

**DOCKETED**

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BEFORE THE  
CALIFORNIA ENERGY COMMISSION

Application for Small Power )  
Plant Exemption for the: )  
  
CA3 Backup Generating ) Docket No. 21-SPPE-01  
Facility )  
\_\_\_\_\_ )

EVIDENTIARY HEARING

IN-PERSON AND REMOTE VIA ZOOM  
  
WARREN-ALQUIST STATE ENERGY BUILDING  
  
IMBRECHT HEARING ROOM, FIRST FLOOR  
  
1516 NINTH STREET,  
  
SACRAMENTO, CA 95814

FRIDAY, MAY 27, 2022

11:30 A.M.

Reported by:  
Martha Nelson

APPEARANCES

COMMISSIONERS

Siva Gunda, Presiding Member

Kourtney Vaccaro, Associate Member

HEARING OFFICERS

Susan Cochran, Hearing Officer II

COMMISSIONER ADVISORS

Ben Finkelor, Advisor to Vice Chair Gunda

Liz Gill, Advisor to Vice Chair Gunda

Erik Lyon, Advisor to Vice Chair Gunda

Natalie Lee, Advisor to Commissioner Vaccaro

Eli Harland, Advisor to Commissioner Vaccaro

STAFF

Lisa DeCarlo, Staff Counsel

Eric Veerkamp, Project Manager

PUBLIC ADVISOR

Noemi Gallardo, Public Advisor's Office

FOR APPLICANT

Scott Galati, Applicant Representative, Attorney, DayZen

APPEARANCES

PANELISTS

Shari Beth Libicki, Ramboll

Emily Weissinger

Brewster Birdsall, CEC

Huei-an (Ann) Chu, CEC

Wenjun Qian, CEC

Michael Stoner, Vantage

ALSO PRESENT

Debby Fernandez, City of Santa Clara

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1 MAY 27, 2022

11:35 a.m.

2 VICE CHAIR GUNDA: Good morning. We're on the  
3 record. The time is 11:35 a.m. on May 27th, 2022. This is  
4 the Evidentiary Hearing for the Application for a Small  
5 Power Plant Exemption for CA3 Backup Generating Facility.

6 I'm Siva Gunda, the Vice Chair and Presiding  
7 Member of the Committee assigned to conduct proceedings on  
8 the Application. Commissioner Kourtney Vaccaro is here  
9 today and is the Associate Member of this Committee.  
10 Commissioner Vaccaro and I, along with other members of  
11 Staff and the public, are present in the Warren-Alquist  
12 State Energy Building in Sacramento. In addition, some  
13 people are participating remotely today using Zoom.

14 Before we begin, I would like to make  
15 introductions of the following individuals who may be  
16 participating in today's Prehearing Conference [sic].  
17 Natalie Lee and Eli Harland, Commissioner Vaccaro's  
18 advisors, Ben Finkelor, Liz Gill, and Erik Lyon, my  
19 advisors, Susan Cochran, the Hearing Officer for this  
20 proceeding. I would also like to introduce Noemi Gallardo  
21 from the Public Advisor's Office.

22 I would ask the parties to please introduce  
23 themselves and their panelists at this time, starting with  
24 the Applicant.

25 MR. GALATI: Good afternoon, Commissioners and

1 Members of the Committee. My name is Scott Galati. I  
2 represent Vantage Data Centers.

3 On the phone today, and they can be called as  
4 witnesses, if necessary, are Michael Stoner, he is the  
5 consultant to Vantage Data Centers and has been largely in  
6 charge of a lot of the permitting of this project and was  
7 the Vantage that you saw in the McLaren project, which is  
8 their CA2 project. And, also, we have Simon Casey, who is  
9 with Vantage, and he is in charge of the development of  
10 this project and others in the area.

11 We also have two experts. I have Dr. Shari Beth  
12 Libicki from Ramboll who did -- worked on the air quality  
13 and public health section, and also the gas section, as  
14 well as she's supported also by Emily Weissinger. Those  
15 two will be a panel today for testifying in their knowledge  
16 on the subject of air quality.

17 That's all our introductions now. Thanks.

18 VICE CHAIR GUNDA: Thank you, Mr. Galati.

19 Now Staff.

20 MS. DECARLO: Good morning. Lisa DeCarlo, Energy  
21 Commission Staff Attorney. With me is Eric Veerkamp,  
22 Energy Commission Project Manager. And online we have  
23 various staff, including our witnesses for today, to  
24 respond to Committee questions, and they are Mr. Brewster  
25 Birdsall, Dr. Huei-an (Ann) Chu, and Dr. Wenjun Qian.

1 VICE CHAIR GUNDA: Thank you, Ms. DeCarlo.

2 And now, if there are any elected officials or  
3 representatives from any local state or federal governments  
4 or agencies, or from any Native American tribes, please  
5 introduce yourself if you are in the room, or by raising  
6 your hand so that we can unmute you online, or by pressing  
7 star nine to raise your hand and star six to unmute if  
8 you're participating by phone. I see no representatives  
9 from any other governments or agencies or from any Native  
10 American tribes.

11 With that, I do not have any further comments. I  
12 would look to Commissioner Vaccaro if she has any opening  
13 comments? None from Commissioner Vaccaro.

14 I will now hand over the conduct of this  
15 Prehearing Conference to Hearing Officer Susan Cochran.

16 HEARING OFFICER COCHRAN: Thank you, Vice Chair  
17 Gunda.

18 Good morning. My name is Susan Cochran and I am  
19 one of the hearing Officers with the California Energy  
20 Commission who have been assigned to the CA3 proceeding.  
21 My role is to assist the Committee, including assisting  
22 with the conduct of Committee events, like today's  
23 Evidentiary Hearing.

24 The Committee noticed today's Evidentiary Hearing  
25 in the Revised Notice of Prehearing Conference and



1 Evidentiary Hearing and Revised Scheduling Order issued on  
2 May 13, 2022. The notice for today's Evidentiary Hearing,  
3 as well as other documents that we will be referring to  
4 today, are available in the online docket system that the  
5 Energy Commission uses. The Docket Number for CA3 Backup  
6 Generating Facility Project is 21-SPPE-01. In addition to  
7 the online docket, the Public Advisor's Office is  
8 available -- the Public Advisor's Office is available to  
9 assist the public in accessing documents.

10 I've just received a message that Debby Fernandez  
11 from the City of Santa Clara is online with us this  
12 morning; is that correct? And, if so, can we promote her  
13 to panelist in the event that she needs to speak? Debby,  
14 D-E-B-B-Y, Fernandez, F-E-R-N-A-N-D-E-Z. Okay. If she  
15 should come back, please. Thank you so much.

16 Sorry about that.

17 Before we proceed with the substantive portion of  
18 this Evidentiary Hearing, I would like to discuss  
19 housekeeping issues.

20 The Evidentiary Hearing is being held in a hybrid  
21 format. The Commissioners and I, as well as some of the  
22 parties and their representatives are present in the  
23 Warren-Alquist Building in the Imbrecht Hearing Room.  
24 Other participants are using Zoom today.

25 We have set up the Zoom meeting for

1 today's event so that the parties and identified witnesses  
2 are panelists. This means that they will be able to mute  
3 and unmute themselves to speak and have the option to use  
4 the video feature. Please note that if you are making  
5 noise that disrupts the meeting, we may mute you. When you  
6 need to speak you will need to raise your hand to have your  
7 microphone turned back on again.

8 To find your participation options, look for the  
9 black bar at the bottom of your Zoom screens. If you want  
10 to be recognized, please use the raise-hand feature which  
11 either looks like an open palm or a high-five. If you are  
12 on your phone, press nine to raise your hand. If you have  
13 muted your phone by pressing star six, please be sure to  
14 unmute yourself by pressing star six again. The raise-hand  
15 feature creates a list of speakers based on the time when  
16 your hand was raised. We will call on you in that order.

17 The general public will have an opportunity to  
18 today. The public comment will be toward the end of the  
19 Evidentiary Hearing.

20 A court reporter is online via Zoom and that  
21 person is taking down all of the discussion and will  
22 prepare a transcript of what is said. To ensure that we  
23 have a complete and accurate transcript, I must first ask  
24 that only one person speak at a time. Second, please  
25 identify yourself before you speak. And when you speak for

1 the first time, please say and spell your name slowly.  
2 Remote participation for some people makes it harder for  
3 the court reporter and me to identify who is speaking or  
4 who wishes to be recognized.

5 If you run into difficulties with Zoom, please  
6 contact the Public Advisor's Office or Zoom's Help Center.  
7 The contact information for both is on this being currently  
8 displayed and is also in the notice for today's hearing?

9 Are there any questions about how to use Zoom for  
10 today's Evidentiary Hearing? If you are on Zoom, please  
11 raise your hand and we will do our best to respond to your  
12 question. Remember that it's star nine if you are on the  
13 phone.

14 Ms. Fernandez, would you like to introduce  
15 yourself? I understand you are now a panelist in our  
16 proceeding.

17 Is she unmuted, Ms. Castro? Perhaps she's shy.  
18 So let's continue on.

19 Ms. Fernandez, if you wish to speak or be  
20 recognized, please raise your hand, either using star nine  
21 if you're on the phone or the raise-hand feature on the  
22 Zoom screen.

23 Oh, so let's recognize her.

24 MS. CARLOS: Ms. Fernandez, you're unmuted if you  
25 can unmute on your end.

1 MS. FERNANDEZ: Hello. Good morning. Can you  
2 hear me?

3 HEARING OFFICER COCHRAN: Yes, thank you. Please  
4 proceed.

5 MS. FERNANDEZ: Oh, thank you. Good morning.  
6 I'm Debby Fernandez with the City of Santa Clara Planning  
7 Department and I'm the Project Manager, excuse me, for this  
8 application on the city side.

9 HEARING OFFICER COCHRAN: Thank you, Ms.  
10 Fernandez, for being here today.

11 The purpose of today's Evidentiary Hearing is to  
12 receive exhibits, testimony, and other evidence from the  
13 parties.

14 In case anyone missed the Prehearing Conference  
15 on Tuesday, May 24th, and is joining this proceeding for  
16 the first time today, I will start by providing some  
17 background and briefly describing the Application that is  
18 the subject of today's proceeding. I will then describe a  
19 Small Power Plant Exemption. And I will describe where we  
20 are in this proceeding.

21 After I give the background, I will then ask for  
22 motions on the exhibits. After that the Committee will  
23 call for testimony on the questions it asked by order on  
24 May 25, 2022, which I will describe later. There will then  
25 be an opportunity for public comment.

1           The Committee has also given notice that it may  
2 adjourn to a closed session. Following the closed session,  
3 we will adjourn the Evidentiary Hearing, if appropriate.

4           As previously stated by Vice Chair Gunda, this  
5 Evidentiary Hearing concerns the Application for a Small  
6 Power Plant Exemption, SPPE, for the CA3 Backup Generating  
7 Facility filed by the Applicant in April 2021.

8           The Applicant proposes to install and operate 44  
9 diesel-fired backup generators to provide an  
10 uninterruptable power supply to the CA3 Data Center. And  
11 the project is to be located at 2590 Walsh Avenue in Santa  
12 Clara, California. Each generator is capable of providing  
13 up to 2.75 megawatts of power to meet the Data Center load  
14 of 96 megawatts.

15           In addition, the Applicant will construct a  
16 Substation for the Silicon Valley Power, the local  
17 electricity provider, along the western border of the  
18 project site.

19           The backup generators will not be able to deliver  
20 power off the grid. Instead, the generators would only  
21 serve the Data Center load.

22           Public Resources Code section 25541 specifies  
23 that the CEC may grant an SPPE only when it makes three  
24 separate and distinct findings. First, the proposed power  
25 plant has a generating capacity up to 100 megawatts. Two,

1 no substantial adverse impact on the environment will  
2 result from the construction or operation of the power  
3 plant. And three, no substantial adverse impacts on energy  
4 resources will result from the construction or operation of  
5 the power plant.

6 In addition, the Energy Commission acts as the  
7 lead agency under CEQA, the California Environmental  
8 Quality Act. In reviewing an SPPE, the Energy Commission  
9 considers the, quote, "whole of the action," closed quote.  
10 For the Application, the whole of the action means the  
11 backup generators, the Data Center, and the other project  
12 features, such as the Substation. I will refer to all of  
13 those as, collectively, as the Project.

14 To assist the Committee in analyzing the Project  
15 under both the Warren-Alquist Act and CEQA, Staff prepared  
16 and circulated for public review and comment a Draft  
17 Environmental Impact Report, Draft EIR, on January 21,  
18 2022, and filed errata to the Draft EIR on January 27,  
19 2022. The public review and comment period ended on  
20 March 9, 2022, with comments being received from Applicant,  
21 the Bay Area Air Quality Management District, who I will  
22 refer to as Bay Area, and Andrew Radarman.

23 Staff prepared a Final EIR and published it on  
24 March 24, 2022. The Final EIR consisted of the Draft EIR,  
25 the comments received on the Draft EIR, responses to those

1 comments, and a Mitigation Monitoring or Reporting Program.

2 As set forth in the May 13th notice and discussed  
3 at the Prehearing Conference, this Evidentiary Hearing is  
4 conducted using an informal hearing procedure. The hearing  
5 will be conducted in a hybrid format with both in-person  
6 participation and participation on Zoom. We ask but do not  
7 require that participants on Zoom share video of  
8 themselves.

9 Are there any questions about the conduct of  
10 today's hearing, Mr. Galati?

11 MR. GALATI: No.

12 HEARING OFFICER COCHRAN: Ms. DeCarlo?

13 MS. DECARLO: No.

14 HEARING OFFICER COCHRAN: Thank you.

15 The parties were initially ordered to file  
16 exhibit lists on May 2nd, 2022. During the May 24  
17 Prehearing Conference the Committee indicated that it would  
18 be requiring additional information from the parties  
19 concerning the cumulative health risk assessment contained  
20 in the Final EIR.

21 On May 25, 2022, the Committee filed the orders  
22 regarding Committee questions. The May 25 orders ordered  
23 any party submitting additional evidence in response to the  
24 Committee's questions file a revised exhibit list by 10:00  
25 a.m. today.

1           Applicant filed its supplemental Exhibit List on  
2 May 25, 2022. Thank you, Mr. Galati.

3           Staff, I have not seen a supplemental exhibit  
4 list from you. Did you file one?

5           MS. DECARLO: No.

6           HEARING OFFICER COCHRAN: Thank you, Ms. DeCarlo.

7           Ms. Tran, would you please display the Exhibit  
8 List.

9           The revised Exhibit List displayed on screen has  
10 been compiled by the Hearing and Advisory Unit and is a  
11 complete list of the exhibits identified by the parties as  
12 of today. At this time, I will ask the parties  
13 individually if they wish to move exhibits into evidence.

14           First, Applicant has identified Exhibits 1  
15 through 43.

16           Mr. Galati, do you have a motion regarding your  
17 exhibits?

18           MR. GALATI: Yeah. I make a motion to move  
19 Exhibits 1 through 43 into the evidentiary record.

20           HEARING OFFICER COCHRAN: Thank you.

21           Ms. DeCarlo, do you have any objection to the  
22 Commission and the Committee receiving Exhibits 1 through  
23 43?

24           MS. DECARLO: No objection.

25           HEARING OFFICER COCHRAN: Thank you, Ms. DeCarlo.



1           With that, we will admit Applicant's Exhibits 1  
2 through 43 into evidence.

3           (Applicant Exhibits 1 through 43 are admitted.)

4           HEARING OFFICER COCHRAN: Next, Staff previously  
5 identified Exhibits 200 to 206.

6           Ms. DeCarlo, do you have a motion regarding your  
7 exhibits?

8           MS. DECARLO: Yes. Staff makes a motion to move  
9 Exhibits 200 to 206 into the record.

10          HEARING OFFICER COCHRAN: Mr. Galati, do you have  
11 any objection?

12          MR. GALATI: No objection.

13          HEARING OFFICER COCHRAN: With that, we admit  
14 Staff's Exhibits 200 to 206 into evidence.

15          (Staff Exhibits 200 through 206 are admitted.)

