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BEFORE THE
CALIFORNIA ENERGY COMMISSION

Application for Small Power Plant Exemption for the:
CA3 Backup Generating Facility

Docket No. 21-SPPE-01

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
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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MAY 27, 2022

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

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

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

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

MR. GALATI: Good afternoon, Commissioners and
Members of the Committee. My name is Scott Galati. I represent Vantage Data Centers.

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

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

That's all our introductions now. Thanks.

VICE CHAIR GUNDA: Thank you, Mr. Galati.

Now Staff.

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

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

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

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

HEARING OFFICER COCHRAN: Thank you, Vice Chair Gunda.

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

The Committee noticed today's Evidentiary Hearing in the Revised Notice of Prehearing Conference and
Evidentiary Hearing and Revised Scheduling Order issued on May 13, 2022. The notice for today's Evidentiary Hearing, as well as other documents that we will be referring to today, are available in the online docket system that the Energy Commission uses. The Docket Number for CA3 Backup Generating Facility Project is 21-SPPE-01. In addition to the online docket, the Public Advisor's Office is available -- the Public Advisor's Office is available to assist the public in accessing documents.

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

Sorry about that.

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

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

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

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

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

A court reporter is online via Zoom and that person is taking down all of the discussion and will prepare a transcript of what is said. To ensure that we have a complete and accurate transcript, I must first ask that only one person speak at a time. Second, please identify yourself before you speak. And when you speak for
the first time, please say and spell your name slowly.
Remote participation for some people makes it harder for the court reporter and me to identify who is speaking or who wishes to be recognized.

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

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

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

Is she unmuted, Ms. Castro? Perhaps she's shy.

So let's continue on.

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

Oh, so let's recognize her.

MS. CARLOS: Ms. Fernandez, you're unmuted if you can unmute on your end.
MS. FERNANDEZ: Hello. Good morning. Can you hear me?

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

MS. FERNANDEZ: Oh, thank you. Good morning.

I'm Debby Fernandez with the City of Santa Clara Planning Department and I'm the Project Manager, excuse me, for this application on the city side.

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

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

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

After I give the background, I will then ask for motions on the exhibits. After that the Committee will call for testimony on the questions it asked by order on May 25, 2022, which I will describe later. There will then be an opportunity for public comment.
The Committee has also given notice that it may adjourn to a closed session. Following the closed session, we will adjourn the Evidentiary Hearing, if appropriate.

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

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

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

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

Public Resources Code section 25541 specifies that the CEC may grant an SPPE only when it makes three separate and distinct findings. First, the proposed power plant has a generating capacity up to 100 megawatts. Two,
no substantial adverse impact on the environment will result from the construction or operation of the power plant. And three, no substantial adverse impacts on energy resources will result from the construction or operation of the power plant.

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

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

Staff prepared a Final EIR and published it on March 24, 2022. The Final EIR consisted of the Draft EIR, the comments received on the Draft EIR, responses to those
comments, and a Mitigation Monitoring or Reporting Program.

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

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

MR. GALATI: No.

HEARING OFFICER COCHRAN: Ms. DeCarlo?

MS. DECARLO: No.

HEARING OFFICER COCHRAN: Thank you.

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

On May 25, 2022, the Committee filed the orders regarding Committee questions. The May 25 orders ordered any party submitting additional evidence in response to the Committee's questions file a revised exhibit list by 10:00 a.m. today.
Applicant filed its supplemental Exhibit List on May 25, 2022. Thank you, Mr. Galati.

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

MS. DECARLO: No.

HEARING OFFICER COCHRAN: Thank you, Ms. DeCarlo.

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

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

First, Applicant has identified Exhibits 1 through 43.

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

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

HEARING OFFICER COCHRAN: Thank you.

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

MS. DECARLO: No objection.

HEARING OFFICER COCHRAN: Thank you, Ms. DeCarlo.
With that, we will admit Applicant's Exhibits 1 through 43 into evidence.

(Applicant Exhibits 1 through 43 are admitted.)

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

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

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

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

MR. GALATI: No objection.

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

(Staff Exhibits 200 through 206 are admitted.)

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

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

The Committee issued the May 25th order to seek additional information from the parties on two questions. First, the Committee reads the FEIR as using a numeric threshold to determine whether there are cumulative exceedances for various emissions. The FEIR's analysis shows that those thresholds are exceeded as more thoroughly described above.

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

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

The second question posed by the Committee was, under CEQA, once a significant impact is identified, then the next question is what mitigation is available to reduce the severity of the impact? We asked the parties to please
describe any existing or proposed mitigation measures that would reduce the Project's apparent exceedances of a cumulative threshold for cancer risk and annual PM2.5 emissions.

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

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

Staff did not prefile written supplemental testimony.

At this time, I would like to ask the parties to provide their witnesses on the topic. As stated in the notice of the Evidentiary Hearing, we will swear the witnesses from both parties in as a panel. Applicant's witnesses may offer a brief opening statement, then Staff's witnesses may offer a brief opening statement. After these
opening statements, the witnesses may then we questioned first by the Committee, then Staff, then Applicant. Witnesses may also ask questions of each other. At this time, Mr. Galati, could you please identify who will be testifying on behalf of Applicant?

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

HEARING OFFICER COCHRAN: Thank you.

