us that it's feasible?

16 MR. WILSON: I'm sure the industry will drive
17 us to those safer cars.

18 MAYOR PATTERSON: Not the National
19 Transportation Authority?

20 MR. WILSON: I'm sure they will too. I'm
21 sure -- I'm sure we will hear from everybody on that.

22 MAYOR PATTERSON: But the question really -- I
23 mean that's still not answering the question.

24 The question is obviously the higher --
25 because there's been much debates and pretty good

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1 literature that was provided in the documents and
2 elsewhere, that the 1232s are not as secure as they are
3 advertised to be. And so the next generation that Vice
4 Mayor Hughes is referring to is a better choice.

5 So the Council would be really interested in
6 making sure that as soon possible moment that that is.
7 So there must be some projection when they would be
8 manufactured, when they would be available; how do you
9 make sure you get those cars? Do you buy those cars?
10 Did you put your order in last week?

11 Exactly when and how is that commitment done?

12 MR. HOWE: The majority of Valero's cars which
Page 301

13 were acquired several years ago -- actually we were
14 ahead of the line, if you will, in the acquisition of
15 these newer model cars at the time, the 1232s. Since
16 then there has been more recent designed cars that are
17 manufactured, that are in Valero's fleet, as Don said,
18 that we would try to acquire for use here in Benicia.

19 There's a good explanation of the rules that
20 were passed last year, May of 2015 by the federal
21 government that sets out a schedule for retrofit of all
22 these cars, some of which have already been done and
23 would be used by Valero; as Don said, as we have
24 available in our fleet.

25 But we will be in compliance with the five

1 year, I believe, term finalization of having every car
2 up to the latest specification. I believe it's
3 referred to as a 117R car, if it wasn't constructed to
4 that standard initially.

5 so there is a schedule that evolves over the
6 next five years to have all those cars that are used in
7 any delivery of crude oil by rail here in the U.S. up
8 to that standard within a specified period of time.

9 VICE MAYOR HUGHES: Okay. And really what I
10 was looking for and I think I heard it is a commitment
11 from Valero, that you would transition to those as they
12 become available.

13 MR. HOWE: As they become available. And
14 we're in a -- somewhat of an unique position as a

15 company because we do own a lot of cars.

16 VICE MAYOR HUGHES: Okay. Thank you.

17 MR. HOGIN: May I --

18 MAYOR PATTERSON: Mr. Hogin.

19 MR. HOGIN: -- make a comment?

20 Because I just want to confirm that the 117

21 cars are available today. There's 4,000 of the 117J

22 cars which are cars that are built from the ground up

23 to meet the 117 standard. And then the other way to

24 comply within the five-year deadline is by retrofitting

25 your existing non-jacketed 1232 cars to meet the 117

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1 standard.

2 And under the regulation you have five years
3 in which to do that. But I mean you could do that now.
4 There's nothing, you know, that prevents you from
5 retrofitting right now.

6 So I just want to make it clear, and I think
7 Vice Mayor Hughes is raising a very good point, that
8 you agreed to exceed the minimum legal requirements
9 back when the state of the art was 1232.

10 MR. HOWE: Uh-huh.

11 MR. HOGIN: So I guess the City, seems to me,
12 might want to know, are you willing to take that to the
13 next step? Now the state of the art is 117.

14 And are you willing to commit that you will
15 comply with the 117R or 117J standards before five
16 years are up?

17 MR. HOWE: As Mr. Wilson said and it really is
 Page 305

18 incumbent upon us here in Benicia knowing what's in the
19 inventory of Valero today.

20 The other thing that is working, it's the
21 third party companies that do these retrofits, so you
22 may be inclined to go out and have 4,000 of the 5,000
23 cars you have retrofitted in one of the year but never
24 be able to do that because they are not capability
25 anywhere in the country to make that happen.

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1 So you have that with some that we have done
2 already, some that were ordered towards the end of our
3 order that were, in fact, constructed to that standard.

BENICIA EXPEDITE.TXT
4 we'd need to go back and look at how many cars we have
5 and what kind of commitment we could make going
6 forward.

7 But I am aware that we have retrofitted the
8 1232 cars that we committed to earlier. And several of
9 them have jackets on them which is the next generation
10 of protection. How many of those there are that we
11 could move into our fleet here is something that we
12 would have to go pencil out.

13 MR. HOGIN: And I think just to conclude, you
14 know, I think the question that Vice Mayor Hughes is
15 asking as I understand it is, can you come back to us
16 with a proposal by which you will upgrade to meet the
17 117 standards before 2020, and how quickly can you do
18 that and can we put that commitment in the existing
19 agreement to bolster the commitment to use 1232 cars?

BENICIA EXPEDITE.TXT

20 MR. HOWE: I'll take that back.

21 VICE MAYOR HUGHES: Thank you.

22 I have others, but we will run out of time so

23 I'll make sure there's time for other the Council

24 members.

25 MAYOR PATTERSON: Council Member Strawbridge.

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1 MS. STRAWBRIDGE: Thank you.

2 Some of my questions were in line with Vice

3 Mayor Hughes on volunteering doing this nothing again,

4 the preemption.

5 But along that line, delivery schedules. And

6 it sounds like that on page 2-22 of the -- one of these

7 revisions of the draft, that if -- if the projects were
8 approved Valero would ask UPRR to schedule Valero's
9 unit train so that none of them cross Park Road during
10 the commute hours of 6:00 to 9:00 and from 4:00 to
11 6:00 p.m.

12 So I guess what I'm asking is -- because
13 again, looking at the Planning Commission, I thought
14 there was because of preemption you couldn't really
15 specify to Union Pacific when those deliveries will be
16 made. And along with the type of cars that you're
17 looking at, again, that's a voluntary opportunity for
18 you to -- to upgrade to the 117R.

19 So those -- those -- I guess some of the
20 things that I would be looking at as to, again, going
21 back to safety.

22 Talking about the sales tax of 200,000, on
Page 309

23 that same page that I think Amy brought out is the
24 200,000 is for indirect -- 30 to 40 indirect jobs in
25 the region that lead to the 200,000.

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1 So it's not that Valero itself is going to
2 generate the 200,000 in sales tax, it's people that are
3 going to be indirectly impacted by this and going out
4 and spending money on restaurants and whatever.

5 Is that correct?

6 MAYOR PATTERSON: So secondary economic
7 impacts is what she's talking about. And so it's not
8 being recorded so we heard from the audience that -- I

9 think it was Mr. Howe who said yes, that's correct.

