

CONTINUED SPECIAL MEETING OF THE  
BENICIA CITY COUNCIL

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

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

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

Job No. 7360

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A P P E A R A N C E S

BENICIA CITY COUNCIL:

- MAYOR, Elizabeth Patterson
- VICE MAYOR, Mark C. Hughes
- COUNCILMEMBER, Tom Campbell
- COUNCILMEMBER, Alan M. Schwartzman
- COUNCILMEMBER, Christina Strawbridge
  
- CITY ATTORNEY, Heather McLaughlin
- CITY SPECIAL COUNSEL, Bradley R. Hogin
- ESA CONSULTANT, Janna Scott
- CITY MANAGER, Brad L. Kilger
- COMMUNITY DEVELOPMENT DIRECTOR, Christina Ratcliffe
- POLICE CHIEF, Erik Upson
- FIRE CHIEF, Jim Lydon
- CITY CLERK, Lisa Wolfe

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

2

3 MAYOR PATTERSON: Okay? Are we ready?

4 Thanks.

5 Can we have roll call, please?

6 THE CLERK: Councilmembers Campbell?

7 COUNCILMEMBER CAMPBELL: (No audible response.)

8 THE CLERK: Hughes?

9 VICE MAYOR HUGHES: Here.

10 THE CLERK: Schwartzman?

11 COUNCILMEMBER SCHWARTZMAN: Here.

12 THE CLERK: Strawbridge?

13 COUNCILMEMBER STRAWBRIDGE: Here.

14 THE CLERK: And Mayor Patterson?

15 MAYOR PATTERSON: Here.

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

19 (Pledge recited)

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

25 Also, if you are having a hard time

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

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

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

15           Mr. Kilger?

16           MR. KILGER: (Inaudible.)

17           VICE MAYOR HUGHES: Move to approve.

18           COUNCILMEMBER STRAWBRIDGE: Second.

19           MAYOR PATTERSON: Call the roll, please.

20           THE CLERK: Councilmembers Campbell?

21           COUNCILMEMBER CAMPBELL: Yes.

22           THE CLERK: Hughes?

23           VICE MAYOR HUGHES: Yes.

24           THE CLERK: Schwartzman?

25           COUNCILMEMBER SCHWARTZMAN: Yes.

1 THE CLERK: Strawbridge?

2 COUNCILMEMBER STRAWBRIDGE: Yes.

3 THE CLERK: And Mayor Patterson?

4 MAYOR PATTERSON: Yes.

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

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

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

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

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

22 MS. RATCLIFFE: Side table.

23 MAYOR PATTERSON: Side table. Okay.

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

1 read all of them that we have received.

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

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

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

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

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

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

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

23 Thank you very much.

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

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

4 MAYOR PATTERSON: Okay. Great. Thanks.

5 MR. GREBE: Thank you.

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

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

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

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

15 COUNCILMEMBER SCHWARTZMAN: Closed session?

16 MAYOR PATTERSON: Pardon?

17 COUNCILMEMBER SCHWARTZMAN: Closed session  
18 (inaudible).

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

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

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

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

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

9 Starting to my left?

10 COUNCILMEMBER CAMPBELL: No.

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

15 MAYOR PATTERSON: All right.

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

18 COUNCILMEMBER STRAWBRIDGE: Nothing.

19 VICE MAYOR HUGHES: Nothing since last time.

20 MAYOR PATTERSON: Okay. Great.

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

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

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

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

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

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

17           Oh, here's my agenda.

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

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

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

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

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

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

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

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

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

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

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

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

15 MAYOR PATTERSON: Okay.

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

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

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

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

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

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

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

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

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

16           COUNCILMEMBER SCHWARTZMAN: Okay.

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

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

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

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

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

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

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

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

20 MAYOR PATTERSON: Correct. Okay.

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

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

25 Okay.

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

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

5 VICE MAYOR HUGHES: (Inaudible.)

6 COUNCILMEMBER SCHWARTZMAN: What's that?

7 VICE MAYOR HUGHES: (Inaudible.)

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

10 MAYOR PATTERSON: Yeah.

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

13 MAYOR PATTERSON: Exactly.

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

16 VICE MAYOR HUGHES: (Inaudible.)

17 COUNCILMEMBER SCHWARTZMAN: Okay.

18 Thank you for being here, by the way.

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

20 COUNCILMEMBER SCHWARTZMAN: I appreciate you  
21 coming here.

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

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

1 questions.

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

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

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

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

22           That's Question No. 1.

23           MR. CASTILLO: Okay. Thanks, Councilmember.

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

1 hours, particularly with peak hours.

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

7 COUNCILMEMBER SCHWARTZMAN: So -- okay.

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

16 So what happens in that circumstance?

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

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

1 arriving late because of that.

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

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

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

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

15 I mean, how does that work?

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

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

1 train at a specific time.

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

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

9 MR. CASTILLO: Correct.

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

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

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

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

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

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

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

1 COUNCILMEMBER SCHWARTZMAN: Yeah.

2 Hang on. Hang on, Mr. Howe.

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

5 That's the answer?

6 MR. CASTILLO: Correct.

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

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

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

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

15 COUNCILMEMBER SCHWARTZMAN: "Throughout the  
16 system"?

17 MR. CASTILLO: Throughout our system.

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

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

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

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

8 COUNCILMEMBER SCHWARTZMAN: Uh-huh.

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

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

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

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

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

22 MR. CASTILLO: Uh-huh.

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

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

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

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

6 COUNCILMEMBER SCHWARTZMAN: Okay.

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

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

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

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

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

1 correction as soon as possible.

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

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

6 MR. CASTILLO: Yes.

7 COUNCILMEMBER SCHWARTZMAN: What about  
8 Roseville up?

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

11 COUNCILMEMBER SCHWARTZMAN: All --

12 MR. CASTILLO: -- we have --

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

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

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

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

21 COUNCILMEMBER SCHWARTZMAN: -- twice a week.

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

24 COUNCILMEMBER SCHWARTZMAN: Okay.

25 I remember a discussion, maybe EIR or

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

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

7 COUNCILMEMBER SCHWARTZMAN: Yeah.

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

9 COUNCILMEMBER SCHWARTZMAN: Please.

10 MR. CASTILLO: -- understand that?

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

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

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

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

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

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

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

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

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

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

23           MR. CASTILLO: Yes.

24           COUNCILMEMBER SCHWARTZMAN: -- class?

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

1 slower --

2 COUNCILMEMBER SCHWARTZMAN: Right.

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

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

9 COUNCILMEMBER SCHWARTZMAN: Sure.

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

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

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

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

22 COUNCILMEMBER SCHWARTZMAN: Okay.

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

25 COUNCILMEMBER SCHWARTZMAN: Okay. Thank you.

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

7           So if it's --

8           MR. CASTILLO: Sure.

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

12          MR. CASTILLO: Sure.

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

16          MR. CASTILLO: Sure.

17          COUNCILMEMBER SCHWARTZMAN: -- pay?

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

20          COUNCILMEMBER SCHWARTZMAN: 21 billion?

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

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

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

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

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

12           COUNCILMEMBER SCHWARTZMAN: Okay. So --

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

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

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

22           MR. CASTILLO: Yeah.

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

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

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

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

6           COUNCILMEMBER SCHWARTZMAN: Who would be  
7 responsible?

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

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

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

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

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

1 delivering this -- this particular crude.

