February 6, 2012

By E-Mail
ACKNOWLEDGEMENT OF RECEIPT REQUESTED

Mayor Ron Irish and Members of the City Council
c/o City Clerk
City of Porterville
291 North Main Street
Porterville, CA 93257
cityclerk@ci.porterville.ca.us

Re: Riverwalk Marketplace Phase II Commercial Development; Request for Approval of Conditional Use Permit 2-2010 and Tentative Parcel Map 4-2010 Within the Viejo Robles Planned Development

Dear Mayor Irish and Members of the City Council:

On behalf the California Healthy Communities Network (“HCN”) and Porterville residents Brock Neeley and John Coffee, please accept the following comments on the above-referenced development project (“Project”), currently scheduled for a public hearing and consideration by the City Council on February 7, 2012. HCN is an unincorporated association of environmental conservation, labor, and social advocacy organizations that include Porterville residents as members. HCN previously submitted written comment on the draft environmental impact report (“EIR”) for the Project.

For the reasons set forth in this letter, the final EIR, including the responses to comments received on the draft EIR, does not comply with the information disclosure provisions of the California Environmental Quality Act (“CEQA”), and as a result fails as an informational document. We therefore respectfully urge the City Council to DECLINE certification of the EIR and to DENY the land use entitlements sought.

A. Inadequate Analysis of Global Climate Change Impacts from Greenhouse Gas

The RDEIR concludes that the Project will not make a considerable contribution to GHG emissions, based primarily on its claim that the Project will reduce vehicle emissions by 40.2% compared to a hypothetical “business as usual” project. The EIR fails to document the critical assumptions it makes to justify these claimed reductions. We asked for documentation of each claimed reduction in comments on the RDEIR, but
the FEIR declined to respond to these specific requests for information with anything other than generalities.

Because the FEIR did not provide the information we sought, we asked Tom Brohard, a traffic engineer with over 40 years of experience advising cities on traffic engineering and transportation planning, to review the EIR’s claims. Mr. Brohard’s attached comments demonstrate:

- the GHG significance conclusion depends on critical documentation of claimed emission reductions, which was not supplied, despite requests;
- the GHG significance conclusion depends on claiming emission reductions that are at least twice as much as permitted by the guidance on which the EIR purports to rely;
- if the EIR had used consistent assumptions for its GHG and traffic congestion analyses, it would have had to admit that GHG impacts are significant;
- the GHG significance conclusion depends on comparing the proposed project to a hypothetical baseline project that fundamentally differs from the proposed project.

We summarize Mr. Brohard’s comments below and point out that the EIR fails to disclose essential information, fails to respond adequately to comments, offers conflicting and inconsistent data, and further violates CEQA by comparing the Project to a straw man baseline project.

1. GHG significance determination

The RDEIR adopts the thresholds recommended by the San Joaquin Valley Air Pollution Control District (“SJVAPCD”) to determine the significance of the projects’ GHG emissions. RDEIR, p. 5.1-82. The RDEIR notes that SJVAPCD has determined that a 29% reduction of GHG emissions compared to an established baseline is an appropriate threshold based on SJVAPCD’s contention that this is consistent with the AB 32 goals to reduce statewide GHG levels to 1990 levels by 2020. RDEIR, p. 5.1-81. The RDEIR explains that SJVAPCD has developed some Best Performance Standards (“BPS”) for development projects, but that, “[a]n alternative to complying with the SJVAPCD’s recommended BPS, projects that demonstrate a reduction of 29 percent in GHG emissions from the established baseline would also be considered to result in a less than significant impact under CEQA.” Id. Thus, the RDEIR announces the following method for determining the significance of the Project’s GHG impacts:

“Based on the above, the project’s significance with respect to GHG emissions and global climate change will be assessed based on project features and GHG reduction measures that are consistent with the SJVAPCD’s recommended BPS and the 29 percent reduction target as compared with and [sic, “an”] established BAU [business as usual] baseline for commercial developments.” Id.
The RDEIR identifies various features of the Project that it claims will result in reductions in GHG. RDEIR, Table 5.1-16; Appendix 5.1a, Tables AIR-1 and AIR-3. In identifying these features, the RDEIR identifies a number of guidance documents as authority for the claimed reductions.

The RDEIR quantifies GHG emissions for a business as usual or BAU version of the project and for the proposed project in Appendices 5.1a, 5.1b, and 5.1d. The RDEIR then tabulates these BAU and Proposed Project emissions by source (e.g., construction, motor vehicles, electricity, etc.) in Table 5.1-17, which purports to show that the Project’s overall emissions would be reduced 32.3% compared to the business as usual baseline project. The reductions are primarily associated with motor vehicle emissions. RDEIR, p. 5.1-97. Because the claimed reductions are in excess of 29%, the RDEIR finds that GHG impacts are less than significant and does not propose any mitigation.

2. Failure to document the empirical basis of claimed reductions and project features purportedly justifying these reductions and to respond to comments asking for this documentation

The RDEIR attributes the motor vehicle emission reductions to reductions in vehicle miles traveled (“VMT”), which the RDEIR contends will be realized from project features that will result in fewer and shorter trips than compared to the BAU baseline project. In comments on the RDEIR, we objected that the RDEIR had not provided adequate justification for these claimed reductions in VMT.

Comment 5-22 asked that the EIR confirm that claimed reductions associated with the provision of bicycle parking, end of trip facilities, pedestrian network, pedestrian pathway through parking, and mixed-use were in fact based on guidance from the 2010 Sacramento Metropolitan Air Quality Management District (SMAQMD) Recommended Guidance for Land Use Emission Reductions. If so, the comments asked that the EIR provide the specific information about each of the project features that SMAQMD 2010 identifies as the necessary basis to realize these five distinct and substantial VMT reductions. The FEIR confirmed that the reductions were based on SMAQMD 2010 but declined to provide the requested information about the Project features that might qualify the Project for the reductions identified by SMAQMD. The FEIR stated that “the City is not required to conform to the exact verbiage espoused by these sources” and that SMAQMD “does not require” the requested documentation. FEIR, p. 2.0-86. In fact, SMAQMD’s 2010 guidance repeatedly states that “proponent shall provide information demonstrating compliance with measure requirements . . . ” See e.g., SMAQMD 2010, Measures # 1, 5, 23. More to the point, CEQA requires that an EIR provide a credible basis for its conclusions and that an FEIR respond adequately to comments. As Mr. Brohard points out, some of the claimed reductions (e.g., the reduction for end of trip facilities) are clearly erroneous, and adequate comment responses would have assisted both decision makers and the public in evaluating the claimed reductions.
Similarly, the EIR failed to provide a substantive basis for the approximately 22% reduction in VMT claimed by characterizing the Project as infill development. The RDEIR purported to base this substantial reduction on two sources: a mitigation measure listed in the 2008 California Air Pollution Control Officers’ Association (CAPCOA) CEQA and Climate Change and an unidentified 2007 document prepared by Fehr & Peers. CAPCOA 2008 does not provide the empirical basis of this substantial reduction – it also references the Fehr & Peers document. Accordingly, we wrote to ask the City to provide the Fehr & Peers document. In response, the City stated that it would not provide the document to us but would instead revise the EIR so that the sole authority cited for the infill reduction would be CAPCOA 2008. In fact, no such revision was made. Failure to provide the Fehr & Peers document violates CEQA’s requirement that the City make available to the public the documents referenced in the EIR.

Accordingly, in RDEIR comments, we asked that the FEIR demonstrate the basis of the claimed infill reduction and, specifically, that it provide the information demonstrating that the Project would meet the basis identified in CAPCOA 2008 for taking this credit, namely that the Project improve the weighted average travel time to all other regional destinations by 100% compared to an alternate greenfield site. Again, the FEIR made no substantive response. Indeed, the FEIR lumped all of our specific requests for information, which sought both the underlying empirical basis of the trip reduction claims and documentation of the Project features that would qualify it for these reductions, into a single response, response 5-22. That response did not even mention the infill reduction. The approximately 22% emission reduction attributed to characterizing the Project as infill is a critical assumption in the analysis – without it the Project would not come close to the necessary reductions in GHG emissions to support the significance finding.

As Mr. Brohard points out, the substantial infill reduction based on CAPCOA 2010 is potentially duplicative of reductions taken for other Project features based on other guidance documents, e.g., the reductions taken for “Suburban Mixed Use” based on SMAQMD 2008 and for “Mixed-use Development” based on the Institute of Transportation Engineers (ITE), Trip Generation Handbook, 2nd Edition. Furthermore, the magnitude of the approximately 22% infill reduction is, by itself and in combination with other claimed reductions, inconsistent with the empirically-based limits for combined transportation reductions set out in CAPCOA’s 2010 guidance, Quantifying Greenhouse Gas Mitigation Measures, which the FEIR specifically cites as a source of “best practices in air quality analysis.” FEIR, p. 2.0-85. Given the critical magnitude of the claimed infill reduction, our specific and repeated requests for documentation that would justify taking this reduction, and the inconsistency of the reduction with other sources cited by the EIR, the FEIR should have provided the information we requested.

In sum, if the EIR had not claimed reductions which it declined to document, it could not have found GHG impacts less than significant.
3. VMT reductions in excess of guidance relied on by EIR

The EIR relies on guidance documents prepared by SMAQMD and CAPCOA, which list various strategies for reducing GHG emissions, including strategies for VMT reductions. The EIR does not even consider whether there are effective limits to combining transportation credits.

As Mr. Brohard explains, the EIR ignores the specific, empirically-based limitations that CAPCOA places on taking excessive reductions for combining multiple transportation strategies. By cobbling together a series of reductions taken from different guidance documents and from the unidentified Fehr & Peers document, the EIR takes reductions totaling more than twice the limits applicable to land use and location strategies (e.g., mixed use, infill, multi-use development). The EIR also takes reductions totaling more than twice the limits applicable to all combined transportation-related strategies. The analysis violates common sense and violates the specific 2010 CAPCOA guidance document the FEIR endorses as the source of best practices in air quality analysis.

In sum, if the EIR had observed the limits on transportation emission reductions set out in the guidance it purported to follow, it could not have found GHG impacts less than significant.

4. Hypothetical baseline – a different project

As Mr. Brohard explains, the EIR’s conclusion that the proposed Project will attain a 40.2% reduction compared to the BAU project baseline is critically dependent on characterizing the proposed Project as a “Multi-Use Development” in accordance with the Institute of Transportation Engineers (ITE), *Trip Generation Handbook, 2nd Edition*, but not characterizing the BAU project as a Multi-Use Development. This assumption is responsible for a 13% reduction in emissions for the proposed Project compared to the BAU project.

Treating the BAU baseline as an entirely different type of project is improper because it conflicts with the RDEIR’s own definition of the BAU baseline as the emission from a “similar project.” RDEIR, p. 5.1-82. As Mr. Brohard explained, the Project under review here is a large scale regional retail shopping center. If the Project is eligible for a trip reduction credit as a Multi-use Development, then any “similar project” is also eligible for that reduction. By assuming that the BAU baseline project is not a Multi-Use Development, the EIR in effect compares the Project to a straw-man. CEQA does not countenance this kind of gamesmanship. In fact, the California Attorney General specifically cautioned SJVAPCD against it when SJVAPCD was adopting its GHG guidance.

The use of a hypothetical baseline is improper under CEQA because it presents opportunities for project proponents to game the system. *Communities for a Better
Environment v. South Coast Air Quality Management District (“CBE v. SCAQMD”) (2010) 48 Cal.4th 310, 322 (hypothetical baseline results in “‘illusory’ comparisons that ‘can only mislead the public as to the reality of the impacts and subvert full consideration of the actual environmental impacts,’ a result at direct odds with CEQA’s intent.”) Under CEQA, “[a]n EIR must focus on impacts to the existing environment, not hypothetical situations.” Sunnyvale West Neighborhood Ass’n v. City of Sunnyvale (2010) 190 Cal.App.4th 1351, 1373 [citations omitted]; Guidelines § 15125(a) (existing physical conditions “normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.”); Woodward Park Homeowners Ass’n, Inc. v. City of Fresno, 150 Cal. App. 4th 683, 691 (2007) (“hypothetical office park was a legally incorrect baseline [against which to measure significance] which resulted in a misleading report of the project’s impacts.”); Env’t Planning & Information Council v. County of El Dorado, 131 Cal. App.3d 350 (1982) (EIR for area plan invalid because impacts were compared to existing general plan rather than to existing environment).1

Commenting on SJVAPCD’s proposed guidance for assessing GHG emissions, the California Attorney General objected that comparisons to hypothetical projects frustrate CEQA’s informational purpose by encouraging gaming and incentivizing “project proponents to artificially inflate the hypothetical project to show that the proposed project is, by comparison, GHG-efficient.” Attorney General, letter to SJVAPCD, November 4, 2009, p. 4, Exhibit A. In response to this comment and to other comments objecting that the lack of an established baseline would permit applicants to game the system, the SJVAPCD assured the public that it would establish a baseline emissions level for each development category:

“The Commenter then expresses concern that the proposal will be subject to gamesmanship, and suffers from a lack of transparency and “administerability”, apparently based on the absence of established BAU calculations for the various components for which BPS will be developed. However, the District will establish BAU for each category as a part of the BPS analysis, and this evaluation will be a part of the public record that will be available for review and comment during the public BPS development process. The District policy and guidance provides a framework for this process, but does not dictate the outcome of the process. At this point, an analysis as to the outcome of the BAU / BPS process is

1 Not only is the EIR’s use of a straw project to evaluate the Project’s greenhouse gas impacts inconsistent with CEQA’s baseline principles, but the California Natural Resources Agency (“CNRA”) has specifically repudiated the EIR’s approach to determining the significance of greenhouse gas impacts. In its Final Statement of Reasons supporting its adoption of CEQA Guidelines for the analysis of greenhouse gas impacts, the CNRA cautioned against using the AB 32 Scoping Plan’s business as usual objective for the purpose of determining significance under CEQA, stating that “a comparison of the project against a ‘business as usual’ scenario as defined by ARB in the Scoping Plan …. would confuse ‘business as usual’ projections used in ARB’s Scoping Plan with CEQA’s separate requirement of analyzing project effects in comparison to the environmental baseline.” CNRA, Final Statement of Reasons for Regulatory Action, Dec. 2009, pp. 24-25, Exhibit C.
premature and speculative. However, the District welcomes the Commenter’s participation and assistance in that process when it does occur.” SJVAPCD December 17, 2009 Final Staff Report -Climate Change Action Plan: Addressing GHG Emissions Impacts under CEQA, p. 296, Exhibit B, emphasis added.

SJVAPCD stated that it intended to develop per unit BAU emission levels with reference to project types using the 2002-2004 baseline period as a reference. Id. at 62; see also p. 60 (defining Baseline for development projects as emissions per commercial or industrial unit during 2002-2004). SJVAPCD has not apparently completed this task. At any rate, the RDEIR does not reference or use a baseline emission level developed by SJVAPCD for the BAU project.

In the absence of an actual baseline emission level for a BAU project established by SJVAPCD, the RDEIR defined BAU as follows:

“Business as Usual
The SJVAPCD guidance recommends the use of BPS to assess the significance of GHG emissions. The SJVAPCD expects that compliance with the recommended BPS would reduce a project’s GHG emissions by a target of 29 percent or more, compared an established baseline. The SJVAPD defines the baseline for commercial development projects as the emissions that would occur from a similar project, during the 2002 through 2004 baseline period without any project features or measures beyond those required by statute or regulation that would reduce GHG emissions.” RDEIR, p. 5.1-82

This definition appears to reflect the definition of business as usual offered by CAPCOA:

“Not all baseline conditions occur in the present. In some cases, the baseline is a forecast of the conditions that are expected to exist at some time in the future, in the absence of any interventions to change those future conditions. The forecasted baseline conditions are referred to as ‘business-as-usual’ and are intended to reflect normal operation.” CAPCOA 2010, p. 26. emphasis added.

CAPCOA cites the California Air Resources Board (“CARB”) definition of business-as-usual: “the normal course of business activities for an entity or a project before the imposition of greenhouse gas emission reduction requirements or incentives.” Id. at 27, emphasis added.

The definitions of BAU baseline offered by the RDEIR, CAPCOA, and CARB provide no basis to define the BAU project here as a fundamentally different project. If the “normal operation” and “normal course of business activities” for a regional commercial shopping center includes a trip reduction attributable to internal trips from store to store, then that reduction should be assumed for the BAU project, which is supposed to be “similar” to the proposed Project.
In sum, had the EIR compared the project to a similar BAU project instead of a straw man, it could not have found GHG impacts less than significant.

5. Inconsistent assumptions in GHG and traffic analyses

Finally, Mr. Brohard explains that the traffic levels used in the RDEIR’s analysis of GHG impacts are not the traffic levels used in its analysis of congestion impacts. The RDEIR projects much less traffic from the Project when it analyzes GHG impacts than it does when it analyzing traffic impacts. It also assumes much more traffic when it analyzes the BAU project for GHG impacts than it does when it analyzes traffic impacts. The differences in these traffic projections are critical to the GHG analysis – without these inconsistencies, the EIR could not support its finding that GHG impacts are less than significant. The EIR violates the fundamental and obvious tenant that it must at least be factually consistent. *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 439.