16          HEARING OFFICER COCHRAN: In the prior notice for  
17 the Prehearing Conference, the Presiding Member had asked  
18 the parties to respond to an issue regarding the cumulative  
19 impacts analysis for health risk based on the Project's  
20 exceedance of the cancer risk and annual PM2.5 emissions  
21 threshold of significance.

22          Both Staff and Applicant filed responses to the  
23 questions in their rebuttal testimony. While the responses  
24 differed, both parties agreed that the impacts from the  
25 Project were not cumulative considerable and, therefore, no

16

1 mitigation was required.

2           The Committee issued the May 25th order to seek  
3 additional information from the parties on two questions.

4           First, the Committee reads the FEIR as using a  
5 numeric threshold to determine whether there are cumulative  
6 exceedances for various emissions. The FEIR's analysis  
7 shows that those thresholds are exceeded as more thoroughly  
8 described above.

9           Under Bay Area's 2017 CEQA Guidelines, which  
10 established the thresholds of significance used in the  
11 FEIR, the exceedances are presumptively cumulatively  
12 considerable. Nonetheless, the FEIR claims that there is  
13 not a significant impact.

14           The Committee then asked the parties to explain  
15 whether the Committee is correctly understanding the FEIR.  
16 If the Committee is not correctly understanding the FEIR,  
17 we ask the parties to provide specific citations to  
18 information in the record or law that supports a different  
19 conclusion. If the Committee is correctly understanding  
20 the FEIR, please describe the process and procedure to make  
21 the Final EIR CEQA compliant.

22           The second question posed by the Committee was,  
23 under CEQA, once a significant impact is identified, then  
24 the next question is what mitigation is available to reduce  
25 the severity of the impact? We asked the parties to please

1 describe any existing or proposed mitigation measures that  
2 would reduce the Project's apparent exceedances of a  
3 cumulative threshold for cancer risk and annual PM2.5  
4 emissions.

5           Applicant filed written supplemental testimony  
6 stating that the analysis contained in the FEIR  
7 significantly overestimated the cumulative cancer risk and  
8 PM impacts. Applicant provided a refined analysis that  
9 shows no exceedances of Bay Area thresholds of  
10 significance.

11           Applicant further states that the information  
12 does not require recirculation of the FEIR because it does  
13 not reveal a new significant environmental impact, shows a  
14 substantial increase in the severity of an environmental  
15 impact, and is not a proposed alternative and mitigation  
16 measure, and the FEIR is not so inadequate as to preclude  
17 meaningful public review and comment.

18           Staff did not prefile written supplemental  
19 testimony.

20           At this time, I would like to ask the parties to  
21 provide their witnesses on the topic. As stated in the  
22 notice of the Evidentiary Hearing, we will swear the  
23 witnesses from both parties in as a panel. Applicant's  
24 witnesses may offer a brief opening statement, then Staff's  
25 witnesses may offer a brief opening statement. After these

1 opening statements, the witnesses may then we questioned  
2 first by the Committee, then Staff, then Applicant.  
3 Witnesses may also ask questions of each other.

4 At this time, Mr. Galati, could you please  
5 identify who will be testifying on behalf of Applicant?

6 MR. GALATI: Yes. I'll have Dr. Shari Beth  
7 Libicki please be sworn to testify on behalf of the  
8 Applicant, and Emily Weissinger. And they will be  
9 testifying as a panel.

10 HEARING OFFICER COCHRAN: Thank you.

11 Dr. Libicki, are you on the line, please?

12 Please make sure that she is unmuted.

13 Dr. Libicki, are you unmuted on your end?

14 MS. CARLOS: I can see her nodding her head.

15 HEARING OFFICER COCHRAN: Dr. Libicki, I'll need  
16 you to answer verbally, out loud.

17 DR. LIBICKI: Okay, how's that? Is that better?

18 HEARING OFFICER COCHRAN: Perfect. Thank you.

19 Could you please spell your name?

20 DR. LIBICKI: Shari, S-H-A-R-I, Beth, B-E-T-H,  
21 Libicki, L-I-B, as in boy, -I-C-K-I.

22 HEARING OFFICER COCHRAN: And could you raise  
23 your hand and be sworn?

24 (Sheri Beth Libicki was sworn.)

25 HEARING OFFICER COCHRAN: Thank you.

1 Ms. Weissenberg [sic] are you like and on the  
2 phone?

3 MS. WEISSINGER: I am.

4 HEARING OFFICER COCHRAN: Could you please spell  
5 your name for the record?

6 MS. WEISSINGER: Emily, E-M-I-L-Y, Ann, A-N-N,  
7 Weissinger, W-E-I-S-S-I-N-G-E-R.

8 (Emily Ann Weissinger was sworn.)

9 HEARING OFFICER COCHRAN: Thank you.

10 Ms. DeCarlo, can you please identify the Staff  
11 witnesses?

12 MS. DECARLO: Yes, but initially, I have a  
13 question for the Committee. So I had intended to give the  
14 opening statement on behalf of Staff. It's really  
15 addressing kind of the overarching legal kind of place of  
16 the BAAQMD Guidelines, if that's okay?

17 HEARING OFFICER COCHRAN: That's perfectly  
18 reasonable.

19 MS. DECARLO: Okay. Okay, great. Yes, our  
20 witnesses are Mr. Brewster Birdsall, Dr. Huei-an (Ann) Chu,  
21 and Dr. Wenjun Qian. And they are all on land.

22 HEARING OFFICER COCHRAN: Okay.

23 Mr. Birdsall?

24 MR. BIRDSALL: Hello. Good morning.

25 HEARING OFFICER COCHRAN: Just a quick question,

20

1 Ms. DeCarlo. Sorry. Excuse me one sec.

2 So is it more in the nature of sort of a legal  
3 argument? I mean, you're not purporting to like be sworn  
4 in and to give testimony? I just want to be clear because  
5 the other witnesses are actually giving testimony that we  
6 are going to treat as such. And so you're just sort of --  
7 I just want to be clear on what you are going to be doing.

8 MS. DECARLO: Yes. I'm just framing the  
9 conversation from Staff perspective. And then the detail  
10 will be provided by technical staff to the point of actual  
11 evidence, technical information, how they actually applied  
12 the Guidelines.

13 HEARING OFFICER COCHRAN: Thanks. I think that  
14 makes sense but then I want to offer Mr. Galati that same  
15 opportunity, if there was any framing that you wanted to do  
16 in advance of witnesses giving their testimony? If not,  
17 that fine. But it just seems to me equal dignities are to  
18 go ahead and provide that opportunity to both.

19 MR. GALATI: Thank you. I'll take about a minute  
20 and do that, as well, after Staff does.

21 HEARING OFFICER COCHRAN: So, again, we're not  
22 treating the comments that are made by Counsel as  
23 testimony, so no oath will be administered.

24 So turning to Mr. Birdsall, are you available and  
25 on the line?

1 MR. BIRDSALL: Hello. I am. First name --

2 HEARING OFFICER COCHRAN: Do you --

3 MR. BIRDSALL: Oh.

4 (Brewster Birdsall was sworn.)

5 HEARING OFFICER COCHRAN: Thank you.

6 Dr. Chu, are you available and on the line?

7 DR. CHU: Yes. Yes. Can you hear me?

8 HEARING OFFICER COCHRAN: Yes. Thank you.

9 (Huei-an Ann Chu was sworn.)

10 HEARING OFFICER COCHRAN: Thank you.

11 And, finally, Dr. Qian, are you available and on  
12 the line?

13 DR. QIAN: Yes.

14 (Wenjun Qian was sworn.)

15 HEARING OFFICER COCHRAN: So as I stated  
16 previously, the Committee reads the FEIR as using a numeric  
17 threshold to determine whether there are cumulative  
18 exceedances for various emissions. The FEIR's analysis  
19 shows the thresholds are exceeded under BAAQMD's CEQA  
20 Guidelines which established those thresholds of  
21 significance. The exceedances are presumptively  
22 considerable. Nonetheless, the FEIR claims that there is  
23 not a significant.

24 Ms. DeCarlo, I believe you wish to make a framing  
25 statement about this issue --

1 MS. DECARLO: Yes. Thank you.

2 HEARING OFFICER COCHRAN: -- that is not  
3 testimony.

4 OPENING STATEMENT BY STAFF

5 MS. DECARLO: Correct. Yes. Yes. Thank you.  
6 Yeah. As I mentioned, Lisa DeCarlo, D-E-C-A-R-L-O,  
7 representing Energy Commission Staff. So this is just kind  
8 of an overarching framing. And then Staff will present  
9 additional detail and respond to any questions the  
10 Committee may have specific to this.

11 So let me just start off by saying Staff does not  
12 consider the BAAQMD-CEQA Guidelines a model of clarity.  
13 And it's only recently that we've started including this,  
14 what we'll call, the cumulative threshold in our analysis.  
15 And we've done that at the request of the Bay Area Air  
16 Quality Management District. But we're still wrestling  
17 with what import that has in the analysis. And I'll go on  
18 to explain why that is.

19 The Guidelines themselves are confusing and  
20 appear to be internally inconsistent in several places.  
21 But it's also true that we, ourselves, need to provide more  
22 clarity in our analysis as we move forward, so we  
23 understand the Committee's wrestling with what we're trying  
24 to say in our FEIR, as well.

25 I would just note as we dive into this, you know,



1 and parsing out the confusion, that the Guidelines are,  
2 ultimately, advisory. And lead agencies are directed to  
3 rely on substantial evidence most appropriate for the  
4 project being studied, so that's kind of our guiding star  
5 as we're trying to interpret these Guidelines, what's most  
6 appropriate for analyzing the project we have before?

7           And so, ultimately, where the Guidelines are  
8 inconsistent, the CEC does have discretion to resolve such  
9 inconsistencies, as necessary, to evaluate the project  
10 before it, which Staff has been trying to do.

11           The Guidelines themselves present two thresholds  
12 that are at issue here, right, with the health risk  
13 assessment which analyzes the toxic air contaminants and  
14 PM2.5. There's the individual project threshold of  
15 significance for excess cancer risk and PM2.5 that states  
16 that an exceedance of these levels, quote, "would be a  
17 cumulatively considerable contribution," end quote. So  
18 that, in itself, bakes in this idea of cumulative impacts.

19           But then, after that, the Guidelines go on to  
20 say -- to identify another threshold which it calls  
21 cumulative impacts but it doesn't explain how this  
22 threshold interrelates with the previously identified  
23 threshold. This portion of the Guidelines identifies when  
24 the aggregate total of sources in a 1,000-foot radius would  
25 be considered significant but it does not specify what

1 portion of that total attributable to a source would be  
2 considered cumulatively considerable contribution to that  
3 significant impact. That's a mouthful and kind of that's  
4 the beginning of the complications.

5           So what CEQA does, right, you have -- and when  
6 you're addressing cumulative impacts you first identify, is  
7 there a significant cumulative problem? And then -- that's  
8 step one. And then you go on to identify or analyze  
9 whether your project, the project before you, contributes  
10 significantly to that problem.

11           So the problem with the BAAQMD-CEQA Guidelines  
12 for the cumulative threshold is it stops at step one. It  
13 says, okay, here's the significant -- here's when there's a  
14 significant cumulative problem, but it doesn't step two to  
15 direct us how to determine whether the project we're  
16 reviewing actually cumulatively contributes to that  
17 problem. We see the first threshold as doing that, that  
18 individual project threshold. That, in Staff's view, is  
19 the one that says, okay, projects, if you exceed this  
20 standard, you are contributing to a cumulative impact and  
21 you need to mitigate or whatever steps need to be taken.

22           The problem with not identifying a cumulatively  
23 considerable contribution level in that second cumulative  
24 threshold that BAAQMD identifies is that we're left with  
25 this idea of is it a one-molecule threshold or is it not?

1 BAAQMD doesn't -- the Guidelines themselves don't  
2 elaborate, no supporting information that we could find  
3 elaborates on that, so we really struggled. It can't be  
4 that zero emissions would result in a cumulatively  
5 considerable impact from that; right? But BAAQMD  
6 doesn't -- that threshold doesn't address the situation  
7 where you have a project but it's not emitting anything.  
8 If you take a plain reading of the threshold, it would say,  
9 okay, that project is cumulatively considerable as well.

10           So we're really tried to figure out, basically --  
11 so you have a significant underlying impact. To what  
12 extent is the project itself responsible for a cumulative  
13 impact?

14           So the courts have made clear that there is no  
15 one-molecule rule baked into the law. An EIR must consider  
16 not just whether the cumulative impact is significant but,  
17 also, whether the proposed project's incremental effects  
18 are cumulatively considerable. And as I mentioned, the  
19 CEQA Guidelines clearly establish this two-step process  
20 which directs agencies to first consider whether the  
21 cumulative impact is significant and then whether the  
22 effects of the project are cumulatively considerable? The  
23 mere existence of a significant cumulative impact caused by  
24 other projects alone shall not constitute substantial  
25 evidence that the proposed project's incremental effects

1 are cumulatively considerable.

2           So, again, we really need to look at the project  
3 and conduct an evaluation of whether this project  
4 contribution is cumulatively significant. And I don't  
5 think that cumulative threshold that BAAQMD identified does  
6 that. It doesn't have that baked in, necessarily.

7           And BAAQMD itself has accepted this two-step  
8 approach in their own documents. They recently adopted  
9 updates to the CEQA thresholds for GHG and they say, quote,  
10 "Both parts of this test must be met for a project's impact  
11 to be treated as significant under CEQA." In this  
12 document, BAAQMD also says, in reference to CEQA,

13           "The statute does not require a so-called one  
14 additional molecule standard and some project's  
15 incremental contributions would be so minor that their  
16 impact does not have to be treated as significant,  
17 even though the project would add an additional amount  
18 to the significant cumulative impact."

19           The threshold under the Cumulative Impacts  
20 heading on page 2-5 of the BAAQMD-CEQA Guidelines, this is  
21 that cumulative threshold, they either ignore this second  
22 step entirely or conflate it with the first and, thus, it  
23 cannot be used to assess whether a project's contribution  
24 to a cumulative impact is cumulatively considerable.

25           And I would just note that Staff isn't alone in

1 not utilizing these cumulative thresholds in an analysis of  
2 cumulative impacts. I've gone through some recent filings  
3 in the last two years under the BAAQMD jurisdiction, not  
4 done by BAAQMD themselves but facilities that were  
5 proposing to be sited within, and they don't include. Some  
6 do. Some don't. So I think that Staff isn't alone in  
7 trying to wrestle with how exactly we need to apply these  
8 in our individual cases.

9 Nor can it be said that this threshold fails to  
10 appropriately consider the cumulative impacts of a project.  
11 Let's see. I'm sorry.

12 So I just want to take a step back and kind of go  
13 to this point that supports Staff's belief that this  
14 individual project threshold really encompasses this idea  
15 of cumulative impacts. And so take a look at some of the  
16 language introducing the BAAQMD Guidelines at the very  
17 beginning of the baa Guidelines document. BAAQMD itself  
18 says,

19 "Past, present, and future development projects  
20 contribute to the region's adverse air quality impacts  
21 on a cumulative basis. By its very nature, air  
22 pollution is largely a cumulative impact. No single  
23 project is sufficient in size to, by itself, result in  
24 nonattainment of ambient air quality standards.  
25 Instead, a project's individual emissions contribute

1 to existing cumulatively-significant adverse air  
2 quality impacts. If a project's contribution to the  
3 cumulative impact is considerable, then the project's  
4 impact on air quality would be considered  
5 significant."

6 And that's specific to criteria pollutants but  
7 the logic equally applies to the pollutants we're talking  
8 about here.