Dr. Libicki, are you on the line, please? Please make sure that she is unmuted. Dr. Libicki, are you unmuted on your end?

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

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

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

HEARING OFFICER COCHRAN: Perfect. Thank you. Could you please spell your name?


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

(Sheri Beth Libicki was sworn.)

HEARING OFFICER COCHRAN: Thank you.
Ms. Weissenberg [sic] are you like and on the phone?

MS. WEISSINGER: I am.

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


(Emily Ann Weissinger was sworn.)

HEARING OFFICER COCHRAN: Thank you.

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

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

HEARING OFFICER COCHRAN: That's perfectly reasonable.

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

HEARING OFFICER COCHRAN: Okay.

Mr. Birdsall?

MR. BIRDSALL: Hello. Good morning.

HEARING OFFICER COCHRAN: Just a quick question,
Ms. DeCarlo. Sorry. Excuse me one sec.

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

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

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

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

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

So turning to Mr. Birdsall, are you available and on the line?
MR. BIRDSALL: Hello. I am. First name --

HEARING OFFICER COCHRAN: Do you --

MR. BIRDSALL: Oh.

(Brewster Birdsall was sworn.)

HEARING OFFICER COCHRAN: Thank you.

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

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

HEARING OFFICER COCHRAN: Yes. Thank you.

(Huei-an Ann Chu was sworn.)

HEARING OFFICER COCHRAN: Thank you.

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

DR. QIAN: Yes.

(Wenjun Qian was sworn.)

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

Ms. DeCarlo, I believe you wish to make a framing statement about this issue --
MS. DECARLO: Yes. Thank you.

HEARING OFFICER COCHRAN: -- that is not testimony.

OPENING STATEMENT BY STAFF

MS. DECARLO: Correct. Yes. Yes. Thank you.

Yeah. As I mentioned, Lisa DeCarlo, D-E-C-A-R-L-O, representing Energy Commission Staff. So this is just kind of an overarching framing. And then Staff will present additional detail and respond to any questions the Committee may have specific to this.

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

The Guidelines themselves are confusing and appear to be internally inconsistent in several places.

But it's also true that we, ourselves, need to provide more clarity in our analysis as we move forward, so we understand the Committee's wrestling with what we're trying to say in our FEIR, as well.

I would just note as we dive into this, you know,
and parsing out the confusion, that the Guidelines are, ultimately, advisory. And lead agencies are directed to rely on substantial evidence most appropriate for the project being studied, so that's kind of our guiding star as we're trying to interpret these Guidelines, what's most appropriate for analyzing the project we have before?

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

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

But then, after that, the Guidelines go on to say -- to identify another threshold which it calls cumulative impacts but it doesn’t explain how this threshold interrelates with the previously identified threshold. This portion of the Guidelines identifies when the aggregate total of sources in a 1,000-foot radius would be considered significant but it does not specify what.
portion of that total attributable to a source would be considered cumulatively considerable contribution to that significant impact. That’s a mouthful and kind of that's the beginning of the complications.

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

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

The problem with not identifying a cumulatively considerable contribution level in that second cumulative threshold that BAAQMD identifies is that we're left with this idea of is it a one-molecule threshold or is it not?
BAAQMD doesn’t -- the Guidelines themselves don’t elaborate, no supporting information that we could find elaborates on that, so we really struggled. It can't be that zero emissions would result in a cumulatively considerable impact from that; right? But BAAQMD doesn’t -- that threshold doesn’t address the situation where you have a project but it's not emitting anything. If you take a plain reading of the threshold, it would say, okay, that project is cumulatively considerable as well.

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

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

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

And BAAQMD itself has accepted this two-step approach in their own documents. They recently adopted updates to the CEQA thresholds for GHG and they say, quote, "Both parts of this test must be met for a project's impact to be treated as significant under CEQA." In this document, BAAQMD also says, in reference to CEQA, "The statute does not require a so-called one additional molecule standard and some project's incremental contributions would be so minor that their impact does not have to be treated as significant, even though the project would add an additional amount to the significant cumulative impact."

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

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

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

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

"Past, present, and future development projects contribute to the region's adverse air quality impacts on a cumulative basis. By its very nature, air pollution is largely a cumulative impact. No single project is sufficient in size to, by itself, result in nonattainment of ambient air quality standards. Instead, a project's individual emissions contribute
to existing cumulatively-significant adverse air quality impacts. If a project's contribution to the cumulative impact is considerable, then the project's impact on air quality would be considered significant."

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

The Guidelines also state,

"In developing thresholds of significance for air pollutants, BAAQMD considered the emission levels for which a project's individual emissions would be cumulatively considerable. If a project exceeds the identified significant thresholds, its emissions would be cumulative considerable, resulting in significant adverse air quality impacts to the region's existing air quality conditions. Therefore, additional analysis to assess cumulative impacts is unnecessary. The analysis to assess project-level air quality impacts should be as comprehensive and as rigorous as possible."

And, again, that’s where we believe the individual project threshold that BAAQMD identified that said ten-in-a-million for cancer risk and 0.8 for -- I might have that one, sorry -- for PM10, those individual
project thresholds, we believe, fully encompass this idea of whether the project itself would have a cumulative impact.

