

TRANSCRIPTION OF THE VIDEOTAPED
BENICIA SPECIAL PLANNING COMMISSION MEETING

Date: Monday, February 8, 2016

Transcribed By: Sally Bronner
Certificate No. 7090

Job No. 7074

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MONDAY, FEBRUARY 8, 2016

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CHAIR DEAN: Good evening everyone. Welcome to the Benicia Planning Commission.

Will you stand and join me in the Pledge of Allegiance.

PEOPLE AT THE MEETING: I pledge allegiance to the United States of America and to the Republic for which it stands, one nation, under God, indivisible with liberty and justice for all.

CHAIR DEAN: Roll call of the Commissioners, please.

FEMALE SPEAKER: Commissioner Birdseye.

UNIDENTIFIED SPEAKER: Here.

FEMALE SPEAKER: Commissioner Cohen Grossman.

UNIDENTIFIED SPEAKER: Here.

FEMALE SPEAKER: Commissioner Oakes.

UNIDENTIFIED SPEAKER: Here.

FEMALE SPEAKER: Commissioner Radtke.

UNIDENTIFIED SPEAKER: Here.

FEMALE SPEAKER: Commissioner Young.

UNIDENTIFIED SPEAKER: Here.

FEMALE SPEAKER: Commissioner Chair Dean.

CHAIR DEAN: Here.

UNIDENTIFIED SPEAKER: Here.

1 CHAIR DEAN: This is a reference to the
2 fundamental rights of the public. There's a plaque
3 stating the fundamental rights of each member of the
4 public and it's posted at the entrance to this meeting
5 room per section 4.04.030 of the City of Benicia's open
6 government ordinance.

7 Next item is the adoption of the agenda.

8 Do I hear a motion?

9 (Inaudible).

10 Adoption moved by Commissioner Birdseye.

11 UNIDENTIFIED SPEAKER: Second.

12 CHAIR DEAN: Second. Commissioner Oakes.

13 FEMALE SPEAKER: Commissioner Birdseye.

14 UNIDENTIFIED SPEAKER: Yes.

15 FEMALE SPEAKER: Commissioner Cohen Grossman.

16 UNIDENTIFIED SPEAKER: Yeah.

17 FEMALE SPEAKER: Commissioner Oakes.

18 UNIDENTIFIED SPEAKER: Yes.

19 FEMALE SPEAKER: Commissioner Radtke.

20 UNIDENTIFIED SPEAKER: Yes.

21 FEMALE SPEAKER: Commissioner Young.

22 UNIDENTIFIED SPEAKER: Yes.

23 FEMALE SPEAKER: Chair Dean.

24 CHAIR DEAN: Yes.

25 Next item is the opportunity for public

1 comment. This is an opportunity for anyone to come
2 forward to speak to the commission on any item within
3 our jurisdiction on -- that is not related to tonight's
4 agenda's meeting.

5 So does anybody want to come forward on items
6 not related to the Crude by Rail project?

7 (No audible response).

8 CHAIR DEAN: Okay. I'm seeing no one come
9 forward, so I'm going to close the opportunity for
10 public comment and move on to regular agenda items.

11 We've got one item on the agenda tonight and
12 that's the Valero Crude by Rail project Environmental
13 Impact Report and Use Permit.

14 The structure of this hearing follows our
15 normal process. Staff will give a presentation
16 followed by the commission questions to the staff.
17 Applicant will then be given an opportunity to present
18 the project. We are going to give the applicant 15
19 minutes to present their project description. Then we
20 will open the meeting to the public for public comment.

21 So it's a standard procedure that we use for
22 all of our hearings here in Benicia.

23 And we have an unusual format just in terms of
24 the timing.

25 This is a special meeting on a Monday night.

1 We're starting at 6:30 and we will go to a date -- or
2 to a time to be determined.

3 If we don't get through all the presentation
4 public comment tonight, we will continue until tomorrow
5 night. If we don't get through public comment and the
6 commission deliberations tomorrow night, we will go on
7 to a third night and then ultimately a fourth night if
8 we need to.

9 I hope it doesn't go that long, but we're
10 prepared to do that. So people who do not get an
11 opportunity to speak tonight, we have been -- as you
12 probably know, we've been -- we have got a long list of
13 people who want to speak.

14 People will be asked to comment and speak in
15 the order on which they are on the sign up list. So if
16 you don't get an opportunity tonight then we will just
17 keep going down the list the next couple of nights
18 until we get everybody in.

19 We have a lot of attendees tonight. I know
20 there's some people outside. We have some people in
21 the commission room. We know that you are over there.
22 When your time comes to speak, we will give you plenty
23 of time to come over here so you don't necessarily need
24 to be in a hurry. So we know you are there. We will
25 not forget about you.

1 And also in terms of the fire code, everybody
2 needs to have a seat. We can't allow people to stand
3 up in the aisles, so, please, if you don't have a
4 seat -- and I see everybody in this room does -- but
5 when you come into the council chambers, we're going to
6 ask you to wait until a seat's available or until your
7 name is called and then at which point we will ask you
8 to line up in the back of the meeting room and we'll
9 have people lined up there five at a time.

10 There's a plastic cone back there that
11 indicates where we'd like you to line up, but again,
12 please no standing in the central aisle here or along
13 the back of the council chambers.

14 Ex parte communication. Now is the
15 appropriate time for that. If any members of the
16 commission have had any ex parte communication, this is
17 probably the best time to let us know and I'll --
18 should we just go right down the row.

19 Commissioner Young.

20 COMMISSIONER YOUNG: I'm going to report an
21 almost ex parte communication.

22 I went to an event Friday night that was meet
23 your local officials. And as soon as I walked in I
24 realized that anybody who wanted to talk to me was
25 probably going to be talking about this project.

1 There were a couple of council members there.
2 There were known opponents of the project, known
3 supporters of the project, and I was going to get drawn
4 into conversations about the project. And I knew that
5 this time would come when I would be asked about those
6 conversations so I decided to just turn around and walk
7 out and leave the event and not have these
8 conversations. So I guess I'm not reporting an
9 ex parte communication.

10 COMMISSIONER COHEN GROSSMAN: My turn?

11 CHAIR DEAN: Oh.

12 COMMISSIONER COHEN GROSSMAN: Are we going
13 this way?

14 CHAIR DEAN: Yeah.

15 COMMISSIONER COHEN GROSSMAN: I had a couple
16 of meetings that I attended that I've already disclosed
17 in the last public hearing. And the only thing
18 subsequent to those, those were -- let's see -- there
19 was a visit to Valero; there was a visit -- a meeting
20 at town hall with the folks against Crude by Rail, and
21 there was also a legal women voters meeting that
22 occurred about four months ago that I attended. I
23 don't have anything in particular extra to say about
24 those ex parte communications.

25 Thank you.

1 CHAIR DEAN: Okay. Thank you.

2 UNIDENTIFIED SPEAKER: Excuse me.

3 Could you speak a little louder, please? It's
4 hard to understand what you are saying.

5 CHAIR DEAN: You want to do that again?

6 Thank you.

7 COMMISSIONER COHEN GROSSMAN: I don't mind
8 repeating it, and I don't mind speaking slower, and I
9 always appreciate the feedback for when I can't be
10 understood as I think we all do.

11 I had disclosed previously -- is that better?

12 UNIDENTIFIED SPEAKER: Yes. Say that again.

13 COMMISSIONER COHEN GROSSMAN: Good. I'll
14 speak a little slower.

15 When we had a public hearing a year ago or so
16 that I had attended a couple of meetings. I had
17 attended -- I had had a tour as other planning
18 commissioners did in groups of two at Valero, sponsored
19 by Valero, and I had also attended a meeting at the
20 library. I think it was for the Benicians -- let's
21 see. Hold up a sign; I'll tell you what your name is.

22 Anyway, one of the groups that has -- had
23 organized a workshop. Both of those were previously
24 disclosed. So I'm just reiterating to be extra --
25 extra communicative.

1 Subsequent to the last public hearing I have
2 attended one event, I guess -- I don't even know if I
3 would consider it ex parte -- but I did attend a league
4 of women voters meeting about six months ago. I don't
5 remember saying anything, but I listened. So I did
6 attend a meeting on the subject of Crude by Rail, as I
7 recall -- I don't remember all the details of it, and
8 it was about six months ago.

9 And that's it.

10 CHAIR DEAN: Okay. Thank you.

11 Commissioner Oakes, do you want to go next?

12 COMMISSIONER OAKES: Thank you.

13 I have real no ex parte communications to talk
14 about. I was invited to Valero to see the site. I did
15 not attend those meetings. I really have nothing to
16 disclose.

17 Thanks.

18 COMMISSIONER BIRDSEYE: I was invited by
19 Valero to take the tour and I took it as a newly
20 appointed Planning Commissioner to get up to speed on
21 -- on the project.

22 I also attended one conference in Richmond
23 over the summer and there was talk of Crude by Rail at
24 this conference. I did not engage in the discussion
25 about that. That conference was called Soil, Not Oil.

1 COMMISSIONER RADTKE: All right.

2 I went on the same tour of Valero with Kari as
3 we were both new to the Planning Commission at the
4 time.

5 I have called a couple agencies, people within
6 agencies just to kind of check things, kind of clear my
7 mind. And I did call one planning department of
8 another city.

9 CHAIR DEAN: Okay. And I attended a second
10 tour of Valero. And that was so long ago, I don't
11 remember if it was during the negative declaration
12 stage or the EIR stage.

13 Subsequent to that and recently I've had a
14 couple of communications. One was with Mike Ioakimedes
15 who is a former Benicia city council member. We talked
16 about Crude by Rail more on the state and national
17 stage. And then also recently with Marilyn Barday, a
18 couple of conversations with her, mainly about the
19 economic prospects of Valero and Benicia.

20 So that's it.

21 All right. That's it for the ex parte
22 communication.

23 Are we ready for the staff report?

24 MS. MILLION: We are.

25 CHAIR DEAN: Okay. Thank you.

1 MS. MILLION: Good evening.

2 So I'd like to start off by introducing the
3 team. For those of you who don't know, my name is Amy
4 Million. I'm a principal planner here in the City of
5 Benicia and I've been managing this project.

6 CHAIR DEAN: Amy, use your microphone, please.

7 MS. MILLION: Okay. Sorry. Try to face this
8 way.

9 So over on this side we have Christina
10 Ratcliffe is the community development director. To my
11 right is Janis Scott with ESA, the environmental
12 consultant team, and also Cory Barringhaus with ESA.

13 Across the dias we have Brad Hogin, one of the
14 City's contract attorneys. Also Kat Wellvan, another
15 one of the City's contract attorneys.

16 Jim Lydon, the Benicia fire chief; as well as
17 Lieutenant Damian Sylvester with the police department.

18 We have a few members of the team in the
19 seats since we don't have enough seats up here. I just
20 wanted everyone to know who they are.

21 We have two members also with ESA. Tim Rimpo
22 and Jack Hutchinson. We also have with us a
23 representative from MRS, Steve Radis; as well as our
24 public works director, Graham Wattsworth.

25 Tonight's meeting will start with a

1 presentation by staff, as the chair mentioned, followed
2 by commission questions of staff. We have the
3 applicant's presentation followed by Commissioner
4 questions to the applicant.

5 Once all of the Commissioners' questions are
6 answered, we will then open it up to public comment.
7 Eventually public comment will close and the commission
8 will deliberate and take action.

9 So given the fact that we may not get through
10 all seven steps tonight. As you all know we have
11 prescheduled meetings throughout this week. They will
12 start at 6:30, Tuesday, Wednesday and Thursday, if
13 necessary.

14 So we had 145 people sign up to speak in
15 advance of this meeting.

16 For those who are in attendance and if you
17 wish to speak and have not signed up, please fill out a
18 speaker card. They are located on the back table here
19 in the council chambers.

20 For those of you in the satellite rooms there
21 are some also available in the commission room along
22 with a drop basket. City staff will come by and
23 collect those and make sure that we have your name.

24 If you are on the list to speak you do not
25 need to fill out a speaker card at any point in this

1 process, your name is on the list.

2 So before I begin, I want to draw your
3 attention to some of the information that's available.

4 Since the release of the Planning Commission
5 agenda packet on the 28th, we received 18 written
6 comment letters and also 41 other letters of support.

7 The 41 letters of support were the same as the
8 form comments letters that were in the final EIR. You
9 might remember there were three form letters. It was
10 form comment three.

11 So I didn't provide comments of the form
12 letter because you all know what they are. But all the
13 comments which provided were provided in hard copy to
14 the Commissioners as well as provided on the extra
15 copies at the side table if anybody needs them.

16 Tonight we have two PowerPoint presentations
17 that were -- that are available. The first is this
18 one, the staff presentation as well as we received one
19 from the residents of Davis. So that's available --
20 that's already uploaded onto the laptop ready to go.
21 And if anyone is interested in a copy of that, that is
22 also on the side table.

23 If you are -- if you didn't get a copy of the
24 comments and you still want them or you just want a
25 digital copy, they are available on the city's website

1 as of about an hour ago.

2 So there's three parts to the presentation
3 tonight. I'm going to provide an overview of the
4 project and an analysis and a staff report.

5 ESA, Cory Barringhaus is going to follow up
6 with an overview of the environmental impacts and the
7 environmental impact report. And then the city
8 attorney is going to provide an overview of the
9 project's legal surrounding preemption.

10 So the Valero Refinery. The Valero Refinery
11 is centrally located in the Benicia Industrial Park.
12 The main office is located off of East Second Street
13 giving the property the 3400 East Second Street
14 address.

15 The project site which -- the project site
16 which is the location of the new unloading rack and the
17 rails spurs is located on the northeast side near Park
18 Road along Sulfur Springs Creek.

19 Everybody, except those at home, can see the
20 dock. Sorry for those at home. Okay.

21 So just a general project description.

22 So the project is to change the shipment
23 method of up to 70,000 barrels per day of crude oil to
24 be delivered by rail cars rather than Marine vessel.

25 Installation of a new 1500-foot long unloading

1 rack capable of off-loading two rows of 25 crude oil
2 tank cars. Construction of two parallel off-loading
3 rail spurs to access the tank car, unloading rack along
4 with a parallel departure track to store tank cars in
5 preparation for departure for a total of 8,880 track
6 feet of new track on the refinery property.

7 Installation of an approximately 4,000 linear
8 feet of 16-inch diameter oil pipeline. Removal of
9 approximately 1800 feet of earth and containment berm
10 and replacement of a new eight-foot concrete berm
11 approximately 12 feet west of the existing berm.

12 Relocation of an existing fire water pipeline,
13 compressor station and an associated underground
14 infrastructure. Relocation or removal of existing
15 ground water monitoring wells along Avenue A, which is
16 in the project area, and construction of a service road
17 adjacent to the proposed unloading rack.

18 So to orient yourself a little bit to the next
19 four slides, we have sort of switched the view from the
20 original refinery view. Park Road, 680 is basically on
21 the left side and Sulfur Springs Creek is to the south.

22 What this is trying to give you an overview
23 essentially of the two areas which I'm going to discuss
24 a little bit further which is the track improvements
25 area on the left where the new unloading rack is going

1 to be. The dash line represents the new pipeline which
2 will then feed into the existing pipeline that goes to
3 the crude oil tanks.

4 So the blue box area shows the area of the
5 track improvements necessary and the switching
6 activities. Part of the reason why I am sort of
7 coupling the aerial photo with the site drawings is
8 because they are a little bit hard to read, but I just
9 wanted to give you an idea of where everything was
10 taking place.

11 So this is the area of all of the track
12 improvements. There are three existing tracks
13 currently used for Valero's operations for butane and
14 for propane unloading.

15 A new track is going to be added to this area
16 to accommodate all the switching activity associated
17 with the crude oil cars.

18 Second area is the area of the new track for
19 unloading rack. Essentially all of this infrastructure
20 is brand new, and this is essentially -- you could --
21 unfortunately the drawing was too large, but I think
22 the Commissioners all got a copy in their packet.
23 Essentially if you were to line them up, this would be
24 on the right side and that one would be on the left.

25 So the unloading rack platform walkway would

1 be approximately 13 feet above grade and is located
2 near the northeast property line adjacent to Sulfer
3 Springs Creek.

4 The 1500-foot long unloading rack would be --
5 would consist of 25 60-foot long segments. The
6 unloading rack and new track will allow for the 50 car
7 strain -- 50 car train to split into two with 25 tank
8 cars on either side of the rack.

9 For the loading, each of the 60-foot long
10 segments would include an aluminium pole with four LED
11 lights mounted 12 feet above the unloading rack walkway
12 and two LED pendant fixtures mounted underneath the
13 platform, eight feet above the grade.

14 Walkways extending over the rail spurs would
15 include six stanchion mounted, six -- excuse me. Six
16 stanchion mounted LED light fixtures along the walkway,
17 and stairs and four -- four landings at each of the
18 unloading racks; 11 stanchion mounted LED fixtures
19 would be mounted eight feet above the 11 monitoring
20 stations and would actually be space along the length
21 of the unloading rack.

22 In addition, two pole LED lights would be
23 located 18 inches above grade so that the track will
24 remain lit.

25 So the Valero Refinery property is located in

1 the IG zoning district which is general industrial.

2 The IG district requires a use permit for oil
3 and gas refining, including major alterations of an
4 existing refinery such as the Crude by Rail project.

5 Construction associated with the proposed
6 project will be within the existing developed area of
7 the refinery near the northeast edge.

8 The development pattern of the -- the
9 development portion of the project which is essentially
10 the unloading racks, the track, the containment walls
11 will meet the setback, height requirements of the
12 Benicia zoning ordinance.

13 The height of the new loading racks lighting
14 and walkways measure 23 feet above grade, which is well
15 below the 75-foot height limit for the IG district.

16 The proposed use does not require additional
17 parking, and refinery has ample parking to accommodate
18 both permit employees and contractors.

19 The addition of approximately 20 full time
20 permanent workers or contractors is part of this
21 project will not change those determinations.

22 The general plan consistency analysis.

23 The refinery is as -- the refinery is also
24 located in the general industrial land use category of
25 the general plan.

1 The general plan states that the general
2 industrial land use category is the least restrictive
3 of the three industrial categories in the city, and is
4 intended to allow a great deal of flexibility for an
5 industrial development.

6 Over half of the Benician industrial park is
7 designated general industrial. This includes nearly
8 all of the industrial park north of Interstate 780,
9 east of East Second Street.

10 This category includes uses such as
11 manufacturing, assembling the packaging of goods and
12 products from extracted and raw materials, previously
13 prepared materials, and related industrial commercial
14 services.

15 Staff identified 11 general plan goals which
16 cover a variety of topics which are important to the
17 city and are applicable to the project. Those goals
18 encourage the protection of existing industrial
19 business, encourage new industrial businesses, and at
20 the same time -- excuse me -- encourage community
21 health safety through the use of buffer zones between
22 industrial and residential as well as making planning
23 and policy decisions based on protecting and enhancing
24 public safety.

25 The goals also pertain to protection of scenic

1 views in maintaining a certain level of service on all
2 Benicia streets.

3 The project does not need to be consistent
4 with every policy of a general plan to still be found
5 consistent with the general plan.

6 A project must only be in harmony with
7 applicable plans to be consistent with that plan.
8 Because of the policies in the general plan reflect a
9 range of competing interests, staff on the Planning
10 Commission must weigh and balance the plan's policies
11 when applying them. The project must be consistent
12 with the plan's purpose.

13 Staff finds the aspects of the project in
14 which the city has authority are consistent with the
15 purposes of the general plan.

16 The draft resolution provided to you for
17 approval of the use permit identifies 14 conditions of
18 approval. Nine of those conditions are associated with
19 climate -- with compliance of applicable regulations
20 for construction and operation including compliance
21 with the Benicia municipal code, the building code,
22 storm water management. This also includes compliance
23 with the mitigation measures through the mitigation
24 monitoring and recurring program.

25 In addition there are conditions of approval

1 associated with compliance with the city's operational
2 aid agreement for emergency response as well as
3 supporting emergency response to the installation and
4 maintenance of a live feed video camera at the Park
5 Road crossing.

6 This will provide a feed directly back to the
7 emergency dispatch. The purpose is that in a chance
8 that a 911 call is received at the same time as a train
9 is crossing Park Road, emergency dispatch can direct
10 emergency responders to use an alternative route.

11 As with any use permit the commission must
12 also be able to make the required findings for a use
13 permit in order to approve the project.

14 The refinery as a use that manufacturers fuel
15 by processing raw materials is consistent with the
16 purposes of the IG district in that the project would
17 enhance the refinery's ability to fulfill that purpose.

18 The project would consist of changes and
19 improvements to an existing industrial use in an
20 existing industrial district. The project's
21 improvements would be constructed within the existing
22 refinery footprint and as mitigated would meet the
23 city's establish performance standards.

24 The project would support the refinery in its
25 ability to remain competitive in the marketplace and to

1 the future. It would provide an estimated 121
2 temporary construction jobs, 20 permanent full-time
3 jobs thereby helping to strengthen the city's economic
4 base.

5 In addition -- the addition of no more than 20
6 employees would not make a significant contribution to
7 the access population densities.

8 As outlined, the staff report and noted
9 earlier, staff felt the project to be consistent with
10 the applicable goals and policies of the general plan.
11 For areas of impact within the city's purview, the
12 project would not be detrimental to the public health,
13 safety and welfare because the impacts of the project
14 would be mitigated by measures that are incorporated
15 into the project or that are required as conditions of
16 approval.

17 Oops, did I go too far?

18 At this time I'd like to turn it over to Cory
19 Barringhaus of ESA to provide an overview of the EIR
20 and the environmental process.

21 MR. BARRINGHAUS: Thank you, Amy.

22 As Amy indicated, ESA is supporting the city
23 in preparation of the EIR for the Valero-Benicia Crude
24 by Rail project.

25 Before I discuss the findings of that

1 Environmental Impact Report, I'd just like to refresh
2 everyone regarding the overall process and how we got
3 to where we are tonight.

4 The environmental review of the proposed Crude
5 by Rail project began in 2013 with preparation of an
6 initial study and draft mitigated negative declaration.

7 In reviewing public comments received, the
8 city determined based on several factors including
9 section 15064 of the CEQA guidelines.

10 The fair argument had been made that the
11 proposed project may have a significant effect on the
12 environment. Therefore, the city decided that an EIR
13 would be necessary to further analyze the potential
14 impacts of the project.

15 Public scoping occurred from August 8 to
16 September 12, 2013, and a public meeting was held on
17 September 13 to receive verbal input regarding what
18 should be studied in the draft EIR.

19 The draft EIR was released for public comment
20 on June 17, 2014. And three public meetings were held
21 by the city in July, August and September to accept
22 oral comments on the draft EIR.

23 The city also received written comment letters
24 from other government agencies, organizations, planning
25 commissioners and over 200 private citizens.

1 While commenters were interested in many
2 aspects of the analysis contained in the draft EIR, a
3 substantial portion of the comments were focused on the
4 potential effects resulting from a derailment or other
5 accident involving the transport of the crude oil by
6 rail.

7 Commenters also expressed concern about such
8 potential impacts to communities along the rail routes
9 beyond Roseville are or what is referred to as uprail.

10 Many comments also discussed issues related to
11 air quality impacts and the emission of greenhouse
12 gases by locomotives that would haul the tank cars to
13 the refinery.

14 Transportation impacts were a concern,
15 especially on roadways and intersections in the
16 immediate vicinity of the refinery.

17 Finally, commenters also expressed concern
18 with impact biological resources and water bodies
19 resulting from potential spill of crude oil during an
20 accident.

21 It was obvious to us and the city based on the
22 what the volume and complexity of the comments received
23 from the public that more study of certain issues
24 regarding potential impacts of the project should be
25 undertaken. Therefore, the city elected to revise

1 portions of the EIR in order to consider potential
2 impacts uprail of Roseville and to supplement the
3 evaluation of the potential consequences of an upset or
4 accident condition during transport of crude oil to the
5 refinery.

6 The city subsequently published a revised
7 draft EIR to address these issues on August 31, 2015.
8 The public meeting to receive oral comments on the
9 revised draft EIR was held on September 29. Written
10 comment letters also were received from government
11 agencies, organizations, planning commissioners and
12 individuals.

13 On January 5, 2016, the final EIR was released
14 which consists of three components. The previously
15 published draft and revised draft EIRs and a new
16 section containing all of the comment letters received
17 on both of these documents and responses to those
18 comments.

19 Responses to comments on the draft EIR are
20 contained in Chapter 2 of the final EIR document, and
21 responses to revised EIR comments are found in Chapter
22 3.

23 As you may have noted by reading the responses
24 to comments on the original draft EIR, because the EIR
25 was revised to address many of the issues raised by

1 commenters, responses to these comments were directed
2 to relevant portions of the revised draft EIR.

3 Finally, the last chapter of the final EIR
4 document contains text changes to the draft EIR that
5 were not included in the subsequent revised draft as
6 well as further changes to the revised EIR.

7 The EIR identified eight potentially
8 significant impacts relating to air quality, biological
9 resources, energy conservation, geology and soils,
10 hydrology and water quality. All of these impacts can
11 be mitigated to a less than significant level by
12 mitigation measures described in the EIR.

13 For example, impacts to air quality during
14 construction of the project at the refinery would be
15 reduced to less than significant through implementation
16 of standard Bay Area air quality management district
17 control measures.

18 Nesting birds are unlikely to occur in the
19 project area; however, they could exist in the adjacent
20 Sulfer Springs Creek corridor, and construction of the
21 project may adversely affect these birds.

22 Mitigation has been identified to avoid
23 construction activities during nesting season feasible.
24 And if not, protective buffers would be implemented to
25 prevent disturbance of any nesting birds.

1 Regarding potential seismic impacts.
2 Mitigation would require Valero to design the rail
3 spurs, reduce effects related to liquefaction of
4 underlying soils during an earthquake.

5 Valero also would be responsible for regular
6 track inspection and monitoring after incidents with
7 the potential to damage the tracks.

8 Preparation of a storm water management plan
9 would reduce water quality effects during project
10 construction to a less than significant level.

11 The EIR also determined that there would be 11
12 significant and unavoidable impacts regarding air
13 quality, greenhouse gas emissions, biological resources
14 and hazards, all of which are related to the rail
15 transport of the crude oil to the refinery.