9 The Guidelines also state,  
10 "In developing thresholds of significance for air  
11 pollutants, BAAQMD considered the emission levels for  
12 which a project's individual emissions would be  
13 cumulatively considerable. If a project exceeds the  
14 identified significant thresholds, its emissions would  
15 be cumulative considerable, resulting in significant  
16 adverse air quality impacts to the region's existing  
17 air quality conditions. Therefore, additional  
18 analysis to assess cumulative impacts is unnecessary.  
19 The analysis to assess project-level air quality  
20 impacts should be as comprehensive and as rigorous as  
21 possible."

22 And, again, that's where we believe the  
23 individual project threshold that BAAQMD identified that  
24 said ten-in-a-million for cancer risk and 0.8 for -- I  
25 might have that one, sorry -- for PM10, those individual

1 project thresholds, we believe, fully encompass this idea  
2 of whether the project itself would have a cumulative  
3 impact.

4           And so this approach is also reflected in  
5 BAAQMD's recent action to adopt changes to its Toxic Air  
6 Contaminant Permitting Rule to, quote, "better protect  
7 overburdened communities." In effect, those changes, in  
8 order to address concerns about cumulative impacts in  
9 overburdened communities, BAAQMD modified the permitting  
10 threshold for cancer risk from new stationary sources from  
11 ten-in-a-million to six-in-one-million. In the Notice of  
12 Determination from that action, BAAQMD writes,

13           "The Air District has adopted amendments to these  
14 permitting rules to increase public health protection  
15 and transparency in communities overburdened by  
16 pollution and health vulnerabilities by reducing the  
17 allowable increase in carcinogenic risk associated  
18 with any new or modified source of toxic air  
19 contaminants in specified overburdened communities to  
20 six additional cancers per one million exposed  
21 population."

22           So this shows that -- so even in those most  
23 vulnerable communities, BAAQMD is not proposing a one-  
24 molecule rule; right? They're acknowledging that there can  
25 be emissions to a certain extent and still address the

1 issue of cumulative impacts.

2           Lastly, in BAAQMD's initial study and negative  
3 declaration supporting these rule modifications, BAAQMD  
4 only cites to the ten-in-a-million cancer risk threshold  
5 for individual sources. It does not mention any other  
6 threshold to consider for cumulative cancer risk impacts.

7 And I quote,

8           "To provide a conservative air quality analysis, the  
9 air quality impact analysis will use the project's  
10 specific thresholds recommended in the revised 2017  
11 CEQA Guidelines."

12           This is BAAQMD's own statement as it's evaluating  
13 the environmental impacts of its proposed rule. It only  
14 cites, in this context, to the project-level threshold. It  
15 does not mention the cumulative thresholds.

16           As all of the above shows, BAAQMD's own  
17 statements and actions to do not support either, one, a  
18 conclusion that the individual project threshold from the  
19 BAAQMD Guidelines cannot be relied upon to evaluate a  
20 project's cumulative impacts or, two, that the cumulative  
21 threshold from those same Guidelines establishes a de facto  
22 one-molecule rule that must be applied in this  
23 circumstance.

24           For these reasons, Staff has concluded that it is  
25 reasonable to use the individual project thresholds



1 contained in the BAAQMD-CEQA Guidelines as the appropriate  
2 thresholds of significance to determine whether the project  
3 emissions would be cumulatively considerable. And as the  
4 FEIR clearly shows, the project's emissions fall below this  
5 threshold.

6 That is not to say that an agency could not  
7 decide on its own to use BAAQMD's cumulative thresholds and  
8 show, with the support of substantial evidence, that its  
9 application in a given circumstance would find any  
10 contribution from a particular project to be cumulatively  
11 considerable. But absent further clarification to the  
12 BAAQMD Guidelines, including justification for an across-  
13 the-board one-molecule threshold, that analysis would have  
14 to be done on a project-by-project basis.

15 As shown in the FEIR, Staff has reviewed the  
16 cumulative thresholds and, in this instance, did not  
17 conclude that the project's emissions were cumulatively  
18 considerable. This conclusion was based on a number of  
19 factors, including highly conservative input assumption  
20 views in the model and an imminent reduction in background  
21 levels expected with the Caltrain Electrification Program.  
22 Staff, however, did not reflect these factors in  
23 quantitative terms.

24 The Applicant has now provided this  
25 quantification in its May 26th filing. As shown in that

1 filing, when the Caltrain Electrification Program, which is  
2 a reasonably-foreseeable project and, therefore, is  
3 appropriately considered in this analysis, when that  
4 program -- project is factored in, cumulative emissions in  
5 the radius of the project fall substantially below the  
6 cumulative thresholds and confirm Staff's conclusion that  
7 the project would not have a cumulatively considerable  
8 impact on air quality.

9 For these reasons, Staff recommends that the  
10 Committee affirm the analysis and conclusions reached in  
11 the FEIR, supplementing, as needed, with the quantification  
12 provided by the Applicant, and approve their request for  
13 exemption.

14 And I'm sorry, that is a very longwinded way of  
15 just trying to explain what was a potentially confusing use  
16 of this cumulative threshold. And it's something we're  
17 still grappling with and it's something we need to kind of  
18 refine as we move into additional project reviews. But I  
19 just kind of wanted to give that very big picture.

20 VICE CHAIR GUNDA: Yeah. Thank you. And it was  
21 helpful. Just a quick question at a high level.

22 Has there been any attempt by the Staff to talk  
23 to BAAQMD to clarify some of the things that you just  
24 raised?

25 MS. DECARLO: I believe so. I think my witnesses

1 can answer better to the day-to-day, kind of. I know we've  
2 sought their input on a number of occasions on general  
3 things. I would imagine we have had conversations along  
4 these lines but I can't answer any specifics.

5 VICE CHAIR GUNDA: Yeah. I would definitely like  
6 to hear that when we have the testimonies.

7 COMMISSIONER VACCARO: Thank you for providing a  
8 frame before we hear from the witnesses.

9 There's a part of what you said, you said quite a  
10 bit, right, and it was a little more than I was expecting  
11 but, you know, but you had a lot to say; right? So it's  
12 not a criticism, it's like you just, you had a lot that you  
13 wanted to get out there and I appreciate it.

14 I think a little bit of where my thinking is, is  
15 that there's a lot that I feel like you just said that's  
16 not reflected in the document, the environmental document  
17 before us, and that's the one, really, that is supposed to  
18 serve that informational function; right? And so I'm just  
19 giving you a preview of my thinking; right?

20 It's not a preview of decision making it's just  
21 this is some of what I'm thinking about as we're going to  
22 be listening to the testimony and making our way through  
23 today and, you know, looking at the decision is that you  
24 just said a lot that's not showing up anywhere except for  
25 right now in what you said, not even in the supplemental

1 responses to the questions that the Committee posed  
2 initially that Staff and Applicant both addressed.

3           And so I just, I put that out there, that that's  
4 a thing that I'm thinking about because there's everything  
5 that you said about individual impacts and cumulative  
6 impacts, and then there's also the very important function  
7 of an informational document that shows all of the work and  
8 that shows where there might be gaps between authorities  
9 that are being relied on, how Staff is interpreting them,  
10 and what CEQA, more generally, is requiring in terms of the  
11 analysis. So I just say that, and so thank you, but it  
12 really gets to the heart of some of these questions that  
13 we're posing.

14           And then I just have a more simple question,  
15 which is if there are so many challenges with the BAAQMD  
16 regulations, as you are describing it, why is it then that  
17 Staff relied on the BAAQMD regulations in the FEIR for the  
18 analysis? Like I'm just trying to figure out if it's  
19 merely advisory, because I think that was the word choice  
20 that you used, was there an option to not use the BAAQMD  
21 regulations? And, if so -- I mean, I don't know if that's  
22 a question for you because I'm just responding to what you  
23 said or if that's really a question for staff but I don't  
24 really understand that. It's merely advisory, meaning we  
25 didn't really have to go down that path at all or, yes, we

35

1 had to go down that path and there's a lot more to explain  
2 about our use of the BAAQMD regulations?

3 So, I'm sorry, that was a long question but I  
4 think you get where I'm going.

5 MS. DECARLO: Yeah. And I'll try to give my  
6 answer and then, definitely, recommend to Staff to follow  
7 up on it when they give their testimony.

8 So it's helpful to have thresholds that are  
9 clear. So, certainly, where BAAQMD has clear thresholds  
10 that we can understand how to implement, we use those,  
11 advisor or not; right? It's a nice way to approach impact  
12 analysis. So we have wholeheartedly embraced the  
13 individual project threshold. It's clear. We understand  
14 it. We understand how it was derived, what purpose it  
15 serves. And in BAAQMD's own statements, it serves to  
16 analyze a project's cumulative impacts, in Staff's view.  
17 The problem arises with the cumulative threshold that we've  
18 only recently started including at BAAQMD's request.

19 And I think it's hard when Staff is in the  
20 trenches project after project, sometimes it's hard to  
21 really take a step back and really flush out, okay, we have  
22 this confusing thing before us that we've been asked to  
23 use, we want to include it because a sister agency has  
24 included, we want to be as informative as possible for the  
25 reader and the decisionmakers, but we don't fully

1 understand how it interrelates with the one threshold that  
2 we do understand and that's consistently used, not by us,  
3 not just by us but by other agencies and other analyses  
4 within the BAAQMD's jurisdiction.

5           So, yeah, what purpose does it serve in Staff's  
6 documents is a good question; certainly informational. We  
7 believe that, partly, the intent of this threshold was to  
8 ask agencies to look at the bigger picture. Okay, what --  
9 we want you, like land use agencies, we want you to get a  
10 better understanding of what the underlying background  
11 impacts are as you make these permitting decisions.

12           So, certainly, Staff embraces the idea of using  
13 it as an informational document. And I think maybe where  
14 some of the confusion arises is it wasn't really clear in  
15 our document whether we were just using it as information.  
16 I think we kind of -- there was a gray -- there was some  
17 discussion that went into a great area that we saw clear,  
18 well, you have this number, you show the project addition  
19 to that number, you show that the number is over the  
20 threshold, but then you walk it back by saying, well,  
21 there's these other qualitative things we've taken into  
22 consideration.

23           I should also note, too, that Staff's analysis is  
24 a screening analysis at the very -- so the question is, you  
25 know, you do this initial screening analysis and it shows

1 an overage, do you then do some more refined analysis to  
2 figure out whether or not that overage is really, in  
3 practice, is really going to happen? And we didn't take  
4 that extra step because, one, again, we weren't relying on  
5 that cumulative threshold, really, for the significant  
6 determination. We were really relying on that individual  
7 project threshold.

8           And, two, we didn't take that extra step of  
9 refining because we knew in our heads that the Caltrain  
10 Electrification Project would significantly reduce that.  
11 We didn't, given the conservative nature of our analysis,  
12 of our modeling, we didn't believe that the project impacts  
13 were that significant, just from a qualitative perspective.  
14 And the Applicant, the project, has -- is implementing all  
15 the emissions controls that would otherwise be required;  
16 right? It's doing Tier 4 selective catalytic reduction,  
17 diesel particulate filter.

18           So all of those wrapped together is kind of --  
19 was Staff's approach. And I acknowledge, it can be  
20 clearer, how we use it going forward.

21           COMMISSIONER VACCARO: Yeah. So I think now we  
22 probably should hear from the witnesses and get that  
23 sworn -- their sworn testimony and answers to the questions  
24 on the record. I think we should start with Staff before  
25 we go to Mr. Galati.

1 HEARING OFFICER COCHRAN: Okay, but I did have  
2 two follow-up questions for Ms. DeCarlo, as well.

3 And the first is, you were referring to a  
4 recently adopted -- are you referring to the Justification  
5 Report that this Committee has said were taking official  
6 notice of?

7 MS. DECARLO: Yes, the April 2022.

8 HEARING OFFICER COCHRAN: Which specific does not  
9 apply to stationary sources, such as the diesel engines  
10 that are the focus of this proceeding?

11 MS. DECARLO: Right. And Staff's reference to  
12 that was mainly just as a -- it's just another instance of  
13 BAAQMD focusing on their own individual project threshold  
14 discussion and kind of framing up that the cumulative  
15 impact analysis is a two-step analysis, it's not just is  
16 there a cumulative impact, seeing your project is  
17 contributing cumulatively.

18 HEARING OFFICER COCHRAN: Okay.

19 MS. DECARLO: It's separate.

20 HEARING OFFICER COCHRAN: So then my second  
21 question is, if I understand your position correctly, is  
22 that once the individual threshold is determined, then how  
23 do we ever also consider the existing conditions that that  
24 project is operating in which is -- which CEQA requires us  
25 to do conduct a cumulative impact analysis, as well? So

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1 how would that be done under your scenario?

2 And I see your hand, Mr. Galati. Just a moment.

3 MS. DECARLO: And I think Staff's position would  
4 that that's already baked into that individual project  
5 threshold. That concept of cumulative impacts is already  
6 inherent in how BAAQMD determined to establish that  
7 threshold in the first place. But I will let Staff provide  
8 more detail --

9 HEARING OFFICER COCHRAN: Okay.

10 MS. DECARLO: -- if I have that wrong.

11 HEARING OFFICER COCHRAN: So do we want to let --  
12 yeah, yeah, yeah, yeah. Do we want to let Mr. Galati?  
13 Because we said we let them --

14 COMMISSIONER VACCARO: Frame his --

15 HEARING OFFICER COCHRAN: Yeah.

16 COMMISSIONER VACCARO: -- focus?

17 HEARING OFFICER COCHRAN: Yeah. Before his  
18 witness?

19 COMMISSIONER VACCARO: Right.

20 HEARING OFFICER COCHRAN: Okay. Because we're  
21 doing it as a panel.

22 COMMISSIONER VACCARO: Yeah.

23 HEARING OFFICER COCHRAN: There's a panel and  
24 then there's the panel. I think there's --

25 COMMISSIONER VACCARO: (Indiscernible) panel.

1 HEARING OFFICER COCHRAN: I think it's the air  
2 quality panel made up of both Staff and Applicant. I mean,  
3 that's how I envision it.

4 COMMISSIONER VACCARO: Is that how we're doing  
5 it? It's not like Staff's panel? No, I just need clarity  
6 because I thought --

7 HEARING OFFICER COCHRAN: How --

8 COMMISSIONER VACCARO: -- we'd have Staff's panel  
9 and then Applicant's panel.

10 VICE CHAIR GUNDA: One panel.

11 HEARING OFFICER COCHRAN: One panel.

12 COMMISSIONER VACCARO: So it's one big panel?

13 HEARING OFFICER COCHRAN: So one big --

14 COMMISSIONER VACCARO: (Indiscernible.)

15 HEARING OFFICER COCHRAN: -- one big happy panel.

16 So, then, can we hear from you, Mr. Galati?

17 Sorry about that.

18 COMMISSIONER VACCARO: Sorry.

19 OPENING STATEMENT BY APPLICANT

20 MR. GALATI: Thank you. First of all, very much  
21 agree with what Ms. DeCarlo -- we have been fighting with  
22 this for many, many years, long before that threshold or  
23 any other threshold here at the Energy Commission, because  
24 the Energy Commission does -- I don't believe the problem  
25 is just the Bay Area Guidelines, and so I don't think a

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1 simple clarification from the Bay Area is our issue.

2 Our issue is that the CEQA Guidelines ask us a  
3 question. They don't say, does the project have direct air  
4 impacts? They don't say that. They say, "Does the project  
5 have air emissions that are cumulatively considerable?"  
6 They use that terminology. Whereas, in everywhere else,  
7 they ask, "Do you have direct," and then, "Do you have  
8 cumulative?"

9 In addition, air quality, by its very nature, is  
10 only cumulative. It is -- when we compare, for example, a  
11 violation of a standard, we use the ambient air with all  
12 the other emissions coming to determine what the impact is  
13 and that can be confusing. So then you just add, for  
14 example, what are new projects that we don't know about?  
15 But when it comes to doing health risk assessment, we take  
16 projects that are built and operating as part of the air  
17 and we take whatever they determine their health risk  
18 assessment might have been at a time, at some point in  
19 time, when they applied for their permit and those are the  
20 numbers that get added up.

