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memorandum

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SUBJECT: **W12 Response to Comment Letters from Adams and Broadwell Joseph & Cardozo**

The CEQA Analysis for the W12 Mixed-Use Project (Project) was published on July 15, 2016. This memorandum provides responses to the letters providing comments on the CEQA Analysis for the W12 Project (PLN16-133) prepared by Adams Broadwell Joseph & Cardozo dated August 2nd and August 3rd, 2016 (hereafter, "Adams Broadwell letters"), as well as the technical comments prepared by SWAPE, which were attached to each letter (hereafter, "SWAPE letters"). The responses are organized into the following topics, which correspond with the topics in the Adams Broadwell letters:

- A) Consistency with the CEQA Addendum and Exemption Requirements
- B) Adequacy of the On-Site Hazards Analysis and Mitigation
- C) Adequacy of the Project-Specific Health Risk from Diesel Particulate Matter (DPM) Analysis and Mitigation
- D) Adequacy of the Project-Specific Construction Emissions Analysis and Mitigation¹

¹ Section D in the Adams and Broadwell Letter dated 8/2 requested the CalEEMod files used to estimate the Project's construction emissions. This request was met and the Adams and Broadwell 8/3 letter comments on these files. Therefore, for ease of review, section D of this memorandum responds to the comments presented in the Adams and Broadwell 8/3 letter.



A. Response to Comment Regarding the Consistency with the CEQA Addendum and Exemption Requirements

Section II. A of the Adams Broadwell letter asserts that the City may not rely on previous environmental analysis for project approval. Specifically, the Adams Broadwell letter asserts that the Project is not consistent with CEQA Addendum and Exemption requirements. Therefore, the Project allegedly would result in new or more severe significant impacts than were analyzed in the Lake Merritt Station Area Plan Environmental Impact Report (LMSAP EIR).²

RESPONSE:

The LMSAP EIR analyzed the environmental impacts of the adoption and implementation of the LMSAP at full build out and provided project-level review for reasonably foreseeable development, such as the Project. The City Council certified the LMSAP EIR in accordance with CEQA in November 2014 and the analysis now is presumptively valid under California law. Since that certification, the City has created and relied upon a framework for analyzing projects within the LMSAP area called “CEQA Analysis,” which separately and independently provides a basis for CEQA compliance. This framework relies on the applicable streamlining and tiering sections of CEQA: Community Plan Exemption, Qualified Infill Exemption and/or Addendum, as detailed in the CEQA section of the August 3, 2016 Planning Commission Report.

As outlined in exhausting detail, the assumptions and conclusions in the Project’s CEQA Analysis are supported by substantial evidence in accordance with CEQA, while none of the assertions presented by Adams Broadwell provides credible, persuasive, or substantial evidence that the Project would result in a new, peculiar, significant environmental impact or a substantial increase in the severity of a significant environmental impact than determined in the LMSAP EIR. In fact, they make numerous misinterpretations of applicable CEQA thresholds for determining significance, and misrepresent many material facts about the Project to justify its conclusions.

Significant impacts also are not “peculiar” to a project or property where uniform policies or standards apply that would mitigate the impact. Site specific analysis is not required where, like here, Standard Conditions of Approval (SCA) apply to mitigate the impact identified and where, as indicated under Appendix M to the CEQA Guidelines, recommendations established by a qualified consultant are implemented. The Project will be required to comply with SCA HAZ-2, and condition of approval number 40, which requires compliance with all federal, state, regional and local law/codes, requirement, regulations and guidelines. In particular, as noted in the Phase I and recognized in the Adams Broadwell letters, the Site is being evaluated by the Department of Toxic Substances Control (DTSC) for additional investigation, mitigation, and remediation of contaminated media. Such actions will comply with these laws, codes, requirements, regulations and guidelines and will render the site

² The City of Oakland (City) certified an EIR for the LMSAP in November 2014, pursuant to CEQA. The LMSAP EIR can be obtained from the City of Oakland Bureau of Planning at 250 Frank H. Ogawa Plaza, Suite 2114, Oakland, California 94612, and/or located at <http://www2.oaklandnet.com/Government/o/PBN/OurServices/Application/DOWD009157>.



impacts to a less than significant level. Impacts identified by Adams Broadwell are therefore not peculiar and the Community Plan and Qualified Infill Exemptions are appropriate.