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

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

So this shows that -- so even in those most vulnerable communities, BAAQMD is not proposing a one-molecule rule; right? They're acknowledging that there can be emissions to a certain extend and still address the
Lastly, in BAAQMD's initial study and negative declaration supporting these rule modifications, BAAQMD only cites to the ten-in-a-million cancer risk threshold for individual sources. It does not mention any other threshold to consider for cumulative cancer risk impacts.

And I quote,

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

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

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

For these reasons, Staff has concluded that it is reasonable to use the individual project thresholds
contained in the BAAQMD-CEQA Guidelines as the appropriate thresholds of significance to determine whether the project emissions would be cumulatively considerable. And as the FEIR clearly shows, the project's emissions fall below this threshold.

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

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

The Applicant has now provided this quantification in its May 26th filing. As shown in that
filing, when the Caltrain Electrification Program, which is a reasonably-foreseeable project and, therefore, is appropriately considered in this analysis, when that program -- project is factored in, cumulative emissions in the radius of the project fall substantially below the cumulative thresholds and confirm Staff's conclusion that the project would not have a cumulatively considerable impact on air quality.

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

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

VICE CHAIR GUNDA: Yeah. Thank you. And it was helpful. Just a quick question at a high level. Has there been any attempt by the Staff to talk to BAAQMD to clarify some of the things that you just raised?

MS. DECARLO: I believe so. I think my witnesses
can answer better to the day-to-day, kind of. I know we've sought their input on a number of occasions on general things. I would imagine we have had conversations along these lines but I can't answer any specifics.

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

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

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

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

It's not a preview of decision making it's just this is some of what I'm thinking about as we're going to be listening to the testimony and making our way through today and, you know, looking at the decision is that you just said a lot that's not showing up anywhere except for right now in what you said, not even in the supplemental
responses to the questions that the Committee posed initially that Staff and Applicant both addressed.

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

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

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

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

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

And I think it's hard when Staff is in the trenches project after project, sometimes it's hard to really take a step back and really flush out, okay, we have this confusing thing before us that we've been asked to use, we want to include it because a sister agency has included, we want to be as informative as possible for the reader and the decisionmakers, but we don’t fully
understand how it interrelates with the one threshold that we do understand and that’s consistently used, not by us, not just by us but by other agencies and other analyses within the BAAQMD's jurisdiction.

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

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

I should also note, too, that Staff's analysis is a screening analysis at the very -- so the question is, you know, you do this initial screening analysis and it shows
an overage, do you then do some more refined analysis to figure out whether or not that overage is really, in practice, is really going to happen? And we didn’t take that extra step because, one, again, we weren’t relying on that cumulative threshold, really, for the significant determination. We were really relying on that individual project threshold.

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

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

COMMISSIONER VACCARO: Yeah. So I think now we probably should hear from the witnesses and get that sworn -- their sworn testimony and answers to the questions on the record. I think we should start with Staff before we go to Mr. Galati.
HEARING OFFICER COCHRAN: Okay, but I did have two follow-up questions for Ms. DeCarlo, as well. And the first is, you were referring to a recently adopted -- are you referring to the Justification Report that this Committee has said were taking official notice of?

MS. DECARLO: Yes, the April 2022.

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

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

HEARING OFFICER COCHRAN: Okay.

MS. DECARLO: It's separate.

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

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

MS. DECARLO: And I think Staff's position would

that that's already baked into that individual project

threshold. That concept of cumulative impacts is already

inherent in how BAAQMD determined to establish that

threshold in the first place. But I will let Staff provide

more detail --

HEARING OFFICER COCHRAN: Okay.

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

HEARING OFFICER COCHRAN: So do we want to let --

yeah, yeah, yeah, yeah. Do we want to let Mr. Galati?

Because we said we let them --

COMMISSIONER VACCARO: Frame his --

HEARING OFFICER COCHRAN: Yeah.

COMMISSIONER VACCARO: -- focus?

HEARING OFFICER COCHRAN: Yeah. Before his

witness?

COMMISSIONER VACCARO: Right.

HEARING OFFICER COCHRAN: Okay. Because we're

doing it as a panel.

COMMISSIONER VACCARO: Yeah.

HEARING OFFICER COCHRAN: There's a panel and

then there's the panel. I think there's --

COMMISSIONER VACCARO: (Indiscernible) panel.
HEARING OFFICER COCHRAN: I think it's the air quality panel made up of both Staff and Applicant. I mean, that's how I envision it.

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

HEARING OFFICER COCHRAN: How --

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

VICE CHAIR GUNDA: One panel.

HEARING OFFICER COCHRAN: One panel.

COMMISSIONER VACCARO: So it's one big panel?

HEARING OFFICER COCHRAN: So one big --

COMMISSIONER VACCARO: (Indiscernible.)

HEARING OFFICER COCHRAN: -- one big happy panel.

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

Sorry about that.

COMMISSIONER VACCARO: Sorry.

OPENING STATEMENT BY APPLICANT

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

Our issue is that the CEQA Guidelines ask us a question. They don’t say, does the project have direct air impacts? They don’t say that. They say, "Does the project have air emissions that are cumulatively considerable?"

They use that terminology. Whereas, in everywhere else, they ask, "Do you have direct," and then, "Do you have cumulative?"

In addition, air quality, by its very nature, is only cumulative. It is -- when we compare, for example, a violation of a standard, we use the ambient air with all the other emissions coming to determine what the impact is and that can be confusing. So then you just add, for example, what are new projects that we don't know about?