21 So what I'm trying to tell you is this is a big  
22 question. I don't think that the question needs to be  
23 relevant for this proceeding. And I would participate in a  
24 proceeding to get input on how the Bay Area wants to do it  
25 but not on this individual project.

1           And the reason that I say that here is that we  
2 are concerned with that, the people in this room, and  
3 that's why we took the point of the perspective of at this  
4 point for this project, we don't care what threshold you  
5 use. We are fine. And we provide that to you if you would  
6 like to use the 100. We also agree that if we're above  
7 100, that it's not a significant impact because our  
8 contribution is so small. We didn't take that view to you  
9 because Staff had and it wasn't something that seemed  
10 persuasive.

11           So maybe we should have -- maybe I should have,  
12 in our comments on the Draft EIR or in the data request  
13 that Staff asked us to look at 2,000, or all these other  
14 reasons, I should have objected to them saying it's not  
15 relevant, you're using the wrong threshold. But we always  
16 knew we were going to provide an extremely conservative  
17 analysis.

18           For example, let's take, if we were dealing with  
19 noise, if we were dealing with noise and we were below the  
20 threshold, the Energy Commission likes to use a five  
21 decibel threshold, but then cumulatively us and three new  
22 projects were going to make it seven decibels, the way you  
23 would look at cumulative impacts is what's our contribution  
24 to that? Is it six of those decibels, is it five of those  
25 decibels, or is a quarter of those decibels? If it's a

1 quarter of those decibels, then there's no impact. There's  
2 always that second step except, for some reason, in air  
3 quality there doesn't appear to be if you adopt the  
4 cumulative number as a threshold.

5           So I agree with what Ms. DeCarlo is saying in  
6 principle and in the law. But it is not only just  
7 confusing because Bay Area put a number on it, they didn't  
8 put the second number, and CEQA doesn't even ask the second  
9 question, they only ask one big question: Is it  
10 cumulatively considerable emissions? And that is our  
11 fundamental problem here.

12           So what I hope we are capable of doing in this  
13 proceeding is to use what we provided, and I hope that  
14 Staff's witness will say we did it right, I'm confident  
15 that we did, that we're not over 100. The FEIR does not  
16 need to be modified except with the appendance of those  
17 tables to say this is why it was conservative, we've  
18 quantified it, it's not a significant impact, and that we  
19 can move on in this proceeding.

20           And that's what we're going to focus on in our  
21 testimony is why the -- what we did to show you what we  
22 said qualitatively in our first response to you, which is  
23 we're below 100. It's not -- it's just not reflected in  
24 the math. And this time we decided to show you the math,  
25 how far below 100 we are.

1 HEARING OFFICER COCHRAN: Thank you, Mr. Galati.

2 I don't have any questions of Mr. Galati. I do  
3 have several of the witnesses.

4 COMMISSIONER VACCARO: I don't want to belabor  
5 this. I just have one.

6 HEARING OFFICER COCHRAN: Sure.

7 COMMISSIONER VACCARO: I'm sorry.

8 HEARING OFFICER COCHRAN: That's fine.

9 COMMISSIONER VACCARO: I just have one question.  
10 I mean, I'm just, I'm trying to understand; right? So  
11 forgive the slowness. I was like catching up because you  
12 guys have spent a lot more time in this space, right, sort  
13 of thinking about it, mapping out sort of how to explain  
14 all of it, and I hear you. I just can't get there in the  
15 document, though, that's in front of us. And I appreciate,  
16 Mr. Galati, that there was supplemental testimony, right,  
17 that was trying to sort of say, hey, if you add this, too,  
18 then it kind of tells the whole story.

19 So let me understand this one piece. If we have  
20 language in the FEIR that says -- that shows that there's  
21 and exceedance but we're saying, oh, but you know, this is  
22 ultraconservative information and so you can just move  
23 forward, there's no significant impact, I'm trying to  
24 connect the dot between exceedance, ultraconservative, and  
25 no impact because those three, to me, are not explained in

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1 the document, the FEIR, the way that I hear you and Ms.  
2 DeCarlo explaining it now.

3 I mean, is that fair or do you think the document  
4 really does do -- explain everything that you two are  
5 saying right now?

6 MR. GALATI: It doesn't. the document does not.  
7 I think that you could do that in a proposed decision and  
8 provide that clarity. I think that you should write two  
9 areas in the proposed decision, here's why the analysis was  
10 conservative and it's not below the 100, here's also why we  
11 struggle with determining whether we should use the  
12 threshold or not. That would be fine. I don't even think  
13 you need to do the second in this document. The first  
14 document says here's the number but it's not the right  
15 number. It says it's conservative. And it says that it's  
16 overestimating.

17 So I think what we've done is clarified that. we  
18 have quantified that qualitative piece that I believe is  
19 already in Staff's document. Granted, we all should have  
20 written it better. I feel for Staff because, personally, I  
21 don't think you should be ever using the 100. But you had  
22 an agency ask you to do it and it's a long Commission  
23 practice that if an agency asks you to do something, you do  
24 your best to try.

25 I don't believe the 100 should be what we're

1 applying. But even if you did, and since the document  
2 looks like it might, you can refine the analysis by  
3 quantifying the qualitative statements in the Draft EIR and  
4 in these, in our writings, and in Staff's prior writing,  
5 and I think that creates a good enough record. I do not  
6 believe that if you refer to those things and write a  
7 proposed decision and certify the EIR and append your  
8 decision to it, that there is any illegality about the  
9 proceedings.

10           This is a very frustrating thing because in any  
11 other proceeding we would not have evidentiary hearings.  
12 And what would be -- what would -- what would be the  
13 subject of a lawsuit is something called the FEIR. I've  
14 always contended that what Staff puts out is not the FEIR.  
15 It's only the FEIR when you guys say it is.

16           And so that's -- we have evidentiary hearings.  
17 We've just provided testimony and evidence. I don't  
18 believe that we need to go back and have Staff change the  
19 FEIR. I think you can do simple, we agree, there's no  
20 impacts for the following reasons. Because, otherwise,  
21 what does your decision really do? Ever time there is a  
22 dispute about the Final EIR, or an intervenor comes in and  
23 says it's wrong, you don't go back and change the Final  
24 EIR. You write the decision, you make your decision, and  
25 then you docket that decision and vote on that decision. I

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1 believe that decision gets certified as the Final EIR. And  
2 that's what I've told cities and counties, rely on the  
3 decision. And so I think we can do that here.

4           And I would -- I will participate if you opened  
5 up a proceeding or did something as an informational  
6 gathering on how we should look. And I have other air  
7 quality experts outside this room, outside my witness  
8 panel, and I'm sure they've all struggled with this. It's  
9 a CEQA problem, not a Bay Area Air Quality Management  
10 Guideline problem. It's a CEQA problem.

11           So that's what I would say.

12           MS. DECARLO: And I would just quickly say, I do  
13 think the FEIR addresses it, it just doesn't do it in a  
14 quantitative. So we present this quantitative discussion  
15 of this cumulative threshold and we walk it back by  
16 explaining qualitatively why that doesn't -- why those  
17 numbers don't really show a significant impact. And that,  
18 we definitely could do better next time with actually  
19 showing it quantitatively across the board so it's clear.

20           HEARING OFFICER COCHRAN: Thank you. So I now  
21 have a question so that I make sure I understand.

22           What I just heard from Mr. Galati and Ms. DeCarlo  
23 was the frame, so that we are now ready for the Committee  
24 to ask its questions of the witnesses. The witnesses  
25 aren't intending to make any opening remarks either. I

1 want to make sure that I understand the rules of the road.

2 MR. GALATI: Yeah. No, unless you wanted Ms.  
3 Weissinger to summarize what she had already written. But  
4 if you don't need a summary, she's prepared to answer  
5 questions directly about it.

6 HEARING OFFICER COCHRAN: That -- okay.

7 And Ms. DeCarlo, is that the same for your  
8 witnesses?

9 MS. DECARLO: Yes, it's the same.

10 HEARING OFFICER COCHRAN: So what I'm going to do  
11 is I'm first going to ask a question of Mr. Galati's  
12 witnesses. And then if Staff's witnesses wished to be  
13 recognized or heard, they should raise their hands and, if  
14 there are then follow-up questions or discussion, that  
15 we'll handle it that way.

16 So as a I understand your analysis, Ms.  
17 Weissinger, you have reduced the area of the radius that  
18 you are looking at for the cancer risk in PM2.5 from 2,000  
19 feet, as Staff had requested, to 1,000 feet, and that's  
20 reflected in the document that you filed yesterday; am I  
21 understanding that correctly?

22 MS. WEISSINGER: Yes, that's correct.

23 HEARING OFFICER COCHRAN: Okay. Why is that a  
24 more appropriate analysis than 2,000 feet if sources within  
25 that 2,000 feet have potential emission profiles that

1 justify including them in the analysis as Bay Area suggests  
2 in both its CEQA Guidelines and in its comment on the  
3 Notice of Preparation for the EIR? Why is 1,000 better  
4 than 2,000?

5 MS. WEISSINGER: So we view 1,000 feet. That is  
6 consistent with the primary suggestion in the Bay Area  
7 Guidelines. And the reason it's more appropriate is as we  
8 start to increase the distance from the receptor, the  
9 impact of the (indiscernible) off directly. There's a kind  
10 of time, distance, function (indiscernible) the emissions  
11 drop off. And we tried to present that in our supplemental  
12 testimony that we submitted yesterday with the plots of --  
13 they're called distance adjustment factors. So --

14 HEARING OFFICER COCHRAN: Right.

15 MS. WEISSINGER: -- as you can see, as we get  
16 beyond 1,000 feet, they almost half within a 100 to 300  
17 feet. So by including those sources, basically, their  
18 impacts are significantly diminished. So that's why 1,000  
19 feet is more appropriate in this respect.

20 HEARING OFFICER COCHRAN: Ms. Tran, could you  
21 please display the document I had you pull up earlier,  
22 which is the page that you were just talking about, I  
23 believe, Ms. Weissinger, on the diesel backup generating  
24 factors.

25 MS. WEISSINGER: Um-hmm.

1 HEARING OFFICER COCHRAN: I believe it's being  
2 displayed. Can you see what's being displayed?

3 MS. WEISSINGER: I can now. And --

4 HEARING OFFICER COCHRAN: Okay.

5 MS. WEISSINGER: -- yes, it's Figures 2 and 3.

6 HEARING OFFICER COCHRAN: Okay, so when you're  
7 talking about the significant drop off between 200 and 300,  
8 I believe you said -- is that correct?

9 MS. WEISSINGER: So what I was trying to point is  
10 once you get beyond, let's say, 800 feet, 900 feet and you  
11 look at the next 300 feet, the value basically halves  
12 within just 150 feet beyond that radius. And then as you  
13 get out to 1,400 feet, 1,600 feet, it gets incredibly small  
14 when you compare it to the sources that would, say, be at  
15 200 feet from the receptor.

16 HEARING OFFICER COCHRAN: And to be clear, we're  
17 --

18 DR. LIBICKI: (Indiscernible.)

19 HEARING OFFICER COCHRAN: Just one minute. Just  
20 one minute. I want to make sure that the record is clear,  
21 what document we're referring to. We're referring to .pdf  
22 page 8 of Exhibit --

23 MR. GALATI: 43.

24 HEARING OFFICER COCHRAN: -- 43. And you're  
25 specifically referring to Figure 3 on that page; is that

1 correct?

2 MS. WEISSINGER: I'm referring to Figures 2 and  
3 3.

4 HEARING OFFICER COCHRAN: Okay. But the zoomed  
5 in drop-off that shows what you were just saying about from  
6 800 to 1,000 is --

7 MS. WEISSINGER: Right.

8 HEARING OFFICER COCHRAN: -- Figure 3; correct?

9 And I'm sorry --

10 MS. WEISSINGER: I was --

11 HEARING OFFICER COCHRAN: -- who wanted to ask a  
12 question?

13 MR. GALATI: It was Dr. Libicki.

14 HEARING OFFICER COCHRAN: Oh, Dr. Libicki, please  
15 go ahead.

16 DR. LIBICKI: Yeah. I just wanted to add one  
17 thing and it does say it here on the graph and I just want  
18 to be clear. The Bay Area Air Quality Management District  
19 provided an estimate of impacts only at 1,000 feet. And  
20 the graphs that you see displayed here are extrapolations  
21 of that based on both a linear and an exponential curve.  
22 So the Bay Area understands that the risk should be only  
23 calculated at 1,000 feet and that's why they only provided  
24 information at 1,000 feet.

25 So any -- so what was done in the EIR, in the

1 document, was that that value at 1,000 feet was used for  
2 anything that was between 1,000 and 2,000 feet. And this  
3 diagram shows how much of an overestimate that is based on  
4 either a linear or an exponential extrapolation. We don't  
5 have the information that the BAAQMD used for these, so we  
6 have to guess at the extrapolation. That was not the  
7 intention of the BAAQMD and that's why they left it at  
8 1,000 feet.

9 VICE CHAIR GUNDA: And, Dr. Libicki, I just want  
10 to understand that, and for clarification.

11 So at 2,000 feet we have data that's reliable and  
12 beyond that any sort of extrapolation will not accurately  
13 capture? That's what I'm hearing.

14 DR. LIBICKI: I think that's part of it. But the  
15 other part of it is that when we put in the estimates in  
16 our -- that made it into the first document, into the  
17 document that you're relying on, the FEIR, that was  
18 estimated that the risks were at 1,000 feet, not at the  
19 actual distance that they were, so those were overestimated  
20 numbers.

21 So I think what you said is exactly right and --

22 VICE CHAIR GUNDA: Thank you.

23 COMMISSIONER VACCARO: So this is for either or  
24 both witnesses. You know, I guess what I'm trying to  
25 figure out is BAAQMD left it to lead agencies, though, to

1 exceedance that 1,000 feet. And there's nothing really  
2 that I'm seeing or that I'm able to get my head around that  
3 says, well, then what are you looking at and what numbers  
4 are you looking at for your threshold once you go past  
5 1,000 feet? But I don't think it's correct to say that it  
6 just is limited to 1,000 because it's opened up for lead  
7 agencies to look at other factors as to why they might go  
8 beyond 1,000 feet and, in this case, Staff did do that.

9           So I'm just trying to understand, like if the  
10 threshold was 2,000 feet as set forward by Staff, why is  
11 the argument that BAAQMD only anticipates up to 1,000?  
12 Again, I'm not --

13           MS. WEISSINGER: So --

14           COMMISSIONER VACCARO: -- able to make that  
15 connection.

16           MS. WEISSINGER: Yeah. So there's a multipart  
17 answer here, as there often is.

18           The first part of the answer is these are the  
19 tools the Bay Area gave us. They gave us tools only out to  
20 1,000 feet, so they were anticipating 1,000 feet and no  
21 more, even though the guidelines, you know, inconsistently  
22 said you could go farther. Part of the reason that the  
23 guidelines said you could go farther, and I've been working  
24 with these guidelines since they were generated in 2011,  
25 part of the reason that the guidelines said that they could

1 go farther was due to the public's perception of the risks  
2 and refineries as very large sources. And you can imagine  
3 that a, you know, very large source of emissions, like a  
4 refinery, which is where this was contemplated originally,  
5 could have impacts beyond 1,000 feet that may be of  
6 concern.

7           And so the thought process, again, you know, this  
8 is lore, this is not based on anything you'll find in the  
9 document, was that, for most sources, 1,000 feet is fine.  
10 That's why we give you the tools for this. And for the  
11 very large sources, like a refinery, we may want to do  
12 something different.

13           It has been my experience, again, using this  
14 threshold, you know, quite a bit, that we almost never --  
15 in fact I can't remember a case where we went beyond 1,000  
16 feet to look at a source, except sometimes when sources are  
17 like at 1,010 feet and then, you know, the measurement  
18 starts to get a little uncertain, so we do see that  
19 sometimes. But, generally, it really does stop at 1,000  
20 feet.