16 Indirect air emissions from locomotives,
17 transporting tank cars between the refinery and the
18 state line would exceed thresholds of air districts
19 located along the three possible project routes with
20 the exception of the Bay Area management district.

21 The exceedance of ozones precursors would
22 result in cumulatively considerable impacts in those
23 districts and also conflict with their respected air
24 quality plans.

25 Emissions of greenhouse gases would exceed the

1 threshold level of 10,000 metric tons of carbon dioxide
2 equivalent per year.

3 This is again a result of locomotive emissions
4 between a state line and Roseville. The greenhouse gas
5 exceedance also would trigger another significant and
6 unavoidable impact because the project would not be
7 consistent with greenhouse gas reduction goals set by
8 the state.

9 The increased frequency of trains along
10 possible rail routes to the refinery would result in an
11 increase in potential for wildlife collisions
12 especially in sensitive habitats such as riparian
13 corridors, wetlands and marshes where a higher number
14 of wildlife species are supported.

15 As noted earlier, many of the comments on the
16 draft EIR focused on concerns about possible impacts to
17 people during a train accident.

18 In order to evaluate potential project related
19 risks to the public, a quantitative risk assessment was
20 prepared that also extended the geographic scope of
21 analysis uprail to the California boarder and beyond.

22 This analysis concluded that impacts would be
23 significant for Valero's proposed tank cars as well as
24 for new tank cars required by U.S. Department of
25 Transportation regulations issued in May of last year.

1 Impacts also would be significant under cumulative
2 conditions.

3 Finally, significant unavoidable secondary
4 effects resulting from accidents would occur to
5 biological and cultural resources, geology and
6 hydrology.

7 Potential wildland fire impacts also were
8 determined to be significant and unavoidable.

9 The EIR fulfilled CEQA requirements to
10 identify potential significant impacts. However,
11 mitigation for significant impacts of the proposed
12 project were determined to be infeasible.

13 According to CEQA guidelines section 15364,
14 feasible means capable of being accomplished in a
15 successful manner within a reasonable period of time
16 taking into account economic, environmental, legal,
17 social and technological factors.

18 Regarding mitigation, the guidelines state:
19 If a lead agency determines that a mitigation measure
20 cannot be legally imposed, the measure need not be
21 proposed or analyzed. Instead, the EIR may simply
22 reference that fact and briefly explain the reasons
23 underlying the lead agency's determination.

24 MS. MILLION: Thank you, Cory.

25 At this point I'd like to turn over to the

1 city's contract attorney Brad Hogin. Mr. Hogin was
2 brought on early in the process by our own city
3 attorney to help city staff with the CEQA review for
4 this project.

5 MR. HOGIN: Chair, Mr. (Inaudible) briefly of
6 scope of reaction --

7 UNIDENTIFIED SPEAKER: Not being heard,
8 please.

9 MS. MILLION: You need to push the button to
10 turn on the microphone.

11 MR. HOGIN: Okay. Does that work?

12 CHAIR DEAN: That's better. Thank you.

13 MR. HOGIN: Sorry about that. I'll start
14 over.

15 Mr. Chair, members of the commission, I'm
16 going to talk briefly about the nature and scope of
17 preemption under the Interstate Commerce Commission
18 Termination Act which is a federal law. And the
19 application of those preemption principles to the
20 matter that we have before us.

21 I look up and all I see is myself. Okay.
22 There we go.

23 The Interstate Commerce Commission Termination
24 Act was adopted about 20 years ago. One of the
25 provisions says that the Surface Transportation Board,

1 which is a federal agency within the Department of
2 Transportation, has exclusive jurisdiction over rail
3 operations.

4 And rail operations, for purposes of the
5 preemption provision, is defined very broadly to
6 include not only locomotives, but operate on mainlines
7 and side tracks and all different types of tracks, but
8 also ancillary facilities, including rail yards,
9 warehouses, transloading facilities which is a facility
10 that serves a rail line by allowing for the unloading
11 of goods from a rail car and loading it on to some
12 other mode of transportation, for example, trucks.

13 And then broadly it applies to any equipment
14 or services involved in the movement of goods and
15 people through the rail system.

16 Under this preemption provision, a wide
17 variety of courts in the last 20 years have ruled that
18 state and local governments overstepped their
19 boundaries by attempting to regulate rail operations.

20 And the courts (inaudible) that local
21 governments cannot place limits on emissions from
22 locomotive engines; local governments cannot regulate
23 the extent to which trains block grade crossings for
24 any length of time and so on; the local governments
25 cannot impose environmental permitting schemes upon

1 rail operations.

2 And it's important to note that courts have
3 found that local actions are preempted not only if they
4 are direct -- involve direct regulation of railroad
5 operations, but also if they attempt to accomplish the
6 same thing in some indirect fashion.

7 For example, a number of courts have held that
8 a state may not allow a state law tort claim to proceed
9 against a rail railroad by, say, a neighboring property
10 owner who is complaining about the noise, because to do
11 so would be -- would effectively be an indirect way to
12 regulate noise coming from railroad operations.

13 So it's important to understand that the scope
14 of preemptive effect applies not only to direct
15 regulation, but also to indirect regulation.

16 I've got a quote here that has been quoted --
17 that has been cited in 22 separate publications over
18 the last 20 years.

19 The quote is this. It is difficult to imagine
20 a broader statement of Congress' intent to preempt
21 state regulatory authority over railroad operations,
22 which I think kind of nicely captures and summarizes
23 the way the courts have interpreted the preemption
24 provision.

25 There are two types of preempted regulation.

1 The first type is any type of preclearance or
2 pre-construction permitting requirement that a state or
3 local government attempts to impose upon a railroad
4 operation.

5 That is basically if the Surface
6 Transportation Board has granted a railroad permission
7 to operate, the state and local government cannot come
8 in and deny that -- deny that operation or take any
9 action which precludes an operation that has been
10 approved by the Surface Transportation Board.

11 The second requirement, setting aside
12 permitting requirements, the second type of requirement
13 is any attempt to directly regulate or indirectly
14 regulate rail operations.

15 And this -- this prohibition has been very
16 broadly construed to apply to any requirements that
17 have the effect of governing or managing rail
18 transportation.

19 So it applies to -- not only to things that --
20 attempted to directly regulate rail transportation, but
21 also, as I mentioned, to state action such as allowing
22 state law tort claims against rail operations.

23 So there's -- there's basically three
24 principles that I'll articulate in these last three
25 slides.

1 And the first principle is this. That
2 contrary to what Valero has said, CEQA does apply to
3 the onsite activities in this particular case. The
4 onsite activities being the construction and operation
5 of the unloading rack that will transfer crude oil from
6 railroad cars into Valero's refinery process system.

7 There are some cases that I have cited that
8 are cited in the EIR where a particular transloading
9 facility was prohibited by a local zoning ordinance,
10 but because transloading facilities are generally
11 considered rail operations; however, what these cases
12 held was that if the transloading facility is owned and
13 operated by a private party that is not the railroad,
14 then preemption does not apply to review of onsite
15 impact.

16 So in that case the -- in both of those cases,
17 the local government determined that these types of
18 facilities were not compatible in residential areas,
19 and the court said the authority -- the local
20 governments have the authority to prohibit these type
21 of operations in residential areas as long as the
22 transloading operation and the facilities were not
23 owned or operated by the railroad.

24 And that is the case here. Union Pacific does
25 not own or operate the unloading rack. In the

1 operation of the unloading rack, Valero is not an agent
2 or under the control in any way of the railroad;
3 therefore, CEQA does apply to the operation of the
4 unloading rack.

5 So let's say that the city found that there
6 was a significant adverse noise impact from the
7 operation of the unloading rack in itself, the city
8 could regulate that, could impose permit conditions on
9 the -- the operation of the unloading rack in that
10 situation.

11 So I think it's very important to point out
12 that CEQA does apply here at least to some degree.

13 However, having said that, the application of
14 CEQA to any of the rail operations and impacts that
15 they were from, we're talking about impacts from -- air
16 quality impacts from locomotive emissions, impacts
17 arising from the risk of a derailment in fire and
18 explosion based on accidental release of crude oil and
19 so on. All of these risks arise from rail operations
20 and facilities that are owned, operated and managed by
21 Union Pacific.

22 And so we will look at the three key
23 requirements here. If the city were to deny the use
24 permit based on the fact that the rail impacts are
25 detrimental to the health, safety and welfare of the

1 population, that would be preempted because the city
2 does not have the authority to impose a preclearance
3 requirement on the operation of a rail line.

4 The second area of preemption would be if the
5 city were to decide under CEQA that the benefits of the
6 project do not outweigh the adverse -- significant
7 adverse environmental impacts from rail im -- from rail
8 operations and attempt to deny the permit on that
9 basis, again that would be preempted because it is a --
10 that would be the -- involve the imposition of a
11 preclearance requirement on rail operations, operations
12 that the ST, Surface Transportation Board has already
13 decided can proceed.

14 And finally the city is prohibited under
15 preemption principles from opposing mitigation as
16 conditions of an issuance of a permit to Valero to the
17 extent that those mitigation measures are attempt --
18 any attempt to regulate rail impacts.

19 Because again, that involves the imposition of
20 a preclearance requirement on Valero with respect to
21 rail operations as opposed to the onsite activities
22 involved in the operation of a -- of the unloading act.

23 Final -- finally, the city here has proceeded
24 and required disclosure of environmental impacts. Up
25 to this point the city has determined that it does not

1 have the authority to require mitigation of rail
2 impacts, but it has in connection with the permit
3 process required Valero to assist and undergo a
4 disclosure requirement for rail impacts.

5 It's unclear whether the disclosure
6 requirement of CEQA might also be preempted. There are
7 cases that have held that CEQA is preempted all
8 together as applied to rail impacts of rail activities.

9 There's been no case precisely like this one
10 where the permit is being issued to a party that is not
11 a railroad operator.

12 So under at least some lines of the case law,
13 there's an argument to be made that because the
14 disclosure requirement does not in any way directly
15 manage or govern rail operations, that it would be
16 permissible.

17 Because there's been no case squarely on point
18 that has addressed a disclosure requirement in itself,
19 the city has proceeded to require disclosure. The city
20 believes firmly in transparency and the full disclosure
21 of environmental impacts really wherever they may
22 occur, environmental impacts that could result from an
23 action that the city takes.

24 So it has proceeded. But let me be very
25 clear. It may well be the case that a court would find

1 that even the disclosure provision is preempted.

2 Now I suppose, as applied here, it is to some
3 degree a moot question because the city has required
4 Valero to identify and disclose impacts from rail
5 operations. But nonetheless, I think it bears noting
6 that a court may well find that as applied to CEQA
7 review of rail impacts, that even the disclosure of
8 CEQA might well be preempted.

9 So that concludes my remarks and I'll kick it
10 back to Amy.

11 MS. MILLION: Thank you.

12 I'll go ahead and include -- Brad, if you
13 could flip it to the next slide, I'll just end with
14 the -- with the recommendation.

15 So there's two recommendations before the
16 commission and they coincide with the two required
17 actions for the project.

18 The first is to adopt a resolution -- the
19 first is to adopt a resolution certifying the EIR,
20 including adopting CEQA findings and the mitigation
21 monitoring and reporting program.

22 I think if you just hit the upper left, the
23 slide show -- yep. There you go. Thank you, Jim.

24 And the Planning Commission packet is a draft
25 resolution with -- in the draft resolution for the

1 Environmental Impact Report there were two exhibits,
2 A-1 and A-2; both addressing statement of overriding
3 considerations.

4 So Exhibit A-1 states that the benefits of the
5 project do not outweigh the impacts of rail operations.
6 However, preemption does not allow the city to apply a
7 statement of overriding considerations for those
8 impacts associated with rail operations. And this goes
9 into what Mr. Hogin was just talking about.

10 Exhibit A-2 states that the benefits do
11 outweigh the impacts of rail operations.

12 Staff does not find that the project benefits
13 outweigh the project impacts associated with uprail
14 communities and is recommending adoption of A-1.

15 So with concurrence that the city is preempted
16 from applying the statement of overriding
17 considerations which is CEQA Section 21081 for the rail
18 impacts.

19 Statement of overriding considerations A-2 was
20 provided because it is within the city's Planning
21 Commission's discretion to determine that project
22 benefits do outweigh the significant of (inaudible) oil
23 impacts on the rail communities.

24 In order to certify an EIR, the Planning
25 Commission must find that the final EIR was completed

1 in compliance with CEQA, essentially saying that it is
2 legally sufficient; that the final EIR reflects the
3 city's independent judgment and analysis.

4 As part of the EIR certification, the Planning
5 Commission is adopting the mitigation monitoring and
6 reporting program which is the mitigation measuring
7 implementation tool. It outlines the responsible
8 parties, time frames and required actions for
9 non-compliance.

10 The second action before the Planning
11 Commission and second resolution is for the use permit.
12 Staff is recommending approval of the use permit based
13 on the findings and with the conditions of approval
14 attached therein.

15 And with that, staff is available for any
16 questions that the commission may have.

17 CHAIR DEAN: Okay. Thank you, all of you for
18 your presentation.

19 And I would like to -- I think the point was
20 made earlier, but for the commission, and the
21 commission's question of staff, both for --
22 particularly for the EIR.

23 ESA has brought their consultants here. Some
24 specialists in train and traffic, greenhouses gases,
25 air quality. So if you have specific questions about

1 those topics -- and if I miss somebody, I apologize --
2 tonight would be a good opportunity to ask those
3 because we are not sure we will be able to get these
4 consultants back consistently throughout the week.

5 So with that, who would like to start?

6 Commissioner Young.

7 COMMISSIONER YOUNG: Well, I -- I would defer
8 to the rest of the commission because I have a lot of
9 questions and it might take a little while. So if
10 anybody else wants to go first.

11 UNIDENTIFIED SPEAKER: (Inaudible).

12 COMMISSIONER YOUNG: All right. I've got
13 questions on the staff report itself. And then I've
14 got additional questions on the balance of the EIR.

15 And so what I want to do is first talk about
16 the staff report and things that are in the staff
17 report, ask questions about that, and then come back to
18 some of the other issues that may not have been
19 addressed directly on the staff report but it is within
20 the volumes.

21 In the executive summary it says that crude
22 oil transported by rail cars is expected to be a
23 similar quality compared to the existing crude oil
24 imported by tankers.

25 Now two of the crudes that are expected to be

1 shipped by rail are tar sands oil, which is a heavy
2 sour crude; and Bakken shale oil which is a very light
3 oil with high ends which is often described as having
4 the consistency of gasoline.

5 How are these crudes of similar quality to the
6 oil currently being imported by tanker?

7 MS. MILLION: So through the chair, do you
8 mind if I --

9 CHAIR DEAN: No, please, go ahead.

10 MS. MILLION: Okay. So you may remember -- I
11 apologize I don't remember the meeting. It was either
12 a comment by the -- part of the public's comment to
13 process on the draft EIR or revised draft EIR.

14 These guys have great memories. I'm sure they
15 can correct me at any time.

16 But I remember that the vice president of
17 Valero was at that meeting and he had confirmed at that
18 time that the Valero Refinery did currently process
19 Bakken crude, that it came in by Marine vessel.

20 So the -- part of the analysis that went into
21 what kind of crude -- maybe that played into it -- but
22 we also -- there was (inaudible) that were submitted,
23 confidential information -- but we have enough
24 information to know that what the -- that the Valero
25 Refinery is processing that crude now and that they

1 will also be -- you know, if -- if they were to have
2 this project, they could also bring it in by rail.

3 COMMISSIONER YOUNG: And are they processing
4 on any oils that are similar to tar sands oil?

5 MS. MILLION: I'm going to default to somebody
6 else on that.

7 CHAIR DEAN: Some of these questions might be
8 more appropriate for the applicant, but why don't we
9 hold those for the applicant during their
10 representation.

11 COMMISSIONER YOUNG: Okay. All right.

12 Under the section on emergency access and
13 response, it talks about an agreement between the
14 Benicia Fire Department and the Valero Fire Department
15 to implement an operational aid agreement as a
16 mitigation measure. But then it says, quote, due to
17 preemption, the city has no ability to require such a
18 mitigation measure since the impact to be mitigated
19 relates to rail operation.

20 So how is a mutual aid response to an incident
21 on Valero property or the provision of an EMT response
22 by Valero fire in the event of a train blocking access
23 to regular first responders, how is that impacted or
24 not nullified by preemption?

25 UNIDENTIFIED SPEAKER: (Inaudible).

1 COMMISSIONER YOUNG: Please.

2 MR. HOGIN: Simply put, because Valero agreed
3 to those requirements. And the requirements can
4 therefore be enforced as a matter of contract law.

5 And, in fact, the city has the authority --
6 has the ability under the agreement to go in and get an
7 injunctive -- injunction against Valero proceeding, if,
8 for example, Valero were to stop or threaten to stop
9 using 1232 tank cars.

10 But the reason that it's enforceable is simply
11 because it's a matter of contract. Valero has agreed
12 to it and the city does not need any regulatory
13 authority to enforce it and that's because the
14 regulatory authority would be preempted.

15 COMMISSIONER YOUNG: So the agreement itself
16 says as follows: This covenant protects the public in
17 the environment along hundreds of miles of track from
18 the risks associated with derailment and release of
19 crude oil and fires and explosions that could result
20 therefrom, and that to the city relies on this covenant
21 in making the determination under CEQA when it
22 considered the CDR project. And because it is unique,
23 monetary damages would be wholly inadequate to
24 compensate the city for any breach of the covenant.
25 And in the event of a breach by Valero, the city will

1 have no adequate remedy of law.

2 Based on these facts and conclusions, Valero
3 agrees that the city may enforce a covenant through
4 injunctive release. I think that's what you just said,
5 Mr. Hogin.

6 MR. HOGIN: Yes.

7 COMMISSIONER YOUNG: So what are the
8 consequences?

9 The only consequences, as I understand it, is
10 that the city would have to sue. There's no fines
11 involved for not using a 1232 car, for example.

12 MR. HOGIN: That's right.

13 COMMISSIONER YOUNG: So the city would have to
14 sue to enforce the terms of the agreement. But the
15 agreement doesn't call for any legal fees to be covered
16 in the event that the city has to sue.

17 And as I understand it, it's pretty typical
18 that an agreement with an outside party and the city,
19 the city would have a clause that says their legal fees
20 would be paid in the event they prevail.

21 Why is that not in the agreement?

22 MR. HOGIN: I don't remember whether it is or
23 is not. I'll take your word for it that it's not, and
24 I really can't answer that question. I don't know.

25 COMMISSIONER YOUNG: Okay. One other

1 question.

2 I assume they -- when your firm was being
3 considered to be hired by the city council, the city
4 attorney said that one of the purposes to hire you was
5 to bulletproof the EIR. You may not have been there at
6 the time but that's what she said.

7 And I assume that part of your job was to
8 write the findings for the overriding considerations
9 that we would be asked to adopt if we approved the
10 project, is that right?

11 MR. HOGIN: Are you asking --

12 COMMISSIONER YOUNG: I'm asking if you wrote
13 the findings.

14 MR. HOGIN: -- I was contemplated when I was
15 hired or are you asking --

16 COMMISSIONER YOUNG: No. I'm asking if you
17 help write the findings that are in front of us.

18 MR. HOGIN: I was involved in the process of
19 preparing the item for the Planning Commission, yes.

20 COMMISSIONER YOUNG: Okay. And so conversely,
21 if the Planning Commission chooses not to certify the
22 EIR, will you also help us write the findings in that
23 event?

24 MR. HOGIN: I -- I don't know.

25 COMMISSIONER YOUNG: Well, you do work for the

1 city, right?

2 MR. HOGIN: I do.

3 COMMISSIONER YOUNG: And we are a part of the
4 city?

5 MR. HOGIN: You are.

6 COMMISSIONER YOUNG: But you are not sure that
7 you would help us writing the findings.

8 MR. HOGIN: I don't -- Mr. Commissioner, I
9 don't know.

10 COMMISSIONER YOUNG: Okay.

11 MR. HOGIN: The city attorney, you know, I
12 have served as essentially the pleasure of the city
13 attorney. If she asked me to do something, I'd be more
14 than happy to jump in and help.

15 COMMISSIONER YOUNG: All right. Moving on.

16 On page 15 under goal 2.7 it says the project
17 will allow the refinery access to additional North
18 American source crudes.

19 But that's not the only way -- this project
20 isn't the only way those crudes can be accessed.

21 The report by Dr. Jim McGovern who was hired,
22 I guess, by the city to write a report on the economic
23 benefits of the project -- and this was dated two weeks
24 ago -- said the California refineries, quote, receive
25 additional North American crude that has been shipped

1 by rail to ports in Washington state and loaded on to
2 tankers for shipment to California refineries.

3 So presumably there's already a way for Valero
4 to get this oil that they would like to refine.

5 Later on the same page of this study, Dr.
6 McGovern wrote, quote, Valero is a publicly owned
7 corporation with a fiduciary responsibility to its
8 shareholders. If the Benicia refinery is no longer
9 profitable, Valero can no longer justify operating it.

10 Now that's a pretty ominous warning and it's
11 consistent with rumors in the community that if Valero
12 does not get this permit, they might close the
13 refinery.

14 On January 21st, 2016, the L.A. Times business
15 section had a report with the headline: Valero second
16 quarter profit soars. And the article stated that the
17 two California refineries operated by Valero saw their
18 operating income increase from 24 million dollars in
19 the second quarter of 2014 to 295 million dollars in
20 the second quarter of 2015. And that's without any
21 crude being delivered by rail.

22 So of course Valero is free to do what they
23 want with their own property. And if they choose to
24 close the refinery, it won't be because it's not
25 profitable.

1 CHAIR DEAN: Please respect the speakers,
2 please. No cheering, clapping. We do have guidelines
3 for the hearing process. We appreciate it if people
4 would not cheer, clap or yell.

5 If you agree with a speaker, you can raise
6 your hand. The commission will take note, but please
7 respect the -- whoever is speaking, whether it's staff,
8 commission or members of the public. You will get your
9 turn. I think you would want the same respect.

10 Thank you.

11 COMMISSIONER YOUNG: Under goal 2.2, it talks
12 about traffic. And it says that the general plan
13 states that the Level of Service D has been adopted as
14 the standard for intersection operation and that the
15 project would not degrade any intersection to a level
16 worse than Level of Service D.

17 So for people who don't know, Level of Service
18 is what traffic engineers mean by the length of a delay
19 at an intersection.

20 And Level of Service D means a long traffic
21 delay from between 25 to 35 seconds at an intersection.
22 And Level of Service F is defined as an extreme traffic
23 delay with intersection capacity exceeded in delays of
24 more than 50 seconds.

25 So the staff report says the project won't

1 degrade any section to a level worse than Level of
2 Service D.

3 So going to the traffic study itself, which is
4 page 1,293 of the draft EIR somewhere in this stack --
5 but it's there -- it says, quote, during times of the
6 day when traffic volume is low, it's possible for an at
7 grade train crossing to result in average delays in the
8 Level of Service F range with resulting vehicle cues
9 accommodated within the storage capacity provided at
10 the intersection.

11 Table 2.5 of the traffic study shows that five
12 intersections would degrade from Level of Service A to
13 Level of Service F at the times of the train crossings.

14 On page 1307, it says that if there are no
15 train crossings at intersections, the traffic was
16 acceptable. But if there were train crossings of more
17 than five minutes, Level of Service would degrade to F.

18 So how do you justify the statement that the
19 project will not degrade any intersection to a level
20 worse than D?

21 CHAIR DEAN: So is that -- who is that --

22 COMMISSIONER YOUNG: Well, I guess -- I hope
23 that somebody from Fehr & Peers is here. I asked that
24 they be here.

25 Is there someone from Fehr & Peers here?

1 (No audible response.)

2 UNIDENTIFIED SPEAKER: (Inaudible).

3 CHAIR DEAN: Please, would you please
4 introduce yourself again for the commission?

5 MR. HUTCHINSON: My name is Jack Hutchinson.
6 I'm senior transportation engineer with ESA.

7 I'm not with Fehr & Peers. Fehr & Peers'
8 report had been developed, prepared as a resource to be
9 used. It ended up not being the only source. We fed
10 off that and expanded upon it based on new information
11 as was coming in, new analysis and such.

12 Regarding the statement about the not
13 degrading intersection to a Level of Service D, the --
14 in the EIR our focus was on the Park Road crossing and
15 its -- and its treatment as an intersection. I mean
16 it's not technically an intersection, but in a way you
17 can say there's two extremes of traffic crossing each
18 other, so they are intersecting each other, one being a
19 train and one being automobiles.

20 And it was at that location where our analysis
21 had shown that under baseline conditions, whenever
22 there's a train crossing, it's at Level of Service F
23 because of the prevailing light ranging from -- there
24 was some really short, 30 seconds, up to 16 minutes
25 of -- of delays.

1 And so our position in the EIR was that
2 because they are on the baseline, Level of Service F
3 conditions are now occurring whenever there is a rail
4 crossing.

5 Rail crossings under this project the four
6 times a day, two loaded, two empties leaving, would not
7 cause the Level of Service F, it would be -- it would
8 be a similar Level of Service F condition during those
9 times.

10 But that because of the three and a half --
11 three and a half, three and a third minutes of delay,
12 the other 51 minutes -- almost 52 minutes, there would
13 be zero delay. Hence the conclusion was, Level of
14 Service F, but that the average delay over the course
15 of an hour, which is standard traffic planning
16 practice, that increase would be no more than one
17 second and that would not exceed a threshold of
18 significance.

19 I'm not sure if I'm answering the question
20 exactly --

21 COMMISSIONER YOUNG: Yeah, you started to lose
22 me at the end there.

23 So but are you sticking with the statement
24 that no intersection will have a level of service worse
25 than level D?

1 MR. HUTCHINSON: In comparison to the
2 baseline. The baseline is when there are railroad
3 crossing the -- the area or entering the industrial
4 area.