Finally, contrary to Adams Broadwell's claim, the substantive nature of the CEQA Analysis prepared is not relevant to a determination of whether an Addendum is appropriate. An Addendum to previously certified EIRs is appropriate as long as the project changes, changed circumstances or new information does not require a subsequent EIR. CEQA makes clear that the only relevant test in whether to prepare an Addendum is whether the provision of CEQA Section 15162 can be satisfied. As the CEQA Analysis correctly concludes, none of these provisions requiring preparation of a supplemental or subsequent EIR applies to the Project. Therefore, an Addendum is appropriate.

Adams and Broadwell's comment regarding the substantive nature and length of the Addendum is irrelevant. (See *Fund for Env'tl Defense v County of Orange* (1988) 204 CA3d 1538 (where a lengthy and detailed addendum was prepared with comprehensive discussions and analysis).) Moreover, the discussions merely document the Project's consistency with the LMSAP and its EIR, and satisfy CEQA's primary function as a disclosure tool. The detail and scope of the analysis is a result of the various air quality, GHG and transportation model runs and should not be criticized for being overly informative.

Therefore, the conclusions in the CEQA Analysis are valid and preparation of an EIR is not warranted. The Planning staff can appropriately rely on the CEQA Analysis to support its recommended approval of the Project.

B. Response to Comment Regarding the Adequacy of the On-Site Hazards Analysis and Mitigation

Section II. B of the Adams Broadwell letter asserts that the CEQA Analysis did not adequately address on-site contamination analysis and mitigation.

RESPONSE: Substantial evidence supports the City's determination that the Project's impacts related to hazards will be equal or less severe compared to those identified in previous CEQA documents.

The CEQA Analysis discloses that the Phase I Environmental Site Assessment for the Project identified recognized environmental conditions (RECs) at the Project site. The LMSAP EIR fully analyzed the potential hazards impacts of such contaminated sites, and it determined that state regulatory programs and SCAs will reduce those impacts to a less than significant level. In particular, as detailed in the LMSAP, the applicant will need to comply with regulatory programs established by the Department of Toxic Substances Control (DTSC) and the Regional Water Quality Control Board (RWQCB), including by applying for permits, conducting further investigation, and performing cleanup and remediation actions, as dictated by the regulations and the agencies.

It is entirely appropriate for the City to rely on these regulatory standards as mitigation, and Adams Broadwell appears to ignore the long-standing case law precedent supporting this approach. (See *Perley v Board of Supervisors* (1982) 137 CA3d 424 (upholding reliance on compliance with environmental agency requirements as



mitigation); *Sundstrom v. County of Mendocino* (1988) 202 CA3d 296 (finding that the County's reliance on compliance with air and water quality standards to mitigate air and water quality impact was appropriate); *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 234 CA4th 214 (finding the Department of Fish and Wildlife's reliance on compliance with federal regulations for a hatchery genetic management plan was appropriate); and *Leonoff v Monterey County Bd. of Supervisors* (1990) 222 CA3d 1337 (finding that the County's reliance on compliance with environmental laws on registering hazardous materials and monitoring of underground tanks for leaks was appropriate).

Moreover, in *Oakland Heritage Alliance v. City of Oakland* (2011) 195 CA4th 884, 906, the Court of Appeals held that "a condition requiring compliance with regulations is a common and reasonable mitigation measure and may be proper where it is reasonable to expect compliance." (emphasis added). Because the City requires compliance with all applicable state, federal and regulatory requirements prior to commencing construction, as set forth under SCA HAZ-2 and condition of approval number 40, it is reasonable to expect compliance with the regulatory standards and requirements established for contaminant.