But when it comes to doing health risk assessment, we take projects that are built and operating as part of the air and we take whatever they determine their health risk assessment might have been at a time, at some point in time, when they applied for their permit and those are the numbers that get added up.

So what I'm trying to tell you is this is a big question. I don’t think that the question needs to be relevant for this proceeding. And I would participate in a proceeding to get input on how the Bay Area wants to do it but not on this individual project.
And the reason that I say that here is that we are concerned with that, the people in this room, and that's why we took the point of the perspective of at this point for this project, we don't care what threshold you use. We are fine. And we provide that to you if you would like to use the 100. We also agree that if we're above 100, that it's not a significant impact because our contribution is so small. We didn't take that view to you because Staff had and it wasn't something that seemed persuasive.

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

For example, let's take, if we were dealing with noise, if we were dealing with noise and we were below the threshold, the Energy Commission likes to use a five decibel threshold, but then cumulatively us and three new projects were going to make it seven decibels, the way you would look at cumulative impacts is what's our contribution to that? Is it six of those decibels, is it five of those decibels, or is a quarter of those decibels? If it's a
quarter of those decibels, then there's no impact. There's always that second step except, for some reason, in air quality there doesn’t appear to be if you adopt the cumulative number as a threshold.

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

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

And that's what we're going to focus on in our testimony is why the -- what we did to show you what we said qualitatively in our first response to you, which is we're below 100. It's not -- it's just not reflected in the math. And this time we decided to show you the math, how far below 100 we are.
HEARING OFFICER COCHRAN: Thank you, Mr. Galati. I don’t have any questions of Mr. Galati. I do have several of the witnesses.

COMMISSIONER VACCARO: I don’t want to belabor this. I just have one.

HEARING OFFICER COCHRAN: Sure.

COMMISSIONER VACCARO: I'm sorry.

HEARING OFFICER COCHRAN: That’s fine.

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

So let me understand this one piece. If we have language in the FEIR that says -- that shows that there's and exceedance but we're saying, oh, but you know, this is ultraconservative information and so you can just move forward, there's no significant impact, I'm trying to connect the dot between exceedance, ultraconservative, and no impact because those three, to me, are not explained in
the document, the FEIR, the way that I hear you and Ms. DeCarlo explaining it now.

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

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

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

I don’t believe the 100 should be what we're
applying. But even if you did, and since the document looks like it might, you can refine the analysis by quantifying the qualitative statements in the Draft EIR and in these, in our writings, and in Staff's prior writing, and I think that creates a good enough record. I do not believe that if you refer to those things and write a proposed decision and certify the EIR and append your decision to it, that there is any illegality about the proceedings.

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

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

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

So that's what I would say.

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

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

What I just heard from Mr. Galati and Ms. DeCarlo was the frame, so that we are now ready for the Committee to ask its questions of the witnesses. The witnesses aren’t intending to make any opening remarks either. I
want to make sure that I understand the rules of the road.

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

HEARING OFFICER COCHRAN: That -- okay.

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

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

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

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

MS. WEISSINGER: Yes, that’s correct.

HEARING OFFICER COCHRAN: Okay. Why is that a more appropriate analysis than 2,000 feet if sources within that 2,000 feet have potential emission profiles that
justify including them in the analysis as Bay Area suggests in both its CEQA Guidelines and in its comment on the Notice of Preparation for the EIR? Why is 1,000 better than 2,000?

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

HEARING OFFICER COCHRAN: Right.

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

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

MS. WEISSINGER: Um-hmm.
HEARING OFFICER COCHRAN: I believe it's being displayed. Can you see what's being displayed?

MS. WEISSINGER: I can now. And --

HEARING OFFICER COCHRAN: Okay.

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

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

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

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

DR. LIBICKI: (Indiscernible.)

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

MR. GALATI: 43.

HEARING OFFICER COCHRAN: -- 43. And you're specifically referring to Figure 3 on that page; is that
MS. WEISSINGER: I'm referring to Figures 2 and 3.

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

MS. WEISSINGER: Right.

HEARING OFFICER COCHRAN: -- Figure 3; correct? And I'm sorry --

MS. WEISSINGER: I was --

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

MR. GALATI: It was Dr. Libicki.

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

DR. LIBICKI: Yeah. I just wanted to add one thing and it does say it here on the graph and I just want to be clear. The Bay Area Air Quality Management District provided an estimate of impacts only at 1,000 feet. And the graphs that you see displayed here are extrapolations of that based on both a linear and an exponential curve.

So the Bay Area understands that the risk should be only calculated at 1,000 feet and that’s why they only provided information at 1,000 feet.

So any -- so what was done in the EIR, in the
document, was that that value at 1,000 feet was used for anything that was between 1,000 and 2,000 feet. And this diagram shows how much of an overestimate that is based on either a linear or an exponential extrapolation. We don’t have the information that the BAAQMD used for these, so we have to guess at the extrapolation. That was not the intention of the BAAQMD and that’s why they left it at 1,000 feet.

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

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

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

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

VICE CHAIR GUNDA: Thank you.