5 So yes.

6 COMMISSIONER YOUNG: But we know that the rail
7 crossings for this project will be eight-and-a-half
8 minutes.

9 MR. HUTCHINSON: Correct.

10 COMMISSIONER YOUNG: So eight-and-a-half
11 minutes will certainly cause a Level of Service F, will
12 it not?

13 MR. HUTCHINSON: Right. But it already --
14 five minutes, 16 minutes.

15 During the crossings, it already is at Level
16 of Service F. This will increase the number
17 potentially that would happen, but it would not
18 increase the severity of that Level of Service F
19 condition. And it's on that basis --

20 COMMISSIONER YOUNG: But we're sticking with
21 the statement that no intersection will be worse than
22 Level of Service D. That's what the staff report says.

23 MR. HUTCHINSON: Right. During rail
24 crossings, there would not be any situations where it
25 goes from better than D to worse than D. If there is a

1 crossing now, it's worse than D and with the project it
2 would be worse than D.

3 COMMISSIONER YOUNG: Well, I think that's
4 debatable, but let's move on.

5 Thank you, sir.

6 On the issue of greenhouse gases. Page 18 of
7 the staff report says the project would result in a net
8 decrease of air pollutants and greenhouse gas emissions
9 in the Bay Area.

10 But the air districts letter of October 28
11 says the project would emit 13,609 tons of greenhouse
12 gases which make them cumulatively considerable.

13 Now the Table 4.1.5 of the draft EIR is the
14 net operational exhaust emissions within the Bay Area
15 basin. And it calculates the emissions from shifts
16 traveling from the buoy west of the Golden Gate bridge
17 to Benicia. And it then deducts the emissions expected
18 in Benicia from the use of diesel locomotives
19 delivering oil by rail from those larger emissions
20 covering the entire Bay Area and makes the finding that
21 this constitutes a less than significant impact.

22 My question is: When you're calculating the
23 locomotive emissions for the Bay Area, what part of the
24 Bay Area are you using?

25 MR. RIMPO: This is -- I'm Tim Rimpo with the

1 ESA.

2 And in regard to your question about
3 locomotive emissions, it's the train travel from the
4 refinery to the edge of the basin -- or to the edge of
5 the San Francisco Bay Area air basin which is Solano
6 County.

7 COMMISSIONER YOUNG: Right. Vacaville
8 essentially.

9 MR. RIMPO: Essentially, yeah.

10 COMMISSIONER YOUNG: So basically what you're
11 saying is you're calculating locomotive emissions from
12 Benicia to Vacaville, and you are comparing that
13 against tankers coming in from -- outside the Golden
14 Gate bridge spread out over the entire Bay Area, is
15 that right?

16 MR. RIMPO: That's correct. It's a comparison
17 of emissions that occur within the San Francisco
18 Bay Area -- air basin.

19 COMMISSIONER YOUNG: So that's not really
20 apples to apples, is it?

21 MR. RIMPO: Yes, absolutely it is.

22 COMMISSIONER YOUNG: It is?

23 MR. RIMPO: We looked at individual site
24 specific emissions in terms of health risks. But in
25 terms of the regional pollutants in the way that the

1 Bay Area air district requires us to do the analysis,
2 that's --

3 COMMISSIONER YOUNG: So the argument that
4 we're saving greenhouse gases through this project is
5 based on locomotive emissions of about 20 miles --

6 MR. RIMPO: Well, the --

7 COMMISSIONER YOUNG: -- versus --

8 MR. RIMPO: We looked at --

9 COMMISSIONER YOUNG: -- Marine transport of a
10 much greater distance over a much larger area.

11 MR. RIMPO: Greenhouse gas is a little
12 different.

13 We looked at the emissions of greenhouse gases
14 that would occur in California, so rail traffic all the
15 way to the border of California.

16 COMMISSIONER YOUNG: Right. But -- but the
17 statement is that it would result in a net decrease of
18 air pollution and greenhouse gas emissions in the Bay
19 Area.

20 MR. RIMPO: In the Bay Area.

21 COMMISSIONER YOUNG: That's my question.

22 MR. RIMPO: That's correct, in the Bay Area.
23 But for significance of greenhouse gases, we looked at
24 the entire state.

25 COMMISSIONER YOUNG: So when -- so when the

1 statement is made that this is going to be a net win
2 for the environment, it's because you're comparing 20
3 miles of locomotive emissions against whatever that
4 distance is from outside the Golden Gate spread out
5 over the entire San Francisco bay.

6 MR. RIMPO: And whether you are talking about
7 greenhouse gases or criteria pollutants.

8 COMMISSIONER YOUNG: Greenhouse gases.

9 MR. RIMPO: The greenhouse gas analysis just
10 looked -- well, we did two analyses. One comparing
11 emissions within California, and then worldwide
12 emissions associated with the project.

13 COMMISSIONER YOUNG: Okay. Thank you.

14 I got more questions on greenhouse gases,
15 though, so maybe you should just stay there.

16 Objective 1-C-4 of the Climate Action Plan --
17 and this is all from the staff report -- is to
18 encourage Valero to continue to reduce emissions.

19 And without mentioning the air district's
20 estimate of more than 13,000 tons of emissions, the
21 staff report says that the project would not directly
22 conflict with the city's established strategies since
23 GHG emissions would be reduced in the whole Bay Area as
24 we just talked about.

25 So I think what the city is saying is that

1 even though our Climate Action Plan encourages them to
2 reduce emissions and they are going to increase it by
3 13,000 tons, it doesn't really conflict with our own
4 established strategies because of the fact that
5 greenhouse gases throughout the entire Bay Area might
6 be reduced -- according to the staff review -- the
7 status (Inaudible) are reduced.

8 So -- and a commenter wrote in the EIR on this
9 issue. And the consultants response was that the
10 city's Climate Action Plan didn't have any way to
11 reduce greenhouse gases from locomotives, but that the
12 emissions were significant and unavoidable.

13 So I guess my question is to the staff: How
14 does that jive with the conclusion that it doesn't
15 conflict with the Climate Action Plan?

16 MS. RATCLIFFE: I'm sorry. I'm trying to go
17 back because it was sort of a long question. So --

18 COMMISSIONER YOUNG: I apologize. Let me try
19 again.

20 MS. RATCLIFFE: If you could --

21 COMMISSIONER YOUNG: The staff report says
22 that this project does not conflict with the Climate
23 Action Plan, and that one of the reasons that it
24 doesn't conflict, even though it increases greenhouse
25 gases by 13,600 tons, is that -- the reason it doesn't

1 conflict is because the city has no way to reduce
2 greenhouse gases from locomotives. Is that the basis
3 that you are making the conclusion?

4 Then maybe somebody can help me explain -- so
5 what is the basis for that conclusion? Let me try it
6 that way, that it doesn't conflict with the Climate
7 Action Plan.

8 MS. MILLION: So the basis for the conclusion
9 is the reduction in GHG in the Bay Area basin.

10 UNIDENTIFIED SPEAKER: Yeah, that is --

11 MS. MILLION: It's the offset of Marine vessel
12 and the rail car.

13 COMMISSIONER YOUNG: Even though it's the
14 increase in Benicia.

15 MS. MILLION: It is not increasing it in
16 Benicia.

17 COMMISSIONER YOUNG: Not by 13,600 tons?

18 MS. MILLION: We're looking -- so we are
19 looking at -- and Mr. Rimpo is going to interrupt me at
20 any minute -- but essentially what we are looking at is
21 the Bay Area air quality management district as a
22 region establishes a threshold.

23 So city of Benicia is within the air
24 district's jurisdiction, so we look at their boundaries
25 when doing a lot of the analysis of air quality

1 threshold and GHG thresholds.

2 Add anything to that you could.

3 MR. RIMPO: Yeah. The other thing is we
4 looked at the Climate Action Plan and didn't find any
5 provisions in it that would actually conflict with the
6 project itself.

7 COMMISSIONER YOUNG: Okay. Moving on.

8 The CEQA guidelines talk about the significant
9 of impacts from greenhouse gas emissions. And it says
10 that among the things the city should consider is
11 whether the project increases or reduces GHG emissions
12 resulting from the project in comparison to baseline
13 conditions, whether the emissions exceed in adopted
14 threshold of significance and the extent to which the
15 project complies with plans to reduce GHG emissions --
16 emissions.

17 So given that definition, we're still saying
18 that this is not -- does not constitute a significant
19 impact on GHG emissions?

20 MR. RIMPO: Well, we did find that greenhouse
21 gas impacts would be significant. That was the
22 conclusion.

23 COMMISSIONER YOUNG: Okay. Well, I'm -- stick
24 around because I've got more questions on GHG as we get
25 further into this.

1 CHAIR DEAN: So do you want to ask those while
2 we have Mr. Rimpo here?

3 COMMISSIONER YOUNG: Are you planning to
4 leave?

5 MR. RIMPO: No.

6 CHAIR DEAN: I mean while he's at the podium?

7 COMMISSIONER YOUNG: Well, I'd rather just
8 deal with the staff report first and then get back into
9 questions --

10 CHAIR DEAN: Okay.

11 COMMISSIONER YOUNG: -- later.

12 CHAIR DEAN: Thank you, sir.

13 COMMISSIONER YOUNG: If that's okay.

14 Mitigation measure 4.1-1, page 22 of the staff
15 report says -- and it's a mitigation measure. Says
16 that Valero or its contractors will comply with
17 applicable air district control measures for emissions
18 during construction.

19 My question is: When did compliance with
20 existing laws and regulations become a mitigation
21 measure?

22 CHAIR DEAN: Who's that question directed to?

23 COMMISSIONER YOUNG: Anybody.

24 CHAIR DEAN: Staff, please.

25 MS. RATCLIFFE: So that's a standard

1 mitigation measure for any project --

2 COMMISSIONER YOUNG: That is required by the
3 law anyway.

4 MS. RATCLIFFE: That they adhere to -- and I
5 understand what you are saying. It's something that is
6 a standard mitigation project for any -- for any
7 project, that we would include as a mitigation project,
8 whether it was Valero or whether it was something else.

9 COMMISSIONER YOUNG: It doesn't seem like --

10 MS. RATCLIFFE: And yes, it might be restating
11 the fact if that's what you are saying.

12 COMMISSIONER YOUNG: Well, it seems that
13 complying with the law is a basic requirement and that
14 it doesn't constitute mitigating an impact.

15 An impact is an impact that needs to be
16 mitigated, not just following the law. I don't
17 understand why that becomes a mitigation matter.

18 Okay. Findings and certifications.

19 You know, I'm reluctant to get into this at
20 this time because we're supposed to be dealing with the
21 EIR separate from the use permit. And the use permit
22 deals with findings that talk about economic benefits
23 of the project.

24 But since the staff report includes both of
25 these things together, I guess it's okay to talk about

1 both of these things even though we are supposed to be
2 dealing with the EIR exclusively at this point.

3 The findings talk about -- well, page 31 of
4 the staff report says that case law makes it clear that
5 a mitigation measure or alternative can be deemed
6 infeasible on the basis of its failure to meet project
7 objectives or on related public policy grounds.

8 On page 33 it describes a finding rejecting
9 the no project alternative as infeasible because,
10 quote, it would not allow the refinery to meet most of
11 the project objectives.

12 My question is: When did it become the city's
13 responsibility to help the applicant meet their
14 objectives?

15 Anybody?

16 CHAIR DEAN: Is that a rhetorical question?

17 COMMISSIONER YOUNG: No. Well, I think it's a
18 legitimate question. We're talk -- the staff report
19 says we can't -- we can't do the no project alternative
20 because it wouldn't meet the project objectives.

21 But I think our obligation as a Planning
22 Commission isn't just to meet the objectives of the
23 applicant. It goes beyond that.

24 So if anybody would like to respond to that,
25 fine. Maybe it is a rhetorical question.

1 CHAIR DEAN: Would our consulting attorney
2 like to comment on that?

3 MR. HOGIN: Yes, Mr. Chair, thank you.

4 The purview of the commission is to require
5 alternatives that avoid significant impacts. So that's
6 really -- that's really the key. And there are no
7 alternatives here that would avoid any significant
8 impact.

9 Now it also -- there's also the finding here
10 that the no project alternative would be -- would not
11 be feasible as compared with the project objectives.
12 But as far as the purview of the city, the Planning
13 Commission, the role of alternatives analysis is for
14 the Planning Commission to identify alternatives that
15 would avoid significant impacts.

16 And the alternatives here will not do that
17 except to the extent that we're talking about rail
18 impacts. And so the city would be precluded by the
19 ICCTA from requiring those alternatives.

20 CHAIR DEAN: Commissioner Young.

21 COMMISSIONER YOUNG: Yeah.

22 Page 35 of the staff report has an interesting
23 description of the staff's position. And I think
24 that's what's stated earlier.

25 Staff believes that the benefits of the

1 project do not outweigh the significant and unavoidable
2 impacts on uprail communities.

3 The draft statement of overriding
4 considerations attached to this report as Exhibit A-1
5 finds that the project benefits do not outweigh the
6 project's impacts, but that it is legally infeasible
7 due to preemption to mitigate the impacts of the
8 project.

9 The issue of preemption is obviously critical
10 to this whole discussion, and there's going to be a lot
11 more testimony about preemption and I've got more
12 questions about it that we will get to shortly, I hope.

13 On the economic impacts itself of the project.
14 There is a report in the draft -- in the staff report
15 attachment from Andrew Chang & Company.

16 Is Mr. Chang here or someone from his company
17 here?

18 MS. MILLION: I don't believe so.

19 COMMISSIONER YOUNG: Okay. Well, hopefully
20 somebody can answer these questions.

21 The report says that Valero pays over three
22 million dollars a year in property taxes to the city.
23 That number has been significantly reduced by two
24 previously successful appeals to the county assessor of
25 their property valuation, is that correct?

1 Anybody?

2 MS. MILLION: Here the chair.

3 CHAIR DEAN: Yes, please.

4 MS. MILLION: I think if we are going to go
5 through the project impacts based on a report that was
6 prepared by Valero, should probably direct those to the
7 applicant.

8 You can choose to hold on to those questions
9 until after --

10 COMMISSIONER YOUNG: Okay.

11 MS. MILLION: -- the applicant gives a
12 presentation or we can ask the applicant to come up
13 now, but I don't think --

14 CHAIR DEAN: No, let's hold those -- let's
15 hold those questions for the applicant.

16 COMMISSIONER YOUNG: Okay.

17 The root question is on tax revenue that's
18 generated by the project. So if Valero's the right
19 person, if Mario is here, somebody from the finance
20 department, somebody who can talk to sales tax
21 questions. I don't know if that's the applicant or
22 not, but I'm happy to defer these questions until
23 later.

24 MS. MILLION: So you can go ahead and wait for
25 the applicant to comment on that.

1 COMMISSIONER YOUNG: Okay.

2 MS. MILLION: We -- the city does not get the
3 economic benefits from Valero from sales tax.

4 COMMISSIONER YOUNG: From sales tax.

5 MS. MILLION: We do not. They are not a sales
6 tax revenue generator for the city of Benicia.

7 COMMISSIONER YOUNG: Right. But the report
8 and the findings speak directly to sales tax benefits
9 that the city would receive.

10 MS. MILLION: Some directed to Valero.

11 COMMISSIONER YOUNG: So I want to ask how
12 those figures were arrived at.

13 My last question for -- for the moment is that
14 number 5 in the statement of overriding considerations
15 says the project will, quote, reduce the likelihood of
16 an oil spill compared to the risk of a maritime spill
17 under current conditions.

18 Well, we have heard a lot about oil spills due
19 to derailments.

20 Can anybody give me examples of oil spills
21 from a maritime tanker to back up that statement?

22 CHAIR DEAN: Is there a risk analysis question
23 in there?

24 COMMISSIONER YOUNG: No.

25 MS. MILLION: Why don't you go and give us a

1 moment to think about the question.

2 COMMISSIONER YOUNG: Okay.

3 MS. MILLION: Continue.

4 CHAIR DEAN: Okay. Thank you.

5 COMMISSIONER YOUNG: Yeah, I've got more but
6 I'm going to defer to the rest of the commission if
7 they've got questions on the staff report.

8 CHAIR DEAN: Okay. Who else on the
9 commission, questions for staff on the staff report?

10 UNIDENTIFIED SPEAKER: (Inaudible).

11 CHAIR DEAN: They can come back to us when
12 they are ready. That may take more than a minute.

13 Who else would like to go forward?

14 Commissioner Birdseye.

15 COMMISSIONER BIRDSEYE: Okay. So the numbers
16 related to the decrease in greenhouse gas emissions
17 call for a very specific scenario. The same amount of
18 crude coming in replacing what's currently coming in on
19 ship.

20 If Valero wanted to change their business
21 practices and, say, start shipping crude to other
22 countries now that the crude export ban has been
23 lifted, would the city of Benicia have to approve that?
24 Do we monitor their business practices after this is
25 approved?

1 MS. MILLION: You're asking whether or not we
2 would have discretion over their Marine operation?

3 COMMISSIONER BIRDSEYE: Uh-huh.

4 MS. MILLION: The City of Benicia, no.

5 COMMISSIONER BIRDSEYE: Okay. So if Valero
6 deviates from the practices that they outline in the
7 EIR such as using the safer 1232 rail cars, how -- how
8 would we know? Is there monitoring or enforcement of
9 what's outlined in the EIR?

10 MS. SCOTT: Yes. Conditions like that are
11 part of the mitigation monitoring reporting plan that
12 are required -- would be required as a condition of
13 project approval.

14 CHAIR DEAN: I'm sorry. Would you pull your
15 microphone a little closer and say that again?

16 MS. SCOTT: Sure.

17 My answer was yes. That promises like that
18 would be monitored as part of the mitigation monitoring
19 reporting plan which would be required as a condition
20 of project approval.

21 So yes, monitoring would happen.

22 COMMISSIONER BIRDSEYE: Okay. So -- and if
23 they say break some of the agreement, would there be
24 punitive actions involved at that point?

25 MS. SCOTT: Enforcement is discretionary, but

1 it would be up to the city to enforce those promises
2 and those agreements.

3 COMMISSIONER BIRDSEYE: Okay. Okay.

4 My other question is related to the economic
5 studies that are in the -- in the staff report.

6 So there's a fear here in the community that
7 the approval of this process or this project would
8 affect real estate values. And their -- a recent
9 mailer by Valero says that they, quote -- states that
10 the refinery supports Benicia's recent higher median
11 home value by providing quality jobs and significant
12 funding for improved services and facilities.

13 However, a survey -- a survey performed by the
14 University of Pittsburgh, the one in Pennsylvania, not
15 anybody local, found that undesirable facilities or
16 incidents reduce property values in their vicinity.

17 Valero recently was listed as number three on
18 the state's top po -- GHG greenhouse gas emission
19 polluter by data out of the California Air Resources
20 Board. So I think it's safe to say that that -- it's
21 one of these type of facilities that strikes fear.

22 The University of Pacific -- or the University
23 of Pittsburgh report goes on to say that housing
24 markets are sensitive to the real or perceived risks
25 associated with the adverse of risks.

1 So just the fact that there could be a Crude
2 by Rail accident or explosion like those that have
3 happened in other communities could affect our property
4 values.

5 My question to staff and the team of
6 consultants is: If this project is approved, what can
7 be done to ensure that our property values will be
8 inoculated by the perceived risks?

9 MS. RATCLIFFE: Sorry, Commissioner Birdseye.

10 So your question was, if the project is
11 approved, what could the city do to ensure that
12 property values remain the same or increase?

13 COMMISSIONER BIRDSEYE: Uh-huh.

14 MS. RATCLIFFE: And I don't have an answer to
15 that question.

16 COMMISSIONER BIRDSEYE: Okay. My last
17 question is related to the letter that we received on
18 February 8 today from the Bay Area Air Quality
19 Management District.

20 And we actually used their zones and their
21 information for the EIR, but in this letter -- today's
22 letter it states: After review of the final EIR
23 Bay Area air district staff remain concerned that the
24 cumulative air quality impact and health risk analysis
25 provided in the final EIR do not accurately

1 characterize the potential air pollution emissions or
2 health impacts associated with this project.

3 The analysis relies in part on an outdated
4 health risk assessment from the 2002 Valero improvement
5 project, draft EIR, and it under estimates the number
6 of remaining ship calls to the refineries.

7 It also uses unreasonable locomotive fuel
8 efficiency estimates and emits some sources of
9 emissions.

10 It goes on to say that it does not evaluate
11 the potential health impacts from the particulate
12 matter to .5 emissions.

13 Can someone address these concerns?

14 MR. RIMPO: Tim Rimpo again.

15 There are several comments there, but I think
16 they were all raised previously in the comments on the
17 revised draft EIR. And we responded to all of them.

18 For example, the air district argues that an
19 outdated health risk assessment was used and that
20 health risk assessment was updated in the revised draft
21 EIR.

22 It included a revised modeling, the air mod
23 model, the previously used ISC model. It also used
24 updated health risk estimates that were -- that came
25 into effect or passed in March of last year by the

1 California office of environmental health hazard
2 assessment.

3 So all of those comments have been addressed.
4 And what was frustrating about the letter is it didn't
5 provide any specifics on how, follow up as to what
6 specifically they felt was wrong. It was kind of a
7 general --

8 COMMISSIONER BIRDSEYE: Thank you.

9 MR. RIMPO: -- a general response.

10 COMMISSIONER BIRDSEYE: That's all for me.

11 CHAIR DEAN: Commissioner Radtke, comments?

12 COMMISSIONER RADTKE: Okay. I think I have a
13 question on traffic. I'm not sure if you can answer my
14 question or not.

15 One of my phone calls to one of the agencies
16 did not get returned. And my question had to do with
17 the 680 off-ramp.

18 I was driving 680 not too long ago and yet
19 could already see the one off-ramp already backed up
20 almost to the freeway as it was with the kind of
21 traffic we are having right now.

22 If it becomes more of a problem under a
23 project like this -- and that's an area if you are
24 going northbound on 680, that's right where the
25 concrete starts to restrict down and it heads on to the

1 cosway section of the freeway.

2 How would Caltrans approach resolving that
3 problem?

4 MR. HUTCHINSON: Jack Hutchinson again.

5 Okay. I can't answer what Caltrans would do.
6 But my educated opinion would be that because they are
7 his kind of existing changeable message, electronic
8 changeable message sign on the side of the freeway as
9 you're approaching the off-ramp similar to what they do
10 for -- on U.S. 101 in the Blythedale Avenue exit up in
11 Mill Valley. They would flash a sign when there is
12 something activated where there's a backup on the ramp,
13 then it will warn the drivers, you know, warning; watch
14 for stopped traffic ahead.

15 And it's basically -- what we're talking about
16 is a safety concern in terms of people do not expect
17 that there's going to be a backup further back than
18 usual, will they proceed at the same speeds that they
19 normally would, and then therefore could they have a
20 rear-end accident.

21 That's the only thing I can think of is just
22 forewarning on those occasions. Because while clearly
23 I don't live here and so I don't -- I can't speak to
24 every day what happens.

25 The length of the off-ramp plus the extended

1 auxiliary lane, the actual lane that connects 780 to
2 680 before you're -- if you are going to continue on
3 680, you have to merge left, you know, 3,000 feet in
4 length which holds an awful lot of cars.

5 And so I'm not saying that it doesn't happen.
6 I hear testimony that it has happened, it extends back
7 that far.

8 So to answer your question, Caltrans would
9 look to some safety vice in terms of notification of
10 drivers of what they may be running into downstream.

11 COMMISSIONER YOUNG: Could I add to that
12 question?

13 CHAIR DEAN: You have the follow-up for --
14 Mr. Hutchinson, could you come back for a second?

15 Thank you.

16 COMMISSIONER YOUNG: I could maybe help you
17 with this.

18 This is from a letter from Caltrans of
19 January 15th of this year.

20 Is the opinion of Caltrans that cues would
21 back up on to the main line of northbound 680 at Bay
22 Shore Road. We find -- we find these impacts to be
23 significant because the fourfold increase in frequency
24 of cuing is anticipated to impede traffic while
25 reducing the deceleration speeds for travelers as they

1 approach the Bay Shore Road off-ramp.

2 This issue must be evaluated in your traffic
3 analysis to ensure sufficient mitigation of any adverse
4 effects of the 680 Bay Shore off-ramp.

5 But as far as I can see there's no mitigation
6 at all proposed or --

7 MR. HUTCHINSON: They offered me a letter.
8 Yes. And I -- all right. I have to say it.

9 I have not seen that letter, so I'm hearing
10 you quote it and I take it that you are reading it
11 correctly.

12 The previous communications that we had
13 received from Caltrans was simply saying during the
14 scoping process for the EIR.

15 Please make sure that you totally analyze the
16 affect of the project on it because we don't want it to
17 affect our ramp interchange.

18 COMMISSIONER YOUNG: But how much analysis was
19 really done if you've already said we can't mitigate
20 because of preemption?

21 MR. HUTCHINSON: I'm stepping away from
22 preemption.

23 My job as a technical analyst is to put the
24 facts out there for you. And my analysis is showing
25 that based on the computer simulations that weren't in

1 the Fehr & Peers report showing she's back -- two lanes
2 back from Park Road along Bay Shore, down the off-ramp.

3 Those maximum values of the cue lengths during
4 the a.m. peek hour of traffic where traffic is the
5 heaviest, would not extend onto the freeway -- freeway
6 way main line.

7 CHAIR DEAN: Even at the time of a train
8 crossing?

9 MR. HUTCHINSON: That's the basis.

10 They did the analysis based on blockage of
11 Park Road, the volume of traffic coming up the
12 off-ramp, trying to get across that crossing.

13 The maximum cue during the highest morning
14 traffic, the maximum backup to cue length would not
15 back up on to the main line. It would back up through
16 the off-ramp on to the auxiliary lane partially, but
17 would not extend onto the main line.

18 COMMISSIONER YOUNG: That's the opposite of
19 what Caltrans concluded.

20 MR. HUTCHINSON: And the letter that you are
21 reading which I have never seen, I'm just hearing so
22 I'm just trying --

23 COMMISSIONER YOUNG: So we are going to have
24 to choose between with your opinion and Caltrans
25 opinion.

1 MR. HUTCHINSON: Yeah. I mean if they could
2 site -- if that letter sites instances of that and
3 provides their analysis of the basis for it, your
4 statement -- you quoted them saying it would be four
5 times --

6 COMMISSIONER YOUNG: It is the opinion of
7 Caltrans, that cues would back up on the main line of
8 northbound 680 at Bay Shore, we find these impacts to
9 be significant because the fourfold increase in
10 frequency of cuing is anticipated to impede traffic
11 while reducing the deceleration space for travellers as
12 they approach the Bay Shore road off-ramp.