10 MS. STRAWBRIDGE: Okay. And then -- I'm kind
11 of skipping around here because I just want to cover
12 some of the questions in reading through this.

13 On page 268, 2-68 of the draft EIR it talks
14 about the refinery currently exports petroleum coke and
15 LPG via rail to off-site customers.

16 So I guess I'm asking, we're already doing
17 some things by rail currently. And then in the next
18 paragraph it says similar export operations take place
19 with rail cars transporting LPG destined for customers.
20 But it doesn't really say where those customers are.

21 So I guess where I'm going with this is: Are
22 we already seeing crude -- maybe not crude -- but oil
23 on the rails?

24 MR. CUFFEL: Excellent question.

25 The liquified petroleum gases, butane and

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1 propane, have been shipped by rails since the refinery
2 was constructed in the late '60s. That's not a new
3 operation.

4 In the movement of coke, from the coke silos
5 in the refinery to the dock silos at Amports has also
6 been a continuous operation, for what now, 46 years.

7 MS. STRAWBRIDGE: And the customers, the
8 destined customers, where are those on the rail route?

9 MR. CUFFEL: I don't know.

10 Do you know where the customers are for
11 liquified petroleum --

12 UNIDENTIFIED SPEAKER: No.

13 UNIDENTIFIED SPEAKER: Coke goes overseas.

14 MR. CUFFEL: Coke goes overseas now. It used
15 to go to (inaudible) across straights, but now that
16 facility is shut down and the coke goes overseas.

17 MS. STRAWBRIDGE: So obviously you can't take
18 a rail overseas.

19 So you take it down to the tankers?

20 MR. CUFFEL: So it's loaded on Amport stock.
21 There's a conveyor system from the silos there to the
22 coke ships that take it overseas for power generation.

23 MS. STRAWBRIDGE: Okay. Along sort of this
24 line, I read -- and again, somewhere in this draft EIR,
25 that the -- UP actually needs gas or needs something to

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1 fill their tanks. And it said that they get petroleum
2 or gas to -- how do -- how does the locomotives
3 actually work?

4 MR. CUFFEL: You mean how do the locomotives
5 get their fuel to run?

6 MS. STRAWBRIDGE: Yes.

7 MR. CUFFEL: I don't know. UP would have to
8 answer that question.

9 MS. STRAWBRIDGE: Okay. Because one of the --
10 one of the things is do they do they ever fill up at
11 Valero?

12 MR. CUFFEL: No. The refinery is not a sales
13 point.

BENICIA EXPEDITE.TXT

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MS. STRAWBRIDGE: Okay.

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MR. CUFFEL: It's a production facility. So

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UP would have to purchase its fuel through normal

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commercial channels.

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MS. STRAWBRIDGE: Commercial channels.

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MR. CUFFEL: Yeah.

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MS. STRAWBRIDGE: Okay. And then once the

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crude is refined, how does it leave the -- the

22

refinery?

23

MR. CUFFEL: Today most of our product goes

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out by pipeline, on the shared pipeline that goes

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through the (inaudible) straights into Brisbane and

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1 other terminals in the Bay Area. About 80 percent of
2 our product goes out by pipeline. And the other 20
3 percent either to the -- from the marketing terminal on
4 East Second Street or, as we have discussed, the
5 liquified petroleum gases and coke by rail.

6 MS. STRAWBRIDGE: All right. Those are all my
7 questions. Thank you.

8 MAYOR PATTERSON: Okay. Council Member
9 Campbell.

10 MR. CAMPBELL: This one is for Mr. Hogin first
11 off. And it has to do -- I'm going to try and stay
12 away from preemption as much as I can.

13 And so one of the points that was brought up,
14 one of the -- I guess there's seven benefits that were
15 roughly given for the project. One of them was that
16 the rail emissions were going to be less than the

17 marine emissions.

18 Can we even talk about that because that goes
19 to the railroads and anything that goes toward the
20 railroads is preempted. So even the decision on
21 whether, you know, the emissions from trains are better
22 than the once for Marines, can we just sort of throw
23 that out and not even really think about it?

24 MR. HOGIN: Yeah. I don't know that there's
25 anything in federal law that -- I mean to simply take

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1 into account the benefit -- the air quality benefit of
2 switching from ships to trains. Doing that does not,
3 in my view in any way, impose a requirement that

4 manages or governs rail operations. So I don't really
5 see why that would be a problem.

6 MR. CAMPBELL: Okay. And this one is sort of
7 for Valero.

8 You know, this was at, you know, the same
9 thing. You know, that the rail emissions are going to
10 be less and they are sort of a substitute for the
11 Marine emissions.

12 And so I was looking at the Planning
13 Commission meetings and they said that roughly about
14 110,000 barrels are being produced a day, and you've
15 got up to 171,000 barrels that are produced, so you are
16 maybe two-thirds, three quarters of your normal
17 emissions.

18 So, you know, I was thinking okay. Well, what

19 does that mean? Does that mean that you absolutely
20 have to do that? And I think you actually said well,
21 you know, we get it from the market. And so, you know,
22 we'll get the best deal we can on oil which is fine
23 with me.

24 And, you know, I don't really have a problem
25 with the idea that what you are looking for is some

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1 place else to get oil other than from Marine and from
2 Pipe because the area in North Dakota and Canada area
3 is right now something you can't tap.

4 But, you know, it looks to me like this is
5 unenforceable promise. So that if you do substitute

6 Marine from rail, fine and dandy, you'll -- but there's
7 no guarantee you have to because you have right now --
8 I'm thinking maybe around 50,000 barrels of capacity
9 that you right now aren't using.

10 MR. CUFFEL: So let me try to simplify this
11 because it is confusing. There's many different
12 factors that play into the answer.

13 Today the refinery could receive 100 percent
14 of its crude by ship. We are permitted to do that.
15 And the way we got --

16 MR. CAMPBELL: One hundred percent meaning
17 that, you know, your total capacity of 171,000 barrels
18 or right now just where you are at a 110, all of that
19 can come from Marine?

20 MR. CUFFEL: Permitted capacity right now is
21 165,000 barrels per day annual average. And we can

22 receive all of that by ship. And the way you get that
23 permit is you have to account for all of those
24 emissions.