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

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

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

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

17 MR. CASTILLO: Yeah.

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

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

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

23 COUNCILMEMBER SCHWARTZMAN: Okay.

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

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

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

7           Would that be correct?

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

12           COUNCILMEMBER SCHWARTZMAN: Okay.

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

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

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

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

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

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

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

3 COUNCILMEMBER SCHWARTZMAN: Okay. Thank you.

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

7 COUNCILMEMBER SCHWARTZMAN: All right.

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

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

11 That's all that I have.

12 MAYOR PATTERSON: Okay. I have --

13 MS. RATCLIFFE: Mayor Patterson?

14 MAYOR PATTERSON: Thanks.

15 I have three questions.

16 MR. CASTILLO: Sure.

17 MS. RATCLIFFE: Mayor Patterson?

18 MAYOR PATTERSON: Okay -- yes?

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

22 MAYOR PATTERSON: Yes.

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

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

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

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

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

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

12 MS. SCOTT: Yes, they did.

13 COUNCILMEMBER SCHWARTZMAN: Excuse me?

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

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

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

23 Thank you.

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

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

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

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

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

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

17 So any questions anyone has on that?

18 Okay. Thanks.

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

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

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

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

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

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

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

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

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

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

1 a road at the time of peak traffic travel.

2 Correct?

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

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

8 MR. CASTILLO: Correct.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16           So that's my concern.

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

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

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

1 tonight.

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

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

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

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

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

23           MR. CASTILLO: Absolutely.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20           MR. CASTILLO: (No audible response.)

21           MAYOR PATTERSON: And so thank you very much.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 MR. CASTILLO: Yeah.

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

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

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

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

1 a -- or maybe a Valero --

2 (Overlapping voices)

3 COUNCILMEMBER CAMPBELL: Maybe someone can  
4 answer that.

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

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

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

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

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

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

23 COUNCILMEMBER CAMPBELL: Uh-huh.

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

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

3 COUNCILMEMBER CAMPBELL: Well --

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

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

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

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

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

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

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

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

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

5           COUNCILMEMBER CAMPBELL: Yeah.

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

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

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

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

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

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

1 organic liquid in there, you know.

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

4 MR. HOWE: I'm not sure.

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

6 COUNCILMEMBER CAMPBELL: Yeah.

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

9 COUNCILMEMBER CAMPBELL: Thank you.

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

13 COUNCILMEMBER CAMPBELL: Okay.

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

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

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

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

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

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

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

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

11 COUNCILMEMBER CAMPBELL: Okay.

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

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

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

1 don't want to have days off.

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

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

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

11           COUNCILMEMBER CAMPBELL: Uh-huh.

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

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

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

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

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

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

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

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

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

12           COUNCILMEMBER CAMPBELL: Okay.

13           MAYOR PATTERSON: So there --

14           COUNCILMEMBER CAMPBELL: All right.

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

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

23           (Laughter)

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

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

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

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

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

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

23           MAYOR PATTERSON: Oh, okay.

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

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

4 CHIEF LYDON: Okay.

5 MAYOR PATTERSON: Okay.

6 Anything else?

7 COUNCILMEMBER CAMPBELL: No.

8 MAYOR PATTERSON: Okay.

9 Vice Mayor Hughes?

10 VICE MAYOR HUGHES: Thanks.

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

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

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

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

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

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

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

6           Can I get clarification on that --

7           MAYOR PATTERSON: Sure.

8           VICE MAYOR HUGHES: -- from the chair?

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

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

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

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

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

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

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

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

17           VICE MAYOR HUGHES: Okay.

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

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

25           MR. HOWE: We probably would have called them

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

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

7 MR. CASTILLO: (Nods head affirmatively.)

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

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

13 MAYOR PATTERSON: Follow-up question from --

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

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

18 COUNCILMEMBER SCHWARTZMAN: Yeah, thank you.

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

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

25 COUNCILMEMBER SCHWARTZMAN: Okay. An hour

1 and a half. Okay.

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

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

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

16 COUNCILMEMBER SCHWARTZMAN: Attached to  
17 the others?

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

20 COUNCILMEMBER SCHWARTZMAN: Thank you.

21 MAYOR PATTERSON: Councilmember Strawbridge?

22 COUNCILMEMBER STRAWBRIDGE: Thank you.

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

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

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

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

6 COUNCILMEMBER STRAWBRIDGE: Okay.

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

9 MR. HOWE: Yes.

10 COUNCILMEMBER STRAWBRIDGE: -- during this  
11 process?

12 MR. HOWE: Yeah.

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

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

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

25 COUNCILMEMBER STRAWBRIDGE: And what do --

1 MR. HOWE: -- property.

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

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

7 MR. CASTILLO: (Inaudible) --

8 MR. HOWE: Yeah.

9 MR. CASTILLO: -- back there.

10 MR. HOWE: Yeah.

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

15 COUNCILMEMBER STRAWBRIDGE: Okay.

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

20 Would that be helpful?

21 COUNCILMEMBER STRAWBRIDGE: Yes.

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

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

25 MR. COSTILLO: Yeah.

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

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

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

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

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

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

14           MR. HOWE: Sorry.

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

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

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

22           MAYOR PATTERSON: Okay.

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

1           MAYOR PATTERSON: Say that again?

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

7           MAYOR PATTERSON: Okay.

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

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

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

16           MS. SGAMBATI: Correct.

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

19           Okay?

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

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

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

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

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

11 Does everybody see the Track 732?

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

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

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

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

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

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

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

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

1 take that back to Roseville.

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

4 MS. SGAMBATI: Yes, correct.

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

8 MS. SGAMBATI: What was the issue?

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

12 MR. HOWE: Yeah.

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

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

20 MAYOR PATTERSON: Okay.

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

23 MAYOR PATTERSON: I -- I --

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

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

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

6           COUNCILMEMBER STRAWBRIDGE: Okay.

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

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

14          COUNCILMEMBER STRAWBRIDGE: Okay.

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

19          What's that all about?

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

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

23          MR. CASTILLO: Sure.

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

1 commodities to.

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

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

8           MR. CASTILLO: Yeah.

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

11          MR. CASTILLO: Correct.

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

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

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

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

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

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

6 MR. CASTILLO: Sure.

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

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

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

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

1 another 100.