13 MR. HUTCHINSON: Okay. And I'm reacting to
14 that fourfold increase. I don't --

15 COMMISSIONER YOUNG: Trains go four times a
16 day.

17 MR. HUTCHINSON: But there's already more than
18 that.

19 So their fourfold increase would indicate that
20 there was one crossing now and there will be four
21 crossings in the future.

22 COMMISSIONER YOUNG: I don't know what --

23 MR. HUTCHINSON: It's more existing, so I
24 would question their numbers.

25 COMMISSIONER YOUNG: I'm only quoting what

1 they said.

2 MR. HUTCHINSON: Yeah, so difference of
3 opinion.

4 COMMISSIONER YOUNG: Yeah.

5 MR. HUTCHINSON: Thank you.

6 CHAIR DEAN: Thank you, sir.

7 Other comments for from the commission?

8 Commissioner Oakes.

9 COMMISSIONER OAKES: Thank you.

10 My question has to do again with traffic, but
11 also access in case of emergency.

12 There's several businesses that are located on
13 the other side of Park Road that have no access when
14 that train goes by.

15 What are we doing to mitigate that impact?

16 CHAIR DEAN: So is that a question for the
17 traffic engineer?

18 COMMISSIONER OAKES: Whomever may want to
19 answer it.

20 MS. MILLION: Chair Dean and Mr. Oakes, let me
21 interrupt for just a moment just to let you know, we do
22 have a representative -- Jack, you didn't know this --
23 from Fehr & Peers here. If you two wanted to talk
24 about it or tag team on responses, you can.

25 MR. HUTCHINSON: I was just saying, the

1 question of emergency access, my -- the responses in
2 the final EIR were referring to the mitigation measure
3 4.11-4 which the executing agreement of the mutual aid
4 agreement obviates the need for that mitigation.

5 So to me the mitigation was that it would set
6 up notification; it would provide for, you know, for
7 monitoring and notification, and that that would apply
8 mostly to Park Road because that's where it's going to
9 be blocked the most, but a stream from the refinery
10 that similar actions would take place.

11 And yes, there would be times what it could be
12 problematic, but that's when you have the local aid
13 to -- from Valero to try to step in, the mutual aid
14 agreement would obviate that mitigation.

15 COMMISSIONER OAKES: The problem in my mind is
16 once this train goes by, the access road to these
17 businesses, I think there's a trade union out there,
18 there's no access. They are locked out.

19 How do you mitigate that?

20 MR. HUTCHINSON: In my professional opinion,
21 you do not. It's a question of the -- the frequency of
22 the need for emergency access simultaneously occurring
23 at the time of a crossing.

24 I would never say that it will never happen,
25 but the probability of simultaneous crossings with an

1 emergency event is low, relatively low.

2 CHAIR DEAN: Okay. Thank you.

3 More comments?

4 COMMISSIONER OAKES: No.

5 CHAIR DEAN: Commissioner Cohen Grossman?

6 COMMISSIONER COHEN GROSSMAN: I have a
7 question for the legal people here.

8 My question is about preemption. And when
9 staff gave their report earlier this evening, they said
10 the CEQA review of their refinery operations is not
11 preempted. And it was -- it was very clearly presented
12 that the unloading rack is on Valero property.

13 There's another bullet in the staff
14 presentation that I didn't hear a mention of, but I
15 just wanted to kind of draw out a little more on why
16 this bullet's there and why -- what the point was that
17 was supposed to have been made, or maybe to just ask
18 for an expansion on it.

19 The point says Valero is not acting as an
20 agent of Union Pacific. But I didn't hear the staff
21 presentation on that. I may have been not listening.
22 It's in the slide show that we saw this evening, so
23 that's why I'm asking.

24 MR. HOGIN: Mr. Chair, I will address that.

25 CHAIR DEAN: Yeah, please.

1 MR. HOGIN: There are a -- the conclusion that
2 CEQA does apply to the onsite operations, construction
3 operations of the loading rack is based on some of the
4 federal cases that have decided a preemption issue for
5 projects that were owned and operated by a private
6 party other than the railroad.

7 And the rule that has come out of those cases
8 is that local zoning and local permitting process will
9 apply to a transloading facility or other ancillary
10 railroad facility as long as it is not owned or
11 operated by the railroad and as long as the private
12 party that owns and operates it is not doing so
13 pursuant to a contractual arrangement with Union
14 Pacific.

15 So that's -- that's where the agency aspect
16 comes in.

17 COMMISSIONER COHEN GROSSMAN: So where do you
18 draw the line on preemption?

19 Since obviously there is -- if this project
20 were to happen, there would be a contractual
21 relationship between Valero and Union Pacific.

22 It seems like preemption, preemption,
23 preemption. I mean it's -- it's kind of like --
24 it's -- it's a difficult concept to grasp as a Planning
25 Commissioner. You know, look at this but don't look at

1 this. Look at this -- sorry -- but don't look at this.

2 So the line -- where do you draw that line in
3 the sand on what is preempted, and how do you explain
4 that at this point in time going forward?

5 MR. HOGIN: Yes.

6 COMMISSIONER COHEN GROSSMAN: That's kind of a
7 part two question.

8 MR. HOGIN: Yeah. It's a very good question.
9 And the line we draw here is where the crude oil is
10 unloaded from the train in the unloading rack.

11 The ICCTA was designed to prevent a patchwork
12 of local regulations that would make it difficult for
13 railroads to do their job and to make money and to do
14 their business and to serve people's needs.

15 And so basically what it says, the Surface
16 Transportation Board is permission to the railroads and
17 other aspects of the railroads operations are regulated
18 by the U.S. Department of Transportation. And so when
19 it comes to rail operations, very broadly construed,
20 rail operations meaning trains, tracks, all different
21 types of tracks, ancillary facilities, warehouses,
22 piers, docks to the extent that they are owned,
23 operated or managed by a railroad comes within the
24 scope of that very broad exclusive jurisdiction.

25 But that jurisdiction stops based on the way

1 the cases have interpreted the preemption provision. A
2 jurisdiction stops at a transloading facility that is
3 owned and operated by a private party other than the
4 railroad. So that's where the line is drawn. That's
5 the way the cases have come.

6 COMMISSIONER COHEN GROSSMAN: So if this -- if
7 we were going back three years just hypothetically,
8 would it be possible and are there -- it sounds like
9 there are other settings where the railroad actually
10 owns the transloading facility and then it's piped --
11 there's a pipeline into the refinery, is that correct?

12 MR. HOGIN: That's correct.

13 If Union Pacific was constructing and owned
14 this -- the unloading rack here, we wouldn't be able to
15 require any permitting of it at all.

16 COMMISSIONER COHEN GROSSMAN: So --

17 MR. HOGIN: The city would not be able to.

18 COMMISSIONER COHEN GROSSMAN: Just -- just for
19 my own edification and for the room to --

20 MR. HOGIN: Sure.

21 COMMISSIONER COHEN GROSSMAN: If that were the
22 case, if that were a facility that was proposed here,
23 what kind of environmental review would a facility of
24 that nature go through? Would it be outside of the
25 purview of the locals? Would it be subject to NEPA?

1 MR. HOGIN: It would be outside of the purview
2 of the locals. Whether it would -- any particular
3 project would be subject to NEPA, I can't -- I can't
4 answer that question.

5 You know, projects that are approved by -- or
6 funded by the federal government, government agencies,
7 are potentially subject to NEPA. There's a very long
8 list of exemptions to NEPA.

9 And if I had to guess, based on my experience
10 with NEPA, constructing a facility like this is a very
11 small project in the grand scheme of things. And that
12 would probably fit under one exemption or another, but
13 I can't give you a definitive answer right now.

14 COMMISSIONER COHEN GROSSMAN: So assuming it's
15 following that logic, then -- I guess my question goes
16 back to all this preemption really begs the question of
17 who and how the railroad is regulated.

18 We have a project here with an environmental
19 impact so we have a railroad that's preempted because
20 of vulcanization, I understand that.

21 But we have an environmental consequence, many
22 environmental -- 11 environmental consequences in this
23 project, so, you know, as a -- just a citizen of the
24 United States and the State of California and the City
25 of Benicia, I don't understand how I am being protected

1 from the behavior of the railroad, which is a business.

2 MR. HOGIN: Well, and the short answer is
3 this.

4 The railroad is heavily regulated by the
5 federal government. So --

6 CHAIR DEAN: Show the speakers some respect,
7 please.

8 MR. HOGIN: One may think that the regulations
9 are inadequate, they don't go far enough, and so on.
10 I'm not opining one way or the other on the adequacy of
11 the federal regulations.

12 I am saying, however, they are heavily
13 regulated by the federal government in the interest of
14 air quality, EPA, the federal environmental protection
15 agency regulates emissions for locomotive engines,
16 requires certain types of engines on a certain -- on a
17 schedule.

18 When it comes to the risks of fire and
19 explosion, that's heavily regulated by the pipeline
20 and Hazardous Materials Safety Administration and other
21 safety aspects are regulated by the federal railroad
22 administration.

23 So there's a whole body of federal law out
24 there. Now whether you as a member of the Benicia
25 Planning Commission, as a citizen, things to that

1 regulation is or is not adequate, the place to go is to
2 your congressman, I would say, or your -- and try
3 and -- or federal Senator and -- and/or go directly to
4 the agencies involved. That would be your avenue to
5 try and get a change if you were unhappy with the scope
6 of the federal regulation.

7 CHAIR DEAN: I have a follow-up on the
8 preemption question.

9 I understand the necessity for preemption in
10 terms of operating a railroad that goes through
11 multiple jurisdictions nationwide carrying a whole
12 variety of products.

13 But I'm also no stranger to CEQA. And when I
14 read the staff report, there's discussion in there in
15 the staff report and in the resolution that -- and just
16 to back up for a second -- presumably to go forward
17 with this project we'd have to find that the EIR is
18 adequate and complete and then we would have to make
19 some findings related to that. And particularly since
20 there's some significant unavoidable impacts, we'd have
21 to make findings related that the benefits of the
22 project outweigh the -- the risk of the project or the
23 negative impacts of the project.

24 So I understand preemption in terms of
25 operating railroads, but this is the first time reading

1 the staff report where it says that you won't even be
2 making findings related to the negative impacts of the
3 railroad because of preemption.

4 So now it's entered not just the physical
5 aspect of operating a railroad in a railroad
6 right-of-way, but the actual process.

7 You are saying we are going to preempt this
8 process of making the findings, and the commission
9 won't even be able to do that because of preemption.

10 Is --

11 MR. HOGIN: Well --

12 CHAIR DEAN: Am I interpreting that correctly?

13 MR. HOGIN: Not entirely, no.

14 The staff has presented a variety of findings
15 relating to the environmental impact to the project,
16 including impacts from rail operations. And, for
17 example, there are a number of findings that there will
18 be significant and unavoidable impacts from rail
19 operations. A variety of different air quality
20 impacts, hazards impacts and so on.

21 And the staff is recommending that the
22 commission consider and adopt those findings.

23 Now Valero will say the commission and the
24 city is preempted even from doing that. But the city
25 is saying well, that's not entirely clear. So staff is

1 asking the commission to adopt those findings.

2 What staff is also saying, however, is that
3 the commission cannot deny the permit based on impacts
4 from rail operations. That would be preempted, number
5 one.

6 And number two, the city cannot comply with
7 public resources code 21081 to the extent that it would
8 require a finding of overriding considerations to
9 override rail impacts.

10 So on normal things -- let's say there wasn't
11 any preemption, okay. The project has significant
12 unavoidable impacts, CEQA precludes the city from
13 approving the project unless the Planning Commission
14 finds that the benefits outweigh the significant
15 unavoidable impacts.

16 The city will -- if Planning Commission were
17 to follow that protocol, standard protocol here, and if
18 it were to find that the benefits did not outweigh the
19 impacts, the impacts are horrible and the benefits are
20 small, that would be an exercise of -- of imposing a
21 preclearance or permitting requirement on rail
22 operations. It would be a regulatory decision by the
23 Planning Commission that would preclude Union Pacific
24 from operating to some -- in some degree in some
25 portion its locomotive fleet. Because you basically

1 would be saying we're not going to let you deliver
2 crude to the Benicia Refinery because the impacts are
3 so bad and we find that they don't outweigh -- or the
4 benefits don't outweigh the impact.

5 Is that clear? You would be -- you would be
6 basically vetoing rail operations. That's the problem.
7 This --

8 CHAIR DEAN: Again, give the speaker some --

9 MR. HOGIN: This Planning Commission --

10 CHAIR DEAN: -- respect, please.

11 MR. HOGIN: I'm sorry.

12 CHAIR DEAN: Go ahead.

13 MR. HOGIN: This Planning Commission does not
14 have the authority to veto rail operations that have
15 been approved by the Surface Transportation Board.
16 That's the basic problem.

17 CHAIR DEAN: So basically what you're say --
18 if I understand you correctly, that we cannot deny the
19 project based on any impacts related to rail
20 operations.

21 MR. HOGIN: That is it exactly.

22 CHAIR DEAN: All right. Thank you.

23 Any additional comments from the commission?
24 Commissioner Young.

25 COMMISSIONER YOUNG: On preemption.

1 The draft EIR has a statement from UP from
2 June 2014 that starts with the sentence Union Pacific
3 will not agree to any limitation on the volume of
4 product it ships or the frequency route or
5 configuration of such shipments.

6 Yet UP in that same letter made no mention of
7 this somewhat disputed contention that Valero is
8 somehow protected from having to do mitigation because
9 of the indirect preemption that we have been talking
10 about.

11 And the city in the draft EIR said nothing
12 about Valero being exempt from mitigation. And that
13 was also consistent with a number of legal opinions
14 from affected public agencies, including the California
15 attorney general, all of which argue that Valero was
16 the applicant, not UP, and that Valero wasn't a
17 railroad immuned from possible mitigation requirements.

18 In the appendices to the EIR, in the letter
19 from Valero to the city, November 2014.

20 In the letter, Valero argued that the city
21 couldn't even undertake environmental review of the
22 project because the impact of rail operations was
23 preempted. And since oil would be delivered by train,
24 there could be, quote, no denial or delay in the
25 issuance of or any conditions on the permit to operate

1 the project.

2 And the letter also threatened to stop paying
3 for any further environmental review since CEQA review
4 was preempted as well.

5 So my question to the staff is has the
6 applicant paid in full for the entirety of the CEQA
7 processing to date?

8 MS. MILLION: Yes. In a typical process when
9 the city hires an environmental consultant, it is the
10 responsibility of the applicant to pay for that
11 consultant.

12 COMMISSIONER YOUNG: Okay. All right.

13 And so getting back to the evolution of the
14 city's position on this question of preemption.

15 The revised draft EIR, which was released in
16 August 2015, also made no mention of the indirect
17 preemption for Valero in the section quote, called
18 areas of controversy and issues to be resolved.

19 That wasn't an issue at all in 2015.

20 But when the final EIR was released in January
21 2016, just four months later, the city's position had
22 changed significantly.

23 At the very end of the final EIR -- right
24 here -- it says -- and it has to do with the different
25 alternatives.

1 Although UP has taken the position that the
2 breath of preemption included, quote, any limitation on
3 the volume of product shipped or the frequency router
4 configuration, the city was not persuaded that
5 preemption would make alternative one, which was
6 limiting the number of trains to one per day legally
7 and feasible. The city wasn't convinced of that.

8 With the advice of legal counsel, the city has
9 since come to the conclusion that alternative one is
10 legally and feasible.

11 Since the project is environmentally
12 superior -- if the project is environmentally superior
13 to alternatives two and three, decision makers will be
14 deciding to the project -- between the project and the
15 no project alternative.

16 So it seems now that the city has adopted
17 Valero's contention that they are protected from having
18 to make any mitigation of significant and unavoidable
19 impacts because they would be hauling oil by rail and
20 are therefore indirectly protected by federal
21 preemption.

22 Is that basically correct?

23 MR. HOGIN: I'm sorry. That was a very long
24 question.

25 What -- what is it that you are asking

1 exactly?

2 COMMISSIONER YOUNG: The city now has come
3 around to agreeing with Valero and UP, that the -- that
4 they, Valero, is protected from any mitigation of
5 significant and non-avoidable impacts because of
6 preemption.

7 MR. HOGIN: Rail impacts, that's right.
8 Impacts from rail operations. That is correct.

9 COMMISSIONER YOUNG: And also, the final EIR
10 now acknowledges that the no project alternatives is
11 both legally feasible and environmentally superior and
12 states that decision makers will be limited to deciding
13 between the project and the no project alternative.
14 Basically it's a take it or leave it situation.

15 Is that accurate.

16 MR. HOGIN: I'm sorry. Would you just repeat
17 that last part again?

18 COMMISSIONER YOUNG: Yeah.

19 The FEIR, the final EIR, now acknowledges that
20 the no project alternative is both legally feasible and
21 environmentally superior and states that decision
22 makers will be limited to deciding between the project
23 and the no project alternatives. And that's basically
24 it's a take it or leave it situation.

25 Is that correct?

1 MS. MILLION: Yes. That is correct.

2 COMMISSIONER YOUNG: Okay. But the staff
3 report seems to go even further than that, and
4 basically says that the city has no discretion over the
5 project at all, that all the project alternatives other
6 than the project or no project is basically and
7 feasible.

8 I'm sorry I think that -- I think you answered
9 that already.

10 So if you thought these other alternatives
11 were infeasible because of preemption, does that mean
12 that you didn't really analyze those alternatives?

13 MS. SCOTT: No. Each of the alternatives,
14 alternatives one, two and three were analyzed in detail
15 in the draft and were revisited in the revised draft
16 EIR.

17 The issue of preemption -- I defer to your
18 counsel on this -- is that it has been an evolving
19 issue.

20 It was not disclosed for the first time in the
21 final EIR. In fact, there was a special section on it
22 in the initial draft EIR, and appendices regarding
23 those issues.

24 The city, with legal counsel, has been
25 considering the issues of federal preemption very

1 carefully throughout the process, and evolution of the
2 thinking is what you see in the final EIR.

3 COMMISSIONER YOUNG: So I want to sort of
4 carry this a little bit forward.

5 Are we saying that the Planning Commission
6 can't propose any mitigations, including mitigations
7 that protect the health and safety of the public
8 because it would interfere with railroad operations,
9 and we can't do that?

10 MR. HOGIN: Is this on?

11 Essentially I'll restate it.

12 The test isn't whether it interferes with
13 railroad operations. The test, as I've said, is
14 whether the city is going to attempt to impose a
15 preclearance or pre-construction requirement with
16 conditions that have the effect of managing your
17 governing rail operations in order to mitigate a rail
18 related impact.

19 COMMISSIONER YOUNG: So getting back to the
20 timeline where the city did not have an issue with
21 indirect preemption in the draft EIR; it didn't have an
22 issue in the revised draft EIR, but in the final EIR
23 after consulting with legal counsel, they reverse
24 themselves and now they have a problem with it.

25 MR. HOGIN: No, that's not accurate.

1 The issue of preemption was not really firmly
2 presented to the city staff until a certain point. In
3 the mitigated negative declaration, for example, there
4 were no significant impacts identified from rail
5 operations or otherwise. In the initial environmental
6 impact report, there ultimately were two uprail air
7 quality impacts that were identified.

8 But it was not until that document was
9 circulated that we got a lot of public comment that
10 indicated that there was a lot more to rail impacts
11 that could be studied. And the city staff decided to,
12 in the interest of full disclosure, to generate a lot
13 more information about the nature of the rail impacts.
14 And it was at that point where the issue of mitigation
15 of these significant impacts that had now been
16 discovered became an issue. So it was at that point
17 where city staff looked closely at -- at the issue of
18 what is the city's authority to mitigate impacts from
19 rail operations.

20 And the second development that happened was
21 that Valero sent a letter for the first time that was
22 before the revised draft EIR was drafted and circulated
23 for public comment. It was just after the close of the
24 comment period, as I recall, on the initial draft EIR.

25 And Valero made a number of contentions with

1 very specific citations and that required the city to
2 go back and address every one of those issues.

3 So that's when the city explained to Valero
4 that one, at least their unloading rack portion of the
5 project is, in fact, subject to CEQA.

6 But two, the city staff does agree that the
7 city cannot require mitigation of rail impacts under
8 the preemption principles.

9 So again, in summary, it's not that the city
10 staff's position changed in any way, it's that the
11 issues were not presented until a certain point of the
12 process.

13 COMMISSIONER YOUNG: But you said that the
14 letter from Valero came prior to the publication of the
15 revised draft EIR.

16 MR. HOGIN: That's correct.

17 COMMISSIONER YOUNG: But in the revised draft
18 EIR, under the areas of controversy and issues to be
19 resolved there was no mention of this indirect
20 preemption.

21 MR. HOGIN: It was in the -- not in -- I
22 believe not in that portion of the EIR, but there was
23 an appen -- there was two appendices to the EIR that
24 addressed preemption.

25 COMMISSIONER YOUNG: A non-indirect

1 preemption, that's --

2 MR. HOGIN: Yes, it --

3 COMMISSIONER YOUNG: -- protected Valero.

4 MR. HOGIN: It is -- it is addressed in that
5 appendix . I don't have the letter in front of me.

6 COMMISSIONER YOUNG: Well, I've ready all of
7 the --

8 MR. HOGIN: And it's L and M. We can call it
9 up and I can point it out to you.

10 CHAIR DEAN: Can we move on.

11 COMMISSIONER YOUNG: Yeah.

12 So theoretically, typothetically, if Alameda
13 county wanted to open a land fill on the Cenal property
14 , and the Cenal property was not zoned for a land fill,
15 so it's a discretionary approval on the city's part,
16 but the trash was going to be hauled in by train.

17 Because it was being hauled in by train, does
18 that mean the city would not have any discretion to put
19 conditions on the operation of the land fill or the
20 fact that there would be a land fill because the fact
21 that it was being brought in by train preempted those
22 discussions?

23 MR. HOGIN: No. If I understood the question
24 correctly, the question is: If there's a land fill
25 being operated by a company that is not a railroad, but

1 it is going to receive trash by railroad and the land
2 fill is not a permitted use, okay, then preemption
3 would not apply to the county's regulation of that land
4 fill use.

5 COMMISSIONER YOUNG: Despite the fact that
6 it's coming on a train.

7 MR. HOGIN: That's correct. That would be
8 essentially the situation in the two cases that -- I
9 mentioned two -- actually there's more than two, but
10 there's two. One came out of Florida and one out of
11 Virginia, as I recall.

12 Those are the two cases of the transloading
13 facilities that were not permitted uses under the
14 zoning code in those situations, and they were -- the
15 facilities were not owned or operated by the railroad.

16 And so it was okay for the cities in that case
17 to say that -- and, in fact, one of them involved a --
18 it was a trash hauling. It was actually a trash
19 hauling transloading facility.

20 So it was designed specifically to receive, as
21 I recall, building materials that came from demolition
22 of structures. So it was, in fact, a trash facility.

23 And the city said we're not going to allow you
24 to construct this transloading facility because it is
25 not a permitted use under our zoning code. And the

1 court in that case said -- upheld what the -- the
2 city's determination.

3 It said the zoning code trumps. You can't --
4 the city says you can't put a trash transloading
5 facility to a residential neighborhood, and we are
6 going to uphold that.

7 The situation would have been different if the
8 railroad owned the transloading facility in that case.

9 COMMISSIONER YOUNG: Okay. You seem pretty
10 sure on this issue of indirect preemption. But there
11 are lots of other attorneys who are taking the exact
12 opposite position.

13 For example, the air district.

14 They said that the ICCTA does not prevent the
15 city from requiring an applicant for a dicussionary
16 project like Valero from mitigating significant air
17 quality impacts just because the emissions come from
18 railroad operation.

19 Quote, requiring the applicant to implement an
20 off-site mitigation program to reduce air quality
21 impacts would not be in violation of preemption because
22 a mitigation requirement would not require the
23 applicant to achieve the emission reductions from the
24 railroad. Requiring the applicant to offset the
25 project's emissions through an off-site mitigation

1 program is well within the discretion of the city.

2 CEQA requires the city to look at all feasible
3 mitigation measures that could be implemented by the
4 applicant.

5 The incorrect -- quote, the incorrect
6 assertion that preemption legally prohibits the city
7 from imposing off-site mitigation program on Valero
8 does not provide the substantial evidence required for
9 a lead agency to approve a project with significant
10 impacts or support any findings of infeasibility as
11 required by CEQA.

12 That's according to the air district.

13 Now UP officials, there were a lot of comments
14 from all the government agencies in the Sacramento area
15 through which these trains would pass. And they are
16 represented by an organization called SACAG, the
17 Sacramento Area Council of Governments.

18 So UP and their attorneys went and meant with
19 SACOG and they followed up with a letter from their
20 attorney with the opinion that Valero could not be made
21 to mitigate any of the impacts like we're talking
22 about.

23 But SACOG responded, and they were not
24 convinced. They quoted the Attorney General saying
25 that the ICCTA does not preempt a state law to pay for

1 pedestrian overpasses.

2 So if the -- if -- do you agree that ICCTA
3 does not preempt requiring pedestrian overpasses
4 because of rail operations?

5 MR. HOGIN: I -- you'd have to give me more
6 specific facts. I'm not sure what --

7 COMMISSIONER YOUNG: This is from the Attorney
8 General's letter on SB-861, but if pedestrian
9 overpasses are not preempted, then presumably vehicle
10 overpasses would not be preempted, and that might be a
11 way of dealing with some of the traffic issues that
12 we're talking about.

13 The letter from SACOG also said that state
14 laws were not preempted, quote, merely because they
15 reduced the profits of a railroad or have high
16 compliance costs.

17 SB-861 which requires railroads to have
18 approved spill prevention plans and certificates of
19 financial responsibility does not directly or
20 indirectly impede rail operations.