25 And the VIP project was a tremendous emissions

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1 reduction project. 5,000 tons of SO2 a year and so
2 forth with (inaudible) PM and the other pollutants. So
3 the refinery increased its capacity while at the same
4 time reducing our emissions. Not just our actual
5 emissions, our permitted emissions.

6 MR. CAMPBELL: You mean you put in a scrubber.

7 MR. CUFFEL: We put in a scrubber.

8 So theoretically if the market drove us this
Page 321

9 way, we could receive 165,000 barrels a day at the
10 dock. That's today's business, with or without this
11 project.

12 So the comparison becomes what are you doing
13 today versus what would you potentially do if the
14 project were approved and implemented.

15 The maximum benefit -- the maximum benefit you
16 could have is to substitute 100,000 barrels -- sorry --
17 70,000 barrels a day by rail for those same 70,000
18 barrels a day by ship. That's the maximum benefit.

19 So when I describe greenhouse gas reductions
20 of up to 225,000 tons per year, that's describing the
21 maximum benefit. If we had two trains every single
22 day, 70,000 barrels and we took that from shipping,
23 reduced shipping by the same amount.

24 MR. CAMPBELL: But again, you know, you could

25 but you don't have to.

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1 MR. CUFFEL: Well, we can't guarantee that we

2 can because it really depends on the market.

3 MR. CAMPBELL: Yeah.

4 MR. CUFFEL: I mean who would have predicted

5 where we are today with crude prices? You can't --

6 Valero doesn't produce oil. We're not an Exxon, a BP

7 or a Chevron or a Shell. We don't explore for oil; we

8 don't drill for; we don't get it out of the ground.

9 we buy it on the open market across the world.

10 So we're subject to what's made available to us. And

11 that come in by pipeline, by ship, or maybe some day by
12 rail.

13 And so it's those combinations of delivery
14 systems. We cannot exceed 165,000 barrels a day,
15 processing capacity. But the emissions question you're
16 asking really depends on how much Marine shipping is
17 reduced in favor of rail.

18 MR. CAMPBELL: Okay. Then it's somewhere
19 between zero and 225,000 --

20 MR. CUFFEL: True.

21 MR. CAMPBELL: -- tons. And, you know,
22 putting that aside for just a second there, and since
23 you aren't at full capacity, you know, and you have a
24 right too because your permit, you could actually
25 increase the absolute amount of greenhouse gases

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1 despite, you know, going up to absolute capacity. You
2 have a permit.

3 MR. CUFFEL: No. That wasn't permitted under
4 the VIP. So, again, our existing limit permits already
5 establish the maximum emissions that they are picking.

6 MR. CAMPBELL: Okay. And (inaudible), you
7 know, you are talking about it during the Planning
8 Commission a fair bit about blending. You know, you
9 get, you know, sour, you know, density thing, you know,
10 some sour, some sweet, you know, some high density, low
11 density, what have you.

12 But, you know, it made it sound like that was
13 a point. It's a continuum, right? It's a range where

14 you can, you know, function at the low end of the range

15 you are allowed to blend or the high end, right?

16 You know, it's not like this is the one point.

17 Councilman Schwartzman said 11, you know, specific --

18 so you've got wiggle room on either side.

19 MR. FLYNN: Well, the refinery is designed for

20 a range of different crude oils.

21 MR. CAMPBELL: Yeah.

22 MR. FLYNN: So if you look at the simplified

23 box that's in the EIR, it actually does a fairly good

24 representation on two parameters. One is gravity and

25 one is sulfur.

1 MR. CAMPBELL: Yeah.

2 MR. FLYNN: And that box defines the safe
3 operating window that we have for our equipment.
4 Different refineries have different boxes. That
5 happens to be ours. And the boundary of that box was
6 expanded by the VIP project to the heavy or sour end of
7 the spectrum.

8 MR. CAMPBELL: Well, that's actually kind of
9 where I'm going with this.

10 You know, if you decided to, because you
11 produce by-products. You know, there's the mountains
12 of sulfur sometimes and, you know, metals that are
13 produced, you know, various types, lead, what have you,
14 you know, it's by-products because, you know -- I do
15 have a little knowledge on chemistry and so it used to

16 be called, you know, not crude oil, crud oil because it
17 had water and all sorts of other stuff. And that's
18 what a refinery does. It turns it into gasolines and
19 what have you. But you have by-products that you
20 produce.

21 And so what I'm wondering about is, you know,
22 if you are at the high end with the sour crudes, you
23 are going to have a lot more of these by-products you
24 are going to be producing. And the place they are
25 likely to come from, I guess, you used to get some

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1 called mine crude. Does that sound familiar? And then
2 also the crude oil out in the upper part of Canada and

3 that area is going to be, you know, kind of higher
4 sulfur content.

5 MR. FLYNN: So sulfur is a naturally occurring
6 contaminant in the crude and it's something we remove.
7 And it is sold as a by-product. It's shoulder in
8 molten form. When it leaves the refinery, it's in
9 heated trucks in molten form.

10 And, again, we have limits on how much sulfur
11 we can recover and how much sulfur we can sell. So you
12 have to understand that operating envelope is far more
13 complicated than a four-sided box. But the reality is
14 all of the parameters we have to meet all of the time.

15 MR. CAMPBELL: Yeah, but --

16 MR. FLYNN: So whether we operate heavy sour
17 or medium sour or light sour, as long as we blend
18 inside that box we can do so safely and in compliance

19 with our permits.

20 MR. CAMPBELL: Okay. And you can be
21 anywhere -- well, I don't know want to call it a box,
22 more of a continuum.

23 You can be anywhere on it.

24 Anyway, that's all I had on that. But I
25 wanted to get back to a question that Council Member

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1 Shwartzman brought up, probably not for you, but that
2 was the sales tax, that report Dr. -- or Mr. Chang did,
3 you know. I happen to read that.

4 MR. FLYNN: My colleague will help with that.

5 Thank you.

6 MR. CAMPBELL: Anyway, Mr. Howe. I happened
7 to read that report because some things sort of stuck
8 out.

9 You know, one, he mentioned -- actually it was
10 mentioned earlier. There is a 120 roughly employees
11 that are going to be on the construction on this. And
12 he used a number, a thousand, you know, as opposed to a
13 hundred. So I'm wondering where he got that number.

14 Now he was talking about multipliers, but
15 there are -- a multiplier for jobs is -- I'm unfamiliar
16 with the concept a multiplier for jobs. It's usually a
17 dollar goes through the economy and spent over and over
18 and that's sort of (inaudible) economics, you know.