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

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

9           COUNCILMEMBER STRAWBRIDGE: Okay.

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

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

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

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

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

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

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

10          COUNCILMEMBER STRAWBRIDGE: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

3 COUNCILMEMBER STRAWBRIDGE: In 2018?

4 MR. CASTILLO: 2018.

5 COUNCILMEMBER STRAWBRIDGE: Okay.

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

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

10 MAYOR PATTERSON: Sure.

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

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

15 MR. CASTILLO: Right.

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

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

22 COUNCILMEMBER SCHWARTZMAN: Okay.

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

25 MR. CASTILLO: It's pretty much the

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

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

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

11           COUNCILMEMBER SCHWARTZMAN: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

1 COUNCILMEMBER SCHWARTZMAN: Thank you.

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

6 MR. CASTILLO: Correct.

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

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

15 MR. CASTILLO: Correct.

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

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

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

1 MR. CASTILLO: Sure.

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

4 MR. CASTILLO: Yeah.

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

7 MR. CASTILLO: Yeah.

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

10 MR. CASTILLO: And with all due --

11 MAYOR PATTERSON: Go ahead.

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

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

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

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

1 come up with this technology.

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

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

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

13 Councilmember Campbell?

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

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

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

21 COUNCILMEMBER CAMPBELL: Okay. Okay.

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

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

1 talked about that for a second yesterday.

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

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

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

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

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

19           (Laughter)

20           COUNCILMEMBER CAMPBELL: So the point is --

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

22           COUNCILMEMBER CAMPBELL: Six, seven, yeah.

23           MR. HOGIN: -- Councilmember Campbell.

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

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

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

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

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

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

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

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

25           COUNCILMEMBER CAMPBELL: Okay. Because the

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

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

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

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

16           MAYOR PATTERSON: Can --

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

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

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

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

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

6 COUNCILMEMBER CAMPBELL: Thank you.

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

9 COUNCILMEMBER CAMPBELL: You know --

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

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

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

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

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

1 MR. HOGIN: Right.

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

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

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

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

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

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

3 And so that nexus has to be created.

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

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

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

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

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

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

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

6           So, theoretically, you can follow that chain.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17           I don't see that at all.

18           MAYOR PATTERSON: Okay. Thanks.

19           Councilmember Schwartzman?

20           COUNCILMEMBER SCHWARTZMAN: Yeah, one last  
21 question.

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

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

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

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

7 MR. HOWE: Correct.

8 COUNCILMEMBER SCHWARTZMAN: Okay.

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

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

15 MR. HOWE: Correct. They --

16 COUNCILMEMBER SCHWARTZMAN: And who is that?

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

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

23 MR. HOWE: Yes.

24 COUNCILMEMBER SCHWARTZMAN: Thank you.

25 MAYOR PATTERSON: Okay. Back to Sulpher Creek.

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

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

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

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

18           VICE MAYOR HUGHES: Point of order.

19           MAYOR PATTERSON: Yes?

20           VICE MAYOR HUGHES: Yeah. Point of order.

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

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

1 VICE MAYOR HUGHES: Right.

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

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

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

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

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

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

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

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

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

16           Do you have any response to that response?

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

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

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

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

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

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

8 MR. RADIS: Okay.

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

12 MR. RADIS: So --

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

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

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

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

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

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

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

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

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

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

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

19           MAYOR PATTERSON: More than what?

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

22           MAYOR PATTERSON: So --

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

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

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

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

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

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

13           MAYOR PATTERSON: Okay.

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

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

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

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

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

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

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

4 MR. RADIS: The tanks just fell over?

5 MAYOR PATTERSON: Right, right.

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

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

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

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

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

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

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

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

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

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

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

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

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

19 MAYOR PATTERSON: Yeah --

20 MR. RADIS: -- the existing --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25           MAYOR PATTERSON: Okay.

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

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

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

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

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

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

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

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

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

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

14           So can you help sort that out?

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

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

21           MAYOR PATTERSON: Any --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19           MS. SCOTT: If I may?

20           MAYOR PATTERSON: Yeah.

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

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

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

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

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

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

9           MAYOR PATTERSON: The Draft EIR?

10          MS. SCOTT: Yes.

11          MAYOR PATTERSON: Okay.

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

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

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

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

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

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

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

12           MAYOR PATTERSON: Okay.

13           Councilmember Strawbridge?

14           COUNCILMEMBER STRAWBRIDGE: Thanks.

15           Just a point of order on this.

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

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

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

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

3 MR. FLYNN: Uh --

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

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

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

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

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

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

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

8 COUNCILMEMBER STRAWBRIDGE: Okay. Thanks.

9 MAYOR PATTERSON: And the -- right.

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

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

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

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

1 project.

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

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

9           Are there any other questions?

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

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

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

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

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

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

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

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

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

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

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

25           And once Valero files a petition on that

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

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

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

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

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

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

1 do so if their appeal is denied.

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

5           So should there be further discussion?

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

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

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

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

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

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

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

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

10           Councilmember Schwartzman?

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

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

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

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

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

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

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

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

9           MS. McLAUGHLIN: Yes, you could --

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

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

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

19          COUNCILMEMBER SCHWARTZMAN: Okay.

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

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

24          VICE MAYOR HUGHES: No.

25          MAYOR PATTERSON: -- his question? Okay.

1 Schwartzman?

2 COUNCILMEMBER SCHWARTZMAN: Okay.

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

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

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

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

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

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

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

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

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

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

1 heard?"

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

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

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

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

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

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

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

1 that have come to the STB.

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

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

8 So here's my dilemma.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21           So I'm inclined towards doing that.

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

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

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

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

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

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

1 events, okay, I want more information.

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

4           And that's what I have to say.

5           MAYOR PATTERSON: Vice Mayor Hughes?

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

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

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

16           And I -- I would say, no, we don't.

17           I think we heard last night numerous times  
18 that it's possible that based on the STB's decision,  
19 it could have an effect on the EIR.

20           Well, if that's a possibility, then why would  
21 we talk about the EIR now when we're going to have to  
22 redo that whole -- have this same discussion with some  
23 additional information in three months, six months,  
24 nine months, whenever it's going to be?

25           So I -- for me, I would think it would be a

1 waste of time, not only -- not just on staff, I think  
2 the public as well, and on the city council.

3           So that's -- that's where I -- what I feel  
4 about that.

5           Similar to I think what Councilmember Schwartzman  
6 said, I'm not a fan of federal preemption. I'm not at  
7 all. I don't like the fact that we -- we don't have  
8 some control -- or somebody is telling us we don't  
9 have control over what goes on in or near our city.

10           But the fact is this isn't about whether I  
11 like federal preemption or not. The question is  
12 whether it applies to this project or not.

13           Here's where I'm at with this.

14           There -- there certainly is no shortage of  
15 opinions about whether federal preemption applies or  
16 not. We've heard lots of it in the last three to four  
17 meetings. We've received hundreds of correspondence  
18 on this issue.

19           Here's where I'm at with it.

20           I -- we have the city attorney and our  
21 outside counsel telling us that it definitely applies,  
22 and they're saying that with confidence and  
23 conviction.

24           We've had other attorneys, outside attorneys,  
25 whether they're from environmental groups or other

1 groups, that with the same conviction and confidence  
2 are telling us that it doesn't apply.