The City's standard conditions of approval (SCAs) will ensure that potential impacts are mitigated to a less than significant level. SCA HAZ-1 (*Hazardous Materials Related to Construction*) requires the use of best management practices and includes provisions in the event that soil, groundwater, or other environmental medium with suspected contamination is encountered unexpectedly during construction activities. And SCA-HAZ-2 (*Site Contamination*) requires the implementation of Phase I and II ESA recommendations and a Health and Safety Plan to protect workers during construction.³ This SCA would require implementation of specific sampling and handling and transport procedures for reuse or disposal in accordance with applicable local, state, and federal requirements. The exact method employed or plan to be implemented will be identified in a Site Management Plan, which will be prepared by the Project sponsor and approved by DTSC and will require compliance with identified federal, state or local regulations or requirements and specific performance criteria. The Project sponsor is obligated to develop measures that comply with the requirements and criteria identified. The Health and Safety Plan would adequately protect workers consistent with applicable worker health and safety standards. SCA-HAZ-2 also requires the implementation of best management practices for the handling of contaminated soil and groundwater discovered during construction activities to ensure their proper storage, treatment, transport, and disposal. Specifically, SCA-HAZ-2 would require that all suspect soil be stockpiled on-site in a secure and safe manner and adequately profiled (sampled) prior to acceptable reuse or disposal at an appropriate off-site facility. Likewise, groundwater encountered will be staged and sampled prior to discharge to the sewer under permit, or offsite disposal at an appropriate location

³ In the case of this project, the "recommendations" to protect workers from site contamination will be encompassed within the Remedy to be prepared under and approved by DTSC. This is assured by Health & Safety Code Section 25356.1(d), which requires remedial action plans supervised by DTSC or the Regional Water Quality Control Boards to be based, in part, on Subpart E of the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. 300.400 et seq.) (the "NCP"). Subpart E of the NCP contains detailed requirements for Hazardous Substance Response. The NCP further requires that all response actions under the NCP will comply with the provisions for worker safety and health in 29 C.F.R. 1910.120. 40 C.F.R. 300.150. 29 C.F.R. 1910.120 contains detailed requirements for worker health and safety during hazardous waste operations and emergency response.



CEQA and established case law also makes clear that the CEQA Analysis can wait to specify how the measures/conditions identified will be achieved, provided that a determination of impact has been made prior to approval and where known measures/conditions exist that are feasible for the impact identified. Here, the City has determined the impact of the Project will be less than significant. The City's determination was based on the detailed analysis regarding Hazards and Hazardous Materials prepared as part of the LMSAP EIR and the CEQA Analysis and technical studies prepared. The LMSAP EIR analysis included an overview of the regulatory scheme, evaluated potentially significant impacts associated with development in the LMSAP area, analyzed applicable state, federal and local regulatory schemes that would apply, summarized a listing of known contaminated sites in the area and determined that compliance with the SCAs and/or Mitigation Measures would reduce any hazardous impact, and any cumulative hazardous impact, to a less than significant level. The regulations or requirements identified include specific performance criteria that must be met before starting construction and the Project must comply with the mitigation measures and regulatory schemes that were identified to reduce the impacts as identified in the CEQA Analysis and the accompanying technical studies. Additionally, the Project sponsor has committed to devising measures to satisfy those requirements, but there is no requirement under CEQA to devise those measures now, where, as indicated in the LMSAP EIR and the CEQA Analysis, a reasonable basis exists to conclude the impact will be adequately mitigated. (See *Sacramento Old City Ass'n v City Council* (1991) 229 CA3d 1011; *Defend the Bay v City of Irvine* (2004) 119 CA 4th 1261).

The Adams Broadwell letter claims that recent sampling at the Downtown Oakland Charter School shows elevated concentrations of trichloroethylene, other chlorinated solvents, and petroleum hydrocarbons. This information, however, does not show a new or more severe hazards impact. To the contrary, the existing mitigations, SCAs, and regulatory requirements will ensure that any impacts related to these contaminants will be mitigated to a less than significant level. Indeed, the presence of these constituents was fully disclosed in the Phase I ESA and supporting documents that were utilized to prepare the CEQA Analysis. In particular, as noted in the CEQA Analysis, as a DTSC Cleanup Site, the regulatory framework within California requires remediation of soil, soil vapor, and groundwater and other measures, as needed, to render the site suitable for residential development and to protect construction workers during construction. Such actions would reduce the potential impacts from contaminants to a less than significant level.