COMMISSIONER VACCARO: So this is for either or both witnesses. You know, I guess what I'm trying to figure out is BAAQMD left it to lead agencies, though, to
exceedance that 1,000 feet. And there's nothing really
that I'm seeing or that I'm able to get my head around that
says, well, then what are you looking at and what numbers
are you looking at for your threshold once you go past
1,000 feet? But I don’t think it's correct to say that it
just is limited to 1,000 because it's opened up for lead
agencies to look at other factors as to why they might go
beyond 1,000 feet and, in this case, Staff did do that.

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

MS. WEISSINGER: So --

COMMISSIONER VACCARO: -- able to make that
connection.

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

The first part of the answer is these are the
tools the Bay Area gave us. They gave us tools only out to
1,000 feet, so they were anticipating 1,000 feet and no
more, even though the guidelines, you know, inconsistently
said you could go farther. Part of the reason that the
guidelines said you could go farther, and I've been working
with these guidelines since they were generated in 2011,
part of the reason that the guidelines said that they could
go farther was due to the public's perception of the risks and refineries as very large sources. And you can imagine that a, you know, very large source of emissions, like a refinery, which is where this was contemplated originally, could have impacts beyond 1,000 feet that may be of concern.

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

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

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

DR. CHU: This is Huei-an Chu. And, yes, we
agree. And let me explain a little bit more.

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

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

HEARING OFFICER COCHRAN: Okay. Thank you.

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

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

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

MS. DECARLO: Oh. Okay.
DR. CHU: So this is Huei-an Chu again.

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

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

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

Clearly, that’s for Applicant. This is your testimony.

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

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

So for the railroad, that contribution is coming from the adjacent Caltrain line which, I believe, you can see in Figure 1 in this document, goes right next to the proposed project. And Caltrain has a project, it’s called the Caltrain Modernization Program, or CalMod, where a primary feature of that project is going to be
electrification of the line from San Francisco to San Jose. And this project is underway and under construction. And I believe the majority of the construction in Santa Clara has been completed. And it's set for passenger service in 2024.

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

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

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

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

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

HEARING OFFICER COCHRAN: I'd ask Staff, is what we're being told correct about the railroad line there and its usage? Staff's witness?
DR. QIAN: Sorry. Can you say -- this is Wenjun Qian. Can you say the question again?

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

DR. QIAN: I don’t actually -- I don’t know, actually.

DR. CHU: The data was provided by --

HEARING OFFICER COCHRAN: In the --

DR. CHU: -- the District.

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

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

HEARING OFFICER COCHRAN: Yes, to Staff.

DR. CHU: This is Huei-an Chu again.

Can you point out which page you are talking about?

HEARING OFFICER COCHRAN: On page 4.3-52.

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

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

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

DR. CHU: Oh.

HEARING OFFICER COCHRAN: And if not, why not?

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

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

HEARING OFFICER COCHRAN: Thank you.

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

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

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

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

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

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

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

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

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

Page number six on Exhibit 43, so if you are ready with that, I'm trying to understand and make sure that I'm gathering this information accurately. So between
Tables 1 and 2, we have a drop of -- so I'm just looking at the first row, Existing Stationary Sources, you know, the Applicant analysis of 32, and then it drops to 0.69 for the 1,000 feet screening radius. I just want to understand, you know, you kind of put in your notes that it was adjusted. Could you please explain how that was done?

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

VICE CHAIR GUNDA: For the Applicant, please.

Thank you.

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

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

So as my colleague Dr. Libicki was saying, when we had done the analysis at 2,000 feet, because we did not have distance adjustment factors for the 1,000 to 2,000 feet distance, any source beyond that distance was applied the adjustment factor at 1,000 feet. And you can envision that as having a receptor and taking a radius of 1,000 feet and lining up those sources at 1,000 feet. That’s essentially what we modeled. But, in actuality, those sources are beyond 1,000 feet and there should be adjustments to those emissions.
What we did in the refined analysis is we cut the screening radius off at 1,000 feet, which is what Staff had done in their analysis. And, therefore, the impacts from the stationary sources within the 1,000 feet was the same as what Staff had tabulated.

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

MS. WEISSINGER:  That's correct.

VICE CHAIR GUNDA:  Thank you.

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

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

If you were to look at Staff's analysis, and this would be in the FEIR, you would see that they also had zero for the existing stationary sources in their analysis. And I want to clarify, though, this isn't an absolute zero. There are trailing decimals. I think it's just an
extremely small number. So I think if I add out to three
decimals here, you would see a number but it's just very
small.

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

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

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

VICE CHAIR GUNDA: Thank you. Yeah, that's --
thank you for saying that. I think that's what I -- given that it's structured in a table, I wanted to make sure it's not actually comparable; right?

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

VICE CHAIR GUNDA: Thank you.

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

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

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

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

Maybe we start with Staff and then we go to the Applicant if it's --
DR. CHU: This is Huei-an Chu. Yes, as I just stated, we asked them to do the 2,000 feet radius in our first data request. And this is just our practice.

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

DR. CHU: Oh.

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

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

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

HEARING OFFICER COCHRAN: Yes.

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

HEARING OFFICER COCHRAN: Okay. On page 4.3-33, it indicates that Applicant originally used 2,000 feet but that was for offsite on-road. And then 4.3-49, let me get there really quickly, states that Staff was requesting information on TAC sources within 2,000 feet of the property because of the nearby railroad and surrounding
industrial stationary sources that would -- or that could present elevated existing levels of tax.

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

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

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

HEARING OFFICER COCHRAN: And you said 4.3-12?