21           HEARING OFFICER COCHRAN: Right. Staff, do you  
22 agree with the results of the analysis provided in  
23 Applicant's supplemental testimony? And that's to either  
24 Mr. Birdsall, Dr. Chu, or Dr. Qian.

25           DR. CHU: This is Huei-an Chu. And, yes, we



1 agree. And let me explain a little bit more.

2 According to CEQA Guidelines, 1,000 feet is the  
3 distance we usually use. But in the previous project,  
4 which was Sequoia, the District asked us to go beyond 1,000  
5 feet because there's an airport nearby. So in Sequoia, we  
6 used 2,000 feet as the distance.

7 So that's why Staff in our -- the first data  
8 request, we require Applicant to use the 2,000 feet.  
9 That's because we would like to see if there's any major  
10 other sources within 2,000 feet but, finally, we found that  
11 there's none. So that's why, in Staff's own analysis, we  
12 only use 1,000 feet.

13 HEARING OFFICER COCHRAN: Okay. Thank you.

14 Staying with Staff for just a moment, since the  
15 FEIR does not include Applicant's analysis and the FEIR  
16 appears, instead, to improperly conclude that the  
17 exceedances of the cumulative threshold is not a  
18 significant impact, does the FEIR need to be amended to  
19 correct this error? How would you propose that the  
20 Committee resolve the lack of clarity in the document?

21 MS. DECARLO: So I could jump in or did you  
22 want --

23 HEARING OFFICER COCHRAN: I want to hear from the  
24 witnesses, please.

25 MS. DECARLO: Oh. Okay.

1 DR. CHU: So this is Huei-an Chu again.

2 We did include Applicant's analysis, which was in  
3 Table 4.3 on page 12, starting 14. And did mention their  
4 analysis is within 2,000 feet but our analysis is within  
5 1,000 feet.

6 HEARING OFFICER COCHRAN: Okay. So thank you for  
7 that.

8 An additional question that arises from Exhibit  
9 43 -- Ms. Tran, if you could go to the next page so that we  
10 can see Table 2? -- which shows the refined FEIR analysis,  
11 again, the screening radius is now 1,000 feet instead of  
12 2,000, and it shows a significant reduction in the railroad  
13 emissions. And the question I have is how was the  
14 reduction in railroad emissions calculated?

15 Clearly, that's for Applicant. This is your  
16 testimony.

17 MR. GALATI: Emily or Dr. Libicki, please.

18 MS. WEISSINGER: Yes. Sorry. I wasn't sure if  
19 she was directing that to Staff or not.

20 So for the railroad, that contribution is coming  
21 from the adjacent Caltrain line which, I believe, you can  
22 see in Figure 1 in this document, goes right next to the  
23 proposed project. And Caltrain has a project, it's called  
24 the Caltrain Modernization Program, or CalMod, where a  
25 primary feature of that project is going to be

1 electrification of the line from San Francisco to San Jose.  
2 And this project is underway and under construction. And I  
3 believe the majority of the construction in Santa Clara has  
4 been completed. And it's set for passenger service in  
5 2024.

6 And so if you go to the literature on the  
7 project, you'll see that it is going to be reducing diesel  
8 emissions up to 97 percent. And so what we've done is  
9 we've reduced this number by 97 percent.

10 HEARING OFFICER COCHRAN: Is Caltrain the only  
11 railroad that runs on those tracks?

12 MS. WEISSINGER: That's my understanding. There  
13 are Amtrak tracks that are to the east of this line but  
14 they are on the order of miles away from the project. And  
15 I believe there's also some freight lines and, again, those  
16 split off a matter of miles away from the project. So  
17 those aren't contributing to the maximum impact  
18 (indiscernible).

19 HEARING OFFICER COCHRAN: And is that also true  
20 of the Altamont Commuter Express train?

21 MS. WEISSINGER: I'm not familiar with that  
22 train.

23 HEARING OFFICER COCHRAN: I'd ask Staff, is what  
24 we're being told correct about the railroad line there and  
25 its usage? Staff's witness?

1 DR. QIAN: Sorry. Can you say -- this is Wenjun  
2 Qian. Can you say the question again?

3 HEARING OFFICER COCHRAN: Yes. Can you confirm  
4 that the only railroad usage in the area is by Caltrain?

5 DR. QIAN: I don't actually -- I don't know,  
6 actually.

7 DR. CHU: The data was provided by --

8 HEARING OFFICER COCHRAN: In the --

9 DR. CHU: -- the District.

10 HEARING OFFICER COCHRAN: -- in the FEIR, it  
11 mentions that the Caltrain Electrification Project is not  
12 being considered because it was speculative. Can you  
13 address that comment made in the FEIR?

14 MR. GALATI: Madam Hearing Officer, are you  
15 directing that to Staff or --

16 HEARING OFFICER COCHRAN: Yes, to Staff.

17 DR. CHU: This is Huei-an Chu again.  
18 Can you point out which page you are talking  
19 about?

20 HEARING OFFICER COCHRAN: On page 4.3-52.

21 DR. CHU: I believe Staff has a potential --  
22 potentially beneficial effects of the ongoing and the  
23 probable future of Caltrain's Electrification Program were  
24 not considered. Is this the sentence you are -- you were  
25 talking about?

1 HEARING OFFICER COCHRAN: Yes.

2 DR. CHU: And what's your question again?

3 HEARING OFFICER COCHRAN: So did you consider the  
4 Caltrain Electrification Program as part of the analysis in  
5 the FEIR in determining the cancer risk?

6 DR. CHU: Oh.

7 HEARING OFFICER COCHRAN: And if not, why not?

8 DR. CHU: Okay. Okay. And in Staff's final  
9 analysis, Staff didn't do for the refined cumulative health  
10 assessments because, as Ms. DeCarlo just say, we think --  
11 we thought there is no cumulative considerable impact  
12 identified for this proposed project, so Staff didn't  
13 further discuss the Caltrain Project.

14 However, Staff agrees with the Applicant to  
15 consider the electrification of Caltrain as a probable  
16 future and foreseeable project. And Staff also agrees with  
17 their refined cumulative health risk assessment.

18 HEARING OFFICER COCHRAN: Thank you.

19 MS. DECARLO: I see our other witness, Mr.  
20 Birdsall, has raised his hand.

21 HEARING OFFICER COCHRAN: Please go ahead, Mr.  
22 Birdsall. Remember, you're under oath.

23 MR. BIRDSALL: Hi. Thank you, Hearing Officer  
24 Cochran.

25 And as Dr. Chu just pointed out, the information

1 on the electrification has been coming in, as you know,  
2 late in the proceeding. And so it hasn't been tabulated in  
3 the EIR but I believe that it could be, as Mr. Galati has  
4 pointed out, and it would help to clarify Staff's treatment  
5 of that project that Staff does believe is foreseeable but  
6 di not have quantification for up until recently.

7           So this is -- this would be, as is presented by  
8 the Applicant's witnesses, this would be refinements to the  
9 tables in the cumulative health risk assessment.

10           HEARING OFFICER COCHRAN: And so then I would  
11 ask, Mr. Birdsall, what would be the process to make that  
12 refinement in the document?

13           MR. BIRDSALL: Well, I'm not exactly sure how  
14 best the information would be shown, I mean, maybe in an  
15 addendum or replacement tables to the Final EIR table. I  
16 think that would maybe be, you know, a procedural question.  
17 I think it's -- and so I'll stop right there. I'm not  
18 exactly sure how best to show it in a tabulate format.

19           HEARING OFFICER COCHRAN: Okay. Thank you, Mr.  
20 Birdsall.

21           VICE CHAIR GUNDA: Just a couple of supplemental  
22 questions here. I'll start with the Applicant.

23           Page number six on Exhibit 43, so if you are  
24 ready with that, I'm trying to understand and make sure  
25 that I'm gathering this information accurately. So between

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1 Tables 1 and 2, we have a drop of -- so I'm just looking at  
2 the first row, Existing Stationary Sources, you know, the  
3 Applicant analysis of 32, and then it drops to 0.69 for the  
4 1,000 feet screening radius. I just want to understand,  
5 you know, you kind of put in your notes that it was  
6 adjusted. Could you please explain how that was done?

7 MS. WEISSINGER: Yes. Was that a question for  
8 Staff or the Applicant?

9 VICE CHAIR GUNDA: For the Applicant, please.  
10 Thank you.

11 MS. WEISSINGER: Okay. Great. Happy to answer  
12 that.

13 So it might be helpful if we pull up Exhibit 43  
14 again. There we go. And if go to the table he's  
15 referencing? We could be on Table 2.

16 So as my colleague Dr. Libicki was saying, when  
17 we had done the analysis at 2,000 feet, because we did not  
18 have distance adjustment factors for the 1,000 to 2,000  
19 feet distance, any source beyond that distance was applied  
20 the adjustment factor at 1,000 feet. And you can envision  
21 that as having a receptor and taking a radius of 1,000 feet  
22 and lining up those sources at 1,000 feet. That's  
23 essentially what we modeled. But, in actuality, those  
24 sources are beyond 1,000 feet and there should be  
25 adjustments to those emissions.

1           What we did in the refined analysis is we cut the  
2 screening radius off at 1,000 feet, which is what Staff had  
3 done in their analysis. And, therefore, the impacts from  
4 the stationary sources within the 1,000 feet was the same  
5 as what Staff had tabulated.

6           VICE CHAIR GUNDA: Thank you. Just confirming  
7 that the 0.69 number in Table 2, row number one, Existing  
8 Stationary Sources, is based on Staff analysis?

9           MS. WEISSINGER: That's correct.

10          VICE CHAIR GUNDA: Thank you.

11                 Second, along those lines, if we go to Table 3  
12 and Table 4 quickly, on Table 4, again, on the Existing  
13 Stationary Sources, it goes to zero from 0.73. I want to  
14 understand the methodology used there, please. Thank you.

15           MS. WEISSINGER: Yes. So that, again, is a  
16 similar analysis, like I previously discussed. What you  
17 aren't seeing here, actually, is Staff's analysis on the  
18 MEIS or MEIR. And it's not in these tables because Staff's  
19 analysis showed that the impacts were below the cumulative  
20 threshold.

21                 If you were to look at Staff's analysis, and this  
22 would be in the FEIR, you would see that they also had zero  
23 for the existing stationary sources in their analysis. And  
24 I want to clarify, though, this isn't an absolute zero.  
25 There are trailing decimals. I think it's just an



1 extremely small number. So I think if I add out to three  
2 decimals here, you would see a number but it's just very  
3 small.

4 VICE CHAIR GUNDA: Yeah. I think, you know,  
5 basically the Staff analysis on both tables stands at  
6 0.433, both for 1,000 and 2,000. And so that's kind of  
7 where my question is coming from.

8 MS. WEISSINGER: Oh, I do want to point out that  
9 that's a different receptor type. So unlike Tables 1 and 2  
10 where both in our analysis and in Staff's analysis it was  
11 the MEIS/MEIR where there was the exceedance, when we look  
12 at the annual PM2.5 impact, which is what's presented in  
13 Tables 3 and 4, it is actually the Staff's MEIW, which is  
14 the maximally exposed incremental worker receptor analysis,  
15 that showed an exceedance.

16 So we're talking about, actually, different  
17 receptors. And if you look in Figure 1, you can see where  
18 those are spatially. And when you evaluate a different  
19 receptor, that creates a new center on the radius that  
20 you're evaluating. So when Staff looked at the MEIW, or  
21 the worker receptor, they looked at the 1,000 feet around  
22 that receptor. And then when we did the MEIR, it's a  
23 different circles, let's say. So that would be apples and  
24 oranges to compare those two.

25 VICE CHAIR GUNDA: Thank you. Yeah, that's --

1 thank you for saying that. I think that's what I -- given  
2 that it's structured in a table, I wanted to make sure it's  
3 not actually comparable; right?

4 MS. WEISSINGER: Right. Right. It's something  
5 else.

6 VICE CHAIR GUNDA: Thank you.

7 HEARING OFFICER COCHRAN: if I could have just a  
8 moment, I'm reviewing my notes.

9 VICE CHAIR GUNDA: All right, so I have a couple  
10 more questions. Again, please bear with me. This is  
11 something I'm learning on the go. So if I'm not  
12 understanding this quickly, I apologize.

13 So just on the justification, and we go to the  
14 Applicant first, then the Staff, on the justification from  
15 moving the analysis from 2,000 to 1,000, there was one that  
16 was kind of pointed out. You know, there's -- the  
17 analytical pieces, you know, might be, one, overestimating  
18 and inaccurate. So, you know, we can put that aside for a  
19 second. But the Staff said, you know, the Sequoia case  
20 kind of needed to look at 2,000 square feet -- sorry, 2,000  
21 feet because of the airport close by.

22 What was kind of the justification to look at  
23 2,000 for this project or was it just the practice?

24 Maybe we start with Staff and then we go to the  
25 Applicant if it's --

1 DR. CHU: This is Huei-an Chu. Yes, as I just  
2 stated, we asked them to do the 2,000 feet radius in our  
3 first data request. And this is just our practice.

4 VICE CHAIR GUNDA: I apologize, just asking for  
5 clarification, what was the justification for going from  
6 1,000 to 2,000 in this case?

7 DR. CHU: Oh.

8 VICE CHAIR GUNDA: Why did we need to look at it?

9 DR. CHU: Oh, because at that time, Staff wanted  
10 to know if there's a major -- any major sources beyond  
11 1,000 feet.

12 COMMISSIONER VACCARO: I don't -- I'm sorry, I  
13 don't have the FEIR in front of me. I think it actually  
14 says in there. Can you pull it up --

15 HEARING OFFICER COCHRAN: Yes.

16 COMMISSIONER VACCARO: -- Hearing Officer  
17 Cochran? I think it actually, it says in there, so maybe  
18 we'll just go to the language and then we'll refresh  
19 Staff's recollection of what they explicitly said.

20 HEARING OFFICER COCHRAN: Okay. On page 4.3-33,  
21 it indicates that Applicant originally used 2,000 feet but  
22 that was for offsite on-road. And then 4.3-49, let me get  
23 there really quickly, states that Staff was requesting  
24 information on TAC sources within 2,000 feet of the  
25 property because of the nearby railroad and surrounding

1 industrial stationary sources that would -- or that could  
2 present elevated existing levels of tax.

3           So I know, too, I believe, that BAAQMD asked  
4 the -- made a comment in response to the Notice of  
5 Preparation that Staff consider using something other than  
6 1,000 feet. And Staff did so by using 2,000. I believe  
7 Bay Area suggested using 1,500.

8           So it appears to have been a combination of  
9 things; is that correct?

10           DR. CHU: Huei-an Chu again. Yeah, but if you  
11 see Table 4.3-12, you can (indiscernible) 9,000 feet, the  
12 sources from surrounding highways, major streets, and  
13 railways are already beyond 100.

14           HEARING OFFICER COCHRAN: And you said 4.3-12?

15           DR. CHU: Yeah. If you take a look at the  
16 receptors of MEIR, then you can see.

17           HEARING OFFICER COCHRAN: Which is on page 4.3-  
18 53.

19           DR. CHU: Yes.

20           HEARING OFFICER COCHRAN: And, again, that says  
21 within 2,000 feet of the project boundary for the maximally  
22 exposed individual sensitive receptor. And then for  
23 others, it was 1,000.

24           DR. CHU: Right. And you can see, for the second  
25 receptor, it is within 1,000 feet. The cancer rates around

1 the surrounding highways, major streets, and railways are  
2 already above 100, which is (indiscernible).

3 HEARING OFFICER COCHRAN: Interesting. So, okay,  
4 can either Staff or Applicant's witnesses explain to me the  
5 difference between Table 2 in Exhibit 43 and Table 4.3-12  
6 in the FEIR in terms of how the numbers change and why?  
7 And that's open to either Applicant or Staff's witness.