In sum, if the EIR has used the traffic assumptions from its traffic analysis in evaluating GHG impacts, it could not have found GHG impacts less than significant.

B. Failure To Require Feasible Transportation Demand Measures To Address Unavoidably Significant Traffic Impacts

As Mr. Brohard’s comments explain, the RDEIR identifies significant traffic impacts at the Olive/Jaye intersection that cannot be mitigated by making physical improvements. In part to address those unavoidably significant impacts, our comments on the RDEIR proposed a number of Transportation Demand Management (“TDM”) measures. Mr. Brohard’s comments point out that the FEIR declined even to consider the TDM measures we proposed; instead, the FEIR argued that the RDEIR finds that all traffic impacts are fully mitigated. This is simply not true. RDEIR, pp. ES-6, 5.10-43. The FEIR response violates CEQA’s requirements for good-faith, reasoned comment responses, including its requirement to address proposed mitigation measures. As Mr. Brohard points out, the proposed TDM measures would reduce otherwise unavoidably significant traffic impacts. As long as these impacts remain significant, the City may not approve the Project unless it adopts feasible mitigation to reduce or avoid them.

Our comments explained that imposition of TDM measures is also required by the General Plan. General Plan Policy C-I-11 calls for shifting travel demand from peak periods, “especially in those situations where peak traffic problems result from a few major generators (e.g., major new retail development in the highway corridors).” Here, unavoidably significant PM peak impacts will be caused by just such a major new retail development. In response, the FEIR claimed that the Project would comply with the General Plan through Walmart’s implementation of its Rideshare Program. FEIR, p. 2.0-80. The FEIR lists some strategies included in Walmart Rideshare programs, but it admits that the “specific content” of the Rideshare plan for this Walmart site has not been developed and it would be “premature to speculate” about it. *Id.* The FEIR does not
address TDM measures, voluntary or otherwise, for the rest of this major new retail development. We submit that a program that might be developed for one of several tenants of the Project, but about which it is premature even to speculate, does not meet the intent of General Plan Policy C-I-11. It is difficult to understand to which projects the City would apply Policy C-I-11 if not this major regional retail center. Without a clear specification for a TDM program, the Project will not be consistent with the General Plan.

Our comments also explained that Chapter 27 of the Municipal Code requires new development meeting the employee threshold criteria to prepare a TDM plan. In response, the FEIR stated that the City had not yet implemented its TDM ordinance because “it has not established an employee threshold that would trigger TDM preparation.” FEIR, p. 2.0-81. Section 27-3 of the City’s TDM ordinance provides that the ordinance only applies to employers and projects that exceed an employee threshold, which is to be adopted by the City by resolution.

Essentially, the FEIR appears to be arguing that the City’s TDM ordinance, which contains a number of mandatory requirements for preparing and implementing TDM plans, does not actually apply to any project or employer, even major retail projects with hundreds of employees, simply because the City has not gotten around to setting the employee threshold that is necessary to make the ordinance’s provisions applicable to any employer or project. It is difficult to understand how, after 20 years, the City can have failed to implement the TDM ordinance it enacted by Ordinance 1482 § 1, in 1992. Even if the City has for some reason overlooked the need to activate its TDM ordinance formally by setting a threshold, we submit that the ordinance is clearly applicable to major new projects that will employ hundreds of employees. If it is not applicable to this Project, then the ordinance would in effect be toothless.

Section 27-1 of the TDM ordinance makes it clear that implementation of the ordinance is mandated by California’s congestion management law provisions at Government Code sections 65088 et seq.:

“The purpose of this chapter is to promote the development of transportation demand management (TDM) programs at all existing development and at new development within the city. In order to accomplish this purpose, this chapter establishes certain requirements to enable the city of Porterville to evaluate the effectiveness of TDM programs and to chart progress toward achieving the average vehicle ridership goals established in this chapter. It is also the purpose of this chapter to require certain employers to designate specified individuals to ensure the proper coordination of such reporting and implementation programs.

“This chapter is intended to meet the requirements of Government Code section 6508(a) [sic, 65088] et seq., which mandates the development of a trip reduction and travel demand element of the congestion management program adopted by the Tulare County Association of Government/Transportation Planning Agency
Further, the legislation requires all local agencies to prepare and adopt a TDM ordinance. (Ord. 1482 § 1, 12-15-1992).” Porterville Municipal Code, § 27-1, emphasis added.

The City has acknowledged that it has mandatory duty to develop and implement a TDM program, and its failure to implement its TDM ordinance is inconsistent with its mandatory duties. Furthermore, the Congestion Management Agency has a duty to monitor implementation of its congestion management program and may withhold funding to cities that do not conform to its requirements. We ask that the City implement its ordinance and require the Project to comply – before approving any further entitlements for this Project or any other major project.

C. The EIR Understates The Scope And Magnitude Of Significant Noise Impacts

The Project will impose additional noise on the adjacent neighborhood from both operational noise and from the noise from traffic it attracts. The RDEIR determines the significance of the Project’s non-transportation noise impacts to its neighbors (i.e., noise originating within the site from Project operations), and its combined non-transportation and transportation noise impacts to its neighbors, with reference to the noise standards set out in the City’s noise ordinance. The noise ordinance standards in Municipal code § 18-90.4 and 5 do not permit the Project to cause an exterior noise level in excess of 50 dB hourly Leq measured at the neighbor’s property line during daytime hours. At night, the standard is 45 dB hourly Leq.

The RDEIR evaluates noise impacts to 21 houses on Indiana Street and Springville Avenue and determines that impacts from non-transportation noise alone are significant and unavoidable. RDEIR, pp. 5.7-47. The basis of that conclusion is set out in Table 5.7-14, which finds that the project’s non-transportation noise would, by itself, cause the 21 homes to exceed noise standards.2

The RDEIR also evaluates noise impacts from combined transportation and non-transportation noise to these 21 houses based on the noise ordinance standards. However, for this analysis, the RDEIR considers noise impacts significant only if the Project adds at least 1.5 decibels to homes at which noise levels exceed the noise ordinance standards. This analysis finds that the Project would cause significant impacts to Houses 1-10 during daytime hours and to Houses 1-10 and 14 at night. FEIR, p. 5.7-52 to 5.7-53. A similar analysis under cumulative 2030 conditions shows considerable contributions to significant noise impacts at Houses 1-6 during daytime hours and to Houses 1-10 and 21

2 The RDEIR also reports in Table 5.7-8 that these houses may already experience noise in excess of the noise ordinance. Section 18-90.4 of the ordinance provides that if the existing noise levels, without additional noise, already exceeds the standards, the standard is adjusted to equal the ambient noise level. Thus, the Project’s addition of non-transportation noise would be a significant impact even if the Project, by itself, did not cause the noise levels to be exceeded.
at night. RDEIR, p. 5.7-64. The EIR finds that impacts from operational noise and from combined operational and traffic noise cannot be mitigated and, therefore, the impacts are unavoidably significant. RDEIR, pp. 5.7-61, 5.7-72.

The RDEIR illustrates the levels of combined transportation and non-transportation noise at neighborhood houses at night and daytime hours in Figures 5.7-12 to 15 (2012 conditions) and 5.7-18 to 21 (2030 conditions). These graphic noise contours demonstrate that the scope of the Project’s significant noise impacts extends to the houses behind Houses 1-10, which are on Milo Place. Accordingly, in Comment 5-91, we objected that the RDEIR had not evaluated impacts to the houses behind Houses 1-21.

In response, the FEIR contended that these impacts would be less than significant. FEIR, pp. 2.0-107 to 108. We asked Derek Watry, a noise expert with Wilson Ihrig, to evaluate this response. As Mr. Watry’s attached comments demonstrate, the FEIR did not credibly address the concern we identified for several reasons.

First, the FEIR’s response completely ignored the combined effects of transportation and non-transportation noise, considering only the non-transportation noise effects. However, our comments directly specified a concern with “[t]he analysis of the project’s non-transportation and transportation noise impacts . . .” FEIR, p. 2.0-64, comment 5-91, emphasis added. By limiting its response to non-transportation noise only the FEIR evaded the question and did not provide an adequate response.

As Mr. Watry’s comments explain, the combined effects of transportation and non-transportation noise will cause a number of homes on Milo Place to exceed the noise standards in the City’s noise ordinance. This is evident simply by comparing the graphic noise contour data, with and without the Project, represented in Figures 5.7-13 and 5.7-15. Mr. Watry also derives the incremental transportation noise to confirm this. Under CEQA Guidelines Appendix G, a project has a significant impact if it results in noise levels over the City’s noise ordinance.

Furthermore, Mr. Watry demonstrates that the project will cause increases in excess of 1.5 decibels to houses on Milo Place, which is the increment used by the RDEIR to determine whether impacts are significant at locations exceeding noise standards.

Thus, not only did the FEIR evade the question we raised, but it failed to disclose all of the significant impacts – impacts which must be assumed to be unavoidable because the EIR concludes that this kind of noise impact cannot be mitigated. The City must revise and recirculate the EIR to address these additional undisclosed impacts.

Second, even with respect to its analysis of non-transportation noise, the FEIR response was inadequate. As Mr. Watry explains, the response incorrectly assumes that these non-transportation noise sources (e.g., noises from the parking lot, truck movements, loading operations, mechanical equipment, etc.) all originate from the very
edge of the Project. In fact, these noises originate from within the Project site. As Mr. Watry explains, noise attenuates in proportion to the increase in distance from the source to the receiver. By understating the distance from source to the property lines of the houses on Milo Place, the FEIR overstated the attenuation that would occur. Mr. Watry shows that if the noise is correctly assumed to originate from within the Project site rather than from its edge, it will not attenuate as the FEIR claimed – because the proportionate increase in distance will not be as great as the FEIR assumed. In fact, Project-caused non-transportation noise will exceed the noise ordinance standards for a number of residences on Milo Place. The FEIR also liberally assumes the maximum 5 decibel attenuation from the houses on Indiana, even though it acknowledges that the attenuation provided by that barrier would fall within a 3 to 5 decibel range. Again, the FEIR response is inadequate, and again the EIR fails to disclose all significant and unavoidable noise impacts.

Finally, the FEIR simply ignored the issue we raised with respect to the houses behind houses 10-21 on Springville Avenue. As Mr. Watry indicates, the analysis should have considered these houses as well.

D. Projected Project Noise Violates The City’s Noise Ordinance

As discusses above, the RDEIR acknowledges that non-transportation noise from the Project will, by itself, cause noise in excess of the noise ordinance standards. The RDEIR also acknowledges that combined non-transportation and transportation noise will exceed these standards. And as Mr. Watry demonstrates, the RDEIR understates the actual scope and intensity of these noise impacts.

Section 18-90.4 of the Municipal Code provides that “[i]t is unlawful for any person at any location within the incorporated areas of the city to create any noise, or to allow the creation of any noise, on property owned, leased, occupied or otherwise controlled by such person which causes the exterior noise level . . . to exceed the noise level standards . . .” Section 307.05 of the Municipal code provide that “[n]o use may generate noise that is in violation of the city's noise standards contained in chapter 18, article IX of the municipal code or other standards as may be adopted by the city council.” Sections 307.01 and 307.02 make it clear that the noise standards are intended to apply to all land uses and to provide permissible limits and objective measurements to control nuisances, hazards, and objectionable conditions. Section 604.04 provides that the City may not grant a conditional use permit unless it finds the project to be consistent with and in conformance with all applicable plans.

As proposed, the Project would violate these Municipal Code provisions, and it would constitute a nuisance per se. By allowing the Project, the City would itself violate section 8-90.4. Furthermore, the City cannot make the required findings to grant a conditional use permit. Given its residential neighbors and the inability to mitigate its noise impacts, the Project use is simply inappropriate for the site.
E. Conclusion

For all the foregoing reasons, the City Council should DECLINE to certify the EIR and DENY the land use entitlements sought for the Project until such time as the analytic deficiencies set forth in this letter have been corrected.

Thank you for your consideration of these concerns.

Yours sincerely,

M. R. WOLFE & ASSOCIATES, P.C.

John H. Farrow

JHF:am
Attachments
Comments by Tom Brohard
February 6, 2012

Mr. John H. Farrow, Attorney at Law
M. R. Wolfe & Associates, P.C.
1 Sutter Street, Suite 300
San Francisco, California 94104

SUBJECT: Porterville Riverwalk Marketplace EIR – Transportation-Related GHG Reductions

Dear Mr. Farrow:

I have reviewed the February 2011 Revised Draft Environmental Impact Report (Draft EIR), the March 2010 (revised December 2010) Traffic Study included in the Draft EIR, the Draft EIR Appendices 5.1a and 5.1d related to Greenhouse Gas (GHG) Emissions, the January 2012 Final Environmental Impact Report (Final EIR) prepared for the Riverwalk Marketplace Phase II Project, and relevant technical literature cited below. At your request, I have focused on the Draft EIR’s analysis of GHG emission reductions related to transportation, your April 8, 2011 comments on the Draft EIR (Letter 5) related to GHG emission reductions, and the responses to your comments beginning on Page 2.0-84 of the Final EIR. I have also addressed the Final EIR’s rejection of the mitigation measures you proposed in the form of Transportation Demand Measures on Pages 2.0-79 through 2.0-81.

As indicated below, the Final EIR does not adequately respond to your comments on the Draft EIR and your requests for information to support the GHG reductions analysis. In addition, the EIR’s claims regarding trip reductions attributable to the project features are not supported by data and the combined magnitude of these claimed reductions are counter to empirical studies and the guidance that the EIR cites as support. Accordingly, the evidence does not support the conclusion that the project would reduce its motor vehicle GHG emissions by 40.2%. Actual reductions would be at most half of this. The claimed reductions in motor vehicle emissions are the overwhelming source of the claimed overall GHG emissions for the project. Thus, without the claimed motor vehicle GHG reductions, the project would not meet the stated threshold for less than significant GHG impacts, which requires a reduction of at least 29% in overall GHG emissions compared to Business as Usual (BAU) conditions.

Furthermore, even though the Draft EIR identifies significant traffic impacts that cannot be mitigated through structural improvements, it does not propose to implement TDM measures to address those impacts. The Final EIR mistakenly asserts that all traffic impacts would be mitigated to a less than significant level. Thus, it declines to address the specific TDM measures proposed in comments, which would reduce otherwise unavoidably significant traffic impacts.
Education and Experience

Since receiving a Bachelor of Science in Engineering from Duke University in Durham, North Carolina in 1969, I have gained over 40 years of professional engineering experience. I am licensed as a Professional Civil Engineer both in California and Hawaii, and as a Professional Traffic Engineer in California. I formed Tom Brohard and Associates in 2000 and now serve as the City Traffic Engineer for the City of Indio and as Consulting Transportation Engineer for the Cities of Big Bear Lake, Mission Viejo, and San Fernando. I have extensive experience in traffic engineering and transportation planning. During my career in both the public and private sectors, I have reviewed numerous environmental documents and traffic studies for various projects. Several recent assignments are highlighted in my resume which is enclosed.

GHG Significance Analysis

The Draft EIR purports to determine the significance of GHG emissions based on San Joaquin Valley Air Pollution Control District's (SJVAPCD) 2009 Guidance for Valley Land-use Agencies in Addressing GHG Emission Impacts for New Projects under CEQA. The Draft EIR explains at page 5.1-80 that the guidance calls for reducing GHG emissions by 29%:

"SJVAPCD guidance recommends compliance with best performance standards (BPS) to reduce GHG emissions or demonstrate that a project results in a reduction of GHG emissions by 29 percent compared to an established baseline."

Thus, the Draft EIR identifies the following significance criterion at page 5.1-81:

"...the project's significance with respect to GHG emissions and global climate change will be assessed based on project features and GHG reduction measures that are consistent with the SJVAPCD's recommended BPS and the 29 percent reduction target as compared with an[] established BAU baseline for commercial developments."

The Draft EIR defines the Business as Usual or BAU baseline for analysis at page 5.1-82 as the emissions from a "similar project" without any project features or measures that go beyond regulatory requirements:

"The SJVAPD defines the baseline for commercial development projects as the emissions that would occur from a similar project, during the 2002 through 2004 baseline period without any project features or measures beyond those required by statute or regulation that would reduce GHG emissions."
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The Draft EIR summarizes various features that would reduce GHG emissions in Table 5.1-16, "GHG Reductions from Project Features and Regulations" and in Tables AIR-1 and AIR-3 in Appendix 5.1. These features include the following:  

- a 3% reduction in trips attributed to characterizing the project as mixed use development;  
- a 3% reduction in trips attributed to characterizing the project as infill development;  
- an additional 20% reduction in vehicle miles traveled (VMT) attributed to characterizing the project as infill development;  
- an 8.75% reduction in trips associated with Wal-Mart attributed to providing bicycle parking, end of trip facilities (bike lockers), a pedestrian network (access from storefronts to adjacent streets), and a pedestrian pathway through parking (landscaped or shaded spines through the parking lots for pedestrian connectivity); and  
- a 13% reduction in trips attributed to internal capture for a multi-use development (the reduction in external trip sources attributable to patrons shopping a more than one store at the project).  