19 So, first of all, where do you come up with a
20 number of a thousand employees when you guys are saying

21 it's 120?

22 MR. HOWE: The 120 is temporary construction
23 workers or workers that will be on that job during the
24 period of construction.

25 I'm not familiar with the details of the

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1 multiplier but the same concept applied to those jobs
2 even though they were temporary for some period.

3 I do know and I've cited before that our
4 operations in Benicia are -- result in 3900 jobs here
5 in the Bay Area just by virtue of our operation today.

6 MR. CAMPBELL: But he was talking about -- it
7 sounded like on the site -- a thousand jobs. And so

8 you know, that -- because he was -- it's really pretty
9 specific on this, maybe page 30, somewhere in the 30s,
10 35, 36.

11 MR. HOWE: Sure. I'd be glad to -- to look at
12 it. He did a nice job, I think, on the last day of the
13 hearing citing some of the comments that he had made
14 the night before.

15 MR. CAMPBELL: Well, actually, I'd kind like
16 to know where he came up with that number and how he
17 used a multiplier to come up with it.

18 MR. HOWE: Sure.

19 MR. CAMPBELL: And, you know, next one, you
20 know, involved the question on two million dollars one
21 time saves tax. One time sales tax sort of implies
22 there's no multiplier, it's one time, here is the
23 money.

24 And so, anyway, then I was just sort of
25 running through the numbers given the sales tax percent

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1 that the city gets from the finance director. And it's
2 like two percent, not one percent. And I was thinking
3 well, okay, to come up with two million dollars, it has
4 to be a hundred million dollar project. Again, he was
5 saying well, there's a multiplier in there.

6 And now what I'm trying to figure out is --
7 I'm sorry. I'll let you talk.

8 MR. HOWE: No, I was just going to say, the
9 details, I'm not familiar with to be able to give you

10 an answer now, but I'd be glad to with the page

11 citations or, in fact, these particular facts to go

12 back and --

13 MR. CAMPBELL: Okay. And the third one had to

14 do with -- because multipliers, at least from what I

15 used to remember from economics, you had a multiplier

16 that you used for investment or construction and you

17 had a multiplier that you used for operation.

18 So he's got a third one in there. And so he

19 says 20 employees are going to be added, and that's

20 going to produce \$200,000 a year in increase in, you

21 know, odd -- it wasn't really clear whether he was

22 talking about sales tax or whether -- although it

23 sounded, you know, pretty much like it was sales tax.

24 And in order to get that, those 20 workers are

25 going to have to spend about a hundred million dollars

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1 to come up with that number.

2 And so, you know, he also said well, it's
3 going to be a 30 or 40 sort of spin off, you know, from
4 other employees. So, okay. 60 people are going to
5 have to come up with a hundred million dollars
6 annually.

7 Let's see. Was that right? See, no, it was
8 10 million dollars. It was 10 million dollars that
9 they were going to have to come up annually to have
10 \$200,000 in sales tax generated.

11 And so, again, I was wondering, you know,
12 where he's getting these multipliers because

13 multipliers are pretty -- they are pretty high in math
14 as far as it goes, and they aren't usually used for
15 regional things because he mentioned this Russian who
16 got a Nobel prize for his work on multipliers and he --
17 I'm not going to try and pronounce his name -- but he
18 was talking about national multipliers, not regional
19 multipliers.

20 And if you are going to use a multiplier, I
21 guess you get it out of the bureau of economic analysis
22 tables and you go down there, but you've got to have
23 specific assumptions made like what's the savings,
24 what's the consumption for the region, what's the
25 leakage, because if you buy windows for your project

1 in, say, North Carolina, well, that money, you know,
2 isn't only a multiplier here, you are just going to pay
3 the producer who made it and has his employees back,
4 say, in North Carolina and that's where that multiplier
5 kicks in. So it's not really clear how he could come
6 up with these multipliers.

7 MR. HOWE: Well, I appreciate the questions
8 and I will take those back and speak to Andrew
9 directly. But I also know the whole concept of use tax
10 that California applies to something that is being used
11 in the state that while --

12 MR. CAMPBELL: Yeah, you can designate, you
13 know, a point of sale.

14 MR. HOWE: Right.

15 MR. CAMPBELL: But again, that doesn't

16 really -- that doesn't help with multipliers in this

17 sort of certain thing.

18 I will say, though, that I do agree with his

19 number on the property tax is about 175,00 dollars

20 roughly.

21 Anyway, if you can indulge me.

22 MR. CUFFEL: Sure.

23 MR. CAMPBELL: I have one more set of

24 questions. I don't think these are for you, I think

25 these are for the traffic -- you know, your traffic

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1 specialists here.

2 UNIDENTIFIED SPEAKER: We do have some
3 experts.

4 MR. CAMPBELL: And I can't cite the page on
5 every one of these things, but, you know, I do remember
6 reading that -- that the trains, you know, preempted or
7 not, they are going to have about -- roughly about 8.3
8 to 8.6 minute delay. And then you sort of somehow use
9 some sort of formula to spread it out over an hour or
10 something like that. And then at the end you come up
11 with the -- the rating of the traffic intersection
12 which now I guess down by Park Road where it goes road
13 across is LOS-D.

14 But, you know, I was reading that. And at the
15 very end sentence it goes if it's off by -- or if it's
16 -- where it is right now is something like .8 seconds.
17 And then there was an LOS-D.

18 If it was one second, it went to an F. And
19 so, you know, I was looking at that and I'm thinking
20 how did you come up with that number on not, it sounds
21 like, a lot of citings?

22 MAYOR PATTERSON: So you will need to come to
23 the microphone, please.

24 MR. CAMPBELL: So I'm all ears.

25 Because it sounds like you had some -- you

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1 know, you went out there and you did some measurements
2 and some kind of --

3 MR. HUTCHINSON: No, it was basically just
4 pure math.

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5 Jack Hutchinson, senior traffic engineer, ESA.

6 Basically that the formula, the determination
7 of not exceeding one second increased threshold is that
8 with 8.3 seconds of -- I'm sorry -- 8.3 minutes of
9 delay, that means that there are 51.7 seconds of zero
10 delay.

11 Level of service and delay is based on an
12 hourly basis. So that on an hour there will be some
13 people who will be delayed by 8.37 minutes. There will
14 be the rest of the people who will be having zero
15 delay.