8 MS. WEISSINGER: Sure. I'm happy to take that.  
9 So --

10 HEARING OFFICER COCHRAN: Please identify  
11 yourself for the record.

12 MS. WEISSINGER: This is Emily Weissinger.

13 HEARING OFFICER COCHRAN: THANK YOU.

14 MS. WEISSINGER: And I think as I heard your  
15 question, that you are wondering how this table, Table 2  
16 from Exhibit 43, differs from the cumulative impact  
17 analysis table from the FEIR; is that correct?

18 HEARING OFFICER COCHRAN: Right, specifically  
19 Table 4.3-12.

20 MS. WEISSINGER: Okay. Great. So what this is  
21 showing here is a number of refinements. And it's focusing  
22 on the analyses of the MEISR/MEIR, which are the same in  
23 this analysis. And for the Applicant's analysis, it has  
24 refined the screening radius from 2,000 feet to 1,000 feet.  
25 And by doing so the contribution from the existing

1 stationary sources is reduced from 32 to 0.69, which is  
2 consistent with the Staff analysis.

3 This also incorporates another refinements which  
4 is incorporation of the electrification from the CalMod,  
5 the Caltrain Modernization Program, which will electrify  
6 the line between San Francisco and San Jose, and has  
7 reduced the railroad contribution to risk by 97 percent.  
8 When you incorporate those reductions, you get a total  
9 cumulative impact of 31 for the Applicant's analysis. When  
10 you look at Staff's analysis, the only adjustment we've  
11 done there is the reduction of the railroad contribution,  
12 which we have also reduced by 97 percent. And when that is  
13 incorporated, the total cumulative impact for the Staff's  
14 MEIR analysis is 33 in the (indiscernible).

15 HEARING OFFICER COCHRAN: Okay. Thank you.

16 Can someone tell me where the 97 percent figure  
17 is reflected in our hearing record for the CalMod?

18 MS. WEISSINGER: I believe we have a footnote  
19 citation in one of our exhibits.

20 MR. GALATI: I think --

21 MS. WEISSINGER: It would be Exhibit 42, which  
22 references a sustainable report from Caltrain.

23 HEARING OFFICER COCHRAN: I believe, Mr. Galati,  
24 that's the rebuttal testimony?

25 MR. GALATI: Yes, Exhibit 42.

1 HEARING OFFICER COCHRAN: And when I click on  
2 that link it's footnote three on page four, "page not  
3 found."

4 MR. GALATI: You have an expert witness who has  
5 told you what it says. And you, just like you listen to  
6 expert witnesses without reading all of the documents that  
7 underly their opinion, I think that you have enough to move  
8 forward in this proceeding. And I'm happy to provide that  
9 link.

10 But, again, I think what we're missing here, and  
11 I -- is that we are focused on tiny little things that,  
12 even if you didn't adjust the 2,000 to 1,000, we're still  
13 below 100.

14 So it's very, very difficult to handle these  
15 kinds of questions in Evidentiary Hearing. And I think  
16 that you should rely on your Staff experts and the experts  
17 that you have here.

18 HEARING OFFICER COCHRAN: Thank you, Mr. Galati.

19 VICE CHAIR GUNDA: Mr. Galati, I heard you, just  
20 your comment on that. I'm trying to just establish a  
21 couple of points here for myself as we go into decision  
22 again. This is information seeking to make sure when we  
23 make decisions that we're well informed. So I'm trying to  
24 struggle with a couple of things that I just want to have  
25 some clarification as we go into this, you know, decision-

1 making process, which is if we were to say, you know, just  
2 want to confirm that both BAAQMD Guidelines and CEQA ask us  
3 to do only analysis to 1,000 feet; is that, first, correct?

4 MR. GALATI: Dr. Libicki, can you answer that  
5 question?

6 DR. LIBICKI: I'm sorry, I -- can you phrase it  
7 again please?

8 VICE CHAIR GUNDA: Both the BAAQMD Guidelines and  
9 CEQA require us to go only to 1,000 feet?

10 DR. LIBICKI: So CEQA, actually, is silent on  
11 these kinds of cumulative impacts. It is a district-by-  
12 districts aspect. So the BAAQMD Guidelines are the ones  
13 that state you should go out to 1,000 feet. And the BAAQMD  
14 provides tools to do that only up to 1,000 feet.

15 VICE CHAIR GUNDA: Got it. Thank you.

16 So the next question then becomes, now that we've  
17 done up to 2,000 feet, the analysis, when BAAQMD suggested  
18 maybe 1,500 feet, I just want to understand why we did that  
19 2,000 and how much should I put weight on that?

20 DR. LIBICKI: So let me answer part of that  
21 because I think part of that may have been answered by  
22 Staff earlier. But the evaluation that we did was a  
23 screening evaluation for any source between 1,000 and 2,000  
24 feet. And by screening evaluation, it means it provides an  
25 upper-bound number so that if the screening evaluation



1 showed risks greater than 100-in-a-million, you can leave  
2 it. you can so, okay, as a screening, we're still below  
3 our threshold, we're fine.

4 But if the screening evaluation shows risks above  
5 a threshold, regardless of whether that threshold is valid  
6 or not, and that's, obviously, not something I'm  
7 addressing, then the next step is to do exactly -- you  
8 know, is to say, well, let's look at this again. Is the  
9 screening evaluation accurate? And the answer is no  
10 because we use values between 1,000 and 2,000 feet as if  
11 the sources were at 1,000 feet because BAAQMD did not  
12 provide any additional information.

13 VICE CHAIR GUNDA: Thank you. Super helpful.  
14 Anything else from Staff on it?

15 DR. CHU: Yes. This is Huei-an Chu.

16 According to BAAQMD's CEQA Guideline, page 2-5,  
17 underneath (indiscernible) the page is,

18 "A lead agency shall enlarge the 1,000-foot radius on  
19 a case-by-case basis within unusually source or  
20 sources of risk of hazardous emissions that may affect  
21 a proposed project that's beyond the recommended  
22 radius."

23 So that's why in Sequoia the District asked us to  
24 go beyond 1,000 feet. And this is also why in the  
25 beginning of this project we asked the Applicant to go

1 beyond 1,000 feet.

2 COMMISSIONER VACCARO: So I have a question. It  
3 was for the prior witness who was speaking on behalf of the  
4 Applicant. And it was a statement, and I want to make sure  
5 I understand it, you were saying that the screening -- you  
6 were explaining why the screening were not accurate. And  
7 sort of my notes might be paraphrasing you incorrectly but  
8 I thought I heard you say because BAAQMD did not provide  
9 additional information beyond the 1,000 feet.

10 But I'm just wondering, so if the BAAQMD  
11 regulations are advisory, and if we know we're looking at  
12 2,000 feet but we see limitations with the BAAQMD  
13 information, isn't there something else we could have been  
14 looking at or looking to?

15 DR. LIBICKI: So that's a great question. And  
16 the short answer is it depends. For sources that -- for  
17 say -- one can do a refined risk assessment if one had lots  
18 of detailed information. It is very difficult to get the  
19 level of detailed information that one needs on another  
20 source to do these kinds of evaluations. That's part of  
21 the reason that we frequently don't do anything beyond  
22 1,000 feet because it's very difficult to do and difficult  
23 to get the information.

24 Even if we have information, our ability to  
25 estimate those risks is much less than the BAAQMD is

1 because they have a full set of information that they're  
2 working with, really. And that's, in a sense, why the  
3 BAAQMD put their screening risk thresholds together.

4 COMMISSIONER VACCARO: Okay. That's helpful. Do  
5 you have any sense of what that solar information might  
6 include?

7 DR. LIBICKI: Yeah. So --

8 COMMISSIONER VACCARO: I know you don't have it  
9 but I'm just wondering if you have like a sense of what  
10 it -- the scope of it?

11 DR. LIBICKI: Yeah. So when we go beyond  
12 screening, which is what one has to do if one goes beyond  
13 the BAAQMD tools, it is -- it requires stack heights, stack  
14 exhaust velocities, time-of-day information on emission  
15 rates. It's a pretty complicated set of information.

16 COMMISSIONER VACCARO: Thank you.

17 VICE CHAIR GUNDA: And just one question.

18 Mr. Galati, you said, and I'm just kind of trying  
19 to make sure that I heard it right, so Figures 2, 3, and  
20 figures -- and Table 1 and 4 -- 1 through 4 are the  
21 screening analysis; right? So -- but, you know, once we,  
22 you know, once we understand that the screening doesn't  
23 pass, you know, you -- and we do the more rigorous  
24 analysis, did I hear you right that the analysis passes for  
25 both 1,000 and 2,000 feet?

1 MR. GALATI: Emily, could you answer that,  
2 whether or not you believe the analysis would pass for  
3 1,000 or 2,000 feet with the refined analysis?

4 MS. WEISSINGER: We did look at kind of how that  
5 would play out and it would still pass. If we included all  
6 sources up to 2,000 feet and we correctly applied  
7 (indiscernible) adjustment factors that we extrapolated, we  
8 would still be passing these analyses.

9 VICE CHAIR GUNDA: Could you just explain, like  
10 so with the -- would that be differing from the Staff  
11 analysis and its methodology or input assumptions?

12 MS. WEISSINGER: It would be a different  
13 analysis. Right now what you see with the Staff's analysis  
14 and our refined analysis is it's blind to sources beyond  
15 1,000 feet.

16 What I think you are mentioning is if we had  
17 included those sources out to 2,000 feet but adjusted those  
18 contributions appropriately, that would be a different  
19 analysis than what you're seeing.

20 DR. LIBICKI: Right. And I think what Emily is  
21 also -- or you know, we looked at that and we said, well,  
22 could we use those adjustments to do the analysis? So,  
23 basically, exactly what you're going to. And, again, we  
24 didn't have sufficient information to understand the  
25 BAAQMD's curves to confirm that we, you know, knew exactly

1 how to extrapolate it. And that's why in the information  
2 you have you see two extrapolations that we believe are  
3 correct extrapolations but we don't have the base  
4 information to do that.

5 VICE CHAIR GUNDA: Thank you.

6 MS. DECARLO: A quick question, Hearing Officer  
7 Cochran. Do you have the page number where BAAQMD  
8 suggested that Staff extend their analysis to 1,500 feet?  
9 I'm sorry, I'm just having a hard time finding it in my  
10 notes.

11 HEARING OFFICER COCHRAN: I believe, Ms. DeCarlo,  
12 that it is in their comments on the NOP, I'm sorry, the  
13 Notice of Preparation. I try not to use acronyms because  
14 people don't know what we're talking about. Okay. So I  
15 have finally found it. It is, for those of you playing at  
16 home, TN 239805. It is not an exhibit. I am not currently  
17 finding it. I'm not finding it right off the bat either,  
18 so it was a comment that suggested we extend beyond. It  
19 might have actually been on the Final EIR -- I mean on the  
20 Draft EIR itself.

21 MS. DECARLO: I just did a quick scan of both of  
22 BAAQMD's comments in this proceeding. I didn't find it but  
23 that's not to say it's not there. We should confirm its  
24 existence.

25 HEARING OFFICER COCHRAN: Agreed. It actually

1 talks about the -- oh, it talks about the project being the  
2 fourth centers in a quarter-mile radius, so that's probably  
3 what I was thinking.

4 MS. DECARLO: Thank you.

5 HEARING OFFICER COCHRAN: That's my own failure  
6 to properly summarize the document.

7 So at this point, I'm not aware of any further  
8 questions from me or from the Committee.

9 So let's now go to -- let's now go to closing  
10 arguments.

11 At the Prehearing Conference the parties were  
12 informed that they would be given the opportunity to make  
13 closing statements of no more than ten minutes.

14 I note that it's 1:25 and we've been at this for  
15 about two hours now. Does anybody want to take a comfort  
16 break or do you want to just move through?

17 MR. GALATI: We prefer to move forward.

18 HEARING OFFICER COCHRAN: Okay. So, Mr. Galati,  
19 you chose to go first. Please proceed.

20 MR. GALATI: Can I ask the Committee if I can ask  
21 some redirect questions to my witnesses?

22 HEARING OFFICER COCHRAN: Oh, I'm so sorry.  
23 Absolutely.

24 MR. GALATI: Thank you.

25 Ms. Weissinger or Ms. Libicki, during the time

1 you've been here, during the hearing, were you able to  
2 check whether you believe that there is additional train  
3 traffic on the section of the line that you analyzed for  
4 Caltrain?

5 MS. WEISSINGER: Yes. We were able to look into  
6 the Altamont Corridor Express Line, which while it does go  
7 to Santa Clara, those train tracks are east of the project  
8 site and split before the project.

9 MR. GALATI: With respect to the discussion  
10 between 2,000 feet and 1,000 feet, do you believe in your  
11 professional opinion, having done this work for many other  
12 CEQA-related agencies, that the analysis at 1,000 feet that  
13 is presented in Exhibit 43 is sufficient to be -- to  
14 justify and provide significant evidence that there is no  
15 significance cumulative impact from health risks?

16 DR. LIBICKI: Yes. As I described, that is the  
17 absolutely standard way that we've been doing it for a long  
18 time.

19 MR. GALATI: And I just wanted to make this point  
20 clear, is your best estimate that if you did the analysis  
21 from 2,000 feet, would you still -- would that change your  
22 conclusion?

23 DR. LIBICKI: I don't believe it would change our  
24 conclusions.

25 MR. GALATI: Did your analysis take into account

1 the fact that there are some potential emissions advantages  
2 from using renewable diesel, like the client has agreed to  
3 do?

4 DR. LIBICKI: So great question. There's a fair  
5 amount of literature out there that indicates that  
6 renewable diesel reduces the particulate emissions and the  
7 particulate emissions are the emissions that are tied with  
8 risk, so, yes.

9 MR. GALATI: With respect to the broken link on  
10 footnote number three for the rebuttal testimony, page  
11 four, it links to something that is called  
12 Caltrain.com/assets/planning/sustainability/Caltrain+sustai  
13 nability+summary+report.pdf. You noticed that you accessed  
14 that in April 2022. Have you been able to access that?

15 MS. WEISSINGER: I have not been able to access  
16 it since we did in April.

17 DR. LIBICKI: So --

18 MS. WEISSINGER: It looks like they've moved that  
19 document, potentially.

20 DR. LIBICKI: It does. However, there are  
21 numerous instances of Caltrain citing the reduction of  
22 diesel particulate from the electrification to 97 percent  
23 and that's one of the justifications of the program. So we  
24 can provide another link that has that same reference.

25 MR. GALATI: And in your opinion is -- the



1 Caltrain Project, should it be considered a foreseeable  
2 future project in this cumulative analysis?

3 MS. WEISSINGER: Yes, I would say so, mostly  
4 because it's well underway. The infrastructure in Santa  
5 Clara has largely been completed. And so it very much  
6 would impact the future project here.

7 MR. GALATI: No further questions. Thank you.

8 HEARING OFFICER COCHRAN: Thank you.

9 I'm sorry, Ms. DeCarlo, did you also wish to have  
10 any redirect?

11 MS. DECARLO: No redirect from Staff. Thank you.

12 HEARING OFFICER COCHRAN: And, again, I apologize  
13 for forgetting to ask if you had any questions.

14 Miss -- Commissioner Vaccaro? Sorry.

15 COMMISSIONER VACCARO: That's fine. I'm a Miss,  
16 too. It works.

17 So before we go into the closing arguments, I  
18 remembered I did have a question and I should have written  
19 it down instead of trying to think I would remember it.

20 So just for the sake of argument, and this is for  
21 not Mr. Galati or Ms. DeCarlo, this is for the witnesses,  
22 let's just say for the sake of argument there's a  
23 determination made by the Committee that the project impact  
24 is cumulatively considerable and that there is a  
25 significant impact. Is there something already existing in

1 the record or with respect to the project or something that  
2 could be looked to or identified that would mitigate the  
3 impact to less than significant level?

4 And I feel like it's a fair question because the  
5 conversation, I understand the arguments are going against  
6 that, but we're considering all of this. And if it goes  
7 that direction, it seems to me that we want to have a very  
8 clear record.