The Draft EIR summarizes the emissions that would be generated by a "BAU [business as usual] Project" and the "Proposed Project with Features" in Table 5.1-17. That table shows emissions and reductions for each of various sources (e.g., construction, motor vehicles, electricity consumption, solid waste generation, etc.). The table identifies an overall 32.3% reduction in total emissions, which the Draft EIR therefore concludes will meet the 29% threshold for finding GHG impacts less than significant.  

**GHG Significance Conclusion Depends On Finding That Motor Vehicle Emissions Would Be Reduced At Least 35.4% From BAU**  

The overall claimed reductions in GHG emissions from all types of sources amount to 5,625 metric tons of CO2 equivalents (MTCO2e), from 17,435 MTCO2e to 11,809 MTCO2e. The vast majority of this projected 5,625 MTCO2e reduction – 4,748 tons – is attributed to reductions in motor vehicle emissions. Indeed, Table 5.1-17 projects that motor vehicle emissions would be reduced 40.2% from BAU conditions - from 11,800 MTCO2e to 7,052 MTCO2e.  

The tables below present a sensitivity analysis to demonstrate how critical the magnitude to the claimed reductions in motor vehicle trips and trip lengths are to the Draft EIR’s conclusion that an overall 29% reduction in GHG would be attained.
Table 5.1-17, restated to combine non-motor vehicle sources

<table>
<thead>
<tr>
<th>GHG Emissions Source</th>
<th>BAU Project</th>
<th>Project with Features</th>
<th>Percent reduction from BAU</th>
</tr>
</thead>
<tbody>
<tr>
<td>Motor Vehicles</td>
<td>11,799.97</td>
<td>7,052.23</td>
<td>40.2%</td>
</tr>
<tr>
<td>All Other Sources</td>
<td>5,636.20</td>
<td>4,757.07</td>
<td>15.6%</td>
</tr>
<tr>
<td>Total GHG Emissions</td>
<td>17,435.17</td>
<td>11,809.30</td>
<td>32.3%</td>
</tr>
</tbody>
</table>

Table 5.1-17, restated to identify minimum motor vehicle emission reductions to meet overall 29% goal

<table>
<thead>
<tr>
<th>GHG Emission Source</th>
<th>BAU Project</th>
<th>Project with Features</th>
<th>Percent reduction from BAU</th>
</tr>
</thead>
<tbody>
<tr>
<td>Motor Vehicles</td>
<td>11,799.97</td>
<td>7,622.78</td>
<td>35.4%</td>
</tr>
<tr>
<td>All Other Sources</td>
<td>5,636.20</td>
<td>4,757.07</td>
<td>15.6%</td>
</tr>
<tr>
<td>Total GHG Emissions</td>
<td>17,435.17</td>
<td>12,376.85</td>
<td>29.0%</td>
</tr>
</tbody>
</table>

Unless motor vehicle emission reductions are at least 35.4% from BAU conditions, overall project emissions would not meet the 29% overall emission reduction threshold used to determine if the project’s GHG impacts are significant.

EIR Did Not Provide Supporting Studies Or Data To Justify Trip Reductions

Trip generation for various types of projects has been extensively analyzed and documented through research collected by the Institute of Transportation Engineers to support analysis of traffic and air quality impacts. Traditionally, traffic engineers have evaluated trip reduction claims in connection with analysis of traffic levels of service. In these analyses, the length of trips has been less important than the number of trips, because the typical focus is on impacts near and at the project destination, where traffic is funneled. However, some analyses of reductions in trip lengths were also undertaken in connection with air quality modeling, e.g., for the URBEMIS model used to project air contaminants.

More recently, the analysis and justification of credits for trip generation and trip length reduction, both of which contribute to reduction in vehicle miles traveled (VMT), has evolved in response to the need to undertake smart growth planning and to devise and document GHG reduction strategies. The conclusions of some of these analyses have been summarized in several of the guidance documents cited by the Draft EIR, including
Projected VMT reductions from specific strategies that have been individually analyzed cannot be uncritically combined without limit where a project may implement several of those strategies. For example, locating development proximate to other uses may tend to reduce vehicle trips by facilitating alternative transportation modes (transit, pedestrian, and bike travel) and may also tend to reduce trip lengths. This phenomenon may be described as "mixed use" development when a single project provides a mix of uses or is located proximate to complementary uses. This phenomenon may also be described as "infill" development when a project is located in vacant land that is highly accessible to other uses compared to development in an alternative greenfield site. Providing features that facilitate or provide incentives for pedestrian and bicycle access in a project that is sufficiently close to other uses to permit these modes of transportation may provide additional VMT reductions. However, Pages 58-63 of CAPCOA 2010 explains, and cites empirical evidence to support the claim, that there are limits to the total VMT reductions that should be claimed based on combining various location and project design features. As discussed in the next section, the EIR's claimed VMT reductions greatly exceed these limits.

In view of the potential for overestimating VMT reductions from combined location and project design features, it is critical to document the empirical basis of claimed reductions. The EIR has failed to do so in a number of instances.

INFILL DEVELOPMENT CLAIM - Table AIR-1 in the Draft EIR projects a 3% reduction in trip generation and an additional 20% overall reduction of VMT based on characterizing the project as infill development. The basis of these claimed reductions are Mitigation Measure D-12 from CAPCOA 2008 and an unnamed 2007 document authored by the traffic consulting firm Fehr & Peers.

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1 The Draft EIR cites San Joaquin Air Pollution Control District (SJVAPCD), 2009, Guidance for Valley Land-use Agencies in Addressing GHG Emission Impacts for New Projects under CEQA on Pages 5.1-81 (see footnote 152), 5.1-91 (see Table 5.1-16 reference to "SJAPC;BPS-24 [sic, BPS-23]"), and 5.1-96 (see Notes to Table 5.1-16). However, the actual document referenced in the Draft EIR is the SJVAPCD December 17, 2009 Final Staff Report -Climate Change Action Plan: Addressing GHG Emissions Impacts under CEQA. This is evident from the quoted language on Page 5.1-8, which is from Page 53 of the Final Staff Report, and from the reference to "BPS-24" [sic, the reference should be to BPS-23, suburban mixed use], which is from Appendix J of the Final Staff Report.
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The listing of Mitigation Measure D-12 in CAPCOA 2008 does not provide any actual analysis to justify the claimed reduction – in fact it cites the unidentified 2007 Fehr & Peers document as support. I understand that, despite your request, the City was unable to furnish a copy of the Fehr & Peers document.

Furthermore, Mitigation Measure D-12 on Page B-19 of CAPCOA 2008 provides that the infill development credit requires the following:

"Project site is on a vacant infill site, redevelopment area, or brownfield or greyfield lot that is highly accessible to regional destinations, where the destinations rating of the development site (measured as the weighted average travel time to all other regional destinations) is improved by 100% when compared to an alternate greenfield site."

However, the Final EIR in response 5-22 declined to provide any specific information in response to your request that the City demonstrate how it was determined that the weighted average travel time to all other regional transportation destinations is improved 100% compared to an alternative greenfield site.

Thus, despite your requests, the EIR provides neither the underlying Fehr & Peers study, which may show how the 3% trip and 20% VMT reductions were empirically supported, nor the specific data that would justify applying Mitigation Measure B-12 from CAPCOA 2008. This omission is particularly troubling in light of the excessive reductions claimed from combining reductions from location and project design features discussed below. As discussed below, it is quite likely that the infill credit (3% trip reduction plus 20% VMT) is duplicative of the 3% trip reduction credit for mixed use, since both of these credits are based on locating a project proximate to other complementary uses. Only by providing the empirical basis of the large credit claimed for infill development could the EIR have demonstrated whether this credit is in fact independent of and additive to the other credits taken.

SUBURBAN MIXED USE CLAIM - The Final EIR provided no specific response to your request to identify the number of dwelling units within 1/4 mile, which is directly relevant to the applicability of the 3% credit taken based on SMAQMD 2010 Measure #23 for Suburban Mixed Use. The empirical basis for this reduction is from Nelson\Nygaard’s 2005 Crediting Low-Traffic Developments, Adjusting Site-Level Vehicle Trip Generation Using URBEMIS.2 Nelson\Nygaard 2005 explains on Page 12 that the mixed use trip reduction depends on the number of housing units in the study area. Figure 2.0-3 in the Draft EIR shows

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2 See, for example, SJVAPCD December 17, 2009 Final Staff Report -Climate Change Action Plan: Addressing GHG Emissions Impacts under CEQA, p. 142.
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relatively sparse residential development adjacent to the site. The EIR does not provide data that would justify applying the Suburban Mixed Use reduction. 3

PEDESTRIAN AND BICYCLE CLAIMS - The Draft EIR cites the 2010 SMAQMD guidance, Recommended Guidance for Land Use Emission Reductions, in support of the claimed reductions related to project design features that facilitate bicycle and pedestrian access. SMAQMD 2010 requires that the project proponent provide information to support these claimed reductions. However, Response 5-22 in the Final EIR declined to provide any specific information in response to your request for this information.

The omission is problematic because it is apparent that the Draft EIR misapplied at least one of the measures. The Draft EIR claims a reduction in overall trips attributed to the Wal-Mart portion of the project based on a credit labeled “End of Trip Facilities,” which the Draft EIR describes in Table A1R-1 as follows: “Bike lockers will be provided along store fronts to encourage employee and patron bicycle use (0.625% reduction)”. Your comments asked whether that credit was based on SMAQMD Guidance Measure #2 and if, so requested information about proposed facilities to demonstrate compliance. The Final EIR declined to respond to either of these requests. SMAQMD Guidance Measure #2 is the only measure captioned “End of Trip Facilities,” but it calls for providing shower, changing space, and clothes locker facilities for employees, not for providing bicycle lockers. Bicycle locker facilities are included in SMAQMD Measure #1, for which the Draft EIR also took credit. Thus, the EIR provides no information to support the application of SMAQMD Measure #2, and the application is unjustified based on the information in Table A1R-1. Furthermore, even if the Wal-Mart facility were to provide shower, changing space, and clothes locker facilities for employees, it is clear that this measure would only reduce employee trips, not patron trips. However, the Draft EIR applied this credit to reduce all non-truck trips associated with Wal-Mart.

Similarly, the Final EIR declined to provide any information in response to your specific requests for information about the location and numbers of bicycle parking facilities to support application of SMAQMD Measure #1. Nor did it provide the requested information about pedestrian routes and pathways through the parking areas to support application of SMAQMD Measures #5 and #13.

In sum, without the information requested by comments regarding the underlying empirical study of infill development credits and regarding project features

3 Because Nelson\Nygaard's analysis of mixed use reductions was focused on the effect on the jobs/housing balance, the determination of the credit is based on housing and employment variables. If the balance is unfavorable, the “credit” may actually be negative. The EIR presents no data to show that the underlying mix of jobs and housing would result in a positive or negative adjustment. Furthermore, in Nelson\Nygaard's analysis the credit taken for including retail use in a mixed residential and employment environment is limited to 2%.
relevant to the claimed credits, there is insufficient evidence to support application of these credits.

**Claimed Reductions Substantially Exceed Combined Reduction Limits Established by CAPCOA 2010, The Authority Cited By The Final EIR**

In response to your objection that the Draft EIR fails to justify the trip reduction claims, Response 5-20 of the Final EIR states that the claims were based on three of the guidance documents listed above: CAPCOA 2008, SMAQMD 2010, and CAPCOA 2010. Page 2.0-85 of the Final EIR states:

"CAPCOA has developed detailed guidance for quantifying emission reductions attributable to a wide assortment of air quality and greenhouse gas mitigation measures in its August 2010 document Quantifying Greenhouse Gas Mitigation Measures. CAPCOA member air districts rely on the organization as [the] place for sharing best practices in air quality analysis and regulation."

Page 39 of CAPCOA 2010 explains that it has developed specific procedures for combining mitigation measures for projects that involve more than one measure in order to ensure that the resulting quantification is appropriate and accurate. Two types of limits are applicable to the transportation-related GHG reductions claimed by the Draft EIR. Because the Draft EIR failed to take these limits into account, it greatly overstated the VMT reductions associated with project location and design features.

**CAP ON REDUCTIONS FOR LAND USE/LOCATION STRATEGIES** - First, the Draft EIR took excessive credits for the project location and land use characteristics, which it described as suburban mixed use and infill development. Both of these reductions are what CAPCOA 2010 identifies on Pages 55 and 61 as "Land Use/Location Strategies," and are therefore subject to a cap for that type of strategy.

Tables AIR-1 and AIR-3 show that the Draft EIR took a 3% trip reduction for suburban mixed use, a 3% trip reduction for infill development, and an additional 20% VMT reduction for infill development. This combined credit comes to approximately 25% of total VMT compared to BAU conditions.\(^4\) CAPCOA 2010 states on Page 61 that the combined reductions for these kinds of land use

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\(^4\) The combined credit cannot be calculated by simply summing the percentages. The project VMT as a percentage of BAU after taking the three reductions can be approximated by multiplying 97% (1.00 - 0.03) times 97% (1.00 - 0.03) times 80% (1.00 - 0.20), which is 75.3% of BAU. This means that the three reductions amount to 24.7% of BAU. Since the analysis in the Draft EIR Appendix 5 did not apply the trip reductions to the small number of trips represented by the Wal-Mart delivery trucks (for which it provided separate data), the result is approximate.
strategies should be "capped based on empirical evidence for location setting types as follows:

- Urban: 55% VMT
- Compact Infill: 30% VMT
- Suburban Center: 10% VMT
- Suburban: 5% VMT"

Locations setting types (Urban, Compact Infill, Suburban Center, and Suburban) are defined and characterized on Pages 59 and 60. Based on these definitions, the project site could not be characterized as Urban or Compact Infill because it is not located in a central city or inner-ring suburb with high-frequency transit service. The best description of the site would be Suburban, based on its location outside a central city and based on the building heights, street pattern, setbacks, parking supply, and parking prices. Note also that the URBEMIS modeling in Appendix 5.1a was used to determine GHG emissions was based on the "rural" setting, which is clearly not consistent with the Urban or Compact Infill locations.

Regardless whether the project location is characterized as "Suburban Center" or "Suburban", it is clear that taking a 25% VMT reduction for Land Use and Location Strategies is unjustified in light of the empirical evidence that the maximum reduction for these strategies is either 10% for "Suburban Center" locations or 5% for "Suburban" locations.

As discussed below, the Draft EIR also credited the project with an additional 13% trip reduction compared to BAU based on internal capture (trips between on-site stores that do not use external roads), which it justified by characterizing the project as a "Multi-Use Development." The fundamental error in this contention is the notion that there would not have been internal capture for a similar Multi-Use Development project under BAU conditions. However, if it were somehow proper to assume that a similar project would not have had internal capture under BAU conditions, then the Multi-Use Development characteristic of the project should be considered yet another Land Use/Location strategy and therefore subject to the cap for combining such strategies. If Multi-Use Development is considered such a strategy, then the total credits taken by the Draft EIR for Land Use/Location Strategies would be approximately 34.5%, based on the 3% trip reduction for suburban mixed use, the 3% trip reduction for infill development, the additional 20% VMT reduction for infill development, and the 13% reduction for Multi-Use Development. This total level of trip reductions is even more

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5 Again, the combined credit cannot be calculated by simply summing the percentages. The project VMT as a percentage of BAU after taking all four reductions can be approximated by multiplying 97% (1.00 - 0.03) times 97% (1.00 - 0.03) times 80% (1.00 - 0.20) times 67% (1.00 - 0.13), which is 65.5% of BAU. This means that the four reductions amount to 34.5% of BAU. Again, since the analysis in the Draft EIR Appendix 5 did not apply the trip reductions to the small
inconsistent with the maximum of 5% or 10% that can be justified for this project based on empirical evidence and the guidance cited by the EIR.

CAP ON REDUCTIONS FOR ALL COMBINATIONS OF TRANSPORTATION MEASURES - The Draft EIR also took excessive credits for all of the combined transportation measures. As noted above, Table 5.1-17 projects the project will reduce its motor vehicle GHG emissions by 40.2% compared to BAU conditions. All of the reductions are attributed to the location, land use, or design features of the project. As Page 61 of CAPCOA 2010 explains, there is a global cap for combined transportation strategies:

"A global maximum is provided for any combination of land use, neighborhood enhancements, parking, transit, and commute trip reduction strategies... The total project VMT reduction across these categories, which can be combined through multiplication, should be capped at these levels based on empirical evidence [footnote omitted]. Maximums are provided for the location/development type of the project. The Global Maximum values can be found in the top row of Chart 6-2.

These include:

- Urban: 75% VMT
- Compact Infill: 40% VMT
- Suburban Center (or Suburban with NEV): 20% VMT
- Suburban: 15% VMT (limited empirical evidence available)"

Again, the project is properly characterized as "Suburban", so the combined reductions should have been limited to at most 15%, not the 40.2% taken. Even if the project were properly characterized as "Suburban Center" and eligible for a 20% combined reduction, the reductions actually claimed are twice as high as can be justified by empirical evidence.

The Final EIR cites, but ignores CAPCOA 2010, which demonstrates and provides empirical support for the common sense notion that there are limits to the VMT reductions attainable through location, land use, and project features. The empirically based literature does not support the magnitude of the Draft EIR's claimed transportation related reductions, which are at least twice as high as could be justified.