3 We have the Kern County Superior Court  
4 decision that is indicating that it does apply.

5 And we have Attorney General -- most recently  
6 Attorney General's opinion that it does -- it does not  
7 apply.

8 All right. So I'm trying to figure out  
9 whether it does or whether it doesn't, and I know  
10 a lot of you are convinced, one way or the other; I'm  
11 not, and, unfortunately, I'm one of five that need to  
12 make this decision.

13 And I -- I think Mayor Patterson asked last  
14 night what would be the benefit of the -- for the --  
15 for the public to delay this any further, because the  
16 public is worn out about this -- with this issue?

17 And I think the benefit is that the  
18 councilmembers will be able to make the best informed  
19 decision --

20 Point of order here.

21 There are signs that are being thrown up  
22 there that I think are so disrespectful, and I'm going  
23 to say what the sign said.

24 I'm giving my opinion. You can agree or  
25 disagree with it, but you're holding up signs that say

1 "bull doo-doo." Very immature, very unprofessional,  
2 and very -- very disrespectful. You can continue to  
3 do it, but you're not helping your cause at all. It  
4 really is disrespectful.

5 Let me continue on.

6 So in my mind -- and, again, one of five that  
7 are voting, I still have some questions on it.

8 Is the STB's decision -- or opinion going to  
9 be the end-all for me? No, but it's going to be  
10 another data point that I will factor into my personal  
11 decision on this.

12 And I would think -- again, the benefit to  
13 the public is, and I would -- I would hope that you  
14 would expect us to make the -- the -- a decision that  
15 is the most informed as possible.

16 For me, and it might be different than some  
17 of my colleagues, I need that information. So I think  
18 it's -- it's important for me to have that.

19 As far as the -- the date certain, I know  
20 that's -- that's an issue, and I know staff has  
21 recommended it, and I'm -- I'm not sure why, other  
22 than what we've talked about last night, was the  
23 possibility that the EIR might become stale or there  
24 might be something that comes up from the opinion from  
25 the STB that results in us having to revisit or

1 recirculate the EIR.

2 I'm not -- we have no control over the STB's  
3 schedule. If we do authorize or approve the  
4 continuance, the request for a continuance, what we're  
5 saying -- and maybe not each of us individually, but  
6 what we're saying as a council is, "This information  
7 is important to us. We -- we need this information as  
8 part of our decision-making."

9 And so let's say we set it for September 1st,  
10 a deadline for September 1st, and now September 1st  
11 comes and goes and we don't have that.

12 Do we make a decision based on what we have?

13 I would say "no." It's important for me to  
14 get that information. So if it takes two weeks,  
15 two months or six months, or beyond, I want that  
16 information.

17 And I -- I -- again, I would hope that --  
18 that the public would look at the city council and --  
19 and expect us to gather all the information necessary  
20 to make an informed decision.

21 So that's where I'm heading right now, and  
22 I'd be interested to hear from my colleagues on this.

23 MAYOR PATTERSON: Okay.

24 Councilmember Campbell?

25 COUNCILMEMBER CAMPBELL: (Inaudible.)

1           MAYOR PATTERSON: Councilmember Strawbridge?

2           COUNCILMEMBER STRAWBRIDGE: Thanks.

3           I have a couple of comments and questions on  
4 the mayor's questions for tonight.

5           Under "B," it's saying that Valero would  
6 petition the STB on the extent of indirect preemption  
7 for local government and land use.

8           That was not what I thought was being asked.  
9 I thought that we were asking about the preemption  
10 outside of Valero's property.

11           So that's one question, possibly, for Valero.

12           One of the other -- on letter F, was, "City  
13 has no control over timing of petition nor framing of  
14 the question."

15           And I don't know if -- if that has been  
16 decided. I was not aware that that had been decided,  
17 that there was not going to be any input into this.

18           And this gets to the letter we received from  
19 the Attorney General. I'm -- I'm still not sure where  
20 that came from, who requested that, and what was  
21 given, as far as point of reference, in -- for her to  
22 reply to that.

23           So, you know, it -- this -- this process has  
24 been very eye-opening. I've had threats of going to  
25 jail, to Hell, and not be reelected.

1           And you know what? I -- I'm not going to be  
2 bullied into making this decision, making a decision  
3 tonight, when I don't think we have all the facts.

4           There's a lot of outside interests in this.  
5 Before I came to the council tonight, I got a phone  
6 call from a survey doing -- asking mostly about the  
7 supervisors race, but in the midst of those questions,  
8 it was about the Valero Crude by Rail.

9           So we're already getting our citizens out  
10 there, you know, with -- with a lot of these  
11 questions.

12           The Adams, Broadwell, Joseph & Cardozo  
13 company, Attorney at Law, I don't know whether all of  
14 you are aware of that, but it's being funded by a  
15 union.

16           And so, you know, we're -- we're being, I  
17 don't want to say "set up," but we're being looked at  
18 as Ground Zero here to make this decision, and I don't  
19 think we have enough information here yet.

20           We don't have a -- a clear preemption. We  
21 have a lot of other cases out there, like San Luis  
22 Obispo.

23           I don't think it's fair that Benicia has to  
24 be the one to make this decision tonight. I'm not  
25 afraid of making a decision, but I think we need more

1 information.

2 So that's where I'm coming from.

3 COUNCILMEMBER SCHWARTZMAN: Can I -- can I  
4 have a follow-up; do you mind?

5 MAYOR PATTERSON: Well, let's see if  
6 Councilmember Campbell minds.

7 COUNCILMEMBER CAMPBELL: Go ahead.

8 MAYOR PATTERSON: Okay.

9 COUNCILMEMBER SCHWARTZMAN: This has to do  
10 with Councilmember Strawbridge's question regarding  
11 what you have in your hand. The City has no control  
12 over timing of the petition and framing of the  
13 question. I get that part.

14 Here's the question.

15 Okay. It's a public process. I mean, I  
16 confirmed that with the staff attorney. And so to the  
17 extent it's a public process, I'll bet there's people  
18 here that might submit some stuff.

19 But can't we, as a city, submit information  
20 requests for questions?

21 MS. McLAUGHLIN: Yes, we can certainly file  
22 information with that.

23 COUNCILMEMBER SCHWARTZMAN: Okay.

24 Well, I -- I think that's something that -- I  
25 mean, if this is going to go that path, I think it's

1 something we seriously need to consider doing and give  
2 our input to the STB.

3           Maybe we have a shot at narrowing --  
4 you know, narrowing the preemption issue.

5           Anyway. Thank you.

6           MAYOR PATTERSON: Well...

7           Councilmember Campbell?

8           COUNCILMEMBER CAMPBELL: Mine will be a  
9 little shorter comments.

10           I respect all of you. I think you did an  
11 excellent job. And for Valero, it may be  
12 uncomfortable some of the comments that are made about  
13 Valero and the employees.

14           That said, also, I didn't sort of like some  
15 of the treatment that was done by our contract  
16 attorney. I agree with him on preemption on all the  
17 points.

18           And STB, for me, I think they're going to  
19 come back, because of all the cases throughout, and  
20 rulings they've had, they're going to say that the  
21 rails are off-limits, and I think they're probably  
22 going to say Valero's claim that the project is  
23 off-limits is probably going to be wrong.

