



# **Final Partial Recirculated Environmental Impact Report Cumulative Toxic Air Contaminant Impact Analysis Only Visalia Walmart Expansion Project**

**State Clearinghouse No. 2008121133**



**City of Visalia • March 6, 2013**



**Michael Brandman Associates**

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Fresno, CA 93721



**FINAL**  
**Partial Recirculated Environmental Impact Report**  
**Visalia Walmart Expansion Project**  
**City of Visalia, Tulare County, California**  
**Cumulative Toxic Air Contaminant Impact Analysis Only**  
**State Clearinghouse No. 2008121133**

Prepared for:



**City of Visalia**  
Community Development Department  
315 East Acequia Avenue  
Visalia, CA 93291  
559.713.4003

Contact: Paul Scheibel, Planning Manager

Prepared by:

**Michael Brandman Associates**  
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Fresno, CA 93721  
559.246.3732

Contact: Dave Mitchell, Project Manager



March 6, 2013



## TABLE OF CONTENTS

<b>Section 1: Introduction .....</b>	<b>1-1</b>
<b>Section 2: Responses to Written Comments on the Partial Recirculated Draft EIR .....</b>	<b>2-1</b>
2.1 - List of Authors .....	2-1
State Agencies .....	2-1
Organizations .....	2-1
Individuals.....	2-1
2.2 - Responses to Comments.....	2-1
2.2.1 - Introduction.....	2-1
2.2.2 - Comment Letters and Responses.....	2-1
 <b>Appendix L: Relevant Portions of Late Comments from M.R. Wolfe</b>	

## LIST OF TABLES

Table 2-1: Summary of The Natelson Dale Group, Inc.'s Responses to Comments .....	2-52
--	------

## LIST OF FIGURES

Figure 2-1: Harbor Community Monitoring Study (HCMS) Saturation Monitoring Sites .....	2-28
Figure 2-2: Decrease in Concentration of Freeway Diesel PM Emissions with Distance .....	2-28



## **SECTION 1: INTRODUCTION**

In accordance with the California Environmental Quality Act (CEQA) Guidelines Section 15088, the City of Visalia, as the lead agency, has evaluated the comments received on the City of Visalia Walmart Expansion Project Partial Recirculated Draft Environmental Impact Report (PRDEIR). The responses to the comments and other documents, which are included in this document, comprise the Final Partial Recirculated Environmental Impact Report (Final PREIR) for use by the City of Visalia in its review.

This document is organized into two sections:

- **Section 1 – Introduction.**
- **Section 2 – Responses to Written Comments on the PRDEIR:** Provides a list of the agencies, individuals, and organizations that commented on the Draft EIR. Copies of all of the letters received regarding the PRDEIR and responses thereto are included in this section.

The specific documents constituting the Final PREIR for the Visalia Walmart Expansion Project include the following:

- Draft EIR (October 2010) (provided under separate cover)
- Final EIR (April 2011) (provided under separate cover)
- PRDEIR (September 2012)
- Responses to Written Comments on the PRDEIR (February 2013) (Section 2 of this document)



## SECTION 2: RESPONSES TO WRITTEN COMMENTS ON THE PARTIAL RECIRCULATED DRAFT EIR

### 2.1 - List of Authors

A list of public agencies, organizations, and individuals that provided comments on the Partial Recirculated Draft EIR is presented below. Each comment has been assigned a code. Individual comments within each communication have been numbered so comments can be cross-referenced with responses. Following this list, the text of the communication is reprinted and followed by the corresponding response.

#### Author

#### Author Code

##### State Agencies

State Clearinghouse ..... SCH  
Native American Heritage Commission.....NAHC

##### Organizations

M.R. Wolfe & Associates, Inc..... Wolfe

##### Individuals

Daniel S. Knight ..... Knight

### 2.2 - Responses to Comments

#### 2.2.1 - Introduction

In accordance with the California Environmental Quality Act (CEQA) Guidelines Section 15088, the City of Visalia, as the lead agency, evaluated the comments received on the Partial Recirculated Draft EIR (State Clearinghouse No. 2008121133) for the Visalia Walmart Expansion Project, and has prepared the following responses to the comments received. This Response to Comments document becomes part of the Final EIR for the project in accordance with CEQA Guidelines Section 15132.

#### 2.2.2 - Comment Letters and Responses

The comment letters reproduced in the following pages follow the same organization as used in the List of Authors.





Edmund G. Brown Jr.  
Governor

STATE OF CALIFORNIA  
Governor's Office of Planning and Research  
State Clearinghouse and Planning Unit



Ken Alex  
Director

RECEIVED  
JAN 07 2012  
COMM. DEVELOP.  
CITY OF VISALIA

January 3, 2013

SCH  
Page 1 of 2

Andrew Chamberlain  
City of Visalia Community Development Department  
315 East Acequia Avenue  
Visalia, CA 93291

Subject: Visalia Wal-Mart Expansion  
SCH#: 2008121133

Dear Andrew Chamberlain:

The State Clearinghouse submitted the above named Draft EIR to selected state agencies for review. The review period closed on January 2, 2013, and no state agencies submitted comments by that date. This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act.

Please call the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process. If you have a question about the above-named project, please refer to the ten-digit State Clearinghouse number when contacting this office.

Sincerely,

Scott Morgan  
Director, State Clearinghouse

1

Document Details Report  
State Clearinghouse Data Base

SCH  
Page 2 of 2

**SCH#** 2008121133  
**Project Title** Visalia Wal-Mart Expansion  
**Lead Agency** Visalia, City of

**Type** EIR Draft EIR  
**Description** Note: Extended Review per lead  
Note: Partial Recirculation

Physical expansion of the existing 133,206 square-foot Walmart store by approximately 54,076 square feet, increasing the total floor area to approximately 187,282 square feet.

**Lead Agency Contact**

**Name** Andrew Chamberlain  
**Agency** City of Visalia Community Development Department  
**Phone** (559) 713-4003 **Fax**  
**email**  
**Address** 315 East Acequia Avenue  
**City** Visalia **State** CA **Zip** 93291

**Project Location**

**County** Tulare  
**City**  
**Region**  
**Lat / Long** 36° 19' 20.3" N / 119° 16' 14.9" W  
**Cross Streets** East Noble Avenue, Ben Maddox Way  
**Parcel No.** 100-050-001, -007, -013, -014, -038  
**Township** 18S **Range** 25E **Section** 33 **Base** Mt Diabl

**Proximity to:**

**Highways** SR-198, SR-63  
**Airports** No  
**Railways** San Joaquin Valley RR  
**Waterways** Mill Creek, St. John's River  
**Schools** Pinkham, Mineral King  
**Land Use** Land Use - Vacant. Zoning - "Planned Shopping/Office Commercial (P-C-SO)." General Plan -  
"Planned Shopping/Office Comm.

**Project Issues** Air Quality; Cumulative Effects

**Reviewing Agencies** Resources Agency; Department of Fish and Game, Region 4; Office of Historic Preservation;  
Department of Parks and Recreation; Department of Water Resources; California Highway Patrol;  
Caltrans, District 6; Air Resources Board, Major Industrial Projects; Regional Water Quality Control  
Bd., Region 5 (Fresno); Department of Toxic Substances Control; Native American Heritage  
Commission; Public Utilities Commission

**Date Received** 09/18/2012 **Start of Review** 09/18/2012 **End of Review** 01/02/2013

**State Agencies**

***Governor's Office of Planning and Research State Clearinghouse and Planning Unit (SCH)***

***Response to SCH-1***

The comment letter is the standard form letter issued by the Governor's Office of Planning and Research, State Clearinghouse and Planning Unit confirming that the Draft EIR was distributed to various state agencies, and that the City of Visalia has complied with statutory noticing obligations. No further response is necessary.



**NATIVE AMERICAN HERITAGE COMMISSION**

915 CAPITOL MALL, ROOM 364  
SACRAMENTO, CA 95814  
(916) 653-6251  
Fax (916) 657-5390  
Web Site [www.nahc.ca.gov](http://www.nahc.ca.gov)  
ds\_nahc@pacbell.net



September 24, 2012

Mr. Andrew Chamberlain, Senior Planner

**City of Visalia Community Development Department**

315 East Acequia Avenue  
Visalia, CA 93291

NAHC  
Page 1 of 4

Re: SCH#2008121133; CEQA Notice of Completion; Partial Recirculated Draft  
Environmental Impact Report for the "Visalia Walmart Expansion Project" located in the  
City of Visalia; Tulare County, California

Dear Mr. Chamberlain:

The Native American Heritage Commission (NAHC) is the State of California 'Trustee Agency' for the protection and preservation of Native American cultural resources pursuant to California Public Resources Code §21070 and affirmed by the Third Appellate Court in the case of EPIC v. Johnson (1985: 170 Cal App. 3<sup>rd</sup> 604).

This letter includes state and federal statutes relating to Native American historic properties or resources of religious and cultural significance to American Indian tribes and interested Native American individuals as 'consulting parties' under both state and federal law. State law also addresses the freedom of Native American Religious Expression in Public Resources Code §5097.9.

The California Environmental Quality Act (CEQA – CA Public Resources Code 21000-21177, amendments effective 3/18/2010) requires that any project that causes a substantial adverse change in the significance of an historical resource, that includes archaeological resources, is a 'significant effect' requiring the preparation of an Environmental Impact Report (EIR) per the CEQA Guidelines defines a significant impact on the environment as 'a substantial, or potentially substantial, adverse change in any of physical conditions within an area affected by the proposed project, including ... objects of historic or aesthetic significance.' In order to comply with this provision, the lead agency is required to assess whether the project will have an adverse impact on these resources within the 'area of potential effect (APE), and if so, to mitigate that effect. The NAHC recommends that the lead agency request that the NAHC do a Sacred Lands File search as part of the careful planning for the proposed project.

The NAHC "Sacred Sites," as defined by the Native American Heritage Commission and the California Legislature in California Public Resources Code §§5097.94(a) and 5097.96. Items in the NAHC Sacred Lands Inventory are confidential and exempt from the Public Records Act pursuant to California Government Code §6254 (r).

Early consultation with Native American tribes in your area is the best way to avoid unanticipated discoveries of cultural resources or burial sites once a project is underway. Culturally affiliated tribes and individuals may have knowledge of the religious and cultural

significance of the historic properties in the project area (e.g. APE). We strongly urge that you make contact with the list of Native American Contacts on the attached list of Native American contacts, to see if your proposed project might impact Native American cultural resources and to obtain their recommendations concerning the proposed project. Pursuant to CA Public Resources Code § 5097.95, the NAHC requests cooperation from other public agencies in order that the Native American consulting parties be provided pertinent project information. Consultation with Native American communities is also a matter of environmental justice as defined by California Government Code §65040.12(e). Pursuant to CA Public Resources Code §5097.95, the NAHC requests that pertinent project information be provided consulting tribal parties, including archaeological studies. The NAHC recommends *avoidance* as defined by CEQA Guidelines §15370(a) to pursuing a project that would damage or destroy Native American cultural resources and California Public Resources Code Section 21083.2 (Archaeological Resources) that requires documentation, data recovery of cultural resources, construction to avoid sites and the possible use of covenant easements to protect sites.

Furthermore, the NAHC if the proposed project is under the jurisdiction of the statutes and regulations of the National Environmental Policy Act (e.g. NEPA; 42 U.S.C. 4321-43351). Consultation with tribes and interested Native American consulting parties, on the NAHC list, should be conducted in compliance with the requirements of federal NEPA and Section 106 and 4(f) of federal NHPA (16 U.S.C. 470 *et seq.*), 36 CFR Part 800.3 (f) (2) & .5, the President's Council on Environmental Quality (CSQ, 42 U.S.C 4371 *et seq.* and NAGPRA (25 U.S.C. 3001-3013) as appropriate. The 1992 *Secretary of the Interiors Standards for the Treatment of Historic Properties* were revised so that they could be applied to all historic resource types included in the National Register of Historic Places and including cultural landscapes. Also, federal Executive Orders Nos. 11593 (preservation of cultural environment), 13175 (coordination & consultation) and 13007 (Sacred Sites) are helpful, supportive guides for Section 106 consultation. The aforementioned Secretary of the Interior's *Standards* include recommendations for all 'lead agencies' to consider the historic context of proposed projects and to "research" the cultural landscape that might include the 'area of potential effect.'

1  
CONT

Confidentiality of "historic properties of religious and cultural significance" should also be considered as protected by California Government Code §6254( r) and may also be protected under Section 304 of the NHPA or at the Secretary of the Interior discretion if not eligible for listing on the National Register of Historic Places. The Secretary may also be advised by the federal Indian Religious Freedom Act (cf. 42 U.S.C., 1996) in issuing a decision on whether or not to disclose items of religious and/or cultural significance identified in or near the APEs and possibility threatened by proposed project activity.

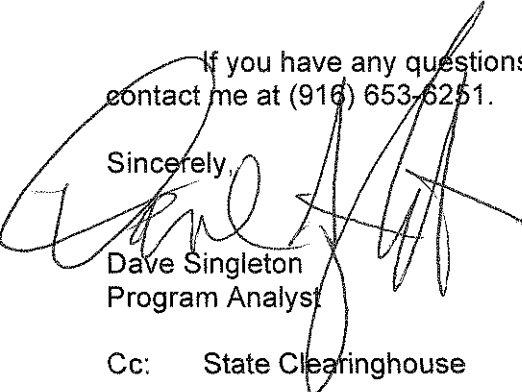
Furthermore, Public Resources Code Section 5097.98, California Government Code §27491 and Health & Safety Code Section 7050.5 provide for provisions for inadvertent discovery of human remains mandate the processes to be followed in the event of a discovery of human remains in a project location other than a 'dedicated cemetery'.

To be effective, consultation on specific projects must be the result of an ongoing relationship between Native American tribes and lead agencies, project proponents and their contractors, in the opinion of the NAHC. Regarding tribal consultation, a relationship built around regular meetings and informal involvement with local tribes will lead to more qualitative consultation tribal input on specific projects.

Finally, when Native American cultural sites and/or Native American burial sites are prevalent within the project site, the NAHC recommends 'avoidance' of the site as referenced by CEQA Guidelines Section 15370(a).

If you have any questions about this response to your request, please do not hesitate to contact me at (916) 653-6251.

Sincerely,



Dave Singleton  
Program Analyst

Cc: State Clearinghouse

Attachment: Native American Contact List

**Native American Contacts  
Tulare County  
September 24, 2012**

NAHC  
Page 4 of 4

Santa Rosa Rancheria  
Rueben Barrios Sr., Chairperson  
P.O. Box 8 Tache  
Lemoore , CA 93245 Tachi  
(559) 924-1278 Yokut  
(559) 924-3583 Fax

Tubatulabals of Kern Valley  
Robert L. Gomez, Jr., Tribal Chairperson  
P.O. Box 226 Tubatulabal  
Lake Isabella, CA 93240  
(760) 379-4590  
(760) 379-4592 FAX

Tule River Indian Tribe  
Neil Peyron, Chairperson  
P.O. Box 589 Yokuts  
Porterville , CA 93258  
chairman@tulerivertribe-nsn.  
(559) 781-4271  
(559) 781-4610 FAX

Wuksache Tribe  
John Sartuche  
1028 East "K" Avenue Wuksache  
Visalia , CA 93292  
signsbysarch@aol.com  
(559) 636-1136

Sierra Nevada Native American Coalition  
Lawrence Bill, Interim Chairperson  
P.O. 125 Mono  
Dunlap , CA 93621 Foothill Yokuts  
(559) 338-2354 Choinumni

Jennifer Malone  
637 E Lakeview Wukchumni  
Woodlake , CA 93286 Tachi  
indianpopup@sbcglobal.net Yowlumni  
559-564-2146 - home  
559-280-0712 - cell

Wuksache Indian Tribe/Eshom Valley Band  
Kenneth Woodrow, Chairperson  
1179 Rock Haven Ct. Foothill Yokuts  
Salinas , CA 93906 Mono  
kwood8934@aol.com Wuksache  
831-443-9702

Santa Rosa Tachi Rancheria  
Lalo Franco, Cultural Coordinator  
P.O. Box 8 Tachi  
Lemoore , CA 93245 Tache  
(559) 924-1278 - Ext. 5 Yokut  
(559) 924-3583 - FAX

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of the statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.

This list is applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH#2008121133; CEQA Notice of Completion; Partial Recirculated Draft Environmental Impact Report for the Visalia Walmart Expansion Project; located in the City of Visalia Tulare County, California.

***Native American Heritage Commission (NAHC)***

***Response to NAHC-1***

The agency provided standard language regarding CEQA Guidelines requirements for evaluation of and mitigation for impacts to cultural resources. The agency recommended a cultural resource record search, an archaeological survey, preparation of archaeological reports, and mitigation measures for resources. No project-specific comments were provided.

The Visalia City Council certified the Final EIR and approved the project entitlements on June 20, 2011. Following the City Council action, the Visalia Smart Growth Coalition filed a lawsuit under the California Environmental Quality Act (CEQA) challenging the EIR's adequacy in Tulare County Superior Court. The Court upheld the adequacy of the 2011 EIR in all but one discrete area related to cumulative toxic air contaminant impacts, which is the subject of this Partial Recirculated Draft EIR. The Partial Recirculated Draft EIR is limited to the single issue of cumulative toxic air contaminants. Cultural resources were addressed in the Final EIR prepared for the project and no new significant information or issues requiring response have been identified by the comment.



January 2, 2013

**By E-Mail**  
**Acknowledgement of Receipt Requested**

Paul Scheibel  
City of Visalia  
Planning Division  
315 E. Acequia Avenue  
Visalia, CA 93291  
Email: pscheibel@ci.visalia.ca.us

**Re: Partial Recirculated Draft EIR – Visalia Walmart Expansion Project**

Dear Mr. Scheibel,

On behalf of the Visalia Smart Growth Coalition, please accept the following comments on the Partial Recirculated Draft EIR (“PRDEIR”) for the Walmart Project referenced above. As discussed in greater detail in the sections that follow, the PRDEIR retains several of the deficiencies of its predecessor with regard to its analysis of impacts from toxic air contaminants (“TACs”).