9 So that's for the witnesses to tell us what you  
10 see in the existing record or what you think might suffice.

11 DR. LIBICKI: Can I just make sure I understand  
12 the question?

13 COMMISSIONER VACCARO: Sure.

14 DR. LIBICKI: Because right now the existing  
15 information in the record doesn't actually indicate  
16 significance for risks. And so I guess I'm a little  
17 confused by the question.

18 COMMISSIONER VACCARO: I'm not sure what was  
19 confusing. I don't know how to make it any more clear.

20 But maybe Hearing Officer Cochran, I think you  
21 know where I'm going with my question, so maybe you could  
22 say it more clearly?

23 HEARING OFFICER COCHRAN: Or not because I was  
24 thinking of a different question about timing of the  
25 Caltrain Electrification Project and when that 97 percent

1 reduction might be achieved. I mean, if the first train  
2 comes on in 2024, when does the last train that fully  
3 electrifies the project come online? And you're saying  
4 that the project gets the credit for that electrification  
5 now for the future electrification if I'm understanding the  
6 analysis. Am I understanding the analysis correctly, Ms.  
7 Leichtnam and/or Ms. Weissinger?

8 MS. WEISSINGER: Yes. So this is taking into  
9 account -- this would be assuming that full electrification  
10 has taken place. Even if there's partial electrification  
11 over time, you'll see that there can be -- we could take  
12 let's say 50 percent reduction and we would still be under  
13 the significance threshold. So even if there is some  
14 ramping up to full implementation of the project the  
15 project would still show less than significant for cancer  
16 risk.

17 HEARING OFFICER COCHRAN: Thank you.

18 Now getting back to Commissioner Vaccaro's  
19 question, I believe it's without Applicant's additional  
20 testimony the FEIR stands as showing a significant  
21 cumulative impact. Assuming the Committee also finds the  
22 project's contribution is cumulatively considerable, then  
23 is there any mitigation in the record or in the project  
24 design that could reduce those impacts?

25 DR. LIBICKI: Okay, so here's exactly why I was

1 confused is because I think that those impacts as analyzed,  
2 you know, and whether this is, you know, additional  
3 information that you accept or don't accept, that's the  
4 part I don't quite get how this works from a legal point,  
5 not being a lawyer, but I think the impacts are below  
6 significance once they're properly analyzed. And so when  
7 you say is there anything in the record to get the risks  
8 below a level of significance, I would say, yes, the risks  
9 are below a level of significance as analyzed.

10 And that's why I'm having problems because as  
11 kind of a mitigation expert, what I would immediately do is  
12 say, okay, what risks are above the threshold? How do I  
13 reduce those? And that's the part I can't do correctly  
14 because, correctly, the risks are already below the  
15 threshold. And that's -- I don't mean to be obstreperous  
16 but that's why I'm having trouble with it.

17 COMMISSIONER VACCARO: You're not being  
18 obstreperous. You're answering the question. Thank you.

19 MR. GALATI: May I --

20 VICE CHAIR GUNDA: Go ahead, Mr. Galati.

21 MR. GALATI: Okay. Two issues that are asked by  
22 the Committee that need significant clarification -- and  
23 I'm always uncomfortable about doing that, you're the  
24 Committee, you're making this decision. If you were the  
25 lawyer sitting next to me, I would not be uncomfortable at

1 all about objecting to the question, saying facts not in  
2 evidence, all the things that I would do that you've seen  
3 me do before.

4 So I ask for the indulgence to please redirect my  
5 witnesses after you ask them a question because I think  
6 that the questions that you've asked are confusing to the  
7 witnesses and are assuming facts not in evidence.

8 So I would like to ask two questions at this  
9 point.

10 One, I can get an answer for you, Commissioner  
11 Vaccaro, about -- I just have to ask it in a way you won't  
12 ask it. So I'd be happy to do that right now.

13 COMMISSIONER VACCARO: Please do.

14 MR. GALATI: Dr. Libicki, if our evidence about  
15 not being a significant impact is not relied upon or not  
16 believed, and so that the only evidence was that there was  
17 an exceedance of the 100-in-a-million cancer risk  
18 threshold, could the impacts be reduced by reducing the  
19 number of hours of operation of the generators?

20 DR. LIBICKI: If you reduce the number of hours  
21 of the generators you always reduce the impacts from the  
22 generators.

23 MR. GALATI: The second question has to do with  
24 the timing of Caltrain's train and credit that we get. The  
25 impacts you calculated, was it for all of the generators?

1 DR. LIBICKI: Yes.

2 MR. GALATI: And are we putting all the  
3 generators in at one time?

4 DR. LIBICKI: No.

5 MR. GALATI: I have another witness who can  
6 answer this question but if you can, it would be great.  
7 When do you think the last generator will be  
8 installed on this project?

9 DR. LIBICKI: I'm going to defer to Vantage on  
10 that one.

11 MR. GALATI: Okay. I can swear in a witness to  
12 describe that if the Committee cares.

13 HEARING OFFICER COCHRAN: We'll take your  
14 evidence. Who would you like to have sworn in?

15 MR. GALATI: Michael Stoner, are you still on?

16 MR. STONER: Yeah.

17 HEARING OFFICER COCHRAN: Mr. Stoner, could you  
18 spell your name for the record, please?

19 MR. STONER: Michael Stoner, M-I-C-H-A-E-L  
20 S-T-O-N-E-R.

21 (Michael Stoner was sworn.)

22 HEARING OFFICER COCHRAN: Thank you.  
23 Mr. Galati, please ask your witness your  
24 questions.

25 MR. GALATI: Mr. Stoner, do you anticipate

1 installing all of the generators in 2024 for this project?

2 MR. STONER: No, there will be no generators. A  
3 quarter of the generators would be installed in 2024. And  
4 the balance -- the next set of generators would be in 2026/  
5 And it would be closer to 2030, '28 to '30, until the final  
6 generators are installed at the earliest.

7 MR. GALATI: Okay. And if the Committee asked  
8 you to reduce your hours of operation for maintenance and  
9 testing as a mitigation measure, is that something you  
10 would be willing to do?

11 MR. STONER: Yes.

12 HEARING OFFICER COCHRAN: Are you proposing an  
13 additional mitigation measure, Mr. Galati?

14 MR. GALATI: No, I'm not. I'm proposing we have  
15 no impact.

16 VICE CHAIR GUNDA: Yeah, Mr. Galati, I think if  
17 you could help translate my question to the witness, back  
18 to your witnesses?

19 So what I heard loud and clear is if we did the  
20 analysis, more rigorous analysis, both for 1,000 and the  
21 2,000 square feet -- sorry, I keep saying square feet --  
22 feet, we'll be okay, we'll pass. It was contingent upon a  
23 certain level of electrification. But you just asked a  
24 couple questions on whether the entire generation is going  
25 to come online right away, not -- I just want to have, you

1 know, some sort of an answer on, given the schedule of the  
2 generators going online, and the transportation  
3 electrification happening, the railroad electrification,  
4 which on the website, one of the links that we found  
5 suggest that the emissions could be reduced by 97 percent  
6 by 2040 -- I mean, again, these are like moving targets.

7 I just want to understand from the work from your  
8 witness if, given the schedules, we would still feel  
9 comfortable stating that it would pass for 2,000 feet?

10 MR. GALATI: I can ask my witnesses. I think I  
11 can ask them in small, small pieces.

12 Dr. Libicki and Emily -- and I'm sorry I call you  
13 Emily, Emily. I'm always calling you Emily. And I made  
14 the mistake long ago of not calling Dr. Libicki Shari.

15 HEARING OFFICER COCHRAN: Mr. Galati, let me try  
16 before you do. So this isn't really the redirect. You can  
17 redirect after I ask what I think I just heard the  
18 Committee ask.

19 We're looking at two different event horizons,  
20 one for 2030 for fully buildout of all generators, and an  
21 indication of 2040 buildout for the Caltrain Modification  
22 [sic] Project. Against that backdrop, how would you  
23 calculate the emissions credit from the electrification?  
24 Would you provide the entire 97 percent now, here I 2022 as  
25 we're analyzing this project, or would you use a different



1 way of analyzing out through that time?

2 MS. WEISSINGER: I think what you have to keep in  
3 mind for, at least, cancer risk is that this is taking into  
4 consideration a long horizon of exposure. So when we talk  
5 about the cancer risk of (indiscernible) in a million for a  
6 resident, it's assuming that that resident is exposed to  
7 that source for, I think it's 365 days a year, and Dr.  
8 Libicki will be able to correct me whether it's 30 years or  
9 70 years exposure.

10 DR. LIBICKI: It's 30 now.

11 MS. WEISSINGER: Thirty years. So even though we  
12 do see some ramping up of both Vantage's project and the  
13 Caltrain project, we will have a significant amount of time  
14 where there is reduced diesel exposure due to  
15 electrification and, excuse me, the reduced exposure  
16 because of Vantage ramping up its project.

17 I will say that I did not kind of map those out.  
18 I don't think I have kind of the detailed information for  
19 the Caltrain project to do that right now. But, yeah, I  
20 don't know if I could definitively say for 2,000 feet  
21 whether that nets out.

22 HEARING OFFICER COCHRAN: Okay. And then I would  
23 ask Staff the same question of whether Staff could perform  
24 that analysis of the comparison of the buildout of the  
25 project with the buildout of the electrification and what

1 that does to the air quality analysis -- the health risk  
2 assessment analysis?

3 DR. CHU: This is Huei-an Chu. So I would like  
4 to clarify.

5 When you say from the analysis, do you mean the  
6 one done by the Applicant?

7 HEARING OFFICER COCHRAN: No, I think that Staff  
8 performed that analysis itself. So would you have -- or  
9 would you do defer to Applicant to perform the analysis?

10 DR. CHU: Oh. Actually, I quickly did a very  
11 similar analysis last night, the same as the one proposed  
12 by the Applicant, both for Table 2 and Table 4.

13 HEARING OFFICER COCHRAN: And did that analysis  
14 look at the timeframe for full buildout of the CA3 Project  
15 and completion of the Caltrain modification for  
16 electrification?

17 DR. CHU: No.

18 HEARING OFFICER COCHRAN: Thank you.

19 VICE CHAIR GUNDA: Great. Thank you. So that  
20 was the first question, just kind of I think you might all  
21 be tracking this. I'm just trying to go through, if there  
22 is analysis, rigorous analysis that suggests whether it's  
23 2,000 feet or 1,000 feet we're good, that (indiscernible)  
24 in my flowchart it satisfies the main piece.

25 If that doesn't, then the next question before,

1 you know, we go into the mitigation issues and such, just  
2 wanted to ask maybe Ms. DeCarlo, you suggested that, you  
3 know, we -- the 2,000 was overly conservative and it was,  
4 at some level, our discretion to go that far based on  
5 sister agencies suggesting that. Would you, based on the  
6 discussion today, suggest a different, you know, feet, how  
7 far we go, whether it's like, you know, 2,000 is still the  
8 most appropriate way of analyzing this? I just want to get  
9 your thoughts on that.

10 MS. DECARLO: I guess I would defer to Staff on  
11 whether or not there were large sources between the 1,000  
12 and the 2,000 feet that justified going that far; right?  
13 Isn't that -- I mean, that's the Guidelines suggestion,  
14 1,000 feet is good, unless there are large sources that  
15 justify going out farther.

16 And I think Dr. Chu testified earlier that the  
17 request from the Applicant to go out that far was just to  
18 see if there were large sources.

19 HEARING OFFICER COCHRAN: To follow up on that,  
20 to Staff or to Applicant's witnesses, either one, what is  
21 the definition of a large source under the BAAQMD-CEQA  
22 Guidelines?

23 DR. CHU: This is Huei-an Chu. There's no clear  
24 definition in the Guidelines. But as I say in Sequoia, the  
25 airport was the major sources. But for this one the major

1 source was from the surrounding highways and railroad. And  
2 so it's already a dominant health risk, so we didn't -- so  
3 Staff didn't go beyond 1,000 feet.

4 HEARING OFFICER COCHRAN: I have a specific  
5 question. Is a data center with backup generators  
6 considered to be a large source?

7 DR. CHU: Yes, but it all depends on its risk.  
8 If its risk is not that high, then we won't consider it as  
9 major sources.

10 HEARING OFFICER COCHRAN: Thank you, Dr. Chu.

11 Are there any further questions, Mr. Galati?

12 MR. GALATI: Dr. Libicki, could you address those  
13 questions that we just had a discussion on? Just after  
14 Staff's testimony, could you address those questions? They  
15 were about what is a large source and is a data center a  
16 large source? And I'd like you to provide some  
17 clarification on what benefit you think the 2,000-foot  
18 range would be relative to this project?

19 DR. LIBICKI: Sure. So let me go back to what  
20 the BAAQMD does with their screening evaluation and what  
21 the actual risks are because I think this is important, is  
22 that the actual risks from a data center, because they have  
23 all been permitted fairly recently, are typically below  
24 ten-in-a-million, so -- and that's right at the boundary of  
25 the relevant data center. So you know, you have the data

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1 center, the permitting that is done. Essentially, you're  
2 not allowed to be permitted unless your risks are below  
3 ten-in-a-million at the boundary of the data center.

4 And so when we use these BAAQMD screening  
5 thresholds, we use a very, very conservative methodology of  
6 estimating risks. And the estimated risks using these, you  
7 know, tools and the lines all come out much, much higher  
8 than the real risks because of the screening methodology.

9 So I would not consider a data center a major  
10 source when it comes to risk because the risks are all  
11 below ten-in-a-million at the boundaries. That's different  
12 from something like, say, a refinery. And so, again, I  
13 talk about refineries a lot here.

14 When the Bay Area Air Quality Management District  
15 thinks of large sources they will typically think of the  
16 refineries because they have been built up over many, many,  
17 many years, they have lots and lots of sources, and their  
18 risks at the boundary are typically well over ten-in-a-  
19 million.

20 Now that's exactly why they Bay Area Air Quality  
21 Management District put in a whole new program for  
22 refineries to evaluate the risks from refineries because it  
23 hadn't been done for a long time. There's a parallel  
24 program to evaluate risks from everything else called 1118  
25 which is, essentially, designed to ensure that the risks

1 are below ten-in-a-million. And that's what lots and lots  
2 of sources, including data centers, fall in under the Bay  
3 Area Air Quality Management District.

4 But as I said, we've been permitting these fairly  
5 recently. And the cumulative risks, because Bay Area has  
6 been requiring cumulative risk assessment for data centers,  
7 so you put in one more generator and you do a risk  
8 assessment for the whole thing, has been under ten-in-a-  
9 million, you know, for -- at the boundary.

10 And I'm sorry, did I (indiscernible)?

11 MR. GALATI: No, you did. You answered part of  
12 my question. And I, not knowing how to do this type of  
13 procedure, is -- I asked you a triple question, so I'm  
14 going to ask the second one.

15 DR. LIBICKI: Okay.

16 MR. GALATI: Do you believe that the major  
17 sources outside 1,000 feet or any of the sources outside  
18 1,000 feet are large enough to significantly contribute to  
19 the health risk at our sensitive receptor?

20 DR. LIBICKI: So do I believe that any of the  
21 sources outside of 1,000 feet would push the cumulative  
22 risk over the cumulative risk threshold? No, I do not.

23 MR. GALATI: If you used half of the electrical  
24 electrification emissions over the life of this project,  
25 would that still create a cumulative human risk --

1 cumulative risk in your opinion?

2 DR. LIBICKI: I don't believe see because it  
3 looks like we've got a fair amount of headroom between what  
4 we estimate in using the full electrification in the risk  
5 threshold.

6 MR. GALATI: And, lastly, when you do a health  
7 risk assessment and you look at the maximum exposed  
8 residents, you assume that there is a person there 24/7;  
9 correct?