16 So the weighted average over the hour resulted
17 in using the peak hour volumes crossing Park Road
18 equated to a .8 -- increase of .8 seconds which did not
19 increase the point of second threshold.

20 MR. CAMPBELL: Okay. So this is where I have
21 the problem. You know, Councilman Schwartzman actually
22 said it earlier, said he waited 12, you know, instead
23 of 8.3 minutes.

24 And, you know, I sort of remember over and
25 across these traffic settings over the years multiple

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1 go out and you measure them over certain times and
2 then, you know, run the math.

3 So as it goes, but, you know, that's -- that's
4 not necessarily statistically completely accurate. If
5 it's 8.3 minutes -- okay, say, on the day you didn't do
6 did it and it was 12 minutes or 9 minutes --

7 MR. HUTCHINSON: I'm sorry. The 8.3 minutes
8 is the delay that would be caused by these 50 car
9 trains traveling at five miles an hour.

10 Again, it's pure math. There's no
11 observations done. There's the length of the train at
12 five miles an hour takes how much time to cross that
13 location. It was 8.3. There was no observation.

14 MR. CAMPBELL: They went out there and
15 measured, you know --

16 MR. HUTCHINSON: It was pure math. Length
17 times time.

18 MR. CAMPBELL: Okay. Because the assumption
19 that you are making there, if you are off by just a
20 little bit that goes from .8 to one second at which
21 case -- you know, because that's really close. That's
22 two tenths of a second. It goes from a D LOS rating to

23 an F rating.

24 MR. HUTCHINSON: No. I'm sorry. Again,

25 that's not related to -- the .8 and the one is not

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1 related to level of service.

2 That one second threshold of significance is
3 if you have a pre-existing Level of Service F condition
4 which we have when trains cross, would the increase in
5 delay under Level of Service F be greater than one
6 second.

7 So it's not like 8.1 seconds is D and one
8 second is F. It's a totally different answer.

9 MR. CAMPBELL: Yeah. I don't think you are
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10 understanding me.

11 I'm saying that, you know, the assumptions
12 that you are making, if they are just slightly
13 different, you know, because that intersection from a D
14 to an F is so close -- at least that's what the last
15 couple of sentences would make it sound.

16 MR. HUTCHINSON: I'm sorry. It's not close.

17 when there's no trains, it's Level of
18 Service A. During the off peak periods, it's Level of
19 Service D.

20 when trains cross now, anywhere up to 16
21 seconds delay, baseline conditions about 11 minutes of
22 delay, this is Level of Service F.

23 So what we're saying is the EIR looks at not
24 at existing conditions and solving existing problems,

25 but what will this proposed project do in terms of

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1 changing those conditions.

2 MR. CAMPBELL: Yeah, that's exactly --

3 MR. HUTCHINSON: What we found was that the
4 eight -- rather .1 -- .3. The eight minutes of delay
5 caused by each of these train crossings falls within
6 the range of the baseline conditions which is now 11
7 minutes, plus the four crossings per day based on a
8 week's worth of videotaping shows that during that week
9 there was a range of crossings of about four per day to
10 18 per day.

11 This is going to have four crossings a day.

12 That falls within that range of preexisting crossings.

13 And the impact related to the project, which is the

14 subject of the EIR, it would be less than significant

15 because people are already experiencing a high number

16 of crossings and higher duration of delays.

17 MAYOR PATTERSON: So what I would like to do

18 because I have a question I'd like to ask before we end

19 the meeting. It is after 11:00.

20 would up put together the variables that

21 change a Level of Service? I think that was the basic

22 question.

23 So what are the variables? I understand what

24 you are saying, but just do that and it would be

25 helpful.

1 So what's -- you've got Level of Service now.
2 what are the variables that would change that Level of
3 service and compare that to the study done with the
4 trains on the tracks.

5 MR. HUTCHINSON: What you are asking for is in
6 the EIR so it just be a matter of packaging together
7 that --

8 MAYOR PATTERSON: Yeah, it's just a depiction
9 of what you have already done. So you have the work
10 there, just depict it in the way that I said. Okay?

11 MR. HUTCHINSON: We can have that available.

12 MAYOR PATTERSON: Okay. I get one question
13 without objection, hopefully. And then should adjourn
14 because we said we were going to adjourn at 11:00.

15 No, me, not you.

16 So back to Mr. Hogin.

17 So one of the things that might be troubling
18 about the delay in going to the Surface Transportation
19 Board is it goes to the heart of a concern that I've
20 had, kind of a global concern I've had in that.

21 Because of the identification of the impacts,
22 but the limited discussion of potential mitigation
23 measures because of the -- being guided by the sense of
24 preemption, there's very little information in the
25 document. One could almost say none that actually

1 provide for mitigation measures that would at least
2 inform.

3 when we talk about the difference between the
4 San Luis document, for instance, is that it goes go
5 into mitigation measures; it talks about if the train
6 is going through a sense of habitat along the coast, it
7 tips over, it spills, here are the things that could be
8 done.

9 I thought -- I thought generously that a good
10 business operation would say hey, you know, I don't
11 have to do this, but as a good neighbor I could. I
12 thought that was kind of useful.

13 But now it becomes much more serious because
14 if you go to the Surface Transportation Board with this
15 document that identifies the impacts but doesn't
16 provide the Surface Transportation Board with some

17 information to show truly the magnitude of the issue.

18 As a for instance, when you have the Suisun
19 Marsh which governed by BCDC which is part of the
20 Coastal Zone Management Act. That's a federal Congress
21 act to encourage and increase the protection of the
22 coast for commerce and other activities. That area
23 also has endangered and threatened species. And with a
24 spill in the Suisun Marsh, it could cause enormous
25 harm.

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1 So what would be the mitigation measures that
2 would help. Perhaps not reduce it to a level of
3 insignificance but certainly would begin to address.

4 For instance, maybe having on -- onsite nearby some
5 waddle material that could capture the pollution.

6 But one of the problems in the discussion on
7 this is the sea level rise makes the marsh mushier and
8 the tracks are very -- are squishy to begin with. It's
9 a very expensive line of track to maintain. I think
10 it's been quoted as one of the most expensive in
11 California if not the country.

12 So you've got squishy tracks with the impacts
13 of sea level rise. And now it's even more complicated
14 in terms of what could happen. That's one.