1

**A. Failure to Reconcile CARB and Local Source Data**

The PRDEIR fails to provide an adequate explanation for the wide divergence between the California Air Resources Board (“CARB”) data on regional level health risks and the analysis of cumulative health risks in the Project vicinity. The PRDEIR finds that the excess cancer risk from cumulative TAC sources within approximately 1,000 feet of the Project is only 23.9 in one million. PRDEIR, p. 2-23. This level is only a small fraction of the average health risk from TACs previously reported in the San Joaquin Air Basin by CARB. Explanation of this discrepancy is necessary.

2

For example, the PRDEIR reports that CARB’s 2009 Almanac estimates annual average concentrations and health risks for each air basin, including the San Joaquin Valley Air Basin. PRDEIR, App. A, p. 21. CARB estimated cancer risks for the San Joaquin Valley Air Basin at 90 per one million (as of 2007) without including diesel PM. *Id.* The risk from diesel PM (as of 2000) was estimated at 586 in one million. *Id.* Even if the Diesel Risk Reduction Program is successful in meeting the predicted 17% reduction between 2000 and 2010, the regional average diesel PM risk will still exceed 486 excess cancers and the combined diesel and non-diesel excess cancer rate will still exceed 500 excess cancers. The PRDEIR does not explain how this regional average rate can be reconciled with the conclusion that the TAC health risk in the Project vicinity is

only 23.9 excess cancers in one million. The obvious explanation for the discrepancy is the exclusion of current, active toxics sources outside the 1,000 foot radius.<sup>1</sup>

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The PRDEIR also reports that monitoring of seven non-diesel TACs at the closest monitoring station in Fresno revealed a cancer risk of 136 to 156 excess cancers. *Id.*, p. 25. The PRDEIR stated that “the mix of sources in Visalia is similar to that in Fresno and would experience similar ambient levels of TACs from non-diesel sources” *Id.* The PRDEIR’s acknowledgement that the non-diesel sources alone would result in ambient risks of 136 to 156 excess cancers cannot be reconciled with the conclusion that the TAC health risk in the Project vicinity is only 23.9 excess cancers in one million. Again, the obvious explanation is that the exclusion of sources outside the 1,000 foot radius accounts for the discrepancy.

3

The PRDEIR argues that the ARB average risk levels do not account for “variations from community to community.” *Id.*, p. 25. However, Visalia has among the worst air quality of any community in the San Joaquin Valley Air Basin. DEIR, p. 238. For example, the American Lung association rates Visalia air quality the second worst in America in 2011 for year round particle pollution, whereas Fresno is ranked only the 6<sup>th</sup> worst. Administrative Record, Vol. 11, p. 2797. Visalia is ranked seventh worst nationally among 277 cities for 24-hour particle pollution. Administrative Record, Vol. 11, pp. 2798-2799. (TAC risks are primarily driven by diesel particulates, so the particulate rankings are the most relevant.) Given its relatively poorer air quality than the regional average, it is difficult to understand how Visalia could have a lower ambient risk than the regional average. Again, the obvious explanation is that the exclusion of sources outside the 1,000 foot radius accounts for the discrepancy.

4

The PRDEIR justifies the 1,000 foot radius by observing that pollutant concentrations drop 80% at 1,000 feet from a single source – specifically, a distribution center.<sup>2</sup> PRDEIR, App. A, p. 26. However, this may not be relevant where there are numerous regional sources of TACs, each of which contributes to elevated levels of TACs. Nowhere does the PRDEIR consider or assess this likely multiple-source scenario. It is simply not credible that regional average TAC risks from all sources could be measured in the hundreds of excess cancers, that Visalia air quality is among the worst in the region, but that the Project located in Visalia could have a cumulative TAC risk measured in the tens of excess cancers.

5

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<sup>1</sup> The PRDEIR states that ARB has removed the maps of cancer risks from its website because the maps are “out of date.” PRDEIR, App. A, p. 25. However, the aspect of the maps that is identified as out of date is the effects of the Diesel Risk Reduction Plan. However, ARB projects that this plan will reduce emissions by about 17%. *Id.* at 22. Even if the reduction is several times greater, the risk will remain well over the 100 excess cancer threshold of significance adopted by the PRDEIR.

<sup>2</sup> We note that the data cited in support of restricting the cumulative analysis to a 1,000 foot radius was for non-cancer health effects, not for cancers. PRDEIR, App. A, pp. 26-27.

January 2, 2013  
Page 3

The PRDEIR must be revised and recirculated to reconcile the highly elevated cancer risk data for the San Joaquin Valley Air District with the relatively low risk accounted for by considering only sources within 1,000 feet of the Project.

6

The PRDEIR references mapping data provided by CARB on its CHAPIS website. PRDEIR, App. A, pp. 25-26. Although this mapping data does not include risks, it does include emissions inventories. It is not clear that the PRDEIR used the CHAPIS data to determine whether there are large sources of TACs, or numerous small sources of TACs, outside the 1,000 foot radius that may affect the project site. The PRDEIR must be revised and recirculated to provide CARB mapping data for all emissions sources, large or small, that have any potential to affect the Project site.

7

## **B. Need for Justification of Significance Threshold for “Considerable Contribution”**

The PRDEIR admits that no agency has adopted guidance that identifies or justifies a threshold for determining whether a project’s incremental risk is a “considerable contribution” to a cumulatively significant impact. Absent any adopted guidance, the PRDEIR adopts the same threshold for determining whether a project’s individual impact is by itself significant – the SJVUAPCD’s 10 excess cancer threshold. Use of the same threshold to determine whether a project’s impact is individually significant and whether it is a considerable contribution to a cumulatively significant impact is error.

8

The cases are clear that an EIR may not conclude a cumulative impact is insignificant merely because the project’s individual contribution to an unacceptable existing condition is, by itself, not significant or relatively small. *Los Angeles Unified School Dist. v. City of Los Angeles (“LAUSD”)* (1997) 58 Cal.App.4th 1019, 1025-1026 (rejecting EIR’s reasoning that because noise levels around schools already exceeded governing standards, new noise source would have insignificant impact); *Communities for a Better Environment v. California Resources Agency (“CBE”)* (2002) 103 Cal.App.4th 98, 117-118, 121 (invalidating CEQA Guidelines provision that *de minimis* impacts are necessarily less than considerable); *see also Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718.

9

On the contrary: “the greater the existing environmental problems are, the lower the threshold should be for treating a project’s contribution to cumulative impacts as significant.” *CBE, supra*, 103 Cal.App.4th at 120. Thus, even if a given project has only an “individually minor” impact, its contribution to an existing environmental problem may nevertheless be “cumulatively considerable,” hence significant, and hence requiring mitigation measures under CEQA. *CBE* at 120; *see also* Guidelines, §§ 15355(b), 15065(a)(3); *LAUSD, supra*, 58 Cal.App.4th at 1024-25 (“individually insignificant” noise increase may be cumulatively considerable).

In sum, the PRDEIR violates two fundamental tenets of cumulative impact analysis. First, it incorrectly assumes that the project’s impact is not a considerable

10

contribution just because it is not individually significant. Second, it applies a fixed threshold to determine what constitutes a considerable contribution, thereby failing to recognize that the greater the existing environmental problems are, the lower the threshold should be.

10  
CONT

The justifications offered by the PRDEIR for its 10 in one million excess cancer threshold of significance for “considerable contribution” are unconvincing, as discussed below

1. Existing SJVUAPCD GAMAQI

The PRDEIR claims that the SJVUAPCD “was aware that the average existing toxic risk was over 500 in a million” when it set its 10 in one million threshold in its existing Guidance for Assessing and Mitigating Air Quality Impacts (“GAMAQI”). PRDEIR, App. A, p. 34. However, the PRDEIR offers no evidence that the SJVUAPCD intended its 10 in one million threshold for determining the significance of a project’s individual impacts to function also as a threshold for “considerable contribution.” Indeed, the PRDEIR admits that the SJVUAPCD failed to identify a threshold for considerable contributions. *Id.*, pg. 11. Furthermore, this claim is entirely unsupported by SJVUAPCD’s GAMAQI or its Risk Management Policy, which make no reference to existing conditions in connection with the explanation of the 10 in one million threshold of significance. There is simply no evidence that the SJVUAPCD took ambient (existing cumulative) conditions into consideration in setting the 10 in one million threshold.

11

In fact, the source of the 10 in one million threshold, the SJVUAPCD’s Risk Management Policy, expressly states that it is “not intended a means of reducing *total public health exposure to toxic substances in the air from all sources*.” SJVUAPCD, Risk Management Policy for Permitting New and Modified Sources, p. 1, emphasis added. Furthermore, the Risk Management Policy clearly disavows responsibility for cumulative impacts as beyond the scope of the policy, adverting to other efforts, including efforts by local agencies, to address them: “[a] reduction in overall public exposure will require a coordinated effort by Federal, State and local agencies and is beyond the scope of this Risk Management Policy. Clearly, the Risk Management Policy threshold was not designed to function as a yardstick in a cumulative impact analysis under CEQA.

12

Indeed, the Risk Management Policy provides *no* meaningful justification for the 10 incremental cancers per year threshold. The entire statement of purpose consists of the following:

“The goal of risk management is to reduce public exposure to toxic air contaminants to a level as low as reasonably achievable. This level is determined by weighing all relevant scientific, technological, social, and economic factors.

“The purpose of this risk management policy is to minimize the increase that new or modified stationary sources add to the existing toxic load in the public’s breathing air. Therefore, the provisions of this policy are only to be used in

13

evaluating permit applications for new and modified stationary sources. This policy is not intended as a means of reducing total public exposure to toxic substances in the air from all sources. A reduction in overall public exposure will require a coordinated effort by Federal, State and local agencies and is beyond the scope of this Risk Management Policy.” *Id.*

13  
CONT

Aside from disavowing responsibility for cumulative impacts, this statement of purpose contains only the generally stated objective to reduce exposure to a level as low as is “reasonably achievable,” after weighing “all relevant scientific, technological, social, and economic factors.” *Id.*; see also FEIR, p. 80. The statement contains no fact-based analysis that to why 10 additional cancers represents an appropriate threshold for determining significance. For example, there is no identification of the relevant scientific, technological, social, and economic factors or explanation of how those factors were weighed against human health concerns.

14

Furthermore, the Risk Management Policy demonstrates that the SJVUAPCD’s significance determination is based on factors that are not permissible under CEQA in a significance determination. The Air District may be mandated to consider scientific, technological, social, and economic factors in promulgating its Risk Management Policy under its statutory permitting mission. However, under CEQA, a different statutory scheme, these factors are not in play until *after* an agency has determined significance.

15

A CEQA significance determination is supposed to measure the level at which harm occurs, not the level at which harm might be justified by overriding considerations. Scientific, technological, social, and economic factors may only be considered in a statement of overriding considerations if and when the impact is found significant and unavoidable. CEQA Guidelines, § 15093(a). Because the SJVUAPCD and the PRDEIR base a significance determination on factors that are unrelated to health effects, they inappropriately conflate the determination of significance with the determination whether there are overriding social or economic considerations. But CEQA does not permit an agency to dispense with a careful analysis of significance simply by identifying overriding considerations. *Berkeley Keep Jets Over the Bay v. Board of Port Commissioners* ( 2001) 91 Cal.App.4th 1344, 1371.

16

## 2. Draft SJVUAPCD Guidance

The PRDEIR cites the as yet un-adopted draft SJVUAPCD GAMAQI to justify the 10 in one million threshold for considerable contributions. This document states that its thresholds for criteria pollutants are also thresholds for determining whether those pollutants are a considerable contribution. The rationale for this claim is that CEQA Guidelines section 15064(h)(1) allows an agency to “determine that a project’s incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously approved plan or mitigation program, including, but not limited to an air quality attainment or maintenance plan that provides specific requirements that will avoid or substantially lessen the cumulative problem within the geographic area in which the project is located.” SJVUAPCD, Draft

17

GAMAQI, May 2012, p. 61. While this logic may apply to criteria pollutants, for which the Air District has adopted attainment or maintenance plans, it does not apply to TACs, which are not criteria pollutants.

17  
CONT

The Draft GAMAQI does specifically claim that its 10 in one million threshold for determining the significance of a project's individual impact can be used as a threshold for determining whether its contribution to a cumulatively significant impact is considerable:

“Impacts from hazardous air pollutants are largely localized impacts. As presented above in section 8.3 (Thresholds of Significance - Toxic Air Contaminant Emissions), the District has established thresholds of significance for toxic air contaminants (TAC) that are extremely conservative; protective of health impacts on sensitive receptors. Consequently, the District's application of thresholds of significance for TACs is relevant to the determination of whether individual project emissions of TAC would have a cumulatively significant health impact. Because the established TAC significance thresholds are highly conservative, if project specific TAC emissions would have a less than significant health impact, the project would not be expected to result in a cumulatively considerable net increase in TAC. Thus, the project and would be determined to have a less than cumulatively significant impact on air quality.” SJVUAPCD, Draft GAMAQI, May 2012, p. 92.

18

The argument amounts to the claim that no individually minor contribution could ever constitute a considerable contribution to a cumulatively significant impact, which flies in the face of CEQA. Furthermore, no evidence is offered in support of the notion that the 10 in one million standard is “conservative.” Neither is there any consideration or discussion of the cumulative context, even though CEQA is clear that a determination of what constitutes a considerable contribution necessarily depends on how bad the cumulative situation is.

The Draft GAMAQI simply does not provide any substantial evidence to support the PRDEIR's use of 10 in one million as the threshold for “considerable contribution.”

### 3. Other Air Districts

The PRDEIR also attempts to justify the 10 in one million threshold for considerable contributions by claiming that it is widely accepted by other air districts. *Id.*, pp. 34-35. It is widely used – but as a threshold for determining a project's individual significance, not a threshold to determine if it makes a “considerable contribution.” Again, the PRDEIR admits that these other air districts have not provided a methodology for the two-step analysis of cumulative impacts, including a distinct threshold for “considerable contribution.” *Id.*, pp. 9-20. Furthermore, the contention that this 10 in one million threshold is used by other districts, which admittedly have different existing TAC risks (FEIR, p. 82), demonstrates that this risk threshold is *not* dependent on existing conditions, which violates CEQA's requirement that the step-two threshold reflect the severity of cumulative conditions.

19

#### 4. EPA Guidance

The PRDEIR cites EPA's range of "acceptable" cancer risks from one in a million to one in ten thousand. *Id.*, p. 35. However, there is no reason to assume that the "acceptable" risk used by the EPA in permitting decisions is an appropriate measure for determining significance under CEQA. Again, permitting decisions may consider economic and other considerations in determining acceptable risk, but CEQA requires that an agency bring these considerations into play only after making a health-based determination of significance.

20

#### 5. Trends

The PRDEIR also cites the fact that TAC risks are declining as a justification for the 10 in one million threshold for "considerable contribution." PRDEIR, pp. 35-36. Even if this were true, it is not relevant. If the modeled first year results are worse than future years, the correct procedure would be to make the best estimate of the lifetime risk and compare that to a justifiable threshold, not to combine uncertainties and argue that the uncertainties somehow offset each other.

21

In sum, the PREIR fails to provide a reasoned justification for the threshold of significance used to determine "considerable contribution." The PRDEIR makes clear that 1) the threshold was not set in consideration of ambient conditions, 2) there is no health-based justification of the threshold, and 3) the threshold is expressly based on factors that are unrelated to determination of significance under CEQA.

22

#### C. **Unjustified Relevant Receptor Location.**

The PRDEIR assumes that the only relevant receptor to consider in cumulative analysis is the receptor that is maximally exposed to the Project's own emissions (the "Maximally Exposed Individual" or "MEI"). PRDEIR, pp. 2-17, 2-21. Here this was identified as a receptor located 980 feet from the dominant local source of TACs, the SR-198 freeway. EIR, App. J, p. 67. At that location, the cumulative health risk was less than the 100 excess cancer threshold used to determine cumulatively significant impacts. However, no assessment was made of receptors located at other locations, such as locations closer to SR-198 that do in fact have cumulatively significant TAC health risks.

23

While the PRDEIR argues extensively to provide a geographic justification for the 1,000 foot radius for determining sources, it fails to provide a geographic justification for ignoring receptors other than the MEI who may experience a cumulatively significant impact that includes a contribution from the Project, albeit not the Project's maximum contribution. PRDEIR, pp. 26-27. There is no principled reason for ignoring such a receptor. In any event, CEQA requires an agency to justify the limitation of the affected area, not just the geographic limitation of the emission sources; and agency must "define the geographic scope of the area affected by the cumulative effect and provide a reasonable explanation for the geographic limitation used." Guidelines, § 15130(b)(3).

24

The PRDEIR must be revised and recirculated to provide a justification for the limited geographic scope of the “area affected by the cumulative effect,” and that this area include all locations at which there may be a cumulatively significant impact to which the Project emissions measurably contribute.

25

Thank you for your consideration of these comments and concerns.

Yours sincerely,

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

A handwritten signature in blue ink, appearing to be 'JH' or 'JH Farrow', is centered below the typed name.

John H. Farrow  
On behalf of the Visalia Smart Growth Coalition

JHF:am

cc: City Clerk (by email to: [cityclerk@ci.visalia.ca.us](mailto:cityclerk@ci.visalia.ca.us))

## Organizations

### **M. R. Wolfe & Associates)**

#### *Response to WOLFE-1*

Mr. Wolfe indicated that he is representing Visalia Smart Growth Coalition. Mr. Wolfe stated that the Partial Recirculated Draft EIR analysis of toxic air contaminants is deficient.

Before responding to each of Mr. Wolfe’s comments, a recap of his prior comments on the issue of cumulative toxic air contaminants is provided to assist in the evaluation of the author’s new material.

Mr. Wolfe submitted 216 pages of comments that were submitted to the Visalia City Council on the day of its May 16, 2011 hearing on the project (hereinafter, the “Late Comments”). The relevant portion of the Late Comments is included in this PREIR as Appendix L.<sup>1</sup> In his Late Comments, Mr. Wolfe for the first time claimed that CEQA required a new cumulative toxic air contaminant (TAC) analysis that followed the two-step process set forth in CEQA Guidelines Section 15130(a), which the Court ultimately ordered the City to prepare and is now contained in the PRDEIR.