Common sense suggests that this typical suburban big box-anchored shopping center project does not differ substantially from other suburban "business as usual" big box-anchored shopping center projects. Some reduction in VMT may be justified for pedestrian and bicycle features, although it is clear that the reductions for End of Trip Facilities are unwarranted. Some reduction in VMT number of trips represented by the Wal-Mart delivery trucks (for which it provided separate data), the result is approximate.
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may also be justified for project location and land use characteristics. However, CAPCOA 2010 shows that the Draft EIR has double or triple-counted the reductions attributable to these characteristics.

In addition to the evidence identified by CAPCOA 2010, the other guidance documents cited by the Draft EIR also point to this double counting. For example SMAQMD 2010 provides distinct credits for three distinct measures within the Mixed-use category including #22 (Urban Mixed-use), #23 (Suburban Mixed-use), and #24 (Other Mixed-use). Critically, SMAQMD 2010 specifies that none of these may be taken in combination with another mixed use reduction. This reflects the reality that there is a limit to reductions that can be justified by location and land use characteristics. However, by combining various reductions from different sources, none of which are coordinated with each other, the Draft EIR has taken a 3% credit for Suburban Mixed-use based on SMAQMD 2010, another 13% credit for Multi-Use Development based on Institute of Transportation Engineers (ITE), Trip Generation Handbook, 2nd Edition, and a 3% plus 20% reduction for infill development based on an unavailable Fehr & Peers document.

If an analysis combines reductions from uncoordinated guidance documents and empirical sources, it must address the obvious possibility that reliance on those sources may lead to overestimating trip reductions. The Draft EIR has not done so. The empirically based caps for transportation reductions in CAPCOA 2010 reflect the fact that, while many of the location, land use, and project features may have some synergy in combination, there is an effective upper limit to the number of drivers that will be persuaded to walk, bike, or use transit.

Exclusion of Internal Capture Trip Reductions From Similar Multi-Use Development Project Under BAU Conditions Is Unjustified

As noted above, Table AIR-1 of the Draft EIR credits the project with a 13% reduction in trips attributed to characterizing it as a Multi-Use Development. Although the worksheet setting forth the calculations in support of this reduction was not included in the Traffic Study actually appended to the Draft EIR, Final EIR Response 5-21 explains that the reduction was based on calculations performed pursuant to the Institute of Transportation Engineers (ITE), Trip Generation Handbook, 2nd Edition. Page 85 of the ITE Handbook provides that a reduction in trips may be taken for a single real estate project where trips between uses with different ITE land use classifications can be made without using off-site roads. The ITE Handbook provides a methodology for calculating the trip reduction.

ITE provides trip rates for numerous land use classifications, including, for example, various types of office, industrial, commercial and residential uses and various types of retail use, such as the two retail land use classifications.
evaluated for the project’s Wal-Mart and other commercial sections. The typical scenario in which a Multi-Use Development internal trip capture discount is taken is a mixed use project that combines different land uses, such as office and retail, or residential, retail, and office.⁶

The problem with Draft EIR’s approach to internal capture is that Table A1R-1 includes the internal capture reduction in the calculation of GHG emissions for the proposed project but unaccountably omits it from the calculations for the project under BAU conditions. There is no reason to suppose that trip reductions from internal capture, if applicable at all, would not apply to the project under BAU conditions.

The Draft EIR defines the BAU baseline for analysis on Page 5.1-82 as the emissions from a “similar project” without any project features or measures that go beyond regulatory requirements. Page 85 of the ITE Handbook makes it clear that internal capture attributed to Multi-Use Development is applicable to “a single real estate project.” Here, the Draft EIR defines the real estate project under review as a regional retail commercial center with a 161,602 square foot Wal-Mart and 202,854 square feet of other shopping center uses on four other pads. The project objectives identified on Pages 3.0-1 and 3.0-2 are to develop a regional retail shopping center at a large scale. If a similar project to the project under analysis—a large scale regional commercial center—were to be constructed under BAU conditions, it would also have internal capture.

In effect, the BAU project evaluated by the EIR is not a “similar project,” since it is not assumed to be a regional commercial center with multiple land uses. By omitting the 13% trip reduction attributable to Multi-Use Development from the BAU project evaluated, the Draft EIR substantially overstates the reduction in motor vehicle GHG emissions from the proposed project.

GHG Impact Trip Assumptions Are Inconsistent With Trip Assumptions In The Traffic Impact Analysis

Further evidence that the total reductions in trips taken in the GHG analysis are unjustified is provided by the fact that the Draft EIR did not assume all of these reductions in its analysis of traffic impacts, e.g., impacts consisting of increased traffic congestion and reductions of intersection Level of Service. The Draft EIR’s traffic analysis (Table 5.10-9) forecasts 8,440 average daily trips (ADT) for the proposed project. However, Appendix 5.1a, the URBEMIS analysis of GHG

⁶ Page 85 of the ITE Handbook cautions that a shopping center should not be treated as a multi-unit development, because ITE’s shopping center trip generation data already reflect internal capture, unless “the shopping center is planned to have out-parcel development of a significantly different land use classification.” Because the Wal-Mart use is not “significantly different” than the shopping center use, taking the internal capture reduction at all is questionable. However, this is not the fundamental basis of our objection to the Draft EIR’s analysis.
impacts for the proposed project, forecasts only 7,518 average daily trips including 4,998 from Wal-Mart and 2,520 from other commercial uses. Furthermore, Appendix 5.1b projects total ADT in the GHG analysis for the BAU project at 9,962 average daily trips including 5,716 from Wal-Mart and 3,246 from other commercial uses.

Thus, the Draft EIR uses inconsistent and entirely different trip generation assumptions to evaluate traffic and GHG impacts. The traffic analysis reflects 12.3% more daily trips than the GHG analysis for the proposed project. The GHG analysis for the BAU project reflects 18.0% more daily trips than the traffic analysis.

In sum, the GHG analysis reflects 922 fewer daily trips for the proposed project and 1,522 more daily trips for the BAU project than the traffic impact analysis. It is simply unreasonable for the EIR to use such radically different assumptions about the proposed project's traffic generation for the traffic and GHG analyses. If the trip reductions assumed in the GHG analysis were actually defensible, there would be no reason not to use them in the traffic analysis.

**Transportation Demand Measures Should Be Required To Address Significant Traffic Impacts**

On Pages ES-6 and 5.10-43, the Draft EIR identifies significant traffic impacts to the intersection at Olive Avenue and Jaye Street. The Draft EIR states that structural mitigation is infeasible due to intersection geometry and, accordingly, identifies the impacts as significant and unavoidable. The Draft EIR’s traffic analysis section does not propose any non-structural mitigation such as Transportation Demand Management (TDM) measures. As discussed below, TDM measures could reduce trips and reduce otherwise unavoidably significant traffic impacts.

Comments 5-14 and 5-15 explain that TDM measures should be required of the Project and spelled out in the EIR, in part because traffic impacts are identified as unavoidably significant. The comments also state that TDM measures are warranted because air impacts are likely to be significant and because the City’s General Plan and Municipal Code call for TDM measures. Comment 5-16 proposes 27 specific TDM mitigation measures that would address both air quality and transportation impacts and asks that they be imposed on the Project. The comment notes that the Draft EIR references an Employer Voluntary Trip Reduction Implementation Plan under the Air District’s Rule 9410, but that the Draft EIR states that the details have not been specified. The comment asks that details related to TDM measures be specified for the public and identified as required mitigation measures.
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In Responses 5-14 and 5-15 on Pages 2.0-79 to 2.0-81, the FEIR states that TDM measures are not in fact required, stating that neither air quality nor traffic impacts are significant after mitigation, that the Air District’s Rule 9410 does not in fact apply to the Wal-Mart portion of the Project, and that the Municipal Code provisions have not yet been implemented by the City. The contention that all traffic impacts are mitigated is at odds with the Draft EIR’s conclusion that impacts at Olive Avenue and Jaye Street will remain unavoidably significant because structural mitigation measures are not feasible.

The Final EIR states that even without a mandated TDM program, Wal-Mart stores already encourage trip reduction through Wal-Mart’s Rideshare programs, which programs may include on-site food service, break rooms with places to eat, bicycle parking, lockers, and designated parking for vehicles that are low emission or fuel efficient or for carpooling or vanpooling. The Final EIR states that the Project would further General Plan goals with its Rideshare Program, and lists strategies that may be included. However, the Final EIR does not state that these strategies will actually be required at the Wal-Mart site. In fact, the Final EIR states on Pages 2.0-80 and 5.1-44 that “it is premature to speculate on the specific content of the plan that will be developed” for this Wal-Mart. The Final EIR does not state what voluntary efforts might be undertaken at the non-Wal-Mart portions of the project.

Because it concludes that TDM measures are not required, the Final EIR does not address any of the 27 specific measures proposed in Comment 5-16. Instead, it refers to Responses 5-14 and 5-15.

Reduction of employee trips through a TDM program required of all employers at the project could substantially reduce the significant impacts at the Olive Avenue and Jaye Street location. The Draft EIR states on Page 5.1-44 that the Wal-Mart portion of the project will itself have approximately 300 employees. The Final EIR states on Page 2.0-79 that Wal-Mart is not expected to be required to implement the Air District Rule 9410 because it is not expected to have more than 100 full-time associates starting work between 6:00 AM and 10:00 AM. However, this revision does not address the numbers of all Wal-Mart employees, including part-time employees, who may be commuting during the PM peak commute hour when significant impacts are projected at Olive Avenue and Jaye Street. Nor does the statement address the numbers of employees from the non-Wal-Mart portion of the Project who will commute during the PM peak hour. The Draft EIR states on Page 3.0-28 that tenants at the non-Wal-Mart portion of the site may include office workers, whose numbers and regular commute hours would particularly affect the PM peak hour traffic.

Employee trip reductions can be maximized when an employer provides a coordinated and comprehensive TDM program that includes support measures, transportation services, and economic incentives. The enclosed Pages 122 and
123 of *Trip Generation Handbook, 2nd Edition* published by the Institute of Transportation Engineers report the typical experience of various TDM measures identified as part of Transit Cooperative Research Program (TCRP) Project B-4. This project surveyed 49 employers with active TDM programs across the nation to ascertain the costs and benefits (both perceived and actual) of TDM programs to employers. Information was also gathered to enable computation of overall reductions in the number of commuter vehicles based on existing TDM programs. The TCRP report categorized the many different TDM programs into the following three categories and reported the following:

“Support measures are measures provided by employers to foster a work environment that supports commuting by alternative modes. Support measures include employee transportation coordinators, rideshare matching, promotional activities, on-site dependent care, and alternative work schedules (such as flexible work hours, compressed work weeks, staggered work hours, and telecommuting). The surveyed TDM programs that provide only support services were measured to have no effect on the number of vehicles (not number of vehicle-trips) used by commuters.

Transportation Services include employer-based efforts such as van-pool programs, shuttle bus service to off-site transit stations, guaranteed ride home programs, and the provision of on-site showers and changing facilities. TDM programs that involve transportation services provided by the employer were measured to have a noticeable impact on the number of vehicles (not number of vehicle-trips) used by commuters (an average 8 percent reduction in the number of vehicles at the survey sites).

Economic Incentives are any steps taken by an employer to provide a monetary incentive for employees to use an alternate travel mode. These include transit subsidies, parking fees for non-rideshare vehicles, parking discounts for rideshare vehicles, and transportation allowances. TDM programs with economic incentives to not drive alone were found to reduce the number of commuter vehicles generated by an employment site (not number of vehicle-trips) by an average of 16 percent.

Finally, TDM programs that combine economic incentives with transportation services produce the most significant effect on commuter vehicles (not vehicle-trips) generated by a site (an average 24 percent reduction at survey sites).”

The TDM measures proposed by Comment 5-16 include support, transportation, and economic incentive measures. By requiring that all project employers adopt all feasible measures the project be able to realize the full benefits of TDM measures – benefits that the TCRP report found to result in an average 24%
Mr. John H. Farrow
Riverwalk Marketplace EIR – Transportation Related GHG Reductions
February 6, 2012

reduction in employee trips and benefits that also include reductions in customer trips.

Note that the guidance documents cited by the Draft and Final EIR in support of the efficacy of GHG reduction strategies support the value of TDM measures. For example, CAPCOA 2010 reports on Page 66 that mandatory commute trip reduction programs may reduce employee trips from 4.2% to 21% compared to the 1% to 6.2% effectiveness of voluntary programs. CAPCOA 2010 reports that Employer-Sponsored Vanpools/Shuttle programs may reduce employee trips up to 13.4% and that pricing parking may reduce employee trips up to 19.7%.

As discussed above, there are limits to trip reductions that may be obtained through TDM measures, and the EIR’s GHG analysis has substantially overstated the reductions that would be attained by those measures the project proposes to implement. However, this does not suggest that the project should not implement additional trip reduction measures that are feasible. These additional trip reduction strategies may not entirely avoid significant traffic and GHG impacts, but they will reduce those impacts.

Conclusions

The GHG significance analysis is critically dependent on the projection of substantial reductions in transportation emissions compared to a similar project undertaken under BAU conditions. The Draft EIR must demonstrate at least a 35.4% reduction in VMT to meet the overall emission reduction target of 29%. It projects reductions of 40.2%. If it has failed to document, or has overstated, motor vehicle reductions by only five percentage points, the claimed reduction of overall GHG emissions would not be demonstrated.

Despite requests for the Fehr & Peers study cited as the basis for the approximately 25% reduction in VMT attributed to infill development, the Final EIR failed to provide anything other than a citation to a guidance document, which in turn cites the same unnamed and unavailable study. The Final EIR also failed to provide requested information to demonstrate that project features would actually be consistent with the specifications of the mitigation measures from the SMAGMD 2010 and CAPCOA 2008 guidance documents cited by the Draft EIR. The EIR does not present an adequate basis for the claimed reductions related to pedestrian and bicycle usage, mixed use, or infill.

The EIR fails even to consider the fact that the combined reductions from land use and location measures, and from all transportation measures taken together, have real limits. CAPCOA 2010, the guidance document cited by the Final EIR as the basis for air districts to share best practices in air quality analysis, places clear limits on the total reductions that may be claimed. However, the EIR claims more than twice these total limits.
Finally, the EIR provides no justification for evaluating a different project under the BAU scenario – one that is not a Multi-Use Development subject to trip reductions via internal capture.

Each of these shortcomings in the EIR is sufficient to reduce the claimed 40.2% reduction in transportation emission to below 35.4%. For example, the EIR’s lack of documentation for the 3% trip reductions and additional 20% VMT reductions claimed for infill negates reductions which when multiplied together totaling about 22%. The EIR’s failure to recognize effective real-world limits to combined transportation emission reduction measures results in taking reductions more than twice as high as the most liberal possible limit for combined Land Use/Location reductions (15% for “Suburban Center” projects) and twice as high as the most liberal limit for all combined transportation reductions (20% for “Suburban Center” projects).

In sum, there is insufficient evidence to justify the individual GHG reductions claimed. Even if these reductions were applicable, the EIR fails to consider limits on their combined effects. The available evidence demonstrates that the claimed reductions greatly exceed GHG reductions attainable with combined individual transportation strategies.

Finally, the EIR should be revised to propose all feasible TDM measures, which would reduce the project’s otherwise unavoidably significant traffic impacts, and which would also reduce GHG impacts.

If you should have any questions regarding these findings, please contact me at your convenience.

Respectfully submitted,

Tom Brohard and Associates

Tom Brohard, PE
Principal

Enclosures
ed at the site. For example, the TDM program may only affect commuters who travel outside the peak hour.

**Data Isolating TDM Effects**

There are very little controlled before-and-after data for which the only change is the initiation of TDM programs or transit services. Traditionally, the pre-TDM mode shares are determined by survey (e.g., asking the employee how he/she commutes six months before). This method relies on the memory of the survey respondent and may not adequately account for potential bias on the part of the respondent or the impacts of any employee turnover.

The design, initiation, and operation of TDM and transit programs for which trip reductions are being sought are traditionally the responsibility of individual employers, groups of employers (e.g., through a transportation management association), or a regional or local governmental agency. Therefore, these actions are not site-driven which is different from all other trip generation estimating applications. There are exceptions, of course. Some site-driven measures can have a significant bearing on TDM program effectiveness (e.g., the provision of on-site services, the limitation of the on-site parking supply) while others have merely minor effects (e.g., sidewalks to neighboring sites, bus stop shelters).

The concerns over the reported experience as described above may on first inspection appear to be relatively insignificant. However, the potential error introduced by these TDM/transit factors (for the sake of argument, between 5 and 10 percent) is nearly as great as the anticipated trip reductions attributable to TDM/transit (described later in Section B.3 as 5 to 20 percent). Therefore, these data need to be used with extreme caution.

**B.3 Reported Typical Experience TCRP Project B-4—Cost-Effectiveness of TDM Programs**

As part of Transit Cooperative Research Program (TCRP) Project B-4, 49 employers with active TDM programs were surveyed nationwide. The primary purpose of the survey was to ascertain the costs and benefits (both perceived and actual) of TDM programs to employers. In addition, information was gathered that would enable the computation of overall reductions in the number of communter vehicles based on the TDM programs in place. The following presents a summary of the survey results as they pertain to trip generation.