24           So for me, I -- I was elected to make votes,  
25 you know, whether it's right or wrong, and for me,

1 also, every vote I make, in my mind, I couldn't care  
2 less about elections. I make it as if it's the last  
3 vote I'm ever going to make, because it's me, and what  
4 I think with every vote is a little part of me.

5 So that said, I -- I really don't see this to  
6 be coming back with anything that will change what  
7 we've already brought up. So I -- I'm opposed to  
8 continue this. I think we should vote.

9 And for me, also, when it comes to this EIR,  
10 I'm going to certify it because I've got enough  
11 information to make a decision on the -- the actual  
12 project, which, unfortunately, I'm opposed to, and for  
13 a series of reasons, all I give if we ever get around  
14 to voting on that.

15 So those are my three votes, and I'm not  
16 going to ever change them. So, you know, STB can come  
17 back with what they want, but that's the way I'm going  
18 to vote on all three of them.

19 So...

20 MAYOR PATTERSON: So I --

21 COUNCILMEMBER CAMPBELL: That's it for me.

22 MAYOR PATTERSON: -- I agree with the issue  
23 that we've had now from the staff and the attorney  
24 about preemption, and so I am confused about what is  
25 it that STB is being asked about what we don't

1 understand about preemption.

2           We get that. On or off property, preemption  
3 rules when it comes to rail operations.

4           What remains to be asked of STB?

5           And my understanding is that in the letter  
6 that was sent to the city, and it's in Appendix --  
7 help me on that. Is it H? -- says that in addition to  
8 all the rail activity that is subject to federal  
9 preemption, for which we have no disagreement and  
10 complete alignment with what San Luis Obispo has  
11 stated as well, the additional issue that Valero  
12 raises is that other land use opinions, decisions, are  
13 affected by indirect preemption.

14           And, frankly, I don't know what in the hell  
15 that means.

16           We have local land use decision-making. That  
17 is a very precious decision-making ability that we  
18 have as a City, and I wouldn't give that up easily.

19           And I'm -- and so if STB -- if we're asking  
20 STB, "Oh, gosh. Could you advise us on whether or not  
21 we have opinions and can make decisions on land use  
22 decisions that aren't connected with rail activities  
23 on or off site?" I -- I -- I will go down fighting.

24           So why would we want to ask STB to confirm  
25 what we agree, that the preemption rules the day when

1 it comes to rail transportation, but that it does not  
2 rule the day when it comes to land use decision?

3 I can -- I -- I don't understand what we're  
4 asking STB. We, as a City, could weigh in, if the  
5 agreement is -- I mean, it isn't really actually  
6 matter, delay or not delay. Valero could file a  
7 petition, just to get a clarification in their minds  
8 for some reason that they want.

9 And so we could file a comment, but that's  
10 what we would be doing, is filing a comment.

11 And how have you felt about commenting on a  
12 document that you've had no control over, you haven't  
13 framed the question, and you have been reacting for  
14 the last three years?

15 And that's exactly the position that the City  
16 would be put in.

17 Now, it's just not the City of Benicia. You  
18 heard that long list of jurisdictions, air districts,  
19 and cities and county, I believe, the -- SACOG, the  
20 Attorney General, all weighing in. Whether we agree  
21 with them or not, that's not the issue. The fact is  
22 they've weighed in.

23 Guess what they're going to do if there's a  
24 petition? And how long do you think that is going to  
25 take?

1           So in my series of scenarios, sure, we could  
2 say, "Well, we would like to have this continued to  
3 September because we have other things that we need to  
4 get done, and so that makes a lot of sense, and we  
5 won't have a stale EIR, and we'll still have some  
6 staff that's familiar with the process," and blah,  
7 blah, blah.

8           But if the response is so awesome that STB  
9 says, "We're going to need more time," that is a  
10 possibility.

11           Do we want to live with that?

12           One of the things that I -- I knew when I  
13 started out planning is I was told by a city manager  
14 many, many years ago is, "Just keep having meetings  
15 because you're going to wear out the public, and you  
16 get your project."

17           And is that what we want to do, wear out the  
18 public and not be responsible?

19           We can't -- we have enough information to  
20 make a decision tonight. We may not agree on that  
21 decision, but we do have enough information to make a  
22 decision, and it seems to me that that is fair to the  
23 public. It also certainly tells Valero what -- what  
24 that is, and they can proceed from there.

25           Right now it doesn't really matter, I

1 suppose, because of change economics when it comes to  
2 transporting of oil, but it does matter to the City of  
3 Benicia and its staff.

4           And I do want to say that -- well, I  
5 always -- I usually say at the beginning of the  
6 meeting how much I appreciate everybody, Valero,  
7 Valero's employees, the public, people from other  
8 places that are concerned about their homes and  
9 everything, and I always want to come back to staff.

10           They have -- they work hard and they have  
11 done their job, and -- and I really respect that.

12           So -- so -- but we have other things we want  
13 to do in this city, and we have limited people,  
14 limited time, limited energy, and it's being sucked  
15 out of the city, dealing with this issue.

16           I really care a lot about doing other things  
17 than talking about Valero.

18           And to quote Bernie Sander -- Sanders, "The  
19 damned e-mails," it's sort of a "Damn Valero." I'm  
20 just tired of it. I want to move on. We have things  
21 to do in the -- in the city.

22           Valero is going to be in business tomorrow.  
23 We know that. It's good for the city, but we need to  
24 move on.

25           So I am confused about what you expect to get

1 clarified by the Surface Transportation Board.

2 COUNCILMEMBER SCHWARTZMAN: May I answer?

3 MAYOR PATTERSON: Yes.

4 COUNCILMEMBER SCHWARTZMAN: Precisely the  
5 indirect parts of it --

6 MAYOR PATTERSON: So --

7 COUNCILMEMBER SCHWARTZMAN: -- that's  
8 precisely the indirect aspects of the preemption  
9 issue. That's what I want to see if we can get an  
10 answer on, because that would give me a lot more  
11 clarity.

12 And with that answer, I would feel complete,  
13 as far as what I need to know to move forward in  
14 making a decision on this issue, because that's the  
15 only area that we -- there might be wiggle room, and  
16 that's what I'm looking to get an answer on.

17 MAYOR PATTERSON: But they don't have the  
18 last word.

19 COUNCILMEMBER SCHWARTZMAN: Okay. And if it  
20 goes to court, it goes to court. I get that part.  
21 But they're the place to start.

22 MAYOR PATTERSON: Okay.

23 So any further discussion?

24 I'm looking for a motion to delay and the  
25 conditions of that motion.

1 COUNCILMEMBER SCHWARTZMAN: Okay. Well, let  
2 me just say that I -- I -- I don't think I want to go  
3 forever and just on and on and on and on. I think a  
4 date certain is the thing, also, that we need do. I  
5 mean, there's only so long I'm willing to wait.

6 And, you know, from talking to the staff  
7 attorney, there's no guarantee. Just like there's no  
8 guarantee on -- on the trains and all that other  
9 stuff, but anyway.