According to the Late Comments, a legally adequate cumulative TAC analysis must (1) quantify TAC emissions from past, present and foreseeable future sources within an approximately 1,000-foot radius from the project site and (2) determine if the project’s contribution to the cumulative impact is significant. In undertaking this analysis, the lead agency must prepare an inventory of past, present and foreseeable sources of TAC emissions located in a 1,000-foot analysis radius, quantify those emissions and determine if they exceed a cumulative threshold which the Late Comments suggested be 100 in a million.

Mr. Wolfe’s Late Comments describe the process and the “existing sources” of TAC emissions the EIR must quantify as follows:

Cumulative impact analysis is a two-step process that requires an agency to answer two questions: (1) whether the combined impacts of the project and other projects are significant, and (2) if so, whether the project’s own effect is cumulatively considerable. Guidelines, § 15130(a) . . . A cumulative impact analysis of air quality emissions is required to consider all sources of emissions from *past, present, and reasonably foreseeable probable future projects*. CEQA Guidelines, § 15355(b) [and] § 15130(b)(1)(A) [citations]. Here, as Autumn Wind explains, the EIR fails to

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<sup>1</sup> The relevant portion of the Late Comments consists of pages 1-6 of Mr. Wolfe’s May 16 letter and pages 1-6 of the attached Review of Air quality and Greenhouse Gas Impact Analysis for the Visalia Walmart Expansion EIR by Greg Gilbert, Autumn Wind Associates, Inc., dated May 16, 2011. The Autumn Wind comments are referenced herein as Late Comments, Attachment 1 (Appendix L). These pages and the signature pages of each are included in Appendix L. The issues raised in the remainder of Mr. Wolfe’s letter and underlying reports are not open for reexamination, inquiry, or comment, as the comments have been addressed and the EIR was upheld by the Court as adequate, with the exception of its Cumulative TAC analysis, which is the only topic covered in this PREIR. A full set of the Late Comments is part of the administrative record in the case available for review upon request to the City.

provide an adequate analysis of cumulative impacts (see Appendix L [M.R. Wolfe letter to City Council dated May 16, 2011 at pp. 2–3]).

When determining what existing TAC emissions sources to include in the “existing conditions,” Mr. Wolfe’s comments state the following:

These existing TACs are caused by diesel vehicle in the vicinity, including delivery trucks and customer vehicles already serving the Project site, vehicles attracted to the neighboring commercial site, and vehicles on SR 198, directly north of the project site. Despite the high level of existing TACs, the EIR simply refused to consider the cumulative effects of the Project’s TACs taken together with the existing TAC emissions . . . .

Mr. Wolfe’s air quality consultant agreed. Autumn Wind describes the need for the EIR to quantify existing and future TAC sources **within the project vicinity**:

In the proposed project DEIR, the cumulative impact analysis is flawed because it fails to recognize that existing sources of TACs must be included in the step one determination of whether there is a significant cumulative impact. The existing Walmart store creates TAC emissions from delivery truck trips and other diesel sources such as transport refrigeration units and customer trips. **In addition, there are other existing sources in the project vicinity that generate TAC emissions, including a commercial shopping center on the adjacent west side, and State Route 198. The adjacent shopping center includes a Save Mart Supermarket and other retail stores that require deliveries by diesel trucks. And truck travel on State Route 198 creates even more TAC emissions.** Nearby residences are exposed to all of these cumulative sources, and all of the TAC emissions from these existing sources must be included in the cumulative analysis . . . . (Late Comments, Attachment 1 at page 3 [emphasis added])

The PRDEIR followed this methodology and utilized a 100-in-a-million threshold in its evaluation. The PRDEIR’s cumulative TAC analysis found that the total cumulative impact of all TAC emission sources within the project vicinity totaled 23.9 in a million. This number is apparently far less than Mr. Wolfe had envisioned it would be. Mr. Wolfe’s current comments run counter to the cumulative TAC analysis methodology described above, that the PRDEIR followed, and attempt to demonstrate that the methodology used in the PRDEIR is unsupported and unjustified.

For instance, the author contends that the PRDEIR’s analysis is faulty because 23.9 is a fraction of the regional or areawide emissions estimated in the hundreds of excess cancers per million individuals. To be legally adequate, the author now contends that the PRDEIR must “explain the discrepancy”

between the areawide estimates and the project-specific emission level of 23.9 measured in the project's 1,000-foot analysis radius.

Prior to the PRDEIR's quantification of existing TAC emissions sources that revealed an existing cumulative impact of 23.9 in a million, the author had never before claimed that the EIR's cumulative impact analysis for project-related TACs should incorporate emissions beyond those measured from past, present, and future sources within 1,000 feet of the project site to include "large regional sources" or broad-based estimates of the average areawide risk levels derived from modeling and/or extrapolations from measurements of TAC precursors from locations outside of the City of Visalia. This is because the average regional or areawide background risk levels were never intended to be added to the project-area's existing and future TAC emissions inventory in order to quantify "existing" TAC emissions for a cumulative impact analysis. Including background estimates of TAC-related health risks would skew the analysis away from its intended purpose of determining whether the project contributes to a significant cumulative condition created by the past, present, and future projects close enough to the project that their impacts could combine and create a significant cumulative impact.

CEQA is clear that a cumulative impact analysis is centered on past, present, and foreseeable future projects whose effects could combine to result in a significant cumulative impact. CEQA does not contemplate much less require that an analysis of a project's cumulative impacts—be they TAC emissions, noise, or even traffic impacts—take into account "background" averages estimated over a regional or city-wide area (CEQA Guidelines Section 15130). Environmental impacts with localized effects such those resulting from TAC emissions or even traffic require the quantification impacts from sources whose impacts could combine with the project's impacts to create a significant cumulative or "combined" impact. Traffic related to a regional or even local distribution center across town are unlikely to have a measurable impact on the same intersections affected by a new grocery store's vehicle trips. Similarly, TAC emissions on from what Mr. Wolfe's current comments call "large regional sources" located outside of the approximately 1,000-foot analysis radius he suggested the EIR use would not combine with those emitted by a project to create impacts on sensitive receptors within the analysis radius.<sup>2</sup> The detailed responses to Mr. Wolfe's comments 2 through 4 address this issue and demonstrate that there is no "discrepancy" that the PRDEIR must address.

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<sup>2</sup> Existing conditions are determined by quantifying impacts from a study area's cumulative projects (CEQA Guidelines Section 15130(a)(b)). If an average areawide or regional TAC-related health risk estimate was meant to serve as or be factored into the quantified "existing condition" the cumulative threshold would be exceeded before the project is even considered (a fact recognized in the Superior Court's decision [Appendix K, p. 6, lines 8–10]).

To recap:

- Mr. Wolfe’s Late Comments claimed that the EIR’s cumulative TAC analysis was invalid due to its failure to:
  - Establish cumulative threshold (such as the 100/million used by BAAQMD);
  - Determine the “aggregate total of all past present and future [TAC] sources within a 1,000-foot radius (or beyond where appropriate);” and
  - Add the contribution from the project to determine if the total aggregate number is more than 100 in a million.
- The Tulare County Superior Court on March 5, 2011 ruled that an adequate cumulative TAC analysis required the two-step analysis of cumulative TAC impacts.
- The PRDEIR uses this methodology to inventory and quantify TAC emissions from sources within a 1,500-foot radius, and finds that existing cumulative emissions from sources within this radius total 23.9 in a million. This number is below the 100-in-a-million cumulative impact threshold suggested by Mr. Wolfe and utilized in the PRDEIR. Thus, there is no significant cumulative impact without the project, or after its TAC emissions are included.

As will be explained in Responses WOLFE-2 through WOLFE-25, the PRDEIR analysis of toxic air contaminants provides an exhaustive examination of this impact and provides substantial evidence supporting its impact determination in compliance with CEQA.

#### *Response to WOLFE-2*

Mr. Wolfe questioned why the cumulative cancer risk identified in the cumulative analysis of sources within 1,000 feet of the project of 23.9 in a million is lower than the regional cancer risk estimated by the California Air Resources Board (ARB) in 2000 of 586 in a million. His comment faults the PRDEIR for failing to incorporate into the existing conditions the “regional average rate” that “will still exceed 486 excess cancers.” The comment seeks an “explanation for the discrepancy” between the 23.9-in-a-million excess cancer risk measured in the project vicinity and the areawide estimated background risk that does not take into account any specific sources of emissions within a given analysis radius.

First, it is important to provide some definitions and descriptions that will help readers understand this very complex topic and to provide answers to Mr. Wolfe’s questions and concerns. The key terms referenced in these responses are described below:

- **Regional Toxic Air Contaminant (TAC) Cancer Risk:** Regional TAC cancer risk estimates represent the number of excess cancer cases per million people based on a lifetime (70-year) exposure to the annual average concentration. The average annual concentration of TAC emissions for the San Joaquin Valley Region is based on data collected from six monitoring stations located in the largest cities in the Valley. Ambient monitoring of DPM is not

technically feasible; therefore, ARB used receptor modeling techniques to estimate DPM concentrations. Receptor-based models utilize chemical measurements at an individual monitoring site (the receptor) to calculate the relative contributions from major sources to the pollution at that site. Regional TAC risk for the San Joaquin Valley was obtained from the ARB Almanac 2009.

- **Community TAC Cancer Risk:** Health risk estimates at the community level are developed through the same methods as the regional risk estimates but use average concentration data from TAC monitoring station(s) in the City being assessed. Community TAC risk data is not available for the City of Visalia, and was obtained for the City of Fresno that was compiled for the Community Air Quality Monitoring Special Studies, Fresno, Fremont Elementary School.
- **Local TAC Cancer Risk:** Local or localized TAC cancer risk refers to the risk from actual TAC sources within a zone of influence from a specific receptor location. Local TAC risk is estimated using an emission inventory that quantifies the annual emissions from each source in the zone of influence and uses dispersion modeling to provide estimated TAC concentrations at the receptor location. Cancer risk factors for each TAC are applied to the predicted concentrations to arrive at a total cancer risk. Sources of local TAC cancer risk contribute to background risk but do not include background risk.
- **Background TAC Cancer Risk:** According to the United States Environmental Protection Agency (EPA), background air quality includes pollutant concentrations due to (1) natural sources, (2) nearby sources that are unidentified in the inventory, and (3) long-range transport into the modeling domain. Typically, monitored air quality data should be used to establish background concentrations. The EPA, at page 3 of its report, the Estimation of Background Concentrations for Diesel Particulate Matter (<http://www.epa.gov/ttnatw01/nata/appendix-f.pdf>), indicates that background concentrations estimated with the ASPEN model do not seem to be accurate enough and these results suggest that a value for background should be computed for each receptor. Background risk was not available for receptors impacted by the project. Regional and community risk was disclosed in the PRDEIR but is not a substitute for background risk at the receptor location.
- **Existing TAC Cancer Risk:** Existing TAC risk for the purpose of the cumulative toxic analysis includes all sources modeled within the zone of influence used for the project.
- **Average TAC Cancer Risk:** Average TAC risk is based on TAC concentrations monitored at the applicable monitoring station or stations for a one year period. The average risk only provides the cancer risk based on risk to a person exposed to the measured concentration for a period of 70 years. The risk at individual locations may be higher or lower than the average, depending on the impact of nearby sources. Regional risk and community risk are provided as averages.

- **Project TAC Cancer Risk:** Project risk is expressed as the increase in cancer risk at the receptor location with the maximum impact from the project. Project risk is estimated using an emission inventory of project TAC sources and dispersion modeling to estimate TAC concentrations at receptor locations impacted by the project.
- **Cumulative TAC Cancer Risk:** Cumulative TAC cancer risk for the purpose of this analysis is the combined risk from existing sources, and planned and probable sources within a 1,500-foot zone of influence of the project and the project.
- **Zone of Influence:** Zone of influence is the area surrounding the project where existing and planned sources would have a measurable effect on the maximally exposed receptor from the project. In most cases, a radius of 1,000 feet provides an adequate zone of influence; however, sources outside this radius should be assessed if they have the potential to have a measurable effect. The analysis radius for the project was 1,500 feet to capture sources identified outside the radius.

The author's letter includes several comments regarding the difference between cumulative toxic air contaminant sources analyzed for the project and estimates of regional and community risk disclosed in the PRDEIR. Guidance for the appropriate use of regional data versus project-specific data is provided below:

- *Regional estimates:* Regional cancer risk estimates presented by ARB are the average risk for the entire region; this estimate does not identify the risk at any particular location because emissions are not uniformly distributed and proximity to specific sources affects the amount of risk. Regional risk is based primarily on emissions data collected at monitoring stations in communities within the region. The monitors measure all emissions including background emissions and local emissions at the monitoring station.
- *Project specific cumulative estimates:* The analysis of cumulative sources within 1,000 feet of a project allows the risk associated with a specific location to be evaluated. The 1,000-foot radius is consistent with guidance from Bay Area Air Quality Management District (BAAQMD), for the analysis of cumulative effects. The estimates include local sources impacting receptors in the vicinity of the project.

The PRDEIR provides estimates of regional risk to disclose the average risk to people living in the San Joaquin Valley from TAC emissions. A description from ARB (About the Risk Maps, website: [www.arb.ca.gov/ch/communities/hlthrisk/cncrinhl.htm#caveats](http://www.arb.ca.gov/ch/communities/hlthrisk/cncrinhl.htm#caveats)) regarding the regional risk estimates is enlightening. "The regional cancer risks published by the ARB should be viewed as a gauge of relative risk, rather than as an absolute risk determination. These regional risks are very useful for determining the geographic locations where current science indicates that the greatest amount of risk from toxic air contaminants exists. However, the absolute risk numbers should NOT [emphasis added by the ARB] be used as the basis for determining personal risk."

The analysis of cumulative sources within 1,000 feet provides the risk from actual sources with the potential to cause elevated risk at actual receptors impacted by the project. No agency has prepared estimates of community risk or background risk for the City of Visalia and the area near the project site. Estimates of background TAC emissions have been developed as part of special studies conducted by the ARB or the regional air pollution control district for other areas of the State such as the Multi Air Toxic Exposure Study (MATES-II) in the South Coast Air Basin. The monitoring data and analysis conducted for the MATES-II provides a reasonable estimate of background concentrations and risk at different locations within the basin. MATES-II collected data from 10 fixed sites and 14 microscale sites over a one year period to provide a mechanism for both regional scale and local-scale air toxic characterizations across the air basin. The MATES II Final Report published in March 2000 is available at <http://www.aqmd.gov/matesiidf/matestoc.htm>.

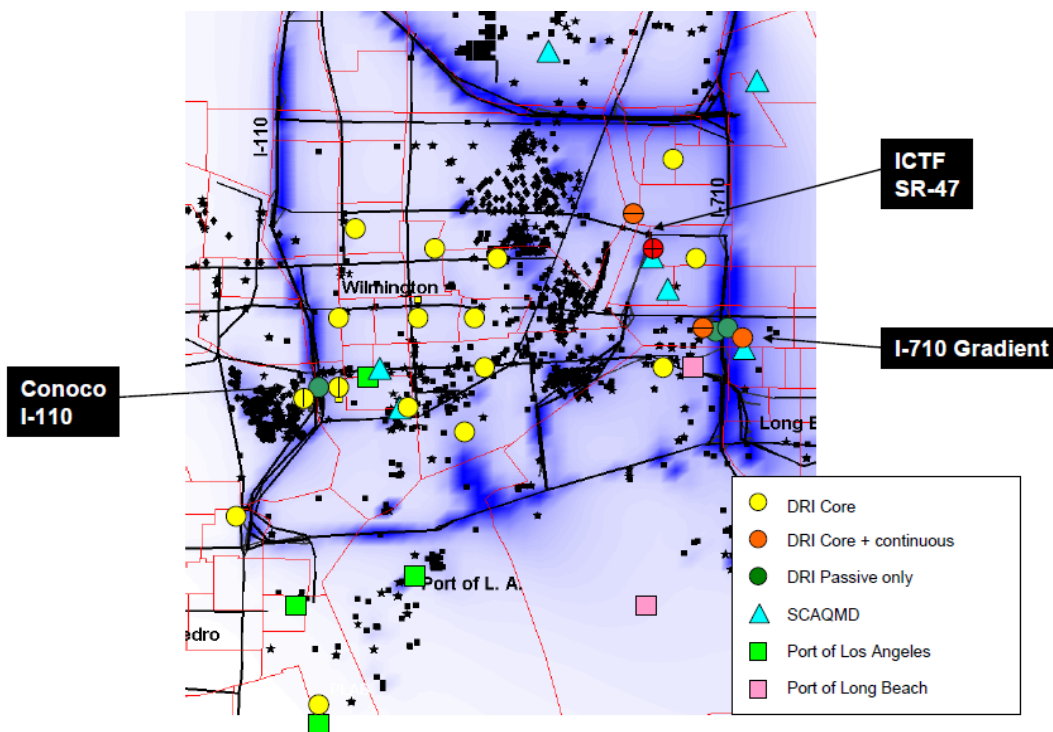
The PRDEIR disclosed the limited regional and community TAC risk estimates available for the San Joaquin Valley and the City of Fresno and made a comparative assessment of their applicability to the City of Visalia. The PRDEIR does not claim that the 23.9-in-a-million risk from actual sources within 1,000 feet of the project includes background risk, because background risk in the vicinity of the project cannot be determined with any accuracy using available data. This was never the task of the cumulative TAC analysis the Court ordered or that CEQA requires. Further, the City's air quality consultant who helped prepare the PRDEIR concluded that derived risk estimates from dated regional averages and incomplete data from another city would be viewed as speculation.

The variation across a community is illustrated in a figure from the Harbor Community Saturation Monitoring Study (<http://www.arb.ca.gov/research/apr/past/05-304.pdf>) prepared for the ARB prepared in 2009 for the area near the Port of Los Angeles and the Port of Long Beach. The figure displays monitoring sites used for the study and spatial mapping of the annual average diesel particulate matter (DPM) concentrations. The darker blue areas along highway corridors and major arterials represent high concentrations and elevated risk, while lighter shades of blue represent lower concentrations and lower risk. The community average is based on emissions data collected at the monitoring stations would be high, since it would include all of the areas with high concentration along the highways, while the majority of areas located at a distance from the highway corridors actually experience much lower concentrations and lower risk.