**CAUTION**

The magnitude of the TDM program effects is only an estimate and is not based on actual before/after counts.

Several notes of caution should be emphasized regarding the TCRP study database.

- An employer survey was used to determine the number of vehicles (not the number of vehicle-trips) used for commuting by employees. Therefore, the "with-TDM" commuter mode shares are only estimates and are not based on actual vehicle counts.

- Mode shares are for commuters only. The trip generation rates for non-commuter trips generated at a place of employment (e.g., visitors, delivery, non-commuter trips by on-site employees) are not included in the trip reduction estimates attributable to TDM programs.

- Trip reduction estimates are for commuter trips spread throughout the day. The values are at best suitable for an overall peak period but may not be valid estimates for a particular peak hour.

- To quantify the trip reduction benefits of a TDM program at an individual site, it is necessary to compare the "after" condition with the "before" condition. However, the data on "pre-TDM" mode shares are not available. The TCRP study assumed that the "before-TDM" baseline value should correspond to the overall mode share distribution for the surrounding area (i.e., ambient conditions), based on U.S. Bureau of the Census data.
Trip reduction estimates are based on small sample sizes (typically 16 or fewer sites).

The following classification scheme was used in the TCRP report to categorize the many TDM programs into those that are supportive of persons willing to commute using an alternative travel mode, actual services that directly enable persons to commute using an alternative mode and financial (i.e., cash) incentives that encourage commuters to use an alternative travel mode.

Support Measures are measures provided by employers to foster a work environment that supports commuting by alternative modes. Support measures include employee transportation coordinators, rideshare matching, promotional activities, on-site dependent care and alternative work schedules (such as flexible work hours, compressed work weeks, staggered work hours and telecommuting).

Transportation Services include employer-based efforts such as vanpool programs, shuttle bus service to off-site transit stations, guaranteed ride home programs and the provision of on-site showers and changing facilities.

TDM programs that involve transportation services provided by the employer were measured to have a noticeable impact on the number of vehicles (not number of vehicle-trips) used by commuters (an average 8 percent reduction in the number of vehicles at the survey sites).

Economic Incentives are any steps taken by an employer to provide a monetary incentive for employees to use an alternate travel mode. These include transit subsidies, parking fees for non-rideshare vehicles, parking discounts for rideshare vehicles and transportation allowances.

TDM programs with economic incentives to not drive alone were found to reduce the number of commuter vehicles generated by an employment site (not in number of vehicle-trips) by an average of 15 percent.

Finally, TDM programs that combine economic incentives with transportation services produce the most significant effect on commuter vehicles (not vehicle-trips) generated by a site (an average 24 percent reduction at survey sites).

Oregon Department of Transportation—Transportation Impact Factors

The State of Oregon sponsored a study with the intent of estimating the impacts of urban form, TDM programs and transit services on travel behavior. Tables B.1, B.2 and B.3 are extracted from that study as provided in the ITE Recommended Practice Traditional Neighborhood Development Street Design Guidelines, 1999.

Cautions

Vehicle trip reduction factors are only for commute trips (not all trips generated by a site)

Vehicle trip reduction factors are for all commute trips (not just those during a peak hour)

Vehicle trip reduction factors include trip reductions attributable to multi-use development

Table B.1 presents an estimated reduction in site vehicle trip generation for sites with no transit service and as a function of the development pattern and density, pedestrian and bicycle facilities, and other characteristics.

The analyst should note that the larger trip reduction factors are achieved with development patterns that ITE would consider multi-use (see Chapter 7 of this handbook). For example, the 7 percent reduction is associated with a "mixed-use commercial...development that includes residential units." For multi-use development sites, the guidelines and trip estimation methodology presented in Chapter 7 should be used rather
Tom Brohard, PE

Licenses:
1975 / Professional Engineer / California – Civil, No. 24577
1977 / Professional Engineer / California – Traffic, No. 724
2006 / Professional Engineer / Hawaii – Civil, No. 12321

Education:
1969 / BSE / Civil Engineering / Duke University

Experience:
40+ Years

Memberships:
1977 / Institute of Transportation Engineers – Fellow, Life
1978 / Orange County Traffic Engineers Council - Chair 1982-1983
1981 / American Public Works Association – Life Member

Tom is a recognized expert in the field of traffic engineering and transportation planning. His background also includes responsibility for leading and managing the delivery of various contract services to numerous cities in Southern California.

Tom has extensive experience in providing transportation planning and traffic engineering services to public agencies. Since May 2005, he has served as Consulting City Traffic Engineer for the City of Indio. He also currently provides “on call” Traffic and Transportation Engineer services to the Cities of Big Bear Lake, Mission Viejo, and San Fernando. In addition to conducting traffic engineering investigations for Los Angeles County from 1972 to 1978, he has previously served as City Traffic Engineer in the following communities:

- Bell Gardens................ 1982 - 1995
- Huntington Beach............ 1998 - 2004
- Lawndale.................... 1973 - 1978
- Los Alamitos.............. 1981 - 1982
- Oceanside.................. 1981 - 1992
- Paramount.................. 1982 - 1988
- Rancho Palos Verdes....... 1973 - 1978
- San Marcos................ 1981
- Santa Ana.................. 1978 - 1981

During these assignments, Tom has supervised City staff and directed other consultants including traffic engineers and transportation planners, traffic signal and street lighting personnel, and signing, striping, and marking crews. He has secured over $5 million in grant funding for various improvements. He has managed and directed many traffic and transportation studies and projects. While serving these communities, he has personally conducted investigations of hundreds of citizen requests for various traffic control devices. Tom has also successfully presented numerous engineering reports at City Council, Planning Commission, and Traffic Commission meetings in these and other municipalities.

Tom Brohard and Associates
In his service to the City of Indio since May 2005, Tom has accomplished the following:

- Oversaw preparation and adoption of the Circulation Element Update of the General Plan including development of Year 2035 buildout traffic volumes, revised and simplified arterial roadway cross sections, and reduction in acceptable Level of Service criteria under certain constraints. Reviewed Riverside County’s updated traffic model for consistency with the adopted City of Indio Circulation Plan.

- Oversaw preparation of fact sheets/design exceptions to reduce shoulder widths on Jackson Street over I-10 as well as justifications for protected-permissive left turn phasing at I-10 on-ramps, the first such installation in Caltrans District 8 in Riverside County; reviewed plans and provided assistance during construction of a $1.5 million project to install traffic signals and widen three of four ramps at the I-10/Jackson Street Interchange under a Caltrans encroachment permit.

- Oversaw preparation of fact sheets/design exceptions to reduce shoulder widths on Monroe Street over I-10 as well as striping plans to install left turn lanes on Monroe Street at the I-10 Interchange under a Caltrans encroachment permit; reviewed plans to install traffic signals and widen three of four ramps at the I-10/Monroe Street Interchange.

- Reviewed traffic impact analyses for Project Study Reports evaluating different alternatives for buildout improvement of the I-10 Interchanges at Jefferson Street, Monroe Street, Jackson Street and Golf Center Parkway.

- Oversaw preparation of plans, specifications, and contract documents and provided construction assistance for over 40 traffic signal installations and modifications.

- Reviewed and approved over 600 work area traffic control plans as well as signing and striping plans for all City and developer funded roadway improvement projects.

- Oversaw preparation of a City wide traffic safety study of conditions at all schools.

- Prepared over 500 work orders directing City forces to install, modify, and/or remove traffic signs, pavement and curb markings, and roadway striping.

- Oversaw preparation of engineering and traffic surveys to establish enforceable speed limits on over 200 street segments.

- Reviewed and approved traffic impact studies for more than 25 major developments.

- Developed the Golf Cart Transportation Program and administrative procedures; implemented routes forming the initial baseline system.

Since forming Tom Brohard and Associates in 2000, Tom has reviewed many traffic impact reports and environmental documents for various development projects. He has provided expert witness services and also prepared traffic studies for public agencies and private sector clients.

Tom Brohard and Associates
Comments by Derek Watry
6 February 2012

Mr. John H. Farrow
M. R. Wolfe & Associates
1 Sutter Street, Suite 300
San Francisco, California 94104

Subject: Riverwalk Marketplace Phase II, Porterville, California
Analysis of FEIR Noise Analysis

Dear Mr. Farrow:

Wilson, Ihrig & Associates, Acoustical Consultants, has practiced exclusively in the field of acoustics since 1966. During our 46 years of operation, we have prepared hundreds of noise studies for Environmental Impact Reports and Statements. We have one of the largest technical laboratories in the acoustical consulting industry, and we routinely utilize industry-standard acoustical programs such as Environmental Noise Model (ENM), Traffic Noise Model (TNM), SoundPlan, and CADNA. In short, we are well qualified to prepare environmental noise studies and review studies prepared by others.

As you requested, we have analyzed the technical analysis in the Riverwalk Marketplace Phase II ("the Project") FEIR and related documents to ascertain if there are environmental noise impacts that were not identified by the FEIR. Your comment 5-91 on the RDEIR objected that the noise analysis had not evaluated noise impacts to the entire neighborhood affected by the project. We find that information presented in the RDEIR clearly indicates that the analysis did exclude residential uses that will be significantly impacted by project noise given the FEIR’s significance criteria. Furthermore, it appears that the response in the FEIR regarding this issue was done in haste and, therefore, resulted in demonstrably erroneous conclusions.

I. RDEIR Clearly Shows Significant, Undisclosed Noise Impacts at Homes on Milo Place

The RDEIR analysis and text only evaluated impacts to 21 residences on Indiana Street and Springville Avenue. It did not consider the homes on Milo Place at all, the homes directly behind those on Indiana St. that the RDIER labels Houses 1 to 8. Herein, we will refer to the Indiana Street houses as 1-Indiana to 8-Indiana and to the Milo Place houses as 1-Milo to 8-Milo. Your comment 5-91 specifically asked why noise impacts at all of the residences behind 1

1 Only one house on Milo Place is behind both 1-Indiana and 2-Indiana. We refer to this as 1-Milo; there is no 2-Milo.
the 21 sites considered in the RDEIR were not evaluated. The FEIR response did not adequately address this comment as we'll discuss at length below. However, information in the RDEIR clearly indicates that the Project will cause noise at residences on Milo Place to exceed City noise standards.

**Figure 5.7-13 2012 No Project Noise Contours Nighttime Hours** clearly shows that the properties 3-Milo to 5-Milo are in the 45.0 dBA or less contour without the Project. **Figure 5.7-15 2012 With Project Noise Contours Nighttime Hour** clearly shows that 3-Milo to 5-Milo are in the 45.1 to 50.0 dBA contour. CEQA Appendix G, cited by the RDEIR at page 5.7-36, states "a project would have a significant impact on noise levels if the project would result in exposure of persons to . . . levels in excess of standards established in the local general plan or noise ordinance . . ." As stated in the RDEIR at p. 5.7-38, "The City of Porterville Noise Ordinance discusses that exterior noise levels at single-family residential units should not exceed 50.0 dB(A) during daytime hours (7:00 AM to 10:00 PM) and should not exceed 45.0 dB(A) during nighttime hours (10:00 PM to 7:00 AM)." These standards are also explicitly shown in **RDEIR Table 5.7-10 City of Porterville Exterior Noise Level Standards**. Figures 5.7-13 and 5.7-15 clearly establish that three homes on Milo Place will have nighttime noise conditions that would cross the 45.0 dBA nighttime standard only with implementation of the Project. This simple analysis alone – based solely on graphical information presented in the RDEIR – establishes unambiguously that the FEIR failed to identify the full scope of environmental noise impacts to the neighborhood surrounding the Project site by failing to identify impacts at these residences on Milo Place.

**II. FEIR Response to Comment 5-91 Inaccurate and Inadequate**

Comment 5-91 specifically asked about homes behind those analyzed on Indiana and Springfield Streets. The FEIR responded with Table 2.0-8 and associated comments which purport to establish that there are no impacts at the seven homes behind 1-Indiana to 8-Indiana, despite clear evidence to the contrary in the RDEIR as explained above. The noise contours in the RDEIR should have alerted the analysts to the problem.

At a glance, it is evident that the FEIR response in Table 2.0-8 and the associated discussion only considers daytime, non-transportation noise, although the issue you raised specifically included transportation noise. Nighttime non-transportation noise is not addressed, transportation noise is not considered, nor is there any analysis of the homes other than those behind 1-Indiana to 8-Indiana. Given these omissions, the FEIR response is clearly incomplete.

From a technical standpoint, the FEIR response is inaccurate for the following reasons:

1. **FEIR Response Uses Clearly Incorrect Distances.** The calculations in Table 2.0-8 show the distances from the houses on Indiana to the project site and from the houses on Milo to the project site. Both measurements indicate that "to the project site" as used in the FEIR means from the house structure to the nearest edge of the Project property. These
distances are then used to quickly and roughly estimate the noise levels at the Milo Place properties by projecting the sophisticated noise results of the SoundPlan model. The major problem with the FEIR "back of the envelope" calculation is that it uses clearly incorrect distances. The FEIR calculation implicitly assumes that all of the Project noise sources are located at the edge of the Project property. This is clearly incorrect since the noise sources in the SoundPlan model include the entire parking lot area; Walmart rooftop mechanical equipment, truck deliveries and loading area, trash compactor, garden center, and pharmacy drive-through speakers; and noise from the four outlot buildings. Furthermore, the FEIR calculation uses the farther distance between the Project and the residential structure on Milo Place, not the residence's property line. Again, this is clearly incorrect. By assuming that all of these sources are located closer than they actually are, the simple FEIR calculation greatly overestimates the attenuation with distance indicated by the results shown in FEIR Table 2.0-8 Estimated Noise Levels at Adjacent Homes. This table should be completely disregarded.

The correct distance to use according to both standard industry practice and as explicitly stated in the Porterville Noise Ordinance at Section 18.90.3E is "from the nearest residential . . . property line to the noise source." The FEIR response moved the noise sources much closer and the receivers farther away, leading to a large overestimation of the attenuation with distance. The following simple calculation example gives an indication of the error introduced by the FEIR calculation. The calculation uses the 6 dB per doubling of distance rate given in the FEIR; it only corrects for distance. For this example, we simply assume that the noise sources collectively generate noise as though they are 100' into the Project property rather than right at the nearest curb. The assumption that the Project noise sources are effectively located 179' from 4-Indiana rather than 79' is reasonable since the Walmart store where most of the noise sources are actually located is over 500' from the closest Indiana St residence. We also use a direct measurement of the distance from the Milo Place rear property line to 100' inside the Project site in the following calculation.

FEIR given distance from Project to House 4-Indiana: 79'
FEIR given distance to Project to House 4-Milo: 180'
FEIR calculated attenuation with distance: – 7.2 dB

More realistic distance from Project to House 4-Indiana: 179'
More realistic distance from Project to House 4-Milo: 254'
More realistic calculated attenuation with distance: – 3.0 dB

2. The FEIR Response Uses Most Optimistic Attenuation Rate for Houses Without Justification. The RDEIR at page 5.7-4 states "Sound levels may also be attenuated 3.0 to 5.0 dB(A) by a first row of houses . . .", citing the FHWA Highway Traffic Noise Prediction Model. However, in its response to comment 5-91, the FEIR uses the most optimistic 5.0 dB attenuation stating "Typically, a minimum of 5 dB(A) can be expected
for receptors whose line-of-sight to the noise source is just blocked by the barrier.” The
FEIR response cites the FHWA Highway Noise Barrier Design Handbook. While the
first citation is valid, the second is not. A row of houses is not solid like a sound barrier
wall – there are gaps between the houses that allow sound to leak through. To be
conservative, the FEIR should have used the 3.0 dB rate or, at a minimum, given a range
of estimated noise levels based on the range of attenuation from houses given in the first
citation.

3. **FEIR Response Does Not Include Transportation Noise.** The amount of traffic noise
including that generated by the Project is easily calculated using the information in Table
5.7-14 Non-Transportation Project Noise Levels and Table 5.7-17 Noise Levels at
Single-Family Residential Units under 2012 No Project Conditions and 2012 Plus
Project Conditions. For example, at house 4-Indiana, the 2012 Plus Project Nighttime
Level (which includes traffic) is 55.0 dBA whereas the Non-Transportation Noise Level
is 53.5 dBA. Standard decibel arithmetic indicates that the traffic noise level must,
therefore, be 49.7 dBA. To this can be combined with the non-transportation noise
estimated at 4-Milo as follows:

<table>
<thead>
<tr>
<th>Calculation of Nighttime Non-Transportation Noise at 4-Milo</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nighttime non-transport noise at 4-Indiana (Table 5.7-14)</td>
</tr>
<tr>
<td>Attenuation with distance (using reasonable distances)</td>
</tr>
<tr>
<td>Attenuation from homes on Indiana (using average of 3-5 dB)</td>
</tr>
<tr>
<td>Estimated nighttime non-transp project noise at 4-Milo</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Calculation of Nighttime Traffic Noise at 4-Milo</th>
</tr>
</thead>
<tbody>
<tr>
<td>Calculated nighttime traffic noise at 4-Indiana (see above)</td>
</tr>
<tr>
<td>Attenuation with distance (based on distances from Indiana St)</td>
</tr>
<tr>
<td>Attenuation from homes on Indiana (using average of 3-5 dB)</td>
</tr>
<tr>
<td>Estimated nighttime traffic noise at 4-Milo</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Combined nighttime noise level at 4-Milo (46.5 + 38.1 dBA)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Effect of including traffic on nighttime noise at 4-Milo</td>
</tr>
</tbody>
</table>

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2 To "add" decibels, the decibel levels are converted to energy, the energy levels are
summed, and then the result in converted back into decibels. Subtraction is similar. For a
consistent decibel reference (as is the case here), the conversion from decibels to energy is given
by \( E = \exp_{10}(\text{dB}/10) \) and the conversion from energy to decibels by \( \text{dB} = 10\log_{10}(E) \). For the
calculation cited above:

\[
49.7 \text{ dB} = 10 \log_{10} \left[ \exp_{10}(55.0 \text{ dB}/10) - \exp_{10}(53.5 \text{ dB}/10) \right]
\]
The following Table I summarizes our calculations of the nighttime noise levels at 1-Milo to 8-Milo with the inclusion of various combinations of the three corrections described above. Noise levels that are over the RDEIR nighttime noise standard of 45.0 dBA are indicated with boldface type.