21 Quote, the same conclusion must be reached
22 here, for physical mit -- or feasible mitigation
23 measures apply to the applicant outside the rail
24 corridor and operations and where the project imposes
25 an unfunded obligation on local communities to prepare,

1 train, supply and equip their first responders for
2 known real accidents and the consequences thereof.

3 This is a massive financial burden on our
4 communities, and the burden is a real cost of the
5 applicant's proposal to ship crude by rail.

6 The City of Davis references Appendix G which
7 states that Valero has opined that they -- the ICCTA
8 preempts the city's ability to mitigate impacts.

9 Since the Attorney General vigorously
10 disagrees and states that preemption is only governed
11 by rules that regulate rail transportation, and that
12 SB-861 doesn't regulate rail operations, and the city
13 has not made a showing that requiring the applicant to
14 comply with state law is illegal.

15 Rather -- quote, rather the city has chosen to
16 accept the applicant's legal theories on a matter that
17 is very much in active dispute.

18 Further, the EIR does not disclose that the
19 applicant's position is not settled law. The city is
20 in no way open obliged to accept the applicant's
21 untested legal arguments.

22 Besides the applicant's position that they are
23 not complied to require -- that they are not required
24 to comply with SB-861, there seems to be no other basis
25 for rejecting mitigation measures. The opinion of

1 Valero or UP is not enough to claim that mitigation is
2 legally and feasible.

3 Many other commenters have argued that it is
4 appropriate, if not required, that the city require
5 Valero, not UP to mitigate the significant impacts of
6 their decision to switch the type of delivery of oil to
7 rail.

8 And the key phrase that you brought up earlier
9 is that the question of whether a regulation, quote,
10 unreasonably burdens rail transportation.

11 So I guess the question to you is how does
12 putting a mitigation on Valero to help pay for the
13 impact of their project off rail unreasonably burden
14 rail transportation?

15 MR. HOGIN: Well, that -- you are going to
16 have to -- I don't have that letter in front of me from
17 the Attorney General.

18 Is SB-861, is that the one that required the
19 railroads to report to the state the Bakken -- the
20 movement of Bakken oil --

21 COMMISSIONER YOUNG: That, and to show
22 certificates of financial responsibility.

23 MR. HOGIN: Right. That's not a preclearance
24 requirement. That's a health and safety regulation
25 being adopted by the state, so that's -- that

1 doesn't -- comes under the same test that the pre --
2 preclearance or pre-construction permit does. Okay?

3 Now the test for a straight up regulation of
4 railroad activity is whether there's an undue burden on
5 the railroad or whether it has -- the regulation has
6 only an incidental or remote impact on the railroad.

7 COMMISSIONER YOUNG: And how would the denial
8 of a permit have an undue impact on the railroad?

9 MR. HOGIN: You're confusing the two tests.
10 Okay?

11 Test number one is are you imposing a
12 preclearance requirement on the railroad? Are you
13 saying, railroad you cannot operate -- you cannot
14 conduct these particular operations which have been
15 authorized by the Surface Transportation Board unless
16 and until you get a permit from us and comply with any
17 conditions we -- we propose.

18 Okay. So that's scenario number one.

19 Scenario number two is the State of California
20 adopts a regulation that says railroads have to do x, y
21 and z. And the task at that point is not as straight
22 forward as it is in a preclearance requirement.

23 The test at that point is: Does the
24 regulation impose an undue burden on the railroad? Or
25 is the burden on the railroad merely remote and

1 incidental?

2 And the argument -- I think I did see that
3 letter once; I don't remember entirely -- but I think
4 the argument the Attorney General is making is simply
5 requiring the railroad to generate information is not a
6 big burden, and that imposes at most an incidental and
7 remote burden on the railroad.

8 COMMISSIONER YOUNG: So turning down the -- or
9 rejecting the permit, not certifying the EIR, neither
10 one of those has an impact on the operation of the
11 railroad, does it?

12 MR. HOGIN: Yes, it does.

13 COMMISSIONER YOUNG: How?

14 MR. HOGIN: Because you are -- you are saying
15 that because of rail impacts we are not going to
16 approve this project. So the consequence will be that
17 Union Pacific will not be able to deliver crude oil to
18 the Valero Refinery.

19 COMMISSIONER YOUNG: And they have an absolute
20 right to haul all the rail related products -- I mean
21 is it -- is it UP that decides whether Valero will fill
22 train tank cars with oil?

23 MR. HOGIN: No. Valero brings the tank cars
24 to UP. UP is a common carrier. It is obligated -- as
25 long as the load complies with all applicable

1 requirements, UP is obligated to transfer -- to accept
2 it for transfer.

3 COMMISSIONER YOUNG: So if Valero can't load
4 rail cars with oil because they don't have a permit,
5 that's not affecting UP.

6 MR. HOGIN: Oh, indeed it is.

7 COMMISSIONER YOUNG: Well, it does seem to be
8 a matter of somewhat unsettled law.

9 We have all these opinions from all these
10 different attorneys, including one we just got tonight,
11 that makes the exact opposite conclusion.

12 And so I think it's fair to say that we are at
13 a point where this critical issue doesn't necessarily
14 have a hard and fast answer. And that commission is
15 going to have to decide between the opinion that is
16 being presented here and all these other opinions.

17 And so that's all I've got on preemption.

18 CHAIR DEAN: Okay. Other questions for staff?

19 COMMISSIONER YOUNG: I guess my question is --
20 I have a lot of questions on a lot of topics. And it's
21 going to take a left turn of time. And I don't want to
22 apologize for that because this is probably the only
23 time we are going to have to ask these questions and
24 get answers.

25 So I'm asking the indulgence of the

1 commission, the patience of the audience to allow me to
2 get through these questions, and it may take some time.

3 And I'm willing to go forward; I'm willing to
4 take a break; I'm willing to -- and I would urge the
5 rest of commission that if any of my questions jog a
6 question in your mind, please interrupt and I'd happily
7 yield the floor to any of you to ask your questions and
8 then I'll get back to mine later.

9 I'm willing to move my questions to later in
10 the process, but we have an adopted agenda. I'm happy
11 to let the public start speaking as long as I can come
12 back and ask my questions. But if that's not possible,
13 then I need to just barrel ahead, I guess.

14 CHAIR DEAN: Well, I think the hearing process
15 is set up -- we want to ask questions of staff and
16 particularly the environmental consultants because we
17 know they are here tonight.

18 We also want to get to the public comment as
19 rapidly as we can, but I don't want to short change the
20 commission on questions that they have.

21 So if you have questions for the applicant or
22 you have questions that you can bring later in the
23 process --

24 COMMISSIONER YOUNG: I'm happy to bring them
25 later as long as I'll have a chance to do that.

1 CHAIR DEAN: Well, I think that you will.

2 Certainly once we have the public hearing and
3 then we close the public hearing and we bring all this
4 back to the discussion of the commission --

5 COMMISSIONER YOUNG: Right. But at that point
6 we won't be asking questions of the applicant or the
7 consultants.

8 CHAIR DEAN: Well, certainly you could ask
9 questions of staff. And I don't know if the
10 consultants would be available at that point or not.

11 COMMISSIONER YOUNG: It's my understanding
12 that when we bring -- when we bring it back to --

13 CHAIR DEAN: Hang on, please.

14 COMMISSIONER YOUNG: Typically when we bring
15 it back to the commission for deliberation, it's to the
16 commission to decide what we want to do.

17 All the public testimony is done. All the
18 questioning of the staff and the applicant is done.
19 And it's just to us to decide what we want to do at
20 that point.

21 That's typically the -- I mean that's my
22 understanding. If you want to change that, that's
23 fine. If you want to go forward with all the questions
24 of the applicant, I'm ready to do that as well.

25 UNIDENTIFIED SPEAKER: Chair Dean.

1 CHAIR DEAN: We will not change our procedure.
2 UNIDENTIFIED SPEAKER: Thank you.
3 CHAIR DEAN: We will -- we have got a standard
4 procedure, so --
5 COMMISSIONER YOUNG: Okay.
6 CHAIR DEAN: So if you have more questions --
7 COMMISSIONER YOUNG: I do.
8 CHAIR DEAN: -- I think the commission would
9 indulge you.
10 COMMISSIONER YOUNG: I do.
11 CHAIR DEAN: And I hope that the audience
12 would be -- show some patience.
13 I do think it might be time for a break. We
14 have been at this for more than two hours. So maybe we
15 could take a ten-minute break and then come back. But
16 let's make it quick. We want to do -- accomplish as
17 much as we can tonight.
18 (Break taken.)
19 CHAIR DEAN: Would you take your seats,
20 please. We'd like to get started again.
21 Seats, please. Everyone. Okay. We're
22 missing one of our staff people over there. Miss
23 Million.
24 UNIDENTIFIED SPEAKER: I'm sorry. She should
25 be back very shortly.

1 CHAIR DEAN: Should we -- are we ready to go?
2 Can you -- if anything comes up --

3 UNIDENTIFIED SPEAKER: I think you can go
4 ahead.

5 CHAIR DEAN: Okay. All right. Thank you.
6 Thank you everybody.

7 There's been a number of questions from --
8 from the audience about if you -- everybody -- we have
9 everybody signed up on a list. Everybody has a number.
10 Those people who don't, I do have cards up here, but
11 the question came from people who are on the list but
12 may have to leave early and might not get a chance to
13 speak tonight.

14 Their question was well, what happens to me?

15 If you are signed up on the list and you have
16 a number and you can't wait until -- in other words, if
17 we don't get to your number tonight, you will not lose
18 your place.

19 We will start again tomorrow night and
20 wherever you are on the list, the people who have not
21 spoken -- in other words, if you are number five on the
22 list and you are not here tonight when we call your
23 name, you will be then at the head of the list when we
24 start tomorrow.

25 So nobody loses their place. The ranking will

1 be the same for tomorrow night. In other words, if you
2 have not spoken and you are at the head of the list,
3 you will be at the head of the list tomorrow night. So
4 I hope that answers people's questions about that.

5 So with that, questions from the Commissioners
6 for the staff.

7 Commissioner Young, you had the floor when we
8 started the break.

9 COMMISSIONER YOUNG: Thank you.

10 I've had a lot of questions about rail issues,
11 and I know the attorney has said that we can't talk
12 about rail issues. But I think that's an opinion
13 that's in some dispute, and it's not really settled law
14 yet so I'm going to go ahead and ask my questions about
15 rail cars and tracks and things like that. And
16 hopefully somebody from Union Pacific is here to answer
17 some of these questions.

18 The first has to do with the accident study in
19 the EIR, and it was done by Dr. Barkin, and I assume
20 he's not here.

21 Is that safe to say?

22 UNIDENTIFIED SPEAKER: I'm --

23 CHAIR DEAN: I'm seeing nods he's not here.

24 MS. MILLION: Dr. Barkin is not here, but we
25 do have a representative from MRS who took that report

1 and then did --

2 CHAIR DEAN: Okay.

3 MS. MILLION: -- a risk analysis.

4 CHAIR DEAN: Okay. Good.

5 COMMISSIONER YOUNG: So the accident study,
6 Dr. Barkin had previously worked for the Association of
7 American Railroads for about a decade.

8 And now he leads a group at the University of
9 Illinois Champagne, Urbana which studies railroads.
10 And that institute receives a lot of money from the
11 Association of American Railroads as well, and he still
12 worked for the Association of American Railroads. So
13 the study may have some questions about its total
14 impartiality.

15 Nevertheless, he said -- his study looked at
16 freight derailments for all freight railroads between
17 2005 and 2009. Although crude oil shipments have
18 increased by 6,000 percent after 2007, and the analysis
19 didn't really focus on crude by rail. It looked at all
20 freight accidents.

21 One of the interesting things in his study
22 was talking about the track conditions. And Class 1
23 track is the worst is the Class 5 track is the best.
24 And he said there was a mile and a half of Class 1
25 track between Roseville and Benicia.

1 And that Class 1 track has a 15 times greater
2 risk of derailment than a Class 5 track.

3 So my question is: Where is this Class 1
4 track?

5 MR. RADIS: We have been asking a lot of the
6 same questions.

7 I'm Steve Radis of Marine Research Specialist.
8 And one of the limitations of the study is that that
9 specific information is not released. We're not
10 allowed to know where those sections are, and I don't
11 think Union Pacific would even answer that question.

12 We're given -- we're given segments of average
13 data to deal with and not given specifics at any one
14 point.

15 COMMISSIONER YOUNG: So all we know is there's
16 at least a mile and a half of Class 1 track between
17 Roseville and Benicia.

18 MR. RADIS: Correct.

19 COMMISSIONER YOUNG: We just don't know where
20 it is.

21 MR. RADIS: Correct.

22 COMMISSIONER YOUNG: Okay. The California --
23 you might as well stay up here because most of my
24 questions are about railroad -- the study.

25 UNIDENTIFIED SPEAKER: So who wouldn't know

1 that?

2 CHAIR DEAN: Please leave the questions to
3 the commission, please. You'll get your chance when
4 you get -- when you get your chance to speak.

5 COMMISSIONER YOUNG: The California Public
6 Utilities Commission has designated the Donner pass
7 route as a high hazard route. And according to
8 comments received at a previous hearing, 96 percent of
9 that route is Class 3 lines.

10 So I guess the question -- maybe it should be
11 addressed to UP -- but to your knowledge, does UP plan
12 to use the Donner pass route to move crude by rail?

13 MR. RADIS: They would probably have to answer
14 absolutely, but we considered it a possible route so we
15 included it, and we did account for the fact that it's
16 Class 3 track in our failure rates.

17 COMMISSIONER YOUNG: Okay. He also -- now one
18 of the controversial points in his study was the
19 likelihood of an accident and derailment. And he said
20 there was a chance -- one time chance in 111 years.
21 And that therefore the risk was less than significant.

22 According to the analysis from NRDC, that said
23 basically even if Dr. Barkin is right in his
24 probability of an accident and a derailment, that means
25 there's a 11 percent chance of a derailment over the

1 next 30 years. Quote, because a significance of an
2 accident depends on both its probability and the
3 magnitude of the risk, large oil spills are significant
4 impacts under CEQA and must be mitigated.

5 The NRDC letter then quotes Section 15143 of
6 CEQA. Quotes, the significant effects should be
7 discussed with emphasis in proportion to their severity
8 and probability of occurrence. And I'm not sure that
9 the report meets that particular standard.

10 The Barkin report assumed, among other things,
11 that trains would be traveling at 26 miles an hour.
12 But the study says they could go up to 50 miles an
13 hour. And we know that the chances of accidents
14 increase with speeds, isn't that correct?

15 MR. RADIS: To a certain extent, yes.

16 COMMISSIONER YOUNG: So I guess my question
17 is: Why wasn't the study done assuming a 50 mile per
18 hour instead of a 26 mile per hour speed?

19 MR. RADIS: I think there's some confusion in
20 the Barkin study because he listed train speed as a
21 function of what class the rail is.

22 So we looked at train speeds in excess of 50
23 miles per hour, but it's on Class 5 track is a higher
24 speed then, for example, Class 3 or Class 1.

25 COMMISSIONER YOUNG: Which is not really

1 relevant to this, is it? I mean we do have Class 5
2 tracks that we are talking about here.

3 MR. RADIS: Class 4 and Class 5 are lumped
4 together, yes. It's the majority of the routes.

5 COMMISSIONER YOUNG: Okay.

6 MR. RADIS: Except Donner pass.

7 COMMISSIONER YOUNG: Table 4.7.2 of the
8 revised draft EIR talks about the release of hazardous
9 materials from train accidents, but it doesn't really
10 call out the trains -- oil trains specifically.

11 And it talked -- and it looked at accidents
12 between 2005 and 2014, but it shows the number of cars
13 carrying hazardous material is declining during that
14 period.

15 Yet we know that trains carrying crude oil has
16 increased expedientially in that same period. So it
17 seems to imply that oil trains weren't really looked at
18 in his analysis, is that right?

19 MR. RADIS: Well, I think the problem is in
20 part of the classification. When they are referring to
21 hazardous materials, I think in that case they are
22 talking about acutely hazardous materials which are
23 things like chlorine, ammonia, sulfur dioxide. But he
24 did base his overall failure rate for all rail traffic
25 or all commercial rail traffic, not passenger.

1 COMMISSIONER YOUNG: And it was between 2005
2 and 2009?

3 MR. RADIS: No. He actually brought it all
4 the way up to 2014 at the time this study was done.

5 I think there's been some confusion that we
6 had some summary statistics that don't reflect
7 currently what's going on with crude trades, but then
8 the actual failure rates were based on total traffic.

9 COMMISSIONER YOUNG: Okay. One of the
10 possible routes is what's called the southern route.
11 And all the EIR says is that well, if UP chooses to use
12 the southern route, it's going to have about the same
13 effects as any of the other northern routes in terms of
14 its environmental impact.

15 But the southern route is about 700 miles long
16 which is about twice as far as any of the northern
17 routes. And so it seems that the longer the route, the
18 greater chance of the accidents, the more emissions
19 from locomotives and more health risks to the public.

20 And the southern route passes through the
21 San Joaquin valley which is an extreme non-attainment
22 zone for air pollution. And UP can choose to take this
23 route at their sole discretion.

24 So what is the basis for saying that the
25 impacts of the southern route would be the same or

1 similar to any of the northern routes?

2 MR. RADIS: That's a good question because you
3 have a valid point with the longer -- the longer leg of
4 the segment, the higher probability of a spill.

5 We did not evaluate a southern route, we only
6 looked at three northern routes.

7 But in each case they were all significant, so
8 you can probably make the statement that they are all
9 similar in that they all exceed the thresholds.

10 COMMISSIONER YOUNG: But you would agree that
11 the southern route would have more -- more impacts than
12 any of the shorter northern routes?

13 MS. SCOTT: To supplement what Steve is
14 saying --

15 COMMISSIONER YOUNG: Pardon me?

16 MS. SCOTT: -- the EIR, the final EIR, the
17 revised draft EIR suggests that the nature -- the type
18 and nature of impacts, the severity of impacts along a
19 southern route would be comparable to the three
20 northern routes that are the focus of the revised draft
21 EIR.

22 He brought up the example of air quality and
23 the fact that the San Joaquin valley is a
24 non-attainment zone. The EIR already identifies a
25 significant unavoidable impact locomotive related air

1 emissions.

2 COMMISSIONER YOUNG: Right. I'm just
3 saying --

4 MS. SCOTT: So it's the same kind of impact
5 and it's the same severity of an impact.

6 COMMISSIONER YOUNG: Well, it's not really the
7 same.

8 MS. SCOTT: It's a significant unavoidable
9 locomotive related air impact.

10 COMMISSIONER YOUNG: Okay. So in that sense
11 it's the same.

12 Okay. There's a letter from Butte County and
13 the City of Biggs about the Feather River Canyon route.
14 And 93 miles of that route has been designated by the
15 PUC as a local safety hazard site because of steep
16 grades and tight curves. And the city and the county
17 both caution that there's limited fire fighting
18 capability along that route.

19 It also -- the final EIR also states that a
20 portion of the Feather Canyon route has not been fully
21 upgraded to allow the use of positive train controls,
22 but we assume that UP could be using that route as
23 well, correct?

24 MR. RADIS: I believe there's some delays in
25 the implementation of positive train control. There

1 have been a few, I guess, issues. UP probably should
2 speak to the issue, so I don't know when that will
3 actually occur.

4 COMMISSIONER YOUNG: But it happen after the
5 implementation of this project presumably.

6 MR. RADIS: It's possible. Correct.

7 COMMISSIONER YOUNG: So there was an accident
8 along the Feather River recently, November 2014, that a
9 train derailed and it spilled corn into the Feather
10 River.

11 The Plumas County grand jury actually
12 investigated that accident and they found that it took
13 about five hours for UP to have containment booms in
14 place.

15 According to the Plumas County officials, UP
16 told them that they do not have any spill containment
17 kits in Plumas County. They -- the grand jury asked UP
18 where their containment kits were.

19 And they said well, there was some in Chico
20 and some in Roseville and some in Reno, but those were
21 the closest ones they had to the Feather River.

22 The City of Truckee in their letter pointed
23 out that 96 percent of the tracks between Roseville and
24 Nevada, via Truckee your Class 3 tracks which are less
25 tolerant of higher speeds and used less frequency for

1 freight. And they also made the point that the route
2 was prone to highly unpredictable weather. But we
3 already heard that UP would probably be using that
4 route as well or at least they were. It was in the
5 discussion.

6 Do you know if the requirement to have two
7 employees on each train is an active current
8 requirement?

9 MR. RADIS: I'm sorry. An active current
10 requirement?

11 COMMISSIONER YOUNG: Yeah.

12 MR. RADIS: I'm not sure at this point.

13 COMMISSIONER YOUNG: Okay. So that's a
14 question for UP, I guess, is whether they have agreed
15 to put at least two employees on every train.

16 The federal government predicts that trains
17 hauling crude oil will derail an average of ten times a
18 year over the next two decades causing more than four
19 billion dollars in damage and possibly killing hundreds
20 of people if an accident happens in a densely populated
21 part of the U.S.

22 Solano County in their response to the EIR
23 said the project could, quote, pose a significant
24 hazard to the public and environment through reasonably
25 foreseeable upset and accident conditions involving the

1 release of hazardous material into the environment.

2 Yet I believe we're calling that a less than
3 significant impact, is that right?

4 MR. RADIS: I don't believe so.

5 COMMISSIONER YOUNG: No?

6 MS. MILLION: I'm sorry. Can you repeat the
7 specific impact that you are referring to?

8 COMMISSIONER YOUNG: It's impact statement
9 4.7.2. It has to do with the release of hazardous
10 materials into the environment.

11 Somebody brought this up in one of the
12 comments.

13 MS. SCOTT: Upset and accident conditions
14 including secondary effects relating to upsets and
15 accidents, things like explosion and fire --

16 COMMISSIONER YOUNG: Right.

17 MS. SCOTT: -- those related impacts are
18 identified is significant non-avoidable.

19 COMMISSIONER YOUNG: Oh, so we are calling
20 them significant?

21 MS. SCOTT: Yes, we are. That was the change
22 in consideration -- the change to consider consequences
23 of a potential upset in a quantitative way was made in
24 the revised draft EIR.

25 The city elected to use conservative approach

1 to that analysis that was based on the Santa Barbara
2 method that has been adopted and utilized by agencies
3 state-wide. And Steve can speak to that in more
4 detail.

5 But the conclusion of that analysis is that a
6 significant unavoidable impact related to upset and
7 accident conditions could occur.

8 COMMISSIONER YOUNG: Okay. Okay. Good.

9 I'd like to talk a little bit about the 1232
10 cars. I don't know if you are the right guy for that
11 or not.

12 MR. RADIS: Sure.

13 COMMISSIONER YOUNG: Okay. There was a recent
14 derailment in the James river in Lynchburg, Virginia
15 that you may be familiar with. Those -- that accident
16 involved 1232 cars. And there was leakage from those
17 cars into the James river.

18 The president and chief executive officer of
19 the American Association of Railroads, Edward,
20 Hamburger, testified to a senate subcommittee that the
21 railroad industry is now recommending that DOT require
22 tank cars to be built to specifications exceeding the
23 1232 standard. And he said that he doesn't think that
24 the 1232 standard is a big step above the DOT-111 cars.

25 Then the railroad industry now thinks that the

1 safety needs go beyond the voluntary industry standard.
2 The AAR, the Association of Railroads, is recommending
3 that federal tank car standards adopt the following
4 safety designs that exceed those found in 1232 cars.

5 So these are what the railroad industry is
6 suggesting needs to into a 1232 car. And let me know
7 if any of these improvements are actually in the 1232
8 cars that Valero was proposing to use.

9 A high capacity pressure relief valve to
10 protect the tank car from an increase in internal
11 pressure resulting from a fire.

12 MR. RADIS: Not at the same design as the new
13 DOT 7 -- 117s. So that would be correct.

14 COMMISSIONER YOUNG: Okay. So it doesn't
15 include those.

16 A minimum nine-sixteenth inch thick steel
17 tank.

18 MR. RADIS: Does not. That's the DOT-117.

19 COMMISSIONER YOUNG: A half inch thick full
20 height head shield on both ends of the tank car.

21 MR. RADIS: I don't believe it has either.

22 COMMISSIONER YOUNG: Okay. A bottom outlet
23 handle that will not inadvertently open the bottom
24 outlet in the event of a derailment.

25 Mr. RADIS: That's the DOT-117.

1 COMMISSIONER YOUNG: 117, yeah.

2 And eighth thick steel jacket around the tank
3 car with thermo protection.

4 MR. RADIS: That's the 117 and 117R.

5 COMMISSIONER YOUNG: Okay. So the final rule
6 that DOT came out with in May 2015 required those
7 non-jacketed 1232 cars that we're talking about that
8 transport higher danger crudes like Bakken to be phased
9 out of unit train service for the new 117 cars by 2020.

10 MR. RADIS: Correct.

11 COMMISSIONER YOUNG: So I guess my question
12 is: Why not just get those safer cars now?

13 MR. RADIS: Well, yeah, that would be the
14 recommendation.

15 You can do one of two things. You can go out
16 and get 117s new, or you can retrofit and -- which is
17 the 117R, which I believe the only difference is the
18 steel tank thickness is an a little bit thinner, like
19 7/16ths instead of 9/16ths.

20 COMMISSIONER YOUNG: Okay. But none of those
21 improvements is being proposed for this project.

22 MR. RADIS: No, not in the same capacities.

23 COMMISSIONER YOUNG: Okay. In the letter from
24 SACOG, they made the point that since Valero will be
25 owning or leasing the rail cars, they are not prevented

1 by federal preemption from taking measures that would
2 make those tank cars more safe.

3 Would you agree with that?

4 MR. RADIS: That's always been our prospective
5 in terms of when you're buying your tank cars, you
6 should be able to mitigate those, but that's really a
7 legal question to be answered.

8 COMMISSIONER YOUNG: But they could, for
9 example, require better rollover protection on the tank
10 cars or better labeling of the contents.

11 MR. RADIS: They could.

12 COMMISSIONER YOUNG: Okay. And that's a
13 decision that Valero makes, not UP.

14 MR. RADIS: Well, I think UP has certain
15 standards that they might want to address when they
16 come in terms of things like labeling of tank cars, but
17 there's nothing to stop somebody who owns their own
18 tank cars and design them to higher standards.