The Adams Broadwell letter expresses specific concerns about vapor intrusion pathways, the potential presence of TCE dense nonaqueous phase liquid ("DNAPL") and the need to address this potential presence during construction. First, under the direction and oversight of DTSC and the BAAQMD, the vapor intrusion pathway into the existing building (which will be replaced by the new residential structure) has been addressed by the installation of a temporary sub-slab depressurization/soil vapor extraction system. This system removes and treats VOC vapors from the subsurface before they can accumulate in the indoor air at concentrations of concern, and demonstrates that even a temporary retrofitted vapor intrusion mitigation system can be effective to prevent VOC vapor intrusion at this site, and indeed can be effective even before the subsurface source of the VOCs has been remediated under DTSC supervision and pursuant to applicable standards. While the existing environmental conditions are not the result of the Project, the performance of mitigation measures to date indicates that the



Project will not result in or increase the risk of vapor intrusion, but instead that the Project will greatly reduce that risk.

Second, while it is true that TCE can at some sites be found in the form of a DNAPL, it is unlikely that TCE at the Project site has taken that form. The maximum concentration of TCE detected in soil samples is 780 micrograms per kilogram ($\mu\text{g}/\text{kg}$). This value, which is less than the residential soil Regional Screening Level (RSL) of 940 $\mu\text{g}/\text{kg}$ but greater than the residential Environmental Screening Level (ESL), is not indicative of the presence of a DNAPL⁴. Likewise, the maximum concentration of TCE detected in groundwater is 1,800 micrograms per liter ($\mu\text{g}/\text{l}$), which is less than 1% of the solubility of TCE in water (14,720 $\mu\text{g}/\text{l}$). Typically, if a groundwater concentration is greater than 1% of the aqueous solubility, this may indicate the presence of a DNAPL⁵. Here, because the maximum concentration of TCE detected in groundwater is less than 1% of the aqueous solubility of TCE, the groundwater data do not support the conclusion that a DNAPL is present at the site. Furthermore, while TCE concentrations in vapor samples are high at the site, according to EPA “[b]ecause some DNAPLs can completely vaporize in relatively short time periods (yet the vapors will persist much longer), the presence of vapors and the mapping of a vapor-phase plume should generally not be used in isolation to conclude that DNAPL is present in the vadose zone, or to delineate the spatial extent of the DNAPL source.”⁶. As such, the available data do not indicate that a DNAPL is present at the site.

Finally, given the above considerations, the concerns about the potential for encountering DNAPL during construction are exaggerated. Regardless, should DNAPLs be encountered they would be properly addressed under the construction worker health and safety component of the remedy to be developed under DTSC’s guidance and oversight, in accordance with the SCAs.

Therefore, the conclusions in the CEQA Analysis are valid and preparation of an EIR is not warranted. The Planning staff can appropriately rely on the CEQA Analysis to support its recommended approval of the Project.

⁴ The presence of DNAPLs has been inferred from soil chemical data where the concentration of DNAPL chemicals in soil are greater than one percent by mass, or 10,000 ppm (EPA, 1994. *DNAPL Site Characterization. OSWER Publication 9355.4-16FS*). 780 $\mu\text{g}/\text{kg}$ is considerably less than 10,000 ppm, which is equivalent to 10,000,000 $\mu\text{g}/\text{kg}$.

⁵ EPA, 1992. *Estimating Potential for Occurrence of DNAPL at Superfund Sites. OSWER Publication 9355.4-07FS*. January.

⁶ EPA, 2009. *Assessment and Delineation of DNAPL Source Zones at Hazardous Waste Sites. EPA/600/R-09/119*. September



C. Response to Comment Regarding the Adequacy of the Project-Specific Health Risk from Diesel Particulate Matter (DPM) Analysis and Mitigation

Section II. C of the Adams Broadwell letter asserts that the CEQA Analysis fails to assess the health risk impacts from construction-related DPM emissions. The letter also states that the LMSAP EIR deferred the assessment of construction-related health risks to a stage where project-specific impacts and mitigation measures could be determined.