### Table I  Summary of Nighttime Noise Estimates With Corrections

| Use reasonable distance | | | | | | | |
|------------------------|----------------|----------------|----------------|----------------|----------------|----------------|
| Use 4 dB attenuation for houses | | | | | | |
| Include traffic noise | | | | | | |
| 1-Milo | 43.3 | 44.4 | 44.3 | 45.4 | 47.5 | 47.9 | 48.5 | 48.9 |
| 3-Milo | 43.3 | 44.3 | 44.3 | 45.3 | 46.9 | 47.4 | 47.9 | 48.4 |
| 4-Milo | 41.3 | 42.7 | 42.3 | 43.7 | 45.5 | 46.1 | 46.5 | 47.1 |
| 5-Milo | 38.3 | 40.4 | 39.3 | 41.4 | 44.0 | 44.7 | 45.0 | 45.7 |
| 6-Milo | 37.0 | 39.8 | 38.0 | 40.8 | 42.5 | 43.5 | 43.5 | 44.5 |
| 7-Milo | 35.0 | 38.5 | 36.0 | 39.5 | 40.3 | 41.7 | 41.3 | 42.7 |
| 8-Milo | 33.3 | 37.9 | 34.3 | 38.9 | 38.9 | 40.7 | 39.9 | 41.7 |

The table shows that correcting for the erroneous distance assumption alone results in nighttime noise impacts at 1-Milo to 4-Milo. Inclusion of all three corrections indicates significant noise impacts at 1-Milo to 5-Milo.

Note that the results at 1-Milo to 5-Milo correspond with the graphical information presented in Figure 5.7-15 and discussed above. It would appear that the RDEIR noise analysts had in fact graphically addressed the noise levels at properties other than those labeled 1 to 21 in the RDEIR but simply failed to recognize that when responding to comments.

### III. Project Will Add More Than 1.5 dB to Nighttime Noise Levels on Milo Place

Figures 5.7-13 and 5.7-15 do not reveal how much the nighttime noise levels will increase at 3-Milo to 5-Milo as a result of the Project. However, Figure 5.7-13 does clearly indicate that the 2012 no project nighttime noise levels at 3-Milo to 8-Milo are at most 45.0 dBA. Given the reasonable estimates of nighttime noise presented in the rightmost column of Table I above, it is
evident that nighttime noise levels at 3-Milo will increase by at least 3.4 dBA and at 4-Milo by at least 2.1 dBA. Both of these increases exceed the RDEIR adopted noise increase standard of 1.5 dBA.

* * * * *

We have focused on the situation on Milo Place behind Indiana, primarily because the FEIR response addressed only these houses. A similar analysis for residences on the side streets branching off of Springville Avenue may uncover additional undisclosed noise impacts. The graphic noise contour data in the RDEIR clearly demonstrates that some of these houses will experience noise levels in excess of the noise ordinance standards (see, for example, Figure 5.7-15 that shows nighttime noise levels with the Project in excess of 45.0 dBA). For residences along those streets, shielding from the Project site afforded by closer homes will be even less than the minimum 3.0 dBA cited in the RDEIR because the streets themselves provide a broad path for sound to travel. As alluded to above, these complex calculations for additional receivers could and should be done relatively quickly and easily given the sophisticated SoundPlan model developed for the RDEIR.

Please call us if you have any further questions about the Riverwalk Marketplace Phase II FEIR noise analysis.

Very truly yours,

WILSON, IHRIG & ASSOCIATES, INC.

[Signature]

Derek L. Watry
Principal
Exhibit A
November 4, 2009

VIA E-MAIL & U.S. MAIL

Dave Warner
Director of Permit Services
San Joaquin Valley Air Pollution Control District
1990 East Gettysburg Ave.
Fresno, CA 93726-0244

RE: Final Draft Staff Report on Greenhouse Gas Emissions Under CEQA

Dear Mr. Warner:

We have reviewed the San Joaquin Valley Air Pollution Control District’s September 17, 2009, Final Draft Staff Report on “Addressing Greenhouse Gas Emissions Under the California Environmental Quality Act.”1 We appreciate the Air District’s extensive efforts and leadership in this area.2 We are concerned, however, that the approaches suggested in the Staff Report will not withstand legal scrutiny and may result in significant lost opportunities for the Air District and local governments to require mitigation of greenhouse gas (GHG) emissions.

The Staff Report sets out a proposed threshold of significance for GHG emissions for stationary source projects under the Air District’s permitting authority. A threshold of significance is, in effect, a working definition of significance to be applied on a project-by-project basis that can help a lead agency determine which projects normally will be determined to be less than significant, and which normally will be determined to be significant.3 In the context of GHG emissions, the relevant question is whether the project’s emissions, when considered in conjunction with the emissions of past, current, and probable future projects, are

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1 The Attorney General submits these comments pursuant to his independent power and duty to protect the natural resources of the State. (See Cal. Const., art. V., § 13; Cal. Gov. Code, §§ 12511, 12600-12612; D’Amico v. Board of Medical Examiners (1974) 11 Cal.3d 1, 14-15.)

2 The Staff Report states that “[n]o state agency has provided substantial and helpful guidance on how to adequately address GHG emissions under CEQA, nor has there been guidance on how to determine if such impacts are significant.” (Report at p. 2.) In fact, there are numerous sources of guidance, including information on the Attorney General’s website (http://ag.ca.gov/globalwarming/ceqa.php), a Technical Advisory issued by the Governor’s Office of Planning and Research (http://opr.ca.gov/ceqa/pdfs/june08-ceqa.pdf), and the Resources Agency’s proposed CEQA Guidelines amendments (http://ceres.ca.gov/ceqa/guidelines/), which is accompanied by a detailed, 78-page Initial Statement of Reasons (http://ceres.ca.gov/ceqa/docs/Initial_Statement_of_Reasons.pdf).

cumulatively considerable.\(^4\) Thresholds can be a useful interim tool until cities and counties have in place programmatic approaches, e.g., Climate Action Plans, which allow local government to consider a wide variety of mitigation opportunities and can substantially streamline the CEQA process for individual projects.\(^5\) Staff’s proposed stationary source GHG threshold relies on implementation of GHG emission control technologies. Under this proposal, projects that implement currently unspecified GHG Best Performance Standards (“BPS”) would be deemed to not have significant impacts, regardless of the total amount of GHGs emitted.

The Staff Report also recommends a threshold of significance for cities and counties to use in determining whether a development or transportation project’s GHG emissions are significant under CEQA. Like the stationary source threshold, this threshold would also rely on performance measures that are not currently identified. BPS for these projects would be any combination of identified GHG reduction measures that reduce project-specific GHG emission by at least 29 percent as compared to “business as usual,” as calculated based on a point system to be developed in the future by the Air District.

The Staff Report contains a useful analysis of possible GHG mitigation measures for a variety of stationary sources and for development and transportation projects. This discussion will certainly assist lead agencies and project proponents in considering what mitigation measures currently are available and should be considered. It is not clear to us, however, how much additional analysis the Air District plans to do to support the proposed CEQA thresholds of significance recommended in the Staff Report. A public agency proposing to adopt a CEQA threshold of significance should be able to answer at least the following questions about its proposed approach:

**What defined, relevant environmental objective is the threshold designed to meet, and what evidence supports selection of that objective?**

The Staff Report does not discuss a particular environmental objective that would be achieved by implementing the proposed thresholds, such as meeting a GHG emissions reduction trajectory consistent with that set forth in AB 32 and Executive Order S-03-05 within the Air District’s jurisdiction.\(^6\) It appears that the Air District has not yet determined what amount of

---

\(^4\) Cal. Code Regs., tit. 14, § 15064, subd. (b)(1); see also Initial Statement of Reasons at p. 17 (“Due to the global nature of GHG emissions and their potential effects, GHG emissions will typically be addressed in a cumulative impacts analysis.”)


\(^6\) Pursuant to these mandates, California is committed to reducing GHG emissions to 1990 levels by 2020, and to 80 percent below 1990 levels by 2050. These objectives are consistent with the underlying environmental objective of stabilizing atmospheric concentrations of greenhouse gases at a level that will substantially reduce the risk of dangerous climate change. (See AB 32 Scoping Plan at p. 4 [“The 2020 goal was established to be an aggressive,
GHG reduction it is aiming to achieve. Setting a relevant environmental objective is an essential step in establishing any legally defensible threshold of significance; without it, there is nothing against which to gauge the success of the threshold in operation.

**What is the evidence that adopting the threshold will meet this objective?**

Because the BPS discussed in the Staff Report are described as “illustrative” only, it is not possible at this time to determine whether the BPS ultimately adopted will reduce GHG emissions in the San Joaquin Valley and, if so, by how much. There is no stated commitment to tie BPS proposed in the future to regional GHG reduction objectives.

**How does the threshold take into account the presumptive need for new development to be more GHG-efficient than existing development?**

The Staff Report seems to assume that if new development projects reduce emissions by 29 percent compared to “business as usual,” the 2020 statewide target of 29 percent below “business as usual” will also be achieved, but it does not supply evidence of this. Indeed, it seems that new development must be more GHG-efficient than this average, given that past and current sources of emissions, which are substantially less efficient than this average, will continue to exist and emit.7

**Will the threshold routinely require new projects to consider mitigation beyond what is already required by law?**

Because “business as usual” for a development project is defined by the Staff Report as what was typically done in similar projects in the 2002-2004 timeframe, and requirements affecting GHG emissions have advanced substantially since that date, it appears that the Air District’s proposal would award emission reduction “points” for undertaking mitigation measures that are already required by local or state law.8

Similarly, we are concerned that project proponents could “game” the system. Under the current proposal, each project will be considered against a hypothetical project that could have been built on the site in the 2002-2004 time period. It is not clear why the project should be compared against a hypothetical project if that hypothetical project could not legally be built but achievable, mid-term target, and the 2050 greenhouse gas emissions reduction goal represents the level scientists believe is necessary to reach levels that will stabilize climate.”)

7 We note that CAPCOA expressly found that an approach that would rely on 28 to 33 percent reductions from BAU would have a “low” GHG emissions reduction effectiveness. CAPCOA, CEQA and Climate Change (Jan. 2008) at p. 56, available at http://www.capcoa.org/CEQA/CAPCOA%20White%20Paper.pdf.

8 To take one important example, Title 24 has undergone two updates since 2002-2004 – in 2005 and 2008. The 2008 Title 24 standards are approximately 15 percent more stringent that the 2005 version. In addition, a significant number of local governments have adopted green building ordinances that go beyond Title 24 in just the past few years, and many more are considering adopting such ordinances as part of their Climate Action Plans. See http://ag.ca.gov/globalwarming/pdf/green_building.pdf.
today,\(^9\) and the approach would appear to offer an incentive to project proponents to artificially inflate the hypothetical project to show that the proposed project is, by comparison, GHG-efficient.\(^{10}\)

**Will operation of the threshold allow projects with large total GHG emissions to avoid environmental review? What evidence supports such a result?**

It appears that any project employing certain, as of yet unidentified, mitigation measures would be considered to not be significant, regardless of the project’s total GHG emissions, which could be very large. For instance, under the Air District’s proposal, it would appear that even a new development on the scale of a small city would be considered to not have a significant GHG impact and would not have to undertake further mitigation, provided it employs the specified energy efficiency and transportation measures. This would be true even if the new development emitted hundreds of thousands of tons of GHG each year, and even though other feasible measures might exist to reduce those impacts.\(^{11}\) The Staff Report has not supplied scientific or quantitative support for the conclusion that such a large-emitting project, even if it earned 29 “points,” would not have a significant effect on the environment.

**Will the threshold benefit lead agencies in their determinations of significance?**

For the reasons set forth above, we fear that the recommended approach in its current form may unnecessarily subject lead agencies that follow them to CEQA litigation. This would be detrimental not only to the lead agencies, but to the many project proponents who may face unnecessary delay and legal uncertainty.\(^ {12}\)

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\(^9\) The appropriate baseline under CEQA is not a hypothetical future project, but rather existing physical conditions. (Cal. Code Regs., tit. 14, § 15126.2, subd. (a).)

\(^{10}\) A detailed analysis of the proposed amendments to Rule 2301 (emissions reduction credit banking) is beyond the scope of this letter. It is important, however, that any such plan comply with CEQA’s requirements for additionality. As the most recent draft of the proposed CEQA Guidelines notes, only “[r]eductions in emissions that are not otherwise required may constitute mitigation pursuant to this subdivision.” Proposed Cal. Code Regs., tit. 14, § 15126.4, subd. (c), available at [http://ceres.ca.gov/ceqa/docs/Text_of_Proposed_Changes.pdf](http://ceres.ca.gov/ceqa/docs/Text_of_Proposed_Changes.pdf).

\(^{11}\) In the advance of a programmatic approach to addressing GHG emissions, lead agencies must examine even GHG-efficient projects with some scrutiny where total emissions are large. Once a programmatic approach is in place, the lead agency will be able to determine whether even a larger-emitting project is, or is not, consistent with the lead agency’s overall strategy for reducing GHG emissions. If it is, the lead agency may be able to determine that its incremental contribution to climate change is not cumulatively considerable.

\(^{12}\) The Staff Report states that “[l]ocal land-use agencies are facing increasing difficulties in addressing GHG emissions in their efforts to comply with CEQA.” (Report at p. 2.) We strongly believe that this experience is not universal. In fact, many cities and counties are actively taking up their role as “essential partners” in addressing climate change (see AB 32 Scoping Plan at p. 26) by making commitments to develop local Climate Action Plans.
We support staff’s continued work in this area. However, before formally endorsing or adopting any particular threshold, we recommend that the Air District consider the issues that we have raised in this letter; if warranted, evaluate the approaches currently under consideration by other districts; and, if possible, work with those districts to devise approaches that are complementary and serve CEQA’s objectives.

Sincerely,

/ s /

TIMOTHY E. SULLIVAN
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General
Exhibit B
FINAL STAFF REPORT
ADDRESSING GREENHOUSE GAS EMISSIONS IMPACTS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

DECEMBER 17, 2009
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4.3 Determining Significance Using Best Performance Standards

4.3.1 Legislative Basis for use of Best Performance Standards

The basis for the use of performance based standards is well founded both legislatively and in implementation of legislative mandates. As presented before, SB 97 and SB 375 clearly provide for establishing either quantitative or qualitative based determinations of significance. ARB, in implementing their legislative mandate to develop guidance for assessing significance of project related GHG emissions, prepared a preliminary draft proposal that defines threshold of significance as “an identifiable quantitative, qualitative or performance level that marks the division between an impact that is significant and one that is not”. In April 2009, the Governor’s Office of Planning and Research (OPR) proposed several amendments to the CEQA Guidelines to address analysis and mitigation of potential effects of greenhouse gas emissions. Among the proposed amendments are provisions recognizing lead agency discretion to adopt quantitative or qualitative thresholds of significance. Specific amendments are presented below.

OPR proposed a new subdivision that emphasizes that the effects of greenhouse gas emissions are cumulative, and should be analyzed in the context of CEQA's requirements for cumulative impacts analysis. (See CEQA Guidelines section 15130(f)). OPR further proposed a new subdivision to assist lead agencies in determining the significance of project related greenhouse gas emissions. (See section 15064.4.). In addition to quantification of GHG emissions, this section provides for the consideration of several other qualitative factors that may be used in the determination of significance. Per the proposed amendments, a lead agency has discretion to determine whether to:

- Use a model or methodology to quantify greenhouse gas emissions resulting from a project, or
- To rely on a qualitative analysis, or
- To apply performance based standards.
Under OPR’s proposed guidance a lead agency may consider the following when assessing the significance of impacts from greenhouse gas emissions on the environment:

- The extent to which the project may increase or reduce greenhouse gas emissions as compared to the existing environmental setting; or
- Whether the project emissions exceed a threshold of significance that the lead agency determines applies to the project, or
- The extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions.