Unfortunately, similar modeling is not available for the City of Visalia; however, the concept that risk will be higher near large sources and lower away from those large sources is valid in all communities. Keep in mind, however, that the traffic volume on State Route 198 (SR-198) is fraction of that on the freeways serving the port area and would produce much lower local impacts. The Caltrans 2011 report on Annual Average Daily Truck Travel on the California State Highway System (<http://traffic-counts.dot.ca.gov/>) reported that average annual daily trips (AADT) on Interstate 710 at the interchange with SR-91 in Los Angeles County had 179,000 AADT with 25,525 truck trips of all

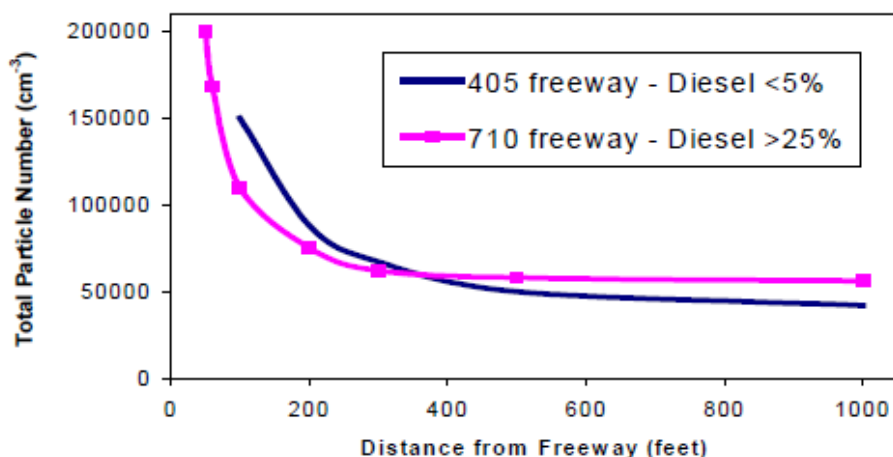
types in 2011, while AADT on SR-198 at Lovers Lane was 36,000 with 3,240 truck trips of all types in 2011.

**Figure 2-1: Harbor Community Monitoring Study (HCMS) Saturation Monitoring Sites**



The importance of local sources is further exemplified in a distance-related figure prepared by the ARB as part of its recommendations concerning the siting of sensitive receptors near large sources of emissions in its Air Quality Land Use Handbook (ARB 2005). This figure shows that the impacts from a freeway decrease about 75 percent from the impacts right next to a freeway at a distance of 1,000 feet from the freeway with the strongest reductions within the first 300 feet from the freeway.

**Figure 2-2: Decrease in Concentration of Freeway Diesel PM Emissions with Distance**



The regional risk and community risk are the averages of all readings at the monitoring stations within a given geography. The monitoring stations are intentionally located in areas that avoid influence from large sources to improve their representativeness to the community. The 23.9-in-a-million risk from cumulative sources near the project includes the contribution from local sources within 1,500 feet using dispersion modeling.

The reason for assessing the impacts of sources within a 1,000-foot radius is to determine if receptors near the project are impacted by locally elevated TAC emissions and associated cancer risk from existing sources, planned projects and the project in amounts that would be considered a significant cumulative impact. The cumulative analysis is based on a zone of influence of emissions from the project. The regional risk estimates are important because they provide an indication of the average cancer risk for people living in the region (of which Visalia is a part) and a basis for comparison with other regions; however, regional estimates do not provide background risk at any particular location in the region. A description of the zone of influence and importance of distance from sources in relation to cancer risk is provided in the Threshold Document in section 3.3.5. As noted in WOLFE-1, Mr. Wolfe urged use of a 1,000-foot radius to measure emissions from past, present, and future TAC sources, as the BAAQMD had adopted this very same approach in the evaluation of cumulative TAC impacts.

The Cumulative Toxics Air Contaminant Threshold Document (Threshold Document) included as Appendix A of the Cumulative Health Risk Assessment prepared for the project includes an extensive discussion of existing TAC risk and the reasons for using a 1,000-foot cumulative analysis radius in Sections 3.3 –Existing Conditions for Toxic Emissions. As was stated in the Threshold Document, TACs are not monitored in Visalia, so information for the San Joaquin Valley and the closest TAC monitoring site in Fresno were provided to give an indication of the average levels of risk experienced in Visalia.

Based on all of the limitations described above and in the Threshold Document regarding the risk data available for estimating average TAC risk for the City of Visalia, only a qualitative comparison of average risk was made in the Threshold Document. The conclusion was that average TAC risk in Visalia would be similar to that of Fresno but was likely to be somewhat lower. A precise numeric of estimate of risk seemed excessively speculative based on the quality of the data available. The commenter unfairly accuses the City of understating the TAC risk when, in fact, the City presented average risk estimates supported by ARB. Additional risk estimates using alternative methods for determining DPM concentrations have been prepared to support the conclusions of the PRDEIR. A summary of how the City estimated a range of average risk for Visalia is provided below.

#### **Average Risk from DPM Sources**

Although average risk estimates for Visalia are still highly speculative, the City recognizes that providing an estimate of average emissions specifically for Visalia would help clarify the relationship between average emissions and the cumulative threshold. The air quality consultant reviewed

additional technical information to identify potential estimation approaches that could be applied in Visalia. The following describes two approaches identified for DPM, which yielded results ranging from average risks of 166 in a million to 332 in a million.

### ***Using Elemental Carbon to Estimate Average Risk***

The first estimation approach—used in studies performed by ARB and in the South Coast Air Basin (SCAB)—uses measurements of elemental carbon (EC) collected as a component of PM<sub>2.5</sub> samples as a surrogate for DPM. The approach relies on two key factors:

- The SJVAPCD approved its new 2012 PM<sub>2.5</sub> Plan on December 20, 2012, which estimates that EC comprises 5 percent of PM<sub>2.5</sub> on an annual basis ([http://www.valleyair.org/air\\_quality\\_plans/PM25Plans2012.htm](http://www.valleyair.org/air_quality_plans/PM25Plans2012.htm)).
- The March 2000 Multiple Air Toxics Exposure Study (MATES II) used a factor of 1.04 as the ratio of EC to DPM.

PM<sub>2.5</sub> monitoring data for Visalia was obtained from the ARB's ADAM Air Quality Data Statistics system for the three most recent years available (<http://www.arb.ca.gov/adam/index.html>). The three-year average annual PM<sub>2.5</sub> concentration at the Visalia Church Street monitoring station from 2009 to 2011 was 15.43 micrograms per cubic meter (µg/m<sup>3</sup>). Based on the 5 percent fraction for EC from the PM<sub>2.5</sub> Plan, EC averaged 0.77 µg/m<sup>3</sup>. Applying the 1.04 EC to DPM ratio to the 0.77 µg/m<sup>3</sup> EC concentration, the DPM concentration would be 0.80 µg/m<sup>3</sup>.

The ARB recommends a DPM cancer risk of 300 in a million per 1 µg/m<sup>3</sup>. Based on this conversion factor, cancer risk from DPM at the Visalia monitoring station averages 241 in a million. The SJVAPCD recommends using a more conservative estimate of DPM cancer risk of 414.5 in a million per 1 µg/m<sup>3</sup>. Using the SJVAPCD rate would result in an average risk of 332 in a million from DPM.

The average risk identified using this approach ranges from 241 to 332 in a million.

### ***Using Ambient Oxides of Nitrogen (NO<sub>x</sub>) to Estimate Average Risk***

The ARB provided a newer method for estimating DPM concentrations over large spatial scales to support rulemaking for the regulation of trucks and buses<sup>3</sup>. The report describes a method based on ambient oxides of nitrogen (NO<sub>x</sub>) concentrations for estimating DPM that was shown in research to be more accurate than the EC method. The methodology relates ambient NO<sub>x</sub> levels to DPM levels using a factor of 0.022 for years after 2008. Data published on the ARB's ADAM website shows the annual average NO<sub>2</sub> concentration at the Visalia Church monitoring station for 2009 through 2011

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<sup>3</sup> The estimation method was identified in the ARB's Staff Report: Initial Statement of Reasons for Proposed Rulemaking Proposed Amendments to the Truck and Bus Regulation, the Drayage Truck Regulation and the Tractor-Trailer Greenhouse Gas Regulation Appendix J - Methodology for Estimating Ambient Concentrations of Particulate Matter from Diesel Fueled Engine Emissions.

was 0.0133 part per million (PPM) or  $25.08 \mu\text{g}/\text{m}^3$ . Using the DPM factor of 0.022 results in a DPM concentration of  $0.552 \mu\text{g}/\text{m}^3$ . Applying the ARB recommended DPM cancer risk of 300 in a million per  $\mu\text{g}/\text{m}^3$ , the DPM risk at the Visalia monitoring site is 166 in a million. Using the SJVAPCD DPM risk factor of 414.5 results in a risk of 229 in a million.

The range of risk using the two risk factors results in a range of risk from 166 to 229 in a million from DPM.

#### **Average Risk from Non-DPM Sources**

No additional data was found that would provide a surrogate for non-DPM sources of TACs for Visalia. However, a comparison of the regional data for the San Joaquin Valley from the ARB 2009 Almanac with Fresno data collected for a special study in 2002 and 2003 is instructive, and suggests that average risk ranges from 126 to 157 in a million. Local data for Visalia would be far more preferable than applying regional and Fresno data to the City of Visalia, but this was the only data available to use in an estimate.

#### **2002–2003 Fresno Data**

The average risk reported in the ARB 2009 Almanac at page 5-69 from the non-DPM TACs in the San Joaquin Valley was 157 in 2003. The Community Air Quality Monitoring: Special Studies Fresno, Fremont Elementary School published in May 2006 reported risk of 139 in a million at the Fresno First Street monitoring station and 156 in a million at the temporary Fremont Elementary School site. Interestingly, the monitored data for Fresno was lower than the regional average, even though it is consistently ranked among the worst sites in the nation for ozone and particulate matter.

#### **ARB 2009 Almanac**

The 2009 ARB Almanac at page 5-69 provided an estimate of the average regional non-DPM TAC risk for 2007 (the most recent year of data available) of 90 in a million. However, the record for 2007 is missing data for two TACs, carbon tetrachloride, and para-dichlorobenzene. Using 2003 data for carbon tetrachloride as a substitute for the missing data and assuming no decrease since 2003 would add a risk of 26 in a million. Using 2006 data for para-dichlorobenzene would add 10 in a million. Adding these to a risk of 90 in a million for the other non-diesel TACs results in an average risk of 126 in a million.

#### **Combined DPM and Non-DPM Risk**

As shown in the table below, adding the average regional non-DPM risk for 2007 of 126 in a million and Visalia DPM risk estimates for 2009-2011 of 166 in a million based on  $\text{NO}_x$  concentrations provides an estimate of overall TAC cancer risk of 292 in a million for Visalia.

The higher estimates derived from  $\text{PM}_{2.5}$  concentrations and the SJVAPCD DPM risk factor results in an average risk of 455 in a million based on the Fresno First Street monitoring data and 489 in a

million based on the Fremont School monitoring data. The range in risk from these two methods and two alternate DPM risk factors results in a range of risk from 292 in a million to 489 in a million.

	<b>DPM – NO<sub>x</sub> Approach</b>	<b>Non-DPM</b>	<b>DPM/Non-DPM Risk</b>
Low Range	166	126	292
High Range	229	157	386

	<b>DPM – EC Approach</b>	<b>Non-DPM</b>	<b>DPM/Non-DPM Risk using EC Approach</b>
Low Range	241	126	367
High Range	332	157	489

Considering this uncertainty and the range of risk provided by the estimates cited above, the cumulative TAC threshold approach used in the PRDEIR remains valid. The cumulative risk threshold from sources within a 1,000-foot zone of influence (1,500 feet for the project) of 100 in a million is a reasonable measure of elevated risk from local sources in an area with an average risk or background risk of 292 to 489 in a million.

The risk could also be characterized in the following way: the average risk in Visalia is approximately 292 to 489 in a million. Large sources and sources not distributed widely throughout the City that are located in the zone of influence of the project have the potential to cause an impact greater than the average risk at the maximally exposed receptor. For this project, the freeway, rail line, and the project contribute a risk of 15.7 in a million (see Table 15 of the Cumulative Health Risk Assessment). Another way of stating this information is that the maximally exposed receptor will experience a risk that is higher than the average risk by 15.7 in a million. More conservatively, counting all sources within the zone of influence presented in Table 15 of the Cumulative Health Risk Assessment including those that are common throughout the City, the receptor would experience a risk that is higher than average by 27.2 in a million. The threshold of significant cumulative impact used in the PRDEIR is whether sources within the zone of influence contribute a risk of more than 100 in a million. For this project, the cumulative impact is not significant.

#### *Response to WOLFE-3*

Mr. Wolfe compared TAC modeling results presented in the PRDEIR with TAC estimates derived from ambient air quality monitoring data from an air quality study performed in the City of Fresno by the ARB. The analysis of the monitoring data prepared by ARB estimated cancer risk of 139 to 156 at the two monitoring sites used for the study, while the dispersion modeling performed for the PRDEIR health risk assessment (HRA) showed a risk of 23.9 in a million. Mr. Wolfe claimed that the difference is due to exclusion of sources outside the 1,000-foot analysis radius. Again, this

comment conflicts with Mr. Wolfe's Late Comments regarding the EIR's cumulative TAC analysis, and the Court Ruling directing the City to prepare a cumulative TAC analysis. Neither the Court Ruling nor the Late Comments suggest the 1,000-foot radius emissions inventory must be consistent with or combined with the TAC estimates from monitoring data in Fresno or elsewhere.

The Fresno Study data was disclosed in the PRDEIR and was considered by the City in setting the cumulative threshold. The range of average risk estimate described above in WOLFE-2 includes the City of Fresno data for non-DPM TAC. The threshold approach is based on elevated risk above average exposure levels.

As stated previously in WOLFE-2, the cumulative analysis prepared for the PRDEIR conservatively assessed emissions from existing, planned, and probable sources within a 1,500-foot analysis radius to determine if the risk from the identified emission sources would exceed the 100-in-a-million cumulative threshold. The cumulative threshold is based on the potential to create elevated risk from sources with a measurable impact on the receptor most impacted by the project. The risk from ambient TAC exposure, which includes emissions from local sources and from transport and mixing of emissions, has not been measured and is not known with any accuracy at the project site. The regional and community average risk estimates were disclosed in the PRDEIR but are not recommended for application to a specific receptor location by ARB. The approach chosen by the City was to consider the regional average risk and limited available community average risk estimates in setting a threshold based on exposure to elevated risk within a zone of influence. Background risk is not added to the risk from the sources within the zone of influence when using this approach because doing so would not provide a measure of elevated risk to receptors impacted by the project. Restating the threshold in terms of the average risk estimate for Visalia may help to clarify.

The most current range of average risk estimated for the City of Visalia using the methods described in WOLFE-2 is a risk of 292 to 489 in a million. In light of this average risk in the community, the City has determined that areas with existing, planned, and probable sources within an approximate 1,000-foot zone of influence with risk exceeding 100 in a million would be considered to have an existing significant cumulative impact. A risk of 100 in a million at the maximally exposed receptor from a project would represent an elevated risk compared to the community average.

The ARB Almanac data and Fresno data for non-DPM TAC risk are the best information available. The Fresno data is useful for identifying the average risk from non-DPM TAC sources in Fresno, but it has several limitations for application as background risk at a specific receptor location in Visalia. The ARB Almanac data shows similar non-DPM TAC risk compared with the Fresno data but is subject to the same limitations.

It is not possible to determine the level of emissions resulting from local and distant sources at the project site with any certainty. This is important, because it explains the error in Mr. Wolfe's theme in this and the previous comment that risk estimates made for other cities and average risks for the

entire region should be added to the cumulative risk from sources within the project's zone of influence. The PRDEIR provided information on broader background risk levels by identifying the regional and community level TAC risk that the City of Visalia may experience, based on the available risk data, and then identifying actual cumulative sources near the project that contribute a specific amount of risk to the receptors impacted by the project. However, modeled background risk is not intended to be incorporated into a site-specific cumulative TAC analysis, as Mr. Wolfe's prior comments from May 16, 2011 recognize.

Based on a comparative analysis of the risk information available for other areas for application to Visalia and other analytical techniques using surrogates for estimating TAC emissions, the average community risk was estimated at between 292 and 489 in a million in Visalia. However, as stated several times in these responses to comments and in the PRDEIR, the level at any particular location will be higher or lower than the average. The question then becomes, are there cumulative sources of toxic emissions within a zone of influence of the project site that would result in a substantially greater impact to receptors impacted by the project? For this analysis, the threshold for cumulative risk within the 1,000-foot (actually out to 1,500 feet) zone of influence was set at 100 in a million, based on substantial evidence—as recognized by the commenter himself.

#### *Response to WOLFE-4*

Mr. Wolfe questioned the statement in the PRDEIR on page 25 that ARB average risk levels do not account for variations from community to community. He indicates that Visalia has poor air quality compared to the regional average and concludes that risk should be higher than the regional average. He concludes that the 1,000-foot radius must exclude sources to account for the discrepancy. Refer to Response to WOLFE-1 for a summary of Mr. Wolfe's prior comments.

Mr. Wolfe's comparison of ARB regional risk and risk from sources within a zone of influence of the project is not valid. The purpose for using a zone of influence around the project is to determine if receptors impacted by the project are located in an area with elevated risk from other emission sources within the zone of influence. The PRDEIR Threshold Document at page 25 indicates that "the mix of sources in Visalia is similar to that in Fresno and would experience similar ambient levels of TACs from non-diesel sources. However, Fresno is a substantially larger metropolitan area than Visalia with more sources and traffic, so risk is likely to be somewhat lower in Visalia."

Mr. Wolfe questioned how Visalia could have a lower regional risk than the regional average. The PRDEIR did not conclude that the City of Visalia has a lower risk than the region. The Threshold Document, page 25, paragraph 4, indicated that the 586-in-a-million figure does not account for variation from community to community. The Threshold Document did state that TAC risk in Visalia is likely to be less than in Fresno for the reasons stated. We stand by our statement that risk will vary from community to community because of the size of the community, mix of sources, and meteorological conditions.

The ARB regional data must be used with caution. The ARB Almanac 2009 at page 1-9 states: “The measured concentrations are used to represent average statewide concentrations and health risk. It is important to note that actual concentrations can vary from one location to another, and local concentrations and risks may be either higher or lower than the average values.” Later, the Almanac at page 5-4 states: The TAC monitoring network is designed to provide air quality data in support of general population exposures . . . . Localized impacts may involve exposure to different TACs with higher or lower concentrations than those represented by the regional ambient air monitoring data.”