15 And I have another example of where a really
16 significant impact that why -- if you discuss the
17 mitigation measures, it gives the lay person -- I would
18 say the Surface Transportation Board is expert; I'll
19 give them that in terms of rail transportation. But

20 they are probably not expert in some of these other
21 endangered species issues, marsh restoration and so
22 forth.

23 so it's pretty serious.

24 Another example of what the Surface
25 Transportation Board should be made aware of which

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1 the -- the document does not do a good job on.

2 So University of California Davis is literally
3 within a stone's throw of the tracks. And the Mondavi
4 Music Center is actually built in order to not hear the
5 trains go by. It's really an amazing engineering feat.

6 But if there were -- goodness sakes, I hope
7 not -- an explosion, that is -- that's more than some
8 theoretical blast zone. That's a distraction of a
9 University of California and peace property as well as
10 the people involved.

11 So what would be the -- what would be the
12 mitigations for that? Can you put up a blast wall? I
13 mean explore some of the possibilities of what one
14 would have to consider.

15 So without those then this delay, while the
16 petition is made to the Surface Transportation Board,
17 is at a level that is not nearly as deep for these
18 really thoughtful and knowledgeable people about rail
19 would need to know to comprehend the magnitude.

20 That's the beauty of mitigation measures. It
21 really does give you a sense of wow, that's really hard

22 to deal with, but here, you know, we could do all these
23 things.

24 And my last point is going back to the
25 document with San Luis Obispo. They went into fine

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1 detail on the coastal habitat.

2 We're on an impaired river system with
3 adarious fish and a spill that could be very
4 detrimental to those fish. And what would be the
5 mitigation for that? Again, it would be parking some
6 waddle material out there to capture the spill
7 hopefully.

8 There's some other things that could be done.

9 That would be extremely informative. I think it's
10 informative for what I said.

11 One, it would be good business practices.

12 Phillips looked like they were sort of willing to do a
13 few things. Valero practices good neighbor things.
14 Maybe they would have incorporated that. They don't
15 have the information.

16 And now we are further handicapped by the idea
17 that this would go forward for an opinion by the
18 Surface Transportation Board.

19 Would you like to --

20 MR. HOGIN: Absolutely. The first issue, the
21 comparison of what San Luis Obispo did with mitigation
22 measures versus what was done here with mitigation
23 measures.

24 The difference really is the level of

25 specificity. I mean this EIR did consider in general

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1 terms the idea can we require them -- can we require
2 valero to obtain emissions offset to offset the air
3 quality impacts from locomotive emissions.

4 Can we limit the number of train deliveries
5 that valero receives in order to reduce air emission
6 impacts and also safety and hazard impacts.

7 Can we specify the design of the tank car that
8 valero can use to make them use a more stringent
9 standard like 117 versus 1232.

10 so all those basic ideas are in the Benicia

11 EIR. The only difference is that San Luis Obispo kind
12 of wrote it up, you know, and made it very specific.
13 okay.

14 so -- and that's really the difference. The
15 basic idea that we cannot take certain actions and what
16 those actions would be are in the Benicia EIR. The
17 difference is that San Luis Obispo said -- established
18 a little process whereby, you know, when would the
19 emissions credits have to be bought. You know, how do
20 you determine, you know, what is the amount of
21 emissions credits we bought. For example, okay. It's
22 they provided more specificity.

23 And the second point is, you know, would it be
24 more helpful for us to have more specific mitigation
25 measures here in front of the City Council?

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1 The answer is well, you do. You have the San
2 Luis Obispo mitigation measures. I mean those -- for
3 the most part, those are -- you could just cut and
4 paste those out of San Luis Obispo EIR and put those in
5 our EIR.

6 And I haven't cataloged all the different
7 mitigation measures in San Luis Obispo put together,
8 but I don't believe that they are -- most of them are
9 not going to be specific to the San Luis Obispo
10 project. They are general mission measures that are
11 intended to mitigate rail impacts.

12 So, you know, one thing staff could do is
13 maybe compile all the different -- you know, the

14 specific mitigation measures that San Luis Obispo had
15 developed in their EIR and presented so that that
16 information is, in fact, in front of the decision
17 makers and the public.

18 The third point about -- you know, what could
19 the impact be on this particular water body, what could
20 the impact, you know, be on this historic structure and
21 whatnot, I mean I shutter to think. You know, I
22 shutter to think.

23 There have been a number of enormous
24 derailments, fire explosions in the last three years
25 carrying Bakken crude oil with both DOT 11 legacy cars

1 and also 1232 cars which are ones that Floyd currently
2 intends on using.

3 And, you know, it really -- I shutter to think
4 what could happen in any individual place. However,
5 having said that, I mean there is a rule of reason in
6 CEQA that, you know, you have to be analyze impacts
7 that are reasonably foreseeable, you know, according to
8 some standard of rationality.

9 I mean if the city was to attempt to identify
10 every significant, you know -- every resource of any
11 value, whether it's a building or a lake or a stream, a
12 mountain pass, whatever it is, and attempt to, you
13 know, study specifically what the impacts of an
14 explosion could be in that particular location, the
15 city could, you know, spend 50 million dollars and take

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20 years doing that.

17 MAYOR PATTERSON: Okay. Well, I don't want to
18 get derailed on this discussion.

19 MR. HOGIN: No pun intended.

20 MAYOR PATTERSON: But I would like to point
21 out -- no pun intended.

22 But I would like to point out that years ago
23 their hazardous trucks were allowed to go through
24 tunnels. And the supervisor said that's not really a
25 good idea and was assured that the probability was

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1 infinitesimally small and so not to worry about it.

2 And then of course it happened. And the

3 reason that they were able to say no trucks with
4 hazardous materials will go through tunnels is because
5 there were alternative routes.

6 So I understand your point about the
7 infinitesimal likelihood of something, but I also think
8 that the alternatives to that are something we should
9 be aware of.

10 Now that my derailment or you could call my
11 bird walk digression. I want to go back to what you
12 just said in taking cut and paste out of San Luis
13 because those are sort of standard operating procedures
14 for -- for certain potential impacts and mitigation.

15 So let's talk about Topanga. My -- if my
16 memory serves me correctly, not only do we have this --
17 the findings that are required in Topanga, but we
18 also -- I haven't done this for a while, but we always

19 had to respond to comments that were made at the public
20 hearing for the final EIR. Because it's not a public
21 comment, it's a public hearing.

22 And so when we prepared the findings, we
23 always prepared the findings so that they included the
24 response to the comments that were made at the public
25 hearing.