19 COMMISSIONER YOUNG: Okay. One of the points
20 of sitting on --

21 CHAIR DEAN: Miss Scott, did you want to weigh
22 in on this?

23 MS. SCOTT: I did. I just wanted to point out
24 that the tank car safety conversation is evolving very
25 rapidly in the context of federal regulation.

1 And what's required today is quite different
2 than what was required when this process started. And
3 it's also quite possible that safety regulations with
4 public participation and participation from cities and
5 counties all over the state and all over the nation
6 could require safer and safer cars as we proceed.

7 COMMISSIONER YOUNG: Right.

8 MS. SCOTT: And the revised draft EIR walks
9 through all of the safety improvements that have been
10 made during the pendency of this process, so I wanted
11 to point you to that as well.

12 COMMISSIONER YOUNG: The next one had to do
13 with the speed of the -- of the trains themselves.

14 I believe the city made the finding of less
15 than significant is -- well, let me back up.

16 Trains, there's something called high threat
17 urban areas.

18 Are you familiar with that term?

19 UNIDENTIFIED SPEAKER: Yes.

20 COMMISSIONER YOUNG: And in a high threat
21 urban area, trains are limited to speeds of no more
22 than 40 miles an hour. But according to the Department
23 of Transportation, that 40 mile per hour limit only
24 applies to DOT-111 cars and not 1232 cars?

25 MR. RADIS: I believe they are working on

1 revisions to that regulation, but currently that's the
2 case.

3 COMMISSIONER YOUNG: Okay. So the high threat
4 urban area is defined for our general area as stopping
5 ten miles past Valero and starting again ten miles
6 outside Sacramento. So maybe this is a question for
7 UP, but if you are speaking for them, fine.

8 Will UP commit voluntarily to the 40 per
9 hour -- 40 mile per hour speed limit in all of Solano
10 County?

11 MR. RADIS: UP would have to ask that
12 question.

13 COMMISSIONER YOUNG: Okay. Do you want to --
14 if (inaudible) do you want to speak to that?

15 MR. CASTILLO: Good evening Commissioners.
16 Francisco Castillo (inaudible) for UP.

17 So we -- as you said there are high threat --
18 high urban threat areas along the lines here, obviously
19 Sacramento and Davis. Some of them those are
20 considered high urban threat areas we go 40 miles per
21 hour.

22 Aside from that, it's 50 miles per hour on the
23 lines carrying crude. It's something we can commit to
24 in terms of 40, but 50 is a voluntary speed that we
25 commit to as it relates to train -- unit trains

1 carrying crude.

2 COMMISSIONER YOUNG: Well --

3 MR. CASTILLO: In areas not -- in areas not
4 considered high urban threat areas.

5 COMMISSIONER YOUNG: Are you allowed to go
6 more than 50?

7 MR. CASTILLO: We are allowed to go more than
8 50. There's -- the lines on that Martinez (inaudible),
9 for example, go up to 70 miles per hour.

10 COMMISSIONER YOUNG: With crude oil?

11 MR. CASTILLO: No, we don't go 70 miles per
12 hour with crude oil. It's freight. We set the speed
13 limit at 50 miles per hour as it relates to unit trains
14 carrying crude.

15 In high urban threat areas with 20 tank cars
16 or more, it's 40 miles per hour. It's ten miles per
17 hour less than what we already commit to 50.

18 COMMISSIONER YOUNG: But you don't want to
19 commit to 40 miles per hour throughout Solano County.

20 MR. CASTILLO: Well, I can't say yes or no
21 Commissioner. I would have to go back and check on
22 that.

23 COMMISSIONER YOUNG: Okay. Before you leave,
24 a couple more questions.

25 MR. CASTILLO: I'll just stay up here.

1 COMMISSIONER YOUNG: SACOG recommended
2 mitigation measures that include requesting UP to use
3 both distributed power and positive train control.

4 I believe you've got positive train control on
5 most of your fleet, is that right?

6 MR. CASTILLO: Yes. So we're in the
7 process -- just to give you an update on positive train
8 control, I have a note here.

9 So on their -- on the main rail lines in
10 California, obviously it's required, UP has been
11 installing positive train control.

12 The three main line routes between the
13 refinery and the state line that would be used for the
14 proposed project have been almost completely upgraded
15 to include PTC with only a portion of the (inaudible)
16 county as you mentioned earlier route has not been
17 fully upgraded.

18 And PTC is used obviously to prevent train,
19 only on a portion of (inaudible) county and not fully
20 upgraded. It has not been fully upgraded.

21 But our priority has been Southern California
22 for now. And right now we are in revenue demonstration
23 service in Southern California and we are going to move
24 that up north.

25 I don't have a timeline exactly on when that's

1 going to happen. As you know, the federal government
2 extended the implementation of PTC for an additional
3 two years, but we're making progress on PTC on all rail
4 lines in California.

5 COMMISSIONER YOUNG: And what about
6 distributed power?

7 MR. CASTILLO: We use distributed power as
8 well.

9 COMMISSIONER YOUNG: On all your unit trains?

10 MR. CASTILLO: On all the unit trains that
11 carry crude.

12 COMMISSIONER YOUNG: Okay. Thank you.

13 That's all I've got for tracks and trains
14 stuff. But I do have more questions.

15 On emergency -- emergency preparedness. And I
16 guess this is questions for Chief Lydon.

17 The national fire protection association
18 standard for emergency responses is five minutes from
19 dispatch. The city has an agreement with Solano County
20 emergency medical services to provide advanced life
21 support for all medical emergencies in seven minutes.

22 The fire department standard is to reach all
23 incidents in seven minutes. In 2012 the response time
24 was five minutes and 13 seconds for the balance of the
25 city and six minutes and 35 seconds in the industrial

1 park. It seems that you're meeting those goals.

2 But it says that when a train is blocking Park
3 and Bay Shore, you'll have to take east Second Street.
4 And that would add a little over two minutes to your
5 response time.

6 Which fire services stations service
7 industrial park? Where are you coming from when you
8 have a call to Park and Bay Shore?

9 CHIEF LYDON: So our primary response to Park
10 and Bay Shore is from the main fire station on Military
11 West.

12 COMMISSIONER YOUNG: Okay. So you say it
13 would add another two minutes to take east Second
14 instead of Bay Shore exit off of 680.

15 Well, I drove east Second from the courtyard
16 to Park and Bay Shore at 6:30 on a Friday night. There
17 was no traffic. It took me five-and-a-half minutes.

18 So I don't know how long it takes a fire
19 engine. The standard in the study said 30 miles an
20 hour. I'm guessing you're going faster than 30 miles
21 an hour, but maybe not.

22 But you're saying that it would only take an
23 extra two minutes to go all the way down east Second
24 Street and all the way down Industrial and all the way
25 back to Bay Shore?

1 CHIEF LYDON: That was the study that was
2 done. And just to clarify a little bit on your
3 response time statistics, those were all based on a 90
4 percentile.

5 So the concept is that 90 percent of the time
6 we were able to reach those incidents within those time
7 frames. So it does factor in the fact that in some
8 areas of the community you may have some extended times
9 based on -- you know, the times are all predicated on
10 the fire engine being in the fire station at the time
11 of the call.

12 They may be down at the end of First Street,
13 they may be out at the west end of town, you know, so
14 there are variables in there. So the response time is
15 a 90 percentile issue.

16 COMMISSIONER YOUNG: Okay. The agreement that
17 you signed with Valero Fire Department or Valero for
18 the mutual aid agreement. And it says that if you guys
19 can't get there because of a train blocking the access,
20 that Valero Fire Department would respond to fires and
21 incidents within the industrial park.

22 But as Commissioner Oakes said earlier, what
23 do you do about a place like Russell Wood Works on
24 the -- what is that -- the east side of Park which is
25 completely blocked by a train. Somebody cuts off three

1 fingers in their wood shop, how does -- how do they get
2 any kind of attention at all?

3 CHIEF LYDON: We would have to work to have
4 the train stopped and navigate on foot or wait. And in
5 that process, allow them to separate the train as well
6 and open up an area where we could drive through if we
7 needed to.

8 COMMISSIONER YOUNG: So you'd have decouple
9 the train cars and separate them somehow?

10 CHIEF LYDON: Correct.

11 We have done that in other areas for emergency
12 response.

13 COMMISSIONER YOUNG: Okay. In terms of crude
14 oil fires, I assume that your personnel have been
15 trained to fight crude oil fires?

16 CHIEF LYDON: We have personnel that have been
17 to training in Colorado for specifically related to
18 crude by rail. We regularly have personnel that attend
19 oil fire school in Texas which is funded and sponsored
20 by Valero for our personnel to traveling down there.
21 We send approximately six people per year to those
22 specialized trainings.

23 COMMISSIONER YOUNG: Isn't it true that Bakken
24 oil that a fire happens that you can't really fight it
25 with water, that you have to fight it with foam, is

1 that correct?

2 CHIEF LYDON: We would use foam application to
3 control the fire involving crude oil.

4 COMMISSIONER YOUNG: And how much foam does
5 the department have?

6 CHIEF LYDON: The department apparatus is all
7 equipped with a 30 gallon concentrate. I would have to
8 do a significant mathematical problem for you to tell
9 you what that equates to based on the percentage of
10 mixture with water as to how long you would apply that
11 amount of foam.

12 The concept is that you -- you protect the
13 threat until such time as you have adequate foam on
14 hand to sustain the application of the necessary foam
15 product to control the fire.

16 COMMISSIONER YOUNG: So basically you just --
17 you don't try to fight the fire until you've got the
18 foam.

19 CHIEF LYDON: Correct.

20 COMMISSIONER YOUNG: You let it burn.

21 CHIEF LYDON: You control the threat, the
22 exposure issues until you have adequate foam resources
23 and application process to apply enough foam to control
24 the fire.

25 COMMISSIONER YOUNG: I read that foam is

1 pretty expensive. It cost about 45 dollars a minute to
2 use it.

3 My question is: Who pays for the foam that
4 the fire department has? Is that under your own
5 budget?

6 CHIEF LYDON: Currently we do not pay for
7 foam. We acquire our foam directly from Valero.

8 COMMISSIONER YOUNG: Valero provides you with
9 foam?

10 CHIEF LYDON: Correct.

11 COMMISSIONER YOUNG: Okay.

12 CHAIR DEAN: Yeah. Commissioner Radtke.

13 COMMISSIONER RADTKE: Continuing on the foam
14 thought.

15 What is actually made up of foam? How do you
16 clean it up? And depending on where you might have to
17 use it, how do you prevent it from escaping into like
18 Sulfur Creek Springs or the local area, local marshes?

19 CHIEF LYDON: Repeat your question a little
20 bit so I can --

21 COMMISSIONER RADTKE: Okay. So let's say you
22 have to react and use foam somewhere within the City of
23 Benicia because of a Crude by Rail issue. It doesn't
24 necessarily be in the refinery, it may be outside the
25 refinery.

1 What is actually in this foam? How do you
2 clean it up and how do you prevent it from escaping
3 into, say, local marshes or like Sulfur Creek Springs?

4 CHIEF LYDON: Chairman Dean, I would like to
5 have the Valero fire chief come in and speak
6 specifically to the form product.

7 CHAIR DEAN: All right. Why don't you come in
8 and use the microphone at the podium.

9 Do you want to introduce yourself?

10 CHIEF BATEMAN: Yeah. My name is Joe Bateman
11 and I'm the fire chief for the refinery.

12 CHAIR DEAN: Did you hear the question? It
13 was --

14 CHIEF BATEMAN: I heard most of it. Can you
15 repeat it one more time?

16 CHAIR DEAN: Sure.

17 CHIEF BATEMAN: Sorry.

18 COMMISSIONER RADTKE: Sure I think I'm getting
19 it under control now as I'm going.

20 So my question is: What is in the foam? How
21 do you clean it up? And if you respond near a marsh or
22 sulfur -- near Sulfur Creek Springs, how do you prevent
23 it or the cleanup of it escaping into the environment?

24 CHIEF BATEMAN: Well, I answer that in two
25 ways.

1 First off, foam is in laymen's terms is very
2 similar to dish soap. Our foam has a surfactant in it.
3 And what that surfactant does is it separates and makes
4 sure that water does not drop into the fuel. It keeps
5 that foam on top because foam is basically a vapor
6 suppression so it does its job. And this surfactant
7 will keep the bubbles floating on top of the fuel.

8 So if it gets into Sulfur Springs or into a
9 water way, what we would do is boom that, keep that
10 isolated the best we could.

11 But to get to your point on foam, we have
12 23,000 gallons of foam inside the refinery right now.
13 So we're -- if foam is needed, we have a sufficient
14 amount of foam.

15 COMMISSIONER YOUNG: How much would 23,000
16 gallons of foam -- how many gallons of oil could you
17 suppress with 23,000 gallons of foam?

18 CHIEF BATEMAN: That's a tricky question
19 because what it -- what it really depends upon is
20 surface area. How deep is -- how deep is the fuel, how
21 spread out the fuel is.

22 We normally our fuel consumption -- or our
23 foam consumption on a diameter of the spill. So if you
24 had a large tank that was 250 feet in diameter, you
25 would need seven -- seven, eight gallons of foam.

1 COMMISSIONER YOUNG: A train --

2 CHIEF BATEMAN: But that's -- that's -- that's
3 a deep fuel. So a spread out fuel would be -- depends
4 on -- a lot of it has got to do with the square
5 footage.

6 COMMISSIONER YOUNG: Okay. So you couldn't
7 say, for example, that a one train car derailed and
8 spilled that whole side thing, 30,000 gallons in one
9 train car, whether 23 gallons of foam would be
10 sufficient to fight that fire.

11 CHIEF BATEMAN: Twenty-three -- if -- it
12 depends. If it spreads out on a flat rock, it's one
13 thing if it spreads into a smaller area. But I think
14 23,000 should be able to handle one rail car.

15 COMMISSIONER YOUNG: One rail car.

16 CHIEF BATEMAN: (Nods head.)

17 COMMISSIONER YOUNG: Okay. Back to Chief
18 Lydon, if I could.

19 One of the issues that has troubled people is
20 the fact that we don't really know what type of oil is
21 on each train. Valero hasn't really wanted to discuss
22 and disclose the type of oil, the specific type of oil
23 that's going to be shipped.

24 And the placards on the train cars simply say
25 flammable material, crude oil.

1 If there was an explosion and a fire, isn't it
2 important for first responders to know exactly what
3 type of oil fire they're fighting?

4 CHIEF LYDON: The application is going to be
5 the same. We are going to apply -- we are going to
6 apply the same tactics of protecting the exposed areas
7 around the current fire and delivering adequate amount
8 foam to the scene to suppress the fire.

9 COMMISSIONER YOUNG: And there's true for
10 Bakken, but what if were tar sands oil?

11 CHIEF LYDON: It's gonna -- we're gonna --
12 we're gonna apply the same tactics.

13 COMMISSIONER YOUNG: So you don't think
14 it's -- really necessary to know the particular type of
15 oil that is going to be on fire?

16 CHIEF LYDON: It's -- you're going -- you're
17 going to have to react to the situation you are
18 presented with. It's a dynamic process of
19 reevaluating. But ultimately, as with any large fire,
20 we are going to arrive at the scene and we are going to
21 limit the exposure issues and we are going to get
22 adequate resources on scene and we are going to start
23 apply foam product in the case of a combustible or
24 flammable liquid fire.

25 COMMISSIONER YOUNG: So you're saying you

1 wouldn't prefer to have more information about the type
2 of fire that you're fighting? Does it matter?

3 CHIEF LYDON: More information may come at
4 some point. It's not going to change our tactics.

5 COMMISSIONER YOUNG: Okay. In January 2015,
6 the Pipeline and Hazardous Material Safety
7 Administration issued a safety notice to the general
8 public first responders and shippers that Bakken crude
9 may be more flammable than traditional heavy crude and
10 advised that trains carrying crude be routed away from
11 populated areas and sensitive areas.

12 The notice said that properly characterizing
13 the oil and its properties could help improve awareness
14 of the risks involved in its transportation or in the
15 case of an accident. I guess he just said that -- you
16 gave your answer on that so I'll move on.

17 BNSF, which is another railroad, they owned a
18 train that derailed and exploded in North Dakota. And
19 after that they supported the call for increased
20 labeling for transport.

21 Proper classification and labeling of any
22 hazardous material is a transportation requirement that
23 the rail industry supports to ensure that products are
24 shipped in the appropriate equipment, they said in an
25 e-mail.

1 Based upon preliminary inspections conducted
2 after recent rail derailments in North Dakota, Alabama
3 and Lac Megantic, Quebec involving Bakken crude, the
4 pipeline administration is reinforcing the requirement
5 to properly test, characterize, classify, and where
6 appropriately, significantly degassify hazardous
7 materials prior to and during transportation.

8 So I guess my concern is whether or not simply
9 saying that hazardous material crude oil is
10 sufficiently -- is sufficient information. And I'll
11 get back to this question of degassifying a little
12 later.

13 I guess for the traffic guy, maybe -- miss --
14 I forget your name.

15 On the issue of an emergency happening at the
16 time a train is crossing. They say the chance of that
17 happening is low. And I think you said that earlier.

18 How do you determine that probability?

19 CHAIR DEAN: Do you want to come to the podium
20 again? The microphone?

21 Traffic or rail?

22 COMMISSIONER YOUNG: Well, it's a little of
23 both.

24 UNIDENTIFIED SPEAKER: I have a response.

25 CHAIR DEAN: Okay. Do you want to come to the

1 podium, please.

2 MR. CASTILLO: So UP has this new app,
3 Commissioner. It's called Ask Rail. It's for first
4 responders to be able to identify the type of commodity
5 that's going through the community.

6 So every tank car is -- has an I.D. that they
7 are able to take that I.D. number and put into the app
8 that has that -- first responders have access to, and
9 it tells them the type of commodity and what's needed
10 to be able to respond in case of an incident. It's --
11 particularly if it's hazardous or not.

12 So there is an application that UP has
13 developed. It's called Ask Rail. And first responders
14 have access to that and UP is able to provide that
15 to -- to them.

16 COMMISSIONER YOUNG: Thank you.

17 And then the question of how you made a
18 determination about the probability of an accident
19 happening, that that probability being low.

20 MR. HUTCHINSON: Yes. No quantification. It
21 was just -- to me it seemed professionally the -- you
22 know, the event of a crossing even four times a day ;
23 eight minutes times four, 32 minutes out of 24 hours,
24 the number of reported emergency responses required of
25 the city in a year, I did no quantification. It was

1 just simply, gee, that seems like the probability is
2 going to be low. You can question that but that's my
3 opinion.

4 COMMISSIONER YOUNG: Okay. Thank you.

5 So as I understand it, if there's a fire on
6 Valero's property, Valero is the first responder.

7 If there is a fire outside of Valero within
8 the industrial park, assuming there's no train crossing
9 and no problem getting to it, the city is the first
10 responder.

11 What if there's a fire out in Suison marsh?
12 Who's the first responder then?

13 CHIEF LYDON: You talking about the area
14 outside the city limits, correct?

15 COMMISSIONER YOUNG: Correct.

16 CHIEF LYDON: So that is either the Suison
17 fire protection district or the Cordelia fire
18 protection district. I'm not sure exactly which one,
19 depending on where you're at.

20 COMMISSIONER YOUNG: Okay. But UP has also
21 said that they would respond to fires along -- along
22 the rail line, that that's part of their service, is
23 that correct?

24 MR. CASTILLO: Just really quick,
25 Commissioner.

1 So UP has worked with or currently works with
2 184 fire departments along our routes in California.
3 We provide training obviously. We have provided over
4 3100 first responders have been trained in California;
5 particularly here in Benicia and Solano County, over
6 200 have participated in training that were provided in
7 fall of 2014 where we actually had had a training
8 locally here.

9 So obviously UP has local resources available
10 as well. We have about \$176,000 of containment boom
11 that it's available throughout the state it's equally
12 divided in areas that are needed the most.

13 So we are ready to deploy those resources
14 whenever an event is to occur in addition to local
15 environmental contractors, fire fighter trailers and
16 foams, (inaudible) here locally that we have available
17 as resources as well.

18 We also have a map that we have designed in
19 California that allows first responders and individuals
20 to know exactly where those resources are allocated in
21 the event of a emergency or a derailment.

22 COMMISSIONER YOUNG: But generally you are
23 relying on the county fire district or whoever is --

24 MR. CASTILLO: Yeah. We work closely with the
25 fire departments. We don't have our own fire

1 department but we have hazardous materials response
2 experts that are able to assist and provide those
3 resources locally which is why we work with 184 fire
4 departments across California that are along our lines
5 and provide training. And as the chief mentioned,
6 scholarships to firefighters to be able to take that
7 training in Pueblo, Colorado as well.

8 COMMISSIONER YOUNG: Okay. And I think we
9 heard the chief say earlier that if a Bakken fire they
10 would first sort of first secure the area until they
11 got foam, and basically -- the fire would basically
12 just have to burn itself out or burn itself to the
13 point where you had the foam there.

14 If it happens outside Benicia, if it happens
15 uprail somewhere where there is not immediate access to
16 foam, then the only response is going to be let the
17 fire burn itself out. That's typically what has
18 happened and it certainly is what happened in Bakken
19 explosions and fires elsewhere.

20 My question to the staff or the consultant is:
21 Did you look at emissions from fires burning themselves
22 out? From just letting a fire go involving thousands
23 of gallons of oil burning until it was gone?

24 MS. SCOTT: Are you asking from an air quality
25 standpoint?

1 COMMISSIONER YOUNG: Uh-huh.

2 MS. SCOTT: No, we did not consider in the
3 analysis the air emissions associated with fire due to
4 an up center accident in light of the fact that the
5 risk was so low, as identified in the updated risk
6 report, and the consequences were already identified as
7 significant and unavoidable from an air perspective.

8 COMMISSIONER YOUNG: Okay. Okay. This is --
9 this is from -- maybe this just goes without saying.

10 This is from the revised draft EIR on -- the
11 section on spills and accidents.

12 Depending on the location of a spill, there
13 may be no oil spill cleanup or containment equipment
14 immediately available, and it could take some time for
15 emergency responses (inaudible) teams to mobilize which
16 could allow enough time for the spill to affect water
17 resources. But because it's significant and
18 unavoidable, we basically leave it at that.

19 Is that generally the case?

20 MS. SCOTT: The types of consequences that
21 happen when you have a spill of oil to a water way,
22 are, in fact, analyzed in detail in the EIR.

23 The conclusion was that it was significant and
24 unavoidable.

25 COMMISSIONER YOUNG: And that we can't

1 mitigate because of preemption?

2 MS. SCOTT: Correct. For rail related impact,
3 mitigation is legally and feasible due to preemption.

4 CHAIR DEAN: Okay. Can I -- I follow up on
5 that? Just the question of mitigation for significant
6 unavoidable impacts.

7 You know, typically you want to mitigate to
8 the degree possible even if you can't totally mitigate
9 the impact, so you might suggest some mitigation
10 measures that would reduce the impact even if it
11 wouldn't reduce it to a less than significant impact.

12 So in this case, did you identify mitigation
13 measures that might reduce impacts or did -- in cases
14 where there was rail preemption, did you just say those
15 mitigations are not feasible, therefore, we did not go
16 further with that?

17 MS. SCOTT: In accordance with the CEQA
18 guidelines, once we determined that mitigation would be
19 infeasible because of preemption, we didn't speculate
20 about what could or couldn't be done to reduce
21 something that was not within the city's jurisdiction.

22 CHAIR DEAN: So where's the line there between
23 going far enough to identify potential mitigation
24 measures? You have to obviously identify some before
25 you can determine whether they are preempted or not.

1 Is there a test there that you look for?

2 I mean, you would think there might be some
3 that might be possible although legally not feasible
4 for the sake of discussion.

5 MS. SCOTT: It's a good question. And we
6 looked at that. The question of disclosure of
7 potential impacts, when you think about -- let me back
8 up a second.

9 When you think about CEQA as a process,
10 there's an obligation to disclose potential
11 environmental consequences. Once you have a potential
12 consequence that exceeds an established threshold, that
13 triggers the duty to identify potential mitigation
14 measures, if feasible, that could reduce the
15 significance ideally, below a level of -- below the
16 established threshold.

17 But you're right. When you have a significant
18 unavoidable impact under usual circumstances, you do
19 the best you can. And if it's still significant and
20 unavoidable, then that's what it is.

21 In this case we didn't have to go very far
22 down that route because it's clear that an upset or
23 accident condition involving the railroad is subject to
24 the extreme safety regulations of federal law. The
25 city doesn't have authority to regulate rail safety

1 that's squarely within the purview of federal law.

2 And so once we had a rail safety related
3 impact, we knew there wasn't anything we could do about
4 that, so we declined to speculate. And if city
5 council -- if city attorney has something more to
6 add --

7 MR. HOGIN: That's right. It's clear under
8 CEQA that if you -- and simply put, if you can't do
9 anything about a particular impact, you are not
10 required to discuss all the different ways that you
11 would address it if you could do something about it. I
12 mean there's cases that squarely say that.

13 Now there -- I think there is some mitigation
14 of rail impacts that is discussed in the EIR -- maybe
15 it's not a lot -- but certainly the alternative of
16 limiting the train deliveries would -- would cut in
17 half all of the different impacts that we've identified
18 from rail operations that was presented not as a
19 mitigation measure per se but as an alternative, but
20 properly constructed alternatives have the same
21 function as mitigation measures to reduce or avoid an
22 identified significant impact.

23 So in that sense there was that one mitigation
24 measure, or presented as an alternative, and I -- I
25 think there's others mentioned -- I'm not sure --

1 offsets somewhere may have been mentioned, if not in
2 the EIR itself, in responses to comments.

3 But generally speaking an agency is not
4 required, as I said and as Janis said -- to once you
5 determine that you can't do anything about something,
6 you are not required to identify all the different ways
7 that you could address it if you could.