ARB’s CHAPIS database includes a gridded emissions inventory expressed as pounds per year of each TAC inventoried. According to the database, the estimate of diesel exhaust  $PM_{10}$  near the project site is 5,660 to 6,380 pounds per year per square kilometer (lbs/yr/km<sup>2</sup>), while the estimate of diesel exhaust  $PM_{10}$  near the Fresno First Street monitoring station is in the range of 10,200 to 12,500 lbs/yr/km<sup>2</sup>. The emission density at the Project site is about half that of the Fresno First Street site. This provides one quantitative measure that the DPM risk near the project site in Visalia is lower than in Fresno.

The commenter quotes statistics from a report by the American Lung Association that Visalia was ranked second-worst for particulate matter whereas Fresno was ranked sixth. He goes on to state that particulate rankings are most relevant because they TAC risks are driven primarily by diesel particulates. The particulate matter rankings do not provide a valid measure of relative exposure to diesel particulate for two reasons. First, the diesel particulate fraction is not measured directly and no value for Visalia has been published, so the contribution of risk from this source is subject to additional uncertainty. Second, there is only a single monitoring station in Visalia that measures  $PM_{2.5}$  annual averages compared with three in the Fresno/Clovis Metropolitan Area. Monitoring data compiled by ARB at the ADAM: Air Quality Data Statistics website (<http://www.arb.ca.gov/adam/index.html>) for the three Fresno sites and the Visalia site from 2009 to 2011 show that the Visalia site was higher than Fresno/Clovis average in 2009 but lower in 2010 and 2011. In any case, whether the 2011  $PM_{2.5}$  annual average is 16.1  $\mu\text{g}/\text{m}^3$  in Visalia and 16.2  $\mu\text{g}/\text{m}^3$  in the Fresno/Clovis metropolitan area makes no difference in the selection of the threshold approach used in the cumulative analysis and to the significance findings. The threshold is based on the contribution of cumulative sources within a zone of influence of the project. As stated in Response to WOLFE-2, the average risk in Visalia is estimated at between 292 in a million and 489 in a million.

#### *Response to WOLFE-5*

Mr. Wolfe challenged the PRDEIR’s use of a 1,000-foot analysis radius for compiling an inventory of cumulative sources of TAC emissions. He claimed that it may not be relevant where there are “numerous regional sources” of TACs, each of which contributes to elevated levels of TACs” creating what he terms a “multi-source scenario” that now throws his own cumulative analysis methodology—and that ordered by the court—into question. Again, Mr. Wolfe is trying to incorporate background areawide risk levels into a project-specific cumulative TAC analysis that he previously confirmed required use of a 1,000-foot radius to account for all emission sources that

could combine with the project's emissions and result in a significant cumulative impact. There is no rhyme or reason to Mr. Wolfe's new contention that the EIR must now "assess this likely multi-source scenario." This notion is not seen in his Late Comments or in the BAAQMD guidelines he relied upon. According to the Late Comments:

The DEIR also argues that there is no existing standard for determining the significance of total ambient risk. However, an agency must use its best efforts to determine significance.

Furthermore, there are available standards for what constitutes a cumulatively significant health risk. For example, Bay Area Air Quality Management District (BAAQMD) CEQA Guidelines call for doing a cumulative impact analysis for TACs when there is an existing exposure of 100 in one million *from past, present, and future sources within 1,000 yards* [sic], thereby implicitly treating this risk as a significant cumulative risk. [According to] BAAQMD CEQA Guidelines at 5-15: "A project would have a cumulative significant impact if the aggregate total of all past, present, and foreseeable future sources within a 1,000 foot radius (or beyond where appropriate) from the fence line of a source, or from the location of a receptor, plus the contribution from the project, exceeds the following: . . . An excess cancer risk level of more than 100 in one million or a chronic hazard index greater than 10 for TACs" (Late Comments, Attachment 1 at page 4 [emphasis added]).

As discussed in Response to WOLFE-4 and in the PRDEIR, the regional and community risk estimates do not correlate to localized impacts to specific receptors; the same is true for the "numerous regional sources of TACs" Mr. Wolfe claimed lie outside of the analysis radius. In addition, the information provided in Response to WOLFE-2 indicates that except for freeways, there are few regional sources that make a large individual contribution to risk. The main source of impact at the project site is SR-198, the impact of which was included in the Cumulative Health Risk Assessment. Therefore, the analysis did take into consideration the multiple sources that would affect the level of risk within the project's zone of influence. The risk from regional sources was disclosed in the PRDEIR and considered in the development of the cumulative threshold.

#### *Response to WOLFE-6*

Mr. Wolfe stated that the PRDEIR must be revised and recirculated to reconcile the relatively low risk that can be attributed to the PRDEIR's "considering only the sources within 1,000 feet of the project." Again, Mr. Wolfe criticizes the method he insisted was required for a legally adequate analysis of the project's cumulative TAC impacts. Refer to Response to WOLFE-1 for more information.

The PRDEIR correctly disclosed the existing risks and the impacts of the project using well accepted dispersion modeling techniques and a thorough assessment of sources within 1,500 feet of the project.

This approach and methodology for the analysis of cumulative impacts is consistent with guidance developed by the BAAQMD and supported by the Threshold Document prepared for the PRDEIR. The discussion provided in Response to WOLFE-2 clarifies the relationship of the regional average risk to the cumulative analysis of sources within the zone of influence of the project to determine if they cause an elevated impact above the average regional risk. There are no errors or misstatements in the assessment and no new significant impacts identified that would require recirculation.

***Response to WOLFE-7***

Mr. Wolfe questioned whether ARB CHAPIS data was used to determine if sources beyond 1,000 feet may affect the project site.

The analysis conservatively identified potential TAC emission sites located within a 1,500 foot radius to ensure that all potential sources within and adjacent to the 1,000-foot zone of influence were considered. The CHAPIS data was reviewed to identify potential TAC sources that may impact the zone of influence of the project but was found to be of limited utility. The analysis therefore included a visual search of the area around the site and a database search by the SJVAPCD for permitted and toxic facilities to identify sources that were beyond the 1,000-foot radius that may still impact the area impacted by the project. The CHAPIS Database inventory maps showed no stationary sources close to the site, and two small stationary sources over a mile from the project.

The CHAPIS Database website (<http://www.arb.ca.gov/ch/chapis1/chapis1.htm>) includes a disclaimer that not all facilities are in their database. Therefore, the air quality consultant conducted an emission inventory database search and a visual assessment to identify businesses with loading docks, gas stations, and restaurants as the most accurate way to ensure that all sources with substantial emissions were identified.

***Response to WOLFE-8***

Mr. Wolfe stated that the PRDEIR's use of a 10-in-a-million threshold for cumulative contribution is in error because it is the same as the SJVAPCD's project threshold.

The PRDEIR Cumulative Toxic Threshold Document carefully assessed three different options for a cumulative contribution including 1 in a million, 5 in a million, and 10 in a million. Based on the reasoning and facts presented, the 10 in a million cumulative contribution was determined to be the most appropriate threshold to use for this analysis.

Mr. Wolfe's Late Comments stated that without an established threshold representing "an acceptable level of total health risk from TACs," the EIR could not simply rely upon the SJVAPCD's 10-in-a-million threshold to determine if the project's contribution to cumulative TAC emissions was significant. As the following passage explains:

Only if there were standards for total ambient health effects could the 10 in one million threshold for individual impacts reflect existing environmental conditions.

For example, if an acceptable level of total health risk from TACs was 100 incremental cancer cases, and if under ambient conditions total health risk was under 90 incremental cancers, then an increment of 10 more cancer cases from a localized project might be found acceptable. However, without a standard for total acceptable cancer risk, it is difficult to understand how the 10 in one million individual project risk could reflect existing conditions (Late Comments, Attachment 1 at page 3).

***Response to WOLFE-9***

Mr. Wolfe stated that an EIR may not conclude a cumulative impact is insignificant merely because the project's individual contribution is not significant or relatively small. Further, he stated that the greater the existing environmental problems are, the lower the contribution threshold should be.

The PRDEIR did not rely on the project's contribution being relatively small as the only factor for determining significance. There is no bright line threshold where cancer risk is not considered a health impact. Therefore, an amount of risk deemed to be acceptable must be identified. As described in the PRDEIR, TAC thresholds used in a regulatory context were compared for their relevance for development projects. The conclusion based on consideration of facts and reasoned analysis allowed the conclusion that 100 in a million is a reasonable cumulative threshold when considering sources within 1,000 feet of a project and that a cumulative contribution of 10 in a million is a reasonable threshold to determine whether a project's contribution is cumulatively considerable.

***Response to WOLFE-10***

Mr. Wolfe restated his assertion that the project incorrectly assumes that the project's impact is not a considerable contribution just because it is not individually significant. He disagrees with the use of a fixed cumulative contribution threshold as opposed to one that changes with greater existing impacts.

The City disagrees with Mr. Wolfe's assertion. As stated in Response to WOLFE-8, the City assessed three options for the cumulative contribution threshold and determined that an increased risk of 10 in a million was appropriate in light of the existing conditions and the cumulative sources that would produce elevated risk in the zone of influence of the project.

There is no compelling reason to invoke a sliding scale of cumulative contribution to risk under the circumstances identified in the PRDEIR. Developing such a threshold for broader application in Visalia would require reasonable estimates of the risks that would be experienced near existing large sources or concentrations of sources throughout the City. Without knowing the amount and extent of elevated risk likely to be experienced, this approach is essentially unworkable. In any event, the application of the cumulative contribution threshold was not required for this project because the impact from existing sources, planned projects and the project did not exceed 100 excess cancers in a million within the zone of influence. Accordingly, a cumulatively significant impact was not

identified and the “second step” of determining whether the project’s contribution to a significant impact was “cumulatively considerable” and thus “significant” under CEQA was never reached.

The requirement to respond to the Court ruling was to find a cumulative threshold supported by substantial evidence that could be applied to the Walmart Expansion Project. The analysis clearly shows that the area analyzed does not have a substantially higher risk that would warrant the application of a different threshold. The project’s cumulative contribution is 3.3 in a million at the Maximally Impacted Receptor impacted by the project and less than one in a million to the receptors outside the analysis radius. Most of the impact from cumulative sources is caused by the freeway and nearby surface streets. As shown in the Cumulative Toxic Assessment, Exhibit 13, Graphic Plot of Cumulative Cancer Risk, there are no sensitive receptors located at the most impacted area in the zone of influence near the freeway interchange with Ben Maddox Way. The sensitive receptor with the highest risk in the zone of influence is the home at the southeast corner of E. Noble Avenue and S. Pinkham Avenue, which has a cumulative risk of about 80 in a million and a project contribution of less than one in a million.

*Response to WOLFE-11*

Mr. Wolfe stated that no evidence was provided that the SJVAPCD intended its 10 in a million project threshold to function as a threshold for considerable contribution. Mr. Wolfe further claimed that the GAMAQI and the Risk Management Policy do not reference existing conditions as the impetus for the SJVAPCD to set a 10 in a million project threshold. The PRDEIR does not claim otherwise, nor does it cite this fact as the reason for its selection of 10 in a million as the incremental threshold that would apply were it warranted by the facts.

The City considered multiple sources in setting the threshold for cumulative contribution using its own independent judgment. As stated in the Cumulative Toxic Threshold Document, the 2002 GAMAQI does not provide a cumulative toxic threshold, and the 2012 Draft GAMAQI indicates that 10 in a million should be used as a cumulative contribution threshold but does not define an existing level of TACs that should be considered significant without the project.

To comply with the Court ruling, the City was required to develop its own threshold for use for this project. The City provided the Cumulative Toxic Threshold Document to support its use of the 10 in a million threshold for cumulative contribution and arrived at its own conclusion regarding the appropriateness of the threshold for use in this project. The level of acceptable risk is a judgment based on fact made by the decision makers. The number of increased cancers per million provides a clear basis for comparison in absolute numbers:

- The best estimate, although highly uncertain, of average community risk is 292 to 489 in a million in Visalia and declining.
- The average risk in the South Coast Air Basin (LA area) was over 1,005 in a million in the year 2000 as reported in the 2009 ARB Almanac at page 5-53.

- The risk level that EPA considers acceptable at the facility and community level is 100 in a million as the goal stated in National Emissions Standards for Hazardous Air Pollutant Standards rulemaking.
- The risk that most Air Districts consider an acceptable risk for development projects and facility permitting is 10 in a million.

Based on full consideration of these factors and the supporting information provided in the PRDEIR and herein, the 10-in-a-million cumulative contribution threshold selected for this project is reasonable.

***Response to WOLFE-12***

Mr. Wolfe quoted a statement from the SJVAPCD Risk Management Policy that it is not intended as a means of reducing total public health exposure to toxic substances in the air from all sources. He concludes from this that the policy is not designed to function as a yardstick in a cumulative impact analysis.

Mr. Wolfe has leaped to a conclusion that because the Risk Management Policy was written for a specific purpose—managing toxic impacts of stationary emission sources, the logic supporting its use for stationary sources cannot be applied to development projects. The Risk Management Policy was prepared by an expert agency with expertise in regulating TAC emissions; it was one of several factors considered for comparison with the impacts of development projects.

The correct interpretation of the SJVAPCD statement in the Risk Management Policy is that the SJVAPCD is only responsible for reducing public health exposure from stationary sources subject to SJVAPCD permit. The ARB's Air Toxic Control Measures and Diesel Risk Reduction Plan are the primary means of reducing public health exposure from other sources of TACs. Appropriately, guidance from these documents also informed the City's deliberations regarding the identification of a threshold of significance for cumulative analysis.

***Response to WOLFE-13***

Mr. Wolfe quoted the goal and purpose of the Risk Management Policy and concludes that provides no meaningful justification for the 10-in-a-million threshold.

As stated earlier, there is no level of emissions of TACs that does not cause some impact due to cancer risk. The City considered all of the facts presented in the Cumulative Toxic Threshold Document to determine that the 10-in-a-million threshold is appropriate. Its use in the SJVAPCD Risk Management Policy is only one factor. The primary considerations are the potential increase in cancer risk in relation to the existing average risk, and regulations in place to reduce risk. Other factors considered include EPA guidance on "acceptable risk," analysis prepared by BAAQMD in support of their cumulative threshold approach, and SJVAPCD Rule 2201 – New and Modified Stationary Source Review. See also Response to WOLFE-8.

*Response to WOLFE-14*

Mr. Wolfe stated that the Risk Management Policy purpose statement contains no fact-based analysis that explains why 10 additional cancers represents an appropriate threshold for significance.

The facts are clear. The Risk Management Policy is not the sole basis of the City of Visalia's TAC threshold as stated above. However, the Risk Management Policy was developed in consideration of the facts available to the District. It is inaccurate to state that the regional agency responsible for implementing state and federal regulations related to toxic emissions used no facts in determining its thresholds. The adopted threshold is consistent with thresholds used by other jurisdictions across the state.

*Response to WOLFE-15*

Mr. Wolfe claimed that the Risk Management Policy is based on factors not permissible under CEQA. The factors cited are scientific, technological, social, and economic factors.

Toxic emission impacts are based on a numeric increase in cancer risk caused by a project, allowing decision makers to easily compare the health impacts of projects. The critical factors in setting the cumulative contribution threshold include the following:

- The magnitude of the existing average region and community TAC impact
- The trend of the impact—getting better or worse?
- Plans and regulations in place to reduce the impact
- The presence of sources near the project that would contribute to elevated levels of risk
- The amount of project contribution that should be considered significant when located in an area with elevated emissions.

The PRDEIR Threshold Document addressed these issues to arrive at the threshold used in the cumulative toxic analysis.

*Response to WOLFE-16*

Mr. Wolfe stated that the significance determination is supposed to measure the level at which harm occurs, not the level which harm might be justified by overriding considerations.

There is no level of TAC impact that does not cause an increase in cancer risk, and therefore the threshold must be set at some level above zero. Using Mr. Wolfe's logic, adding a single truck to the highway would be considered a significant impact that requires a statement of overriding considerations. Agencies with responsibility for determining significant impacts from sources of TACs must identify a level of acceptable risk in light of an existing impact. The approach of stipulating that existing conditions are cumulatively significant and that any project with TAC emissions would make a cumulative contribution proposed by the SJVAPCD in its draft GAMAQI update was not allowed by the Court ruling.

The City chose to identify a cumulative threshold of 100 in a million to identify those areas with elevated TAC impacts from cumulative sources in the project's zone of influence and to apply a cumulative contribution threshold of 10 in a million in areas that exceed the cumulative threshold.

*Response to WOLFE-17*

Mr. Wolfe commented on the SJVAPCD's draft GAMAQI update provisions related to cumulative impact for criteria pollutants. The GAMAQI cites CEQA Guidelines Section 15064(h)(1), which allows compliance with a previously approved plan that will substantially lessen the cumulative impacts of the area where the project is located. He stated that this logic cannot be applied to toxic impacts.

Mr. Wolfe is incorrect. The Diesel Risk Reduction Plan adopted by the ARB will substantially reduce the cumulative impact of the project. The SJVAPCD's attainment plans for ozone and particulate matter will provide reductions from sources of TAC emissions in addition to particulate and ozone precursors.

Furthermore, ARB will continue to seek ways to reduce TAC emissions over time, by strengthening existing regulations and adopting new technology-forcing measure to achieve further reductions over time. Even the ARB's Scoping Plan to reduce greenhouse gases will reduce cumulative toxic exposure, by reducing the use of fuels that generate greenhouse gases for electricity and transportation. The long-term State of California targets in AB 32 and Executive Order S-3-05 are to reduce greenhouse gas emissions to 1990 levels by 2020 and by 80 percent below 1990 levels by 2050. Achieving this goal will require the conversion of motor vehicles and power plants to zero emission and alternative fuel power sources with the side benefit of continued reduction of TAC emissions during the 70-year exposure period used in the health risk assessment. As a highly conservative assumption, the benefits of adopted and planned regulatory changes are not factored into the 70-year risk assessment. The adopted regulations will result continued incremental progress in lowering TAC emissions as old vehicles and mobile equipment are retired and replaced by new models meeting the more stringent requirements. In addition, existing vehicles and equipment are subject to emission retrofit requirements that provide additional reductions from these sources as the regulations are phased in.