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1 And so there has been an enormous amount of
2 testimony on some of the -- a couple of these points
3 that I just raised and others that have been raised
4 here, and certainly by the Planning Commission and then
5 the public.

6 So I would expect nothing less than having a
7 response about why -- or how that has been addressed
8 and we need to acknowledge that. And this is not
9 because I think that we don't pay attention to
10 preemption, but it goes back to my original concern
11 that if the Surface Transportation Board took a look at
12 that or perhaps if the courts did, that they would have
13 a full body of information available for their
14 decision.

15 So do we agree with me about Topanga?

16 MR. HOGIN: I agree that Topanga requires
17 findings. And those findings have to be based on
18 substantial evidence and that CEQA may require
19 expressed findings about the adequacy of the responses
20 to comments. I haven't looked at that recently, but

21 BENICIA EXPEDITE.TXT
probably. Yes.

22 MAYOR PATTERSON: Okay.

23 MR. HOGIN: I think so.

24 MAYOR PATTERSON: Okay. So --

25 MR. SCHWARTZMAN : I have a follow-up question

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1 to something you raised. It won't take long I don't

2 think.

3 MAYOR PATTERSON: Okay.

4 MR. SCHWARTZMAN: So you kind of raised the

5 issue that I was thinking about, that what -- what do

6 we do -- not so much a recourse -- but what do we as

7 far as EIR adequacy and everything else if surface

8 Transportation Board narrows the preemption, which then
9 theoretically would give us an opportunity to do some
10 mitigation.

11 And so if we haven't really been looking at
12 mitigations and know we might potentially have an
13 opportunity to, where do we stand with the EIR at that
14 point?

15 MR. HOGIN: Yeah. I think we would need to
16 look at that issue with a specific opinion from the
17 Surface Transportation Board at hand to figure out --

18 MR. SCHWARTZMAN sure.

19 MR. HOGIN: -- how it affects us. But
20 certainly if the transportation -- if the Surface
21 Transportation Board tells us that we can require
22 Valero to purchase emissions offsets to offset, you
23 know, air quality impacts from locomotive emissions,

24 that certainly gives us, you know, substantial
25 ammunition to do just that.

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1 And if we end up in court with Valero, we can
2 say well, the Surface Transportation Board who has this
3 statutory authority under federal law to make calls
4 like that and they said we could do it, so did it. For
5 one example.

6 MR. SCHWARTZMAN: well, you said we need to go
7 back. Do we need to (inaudible) the EIR?

8 MR. HOGIN: You know, that's a -- that's a
9 more difficult question. And the answer, as I sit here
10 right now without having an opinion in front of me, not

11 thinking about it, all I can say is maybe.

12 MR. SCHWARTZMAN: Okay.

13 MAYOR PATTERSON: But as a potential assurance

14 is that you could think about it and to -- for the

15 findings.

16 MR. HOGIN: Uh-huh.

17 MAYOR PATTERSON: Okay. So it is doable by

18 using the findings and responding, using -- relaying on

19 Topanga using the findings and then saying all these

20 issues were raised and this is how we addressed them.

21 MR. HOGIN: Yes.

22 MAYOR PATTERSON: Okay. Great. With that

23 objection, we are adjourned to April 4.

24 UNIDENTIFIED SPEAKER: So I think we should

25 have a little a little bit of clarification.

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1 MAYOR PATTERSON: Oh, you would like us to do
2 something to give you direction.

3 MS. McLAUGHLIN: I would.

4 So we got your list of questions and we will
5 do our best to try and get answers to all those things.

6 But just for the process. I think you now
7 have two -- two things. You may want to decide first
8 on the STB, Surface Transportation Board, whether you
9 want to continue the project for discussion.

10 MAYOR PATTERSON: well, we need to have public
11 comment.

12 MS. McLAUGHLIN: You do. So that could be the

13 first part of the hearing. And then the second part
14 would be just general EIR.

15 MAYOR PATTERSON: Right.

16 well, the question is we're going to continue
17 this hearing until April 4. It would be premature for
18 us to give you direction on how to prepare for a STB or
19 whether or not to delay.

20 MS. MCLAUGHLIN: Right. So we are going to
21 prepare both ways. But for the public, they would need
22 to know that the first decision that you all will make
23 will be on whether you are going to continue the
24 hearing beyond April 4th.

25 MAYOR PATTERSON: Right. So her dilemma is

1 that she needs to have that discussion in order for the
2 public to be able to discuss the pros and cons.

3 Do we agree with me on that Mr. Kilger?

4 MR. KILGER: Well, where I get -- and I'm
5 catching up. Public comment on the decision whether or
6 not to continue versus public comment regarding the EIR
7 project.

8 MAYOR PATTERSON: And. Public comment and.

9 So I don't think we -- I think it would be
10 inadvisable to stop the process for -- and just say we
11 will continue the project.

12 I think we need to address -- I don't think
13 there would be any objection from the Council that we
14 need to address the questions and issues that have been
15 raised this evening as well as the potential public

16 comment on the process.

17 And the reason -- and the reason I say that is
18 it makes the city stronger in the eyes of STB as we
19 move -- if we were to move in that direction.

20 MR. KILGER: Mayor.

21 MAYOR PATTERSON: Yes.

22 MR. KILGER: I have no disagreement with your
23 argument at all. I think where I'm just trying to come
24 from a pure process standpoint is because the issue has
25 been raised by the applicant is you need to -- you

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1 can't do it tonight -- right?

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MAYOR PATTERSON: Right.

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MR. KILGER: You are saying you have to

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continue over to the 4th. Continue -- you have to go

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over to the 4th.

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But would the first item be for you, rather

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than taking public testimony on the project, to debate

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the issue of the applicant's request for a continuance,

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you would take public comment on that issue about a

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continuance. You've raised issues of concern with that

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approach.

12

But I was -- I was getting the understanding

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that, you know, we have only begun the process of the

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Council probably asking questions on the project.

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You may want to take a whole -- you'll have

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more questions after the public provides their

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testimony.

18 But this issue now has been raised, as you all
19 know, should we continue it before we get into the
20 public comment on the project.

21 And so I think where I'm asking and the city
22 attorney is what do you want to do when we open the
23 meeting on the 4th?

24 MAYOR PATTERSON: Okay. I understand that. I
25 guess I'm looking on the two points.

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1 The first point is that the city, I think,
2 presents a stronger picture if we complete that process
3 even notwithstanding that there would be a request of
4 petition to the Surface Transportation Board.