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

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

DR. CHU: Yes.

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

DR. CHU: Right. And you can see, for the second receptor, it is within 1,000 feet. The cancer rates around
the surrounding highways, major streets, and railways are already above 100, which is (indiscernible).

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

MS. WEISSINGER: Sure. I'm happy to take that.

So --

HEARING OFFICER COCHRAN: Please identify yourself for the record.

MS. WEISSINGER: This is Emily Weissinger.

HEARING OFFICER COCHRAN: THANK YOU.

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

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

MS. WEISSINGER: Okay. Great. So what this is showing here is a number of refinements. And it's focusing on the analyses of the MEISR/MEIR, which are the same in this analysis. And for the Applicant's analysis, it has refined the screening radius from 2,000 feet to 1,000 feet. And by doing so the contribution from the existing
stationary sources is reduced from 32 to 0.69, which is consistent with the Staff analysis.

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

HEARING OFFICER COCHRAN: Okay. Thank you.

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

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

MR. GALATI: I think --

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

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

MR. GALATI: Yes, Exhibit 42.
HEARING OFFICER COCHRAN: And when I click on that link it's footnote three on page four, "page not found."

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

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

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

HEARING OFFICER COCHRAN: Thank you, Mr. Galati.

VICE CHAIR GUNDA: Mr. Galati, I heard you, just your comment on that. I'm trying to just establish a couple of points here for myself as we go into decision again. This is information seeking to make sure when we make decisions that we're well informed. So I'm trying to struggle with a couple of things that I just want to have some clarification as we go into this, you know, decision-
making process, which is if we were to say, you know, just want to confirm that both BAAQMD Guidelines and CEQA ask us to do only analysis to 1,000 feet; is that, first, correct?

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

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

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

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

VICE CHAIR GUNDA: Got it. Thank you.

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

DR. LIBICKI: So let me answer part of that because I think part of that may have been answered by Staff earlier. But the evaluation that we did was a screening evaluation for any source between 1,000 and 2,000 feet. And by screening evaluation, it means it provides an upper-bound number so that if the screening evaluation
showed risks greater than 100-in-a-million, you can leave it. you can so, okay, as a screening, we're still below our threshold, we're fine.

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

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

DR. CHU: Yes. This is Huei-an Chu. According to BAAQMD's CEQA Guideline, page 2-5, underneath (indiscernible) the page is, "A lead agency shall enlarge the 1,000-foot radius on a case-by-case basis within unusually source or sources of risk of hazardous emissions that may affect a proposed project that’s beyond the recommended radius."

So that's why in Sequoia the District asked us to go beyond 1,000 feet. And this is also why in the beginning of this project we asked the Applicant to go
COMMISSIONER VACCARO: So I have a question. It was for the prior witness who was speaking on behalf of the Applicant. And it was a statement, and I want to make sure I understand it, you were saying that the screening -- you were explaining why the screening were not accurate. And sort of my notes might be paraphrasing you incorrectly but I thought I heard you say because BAAQMD did not provide additional information beyond the 1,000 feet. But I'm just wondering, so if the BAAQMD regulations are advisory, and if we know we're looking at 2,000 feet but we see limitations with the BAAQMD information, isn't there something else we could have been looking at or looking to?

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

Even if we have information, our ability to estimate those risks is much less than the BAAQMD is
because they have a full set of information that they're working with, really. And that's, in a sense, why the BAAQMD put their screening risk thresholds together.

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

DR. LIBICKI: Yeah. So --

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

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

COMMISSIONER VACCARO: Thank you.

VICE CHAIR GUNDA: And just one question.

Mr. Galati, you said, and I'm just kind of trying to make sure that I heard it right, so Figures 2, 3, and figures -- and Table 1 and 4 -- 1 through 4 are the screening analysis; right? So -- but, you know, once we, you know, once we understand that the screening doesn't pass, you know, you -- and we do the more rigorous analysis, did I hear you right that the analysis passes for both 1,000 and 2,000 feet?
MR. GALATI: Emily, could you answer that, whether or not you believe the analysis would pass for 1,000 or 2,000 feet with the refined analysis?

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

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

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

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

DR. LIBICKI: Right. And I think what Emily is also -- or you know, we looked at that and we said, well, could we use those adjustments to do the analysis? So, basically, exactly what you're going to. And, again, we didn’t have sufficient information to understand the BAAQMD's curves to confirm that we, you know, knew exactly
how to extrapolate it. And that's why in the information
you have you see two extrapolations that we believe are
correct extrapolations but we don't have the base
information to do that.

VICE CHAIR GUNDA: Thank you.

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

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

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

HEARING OFFICER COCHRAN: Agreed. It actually
talks about the -- oh, it talks about the project being the fourth centers in a quarter-mile radius, so that's probably what I was thinking.

MS. DECARLO: Thank you.

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

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

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

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

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

MR. GALATI: We prefer to move forward.

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

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

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

Absolutely.

MR. GALATI: Thank you.

Ms. Weissinger or Ms. Libicki, during the time
you’ve been here, during the hearing, were you able to
check whether you believe that there is additional train
traffic on the section of the line that you analyzed for
Caltrain?

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

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

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

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

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

MR. GALATI: Did your analysis take into account
the fact that there are some potential emissions advantages from using renewable diesel, like the client has agreed to do?