10 DR. LIBICKI: That is correct.

11 MR. GALATI: For 30 years?

12 DR. LIBICKI: For 30 years, that is correct, at  
13 the maximally exposed location.

14 MR. GALATI: So even the number we calculate is  
15 extremely conservative because that's not possible; right?

16 DR. LIBICKI: That is correct.

17 HEARING OFFICER COCHRAN: Any further questions  
18 by anybody to anyone else?

19 So we're trying to move to closing statements.

20 Mr. Galati, you opted to go first. You have ten  
21 minutes.

22 CLOSING STATEMENT BY APPLICANT

23 MR. GALATI: As I said in the opening statement,  
24 I don't think this proceeding is the proceeding to decide  
25 how you will change how you might look at cumulative

1 impacts. I think that there is ample evidence, not only  
2 substantiated but, actually, all the experts in this  
3 proceeding agree, there is no significant impact. And  
4 there is no evidence contrary to that.

5           When you've asked us to do modeling for  
6 cumulative impacts in the past where, let's say, there's a  
7 data center right next to this one, you make us model what  
8 those impacts would be as if that data center is built out  
9 fully the first year and you pretend we are built out fully  
10 for the first year. But when we try to -- when we're  
11 trying to show that there is another project that is a  
12 future foreseeable project that reduces emissions, you're  
13 getting into the timing which, I think is not really  
14 appropriate.

15           The way that this modeling, and, again, it is all  
16 based on being incredibly conservative for health risks, is  
17 take the full effect of that project and compare it to the  
18 full effect of this one, which we did. It just happened to  
19 be, for the first time in Commission history, that there is  
20 a project that reduces emissions by 97 percent. You're  
21 used to the other way around. And when you have it the  
22 other way around you make us look at the project as if it's  
23 fully built out.

24           In addition, I think that there's a missing piece  
25 here that a witness had said but I'd like to provide more



1 clarity in what that means.

2           The data that the Bay Area gives you is data, not  
3 that they're measuring, it's data that was modeled at the  
4 time that project was permitted. And that permit, they may  
5 never have built that project at that level. We don't know  
6 so we don't go to that detail. We take worst-case  
7 scenarios and we evaluate them and that's what's done here.  
8 And no matter how you slice it the number is below 100,  
9 which is why Staff said here's 100, it doesn't matter  
10 because, qualitatively, this important is less than  
11 significant.

12           Data centers are very, very, very low  
13 contributors to health risk and to the Bay Area problem.  
14 There is a policy reason to maybe not want diesel but there  
15 is no CEQA reason to not want diesel. And this project  
16 should not have to reduce its hours, although it could,  
17 because of a policy reason. There is no evidence that  
18 there is a significant impact. There is a number in a  
19 table that has been explained to you by all the experts  
20 that should not be relied upon, either from a legal  
21 perspective or from a technical perspective. And there's  
22 no new numbers that you can look at.

23           And I don't know how else to address this issue.  
24 It was almost like that I had to prepare for direct and  
25 cross-examination that I didn't know we were going to have.

1 So I brought the witnesses the best I could and we prepared  
2 the documents the best we could. I think that the  
3 substantial evidence is there and I urge you to please rely  
4 on those experts, write the decision, append to the  
5 decision the evidence that you have in front of you, and  
6 move forward and issue a decision as soon as possible.

7           Last I would like to say is Vantage is a very,  
8 very respected member of the Santa Clara community. They  
9 are a significant contributor to that community. They're a  
10 significant participant in that community. They don't have  
11 the community upset with them. You/we got one comment that  
12 said, "Please evaluate noise," because they hadn't read  
13 that noise was evaluated. That is the Applicant you're  
14 dealing with. They've built several data centers and they  
15 have more to come. They rely on being able to build the  
16 best data center that they can. And they have tenants that  
17 they -- beforehand.

18           And so urge you. We're very, very close. We've  
19 got full City PCC approval and we're ready to go to a city  
20 development hearing and get this project approved. So as  
21 you to please complete your proposed decision. We think  
22 everything in front of you is what you need.

23           HEARING OFFICER COCHRAN: Thank you, Mr. Galati.

24           Staff did not commit to making a closing  
25 argument. Ms. DeCarlo, would you like to do so now?

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CLOSING STATEMENT BY STAFF

MS. DECARLO: Yes. And I promise to keep it brief this time, since I think I've used up all my time for my opening statement, but I just wanted to kind of sum up Staff's position in case it's helpful. I know you've heard a lot already.

Just Staff feels that the individual threshold is really the appropriate threshold to analyze a project's cumulative impact with regard to cancer risk and PM2.5 at issue here. Even if the cumulative threshold, though, is used and the Committee decides that that is the appropriate threshold, we believe, given the Applicant's refined additional data, that the project meets that threshold and there would be no significant impact with regard to the project or even the existing background levels.

I think the Committee asked a question about mitigation, if the conclusion was that the threshold was exceed, this cumulative threshold, what the mitigation would be? I think that's a tricky issue because it also depends on what threshold within that cumulative threshold you apply; right? What do you say results in a cumulatively considerable contribution from the project itself?

So if you read that cumulative threshold as being a one-molecule rule, then I think any mitigation you'd

1 identify would need to show that it's reduced the project's  
2 contribution to that to less than one molecule. And I  
3 think that's difficult at this point because the Applicant  
4 has applied all the mitigation to the facility itself that  
5 it can't reduce its emissions. So then it's a question of,  
6 well, can you identify community benefits or some broader  
7 approach to mitigation? And then can you quantify that to  
8 show that that mitigation actually reduces the project's  
9 contribution?

10           Anyway, in conclusion, so if the Committee adopts  
11 the -- Staff's conclusion, ultimate conclusions about the  
12 project being less than significant impact overall, even  
13 with -- including the Applicant's refined data, we don't  
14 think that this triggers recirculation. We think the  
15 Committee can do that, accept that additional information  
16 and the conclusions and the testimony provided today,  
17 without recirculating the document under CEQA.

18           HEARING OFFICER COCHRAN: Thank you, Ms. DeCarlo.

19           Before we move to public comment, does Vice Chair  
20 Gunda have any remarks you'd like to make?

21           Commissioner Vaccaro, do you wish to make any  
22 remarks?

23           COMMISSIONER VACCARO: This is really helpful. I  
24 wanted to thank the witnesses and Ms. DeCarlo and Mr.  
25 Galati for sort of the arguments, the explanation in

1 between the Staff testimony. I think it's helpful. I  
2 think it helps me understand better what was written in the  
3 FEIR. I think the supplemental information that was  
4 submitted by the Applicant, I understand it better because  
5 there's been some context put around it. So I appreciate  
6 the time that you've all taken. I think you probably  
7 expected this to be a much briefer hearing. But I think  
8 this opportunity for a robust record and clarity is really  
9 important, so I just thank you all.

10 VICE CHAIR GUNDA: And I'm just still learning  
11 the process so I don't know what the comment meant here.

12 I just want to echo Commissioner Vaccaro's  
13 comments. Thank you. That was really helpful. I think,  
14 you know, some of the way the conversation was structured  
15 towards the end really helped with understanding what the  
16 documents meant to say. I mean, I have some opportunities  
17 for us, in thinking about how we prepare future documents,  
18 but that's a conversation for another time.

19 Thanks.

20 HEARING OFFICER COCHRAN: Thank you.

21 We are now going to proceed to public comments.  
22 And I'm going to hand over control of the Ms. Gallardo from  
23 the Public Advisor's Office to assist in running the public  
24 comment portion of the Evidentiary Hearing.

25 Thank you, Ms. Gallardo.

1 MS. GALLARDO: Thank you. This is Noemi Gallardo  
2 serving as Public Advisor for this Evidentiary Hearing  
3 today.

4 We are going to start with public comments in the  
5 hearing room. If there is anyone in this room here in  
6 Sacramento that would like to make a public comment, please  
7 form a line at the podium. I'm looking at the room now.  
8 It does not look like we have any takers. No one is  
9 standing. No one is at the podium. All right.

10 So we will now move to Zoom. If you would like  
11 to make a comment and you are joining us remotely through  
12 Zoom, please use the raised hand feature to indicate you  
13 would like to make a comment. If you are on by phone,  
14 please press star nine to raise your hand so that we can  
15 call on you. And I'm looking for hands now. I do not see  
16 any hands raised.

17 So one last call. To use the raise-hand feature  
18 if you would like to make a comment. Press star nine if  
19 you are on by phone and would like to make a comment. All  
20 right. That was the last call. I do not see any hands, so  
21 no public comment.

22 I hand the mic back to you.

23 HEARING OFFICER COCHRAN: Thank you, Ms.  
24 Gallardo.

25 The Committee will now recess to a closed session

1 in accordance with California Government Code section  
2 11126(c)(3) which allows a state body to hold a closed  
3 session to deliberate on a decision to be reached in a  
4 proceeding the state body was required by law to conduct.

5 We anticipate we will return from closed session  
6 in approximately 45 minutes, so we'll say 30. That's an  
7 aspirational goal.

8 At this time, I would like to thank and excuse  
9 the witnesses, they don't have to stay, but would suggest  
10 that the parties stay either here physically or remotely in  
11 case there is reportable action coming out of closed  
12 session.

13 So with that, we have recessed to closed session.

14 (The Committee recessed to closed session from 2:04  
15 p.m. until 2:52 p.m.)

16 HEARING OFFICER COCHRAN: This is Susan Cochran.  
17 We're back on the record. It is approximately 2:52. The  
18 following reportable action comes from closed session.

19 We request that Staff, working with Applicant,  
20 create a supplement to the Final Environmental Impact  
21 Report on cumulative HRA issues assuming that the BAAQMD  
22 2017 CEQA Guidelines cumulative thresholds apply. Please  
23 include an analysis of the applicable radius. And the  
24 Committee does not opine on whether the appropriate  
25 radius -- or applicable radius, excuse me, is 1,000 feet or

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1 2,000 feet.

2 In addition, the analysis shall include the  
3 emission reductions of the Caltrain Electrification Project  
4 as a reasonably foreseeable future project.

5 In addition, Staff and Applicant shall provide  
6 adequate documents to substantiate all of the conclusions  
7 and information contained in the supplement to the final  
8 impact report, Environmental Impact Report. Sorry.

9 The hearing record shall remain open. It is not  
10 closed today. We anticipate that there will not be a  
11 physical hearing after the filing of the supplement to the  
12 Final Environmental Impact Report and that we will,  
13 instead, receive all of the additional information by way  
14 of a motion on the papers.

15 The Committee does not believe that recirculation  
16 is required, pursuant to 15088.5 of the CEQA Guidelines.

17 Finally, we are anticipating that this shall be  
18 on the July or August business meeting, depending upon how  
19 quickly Staff or Applicant are able to provide us with this  
20 supplement to the Final Environmental Impact Report.

21 (Colloquy between Hearing Officer and Commissioners)

22 HEARING OFFICER COCHRAN: Sorry. We're having a  
23 little colloquium up here to make sure that we're giving  
24 you all of the information that we're looking for.

25 (Colloquy between Hearing Officer and Commissioners)



1 HEARING OFFICER COCHRAN: Are there any  
2 questions?

3 MS. DECARLO: I'm sorry. I missed the last one  
4 after the include Caltrain as a reasonably foreseeable  
5 project, something about exhibits.

6 HEARING OFFICER COCHRAN: Yes. Please provide  
7 adequate documents to substantiate the conclusions and  
8 additional information.

9 MS. DECARLO: Thank you.

10 HEARING OFFICER COCHRAN: And, again, those  
11 should be included in the hearing record so that the  
12 hearing record is still open.

13 Mr. Galati, did you have any questions?

14 MR. GALATI: I'm sorry. I'm a slow typer. I  
15 just have one.

16 HEARING OFFICER COCHRAN: That's okay.

17 MR. GALATI: Yeah, I have a question on the  
18 motion. If we provide Staff something and Staff is  
19 comfortable with it and either adopts it by -- are you  
20 assuming that I would make a motion for it to be put into  
21 the evidentiary record and maybe ask Staff to stipulate  
22 that they agree with it or something like that, is that  
23 what you were looking for?

24 HEARING OFFICER COCHRAN: I think what we're  
25 looking for is a single integrated document from Staff that

1 potentially -- so there are a number of ways that you could  
2 reach it. But I think what we're looking at is something  
3 in the nature of an addendum or an errata that shows the  
4 changes from the existing final impact report to this  
5 supplement to the Final Environmental Impact Report to show  
6 the analytical steps taken to reach the conclusions that  
7 were obviously difficult for us to follow.

8 MR. GALATI: Okay. And, okay, so assuming that  
9 that is a document that then Staff prepares, we could  
10 provide information to Staff. Staff can prepare the  
11 document. You want one prepared by Staff. I'm assuming  
12 that I would then docket the documents I'm relying upon and  
13 then Staff will move all of that into evidence or --

14 HEARING OFFICER COCHRAN: Or --

15 MR. GALATI: -- how do you want that done?

16 HEARING OFFICER COCHRAN: So --

17 MR. GALATI: I didn't know what motion I might  
18 need to have to make.

19 COMMISSIONER VACCARO: Yeah. So I think it can  
20 work a couple of different ways but I think the idea,  
21 maybe, is if Applicant and Staff are working together it  
22 may or may not be that Applicant has its own, you know,  
23 independent evidence, and it might be what you're providing  
24 to Staff for Staff for then to rely on for the supplement  
25 and cite to all of that and Staff move it in. If you feel

1 that Applicant needs to move something in, I think that's  
2 fine.

3 But the goal here is you all seem to be able to  
4 work well together here and have a sense of what you are  
5 trying to say that we weren't quite understanding and it  
6 makes sense to keep Applicant and Staff communicating. And  
7 to the extent that that can happen, then we don't end up  
8 with conflicts of disputes that have to be adjudicated.

9 But I think we leave it to you, one way or  
10 another. Whatever is in there, right, has got to be the  
11 basis for this supplemental information.

12 HEARING OFFICER COCHRAN: Right. And we're  
13 trying not to play bring me a rock or -- you know, so we're  
14 giving you as much information as we can about what we're  
15 looking for. What you can give to us is in your  
16 discretion.

17 And so again, Mr. Galati, it may be, you know,  
18 your motion to admit these documents into the hearing  
19 record. And that could be separate and distinct from  
20 whatever documents Staff puts in.

21 MR. GALATI: Yeah, I understand. Thank you.

22 HEARING OFFICER COCHRAN: Thank you.

23 MS. DECARLO: I mean, we could conceivably just  
24 do a joint document that includes all the documentation and  
25 a joint motion.

1 HEARING OFFICER COCHRAN: Yes.

2 Anything further?

3 MR. GALATI: No. I'd just like to say I probably  
4 let a little bit of my Sicilian out today and I apologize  
5 to the Committee for doing that. It's frustrating and very  
6 difficult to handle these things in Evidentiary Hearing.

7 The only plea I would make is I actually think  
8 that committees might be very, very helpful earlier in a  
9 project at a scoping meeting and a draft EIR stage to help  
10 us understand what it is you want. From an Applicant  
11 perspective, if things change, we don't know how to respond  
12 to that very easily on how the Commission is -- ultimately,  
13 what they want.

14 And so I know it's not for that, it's for a  
15 broader discussion at a later point, but I believe that  
16 earlier direction from the Committee, which I know  
17 committees don't generally like to do that, would -- look,  
18 it's your document. We should prepare the document you  
19 want. And it would be helpful if you could tell us,  
20 especially on specific projects, as we come we can -- the  
21 informational hearing or the NOP, if the committee could  
22 participate, I think that would be helpful.

23 VICE CHAIR GUNDA: Yeah. No. Good points. And  
24 thank you all for everything that was presented to, really  
25 helpful. Thank you, Susan and the Legal Team.

1                   With that, I adjourn the Evidentiary Hearing at  
2 3:01 p.m.

3                   (The Evidentiary Hearing adjourned at 3:01 p.m.)

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CERTIFICATE OF REPORTER

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of June, 2022.



MARTHA L. NELSON, CERT\*\*367

CERTIFICATE OF TRANSCRIBER

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.



June 10, 2022

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MARTHA L. NELSON, CERT\*\*367