10 There's no guarantee on the timing. It seems  
11 reasonable that within a six-month time period this  
12 should happen. So I'm okay with September.

13 I mean, I'm okay with that as a date certain.  
14 I think that, you know, there can be correspondence to  
15 give them an idea.

16 Somewhere along the lines, I'm not sure, I  
17 don't think it was with STB when I spoke with them,  
18 but some correspondence, maybe it was Mr. Hogin, I  
19 don't remember where it was, but that councils can  
20 actually give their input to try to move the process  
21 along because a decision is waiting on it.

22 And I don't know if that weighs on STB or  
23 not, but it's certainly something that I -- that I'm  
24 willing to try to do.

25 So I guess I'll -- I'll put forth a motion

1 to -- to continue this item to a date certain, first  
2 meeting in September, and that's the motion.

3 VICE MAYOR HUGHES: Discussion.

4 MAYOR PATTERSON: We'll need to have a  
5 second, or the motion dies.

6 COUNCILMEMBER STRAWBRIDGE: I'll second.

7 MAYOR PATTERSON: Okay.

8 Discussion?

9 VICE MAYOR HUGHES: So what if we don't get a  
10 decision by that date certain time?

11 COUNCILMEMBER SCHWARTZMAN: We will have to  
12 make our -- we will have to come back here again and  
13 decide what we're going to do, okay, and I'm -- I'm  
14 not waiting forever for this answer.

15 I -- I also do want to get this resolved, but  
16 I need this -- I need this for me to feel comfortable  
17 to move forward in going through the balance of this,  
18 and then I'm -- I'm prepared at that point to go  
19 through and make a decision.

20 VICE MAYOR HUGHES: Yeah, I'm with you. I  
21 agree with that. I need it, also, to make the  
22 decision, but what if we don't get it? Then we're  
23 making a decision based on --

24 COUNCILMEMBER SCHWARTZMAN: Then we are where  
25 we are now, okay, and, yeah, people will say, "Look at

1 all the time you wasted."

2 I get that part, okay, but I'm willing to  
3 take that -- that chance.

4 VICE MAYOR HUGHES: It's a clarification --

5 MAYOR PATTERSON: We have a city attorney --

6 VICE MAYOR HUGHES: Oh.

7 MAYOR PATTERSON: -- with a light on.

8 MS. McLAUGHLIN: Well, it was just a teeny  
9 clarification, because the first meeting in September  
10 is right after the holiday, staff recommends that you  
11 continue it, if you do it to September, to  
12 September 20th.

13 COUNCILMEMBER SCHWARTZMAN: Fine with me.  
14 I'll amend the motion to the second meeting.

15 VICE MAYOR HUGHES: I'll second.

16 MAYOR PATTERSON: Is the seconder agreeing to  
17 the amended motion?

18 COUNCILMEMBER STRAWBRIDGE: That's fine. Yes.

19 MAYOR PATTERSON: Discussion?

20 VICE MAYOR HUGHES: So help me understand,  
21 because -- because you said six months and then you  
22 said September 1st.

23 COUNCILMEMBER SCHWARTZMAN: Well, I --

24 VICE MAYOR HUGHES: I want to understand.

25 COUNCILMEMBER SCHWARTZMAN: -- okay. So it's

1 not exactly six months. Okay.

2 VICE MAYOR HUGHES: Well, the reason I ask is  
3 because I thought I heard Valero say it's going to  
4 take 30 days to put together the petition.

5 COUNCILMEMBER SCHWARTZMAN: I -- I'm telling  
6 Valero right now, I'm willing to go out to the second  
7 meeting in September. I'm not willing to go beyond.

8 So you guys need to figure out how you can  
9 move this forward, okay, to get that answer back.

10 And I don't mind, with -- with council  
11 concurrence, to send something to try to suggest to  
12 STB, "Hey, we've got a decision riding on this. We  
13 need you to take a look."

14 VICE MAYOR HUGHES: Okay. I think I  
15 understand.

16 MAYOR PATTERSON: Councilmember Strawbridge  
17 and then Councilmember Campbell.

18 COUNCILMEMBER STRAWBRIDGE: Okay. One of the  
19 things that -- in one of our correspondence today from  
20 Ed Ruszel, he -- he mentioned that if this was  
21 continued, that this would give the public an  
22 opportunity to respond to -- again, to some of the  
23 things that's happened tonight and then -- and in  
24 between now.

25 I mean, there's a lot of things still that

1 need to be decided on this, as far as mitigation,  
2 and -- and -- and I'm not sure how that happens in  
3 this time period.

4           So does this all kind of happen at once, or  
5 do we set the September -- the second meeting in  
6 September and then have the public comment and have  
7 the decision, or -- or if STB comes back earlier, then  
8 we have the meeting earlier?

9           COUNCILMEMBER SCHWARTZMAN: Sure.

10          COUNCILMEMBER STRAWBRIDGE: Correct?

11          COUNCILMEMBER SCHWARTZMAN: Yes.

12          COUNCILMEMBER STRAWBRIDGE: So --

13          MAYOR PATTERSON: If we --

14          COUNCILMEMBER STRAWBRIDGE: -- so it seems  
15 like that gives the public another opportunity to  
16 weigh in on this.

17           But, you know, getting back to what the mayor  
18 is saying is that, you know, as far as preemption,  
19 everything is settled now. We understand the --  
20 the -- the feds have control over the railway.

21           But, you know, we've sat here for -- and the  
22 planning commission sat here listening to all the  
23 people up rail wanting us to make a decision that we  
24 can't because we're preempted.

25           So I guess that's why it's very important

1 that we get a higher level of authority in here to  
2 give us a finding. If this does and it probably will  
3 go to court, we need -- we need that kind of backing.

4 So I -- I just don't understand why you think  
5 now it's all been resolved as far as preemption.

6 MAYOR PATTERSON: I just want to get a  
7 clarification and then call on Campbell, and then I'll  
8 respond to the question.

9 So can there be a hearing -- if we're going  
10 to do it to a date certain, can we do anything -- can  
11 we have a hearing before that?

12 MS. McLAUGHLIN: We could. We'd have to send  
13 out new notices to everyone to inform them of the new  
14 date.

15 MAYOR PATTERSON: Okay. So everyone that's  
16 testified?

17 MS. McLAUGHLIN: Correct. And --

18 MAYOR PATTERSON: Okay.

19 MS. McLAUGHLIN: -- and I guess I should  
20 clarify.

21 You all closed the public hearing. So  
22 there's no need to take new testimony, unless there's  
23 new information, such as the STB decision and people  
24 wanted to comment on that.

25 But everything that's happened thus far

1 doesn't need additional public comment, unless you all  
2 chose to open up the hearing again.

3 MAYOR PATTERSON: Okay. Cam- --

4 COUNCILMEMBER SCHWARTZMAN: I'm not sure if I  
5 was clear on that.

6 You're saying there would not be a need to  
7 allow the public to weigh in?

8 MS. McLAUGHLIN: Well, you would need to  
9 allow them to weigh in on anything new. So if the STB  
10 issues a decision, you could allow them to comment on  
11 that, but if it's just the same as it is now, there's  
12 no need for additional public comment.