8 CHAIR DEAN: Okay. Thank you.

9 MS. SCOTT: And that CEQA guideline section
10 15126.4.

11 CHAIR DEAN: All right. Thank you.
12 Commissioner Young.

13 COMMISSIONER YOUNG: On the issue of
14 explosiveness of the gas -- of the fires and the Bakken
15 crude.

16 Chief Shawn Norman of Cal Fire. Cal Fire is
17 the agency that serves a lot of the rural counties in
18 the northern part of the state. And he wrote a letter,
19 as did many people. And he said, quote, any fire
20 involving a flammable material that is transported in a
21 closed container, there is a significant threat of a
22 boiling liquid expanding vapor explosion.

23 During such a fire, it impinges on a closed
24 container and boils the flammable liquid until the
25 vessel containing the product fails. The ruptured tank

1 rapidly exhausts its contents that are now under
2 pressure and it becomes aerosolized.

3 The flammable liquid is then exposed to the
4 fire and a massive explosion takes place. The minimum
5 recommended isolation distance from such an incident is
6 2500 feet.

7 Does that sound like a reasonable analysis of
8 what might happen in a Bakken fire?

9 CHIEF LYDON: So the boiling liquid explosion
10 or what's commonly referred to as a bleve has to do
11 with vapor space within a tank, has to do with flame
12 impingement on the vapor space, not so much the liquid
13 per se that's in there.

14 It's the -- it's the expansion and heating of
15 that vapor space, so that's one of the tactics is to
16 apply high volumes of water to those areas to reduce
17 the potential heating of that vapor space.

18 This is more commonly an issue in high
19 volatile liquified petroleum products like propane is
20 more of the application where you see those types of
21 issues.

22 As far as the evacuation distances, that,
23 again, I'm going to be held to quote the number.

24 COMMISSIONER YOUNG: Sure.

25 CHIEF LYDON: We would -- just as we do with

1 other hazardous materials, the Ask Rail product that
2 the gentleman from UP was talking about and a variety
3 of other applications and software programs that we
4 have, dictate based on the type of product what the
5 evacuation circles are, what the -- you know, wind
6 plumes will do, all that kind of stuff. It's something
7 that you factor in at the time given the circumstances
8 of where you're at.

9 COMMISSIONER YOUNG: Okay. Thank you.

10 For the gentleman from UP. Worst case
11 scenarios.

12 The EIR talks about a worst case scenario of a
13 \$30,000 gallon leak which is the contents of one tank
14 car.

15 Do you agree that that's the worst case
16 scenario?

17 UNIDENTIFIED SPEAKER: Yes, I agree.

18 MR. CASTILLO: I'm not an expert on that,
19 Commissioner, so I won't be able to answer that
20 question.

21 COMMISSIONER YOUNG: Do you think the -- that
22 a leak in fire involving one tank car would constitute
23 a worst case scenario?

24 MR. CASTILLO: I'm not an expert, Commissioner.
25 I think that question is better deferred to a fire

1 chief, not to a public affairs director.

2 COMMISSIONER YOUNG: Okay. Well BNSF, one of
3 your competitors, they told the state of Washington
4 fire chiefs that they thought 150,000 gallons or five
5 train cars was a better standard for a worst case
6 scenario.

7 Do you have any feelings on that one way or
8 another?

9 MR. RADIS: We actually modeled six rail cars.

10 COMMISSIONER YOUNG: Six (inaudible).

11 MR. RADIS: Yeah, 180,000 gallons was our
12 worst case.

13 COMMISSIONER YOUNG: And is that in the EIR?

14 MR. RADIS: Yeah. It's in our -- it's in our
15 analysis so I don't know if that translated all the way
16 through the EIR, but it's definitely in the appendix
17 with the quantitative risk analysis.

18 COMMISSIONER YOUNG: Okay. All in the and
19 appendix. Okay. Maybe that's why I didn't see it.

20 The -- after the Lac Megantic -- one more
21 question for UP.

22 After the Lac Megantic disaster, there was a
23 lot of investigations. And one of the recommendations
24 that came out of that was that trains should just --
25 that are carrying hazardous materials like Bakken

1 should just avoid populated areas and other sensitive
2 areas.

3 Is there a way to avoid a populated area like
4 downtown Sacramento or a sensitive area like Suisun
5 marsh?

6 MR. CASTILLO: Well, I think I want to clarify
7 first that Union Pacific moves less than one percent of
8 crude oil in California. That's our business. We
9 don't move Bakken in California.

10 COMMISSIONER YOUNG: But that is part of this
11 proposal, isn't it?

12 MR. CASTILLO: We currently do not move Bakken
13 in California.

14 COMMISSIONER YOUNG: Right. Currently you
15 don't. But if this project were to be approved,
16 presumably you would be moving it.

17 MR. CASTILLO: Well, I defer to Valero in
18 terms of the type of oil that they were looking to
19 move, but I can tell you that --

20 COMMISSIONER YOUNG: Well, theoretically, just
21 to --

22 MR. CASTILLO: Commissioner, I don't want to
23 get into a theoretical question when it's not something
24 that we move in California.

25 COMMISSIONER YOUNG: So you can't say whether

1 you would avoid a populated area because you are not
2 currently carrying Bakken.

3 MR. CASTILLO: Correct.

4 COMMISSIONER YOUNG: Okay. Do you have a
5 emergency response plan?

6 MR. CASTILLO: Yes.

7 COMMISSIONER YOUNG: And has that been shared
8 with all the emergency responders?

9 MR. CASTILLO: We work closely with local
10 first responders on developing those emergency response
11 plans.

12 COMMISSIONER YOUNG: Pardon me?

13 MR. CASTILLO: We work closely with the first
14 responders on developing those emergency response
15 plans.

16 COMMISSIONER YOUNG: So is that a yes, you do
17 share your emergency response plans?

18 MR. CASTILLO: With first responders.

19 COMMISSIONER YOUNG: With first responders.
20 Okay. All right. I think I'll stop on this topic.

21 I've got more.

22 CHAIR DEAN: Okay.

23 COMMISSIONER YOUNG: Keep moving?

24 CHAIR DEAN: What's next?

25 COMMISSIONER YOUNG: Well, since we talked

1 about the explosiveness of the gases, the oils, let's
2 talk a little bit about how the -- the -- Bakken,
3 in particular, can be dealt with in terms of its gases.

4 On January 2nd of 2015, the pipeline and
5 hazardous materials organization sent out this notice
6 that I talked about earlier saying that Bakken is more
7 flammable than traditional crude and should be routed
8 away from populated areas.

9 They characterize the oil and its properties
10 and said that properly labeling the oil would ensure
11 that it was moved and transported properly.

12 They said that the quality of the light sweet
13 crude from Bakken should be characterized as one from
14 materials with a low boiling point.

15 This means that the materials suppose a
16 significant fire risk if released from the package in
17 an accident.

18 On the question of vapor pressure, which I
19 think the chief talked about just a little bit ago, the
20 consultant in the final EIR talked about the new
21 regulations that North Dakota has put in place at the
22 end of 2014 that requires oil producers in North Dakota
23 to install oil conditioning equipment to significantly
24 reduce vapor pressure of all Bakken crude.

25 So I guess the question for the consultant is

1 what is the difference between conditioning oil and
2 degassifying it?

3 MR. RADIS: I think we're basically talking
4 about the same thing about --

5 COMMISSIONER YOUNG: Same thing.

6 MR. RADIS: -- reducing the liden
7 hydrocarbons. For example, there's basically dissolved
8 propane and butane in the crude oil which when heated
9 obviously wants to vaporize rapidly within the tank
10 which leads to the bloodies.

11 COMMISSIONER YOUNG: And is that also true for
12 stabilization?

13 MR. RADIS: Excuse me?

14 COMMISSIONER YOUNG: Stabilization would also
15 be in that same general --

16 MR. RADIS: Yes.

17 COMMISSIONER YOUNG: -- category?

18 MR. RADIS: Yes, it's all -- it's all a matter
19 of getting rid of the lidens as best they can.

20 COMMISSIONER YOUNG: Okay. Well, North Dakota
21 requires conditioning which is a process to separate
22 production fluids into gas and liquid, including
23 temperature and pressure parameters, and to make sure
24 light hydrocarbons are taken out before the oil is
25 shipped. That's how they define it.

1 But stabilization is a more rigorous process
2 that removes more of the dissolved gases from the crude
3 oil.

4 Since Valero will have complete control over
5 the products it ships, it would be within the city's
6 authority to require that Valero strip the oil of its
7 most volatile gases and elements, including flammable
8 natural gas?

9 Maybe that's a question for the attorney.

10 MR. HOGIN: The answer is no. Any attempt by
11 the city to manage or regulate the manner in which any
12 particular hazardous substance is packaged and shipped
13 by rail would be preempted.

14 COMMISSIONER YOUNG: Even before it's put into
15 a tank car?

16 MR. HOGIN: Yes. Because what you're trying
17 to do is regulate -- regulate rail safety. And the
18 federal government already addresses the manner in
19 which hazardous materials, including crude oil, are
20 packaged and transported in rail car. There's an
21 extensive body of regulations that they -- that they
22 adopt.

23 COMMISSIONER YOUNG: So what North Dakota does
24 is they allow the testing to be done at the wellhead,
25 not in the tank car. And the pressures in a full tank

1 car are very different and are much higher than those
2 that are taken at a wellhead.

3 Am I correct in that?

4 (No audible response.)

5 COMMISSIONER YOUNG: When you are measuring
6 vapor pressure and you measure it at a wellhead, you
7 are going to get a much different reading than if you
8 measured it out of a full tank car.

9 UNIDENTIFIED SPEAKER: Correct.

10 COMMISSIONER YOUNG: And it would be much
11 higher in a tank car.

12 MR. RADIS: It could be.

13 COMMISSIONER YOUNG: Well, there was a study
14 by Reuters and the instrument maker Ametek, and they
15 looked at that question. And they said that the oil
16 pressure measured on average 10 PSI when the loading
17 began which was below North Carolina -- North Dakota's
18 standards of 13.7 PSI, but the vapor pressure jumped to
19 more than 30 PSI on a full rail car.

20 MR. RADIS: Part of the issue is the
21 temperature that they take the vapor pressure at, and
22 it's different between the wellhead and different along
23 the route when it's being transported.

24 So obviously when you transport it in hot
25 weather conditions your vapor pressure increases within

1 the tank car.

2 COMMISSIONER YOUNG: Right. And it's basic
3 physics that you are going to get more pressure in a
4 full container --

5 MR. RADIS: Right.

6 COMMISSIONER YOUNG: -- than you are in an
7 empty one.

8 MR. RADIS: Correct.

9 COMMISSIONER YOUNG: Which is why -- where you
10 measure it becomes important.

11 MR. RADIS: Correct.

12 COMMISSIONER YOUNG: And why you get
13 significantly lower readings at a wellhead than you
14 would in a tank car.

15 MR. RADIS: Right. Because they are pumping
16 out of the well.

17 COMMISSIONER YOUNG: Right. But North Dakota
18 allows it to be measured at the wellhead.

19 So the question, I guess, to -- maybe to
20 Valero, and maybe I can hold this until they make their
21 presentation, is whether they will degassify where they
22 will strip out all of these volatile gases before they
23 load the car or not.

24 I mean is the question safety not just along
25 the rail line, but here in Benicia when they go to

1 off-load it, there will be vapors built up over 1500
2 miles that could potentially be a safety issue.

3 MR. RADIS: Correct. And DOT addresses that
4 to a certain extent where they have their packing group
5 classifications for crude oil, and I think Valero can
6 talk to that one. But there are different packing
7 groups that you can require and they have different
8 requirements for the transport based on packing group,
9 one, two or three.

10 So, for example, packing group three would be
11 something like the San Ardo Crude Oil from a field
12 south of here which is heavy crude that's steamed out
13 of the ground and is transported in heated tank cars.

14 So it's just not volatile at all. Whereas
15 packing group one includes things like Bakken crude and
16 some of the dilbit where they are diluted with some
17 very liden petroleum products.

18 COMMISSIONER YOUNG: Thank you.

19 We have got a lot of letters from people in
20 Davis who are concerned about the possibility that
21 trains full of Bakken will be left on sitings in the
22 city.

23 Now SB-861, which we talked about before,
24 requires railroads to submit a written plan by
25 January 1st, a month ago, that specifies the location

1 and circumstances under which trains can be left
2 unattended.

3 Has that plan been submitted to the state, and
4 can we get a copy of it?

5 I guess it's to UP. The obligation is on you
6 too.

7 MR. CASTILLO: I can certainly check,
8 Commissioner. I'm not sure I've done that or we have,
9 but I can check with you and get back to staff on that.

10 COMMISSIONER YOUNG: We would like to get a
11 copy of it. I mean the question is did you submit the
12 plan when you were supposed to? And if you did, can we
13 get a copy of it.

14 MR. CASTILLO: I assume we did, but I have to
15 go back to our staff and check on that.

16 COMMISSIONER YOUNG: All right. Let me move
17 on.

18 Traffic. So we -- early in the process we
19 talked about whether or not the city could require that
20 train deliveries happen only at night, for example.

21 Well, we know now that we can't make that
22 requirement.

23 We talked about whether deliveries can be made
24 only at certain hours.

25 Well, I think for that question on preemption,

1 same answer, we can't require that either.

2 So if we can't require it, can the applicant
3 assure that trains will only be running between certain
4 hours? I can hold that for Valero, but sure, please.

5 MR. HUTCHINSON: I can make an attempt.

6 COMMISSIONER YOUNG: Okay.

7 MR. HUTCHINSON: The quick is no because UP is
8 the one who actually schedules the trains. But Valero
9 has indicated they will make every -- all of their
10 requests will be to avoid the peak traffic hours on the
11 local roadways.

12 The fact that it takes 12 hours to unload a
13 train, there's a media separation so one of the trains
14 will be arriving at night. And the question is will
15 the other one arrive during the daytime, during the
16 6:00 to 9:00, 7:30 to 8:30 time frame as described in
17 the revised draft EIR and presenting information about
18 UP's operational scheduling of passenger cars -- I'm
19 sorry -- passenger trains and such.

20 The conclusion that we reached was, again in
21 my opinion, reasonably presented that if UP has the
22 ability -- if UP has stated that they will make every
23 attempt to accede to Valero's request to avoid the peak
24 periods, and UP has had the documented success rate of
25 scheduling passenger cars -- passenger trains; I

1 apologize -- within a one-minute interval, it seems
2 reasonable -- or it seems unreasonable to not -- it is
3 reasonable that UP would have a fairly good success
4 rate in avoiding a three-hour time period if they can
5 schedule it down to the minute.

6 COMMISSIONER YOUNG: But what about --

7 MR. HUTCHINSON: There's no guarantee.

8 COMMISSIONER YOUNG: Right.

9 MR. HUTCHINSON: Therefore, the EIR analysis
10 did not assume that it was impossible. But the
11 conclusion was that because of the existence of
12 crossings now and frequencies and duration that exceed
13 what would happen on the project, so there's already a
14 Level of Service F condition that occurs at the
15 crossing.

16 The project would not -- the project's four
17 trips crossings per day would fall generally within the
18 range of daily occurrences, so that it's not -- it's
19 not a fourfold increase day in and day out. There's
20 occasions where there's -- Caltrans commented about
21 the --

22 COMMISSIONER YOUNG: (Inaudible).

23 MR. HUTCHINSON: -- four hold -- fourfold
24 increase.

25 So it's within -- so, in essence, we're saying

1 that -- the EIR was concluding that even if there were
2 a train crossing in the a.m. peak hour, peak traffic
3 hour, we're not saying it wouldn't be an impact, but
4 we're saying that they already occur and that the
5 project would not significantly increase the
6 consequences of delays that already occur.

7 COMMISSIONER YOUNG: All right. Well, I'm
8 glad you mentioned that and I'm glad that there's
9 somebody from Fehr & Peers here because I do have some
10 questions about the traffic study that they did.

11 MR. HUTCHINSON: Okay. As I said, it was a
12 resource but it was not the basis of EIR.

13 MR. MARTIN: Good evening, Commissioners.

14 My name is Francisco Martin. I'm a senior
15 engineer with Fehr & Peers. I'm also a licensed civil
16 engineer so I led the traffic study for this.

17 My areas of expertise are in local street
18 intersection operation, as well as freeway
19 interchanges, which is a study area has both. So --

20 COMMISSIONER YOUNG: Good. Welcome. And I'm
21 glad you're going to be able to answer these questions.

22 One of the findings about the traffic in the
23 area says that if train crossings cause vehicle backups
24 that impede other traffic such as on to the main line
25 of 680 or other intersections, that that would be a

1 significant impact. That was what the traffic study
2 said, correct?

3 MR. MARTIN: So for the traffic study, it's
4 really important to understand the existing conditions
5 before you even understand any project impact. So as
6 part of the study, we actually laid out a camera at the
7 current Park Road -- at grade rail crossing, and we
8 collected a video for seven days.

9 Within that video, we -- we summarized that
10 information; we summarized how long crossings take, how
11 many cars they were and how many crossings per day.

12 So on any given weekday during that week that
13 we collected data, we observed there was an average of
14 ten crossings per day, as low as four crossings per day
15 and as much as 18 crossings per day.

16 The longest crossing that was observed that
17 day was 16 minutes. That's an existing condition. And
18 part of that crossing in the 16 minutes was that the
19 Park Road because of the switch in activity, because
20 you had to switch tracks, it held up the trains at the
21 at grade crossing.

22 So the project itself, there are -- there are
23 proposing two trips -- or two train deliveries per day,
24 one in the off nights and one is during the day. And
25 they would block traffic for about -- a little bit over

1 eight minutes.

2 So the project itself, it's --

3 COMMISSIONER YOUNG: Well, that should be
4 four. Two in and two out.

5 MR. MARTIN: So it's actually eight -- yeah,
6 four -- four crossings.

7 But one of the benefits of the project as well
8 is that they are also expanding the onsite capacity to
9 do the switch -- the switchback activity. So now
10 instead of, you know, existing trains that currently
11 have to kind of block traffic on Park Road because you
12 have to switch, that's not all -- that's going to be
13 onsite now. So the product will potentially also
14 reduce the blockage time on Park Road based on, you
15 know, existing deliveries.

16 But the project itself is still within
17 eight-and-a-half minutes or less than eight-and-a-half
18 minutes that will block Park Road, so when you compare
19 that blockage versus the maximum blockage that is
20 already observed, it's much less, the delay is much
21 less and the cues are much less than is already out
22 there.

23 So the condition is that you wouldn't assume
24 that a 50 rail car train is going to cross right after
25 a, you know, 16 minute closure. One assumes that that

1 would be separated.

2 COMMISSIONER YOUNG: Okay. I'm -- I'm --
3 thank you.

4 The study said that because the city doesn't
5 use Level of Service standards in the industrial park,
6 that we need to come up with other standards, other
7 ways of measuring the impact. And one of them is
8 whether or not traffic backed up on to the main line of
9 680.

10 MR. MARTIN: Correct. So for --

11 COMMISSIONER YOUNG: And my question is: You
12 said that in this traffic study the ramp was 1300 feet
13 long and the traffic backups at the time a train was
14 crossing would be something like eight or 900 feet.

15 MR. MARTIN: Correct.

16 COMMISSIONER YOUNG: My question is: How did
17 you come up with knowing that it would be eight or 900
18 feet and not more than 1300 feet?

19 MR. MARTIN: That's a great question.

20 So essentially what we -- what we do to
21 analyze traffic, we use a high end software, and we
22 actually use a software called Visum.

23 Visum is software that's often used by
24 Caltrans. It's actually above the Caltrans standard
25 for their analysis software, so we -- we took it to a

1 very comprehensive analysis where we collected not only
2 train -- traffic data for an entire week along Park
3 Road, we collected traffic counts. We also collected
4 traffic counts at all the intersections around the
5 interchange area as well as Park Road and Bay Shore.

6 And then we -- using that data, we entered
7 that data into a model. We determined how many lanes
8 there are, what type of intersection control there is,
9 stop and single control. Then we develop a micro
10 stimulation model where you evaluate an hour time
11 period, and within that hour time period, we can
12 determine the length of cues based on the blockage of
13 train.

14 So in that model itself, we have a train that
15 actually shows the impact, you know, blocking traffic
16 for eight-and-a-half minutes and how the cues build
17 over time.

18 So we did that analysis, and we did -- we ran
19 that model 15 times. And we took an average of -- of
20 ten runs. So what that means is that we took every
21 single time as a different day. So you take an average
22 over multiple days and then you get your average cue.

23 So our average -- and actually the maximum cue
24 that we obtained was within the store's capacity of the
25 freeway off-ramp. So that's how we arrived to that

1 number.

2 COMMISSIONER YOUNG: So -- but you aware that
3 Caltrans actually has a different opinion on this?
4 Were you here when we quoted from their letter on this
5 topic?

6 MR. MARTIN: I have not read the letter so I
7 can't comment on the letter, but I've worked with
8 Caltrans for over nine years on various projects.

9 COMMISSIONER YOUNG: All right. So this is
10 what Caltrans said.

11 It's the opinion of Caltrans that cues would
12 back up on to the main line of northbound 680 at Bay
13 Shore Road.

14 We find these impacts to be significant
15 because of fourfold increase in frequency of cuing is
16 anticipated to impede traffic while reducing the
17 deceleration space for travelers as they approach the
18 Bay Shore Road off-ramp.

19 This issue must be evaluated in your traffic
20 impact analysis to ensure sufficient mitigation of any
21 adverse effects at the Bay Shore off-ramp.

22 MR. MARTIN: Yeah, well, I haven't read the
23 letter. And the fact that there's no analysis
24 presented to how they arrived to that off-ramp, I can't
25 comment on that. But I can comment that we actually

1 did evaluate the impacts of cuing from the at grade
2 crossing on to the ramp and the potential of the cues
3 backing up on to the main line.

4 Based on the model that we developed and our
5 analysis, we indicated that the cues would be contained
6 within the provided storage capacity at the off-ramp.

7 So there's about 1300 feet at the off-ramp.
8 The cues that we estimated were a thousand. And keep
9 in mind that we also not only look at existing
10 conditions, we also look -- forecast traffic to year
11 2040, so we look at, okay. What -- what -- how much
12 traffic -- is traffic going to grow within the area?

13 So we also increase our volume per analysis so
14 we use some higher volumes, which higher volumes mean
15 higher cues and higher delays. And then based on that
16 analysis, we arrive to the conclusion that we expect
17 the project to be -- the cues related to the project to
18 be contained within the cue capacity at the off-ramp.

19 COMMISSIONER YOUNG: All right. So, but
20 Caltrans differs, I guess. But we don't know the
21 analysis so we can't say if --

22 MR. MARTIN: I can't say that -- I can't
23 say they had reviewed the analysis or not because the
24 numbers are presented in the traffic study, and it --
25 and it's in accordance to their micro stimulation

1 standards for freeway operation -- for freeway
2 interchange operations.

3 COMMISSIONER YOUNG: Well, let's switch gears
4 a little bit and talk about Level of Service.

5 MR. MARTIN: Sure.

6 COMMISSIONER YOUNG: The study says that Level
7 of Service D, that no intersections in the industrial
8 park will be worse than Level of Service D at the time
9 of a train crossing. And that just didn't sound right
10 because we know it's eight-and-a-half minutes, and we
11 know that Level of Service F means 55 seconds --

12 MR. MARTIN: Uh-huh.

13 COMMISSIONER YOUNG: -- not eight-and-a-half
14 minutes.

15 So I tried to understand what the gentleman
16 said before and I didn't really get it, so maybe you --
17 maybe you can try.

18 MR. MARTIN: Sure.

19 COMMISSIONER YOUNG: How is it that an
20 eight-and-a-half minute train crossing doesn't degrade
21 service beyond Level of Service D?

22 MR. MARTIN: Well, in the course of CEQA and
23 the guidelines is that a project must not make traffic
24 worse.

25 And the fact that we're already observing

1 train crossings at 16 minutes under existing conditions
2 without the project, and then when you compare that
3 scenario, the existing condition scenario with the
4 proposed project scenario, the cuing in delay is
5 actually less than what exists out there today.

6 And you would essentially increase the
7 frequency of trains crossing per day, but the frequency
8 is within the daily variation. Keep in mind that we
9 have an average daily crossing of ten trains per day,
10 but it's been as high as 18, so that four crossings per
11 day is within that variation.

12 COMMISSIONER YOUNG: And I think Commissioner
13 Radtke had mentioned at a previous meeting and asking
14 about the cumulative impact of the traffic delays, and
15 it was explained -- it was actually in her comments.
16 And the answer to her comment was that the change in
17 average vehicle delay at the Park Road crossing would
18 be less than the one second threshold of significance.

19 MR. MARTIN: That is essentially saying that
20 the project itself is not going to result in any longer
21 cues or higher delay than what exists out there today
22 without the project. Just given the fact that we
23 already saw train crossings at Park Road taking 16
24 minutes on a typical weekday, that's an existing
25 condition.

1 COMMISSIONER YOUNG: All right. Let's talk
2 about that -- that video study because I thought that
3 was interesting.

4 That study said that the average train
5 crossing on a weekday took less than three minutes.
6 And that 86 percent of the crossings took less than
7 five minutes. Yet for the purposes of EIR, you are
8 using a baseline condition of almost 12 minutes.

9 So -- and that there were only two trains out
10 of 58 in that week that you looked at that took over 12
11 minutes to cross.

12 So my question is: If only two out of 58 take
13 that long and 86 percent take less than five minutes,
14 why do you use a crossing of 12 minutes as the baseline
15 if it only happened twice in a week and represented
16 less than four percent of all of the crossings?

17 MR. MARTIN: Well, that's a good question.

18 So we looked at not that worst case scenario
19 which is 16 minutes, we looked at something about the
20 90 percentile, so 11 minutes and -- well, let's round
21 it off to 12 minutes.

22 But when you also average out -- you know, the
23 project itself is not going to be a worst case scenario
24 compared to what exists out there today.

25 So we compare it to the worst case scenario of

1 what's out there today, and that's our baseline, and
2 that's what we compare the analysis to.

3 COMMISSIONER YOUNG: So even though it only
4 happens once or twice a week, that becomes the standard
5 that you base --

6 MR. MARTIN: Correct.

7 COMMISSIONER YOUNG: -- the comparison against
8 versus 86 percent of the time when it's five minutes.

9 MR. MARTIN: Because regardless of the project
10 was -- was approved or not, that would still be an
11 existing condition and there would still be road
12 blockages of 16 minutes or more without the project, so
13 that was what we compared it to.