SUMMARY RESPONSE: The following provides a response to SWAPE's comments regarding the need for a construction Health Risk Assessment (HRA):

- The LMSAP EIR disclosed that construction-related health risks would be less than significant with implementation of construction-related best management practices identified in SCA A of the LMSAP EIR. These measures are found in W12 SCA AIR-1 in Attachment A of the CEQA Analysis.
- Project construction would not result in a more severe impact than what was disclosed in the LMSAP EIR.
- The LMSAP EIR does not stipulate that a stand-alone HRA is necessary for construction-related impacts.
- Preparing an additional construction-related HRA would result in unnecessary and duplicative studies.

DETAILED RESPONSE: Impact AIR-3 (construction health risks) was determined to be less than significant in the LMSAP EIR with implementation of SCA A (referred to as SCA AIR-1 in the W12 CEQA Analysis). As stated on page 3.3-39 of the LMSAP EIR, "...SCA A would implement construction-related Best Management Practices to substantially reduce construction-related impacts to a less-than-significant level."

Construction associated with the Project (and other projects in the LMSAP area) would not result in a more severe impact than what was previously disclosed in the LMSAP EIR. Further, as discussed below, there is no evidence that the Project would have peculiar or unusual impacts or impacts that are new or more significant than previously analyzed in the LMSAP EIR. Consequently, the construction health risk has been adequately addressed by the planning-level review and the Project's conditions of approval. Furthermore, there is nothing in the LMSAP EIR indicating that a stand-alone HRA for construction-related impacts is required on a project-by-project basis. In fact, preparation of a construction-related HRA would result in unnecessary and duplicative studies that would ultimately reach the same conclusions and control measures already established in the LMSAP EIR.

For example, as noted on page 3.3-39 of the LMSAP EIR, construction health risks would be minimized to less than significant through application of SCA A (W12 SCA AIR-1), which indicates that diesel emissions would be minimized through the application of various measures. Specifically, subsections (g) and (h) of SCA AIR A (W12 SCA AIR-1) minimize idling; subsection (i) ensures that construction equipment is running in proper condition; subsection (j) specifies that portable equipment would be powered by electricity if available; subsection (u) requires that equipment meet emissions and performance requirements; subsection (v) requires the



use of low volatile organic compound coatings; subsection (w) requires that equipment and diesel trucks be equipped with Best Available Control Technology; and subsection (x) requires that off-road heavy diesel engines meet the California Air Resources Board's most recent certification standard.

The Project sponsor would be obligated to use construction equipment that meets Tier 4 emissions standards and utilize high performance renewable diesel (diesel HPR) in order to comply with subsections (w) and (x). Tier 4 engines and diesel HPR are considered the best available technology and are readily available in the marketplace. Use of Tier 4 engines would reduce total PM_{2.5} exhaust emissions from construction by approximately 75 percent and diesel HPR would reduce total PM_{2.5} exhaust emissions from construction by a further 34 percent, relative to unmitigated conditions.

Section II. C of the Adams Broadwell letter also asserts that the guidance set forth by the Office of Environmental Health Hazard Assessment (OEHHA), which recommends that all short term-projects lasting longer than two months be evaluated for cancer risks to nearby sensitive receptors, is applicable to the Project.

RESPONSE: The Adams Broadwell letter incorrectly suggests that OEHHA's recommended methodology is a formal part of the BAAQMD's applicable guidance. In fact, the OEHHA has no binding authority on the Project that would require a stand-alone construction HRA for the Project. BAAQMD has only adopted this methodology with respect to HRAs that are required pursuant to Regulation 2 Permits, Rule 1 General Requirements or Rule 5 New Source Review of Toxic Air Contaminants. BAAQMD has not formally adopted the methodology to sources outside of its permit authority, such as mobile construction equipment. Regardless of the use of OEHHA's recommended methodology, which describes how (and not when) an HRA should be conducted, a stand-alone construction HRA for the Project is not required for the aforementioned reasons.