13 COUNCILMEMBER SCHWARTZMAN: Okay. Because it  
14 would be my -- my preference to allow -- I mean, I  
15 don't know under what circumstances, allow the public  
16 to -- to weigh in.

17 MS. McLAUGHLIN: Right.

18 COUNCILMEMBER SCHWARTZMAN: I'm not sure the  
19 context of whatever it is.

20 But, yeah, I mean, I'm -- I'm pushing this --  
21 this -- this continuance, but I certainly want them an  
22 opportunity to basically come back and give their  
23 responses, and so on.

24 So I'm -- I'm -- you know, that's why I'm  
25 asking the question.

1 MS. McLAUGHLIN: Right. So related to the  
2 "anything new," the new decision.

3 COUNCILMEMBER SCHWARTZMAN: Okay.

4 MS. McLAUGHLIN: So you wouldn't have to go  
5 back and rehear all the testimony that everybody's  
6 already given over the last several days.

7 COUNCILMEMBER SCHWARTZMAN: Okay. And I know  
8 on staff weighs a lot. I get that and I'm sorry, but  
9 I -- this is what I feel, for me, I have to do.

10 MAYOR PATTERSON: Councilmember Campbell?

11 COUNCILMEMBER CAMPBELL: I know you've got to  
12 do it the way you want to do it, but, you know, you're  
13 asking for a date certain in September, and the  
14 underpinnings are a date uncertain on when Valero is  
15 going to send this out and a date uncertain on when  
16 STB is going to respond.

17 So, you know, the likelihood you're going to  
18 have a date certain anywhere in that list of things is  
19 probably pretty remote.

20 COUNCILMEMBER SCHWARTZMAN: I'm not sure if I  
21 agree with you, Councilmember Campbell, not -- not  
22 from my discussion with STB, and I think even  
23 Mr. Hogin, back a couple meetings ago, commented on --  
24 on the turn time.

25 It may be -- may I ask him to weigh in on his

1 opinion on that --

2 MAYOR PATTERSON: Certainly.

3 COUNCILMEMBER SCHWARTZMAN: -- from his  
4 experience?

5 MR. HOGIN: I'm sorry. What's the question?

6 COUNCILMEMBER SCHWARTZMAN: Well, I mean, you  
7 know, the issues here --

8 MR. HOGIN: Yes.

9 COUNCILMEMBER SCHWARTZMAN: -- okay, and if  
10 this is presented to STB, what is your experience with  
11 their response time for something like this?

12 MR. HOGIN: Well, the STB -- again, I -- I  
13 reviewed a number of STB decisions, and most of the  
14 time, they -- if they agree to institute a  
15 Declaratory Order proceeding, they will issue a  
16 decision within three to six months.

17 There are some cases where they did it  
18 faster, some -- some that it took them longer.

19 Some of the petitions I've seen style  
20 themselves as petitions for expedited  
21 Declaratory Order. I don't think that's a formal  
22 creature, but it's an attempt to get their attention  
23 that there's something urgent here.

24 And I -- I -- if -- were I Valero, I would  
25 certainly send out mine to be expedited -- expedited

1 Declaratory Order.

2           There also have been references, if -- if  
3 there is a date of a court hearing, for example, then  
4 the petitioner will say, you know, "Please -- please  
5 decide by this date. We really need your decision by  
6 this date."

7           But I think it might be helpful for the  
8 council to set a date certain, whether it ends up  
9 sticking to it or not, because that might help the  
10 request for an expedited Declaratory Order.

11           COUNCILMEMBER SCHWARTZMAN: Okay. So that is  
12 something, in your opinion, we could send off to STB,  
13 saying, "This is there, okay, we have to a date  
14 certain. Please, we're asking you to make sure you  
15 get the decision, if you're going to," whatever,  
16 however it's phrased, "back to us by or sooner."

17           MR. HOGIN: That's right. Although, it -- I  
18 mean, the -- the initial filing would be Valero's,  
19 unless the City wanted to --

20           COUNCILMEMBER SCHWARTZMAN: I get that.  
21 Right.

22           MR. HOGIN: -- file -- also file a petition  
23 for Declaratory Order -- Order, which it could.

24           But it would be -- rather, it would be Valero  
25 saying, "The City has continued this item to -- to a

1 date certain, awaiting for guidance from the STB. So  
2 your guidance is urgently needed. Please give us your  
3 guidance by September 20th."

4 COUNCILMEMBER CAMPBELL: Can I have some  
5 quick follow-up on that?

6 But this is a little different than your  
7 standing -- standard Declaratory Order or judgment,  
8 because this is going straight at the -- the policing  
9 powers, I guess you'd say, of the local government,  
10 because this is going at -- at least the way I  
11 understood what Valero wants to do, at the zoning and  
12 building codes of a community and as such, of a state  
13 and county government, the way they're doing it.

14 So this seems like this is one that if they  
15 decide they want to rule on it, there's going to be a  
16 lot of people who want to throw their two bits in  
17 from, the Attorney General of California to -- who  
18 knows? someplace in North Carolina for all I know.

19 Because this looks like this is -- this is  
20 sort of out of our league is the way I view this  
21 particular potential declaratory judgment.

22 I mean, you know, we're just a little  
23 community, but this is pretty --

24 MR. HOGIN: We're little, but we're tough.

25 COUNCILMEMBER CAMPBELL: -- this is pretty --

1 it's a pretty big one we're looking at; right? I  
2 mean --

3 MR. HOGIN: Crude by rail, in general, has  
4 gotten quite a bit of attention. The preemption  
5 issue, I think will -- will -- you know, is -- is the  
6 biggest part of that.

7 I don't know that the fact that there's a lot  
8 of people commenting is necessarily going to delay  
9 things beyond three to six months. I don't think the  
10 issues are complicated.

11 I think that the relevant people at the  
12 Surface Transportation Board could read, you know,  
13 some materials that Valero has written, some materials  
14 that I've written, the Attorney General letter, and be  
15 prepared to rule.

16 It -- it -- it's not going to be -- I don't  
17 think it's going to be a difficult one.

18 COUNCILMEMBER CAMPBELL: Okay. Because it --  
19 this one looks to me like -- I mean you're the expert  
20 on this -- you know, they're pushing the envelope a  
21 little farther than where it's ever gone before.

22 MR. HOGIN: I do not agree with that.

23 COUNCILMEMBER SCHWARTZMAN: You don't?

24 MR. HOGIN: No.

25 COUNCILMEMBER SCHWARTZMAN: You don't think

1 this is a --

2 MR. HOGIN: I think it's clear --

3 COUNCILMEMBER SCHWARTZMAN: -- (inaudible)?

4 MR. HOGIN: I think it's clear that the --  
5 that this City cannot deny Valero, who is a shipper  
6 who has rights under ICCTA --

7 COUNCILMEMBER SCHWARTZMAN: Uh-huh.

8 MR. HOGIN: -- the ability to access the  
9 railroad based on a finding that -- that the rail  
10 impacts are unacceptable, because that's the STB's  
11 exclusive jurisdiction.