Thus, reductions in risk will continue over time, even if no further action is taken by the State.

*Response to WOLFE-18*

Mr. Wolfe quoted a section of the Draft GAMAQI that was included as justification for use of the 10-in-a-million threshold as the cumulative contribution threshold. He concludes that this would result in a case where no individually minor contribution could ever constitute a considerable contribution to a cumulative significant impact.

The City is using its own thresholds for this project, so the Draft GAMAQI has no bearing on the adequacy of its use as a cumulative contribution for the Visalia Walmart Expansion project. The City has determined that the project threshold for this project and the cumulative contribution threshold for areas with locally elevated cancer risk are an increase of 10 in a million, considering all of the factors described in WOLFE-15 and stated in the Threshold Document. The cumulative threshold approach used for this project is not required to address all hypothetical circumstances that could be encountered for any project. It is only required consider the impacts known to exist.

*Response to WOLFE-19*

Mr. Wolfe claimed that wide adoption of the 10-in-a-million project threshold by other Air District's throughout the State, as a project threshold does not justify its use as a cumulative contribution threshold. He further stated that use of the same threshold in areas that have different existing conditions violates CEQA requirement for a two-step threshold that reflects the severity of the cumulative conditions.

Widespread adoption of the threshold shows that a wide variety jurisdictions have examined the facts and come to the conclusion that 10 in 1 million is an appropriate threshold. California has a long history of regulating toxics and has adopted the most stringent regulatory requirements in the country. The State has already identified the areas with high impacts, including locations near high-volume freeways, train yards, ports, and distribution centers. Many studies and plans already address these impacted areas, including:

- Year 2000 Multiple Air Toxics Exposure Study (MATES II)
- 2009 Harbor Community Monitoring Study Saturation Monitoring in the South Coast Air Basin
- ARB Railyard Health Risk Assessments and Mitigation Measures for major railyards throughout the State
- West Oakland Study for the Port of Oakland and associated rail facilities

The high-impact areas have emission and risk amounts many times greater than anything found in Visalia. Special programs are being implemented by state and local agencies responsible to reduce impacts in the areas with the highest risk such as those described in the Emission Reduction Plan for Ports and Goods Movement in California adopted in 2006.

*Response to WOLFE-20*

Mr. Wolfe stated that EPA's range of acceptable risk of one in a million to one in ten thousand is suitable for permitting decisions but not for CEQA.

See Response to WOLFE-18. The threshold amount selected is based on the health risk deemed acceptable by the adopter of the threshold, in this case the City of Visalia. Examining policy

decisions based on regulatory contexts other than CEQA provide facts that can be considered in setting the threshold.

*Response to WOLFE-21*

Mr. Wolfe stated that declining emission trends are not justification for a 10-in-a-million cumulative contribution. He stated that the correct procedure would be to estimate lifetime risk and compare with the threshold and not to combine uncertainties.

The declining emission trends are one of many factors that were considered in setting the threshold. There are many programs and regulations that will cause the sources of emissions from the project and other sources of TAC emissions to decline over time as technology advances. If emissions were increasing and the problem worsening, it would provide more justification for lowering the threshold. Emissions will continue to decline in the face of continued growth. The analysis approach does not combine uncertainties; it limits uncertainty. The analysis calculated the risk based on first-year operational emissions as a worst case analysis, as recommended by the SJVAPCD. This approach reduces uncertainty regarding implementation of regulations in the future to reduce TAC emissions over the 70 year analysis period. See also Response to WOLFE-17.

*Response to WOLFE-22*

Mr. Wolfe claimed that the cumulative contribution threshold did not consider ambient conditions, are not health based, and are based on factors unrelated to a CEQA determination.

Mr. Wolfe's assertions are without merit. The ambient conditions are extensively discussed in the PRDEIR. The lack of monitoring of toxic emissions in the City of Visalia prevents identifying actual existing conditions based on measurement. The level of emissions can only be approximated based on monitoring conducted in Fresno and incomplete emission inventories developed by the ARB for the City of Visalia. The average risk in Visalia is expected to be between 292 and 489 in a million as stated in Response to WOLFE-2. The thresholds are health-based, i.e., increased risk of cancer within a population of 1 million, which are used by regulatory agencies including the SJVAPCD and EPA as acceptable levels of risk and are recommended by many air districts as thresholds of significance in CEQA determinations.

*Response to WOLFE-23*

Mr. Wolfe stated that the use of the Maximally Exposed Individual from the project as the only receptor location analyzed for the cumulative analysis did not account for impacts to receptors closer to largest cumulative source (SR-198).

Several options for identifying receptor locations for cumulative analysis were considered during the preparation of the Threshold Document. The logic behind selecting the maximally exposed individual (MEI) was that all other receptors would receive a lesser impact from the project. For example, the project's contribution to cumulative risk at the MEI would be 3.3 in a million, while the cumulative risk to the MEI is 27.2 in a million, including the project.

The receptor with the highest cumulative risk *within the zone of influence* is located at the southeast corner of E. Noble Avenue and S. Pinkham Avenue. The project's contribution at that receptor is less than 1.0 in a million, while the cumulative impact at that location including the project is approximately 80 in a million as shown on Exhibit 13 of the Cumulative Health Risk Assessment. Cumulative risk at both locations is below the threshold for significant cumulative impact.

The point of maximum impact from cumulative sources in the zone of influence is near the SR-198 and Ben Maddox Way interchange where the risk is 217 in a million; however, there are no sensitive receptors at that location.

As such, the MEI was considered the most relevant and conservative option for evaluating cumulative risk.

***Response to WOLFE-24***

Mr. Wolfe indicated that geographic justification for the 1,000-foot radius for determining sources ignores receptors other than the Maximally Exposed Individual. He stated that CEQA requires an agency to justify the limitation of the affected area, not just the geographic scope limitation of the emissions sources, and the agency must define the area affected by the cumulative effect and provide a reasonable explanation for the geographic limitation used.

See Response to WOLFE-23 regarding receptor locations. The PRDEIR provides a detailed discussion justifying the geographic scope limit used in the cumulative analysis on page 26 of the Cumulative Toxic Threshold Document. The geographic scope discussion includes a caveat: "... a larger radius may be appropriate if a particularly large source is located beyond 1,000 feet from the project and should be considered on a project-by-project basis." The cumulative analysis used in the PRDEIR used a 1,500-foot radius to include even relatively small sources (a rail line, a food processing facility, a car dealership, a restaurant, and a gasoline station) outside the 1,000-foot radius. Review of planned projects identified by the City, air quality permitting records and visual assessment identified no other sources with the potential to add substantial risk farther from the site.

***Response to WOLFE-25***

Mr. Wolfe stated that the PRDEIR must be revised and recirculated to provide a justification for the limited geographic scope of the area affected by the cumulative effect.

The City strongly disagrees with this conclusion. The PRDEIR identified the existing community risk to the extent possible, considering there is no TAC monitoring data available for the City of Visalia, the emission inventory of TACs in Visalia is incomplete, and the TAC monitoring data collected for other San Joaquin Valley locations is incomplete and out of date. The PRDEIR provided justification for use of a 1,000-foot geographic scope based on rapid decrease in risk with distance from the source due to dispersion. The dispersion modeling conducted for the PRDEIR (Exhibit 8 of the Cumulative Health Risk Assessment) showed that the project's contribution was less

than one in a million at sensitive receptors beyond 1,000 feet from the project. Sources located beyond the 1,000-foot radius that would contribute impacts to the area around the project are subject to the same dispersion effects. This is illustrated graphically in Exhibit 13 of the Cumulative Health Risk Assessment. The risk from the largest source analyzed in the cumulative assessment, State Route 198, drops from 60 in a million adjacent to the freeway to less than 20 in a million at a distance of 1,000 feet south of the freeway.

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COMM. DEVELOP.  
CITY OF VISALIA

December 30, 2012

Andrew Chamberlain  
City of Visalia Community Development Department  
315 East Acequia Avenue  
Visalia, CA 93291

Subject: Comments on Walmart Expansion Project EIR (State Clearinghouse  
Number 2008121133)

Dear Mr. Chamberlain:

I have three concerns with the Walmart Expansion Project that I would like to bring to the City's attention and have included in the record when the City Council considers re-approving this project.

First, the EIR should be revised and re-circulated to address changed conditions in the City's economic and environmental setting regarding "urban decay." The EIR says even though the project and related projects may result in the closure of up to 6 grocery stores, these impacts are not significant and need not be mitigated because the store closures are unlikely to result in significant physical deterioration. This analysis must be revised to address changes in the existing setting in Visalia. Since the list of related projects was developed in 2009 (Draft EIR p. 28) several new grocery retailers have entered the market. These include:

- New Walmart Supercenter at South Mooney Blvd.
- Two Target stores have added full grocery sections not present in 2009.
- Vallarta Market now operates in Visalia
- Smart & Final (omitted from prior analysis)
- Walmart "Neighborhood Market" currently under construction in Visalia

These stores add substantial square footage and hours of operation to the Visalia grocery market – but there has not been any substantial increase in population to support this increase. This means revenue comes at the expense of existing retailers and results in an increased likelihood that existing neighborhood supermarkets will close. Not only is this a physical impact resulting from creating increased vacant retail space which, according to the EIR, is likely to lead decreased maintenance and physical deterioration (Draft EIR

p. 49), but displacing convenient neighborhood shopping, in favor of the Walmart project also presents a significant physical impact to the environment – independent of physical deterioration. The established neighborhoods around these supermarkets rely on the close and convenient conventional grocery shopping and displacing that shopping choice will require residents to travel further for these amenities increasing vehicle travel and air pollution and impairs planning and rehabilitation efforts in Visalia.

1  
CONT

I believe the EIR must be revised to address how the elimination of Redevelopment will affect blight-fighting activities in Visalia. This tool is no longer available thanks to ABx1-26. According to a December 30, 2011 article in the Visalia Times-Delta,

Visalia City Manager Steve Salomon said the decision [upholding the Legislature's elimination of Redevelopment] was expected but added that the ruling will also mean cities will need to get creative to redevelop blighted areas. "We may have to use new tools to help improve areas of the city," he said. "There were very real things that this money helped with. We won't be able to do as much as we did before."

And this problem has not been resolved one year later. In a *Fresno Bee* article published on Christmas day this week regarding Lemoore's lawsuit with the State over redevelopment funds, the Visalia City Manager stated that the City is also in a dispute with the State over spent redevelopment money: " 'It wouldn't be surprising if there are numerous ones of these,' Visalia City Manager Steve Salomon said. Visalia is disputing the state's claim to a pot of Visalia Redevelopment Agency money that was loaned by the city but never spent, Salomon said."

2

According to the California Redevelopment Association, "There are hundreds of communities throughout California with neighborhoods and business districts that are struggling economically and socially. The abandoned gas station, dilapidated housing project, and a vacant strip mall that is continually vandalized are all examples of deteriorated and blighted areas. Revitalization of these areas does not happen on its own. Often, the private sector is reluctant to invest in such areas because the risk and costs associated with doing so outweigh the benefits. Redevelopment serves as a catalyst for private investment by providing the initial plan and seed money that ultimately breathes new life into areas in need of economic development and new opportunity." (<http://www.calredevelop.org/external/wcpages/wcwebcontent/webcontentpage.aspx?contentid=266>)

The absence of these formerly available "catalysts for private investment" presents a substantial change from the physical conditions in Visalia in 2009-2010. Without these tools and resources, the City will find itself in a much more difficult position to remove and prevent physical deterioration and blight. This must be addressed in the EIR – both existing blight and how it will be combated without redevelopment. And in my opinion,

Walmart, not the taxpayers, should be required to mitigate these impacts. Requiring anything less is a disservice to the voters and taxpayers of this community.

2  
CONT


Second, the EIR fails to account for substantial increased solid waste production from the project including Walmart's preference for PLA corn plastics in its packaging and impacts to recycling centers. Walmart has been taken to task in other communities for failing to adequately address its solid waste impacts in its EIRs. This EIR shares the same problem. The EIR should be revised and re-circulated to address how the 163 tons per year of solid waste expected to be generated by the project will be land-filled, recycled, or composted. The EIR does not include this information other than to say the ratio of Walmart's waste is relatively small to the overall capacity of the landfill.

3

Third, the project is a regional-serving store rather than a neighborhood or community level store and this conflicts with the City's General Plan. The City's General Plan distinguishes these use types at policies 3.5.6-10 noting the importance of segregating regional land uses from those for "community-, neighborhood-, or convenience-level draw only." The project's P-C-SO zoning is intended to provide "areas for a wide range of neighborhood and community level retail commercial and office uses...[and] neighborhood goods and services where shopping centers may not be available." Zoning Code section 17.18.010(B)(2). The General Plan plainly says that properties labeled as Shopping/Office Centers include areas "*previously* designated for local retail (C-2.5), neighborhood, community, and regional commercial uses" but now "Generally characterized as strip or linear in nature and *serving a non-regional market area.*" Because this project is intended to draw from a large region rather than serving only the neighborhood or community its approval would now be inconsistent with the General Plan designation. Accordingly the project must be denied or, alternatively, the General Plan must be amended.

4

Thank you for your attention to these comments. Please include me on any notification lists for the project and EIR and keep me updated of any revised documents or public hearings.

Sincerely,   
3130 W. Sedona Ave.  
Visalia, Ca.  
93291



## **Individuals**

### ***Daniel S. Knight (KNIGHT)***

#### ***Response to KNIGHT-1***

The commenter claimed the EIR should be revised and recirculated to “address changed conditions in the City’s economic and environmental setting regarding ‘urban decay,’” namely the “several new grocery retailers that have entered the market.”

First, the Partially Recirculated Draft EIR’s was prepared in response to a Court Ruling that the EIR prepared and certified for the Visalia Walmart Expansion did not contain a legally adequate analysis of the project’s potential to result in cumulative toxic air contaminant (TAC) impacts. The remainder of the EIR was upheld and remains valid, not open to new comments. Further, the PRDEIR does not contain any new information or analysis pertaining to urban decay, nor have any of the Draft EIR’s conclusions on this topic changed. In accordance with CEQA Guidelines Section 15088.5, this subject is not open for re-examination in comments or by way of further legal challenge.

For informational purposes only, the commenter should be aware that each of the “new” grocery retailers he identifies were all addressed during the original EIR certification process (in the EIR and responses to comments); the commenter presents nothing new or significant. The requirements for the revision and recirculation of an EIR set forth in CEQA Guidelines Section 15088.5 certainly have not been met.

For the commenter’s information, the following individuals provided comments on the DEIR Retail Market Impact Analysis that referenced these projects (with the exception of the Vallarta store, which was addressed in the DEIR itself):

- Responses to Mark Wolfe’s comment letter (November 29, 2010)
- Responses to Mark Wolfe and Jim Watt comment letters (April 25, 2011)
- Responses to Area Research Associates comment letter (May 16, 2011)

On June 9, 2011, The Natelson Dale Group, Inc. (TNDG) provided responses to all of the comments from the individuals identified above. An abbreviated summary of TNDG’s responses is provided in Table 2-1.

**Table 2-1: Summary of The Natelson Dale Group, Inc.’s Responses to Comments**

Referenced Project	TNDG Responses
New Walmart Supercenter at S. Mooney Boulevard	This Supercenter was not a known cumulative project at the time the DEIR Retail Market Impact Analysis was prepared (January 4, 2010). Notwithstanding the above, TNDG carefully considered the referenced project as part of the response to late EIR comments submitted by Mark Wolfe and Jim Watt on April 25, 2011 (the date of the Planning Commission hearing for the proposed project). In those responses, TNDG specifically documented that the inclusion of the newly identified project would be more than offset by the withdrawal or downsizing of other projects that were included on the original cumulative projects lists (see DEIR Section I, Project Description, Table 3: Approved, Pending, and Reasonably Anticipated Projects).
Two Target stores w/added grocery	The Target expansions were not known cumulative projects at the time the DEIR Retail Market Impact Analysis was prepared (January 4, 2010). Nonetheless, TNDG carefully considered the referenced projects in question as part of the response to late EIR comments submitted by Mark Wolfe and Jim Watt on April 25, 2011 (the date of the Planning Commission hearing for the proposed project). In those responses, TNDG specifically documented that the inclusion of the three newly identified projects (including the Supercenter discussed above) would be more than offset by the withdrawal or downsizing of other projects that were included on the original cumulative projects lists (see DEIR Section I, Project Description, Table 3: Approved, Pending, and Reasonably Anticipated Projects).
Vallarta	This store, which is now open, was included as a cumulative project in the DEIR Retail Market Impact Analysis. See page 19, Table III-4. In addition, this project was evaluated in the cumulative analysis related to supermarket impacts. See Table III-6A (page 26) and Table III-6B (page 28).
Smart & Final	This existing store was not evaluated in supermarket analysis of the DEIR Retail Market Impact Analysis. However, the Final EIR thoroughly addressed the issue in responses to comments from Mark Wolfe. See Final EIR at pages 83-84. The response showed that even including this store in the supermarket category would not change the report’s overall conclusions.
Walmart Neighborhood Market - UC	The Draft EIR included an undisclosed 72,000 square foot (sf) supermarket (Southeast Corner W. Houston Ave. and N. Demaree St.) in the cumulative analysis section of the Retail Market Impact Analysis. The entitlement for the supermarket at this location was reduced to 35,000 sf. The project is now being developed as a Neighborhood Market (Walmart’s stand-alone grocery store concept). Thus, regardless of whether Walmart or another grocer opened a location at this site, a supermarket use was included in TNDG’s cumulative impacts analysis, at more than twice the square footage of the grocery use that actually developed here.

Thus, even after accounting for projects that were announced subsequent to the preparation of the DEIR report (the two Target grocery expansions and the additional Walmart supercenter), the EIR’s

analysis concluded that the proposed project would not result in urban decay in the evaluated trade area.

*Response to KNIGHT-2*

Mr. Knight stated that the Partially Re-Circulated EIR should be revised “to address how the elimination of Redevelopment will affect blight-fighting activities in Visalia.” He stated that the cessation of redevelopment is a “substantial change” from the physical conditions in Visalia in 2009-2010. He reasons that since this “tool is no longer available,” the EIR must be revised to evaluate “existing blight and how it will be combated without redevelopment.” The author opines that Walmart should pay to mitigate “these impacts.”