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

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

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

   DR. LIBICKI: So --

   MS. WEISSINGER: It looks like they’ve moved that document, potentially.

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

   MR. GALATI: And in your opinion is -- the
Caltrain Project, should it be considered a foreseeable future project in this cumulative analysis?

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

MR. GALATI: No further questions. Thank you.

HEARING OFFICER COCHRAN: Thank you.

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

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

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

Miss -- Commissioner Vaccaro? Sorry.

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

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

So just for the sake of argument, and this is for not Mr. Galati or Ms. DeCarlo, this is for the witnesses, let's just say for the sake of argument there's a determination made by the Committee that the project impact is cumulatively considerable and that there is a significant impact. Is there something already existing in
the record or with respect to the project or something that could be looked to or identified that would mitigate the impact to less than significant level?

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

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

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

COMMISSIONER VACCARO: Sure.

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

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

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

HEARING OFFICER COCHRAN: Or not because I was thinking of a different question about timing of the Caltrain Electrification Project and when that 97 percent
Reduction might be achieved. I mean, if the first train comes on in 2024, when does the last train that fully electrifies the project come online? And you're saying that the project gets the credit for that electrification now for the future electrification if I'm understanding the analysis. Am I understanding the analysis correctly, Ms. Leichtnam and/or Ms. Weissinger?

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

HEARING OFFICER COCHRAN: Thank you.

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

DR. LIBICKI: Okay, so here's exactly why I was
confused is because I think that those impacts as analyzed, you know, and whether this is, you know, additional information that you accept or don’t accept, that's the part I don’t quite get how this works from a legal point, not being a lawyer, but I think the impacts are below significance once they're properly analyzed. And so when you say is there anything in the record to get the risks below a level of significance, I would say, yes, the risks are below a level of significance as analyzed.

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

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

MR. GALATI: May I --

VICE CHAIR GUNDA: Go ahead, Mr. Galati.

MR. GALATI: Okay. Two issues that are asked by the Committee that need significant clarification -- and I'm always uncomfortable about doing that, you're the Committee, you're making this decision. If you were the lawyer sitting next to me, I would not be uncomfortable at
all about objecting to the question, saying facts not in evidence, all the things that I would do that you’ve seen me do before.

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

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

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

COMMISSIONER VACCARO: Please do.

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

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

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

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

DR. LIBICKI: No.

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

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

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

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

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

MR. STONER: Yeah.

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


(Michael Stoner was sworn.)

HEARING OFFICER COCHRAN: Thank you.

Mr. Galati, please ask your witness your questions.

MR. GALATI: Mr. Stoner, do you anticipate
installing all of the generators in 2024 for this project?

MR. STONER: No, there will be no generators. A quarter of the generators would be installed in 2024. And the balance -- the next set of generators would be in 2026/2028. And it would be closer to 2030, '28 to '30, until the final generators are installed at the earliest.

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

MR. STONER: Yes.

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

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

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

So what I heard loud and clear is if we did the analysis, more rigorous analysis, both for 1,000 and the 2,000 square feet -- sorry, I keep saying square feet -- feet, we'll be okay, we'll pass. It was contingent upon a certain level of electrification. But you just asked a couple questions on whether the entire generation is going to come online right away, not -- I just want to have, you
know, some sort of an answer on, given the schedule of the
generators going online, and the transportation
electrification happening, the railroad electrification,
which on the website, one of the links that we found
suggest that the emissions could be reduced by 97 percent
by 2040 -- I mean, again, these are like moving targets.
I just want to understand from the work from your
witness if, given the schedules, we would still feel
comfortable stating that it would pass for 2,000 feet?

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

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

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

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

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

DR. LIBICKI: It's 30 now.

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

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

HEARING OFFICER COCHRAN: Okay. And then I would ask Staff the same question of whether Staff could perform that analysis of the comparison of the buildout of the project with the buildout of the electrification and what
that does to the air quality analysis -- the health risk
assessment analysis?

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

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

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

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

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

DR. CHU: No.

HEARING OFFICER COCHRAN: Thank you.

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

If that doesn't, then the next question before,
you know, we go into the mitigation issues and such, just wanted to ask maybe Ms. DeCarlo, you suggested that, you know, we -- the 2,000 was overly conservative and it was, at some level, our discretion to go that far based on sister agencies suggesting that. Would you, based on the discussion today, suggest a different, you know, feet, how far we go, whether it's like, you know, 2,000 is still the most appropriate way of analyzing this? I just want to get your thoughts on that.

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

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

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

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

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

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

DR. CHU: Yes, but it all depends on its risk.

If its risk is not that high, then we won't consider it as major sources.

HEARING OFFICER COCHRAN: Thank you, Dr. Chu.

Are there any further questions, Mr. Galati?

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

DR. LIBICKI: Sure. So let me go back to what the BAAQMD does with their screening evaluation and what the actual risks are because I think this is important, is that the actual risks from a data center, because they have all been permitted fairly recently, are typically below ten-in-a-million, so -- and that’s right at the boundary of the relevant data center. So you know, you have the data
center, the permitting that is done. Essentially, you're not allowed to be permitted unless your risks are below ten-in-a-million at the boundary of the data center.