12 COUNCILMEMBER SCHWARTZMAN: Right.

13 MR. HOGIN: And under ICCTA, the STB  
14 jurisdiction preempts all other remedies, and this  
15 would be -- if were -- if you were to say to Valero,  
16 "You can't operate," that would be a remedy, and  
17 that's preempted. That's -- you can't -- you can't  
18 step into their domain.

19 COUNCILMEMBER SCHWARTZMAN: We don't expect to.

20 MAYOR PATTERSON: Councilmember -- I mean,  
21 Vice Mayor Hughes.

22 VICE MAYOR HUGHES: So I -- I think I could  
23 live with the date certain, as long as when we get to  
24 that date certain, if we don't have the information --  
25 if we have the information, we move on.

1           If we don't have the information, we make a  
2 decision at that time, are we still comfortable moving  
3 on?

4           COUNCILMEMBER SCHWARTZMAN: I would expect  
5 that would be the case.

6           VICE MAYOR HUGHES: Okay. The only reason I  
7 bring it up is because -- but you're saying what I'm  
8 saying is we're not comfortable at this point in time  
9 to make the decision.

10           And so if we don't get the information, what  
11 makes this more comfortable making the decision?

12           COUNCILMEMBER SCHWARTZMAN: I get that, but  
13 I'm not willing to wait forever.

14           VICE MAYOR HUGHES: Okay.

15           All right. Well, as long as we can revisit  
16 that when the date certain arrives.

17           MAYOR PATTERSON: So to answer  
18 Councilmember Strawbridge's comment about what it was  
19 that needed to be clarified by the Surface  
20 Transportation Board for preemption, the only area of  
21 disagreement that I see on the mainline activities of  
22 the rail is that our staff and consultants decided not  
23 to provide any mitigation measures, which the -- to  
24 compare that to San Luis Obispo's staff, they did  
25 provide mitigation measures with the understanding

1 that it may be -- and the exact language was, that it  
2 may be preempted.

3           The advantage of having the mitigation  
4 measures is that, as was described earlier, is it gave  
5 some information to the applicant about things that  
6 could work and perhaps make it more palatable to have  
7 a decision and, also, actually good business and good  
8 for the environment.

9           So why would you not want to be informed  
10 about that?

11           Where we have an area of disagreement, and --  
12 and Mr. Hogin just kind of emphasized that, is that  
13 when it comes to things that don't affect rail, but  
14 could be associated with impacts on site, that -- that  
15 because it's a shipper, that the shipper is immune  
16 from -- and I'm using that word. I know I'm putting  
17 that word in your mouth -- but the shipper is immune  
18 from dealing with some of those impacts.

19           I think the Attorney General is commenting --  
20 it's almost like we're talking past each other.

21           I think the Attorney General is commenting on  
22 the need to be clear on CEQA. So we did that, more or  
23 less. According to Councilmember Campbell, he could  
24 live with the Final EIR; okay?

25           But that we -- but she says that we didn't do

1 mitigation measures, and so that's less than  
2 adequately informing the public, and that was kind of  
3 her point.

4 That's different than saying we had to do  
5 those mitigation measures in violation of what we all  
6 have said we accept as federal preemption.

7 It's less than clear -- crystal clear, in my  
8 mind, about how that affects the land use aspects, and  
9 I think that's where it -- where the Surface  
10 Transportation Board provided its nonopinion on the  
11 SEA-3 decision -- that's S-E-A -- SEA-3 decision  
12 because they were saying, "Hey, you know, the law  
13 already applies to land use.

14 "We don't need to invent law, write law. It  
15 exists, and it refers to a bunch of cases; therefore,  
16 we're not going to provide an opinion."

17 So that -- that, really, is, to me, the area  
18 of dispute.

19 Now, if you're suggesting that we should  
20 allow the Surface Transportation Board to make an  
21 opinion about the land use and that they could,  
22 in fact, preempt our authority, our "lease powers" is  
23 the term of art, and land use, they've got a fight on  
24 their hands.

25 And we're just going to sit by while that

1 fight takes place [sic] when, in fact, we have enough  
2 information to make an opinion, a decision, about the  
3 Final EIR. We have enough information to make the  
4 decision about the project.

5 We are not seeking perfection. I don't see  
6 how the Surface Transportation Board adds to our duty  
7 that we have to make those decisions. I think we're  
8 perfectly capable of making those decisions tonight.

9 I would vote "no" on the delay. I would vote  
10 "no" on the certification of the Final EIR, because it  
11 is actually inaccurate. It does not follow CEQA in  
12 terms of the baseline analysis, and that's very clear,  
13 and there are a few other small things.

14 I would vote "no" on the project because of  
15 our zoning code and what it says in terms of  
16 public health and safety.

17 It doesn't -- and then I'm concerned about,  
18 because I listened to and I follow all the things that  
19 people say about our revenue sources, and that really  
20 troubles me. But, apparently, that's not that major  
21 of an impact to us, and I'm not going to go into the  
22 details on that.

23 But it's "business as usual" with Valero, and  
24 that's fine, but we don't need to take this risk on  
25 this project.

1           So there we are. That's the discussion. I  
2 think it's unfortunate that it looks like the majority  
3 is going to vote for a delay.

4           Are you ready to call the vote?

5           COUNCILMEMBER SCHWARTZMAN: I -- can I just  
6 make a -- a request to Valero?

7           May I?

8           MAYOR PATTERSON: I'm --

9           COUNCILMEMBER SCHWARTZMAN: Well, it's a  
10 hope.

11          MAYOR PATTERSON: -- with a motion on the  
12 table, can you make a --

13          COUNCILMEMBER SCHWARTZMAN: -- it's a hope.

14          MAYOR PATTERSON: -- I -- that troubles me,  
15 because why not --

16          COUNCILMEMBER SCHWARTZMAN: It's a  
17 discussion.

18          Okay. I'm okay. That's all right.

19          MAYOR PATTERSON: Okay.

20          So call the roll, please.

21          THE CLERK: Councilmembers Campbell?

22          COUNCILMEMBER CAMPBELL: No.

23          THE CLERK: Hughes?

24          VICE MAYOR HUGHES: Yes.

25          THE CLERK: Schwartzman?

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COUNCILMEMBER SCHWARTZMAN: Yes.

THE CLERK: Strawbridge?

COUNCILMEMBER STRAWBRIDGE: Yes.

THE CLERK: And Mayor Patterson?

MAYOR PATTERSON: No.

Without objection, we are adjourned.

Thank you.

(End of Reporter's Transcript of Recorded  
Proceedings)

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CERTIFICATE  
OF  
CERTIFIED SHORTHAND REPORTER

\* \* \*

I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing recorded proceedings were furnished via digital medium, reported by me stenographically, and later transcribed into typewriting under my direction; that the foregoing is an accurate transcription of the recorded material.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney or any of the parties.

IN WITNESS WHEREOF, I have subscribed my name this date: May 4, 2016.

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