The Partially Recirculated Draft EIR was prepared in response to a Court ruling that the EIR prepared for the Visalia Walmart Expansion Project approved June 20, 2011 did not contain a legally adequate analysis of the project’s potential to result in cumulative toxic air contaminant (TAC) impacts. The remainder of the EIR was not set aside, and so it remains valid. The PRDEIR does not contain any new information or analysis pertaining to urban decay, nor have any of the Draft EIR’s conclusions on this topic changed. In accordance with CEQA Guidelines Section 15088.5, with respect to any topic aside from cumulative TAC impacts, the EIR is not open for re-examination in comments or by way of further legal challenge.

For informational purposes, the commenter is referred to the Draft EIR’s Urban Decay analysis in Section II. Environmental Setting, Impacts, and Mitigation Measures A. Land Use Planning, Impact A3. Potential for Urban Decay Due to Economic Impacts. The EIR carefully explains what urban decay is and how it can result from a project. Urban decay and “blight” are not interchangeable terms, and the Draft EIR had no obligation to evaluate existing blight or potential future blight, since the project does not trigger redevelopment law requirements. Changes to this law do not impact the project or cause the project to result in any new significant impacts such that CEQA Guidelines Section 15088.5 would require revision of the Draft EIR. The Draft EIR’s reference to the redevelopment activities undertaken by the City of Visalia does not change this fact. Those activities have no bearing upon the Draft EIR’s analysis of the project’s potential to result in urban decay, and they were not the basis for the conclusion that the proposed project would not have related significant impacts. Rather, the conclusion that urban decay impacts would be less than significant was largely predicated on the likelihood of sufficient demand for the proposed project’s new grocery sales, which serves to limit sales diversions from competing retailers. Refer to Response to KNIGHT-1 for further discussion.

*Response to KNIGHT-3*

Mr. Knight stated that the Partially Re-Circulated EIR failed to account for substantial increased solid waste production from the project, specifically associated with Walmart’s preference for PLA corn plastics in its packaging. The author asserted that the EIR should be revised and re-circulated to address how the 163 annual tons of solid waste will be landfilled, recycled, or composted.

The Partially Recirculated Draft EIR's was prepared in response to a Court Ruling that the 2011 EIR prepared for the Visalia Walmart Expansion Project's EIR did not contain a legally adequate analysis of the project's potential to result in cumulative toxic air contaminant (TAC) impacts. The remainder of the EIR was not set aside and is not open to new comments or criticism. Accordingly, the PRDEIR only evaluates the topic of cumulative TAC impacts. It does not contain any new information or analysis pertaining to solid waste, nor did any of the EIR's conclusions on this topic change. In accordance with CEQA Guidelines Section 15088.5, this subject is not open for re-examination.

For informational purposes only, the commenter is referred to the Draft EIR's evaluation of solid waste impacts set forth in Section L, Public Services. The Draft EIR estimated that the proposed project would generate 163 tons annually. For the purposes of providing a conservative analysis, the Draft EIR assumed that all 163 tons (including PLA packaging) would be landfilled at the Visalia Disposal Site, even though the existing Walmart store employs a number of waste diversion and recycling practices. Under this scenario, the proposed project's solid waste would represent 0.02 percent of the permitted daily throughput at the Visalia Disposal Site—an insignificant amount. For these reasons, the Draft EIR concluded that the proposed project's solid waste impacts were found to be less than significant. Refer to Draft EIR page 294 for further discussion.

***Response to KNIGHT-4***

Mr. Knight commented that the proposed project is inconsistent with several policies of the City of Visalia General Plan because it is a regional-serving store and not a neighborhood-serving store.

The topic of Land Use is not open for re-examination or further legal challenge. The Partially Recirculated Draft EIR's was prepared in response to a Court Ruling that the 2011 EIR prepared for the Visalia Walmart Expansion Project did not contain a legally adequate analysis of the project's potential to result in cumulative TAC impacts. The remainder of the EIR was upheld. Accordingly, the PRDEIR evaluates only the topic of cumulative TAC impacts. It does not contain any new information or analysis pertaining to land use or General Plan consistency, nor did any of the 2011 EIR's conclusions on this topic change. In accordance with CEQA Guidelines Section 15088.5, this subject is not open for re-examination. The author may refer to the Draft EIR's Land Use section for information relating to his comments as well as the City's responses to Mark Wolfe and Jim Watt comment letters (April 25, 2011 and May 16, 2011) and the underlying report from Area Research Associates (May 16, 2011).

## **Appendix L: Relevant Portions of Late Comments from M.R. Wolfe**



May 16, 2011

**By E-Mail  
Acknowledgement of Receipt Requested**

Hon. Robert R. Link, Mayor  
Members of the City Council  
c/o City Clerk  
City of Visalia  
315 E. Acequia Ave  
Visalia CA 93291  
cityclerk@ci.visalia.ca.us

**Re: Appeal of April 25, 2011 Planning Commission Actions Certifying  
EIR and Approving Conditional Use Permit and Variance For  
Expansion Of Walmart Store, 1818 E. Noble Avenue**

Dear Mayor Link and Councilmembers:

This letter is submitted on behalf of the Visalia Smart Growth Coalition, the appellant in the above-referenced matter. For the reasons set forth below, we urge the Council to UPHOLD the Coalition's appeal and to DENY certification of the EIR and approval of the conditional use permit and variance for the Walmart Expansion Project ("Project").

As you are aware, we previously commented extensively on the Project's Draft EIR, pointing out several informational deficiencies and analytic flaws in the document. Our comments requested that the EIR preparers provide additional necessary documentation and evidentiary support for the Draft EIR ("DEIR")'s questionable conclusions that with the narrow exception of temporary construction noise, all of the Project's environmental impacts would be less than significant after mitigation. The responses to our comments in the Final EIR ("FEIR") released last month failed to address the vast majority of our concerns and failed to provide the information sought. Accordingly, using the short amount of time available between the release of the FEIR and the hearing before the Planning Commission, we prepared and sent another letter to the Commission explaining how the FEIR failed to respond adequately to our comments and continued to omit necessary, material information from its analysis.

Now, on appeal, we have received a lengthy staff report that purports to provide additional information and evidence prepared by the EIR preparer. It is important to note that this information and evidence does not appear in the EIR itself. On the contrary, it is

contained in a document released one business day before the hearing on the appeal. Hence, the Coalition and other concerned Visalia residents have been deprived of any meaningful opportunity to review and consider this additional information. Worse, the City Council itself is left with an incomplete record upon which to base an important land use decision that will affect economic growth and development patterns in the City for years to come.

Accordingly, in an attempt to address this analytic and informational deficit, we consulted with technical experts in the areas of traffic, noise, and air quality, to obtain their professional opinions regarding whether the EIR adequately addresses the Projects numerous and diverse environmental impacts, and whether significant unmitigated impacts will occur notwithstanding the EIR's conclusions. The opinions of these experts are appended to this letter, together with their respective *vitae*, and are incorporated by reference here. In the sections of this letter that follow, we offer summaries of their main conclusions within the context of CEQA's legal framework. As you will see, each expert concludes the Project will have significant impacts that the EIR has either failed to evaluated or mitigate or has ignored entirely.

**A. AIR QUALITY IMPACTS ARE INADEQUATELY EVALUATED AND ARE SIGNIFICANT**

**1. Toxic Air Contaminants**

Diesel delivery trucks and diesel customer vehicles at the Project site will generate toxic air contaminants (TACs) that will be inhaled by sensitive receptors at adjacent residences. Existing TACs in the area are at a level that causes about 100 excess cancers per one million population. These existing TACs are caused by diesel vehicle in the vicinity, including delivery trucks and customer vehicles already serving the Project site, vehicles attracted to the neighboring commercial site, and vehicles on SR 198, directly north of the project site. Despite the high level of existing TACs, the EIR simply refused to consider the cumulative effects of the Project's TACs taken together with the existing TAC emissions. This violates fundamental CEQA principles for cumulative impact analysis.

**a. Inadequate Cumulative Impact Analysis**

CEQA requires agencies to find impacts significant when a project "has possible environmental effects that are individually limited by cumulatively considerable." Guidelines, § 15065(a)(3). "[A] cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts." *Id.*, § 15130(a)(1). "Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." *Id.*, § 15355(b); *Los Angeles Unified School Dist. v. City of Los Angeles* ("LAUSD")(1997) 58 Cal.App.4th 1019, 1024-25. "The requirement for cumulative impact analysis must be interpreted so as to afford the fullest possible protection of the

environment . . .” because de-emphasizing cumulative impacts “impedes meaningful public discussion and skews the decision maker’s perspective . . . .” *Citizens to Preserve the Ojai v. County of Ventura* (1985) 126 Cal.App.3d 421, 431-432.

Cumulative impact analysis is a two-step process that requires an agency to answer two questions: (1) whether the combined impacts of the project and other projects are significant, and (2) if so, whether the project’s own effect is cumulatively considerable. Guidelines, § 15130(a); *see* Kostka and Zischke, *Practice Under the California Environmental Quality Act* (2<sup>nd</sup> Ed., 2011 Update), § 13.39; Remy, Thomas, et al, *Guide to CEQA* (11<sup>th</sup> Ed., 2007), pp. 474-475. The analysis must consider all sources of “related impacts,” including past, present, and foreseeable future projects. Guidelines, § 15130(a)(1), (b); *LAUSD, supra*, 58 Cal.App.4<sup>th</sup> at 1024-1025. Conclusory analysis is not sufficient; reasoned analysis is required. *Whitman v. Bd. of Supervisors* (1979) 88 Cal.App.3d 397, 411.

Importantly, an EIR may not conclude a cumulative impact is insignificant merely because the project’s contribution to an unacceptable existing condition is relatively small or cannot be measured. Courts have squarely rejected the “ratio theory,” which would trivialize a project’s incremental effect if the cumulative conditions without the project are already bad. *LAUSD, supra*, 58 Cal.App.4<sup>th</sup> at 1025-1026; *Communities for a Better Environment v. California Resources Agency (“CBE”)* (2002) 103 Cal.App.4<sup>th</sup> 98, 117-118, 121 (invalidating CEQA Guidelines provision that *de minimis* impacts are less than considerable); *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718. Indeed, the worse the existing conditions, the smaller the project increment needs to be in order to be found to be a considerable contribution.

A cumulative impact analysis of air quality emissions is required to consider all sources of emissions from *past, present, and reasonably foreseeable probable future projects*. CEQA Guidelines, § 15355(b); *see also* CEQA Guidelines, § 15130(b)(1)(A); SJVAPCD, *Guide to Assessing and Mitigating Air Quality Impacts*, § 5.9.<sup>1</sup> Here, as Autumn Wind explains, the EIR fails to provide an adequate analysis of cumulative impacts.

The EIR fails to provide the required two-step analysis of cumulative impacts. First, it refuses to make any determination as to whether there is a significant cumulative problem based on existing and future emissions. Second, it fails to include existing TAC sources in the cumulative impact analysis. Third, it fails to recognize that the determination whether a project’s incremental TAC emissions are a considerable contribution must recognize that emissions may be individually minor, but nonetheless constitute a considerable contribution to a cumulatively significant impact.

In response to objections that the DEIR failed to assess the significance of total

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<sup>1</sup> The DEIR expressly references and relies upon the SJVAPCD Guide to Assessing and Mitigating Air Quality Impacts, at p. 243. The document is hence properly part of the EIR and is incorporated in full by reference here.

TAC emissions in the Project vicinity, the FEIR claims that there are no available standards. FEIR, p. 82. However, making a significance determination is a critical requirement of a lead agency, and it requires an agency to exercise careful judgment based on scientific and factual data. CEQA Guidelines, § 15064. An agency may not simply duck the question. Furthermore, as Autumn Wind demonstrates, there are in fact available standards. For example, the Bay Area Air Quality Management District employs a threshold of 100 incremental cancers in one million as the basis of cumulative impact analysis. The USEPA also recommends a risk level of 100 excess cancers in one million for community-level risk assessments for hazardous air pollutants.

The DEIR and FEIR fail to consider the cumulative effects of TACs from past and present projects, *e.g.*, the existing Walmart operations, the adjacent commercial center, and SR 198. Indeed, the FEIR argues that existing TAC emissions should *not* be considered because they are part of baseline emissions, except in the “unusual” circumstance of a previously permitted project that has yet to become operational at the time the baseline is established. FEIR, pp. 81-82. This simply misstates CEQA’s requirements. Based on this misunderstanding of CEQA, the EIR concludes erroneously that there *are* no other sources of cumulative emissions, because the EIR only considers the potential for cumulative impacts from *future* projects.

The FEIR claims that the 10 in one million threshold used to determine whether the Project’s impacts are *individually* significant “was established in consideration of the existing environmental conditions.” FEIR, p. 82. This claim is entirely unsupported by SJVAPCD’s Guide to Assessing and Mitigating Air Quality Impacts or its Risk Management Policy, which make no reference to existing conditions in connection with the explanation of the 10 in one million threshold of significance. Furthermore, the contention that this 10 in one million threshold is used by other districts (FEIR, p. 80), which admittedly have different existing TAC risks (FEIR, p. 82), demonstrates that this risk threshold is *not* dependent on existing conditions.

Finally, CEQA recognizes that individually minor emissions may be a considerable contribution to a cumulatively significant impact. The EIR would violate this principle if it purports to use the 10 in one million threshold as the basis for determining *both* 1) whether Project-specific TACs are individually significant and 2) whether these TACs make a considerable contribution to a significant cumulative impact. Using the same threshold for *both* determinations simply fails to recognize that the determination of a considerable contribution must be context-dependent.

As Autumn Wind demonstrates, there is substantial evidence that the Project’s TAC emissions do constitute a considerable contribution to a cumulatively significant impact. This conclusion is based on a reasonable threshold for cumulative significance of 100 excess cancers, the likelihood that the Project area is already at or above this level, and the fact that the Project will materially increase this risk.

b. Unjustified Significance Criterion for Project-Specific Impacts

Comments objected that the EIR uncritically relies on the Air District's threshold of significance for project-specific TAC emissions. In response, the FEIR simply cited the Air District guidance (GAMAQI) and its Risk Management Policy for Permitting New and Modified Sources.

As Autumn Wind indicates, these documents provide no evidence that the Air District took ambient (existing cumulative) conditions into consideration in setting this threshold. In fact, the Risk Management Policy expressly states that it is "not intended a means of reducing *total public health exposure to toxic substances in the air from all sources*." SJVAPCD, Risk Management Policy for Permitting New and Modified Sources, p. 1, emphasis added. Furthermore, the Risk Management Policy clearly disavows responsibility for cumulative impacts as beyond the scope of the policy, adverting to other efforts, including efforts by local agencies, to address them: "[a] reduction in overall public exposure will require a coordinated effort by Federal, State and local agencies and is beyond the scope of this Risk Management Policy. Clearly, the policy was not designed to function as a yardstick in a cumulative impact analysis under CEQA.

Indeed, the Risk Management Policy provides *no* meaningful justification for the 10 incremental cancers per year threshold. The entire statement of purpose consists of the following:

"The goal of risk management is to reduce public exposure to toxic air contaminants to a level as low as reasonably achievable. This level is determined by weighing all relevant scientific, technological, social, and economic factors.

"The purpose of this risk management policy is to minimize the increase that new or modified stationary sources add to the existing toxic load in the public's breathing air. Therefore, the provisions of this policy are only to be used in evaluating permit applications for new and modified stationary sources. This policy is not intended as a means of reducing total public exposure to toxic substances in the air from all sources. A reduction in overall public exposure will require a coordinated effort by Federal, State and local agencies and is beyond the scope of this Risk Management Policy." *Id.*

Aside from disavowing responsibility for cumulative impacts, this statement of purpose contains only the generally stated objective to reduce exposure to a level as low as is "reasonably achievable," after weighing "all relevant scientific, technological, social, and economic factors." *Id.*; see also FEIR, p. 80. The statement contains no fact-based analysis that to why 10 additional cancers represents an appropriate threshold for determining significance. For example, there is no identification of the relevant scientific, technological, social, and economic factors or explanation of how those factors were weighed against human health concerns.

Furthermore, the FEIR's response demonstrates that the significance determination is based on factors that are not permissible under CEQA in a significance determination. The Air District may be mandated to consider scientific, technological, social, and economic factors in promulgating its Risk Management Policy under its statutory permitting mission. However, under CEQA, a different statutory scheme, these factors are not in play until *after* an agency has determined significance.

A CEQA significance determination is supposed to measure the level at which harm occurs, not the level at which harm might be justified by overriding considerations. Scientific, technological, social, and economic factors may only be considered in a statement of overriding considerations if and when the impact is found significant and unavoidable. CEQA Guidelines, § 15093(a). Because the EIR bases its significance determination on factors that are unrelated to health effects, it conflates the determination of significance and the determination whether there are overriding considerations. But CEQA does not permit an agency to dispense with a careful analysis of significance simply by identifying overriding considerations. *Berkeley Keep Jets Over the Bay v. Board of Port Commissioners* ( 2001) 91 Cal.App.4th 1344, 1371. Furthermore, since overriding considerations are at play here, the EIR should have acknowledged a significant impact and then identified the overriding considerations.

In sum, the FEIR fails to provide a reasoned justification for the threshold of significance. Its response reveals that 1) the threshold was not set in consideration of ambient conditions, 2) there is no health-based justification of the threshold, and 3) the threshold is expressly based on factors that are unrelated to determination of significance under CEQA. The City's uncritical reliance on this threshold is an abdication of its responsibility to exercise independent judgment. The FEIR's responses are inadequate. The significance determination is not based on substantial evidence and fails to meet CEQA's informational goals.

c. Inconsistent statements of risk

As Autumn Wind points out, the DEIR reports that the Project will result in a maximum increased cancer risk for residential exposures of 3.4 cancers in one million. DEIR, p. 255, Table 31. The DEIR references the health risk assessment in Appendix I for this conclusion. However, Table 3-12 in Appendix I identifies the net increased cancer risk for residential exposure as 8.6 cancers in one million. The risk to off-site workers also differs in the EIR and in its Appendix I. This unaccountably inconsistent statement of the magnitude of the health risk renders the EIR deficient as an informational document.