Further, a cursory review of SWAPE's preliminary health risk screening assessment of the Project's construction emissions revealed that the analysis is overly conservative and, as a result, overstates the Project's construction emissions. SWAPE's analysis used a highly conservative screening model (aerscreen) which overestimates health risk. Aermid is the analysis tool that is the industry standard for conducting HRA's because it allows a much more refined analysis. In addition, SWAPE's analysis used unmitigated data that did not consider SCA AIR-1 which requires all construction equipment and generators shall be equipped with Best Available Control Technology (BACT) for emission reductions of PM which can reduce PM emissions by 75 to 85 percent.

Section II. C The Adams Broadwell letter, based on the list of mitigation measures in the SWAPE letter, lists mitigation measures that could be incorporated to reduce DPM exposure above and beyond SCA AIR-1 (LMSAP SCA A).

RESPONSE: As noted above, LMSAP Impact AIR-3 (construction health risks) was determined to be less than significant in the LMSAP EIR with implementation of LMSAP SCA A (referred to as SCA AIR-1 in the W12 CEQA Analysis), which included the use of best available control technologies for all construction equipment, diesel trucks, and generators, as well as diesel engines that meet the California Air Resources Board's most recent certification standard, which are currently Tier 4. The LMSAP EIR was publicly reviewed and the impact



conclusions certified by the City. Consistent with CEQA Guidelines, the Project tiers from the analysis completed for the LMSAP EIR and, likewise, concludes that construction-related health risks would be less than significant with implementation of SCA AIR-1. Because the Project is consistent with the CEQA streamlining provisions discussed above and the CEQA Analysis is appropriately tiered from the LMSAP EIR, the control measures outlined in W12 SCA AIR-1 represent feasible mitigation required to minimize the impacts. While other control measures could be added to the control measures outlined in W12 SCA AIR-1, they would not be required because the impacts already would be mitigated to less than significant levels. Nonetheless, the following measures proposed in the SWAPE letter are evaluated for their feasibility and redundancy with W12 SCA AIR-1.

Limit Construction Equipment Idling Beyond Regulation Requirements

Subsection (h) of SCA AIR-1 requires idling times on all diesel-fueled off-road vehicles over 25 horsepower to be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes consistent with California Air Resources Board Off-Road Diesel Regulations. Further reduction in idling time allowances is a feasible measure as it is also identified as an operational control for trucks in SCA AIR-2.

Require Implementation of Diesel Control Measures as described by the Northeast Diesel Collaborative (NEDC).

The first NEDC measure cited is for all diesel vehicles onsite for more than 10 days to have emission control technology verified by EPA or CARB to reduce particulate emissions by 85 percent. Subsection (w) of SCA AIR-1 requires that diesel trucks be equipped with Best Available Control Technology. Currently this represents trucks with Level 3 verified diesel Emission Control strategies (particulate filters), which would reduce diesel PM by approximately 85 percent. Consequently, SCA AIR-1 already implements this suggested measure.

The second NEDC measure cited is for all diesel generators on the site to be equipped with emission control technology verified by EPA or CARB to reduce particulate emissions by 85 percent. Again, subsection (w) of SCA AIR-1 requires that diesel equipment be equipped with Best Available Control Technology. Currently this represents generators with Tier 4 engines, which would reduce diesel PM by approximately 85 percent. Consequently, SCA AIR-1 already implements this suggested measure.

The third NEDC measure cited is for all non-road diesel equipment to have engines meeting the EPA Tier 4 standard. Again, subsection (w) of SCA AIR-1 requires that diesel equipment be equipped with Best Available Control Technology. Currently this represents equipment with Tier 4 engines. Consequently, SCA AIR-1 already implements this suggested measure.

The last NEDC measure cited is for all diesel vehicles to be fueled ultra-low sulfur diesel fuel or a biodiesel blend. All commercially available diesel in California has been ultra-low sulfur diesel since 2006. Consequently, this measure no longer represents a meaningful mitigation.