A new subdivision was added to assist lead agencies in determining methods to reduce or mitigate the effects of greenhouse gas emissions. (See section 15126.4(c)). To emphasize the advantages of programmatic planning this new subdivision emphasizes compliance with a plan among the list of potential GHG emission reduction measures. However, to qualify as mitigation, specific measures from an existing plan must be identified and incorporated into the project; general compliance with a plan, by itself, is not mitigation. Finally, this subdivision reiterates that mitigation for planning level decisions may include the development of specific measures to be implemented on a project-by-project basis.

The District favors use of performance based standards, but recognizes that performance standards have not been developed for all sources of GHG emissions. Thus, for sources not covered by ARB’s scoping plan or SB 375, the District will need to invest resources and work with stakeholders, ARB, planning agencies, and other interested parties to establish source specific performance standards. This process is expected to be ongoing, as mitigation measures and GHG emission reduction techniques will evolve and improve over time, as will our understanding of those measures.

### 4.3.2 Determining Significance

#### 4.3.2.1 Introduction

CEQA requires lead agencies to establish specific procedures for administering its responsibilities under CEQA, including orderly evaluation of projects and preparation of environmental documents. Each lead agency is encouraged to develop and publish thresholds of significance for use in determining the significance of environmental effects.

Determining the significance of project specific impacts of GHG emissions on global climate change is a relatively new concept, and, in the absence of uniform guidance from the state, lead agencies throughout California are facing difficulties to develop their own policies.
and procedures for implementing GHG CEQA requirements. The District is viewed by many in the San Joaquin Valley as the leading authority on air pollution concerns, including GHG issues, and so several lead agencies have asked the District to provide such guidance. Therefore, the District is developing guidance for its own internal use when serving as the lead agency, and is also proposing guidance to assist other agencies in establishing their own processes for determining significance of project related impacts on global climate change. The methodology being proposed relies on the use of performance based standards that would be applicable to projects that result in increased GHG emissions. Use of performance based standards is not a method of mitigating emissions. Rather it is a method of determining significance of project specific GHG emission impacts using established specifications or project design elements. Nothing in this guidance shall be construed as limiting a lead agency’s authority to adopt a statement of overriding consideration for projects with significant GHG impacts.

The effects of project specific GHG emissions are cumulative, and unless reduced or mitigated their incremental contribution to global climatic change could be considered cumulatively significant. The District believes that this is best addressed by requiring all projects (not just those with GHG emissions above some arbitrary “significance threshold”) to reduce their GHG emissions, whether through project design elements, or mitigation. Projects achieving performance based standards that have been demonstrated to be “Best Performance Standards” would be considered to have a less than cumulative significant impact on global climate change.

Use of BPS would streamline the significance determination process by pre-quantifying the emission reductions that would be achieved by a specific GHG emission reduction measure and pre-approving the use of such a measure to reduce project-related GHG emissions. Establishing BPS would also streamline the CEQA review process by providing project proponents, lead agencies and the public with clear guidance on how to reduce GHG emission impacts. Thus, project proponents would be able to incorporate project specific GHG reduction measures during the initial project design phase, which could reduce or project specific GHG impacts to less than significant levels.

As presented in Chapter 5, to support a determination of significance, the efficiency of GHG emission reduction measures would be quantified at the time Best Performance Standards are established for a specific project type or source category. As shown in Appendix L, implementing BPS for stationary sources is expected to achieve an overall 34.0% reduction in GHG emissions, exceeding the overall 29% GHG emission reduction targeted by ARB in their AB32 scoping plan.
4.3.2.2 Definitions

The following definitions are provided to assist the reader in understanding the vernacular associated with the proposed approach of determining significance of project specific impacts on global climate change.

**Achieved-in-Practice**
Achieved-in-Practice is – Any equipment, technology, practice or operation available in the United States that has been installed and operated or used at a commercial or stationary source site for a reasonable period of time sufficient to demonstrate that the equipment, technology, practice or operation is reliable when operated in a manner that is typical for the process. In determining whether equipment, technology, practice or operation is Achieved-in-Practice, the District will consider the extent to which grants, incentives or other financial subsidies influence the economic feasibility of its use.

**Approved Alternate Technology**
Approved Alternate Technology is – Any District approved, Non-Achieved-in-Practice GHG emissions reduction measure equal to or exceeding the GHG emission reduction percentage for a specific BPS

**Baseline**
For Stationary Source projects, Baseline is – the three year average (2002-2004) of GHG emissions for a type of equipment or operation within an identified class and category, expressed as annual GHG emissions per unit.

For Residential Development projects, Baseline is – the three year average of GHG emissions from all dwelling units in the San Joaquin Valley Air District, during the 2002 through 2004 baseline period, expressed as annual GHG emissions per unit.

For Commercial and Industrial Development projects, Baseline is – the three year average of GHG emissions from all commercial or industrial units in the San Joaquin Valley Air District, during the 2002 through 2004 baseline period, expressed as annual GHG emissions per commercial or industrial unit.

**Best Performance Standard**
For Stationary Source Projects for which the District must issue permits, Best Performance Standard is – For a specific Class and Category, the most effective, District approved, Achieved-In-Practice means of reducing or limiting GHG emissions from a GHG emissions source, that
is also economically feasible per the definition of achieved-in-practice. BPS includes equipment type, equipment design, and operational and maintenance practices for the identified service, operation, or emissions unit class and category.

For Development Projects (Residential, Commercial or Industrial), Best Performance Standard is – Any combination of District approved, Achieved-In-Practice emission reduction measures reducing or limiting GHG emissions by in at least a 29% compared to BAU, consistent with GHG emission reduction targets established in ARB’s AB 32 Scoping Plan. GHG emission reduction measures include building standards, appliance standards, project design elements, and land use decisions.

**Business-as-Usual**
For Stationary Source Projects, Business-as-Usual is - the emissions for a type of equipment or operation within an identified class and category projected for the year 2020, assuming no change in GHG emissions per unit of activity as established for the baseline period.

For Development Projects (Residential, Commercial or Industrial), Business-as-Usual is – total baseline emissions for all emissions sources within the development type, projected for the year 2020, assuming no change in GHG emissions per unit of activity as established for the baseline period.

**Category**
For stationary source permitting projects, Category is – A District approved subdivision within a “class” as identified by unique operational or technical aspects.

**Class**
For stationary source permitting projects, Class is - The broadest District approved division of stationary GHG sources based on fundamental type of equipment or industrial classification of the source operation.

### 4.3.2.3 Establishing Business-as-Usual and Baseline

In executing its legislative mandate to establish emission reduction targets which would achieve the 1990 GHG emission levels by the year 2020, the California Air Resources Board (CARB) used its emission inventory to establish a three-year average for GHG emissions occurring by sector during the baseline period of 2002-2004. As presented in Figure 4, Baseline Period GHG emissions exceed 1990 emission levels by almost 10 percent. Baseline Period GHG emissions include
emissions from all sources in ARB’s emissions inventory, including both, old and new, large and small GHG emission sources.

The Baseline Period emissions were then projected to the year 2020, using assumptions about potential growth, assuming no change in the existing business practices, and without considering implementation of any GHG emission reduction measures. CARB designated the baseline emissions inventory projected to the year 2020 as business-as-usual (BAU). As presented in Figure 5, CARB determined that a 29% GHG emissions reduction from BAU is necessary to achieve the 1990 GHG emissions level.

BAU, as established by CARB, is a projected emissions inventory and does not represent actual business or operational practices generating GHG emissions. Therefore, to relate BAU to an emissions generating activity, the District proposes to establish emission factors per unit of activity, for each class and category, using the 2002-2004 baseline period as the reference. For example, for a combustion process, an emissions factor could be expressed as pounds of GHG emissions generated per cubic feet of gas consumed, or pounds of GHG emissions generated per unit of production. For a residential development project, an emissions factor could be expressed as annual pounds of GHG emissions generated per dwelling unit.

Thus, by comparing emissions per unit of activity, one can determine the extent to which GHG emissions from a specific source have changed compared to BAU. GHG emission reductions would be determined by establishing a GHG emissions factor per unit of activity for the proposed project and comparing it to the emissions factor established for the 2002-2004 baseline period. Projects implementing BPS, or otherwise demonstrating that GHG emissions have been reduced by 29%, consistent with GHG emission reduction targets established in ARB’s AB 32 Scoping Plan, will be determined to have a less than significant individual and cumulative impact on global climate change. The percent reduction in GHG emissions would be calculated using the following methodology:

\[
\% \text{ Reduction in GHG emissions} = \left( \frac{(2002 - 2004 \text{ baseline GHG emission factor}) - (\text{Proposed project GHG emissions factor})}{2002 - 2004 \text{ baseline GHG emission factor}} \right) \times 100\%
\]
**Figure 4: 2002-2004 Baseline Period**

- Baseline is a 3-year average GHG emission inventory for the 2002-2004 period
- Baseline includes emissions from all sources in existence at that time; old & new, small & large
- With no growth, the 1990 GHG target could be achieved by a 10% reduction

**Figure 5: 2020 Business-as-Usual (BAU)**

- BAU is a projection of the baseline emissions inventory reflecting anticipated growth to the year 2020
- ARB’s 29% GHG emission reduction target is from BAU
- Projects occurring after the Baseline period may already have achieved GHG emission reductions
4.3.2.4 Determining Project Significance

The District will establish Best Performance Standards (BPS) for stationary sources permitted by the District and will propose GHG emission reduction measures to achieve BPS for development projects. BPS is intended to achieve the maximum GHG emission reductions from a stationary source project and achieve a cumulative total of at least 29% reduction in GHG emissions from development projects, compared to BAU, consistent with GHG emission reduction targets established in ARB’s AB 32 Scoping Plan.

In evaluating GHG emissions from a specific project the District recommends that a lead agency characterize both direct and indirect GHG emissions. Direct GHG emissions would include emissions resulting from a specific operation or process, e.g. fuel combustion emissions from a boiler. Indirect GHG emissions would include emissions resulting from project related energy consumption, e.g. electricity consumed by the production and electricity required to produce and transport water used by the project. For projects resulting in increased vehicle miles traveled (VMT), indirect GHG emissions associated with transportation related activities would also be included in the GHG emissions quantification.

Projects exempt from the requirements of CEQA would not require further analysis, including analysis of project specific GHG emissions. Projects complying with an approved GHG emission reduction plan or GHG mitigation program, which avoids or substantially reduces GHG emissions within the geographic area in which the project is located would be determined to have a less than significant individual and cumulative impact for GHG emissions. Such plans or programs must be specified in law or approved by the lead agency with jurisdiction over the affected resource and supported by a CEQA compliant environmental review document adopted by the lead agency.

Projects requiring project specific environmental review would be evaluated according to a Best Performance Standards (BPS) approach. Projects complying with the GHG emission reduction requirements established as Best Performance Standards would not require project specific quantification of GHG emissions and would be determined to have a less than significant individual and cumulative impact for GHG emissions.

Projects not complying with GHG emission reduction requirements established as Best Performance Standards would require quantification of project specific GHG emissions. To be determined to have a less than significant individual and cumulative impact on global climate change,
project specific GHG emissions have to be reduced or mitigated by 29% from Business-as-Usual GHG emissions, consistent with GHG emission reduction targets established in ARB’s AB 32 Scoping Plan.

Projects requiring preparation of an Environmental Impact Report would require quantification of project specific GHG emissions. Projects implementing BPS or achieving at least a 29% GHG emission reduction compared to BAU would be determined to have a less than significant individual and cumulative impact for GHG.

4.3.2.5 Determining Significance for Stationary Source Projects

Introduction

CEQA requires lead agencies to establish specific procedures for administering its responsibilities under CEQA, including orderly evaluation of projects and preparation of environmental documents. Each lead agency is encouraged to develop and publish thresholds of significance for use in determining the significance of environmental effects. The San Joaquin Valley Air Pollution Control District proposes the following process for determining the individual and cumulative significance of project specific GHG emissions on global climate change when issuing permits for stationary source projects: However, nothing in this guidance shall be construed as limiting a lead agency’s authority to adopt a statement of overriding consideration for projects with significant GHG impact.

District Process for Evaluating GHG Significance

- Projects determined to be exempt from the requirements of CEQA would be determined to have a less than significant individual and cumulative impact for GHG emissions and would not require further environmental review, including analysis of project specific GHG emissions. Projects exempt under CEQA would be evaluated consistent with established rules and regulations governing project approval and would not be required to implement BPS.

- Projects complying with an approved GHG emission reduction plan or GHG mitigation program which avoids or substantially reduces GHG emissions within the geographic area in which the project is located would be determined to have a less than significant individual and cumulative impact for GHG emissions. Such plans or programs must be specified in law or approved by the lead agency with jurisdiction over the affected resource and supported by a CEQA compliant environmental review document adopted by the
lead agency. Projects complying with an approved GHG emission reduction plan or GHG mitigation program would not be required to implement BPS.

- Projects implementing Best Performance Standards would not require quantification of project specific GHG emissions. Consistent with CEQA Guideline, such projects would be determined to have a less than significant individual and cumulative impact for GHG emissions.

- Projects not implementing Best Performance Standards would require quantification of project specific GHG emissions and demonstration that project specific GHG emissions would be reduced or mitigated by at least 29%, compared to BAU, including GHG emission reductions achieved since the 2002-2004 baseline period. Projects achieving at least a 29% GHG emission reduction compared to BAU, consistent with GHG emission reduction targets established in ARB's AB 32 Scoping Plan, would be determined to have a less than significant individual and cumulative impact for GHG.

- Projects requiring preparation of an Environmental Impact Report would require quantification of project specific GHG emissions. Projects implementing BPS or achieving at least a 29% GHG emission reduction compared to BAU would be determined to have a less than significant individual and cumulative impact for GHG.

Figure 6 illustrates implementation of this performance based standards guidance for permitted sources.
Figure 6: Stationary Source Projects with GHG Emissions
4.3.2.6 Determining Significance for Development Projects

Introduction

Determining the significance of project specific impacts of GHG emissions on global climate change is relatively new and lead agencies are finding themselves challenged to develop their own guidance. Many land-use-agencies have expressed serious concerns about the lack of guidance, and some have asked the District for their assistance in finding an adequate approach to address these new CEQA requirements. Therefore, the District is proposing the following guidance to assist lead agencies in establishing their own processes for determining significance of project related impacts on global climate change. Nothing in this guidance shall be construed as limiting a lead agency’s authority to adopt a statement of overriding consideration for projects with significant GHG impact.

Proposed Land-Use-Agency Process for Evaluating GHG Significance

- Projects determined to be exempt from the requirements of CEQA would be determined to have a less than significant individual and cumulative impact for GHG emissions and would not require further environmental review, including analysis of project specific GHG emissions. Projects exempt under CEQA would be evaluated consistent with lead agency rules and regulations governing project approval and would not be required to implement BPS.

- Projects complying with an approved GHG emission reduction plan or GHG mitigation program, which avoids or substantially reduces GHG emissions within the geographic area in which the project is located would be determined to have a less than significant individual and cumulative impact for GHG emissions. Such plans or programs must be specified in law or approved by the lead agency with jurisdiction over the affected resource and supported by a CEQA compliant environmental review document adopted by the lead agency. Projects complying with an approved GHG emission reduction plan or GHG mitigation program would not be required to implement BPS.

- Projects implementing BPS, reducing project specific GHG emissions by at least 29% compared to BAU, consistent with GHG emission reduction targets established in ARB’s AB 32 Scoping Plan, would be determined to have a less than significant individual and cumulative impact on global climate change. Reductions in
project specific GHG emissions would include GHG emission reductions achieved since the 2002-2004 baseline period. Projects determined to have a less than significant individual and cumulative impact for GHG emissions would not require quantification of project specific GHG emissions.

- Projects not implementing BPS, to achieve at least a 29% reduction in GHG emissions as compared to BAU, would require quantification of project specific GHG emissions. Projects demonstrated to have reduced or mitigated project specific GHG emissions by at least 29% compared to BAU, consistent with GHG emission reduction targets established in ARB’s AB 32 Scoping Plan, would be determined to have a less than significant individual and cumulative impact on global climate change.

- Projects requiring preparation of an Environmental Impact Report would require quantification of project specific GHG emissions. Projects implementing BPS or achieving at least a 29% GHG emission reduction compared to BAU would be determined to have a less than significant individual and cumulative impact for GHG.

Figure 7 illustrates implementation of this performance based standards guidance for development projects.
Figure 7: Development Projects with GHG Emissions
the SCS cannot achieve the targets, the Metropolitan Planning Organization The must develop an Alternative Planning Strategy.

Per guidance provided by OPR, CEQA authorizes reliance on previously approved plans and mitigation programs that have adequately analyzed and mitigated GHG emissions to a less than significant level.

5.5.5 Illustrative GHG Emission Reduction Measures for Development Projects

Both GHG and criteria pollutant emissions from development projects are direct results of energy consumption and vehicle miles traveled. Land use decisions that would impact GHG emissions are the same land use decisions that would impact criteria pollutant emissions from development projects. The District, through implementation of District Rule 9510 (Indirect Source Review) has considerable experience with evaluating criteria pollutant emissions from development projects, and evaluating the emission reduction effects of project design elements.