Pages 7 through 25 of these comments raise issues unrelated to the subject matter of this Partial Recirculated EIR and for this reason have been removed. A full and correct copy of the entirety of Mr. Wolfe's Late Comments is part of the Administrative Record in the Superior Court Case *Visalia Smart Growth Coalition vs. City of Visalia, et al.*, Case No. 11-2433353, and is available for review at the City Planning Department upon request.

**E. IF THE COUNCIL DETERMINES TO APPROVE THE PROJECT NOTWITHSTANDING THE EIR'S INADEQUACY AND THE PROJECT'S INCONSISTENCY WITH THE GENERAL PLAN, IT SHOULD APPROVE THE ENVIRONMENTALLY SUPERIOR "REDUCED PROJECT SIZE" ALTERNATIVE.**

Much of the Project's unmitigated traffic, air quality, noise, and urban decay impacts stem from its sheer size. Indeed, the EIR itself expressly acknowledges that the "Reduced Project Size" Alternative – an expansion of 28,400 sq ft – would lessen the Project's impacts "in most categories," including these. Accordingly, the EIR identifies this alternative as the "environmentally superior" alternative among those other than the "no project" alternative. The EIR rejects this alternative, however, on grounds that it would not "go as far" as meeting the project's basic objectives as enumerated in Section I.D. of the Draft EIR. We submit there is no evidence to show that the smaller Project alternative would not achieve all of the Project objectives. More importantly, given that the selected Project alternative will have significant unmitigated effects as we have shown, selection of the smaller Project alternative is necessary if the proposed findings regarding impact significance are to be supportable by substantial evidence.

**F. CONCLUSION**

For all the foregoing reasons, and as elaborated in the attached consultant reports, the EIR for this Project is fundamentally deficient in its analysis of the Project's environmental impacts. The evidence now before the City Council plainly establishes that notwithstanding the EIR's conclusions, the Project will have several significant unmitigated impacts. We respectfully request the Council to uphold the appeal and DENY certification of the EIR. Thank you for your consideration

Yours sincerely,

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

A handwritten signature in blue ink, appearing to be 'J2' or similar, written over a light blue circular stamp.

Mark R. Wolfe  
John H. Farrow

JHF:am  
attachments



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May 16, 2011

Mr. John Farrow  
M.R. Wolfe and Associates  
1 Sutter St., Suite 300  
San Francisco CA 94104

**RE: Visalia Walmart Expansion EIR**

Dear Mr. Farrow:

Thank you for the opportunity to comment on the proposed Visalia Walmart Expansion. As demonstrated in the attached statement of qualifications, Autumn Wind Associates is well qualified to prepare this evaluation based on our experience evaluating air quality issues for numerous public and private clients. We have reviewed the Draft and Final EIR and the relevant technical appendices prepared for the proposed project. For the reasons set forth below, we believe that the EIR fails to provide a reasoned, substantive basis for its conclusions.

**I. Proposed Project Makes a Considerable Contribution to the Significant Cumulative Impact of Cancer Risk from Toxic Air Contaminants**

**1. Background**

The proposed project would cause the use of diesel-powered vehicles and equipment during construction, additional diesel truck trips to deliver products to the store, and some customer and employee trips in diesel passenger cars and trucks. The particulate matter (PM) in diesel exhaust is classified as a toxic air contaminant (TAC) because of the associated long-term cancer risk as well as other short-term health impacts.

The DEIR concluded that the project-specific risk from TACs is not significant because the proposed project would cause an additional cancer risk of 3.4 cases

per million persons<sup>1</sup>, which is less than the significance threshold of 10 cases per million. (DEIR, 255)

The DEIR additionally claims that the cumulative cancer risk is less than significant in the near-term because there are “no other proposed projects” in the vicinity of the proposed project, and also less than significant in the long-term because the General Plan does not include significant commercial development in the vicinity. (DEIR, 258-259)

As described below, the DEIR and FEIR include critical analysis errors that result in a failure to disclose a considerable contribution to cumulative cancer risk.

## **2. Proposed Project Adds a Considerable Contribution to Existing Cancer Risk**

There are two steps involved in preparing a cumulative impact analysis. In step one, the lead agency determines if the emissions and risk from past, present, and foreseeable future projects, together with the emissions and risk from the proposed project, is significant. In step two, if there is a significant cumulative impact found in step one, the lead agency must determine if the project’s contribution to that impact is considerable. A project contribution could be considerable even if the impact is not individually significant.

In the proposed project DEIR, the cumulative impact analysis is flawed because it fails to recognize that existing sources of TACs must be included in the step one determination of whether there is a significant cumulative impact. The existing Walmart store creates TAC emissions from delivery truck trips and other diesel sources such as transport refrigeration units and customer trips. In addition, there are other existing sources in the project vicinity that generate TAC emissions, including a commercial shopping center on the adjacent west side, and State Route 198. The adjacent shopping center includes a Save Mart Supermarket and other retail stores that require deliveries by diesel trucks. And truck travel on State Route 198 creates even more TAC emissions. Nearby residences are exposed to all of these cumulative sources, and all of the TAC emissions from these existing sources must be included in the cumulative analysis.

The San Joaquin Valley Air Pollution Control District (SJVAPCD) provides guidance to lead agencies in their Guide for Assessing and Mitigating Air Quality Impacts (GAMAQI). The GAMAQI affirms that related existing sources must be included in the cumulative analysis:

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<sup>1</sup> Although the DEIR and FEIR claim that the additional cancer risk is 3.4 cases per million, this risk estimate is not supported by Appendix 3 of the Air Quality Assessment in Appendix I of the DEIR. According to Table 3-12 on the last page of Appendix 3, the total residential cancer risk is 9.9 cases per million, with a net increased cancer risk of 8.6 cases per million.

*An adequate cumulative impact analysis considers a project over time and in conjunction with other related past, present, and reasonably foreseeable future projects whose impacts might compound or interrelate with those of the project being assessed [emphasis added].<sup>2</sup>*

The following GAMAQI excerpt describes the SJVAPCD recommended procedures for analyzing cumulative risk:

*Cumulative analysis for HAPs [Hazardous Air Pollutants] focuses on local impacts on sensitive receptors. A single source of HAPs may be insignificant, but when combined with emissions from neighboring sources could expose sensitive receptors to significant pollutant levels. Cumulative analysis of HAPs can be accomplished by identifying all sources of these pollutants near the project site and using a dispersion model to determine exposure levels from the combined emissions of all sources. The SJVAPCD recommends a radius of 1 mile for HAP screening. Dispersion modeling, if indicated by initial screening, should include existing sources, the project, and any reasonably foreseeable projects.*

By failing to include existing sources in the cumulative impact analysis, the methodology employed in the DEIR and FEIR is inconsistent with SJVAPCD guidance and understates the cumulative cancer risk to nearby residences and other sensitive receptors.

The FEIR does not correct the flawed step one determination, but instead claims that existing TAC emissions are included in the baseline and therefore should not be included in the cumulative impact determination. The FEIR claims that “SJVAPCD established this [10 in one million] threshold in consideration of the existing environmental conditions.” (FEIR, Response E-19). The EIR does not identify any authority for this claim. In fact, this is not consistent with the FEIR assertion that there are no available standards for total ambient health effects. Only if there were standards for total ambient health effects could the 10 in one million threshold for individual impacts reflect existing environmental conditions. For example, if an acceptable level of total health risk from TACs was 100 incremental cancer cases, and if under ambient conditions total health risk was under 90 incremental cancers, then an increment of 10 more cancer cases from a localized project might be found acceptable. However, without a standard for total acceptable cancer risk, it is difficult to understand how the 10 in one million individual project risk could reflect existing conditions.

The FEIR claim that the SJVAPCD establishment of the 10 in one million threshold considered existing environmental conditions is also not supported by SJVAPCD’s GAMAQI, which does not refer to existing conditions when explaining the 10 in one million threshold of significance. Furthermore, the

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<sup>2</sup> SJVAPCD, Guide for Assessing and Mitigation Air Quality Impacts, revised January 10, 2002, p. 53.

SJVAPCD Risk Management Policy for Permitting New and Modified Sources, available on-line, from which the 10 in one million threshold is derived, appears to apply only to stationary sources and does not consider existing conditions or context.<sup>3</sup> Also – this claim is belied by the fact that the FEIR states that the 10 in one million threshold is used by other districts (FEIR, p. 80) but it also says that other districts have entirely different ambient conditions (FEIR, p. 82). Relatively minor increments may be considerable when ambient conditions are degraded. Indeed, CEQA recognizes that smaller increments are considerable contributions the worse the existing conditions are. Thus, if the air districts *were* taking existing conditions into account in setting the threshold for acceptable project-specific emissions, then that threshold should vary based on differences in ambient conditions.

While the EIR fails to include existing TAC sources in the cumulative analysis, it does generally describe the cancer risk from existing TAC levels in the City of Visalia as about 100 cases per million (DEIR, 237 and FEIR response to Comment E-20). Note that the background risk estimate is not specific to the project site, but rather the urban area east of downtown (FEIR, Response E-17). Since the proposed project is located downwind from State Route 198, and is part of an existing retail site that attracts truck trips, and is also adjacent to another retail site that attracts other truck trips, the existing background level at the project site is likely higher than the generalized DEIR estimate of 100 cancer cases per million. In any event, an existing risk of 100 cases per million exceeds the DEIR cumulative significance threshold of 10 cases per million<sup>4</sup>.

Even though the DEIR does not provide adequate methodology or justification for establishing a cumulative cancer risk threshold of 10 cases per million, it nevertheless attempts to base its significance conclusion on that threshold. The DEIR also argues that there is no existing standard for determining the significance of total ambient risk. However, an agency must use its best efforts to determine significance. Furthermore, there are available standards for what constitutes a cumulatively significant health risk. For example, Bay Area Air Quality Management District (BAAQMD) CEQA Guidelines call for doing a cumulative impact analysis for TACs when there is an existing exposure of 100 in one million from past, present, and future sources within 1,000 yards, thereby implicitly treating this risk as a significant cumulative risk.<sup>5</sup>

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<sup>3</sup> See SJVAPCD, Risk Management Policy for New and Modified Sources, March 2, 2001. Attached to this letter as Exhibit A.

<sup>4</sup> The DEIR employs the same 10 cancer cases per million threshold for both project-specific impacts as well as cumulative impacts. See DEIR p. 258.

<sup>5</sup> See BAAQMD CEQA Guidelines at 5-15: “A project would have a cumulative significant impact if the aggregate total of all past, present, and foreseeable future sources within a 1,000 foot radius (or beyond where appropriate) from the fence line of a source, or from the location of a receptor, plus the contribution from the project, exceeds the following: . . . An excess cancer risk level of more than 100 in one million or a chronic hazard index greater than 10 for TACs . . .” : BAAQMD, CEQA Guidelines Update, June 2, 2010, p. 5-15, Exhibit G.

The 100 in a million threshold is consistent with USEPA guidance for conducting air toxics analyses and making risk determinations for stationary source and community-scale level impacts. USEPA limits risk to a level no higher than the one in ten thousand (100 in a million) estimated risk that a person living near a source would be exposed to over a lifetime.<sup>6</sup>

In the case of the proposed project, the existing background level already contributes a risk level of 100 in one million, and the project would add an increment beyond that background risk. Since the cumulative risk from past, present and future sources exceeds 100 in a million, and since the project adds materially to that risk, the EIR should have concluded that project emissions cause a considerable contribution to a cumulatively significant TAC impact.

## **II. Flawed Report: “Air Quality Analysis of Localized Emissions”**

### **1. Background**

In response to a November 29, 2010 request from the SJVAPCD (FEIR comment D1-5), the FEIR includes a new report titled, “Air Quality Analysis of Localized Emissions” (Analysis). The purpose of the Analysis was to evaluate whether or not the proposed project would result in significant air quality impacts to the area surrounding the proposed project. The Analysis included an evaluation of project impacts related to several pollutants for which National and State Ambient Air Quality Standards (AAQS) have been established, including particulate matter (PM10 and PM2.5), nitrogen dioxide (NO2), carbon monoxide (CO), and sulfur dioxide (SO2). The Analysis concludes that there are no significant impacts. However, for the reasons set forth below, the Analysis is flawed because the scope is incomplete, the significance thresholds are inconsistent and improper, and many critical emissions-related assumptions are inaccurate.

### **2. Scope of the Analysis is Incomplete**

First, the scope of the emissions included in the Analysis is incomplete, because it includes only the emissions that would occur during project operation, after construction is completed. There is no assessment of local impacts due to construction emissions. Since construction activities tend to be associated with the highest *daily* emissions impacts, this is certainly a critical oversight in terms of potential significance for all pollutants measured relative to 1-hour, 3-hour, 8-hour, and 24-hour significance criteria.<sup>7</sup> For example, the Air Quality

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<sup>6</sup> NESHAP 54 Federal Register 38044, September 14, 1989; CAA section 112(f).

<sup>7</sup> As shown in Tables 10 and 11 of the Analysis, the significance criteria for each pollutant may be measured against different averaging times: 1-hour, 3-hour, 8-hour, 24-hour, and/or annual. The different averaging times are important, in part, because the health impacts caused by exposure to each pollutant vary depending on the duration of exposure. Construction impacts would not be

Assessment prepared for the DEIR included a modeling analysis of diesel construction equipment that would be used during demolition of part of the existing building. The modeled equipment included on-road haul trucks, rubber tired dozers, tractors/loaders/backhoes, and concrete/industrial saws.<sup>8</sup> This highly emitting construction equipment, along with similar equipment used during other construction phases, should have been included in the FEIR analysis of localized emissions.

### **3. Significance Thresholds are Inconsistent and Improper**

Next, the Analysis improperly uses inconsistent thresholds to determine pollutant significance. For NO<sub>2</sub>, SO<sub>2</sub>, and CO, significance is defined as the net change in project impacts plus background concentrations compared to the most restrictive ambient air quality standards (Analysis, p. 17). Under this logical approach, if the additional emissions from the project, when added to existing background concentrations, would exceed the air quality standard, then the impact would be significant. Indeed, this is what the SJVAPCD suggested in FEIR Comment D1-5, by asking that the FEIR demonstrate that the project would not result in localized violations of the Federal or State AAQS. But the FEIR departs from this logical threshold concept when determining the significance of PM<sub>10</sub> and PM<sub>2.5</sub>. Rather than determine significance relative to air quality standards, the FEIR improperly applies a de minimis threshold that was developed by the US Environmental Protection Agency (USEPA) specifically for stationary source permitting. The project PM<sub>10</sub> and PM<sub>2.5</sub> significance determinations are improper not only because they use a significant impact level (SIL) that was not contemplated for use in land use project analyses, but also because the methodology fails to account for background levels when determining significance. The following excerpt from USEPA explains the purpose and proper use of a SIL:

*The SIL is a de minimis threshold applied to individual facilities that apply for a permit to emit a regulated pollutant in an area that meets the NAAQS. The state and EPA must determine if emissions from that facility will cause the air quality to worsen. The SIL is a measure of whether a source may cause or contribute to a violation of PSD [Prevention of Significant Deterioration] increment or the NAAQS, i.e. a significant deterioration of air quality.<sup>9</sup>*

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expected to result in significant impacts over an annual averaging time unless the construction timeline is long.

<sup>8</sup> Reyff, James A., Visalia Walmart Expansion Air Quality Assessment, Appendix 1, Sept. 22, 2010, included as Appendix I to DEIR for Visalia Walmart Expansion.

<sup>9</sup> USEPA, "Fact Sheet -- Prevention of Significant Deterioration for Fine Particle Pollution--Increments, Significant Impact Levels and Significant Monitoring Concentration", emphasis added, accessed at <http://www.epa.gov/NSR/fs20070912.html> on May 13, 2011.

Pages 7 through 21 of these comments raise issues unrelated to the subject matter of this Partial Recirculated EIR and for this reason have been removed. A full and correct copy of the entirety of Autumn Wind Associates attachment to Mr. Wolfe's Late Comments is part of the Administrative Record in the Superior Court Case *Visalia Smart Growth Coalition vs. City of Visalia, et al.*, Case No. 11-2433353, and is available for review at the City Planning Department upon request.

CAPCOA determined that even where emissions from new development are reduced by 50% below business as usual, “it would not be possible to reach the 2050 emissions target with this approach even if existing emissions were 100 percent controlled.” *Id.* at 33-34.

CAPCOA’s determination that the 29% below business as usual threshold has a “low” emission reduction effectiveness is hardly surprising given that compliance with the threshold could largely be achieved merely through compliance with existing and anticipated regulatory requirements. See Attorney General, letter to SJVAPCD, Nov. 4, 2009, p. 3, Exhibit B (Because “business as usual” approach “would award emission reduction ‘points’ for undertaking mitigation measures that are already required by local or state law,” it results in “significant lost opportunities” to require meaningful mitigation.) Under the scheme used by the EIR and SJVAPCD, the Project applicant may take credit for measures entirely outside the Project applicant’s or the City’s control, such as increases in vehicle fuel economy standards, and increases in efficiency of electrical generation. DEIR, p. 354. The EIR’s heavy reliance on state regulatory action to address Project emissions functions to relieve the Project applicant of any independent obligation to adopt needed additional measures to further reduce project emissions. This outcome is inconsistent with the findings in the Scoping Plan, which recognizes that local governments “are essential partners” in achieving California’s emission reduction goals due to their primary authority over land use planning. AB 32 Scoping Plan, p. 26.

In lieu of an unsupported approach to determining significance, the EIR could have applied the zero or 900 ton thresholds CAPCOA determined had “high” effectiveness at reducing greenhouse gas emissions and “high” consistency with California’s short and long-term emission reduction targets. CAPCOA, CEQA & Climate Change, January 2008, p. 57.

Thank you for the opportunity to comment on the proposed Visalia Walmart Expansion.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Gilbert", is written over a horizontal line.

Greg Gilbert

Attached Exhibits:

- Exhibit A: SJVAPCD Risk Management Policy for New and Modified Sources, March 2, 2001
- Exhibit B: Attorney General letter to SJVAPCD, November 4, 2009
- Exhibit C: Attorney General letter to SJVAPCD, December 21, 2009
- Exhibit D: CNRA, Final Statement of Reasons, December 2009