Repower or Replace Older Construction Equipment Engines

This measure is an offset strategy for criteria pollutant emissions and would not serve to reduce local diesel PM risks surrounding the Project site since Tier 4 equipment would already be required for on-site equipment pursuant to SCA AIR-1

Install Retrofit Devices on Existing Construction Equipment

This measure is also an offset strategy for criteria pollutant emissions and would not serve to reduce local diesel PM risks surrounding the Project site since Tier 4 equipment would already be required for on-site equipment pursuant to SCA AIR-1

Use Electric and Hybrid Construction Equipment

While hybrid construction equipment is currently available for purchase for certain equipment types (loaders, rollers, excavators, and dozers), there is currently no regulatory mechanism requiring contractors to acquire equipment using this technology for their equipment fleets as there is for equipment with Tier 4 engines. As a consequence, unlike Tier 4 equipment, the availability of such equipment in contractor fleets cannot be reasonably assured, rendering this potential measure infeasible.

Instituting a Heavy-Duty Off-road Vehicle Plan

This is a potentially feasible component of a Mitigation Monitoring and Reporting Program but would not, through its implementation, result in meaningfully reduced diesel PM emissions or associated risks beyond those realized with implementation of SCA AIR-1.

Implement a Construction Vehicle Inventory Tracking System

A few jurisdictions (Cities of San Francisco and Sacramento) require a tracking system to ensure compliance with specified equipment requirements. This is a potentially feasible component of a Mitigation Monitoring and Reporting Program but would not necessarily equate to a reduction in diesel PM emissions or associated risks than those realized with implementation of SCA AIR-1.

Implement Enhanced Exhaust Control Practices of the Sacramento Metropolitan Air Quality Management District (SMAQMD).

The first two measures of SMAQMD's Enhanced Exhaust Control Practices are the same as the two previously discussed above for the Off-road Vehicle Plan and the Construction Vehicle Tracking System. The third measure would implement an opacity reaction of 40 percent. This would be a feasible mitigation measure, if mitigation were warranted, and if health risks were not reduced to less than significant level by other measures. The last Enhanced Exhaust Control Practice is for the SMAQMD to conduct compliance inspections. However, this measure was developed by SMAQMD which, therefore has agreed to conduct compliance inspections for its



recommended Enhanced Exhaust Control Practices. Since the proposed project is within the jurisdiction of the Bay Area Air Quality Management District, not SMAQMD, it cannot be assured that BAAQMD is adequately staffed or amenable to conducting inspections for control practices not developed or adopted by BAAQMD. Additionally, this measure, if implemented, would be a potentially feasible component of a Mitigation Monitoring and Reporting Program but would not necessarily equate to a reduction in emissions.

Therefore, beyond SCA AIR-1, there are no additional control measures required to further reduce construction-related DPM emissions.

D. Response to Comment Regarding the Adequacy of the Project-Specific Construction Emissions Analysis and Mitigation

Section II. D of the Adams Broadwell letter asserts that the CEQA Analysis incorrectly assumed the Use of Level 3 DPF Off-Road Equipment.

RESPONSE: Although the CalEEMod output contained a note regarding Level 3 PDF, as can be seen in the mitigated output, these emissions reductions were not included in the analysis or reported in the CEQA analysis. In fact, SWAPE performed a screening level assessment using these emission values that did not assume Level 3 PDF. SCA AIR-1 in the CEQA analysis states that all construction equipment, diesel trucks, and generators shall be equipped with Best Available Control Technology (BACT) for emission reductions of NO_x and PM. At present, the BACT for PM control on off-road equipment is either Level 3 PDF or Tier 4 engines, the latter of which the applicant has now committed to.

Section II. D of the Adams Broadwell letter asserts that the CEQA Analysis fails to provide the public with information regarding project-specific construction emissions.

RESPONSE: While construction-related emissions associated with the parking component of the Project would result in an incremental increase not included in the CEQA Analysis for the W12 Project, this increase would be marginal and would not result in significant criteria air pollutant impacts.

Construction associated with the parking component of the Project would not result in a more severe impact than what was previously disclosed in the CEQA Analysis for the Project. Specifically, the construction of parking would result in an additional 3 pounds per day of ROG and NO_x and a statistically insignificant increase in particulate emissions. Construction-related criteria pollutant emissions would still be less than half of the applicable significance thresholds for all four criteria pollutants analyzed, while Project-related emissions of criteria pollutants would be a less than significant air quality impact. CalEEMod files have since been provided to Adams Broadwell, which prove this out.