Any combination of approved GHG emissions reduction measures achieving a combined 29% of GHG emissions compared to the established Baseline GHG emissions factor per unit of activity is considered **Best Performance Standard (BPS)** for the respective type of development project. Projects achieving a 29% reduction in GHG emissions, consistent with GHG emission reduction targets established in ARB’s AB 32 Scoping Plan, would be determined to have a less than significant individual and cumulative impact for GHG emissions. To be considered to have a less than significant individual and cumulative impact for GHG emissions, projects not achieving a 29% reduction would require quantification of GHG emissions and demonstration that GHG emissions have been reduced or mitigated by 29%, including GHG emission reductions achieved since the 2002-2004 baseline.

The following discussion illustrates possible GHG emission reduction measures, as presented in Appendix J, for development projects (residential, commercial and industrial) and provides the basis and/or rationale for each, as well as an assessment of potential GHG emissions reduction impact relative to a 2002-2004 emissions inventory baseline. It should be noted that these examples of BPS are for illustrative purposes only, and should not be used by any lead agency as District-approved or sanctioned standards. As discussed further in this staff report, the proposed process of establishing BPS provides opportunity for public input into the development of BPS.
MIXED-USE MEASURES

23. Urban Mixed-Use Measure - *Mixed Use*

**Measure Description**
Development of projects predominantly characterized by properties on which various uses, such as office, commercial, institutional, and residential are combined in a single building or on a single site in an integrated development project with functional inter-relationships and a coherent physical design. Emission reduction value for this measure depend on job to housing ratio.

**Reduction Methodology & Source**
Nelson/Nygard, 2005. pg. 12. (trip reduction = (1-(ABS(1.5*h-e)/(1.5*h+e))-0.25)/0.25*0.03) where h = study area housing units, e = study area employment (Criteron & Fehr & Peers, 2001). Asymptote of 9% reduction, and an ideal 1.5 jobs per household. Note, these point reductions were taken from Urbemis 2007 9.2.4 data according to sample jobs to housing ratio. Cannot get credit for both this measure and the following measures: Suburban Mixed-Use and Other Mixed-Use.

**Achieved GHG Emission Reductions**
*With this measure the estimated achieved GHG emission reduction is between 3.0% and 9.0%.*

24. Suburban Mixed-Use Measure - *Commercial, Mixed-Use, Residential*

**Measure Description**
Have at least three of the following on site and/or offsite within ¼ mile: Residential Development, Retail Development, Park, Open Space, or Office.

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Reduction Methodology & Source\textsuperscript{84}
By definition, this type of land use implies that housing availability is greater than employment availability. On a project-by-project basis, use formula: Nelson/Nygaard, 2005. pg. 12. (trip reduction = \(1-(\text{ABS}(1.5\times h-e)/(1.5\times h+e))-0.25)/0.25 \times 0.03\) where \(h\) = study area housing units, \(e\) = study area employment (Criteron & Fehr & Peers, 2001) to obtain higher than 3\% reduction. Otherwise, assume 3\% max reduction. Cannot get credit for this measure and the following measures: Other Mixed-Use and Urban Mixed-Use measures.

Achieved GHG Emission Reductions
With this measure the estimated achieved GHG emission reduction is 3.0\%.

25. Other Mixed-Use Measure - Mixed-Use, Residential

Measure Description
All residential units are within ¼ mile of parks, schools or other civic uses. Civic uses are government facilities that provide services directly to the public (post office, city hall, courthouse, community center, etc.).

Reduction Methodology & Source\textsuperscript{85}
This measure has less to do with employment/housing balance. No empirical support for this measure, but logic from suburban mixed-use measure applies. Can’t get credit for both this measure and the following measures: Urban Mixed-Use and Suburban Mixed-Use Measures.

Achieved GHG Emission Reductions
With this measure the estimated achieved GHG emission reduction is 1.0\%.

\textsuperscript{84} Recommended Guidance for Land Use Emission Reductions, Version 2.4, August 2007. Sacramento Metropolitan Air Quality Management District.
Final Staff Report

Appendix M:
Responses to Comments
(Prior to November 5, 2009)
RESPONSE TO COMMENTS RECEIVED
PRIOR TO THE NOVEMBER 5, 2009
DISTRICT GOVERNING BOARD HEARING

Climate Change Action Plan: Addressing Greenhouse Gas
Emissions Under the California Environmental Quality Act

Stakeholders providing comments:
• Office of the Attorney General, State of California (AG)
• Dairy Cares (DC)
• Center for Biological Diversity et al. (CBD)
• California Wastewater Climate Change Group (CWCCG)

1. **Comment:** We have reviewed the San Joaquin Valley Air Pollution Control District’s September 17, 2009, Final Draft Staff Report on *Addressing Greenhouse Gas Emissions Under the California Environmental Quality Act* the September 17, 2009, Final Draft Staff Report⁹⁶ ….. (AG)

   **Response:** The September 17, 2009 Draft Staff Report is superseded by the Draft Staff Report dated November 5, 2009, which became available to the public on October 26, 2009. Unfortunately, the AG commented on the superseded document. Many if not all of the AG’s comments are addressed in the later staff report. Where applicable, District responses will direct the commenter to the appropriate section within the most current staff report, policy, or guidance document.

2. **Comment:** What defined, relevant environmental objective is the threshold designed to meet, and what evidence supports selection of that objective? (AG)

   **Response:** The Draft Final Staff Report clearly establishes the District’s environmental objective as reducing GHG emissions by 29%, compared to business-as-usual (BAU). This emission reduction target is consistent with GHG emission reduction targets established by the California Air Resources Board (ARB) in their AB 32 Scoping Plan⁹⁷. ARB determined that a 29% reduction in GHG emissions, compared to BAU, would achieve the AB 32 emission reduction targets.

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⁹⁶ Letter from the Timothy E. Sullivan, Deputy Attorney General, to Dave Warner, Director of Permit Services, November 4, 2009. (See paragraph 1, page 1).

19. **Comment:** The proposed 29% below Business-As-Usual threshold is not supported by substantial evidence. There is no evidence supporting the District’s assumption that new development that is 29% below business as usual (BAU) will not interfere with California’s emission reduction objectives. By requiring little, if any, emission reduction measures beyond compliance with existing regulatory requirements, the proposed threshold contravenes the expectations for land-use reductions set forth in the scoping plan. The proposed threshold ignores the longer-term emission reductions needed to minimize the risk of dangerous climate change. A threshold of significance without an upper boundary of emissions cannot be supported by substantial evidence. Until the District addresses gamesmanship, transparency, and administrability concerns with a BAU approach to determining significance, it is premature for the Board to Adopt the District’s proposal. (CBD)

**Response:** The Commenter expresses concern that the District has not demonstrated that the 29% below BAU goal will not interfere with the state’s (GHG) emission reduction objectives. On the contrary, because the AB 32 goal of 29% below BAU is the basis for the District’s CEQA significance threshold, and this goal includes reductions in growth emissions, the District believes that it is evident that this goal cannot interfere with the state’s emission reduction objectives.

For instance, the basis of the District’s significance threshold is the California Air Resource Board (ARB) AB 32 Scoping Plan. As the District discusses in its staff report, there is no science upon which to base a numeric project-by-project significance threshold, and therefore the District turned to the state’s own ambitious GHG reduction goals, as specified in the AB 32 scoping plan, to establish the significance level of GHG emissions. As the District also discusses in the CCAP staff report, the AB 32 Scoping Plan GHG emission reduction target is a 29% reduction from a hypothetical Business as Usual (BAU) level of emissions that is based on the 2002-2004 California baseline emissions, which is then grown to 2020 levels, considering growth in emissions and not considering controls on existing or new emissions.

Because the AB 32 Scoping Plan sets a GHG reduction goal that includes growth in emissions, it is an ideal target to use to establish a CEQA significance threshold, and the District has done so.

The Commenter appears concerned that the District’s CEQA significance threshold proposal will result in little if any reductions beyond existing regulatory requirements in the land use area. However, this conclusion is based on seriously flawed analysis. First the Commenter says that since Title 24 energy efficiency standards were made more stringent by 13% in 2005 and another 13-15% in 2008, residential developments are already 26-28% below BAU. There are two problems with this: 1) it is mathematically incorrect to add percentages, and 2) Title 24 only affects the energy consumption portion of a residential
development, a very small percentage of the overall GHG emissions from a residential development. The most significant portion of the residential development’s emissions will come from the vehicles that are travelling to and from the development (approximately 81%). The District’s calculations, using the same percentage reductions for the energy efficiency gains as the Commenter for the purposes of this discussion, conclude an overall reduction in GHG emissions from a residential development due to the Title 24 changes is approximately 5%.

The Commenter goes on to reference an EIR that is in no way related to our proposal, and illogically proposes to use it as an example of the flaws in our proposal. For our proposal, the reductions that will be granted by various reduction techniques will be established through a public process, and the Commenter is invited to take part in that process to ensure that the reductions will not be over-counted.

However, the Commenter is correct that the District’s proposal does provide credit for efforts towards meeting the AB 32 goals, as stated in the staff report and in responses to comments. That is, after all, the same goal used to determine the significance of a project – if a project meets those goals, it is not significant. For example, see responses to comments #15 and #32 in Appendix K of the staff report.

The Commenter then claims that the proposed threshold ignores some longer-term need for emissions reductions, and that the 2020 goal of AB 32 is merely a first step towards additional reductions. As the District has clearly stated in the staff report, it is using the AB 32 Scoping Plan as the state-identified basis for the significance threshold because the state itself has established this goal, and defined in clear terms what the goal is and why. When and if the state clearly defines a more aggressive goal and establishes the proposed methods to achieve those goals with an updated plan, of course the District will necessarily revisit its proposal.

The Commenter then opines that a threshold of significance without an upper boundary of emissions cannot be supported. On the contrary, as discussed thoroughly in the staff report, there is no science available to establish a numerical threshold above which a project will have a significant impact on global climate and below which the project will have an insignificant impact. The Commenter does not provide any evidence that would lead one to conclude otherwise. As the District also discusses in the staff report and in responses to previous comments, GHG impacts are accepted as cumulative in nature. The District is requiring the same percentage reduction from a small project as a large project. This is the appropriate way to address such cumulative changes, and in fact, is the only way the District has been able to identify, given the lack of ability to establish a numerical threshold.
The Commenter then expresses concern that the proposal will be subject to
gamesmanship, and suffers from a lack of transparency and “administerability”,
apparently based on the absence of established BAU calculations for the
various components for which BPS will be developed. However, the District will
establish BAU for each category as a part of the BPS analysis, and this
evaluation will be a part of the public record that will be available for review and
comment during the public BPS development process. The District policy and
guidance provides a framework for this process, but does not dictate the
outcome of the process. At this point, an analysis as to the outcome of the BAU
/ BPS process is premature and speculative. However, the District welcomes
the Commenter’s participation and assistance in that process when it does
occur.

20. **Comment:** Compliance with BPS is not a legitimate means for determining
CEQA significance. (CBD)

**Response:** On the contrary, after extensive analysis and considering
significant amounts of public input and participation in this process, the District
has concluded, for the reasons elucidated here and in the staff report, that not
only is BPS a legitimate means of addressing the significance of GHG
emissions in a CEQA context, it may be the only legitimate means, given the
inability to scientifically assign a numeric significance threshold.

Again, the District invites the Commenter to work with the District as it
establishes BPS for the various emission source categories through the public
process defined in the staff report and attendant policy and guidance
documents.

21. **Comment:** Projects relying on this (BPS-based) threshold will be subject to
legal challenge because remaining emissions may still be significant. (CBD)

**Response:** Of course any project may be subject to legal challenge, but based
on the District’s logical and evidentiary based reliance on the AB 32 reduction
targets to establish its CEQA significance threshold for GHGs, there will not be
a significant impact from a project if it implements BPS. Again, the District
cannot establish a numeric significance threshold that is scientifically defensible.

The Commenter’s insistence on addressing larger projects in a way that is
inconsistent with the treatment of smaller projects is, in itself, inconsistent with
the District’s proposal and inconsistent with the state AB 32 mandates that are
driving the District’s significance threshold. Citing a few studies that say
emissions must be reduced to near zero, without also examining studies which
say that climate change does not exist, or is overstated, does nothing to
advance the state of understanding of global climate change, nor does it provide
the District with a defensible basis for a numeric threshold.
CALIFORNIA NATURAL RESOURCES AGENCY

FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amendments to the State CEQA Guidelines
Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB97

December 2009
find it difficult to demonstrate a good faith effort through a purely qualitative analysis. (See, e.g., Berkeley Keep Jets Over the Bay Com. v. Board of Port Comm. (2001) 91 Cal.App.4th 1344, 1370.)

In the context of Project 1, however, a qualitative analysis would likely be appropriate. Project 1’s emissions are not easily modeled, and the Project is small in scale. While it may be technically possible, quantification of the emissions may not reveal any additional information that indicates the significance of those emissions or how they may be reduced that could not be provided in a qualitative assessment of emissions sources. (See, e.g., Public Resources Code, § 21003(f) (“public agencies involved in the environmental review process be responsible for carrying out the process in the most efficient, expeditious manner in order to conserve the available financial, governmental, physical, and social resources with the objective that those resources may be better applied toward the mitigation of actual significant effects on the environment”.).)

Factors Potentially Indicating Significance

The qualitative factors listed in the proposed section 15064.4(b) are intended to assist lead agencies in collecting and considering information relevant to a project’s incremental contribution of GHG emissions and the overall context of such emissions. Notably, while subdivision (b) provides a list of factors that should be considered by public agencies in determining the significance of a project’s GHG emissions, other factors can and should be considered as appropriate.

Determine Whether Emissions Will Increase or Decrease

The first factor in subdivision (b), for example, asks lead agencies to consider whether the project will result in an increase or decrease in different types of GHG emissions relative to the existing environmental setting. All project components, including construction and operation, equipment and energy use, and development phases must be considered in this analysis. (State CEQA Guidelines, § 15378 (project includes “the whole of the action”).) For example, a mass transit project may involve GHG emissions during its construction phase, but substantial evidence may also indicate that it will cause existing commuters to switch from single-occupant vehicles to mass transit use. Operation of such a project may ultimately result in a decrease in GHG emissions. Such analysis, provided that it is supported with substantial evidence and fully accounts for all project emissions, may support a lead agency’s determination that GHG emissions associated with a project are not cumulatively considerable.

This section’s reference to the “existing environmental setting” reflects existing law requiring that impacts be compared to the environment as it currently exists. (State CEQA Guidelines, § 15125.) This clarification is necessary to avoid a comparison of the project against a “business as usual” scenario as defined by ARB in the Scoping Plan. Such an approach would confuse “business as usual” projections used in ARB’s Scoping Plan with CEQA’s separate requirement of analyzing project effects in
comparison to the environmental baseline.  (Compare Scoping Plan, at p. 9 (—The foundation of the Proposed Scoping Plan’s strategy is a set of measures that will cut greenhouse gas emissions by nearly 30 percent by the year 2020 as compared to business as usual”) with Fat v. County of Sacramento (2002) 97 Cal.App.4th 1270, 1278 (existing environmental conditions normally constitute the baseline for environmental analysis); see also Center for Bio. Diversity v. City of Desert Hot Springs, Riverside Sup. Ct. Case No. RIC464585 (August 6, 2008) (rejecting argument that a large subdivision project would have a “beneficial impact on CO2 emissions” because the homes would be more energy efficient and located near relatively uncongested freeways).) Business as usual may be relevant, however, in the discussion of the “no project alternative” in an EIR.  (State CEQA Guidelines, § 15126.6(e)(2) (no project alternative should describe what would reasonably be expected to occur in the future in the absence of the project).)

Notably, section 15064.4(b)(1) is not intended to imply a zero net emissions threshold of significance.  As case law makes clear, there is no “one molecule rule” in CEQA.  (CBE, supra, 103 Cal.App.4th at 120.)

Thresholds of Significance

The second factor in subdivision (b) asks whether a project exceeds a threshold of significance for GHG emissions.  Section 21000(d) of the Public Resources Code expressly directs public agencies to identify whether there are any critical thresholds for health and safety to identify those areas where the capacity of the environment is limited.  A threshold is an “identifiable quantitative, qualitative or performance level” at which impacts are normally less than significant.  (State CEQA Guidelines, § 15064.7(a); see also Protect the Historic Amador Waterways, supra, 116 Cal.App.4th at 1107.) Lead agencies may rely on thresholds developed by other agencies that have particular expertise in the subject matter under consideration.  (See, e.g., State CEQA Guidelines, Appendix G, Sample Question III (—[w]here available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make a significance determination).)  For example, a lead agency may look to standards included in a Basin Plan to assist in the determination of whether water quality impacts are significant.  (Protect the Historic Amador Waterways, supra, 116 Cal.App.4th at 1107 (—[s]uch thresholds can be drawn from existing environmental standards, such as other statutes or regulations”).)

Several agencies have developed, or are in the process of developing, thresholds of significance for GHG emissions. 3 For example, thresholds are currently being developed, or have already been adopted by the Bay Area Air Quality Management District for operations and construction, 4 the City of Davis for residential

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3 Reference to these thresholds and proposed thresholds does not reflect an endorsement of those thresholds; rather, they are cited solely for the purpose of demonstrating that agencies are developing such thresholds.