14 COMMISSIONER YOUNG: And one result of that
15 conclusion is that you can say that it's not a
16 significant impact. And when it's not a significant
17 impact you don't have to mitigate it.

18 And mitigation for something like this could
19 be expensive. It could be the kind of thing like you'd
20 have to build an overpass, which we talked about
21 earlier as -- according to the Attorney General is not
22 precluded because of preemption.

23 So I'm just -- I don't know that there's a
24 question there.

25 MR. MARTIN: Well, just to be clear, to follow

1 up on that with the traffic study.

2 We developed a traffic analysis with the
3 state -- you know, the state of the practice as
4 required by CEQA law, and we also consulted quite a bit
5 with city staff to determine what the significant --
6 the threshold of significance were to be applied for
7 this project.

8 So that -- that's been coordinated with city
9 staff throughout the process of preparing the
10 (inaudible).

11 COMMISSIONER YOUNG: Oh, I believe that.

12 MR. MARTIN: And just to -- I also want to
13 clarify a previous com -- a question regarding the
14 probability of blocking an emergency vehicle response
15 time and how we arrived at that number. So I just kind
16 of want to follow up on that, and I actually did that
17 estimate.

18 So when you look at eight minutes per
19 crossing, four crossings per day, that's about 24
20 minutes over a 24-hour period which is less than two
21 percent.

22 And then when you account for the fact that
23 trains will be crossing at night when there's a lot
24 less people in the industrial area and you weigh that
25 average out, it comes to less than one percent increase

1 in an incident occurring while a train crossing is
2 occurring as well.

3 COMMISSIONER YOUNG: Okay. I'm not sure I
4 agree with it, but that is the answer, so thank you.

5 UNIDENTIFIED SPEAKER: (Inaudible).

6 COMMISSIONER YOUNG: Yes, please.

7 COMMISSIONER RADTKE: So being that you study
8 this for a living and you're looking at just vehicles,
9 the impact on vehicles at these different
10 intersections -- well, now we've -- also looking at the
11 impact on emergency response, have there been any other
12 studies or any other information that's come in on just
13 the impact that it has on the area, businesses,
14 people's lives, or anything like that, by increasing
15 the amount of time that they are sitting at these
16 intersections, does that impact -- is there any kind of
17 information that shows other impacts?

18 MR. MARTIN: I can't speak to that
19 information.

20 What our analysis focused on was essentially
21 vehicle delay, determining what -- how much delay can
22 we expect from the eight-and-a-half minute crossings
23 that would occur four times a day.

24 And, again, the time of day is also important.
25 You know, late night there's not much traffic out on

1 Park Road so, you know, eight-and-a-half minute train
2 crossing would block two -- two or three vehicles on
3 Park Road during that time period.

4 But we -- we didn't analyze that, what other
5 impacts are there associated with being stuck in
6 traffic.

7 COMMISSIONER RADTKE: Okay. Well, we've also
8 heard that we can't say that these trains are going to
9 be arriving at night or leaving at night.

10 So in looking at the -- the video that you
11 took, what we're -- and you had the primary hours that
12 were the highest impact time, could you kind of
13 extrapolate and say okay, if your trains start to come
14 and go during these high use times, how is that going
15 to impact the cumulative impact of these trains going
16 back and forth across the intersections?

17 MR. MARTIN: So -- so we evaluate a couple of
18 time periods throughout the day: Morning, afternoon
19 and night. And based on the traffic analysis model, we
20 determine that the cuing would be contained within the
21 provided off-ramp, or that cuing wouldn't be any longer
22 than what exists out there today.

23 CHAIR DEAN: Okay.

24 Commissioner Young.

25 COMMISSIONER YOUNG: Thank you, sir.

1 So on the question of GHG emissions.

2 There's a whole section in the final EIR on
3 confidential business information, and that it
4 relies -- basically refers to Valero claiming that the
5 particular type of crude oil they are going to
6 transport is a trade secret and is confidential
7 business information. But they don't say anything
8 about the question on greenhouse gases, and this is why
9 that's significant.

10 The whole argument on greenhouse gases hinges
11 on this theory that Valero uses -- currently uses
12 Marine transport from all over the world to bring their
13 oil in, and they gave us a composite distance of 7300
14 miles to calculate the GHG emissions, and then they
15 compared that against the GHG emissions from
16 locomotives hauling trains from North Dakota. Well,
17 they didn't say North Dakota, but 1500 miles which
18 happens to be the distance to North Dakota.

19 So the question of the 7300 miles, the
20 composite number, the composite distance, the only way
21 you can really validate that number is to know how much
22 oil was bought from which region of the world and then
23 do the calculation. Because obviously if all of it was
24 bought in the Middle East and very little of it was
25 bought in Venezuela, Mexico or Alaska, you are going to

1 get a very different number than if that was the
2 reverse.

3 So it's important to know how much oil was
4 bought from which region of the world. And this is
5 going back three or four years.

6 And Valero never claimed that that was a
7 confidential business information. They never claimed
8 that it was a trade secret. It's hard to understand
9 how it could be where you bought oil four years ago.

10 But when they gave us the document, this is
11 what they gave us for information on that particular
12 question. There's 30 pages in the appendix that are
13 either totally or partially redacted so it's impossible
14 to validate that number.

15 So if you can't validate that number, you
16 can't make the claim that Marine transport is more
17 environmentally friendly than locomotive. And maybe
18 they are not making that claim anymore, but that's
19 certainly what was being discussed in the draft EIR.
20 So maybe they will speak to this when they come and
21 talk about their project.

22 According to CEQA, an EIR must site all the
23 documents used in its preparation. And it's required
24 to make all those documents available for public
25 review, and it must identify all the people consulted

1 in the preparation of the document.

2 So to the extent that that information is
3 available, and I'm sure it is, and that it's not called
4 a trade secret, and it hasn't been, I think it's only
5 appropriate that that information be provided to the
6 commission and the city so that we can once and for all
7 get to this issue of whether or not ships are more
8 polluting than trains.

9 There's another question for Valero so I
10 can -- I can hold it or I can ask it now and they can
11 be prepared to answer it when they come up. It has to
12 do with the capacity of the refinery.

13 One estimate is that over the baseline period
14 which is 2010 to 2012, the refinery operated on average
15 at about 65 percent of capacity.

16 Is that close?

17 (No audible response.)

18 COMMISSIONER YOUNG: Well, I guess we won't
19 get an answer yet. But if it is close and you
20 increased your refining activities to a hundred percent
21 or 90 percent from 65 percent, is it conceivable you
22 would need to continue importing oil by Marine tanker
23 in addition to the crude by rail?

24 And if that's the case, well, then you can't
25 really argue that you're going to have less GHG

1 emissions from tankers because you are still going to
2 use tankers.

3 There is a discussion in the draft EIR on
4 Table 4.1-7 that compares emissions for trains and
5 ships measured in tons per thousands of miles hauled.
6 And the label -- the table lists six types of emissions
7 and shows that ships are less polluting than trains for
8 five of them.

9 Quote, even with these emission factors,
10 there's no way to estimate with any certainty the net
11 effect of the -- on the project on areas outside the
12 Bay Area in Sacramento basin because there's no way to
13 predict the length of locomotive trips that would occur
14 if the project were approved.

15 But if we know by the -- by the draft EIR that
16 ships are less polluting than trains, well, I think we
17 know that they will be less polluting over all.

18 But it also says on page 2.51 that diesel
19 locomotives are eight percent less efficient than
20 Marine transport per ton per gallon of fuel.

21 One of the law -- one of the law firms that
22 commented said that the review of the emissions
23 information from fugitive volitive organic compounds
24 was based on the applicant's unsupported calculations
25 and provided no citations or supporting documentations

1 for the emission calculations.

2 So my question on emissions for volatile
3 organic compounds is did the consultant do an
4 independent analysis or did you rely on the information
5 that was given to you by Valero?

6 MR. RIMPO: I guess I have a question for you
7 on that is what component of GHG emissions are you
8 talking about?

9 Are you talking about --

10 COMMISSIONER YOUNG: Fugitive volatile organic
11 compounds.

12 MR. RIMPO: From the tank cars?

13 COMMISSIONER YOUNG: Yes.

14 MR. RIMPO: Yes. We did an independent
15 evaluation of that and reviewed the document that was
16 used in the preparation of those fugitive emissions and
17 we concurred that that was done correctly.

18 COMMISSIONER YOUNG: All right. And that
19 was -- that came from another source outside Valero?

20 MR. RIMPO: Yes.

21 COMMISSIONER YOUNG: Thank you.

22 Section 4.1.4 which is the discussion of no
23 air quality impacts.

24 It says the project would not conflict or
25 obstruct with the applicable air quality plan which is

1 the Bay Area 2010 Clean Air Plan.

2 To make that determination, the commission
3 must consider three questions. The second question is
4 whether the project would, quote, reduce population
5 explode -- exposure and protect public health.

6 So we know that the project would shift the
7 transport of oil from the -- from ships to trains.

8 Well, ships don't really put populations at
9 risk from an area quality aspect since they come from
10 out to sea and under the gate and they don't really
11 come near populations until they dock here in Benicia.

12 The trains, by contrast, run through the
13 population centers of Roseville and Sacramento and
14 Davis and Fairfield and Vacaville.

15 So I guess I'm asking how you come to the
16 conclusion that this project would reduce population
17 exposure and protect public health.

18 MR. RIMPO: Well, there's -- there's two
19 components to that conclusion.

20 One is that with -- this is a comparison to
21 the Bay Area Clean Air Plan, so we're just looking at
22 exposure within the Bay Area.

23 And we're looking first at emissions, criteria
24 pollutant emissions that occur within the Bay Area.
25 And there's a -- actually a net decrease of criteria

1 pollutants that occur.

2 COMMISSIONER YOUNG: And how's that?

3 MR. MARTIN: Because we're comparing the
4 emissions from trains to those of ships.

5 So in terms of overall comparisons --

6 COMMISSIONER YOUNG: Excuse me. Didn't we
7 just determine or are you disagreeing with the idea
8 that trains are more polluting than ships?

9 MR. RIMPO: On a per mile basis, yes.

10 COMMISSIONER YOUNG: On a per mile basis. But
11 didn't you just say that the -- the opposite?

12 I don't want to put words in your mouth. I
13 guess I didn't understand what you are saying.

14 MR. RIMPO: We're saying that the net change
15 in emissions goes down with the project because the
16 actual travel -- train travel within the Bay Area air
17 district has lower emissions than ships within the Bay
18 Area air district. So ships actually have higher
19 emissions than --

20 COMMISSIONER YOUNG: And that's because you
21 are only measuring the train traffic from Benicia to
22 Vacaville, isn't that right?

23 MR. RIMPO: That's correct, because that's
24 part of the Bay Area air district.

25 COMMISSIONER YOUNG: Right.

1 MR. RIMPO: And that's what the Clean Air
2 Plan applies to.

3 COMMISSIONER YOUNG: And you are comparing
4 that to --

5 MR. RIMPO: Ship traffic.

6 COMMISSIONER YOUNG: -- emissions from the
7 tanker all the way from outside the Golden Gate, and
8 its emissions throughout the entire Bay Area.

9 MR. RIMPO: That's correct. To the edge of
10 the Bay Area air district past the Golden Gate.

11 COMMISSIONER YOUNG: And that's a fair
12 comparison?

13 MR. RIMPO: Yes. That's the way that the
14 Bay Area requires it.

15 COMMISSIONER YOUNG: But on the question of
16 what type of transport puts populations more at risk,
17 are you saying that ships put populations more at risk
18 than trains?

19 MR. RIMPO: No, I'm not saying that, but we
20 did do a health risk assessment of train travel. And
21 even though the risk does increase slightly, it's not
22 -- it's less than significant based on the
23 Bay Area's thresholds.

24 COMMISSIONER YOUNG: Okay. If the -- if the
25 air quality district sets the threshold and the project

1 is still generating cumulatively considerable GHG
2 emissions, which I think we agree that it does, 13,600
3 tons over the 10,000 ton cap --

4 MR. RIMPO: That's true, but that's a
5 state-wide analysis.

6 Within the Bay Area there's actually a
7 decrease.

8 COMMISSIONER YOUNG: I thought it was -- this
9 is the Bay Area. This is the air district itself
10 saying the 13,609.

11 MR. RIMPO: Yeah, but we -- we did that
12 comparison for the entire state for the emissions
13 within the State of California.

14 COMMISSIONER YOUNG: Don't we have to analyze
15 the project in relation to its submissions here in
16 Benicia and how it impacts the Climate Action Plan, for
17 example? We're saying that it's in conformance with
18 the Climate Action Plan.

19 MR. RIMPO: That's correct.

20 COMMISSIONER YOUNG: And the Climate Action
21 Plan has a limit of 10,000 tons.

22 MR. RIMPO: The Climate Action, Plan, I don't
23 think, specifies 10,000 tons. That's the Bay Area air
24 district's threshold.

25 COMMISSIONER YOUNG: And that's what the

1 Climate Action Plan uses as a threshold, I believe.

2 MR. RIMPO: I'd have to check that out.

3 COMMISSIONER YOUNG: Okay.

4 MR. RIMPO: I think there's a threshold
5 specifically in the plan.

6 COMMISSIONER YOUNG: All right. Well, I'll
7 move on. Thank you.

8 On the issue of financial responsibility in
9 the event of an accident.

10 BCDC wrote a letter about this question. And
11 the consultant pointed to SB-861 in the response
12 which -- and 861 requires affected entities, including
13 refineries and including railroads, to submit this oil
14 spill contingency plan and a certificate of financial
15 responsibility.

16 The guy from UP didn't know if they had, in
17 fact, submitted this plan yet. It was due January 1st
18 but he's going to get back to us on that. And I guess
19 Valero also has to submit such a plan.

20 In January 2015 the Wall Street Journal had an
21 article about how under insured railroads hauling crude
22 oil are and concluded they would be unable to cover the
23 cost of an oil train explosion in an urban area.

24 According to the journal's story, even if they
25 wanted to buy insurance for a catastrophic accident, no

1 one would sell it to them.

2 Marsh and McLennan is a company that sells
3 insurance to railroads. James Beardly at that firm was
4 quoted in the article saying, quote, there's not enough
5 coverage in the commercial market anywhere in the world
6 to cover a worst case derailment scenario.

7 The worst derailment so far was in Quebec, and
8 that had estimated liabilities of two billion dollars
9 and cleanup costs of about 200 million dollars. But
10 the shipper in that case is denying responsibility
11 since they weren't the owner of the oil.

12 Meanwhile, the railroad declared bankruptcy
13 and the local and the provincial governments are on
14 their own so far in rebuilding their town.

15 After the tar sands spill in Michigan in 2011,
16 where tar sands sunk to the bottom of the Kalamazoo
17 River because tar sands are heavier than water, that
18 cleanup is still going on five years later, and the
19 costs are approaching one billion dollars.

20 The National Transportation Safety Board sent
21 a letter to the Federal Railway Administration stating
22 that railways, quote -- railways quote are not required
23 to develop detailed emergency response plans for crude
24 oil shipments.

25 As a result, the burden of responsibility of

1 responding to an accident or remediating the aftermath
2 is still left with local communities.

3 The chair woman of the National Transportation
4 Safety Board testified before the Senate and said,
5 quote, no community is prepared for a worst case event.

6 So my question: Who would be responsible for
7 the cost of cleanup if there were a derailment outside
8 Valero's property?

9 Anybody?

10 MS. SCOTT: Union Pacific has -- Lisa Stark of
11 Union Pacific.

12 COMMISSIONER YOUNG: I'm sorry. I can't hear
13 you.

14 MS. SCOTT: Lisa Stark of Union Pacific
15 testified before the Planning Commission in response
16 to -- or during the comment period for the revised
17 draft EIR, that that responsibility is Union Pacific's.

18 COMMISSIONER YOUNG: And I heard her and she
19 said they take full responsibility, but I think I would
20 like to see that in writing.

21 UNIDENTIFIED SPEAKER: Yeah.

22 COMMISSIONER YOUNG: Because it's potentially
23 huge money.

24 MS. SCOTT: Her testimony is in writing. It's
25 part of the final EIR.

1 COMMISSIONER YOUNG: And you --

2 MS. SCOTT: It's in the transcript.

3 COMMISSIONER YOUNG: -- think that's
4 sufficient to put UP on the hook for any accident?

5 MS. SCOTT: It's in writing. She said it. It
6 was her testimony before this body.

7 COMMISSIONER YOUNG: Maybe a question for the
8 gentleman from UP. It's about insurance. Maybe you
9 can answer it, maybe you can't.

10 Do you know how much liability insurance UP
11 carries?

12 (No audible response.)

13 COMMISSIONER YOUNG: Okay. Now when oil is
14 moved by --

15 UNIDENTIFIED SPEAKER: I don't.

16 COMMISSIONER YOUNG: Okay. I got that.

17 When oil is moved by tanker, the tankers are
18 required to post a bond to cover the cost of clean up
19 of any spills.

20 Are there any similar requirements for
21 transporting crude by rail where the rail has to put up
22 a bond to cover the cost of cleanup?

23 Anybody know that one?

24 (No audible response.)

25 COMMISSIONER YOUNG: No. Okay.

1 So the other follow-up question would be how
2 big is that bond? Does it cover all the cleanup cost?
3 And does it cover property damage?

4 So what you're saying is UP has already agreed
5 to cover all the costs of cleanup, property repair and
6 damages.

7 MS. SCOTT: Her testimony was that UP would be
8 fully responsible for the cleanup.

9 COMMISSIONER YOUNG: With that question -- I
10 wrote -- that was one of my questions in my comments on
11 the draft EIR.

12 And the answer from the consultant -- and
13 maybe it wasn't you -- was, quote, in the event of a
14 disaster, questions of liability ultimately will be
15 addressed by insurance companies and the courts.

16 And questions about UP and Valero's insurance
17 was beyond the scope of the EIR.

18 So, you know, it seems that there's a pretty
19 significant risk that something happens between here
20 and Davis, or here and Roseville, some local government
21 is going to be on the hook for cleanup.

22 Again for the gentleman from UP.

23 Are you familiar with the oil spill liability
24 trust fund?

25 (No audible response.)

1 COMMISSIONER YOUNG: Okay. Well, it basically
2 says that oil companies have to pay eight cents a
3 gallon excise tax into this trust fund to pay for oil
4 spills.

5 But in 1980 Congress passed a law that said
6 diluted bitumen which is tar sands wasn't really oil.
7 And in 2011 the IRS ruled that oil companies don't need
8 to pay the tax on tar sands oil.

9 So the oil spill fund itself is about to run
10 out of money because of the cost of that accident in
11 Kalamazoo, there is no more money in this fund, so
12 who's responsible for cleaning up the -- or paying for
13 the cleanup of an oil spill -- for the spill of
14 Tar Sands' oil if it there's no trust fund money?

15 And I guess what you're saying is you think
16 it's -- UP has already agreed to do that.

17 And, again, I would like to see something from
18 UP in writing. I know you say that -- and maybe it's
19 sufficient. Maybe our attorney can give me some
20 feeling of confidence that what UP said in their
21 comments and in their written statement is sufficient
22 protection for the city from any cost, potential
23 liability, or property damage cost.

24 MR. HOGIN: I would say the answer's no.

25 If you're talking about looking for some kind

1 of a contractual commitment on UP's part to cover the
2 cost of some future spill, I would say no, it's not
3 sufficient.

4 COMMISSIONER YOUNG: Thank you.

5 MR. HOGIN: I think perhaps the larger
6 question that one is getting at would be is UP
7 responsible under federal or state laws for remediating
8 the consequences of any spill.

9 I don't know the answer to that offhand, but I
10 strongly suspect the answer is probably yes.

11 COMMISSIONER YOUNG: Okay. Well, I know we
12 are getting close to 11:00 and I'm getting close to the
13 end if you want me to just power through these and --

14 CHAIR DEAN: Well, hang on one second here.

15 We're approaching 11:00. Typically the
16 commission doesn't go past 11:00. And we know that we
17 are going to have a substantial public comment tomorrow
18 night, so I'm going to suggest that we go until 11:00,
19 then we will continue the meeting until tomorrow.

20 Commissioner Young, do you think you could
21 wrap up in the next few minutes?

22 COMMISSIONER YOUNG: I'll do my best.

23 And, again, I thank the audience for their
24 patience as I get through this. I know it's a lot.
25 But I think it's important that all these questions get

1 answer -- asked and answered to the extent possible.

2 CHAIR DEAN: You want to hold your applause,
3 please.

4 Let the Commissioner continue.

5 COMMISSIONER YOUNG: So my last section really
6 has to do with the type of crude oil that's going to be
7 delivered and the whole question of trade secrets and
8 confidential business information.

9 I assume that Valero is still taking the
10 position that they don't want to disclose the type of
11 crude that they are going to be importing.

12 And I guess my question has to do with this
13 legal theory -- and maybe it's more than a theory --
14 about trade secrets and confidential business
15 information. Is -- and maybe the attorney can help me
16 out here.

17 Is this something that's codified in law?

18 MR. HOGIN: Yes. CEQA prohibits the city from
19 releasing information that the applicant, in this case
20 Valero, provides that's labelled trade secret as long
21 as the city is confident that the nature of the
22 information is such that trade secret protection could
23 apply in a --

24 COMMISSIONER YOUNG: In this case they made
25 that --

1 MR. HOGIN: Yes.

2 COMMISSIONER YOUNG: -- conclusion.

3 MR. HOGIN: Yes. And there is extensive
4 discussion of this in the EIR, including, among other
5 things, discussion, I believe, from Mr. --
6 Dr. McGovern, and there's also a legal discussion in
7 the EIR about the principles that apply.

8 COMMISSIONER YOUNG: So is it a voluntary --
9 it's a voluntary -- it's a voluntary thing on the part
10 of the corporation to say whether or not they are
11 claiming this.

12 MR. HOGIN: Yes.

13 COMMISSIONER YOUNG: And is there any fine or
14 sanction for somebody who discloses information?

15 MR. HOGIN: They could be subject to
16 liability. They could be sued for doing something like
17 that.

18 COMMISSIONER YOUNG: All right.

19 So when all these other oil companies say that
20 they are processing, Bakken or Tar Sands, that's just
21 an independent decision they are making and there is no
22 trade secret involved because they are disclosing it
23 voluntarily.

24 MR. HOGIN: Yeah. I'm not sure what --
25 exactly what disclosure you are talking about.

1 COMMISSIONER YOUNG: Right.

2 MR. HOGIN: But, yes, that --

3 COMMISSIONER YOUNG: For example.

4 MR. HOGIN: Yeah.

5 COMMISSIONER YOUNG: The Contra Costa Times,
6 June 1st, 2013. The Shell refinery and Martinez is
7 currently receiving and processing Tar Sands.

8 The -- in March twenty nine -- 2014, the
9 Contra Costa Times quoted Tina Barbie from Tesoro
10 confirming that Tesoro was receiving five to 10,000
11 barrels a day of Bakken crude.

12 On June 1st, 2013, the Times reported that the
13 Phillips 66 refinery in Rodeo was bringing in tar sands
14 crude and that Chevron was refining it and that Shell
15 and Martinez was receiving processed Tar Sands oil.

16 The oil blog Inside Energy said that in 2014
17 the vast majority of crude oil traveling by rail came
18 from the Bakken Shale formation. And they came to this
19 conclusion by looking at the freight receipts kept by
20 railroad companies.

21 So we have a situation where all -- I don't
22 know about all -- but many of Valero's competitors are
23 admitting that they are using Bakken Crude and
24 Tar Sands. In this case Valero doesn't want to say the
25 same things, and that's their right as I understand it.

1 Their -- however, this is from a website -- a
2 financial website called ADVFN.

3 Valero Energy chief executive Bill Kless said
4 in a conference call that refineries should be in the
5 rail car business and that Valero spokesman, Bill Day,
6 said the company is buying a significant number of rail
7 cars to bring crude to refineries, and that Valero --
8 this is in an article in (inaudible) -- Valero was
9 refining 40,000 barrels a day of Bakken at its refinery
10 in Memphis.

11 So you've got both Mr. Day and Mr. Kless
12 talking about how Valero is refining Bakken in Memphis,
13 but Valero in Benicia doesn't want to say that they are
14 going to refine Bakken in Benicia.

15 And I'm not sure why -- what the big secret
16 is, but I think it is important that we -- that the
17 community have full understanding of what is being
18 proposed to be shipped and that the Planning Commission
19 have a full understanding of that question as well.

20 Okay. I'll stop.

21 Thank you.

22 CHAIR DEAN: Are you saying your comments are
23 complete -- or your questions?

24 UNIDENTIFIED SPEAKER: Yes, you are.

25 COMMISSIONER YOUNG: Pretty much. There's --

1 I want to talk a little bit about the economic impact.
2 It's not part of the EIR, but I will wait until Valero
3 makes their presentation or -- until we get to the
4 point of talking about the economic benefits or I can
5 do it now.

6 Your choice.

7 CHAIR DEAN: Well, I think we're getting close
8 to our witching hour of 11:00. This might be a good
9 stopping point.

10 COMMISSIONER YOUNG: Okay.

11 UNIDENTIFIED SPEAKER: Any disagreement from
12 the commission?

13 (No audible response.)

14 CHAIR DEAN: Okay. So with that I'm going to
15 continue this meeting until tomorrow night at 6:00.

16 MS. COHEN GROSSMAN: 6:30?

17 CHAIR DEAN: Excuse me. 6:30. 6:30. This
18 location tomorrow night. Look forward to seeing you
19 all again.

20 Thank you.

21 (End of video tape.)

22 (Whereupon, the proceedings concluded.)

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REPORTER'S CERTIFICATE

I SALLY BRONNER, Certified Shorthand Reporter in
and for the State of California do hereby certify:

That the foregoing transcription of taped
proceedings was transcribed by me to the best of my
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That the foregoing is a true record of the
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In WITNESS WHEREOF, I have subscribed my name
this date: February 23, 2016.

Sally Bronner, CSR NO. 7090