5 And the second thing is keep in mind this is
6 an election year. And it may well be that the Surface
7 Transportation Board opinion doesn't come down to until
8 after the election. And then that means we may have
9 new people on the Council.

10 So I think that you -- what we need to think
11 about is getting the record to be as complete as
12 possible.

13 MR. KILGER: Mayor, with all due respect, I
14 don't disagree. That's a discussion among the Council.

15 Staff just needs to know how you want us to
16 bring this back to you so that you can have that
17 discussion. You are bringing up great points.

18 I agree with you in terms of no, we should not
19 wait. If they want to go ahead and proceed with the
20 process, fine, but complete the review of the EIR. I

21 don't disagree with you. That's a discussion that
22 Council needs to have among yourselves to decide
23 whether or not you want to continue the matter or
24 proceed and complete it. I don't -- I'm just strictly
25 talking process so that we understand.

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1 MAYOR PATTERSON: Right. I think we're saying
2 the same thing.

3 MR. KILGER: I think we are.

4 I'm just trying to -- I'm sorry, Mayor.

5 I'm just trying to understand when we open up
6 the meeting on the 4th is the Council going to continue

7 to proceed with the normal process or do you first want
8 to have a discussion of whether or not you are going to
9 entertain the continuance.

10 MAYOR PATTERSON: Got it.

11 Clarification only, not discussion.

12 MR. SCHWARTZMAN: well, that's what I wanted
13 to -- that's what I wanted to clarify.

14 Is that the first thing that we are going to
15 do? Because if the first thing that we are going to do
16 just talking out is to decide whether or not we are
17 going to continue or not, if we decide to continue, do
18 we then go to public comment or not?

19 And if we decide not to continue -- not to
20 continue it and move on, then obviously we are going to
21 have public comment. That's what I'm trying to figure
22 out.

23 MS. McLAUGHLIN: Right. So you have to have

24 public comment before you make a decision.

25 MR. HOGIN: So let's clarify -- I'm sorry.

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1 Let's clarify.

2 MR. SCHWARTZMAN: Public comment on

3 continuance or public in time for --

4 UNIDENTIFIED SPEAKER: (Inaudible.)

5 MR. SCHWARTZMAN: Okay. Got it.

6 MR. HOGIN: Just the continuance.

7 MAYOR PATTERSON: Exactly.

8 MR. SCHWARTZMAN: Okay.

9 MAYOR PATTERSON: we're all clear? we can --

10 so we have to have -- so the question before the
11 Council would be whether -- and it sort of makes sense
12 now that you think about it even though it's 11:30 at
13 night.

14 The question before the Council is there has
15 been this idea about going to the Surface
16 Transportation Board and asking for a delay.

17 so we're asking for public comment on that
18 concept because that will then -- and our decision.
19 That will then be one choice is that we can simply say,
20 fine. We are done. Go forth. Do your petition.

21 Or we could say there would be delay after we
22 finish our process. And -- but prior to what, a
23 decision? Something like that. So we need to give
24 staff direction that we have those couple of choices.

25 we don't have a choice. And if we're going to

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1 take up the delay issue then we have to have public
2 comment.

3 But then we do have a choice after that about
4 let's say the Council agrees to the delay, but also
5 says let's finish this process up to the point of
6 voting. Okay. Or they could vote too.

7 UNIDENTIFIED SPEAKER: Okay. So that's a
8 decisions. There's two decisions that we are going to
9 make.

10 MAYOR PATTERSON: Right. And she may have
11 some more choices for us after they discuss among

12 themselves, but those are the two primary choices that
13 we will have to have to discuss on April 4th.

14 MR. CAMPBELL: well, hold on just a second.

15 shouldn't the -- you know, this is something
16 between the five of us and our attorneys as far as the
17 continuation and the risk of the STB ruling and
18 everything. That's a closed session item, isn't it?

19 I mean this is like having public testimony in
20 a closed session when you are getting into something
21 like that.

22 MAYOR PATTERSON: why is it a closed session?

23 MR. CAMPBELL: well, because for a start it
24 would be between our attorney and, you know, the five
25 of us on whether, you know, we are going to hire a

1 lawyer and go through the legal process if Valero
2 doesn't, in fact, go to the STB.

3 MS. MCLAUGHLIN: Well, let me do some more
4 research. I don't see that we need a closed session at
5 this point. But we can agendaize it if we need one.

6 MAYOR PATTERSON: Right. So then what we want
7 to do is if we can get concurrence from the Council
8 that if the April 4th public hearing needs to be
9 continued that you would be available for the 6th and
10 the 19th so that we would continue this to those dates
11 certain.

12 Is there -- okay. You got those dates.

13 And then we are going to -- we have given
14 direction to staff about how we're going to proceed, so

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15 that's item two. And then we are -- do we take action
16 to continue to April 4th, date certain?

17 MS. McLAUGHLIN: Yeah. Yes.

18 MAYOR PATTERSON: And add the other dates?

19 MS. McLAUGHLIN: You can adjourn it to that
20 date.

21 MAYOR PATTERSON: Okay. So could I have a
22 motion to continue this item until April 4th and 6th
23 and 19th if needed and under direction -- or given
24 direction to staff.

25 MALE SPEAKER: So noted.

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1 FEMALE SPEAKER: Second.
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2 FEMALE SPEAKER: Call the roll, please.

3 Council Member Campbell.

4 MR. CAMPBELL: Yes.

5 FEMALE SPEAKER: Hughes.

6 VICE MAYOR HUGHES: Yes.

7 FEMALE SPEAKER: Schwartzman.

8 MR. SCHWARTZMAN: Yes.

9 FEMALE SPEAKER: Strawbridge.

10 MS. STRAWBRIDGE: Yes.

11 FEMALE SPEAKER: Mayor Patterson.

12 MAYOR PATTERSON: Yes.

13 All right. we're adjourned. Thank you so

14 much.

15 (whereupon, the proceedings concluded.)

16 * * *

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REPORTER'S CERTIFICATE

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I SALLY BRONNER, Certified Shorthand Reporter in

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4 and for the State of California do hereby certify:

5

6 That the foregoing transcription of taped
7 proceedings was transcribed by me to the best of my
8 ability;

9

10 That the foregoing is a true record of the
11 testimony and proceedings held at that time.

12

13 In WITNESS WHEREOF, I have subscribed my name
14 this date: March 25, 2016.

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