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

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

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

Now that's exactly why they Bay Area Air Quality Management District put in a whole new program for refineries to evaluate the risks from refineries because it hadn't been done for a long time. There's a parallel program to evaluate risks from everything else called 1118 which is, essentially, designed to ensure that the risks
are below ten-in-a-million. And that’s what lots and lots of sources, including data centers, fall in under the Bay Area Air Quality Management District.

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

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

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

DR. LIBICKI: Okay.

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

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

MR. GALATI: If you used half of the electrical electrification emissions over the life of this project, would that still create a cumulative human risk --
cumulative risk in your opinion?

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

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

DR. LIBICKI: That is correct.

MR. GALATI: For 30 years?

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

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

DR. LIBICKI: That is correct.

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

So we're trying to move to closing statements.

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

CLOSING STATEMENT BY APPLICANT

MR. GALATI: As I said in the opening statement, I don’t think this proceeding is the proceeding to decide how you will change how you might look at cumulative
impacts. I think that there is ample evidence, not only substantiated but, actually, all the experts in this proceeding agree, there is no significant impact. And there is no evidence contrary to that.

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

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

In addition, I think that there's a missing piece here that a witness had said but I'd like to provide more
clarity in what that means.

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

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

And I don't know how else to address this issue. It was almost like that I had to prepare for direct and cross-examination that I didn't know we were going to have.
So I brought the witnesses the best I could and we prepared
the documents the best we could. I think that the
substantial evidence is there and I urge you to please rely
on those experts, write the decision, append to the
decision the evidence that you have in front of you, and
move forward and issue a decision as soon as possible.

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

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

HEARING OFFICER COCHRAN: Thank you, Mr. Galati.

Staff did not commit to making a closing
argument. Ms. DeCarlo, would you like to do so now?
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
identify would need to show that it's reduced the project's contribution to that to less than one molecule. And I think that's difficult at this point because the Applicant has applied all the mitigation to the facility itself that it can't reduce its emissions. So then it's a question of, well, can you identify community benefits or some broader approach to mitigation? And then can you quantify that to show that that mitigation actually reduces the project's contribution?

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

HEARING OFFICER COCHRAN: Thank you, Ms. DeCarlo.

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

Commissioner Vaccaro, do you wish to make any remarks?

COMMISSIONER VACCARO: This is really helpful. I wanted to thank the witnesses and Ms. DeCarlo and Mr. Galati for sort of the arguments, the explanation in
between the Staff testimony. I think it's helpful. I think it helps me understand better what was written in the FEIR. I think the supplemental information that was submitted by the Applicant, I understand it better because there's been some context put around it. So I appreciate the time that you've all taken. I think you probably expected this to be a much briefer hearing. But I think this opportunity for a robust record and clarity is really important, so I just thank you all.

VICE CHAIR GUNDA: And I'm just still learning the process so I don't know what the comment meant here. I just want to echo Commissioner Vaccaro's comments. Thank you. That was really helpful. I think, you know, some of the way the conversation was structured towards the end really helped with understanding what the documents meant to say. I mean, I have some opportunities for us, in thinking about how we prepare future documents, but that's a conversation for another time.

Thanks.

HEARING OFFICER COCHRAN: Thank you.

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

Thank you, Ms. Gallardo.
MS. GALLARDO: Thank you. This is Noemi Gallardo serving as Public Advisor for this Evidentiary Hearing today.

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

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

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

I hand the mic back to you.

HEARING OFFICER COCHRAN: Thank you, Ms. Gallardo.

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

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

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

So with that, we have recessed to closed session.

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

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

We request that Staff, working with Applicant, create a supplement to the Final Environmental Impact Report on cumulative HRA issues assuming that the BAAQMD 2017 CEQA Guidelines cumulative thresholds apply. Please include an analysis of the applicable radius. And the Committee does not opine on whether the appropriate radius -- or applicable radius, excuse me, is 1,000 feet or
2,000 feet.

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

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

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

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

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

(Colloquy between Hearing Officer and Commissioners)

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

(Colloquy between Hearing Officer and Commissioners)
HEARING OFFICER COCHRAN: Are there any questions?

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

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

MS. DECARLO: Thank you.

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

Mr. Galati, did you have any questions?

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

HEARING OFFICER COCHRAN: That’s okay.

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

HEARING OFFICER COCHRAN: I think what we're looking for is a single integrated document from Staff that
potentially -- so there are a number of ways that you could
reach it. But I think what we're looking at is something
in the nature of an addendum or an errata that shows the
changes from the existing final impact report to this
supplement to the Final Environmental Impact Report to show
the analytical steps taken to reach the conclusions that
were obviously difficult for us to follow.

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

HEARING OFFICER COCHRAN: Or --

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

HEARING OFFICER COCHRAN: So --

MR. GALATI: I didn’t know what motion I might
need to have to make.

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

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

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

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

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

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

HEARING OFFICER COCHRAN: Thank you.

MS. DECARLO: I mean, we could conceivably just do a joint document that includes all the documentation and a joint motion.
HEARING OFFICER COCHRAN: Yes.

Anything further?

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

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

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

VICE CHAIR GUNDA: Yeah. No. Good points. And thank you all for everything that was presented to, really helpful. Thank you, Susan and the Legal Team.
With that, I adjourn the Evidentiary Hearing at 3:01 p.m.

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

[Signature]
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.

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MARTHA L. NELSON, CERT**367

June 10, 2022