

## Memorandum

DATE	May 25, 2021		
TO	Peterson Vollmann, Planner IV City of Oakland, Bureau of Planning	FROM	Urban Planning Partners in Coordination with Baseline Environmental Consulting

**RE: 1396 5<sup>th</sup> Street Project — Response to Appeal from Adams Broadwell Joseph & Cardozo**

This memorandum provides responses to the appeal filed by Adams Broadwell Joseph & Cardozo, as well as the technical comments prepared by SWAPE in support of that appeal (hereafter collectively titled Adams Broadwell appeal) dated March 12, 2021, regarding the Oakland Planning Commission's March 3, 2021 decision to approve and adopt the California Environmental Quality Act (CEQA) findings for the 1396 5<sup>th</sup> Street Project (PLN20-101).

This memorandum is organized as follows, corresponding to the topics raised in the appeal:

- A. Analysis and Mitigation of On-Site Hazards
- B. Air Quality Impacts and Risk to Human Health
- C. Greenhouse Gas Emissions
- D. Noise and Vibration

### Section A. Analysis and Mitigation of On-Site Hazards

**Comment 1** (B in March 12 letter, D.1 in March 3 letter): The appellant argues that since the project site is identified as a Cleanup Program Site on the State Water Control Resources Board (SWCRB) Geotracker database and has not been previously cleaned to residential levels, that this represents a potentially significant impact peculiar to the site that has not been adequately disclosed and mitigated by the City's Standard Conditions of Approval, and thus an EIR needs to be prepared. The appellant argued that SWAPE concluded, that without proper agency consultation and clean up to residential standard prior to construction, construction workers, nearby receptors and future residents of the project may be exposed to unhealthy levels of contamination released during the project's disturbance of contaminated soil and groundwater, or released from vapor instruction during Project operation.

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**Response 1:** The findings of the Phase II Subsurface Investigation Report and Closure Request prepared by Citadel on July 28, 2016, indicate that the soil used for fill in 2011 is not hazardous in nature and no further investigations are necessary.

Arsenic concentrations in fill material and native soils exceed Tier 1 environmental screening levels (ESLs) but are well within the average range for arsenic concentrations in San Francisco Bay area soils and no further action is required.

Groundwater results indicate that there is total petroleum hydrocarbons (TPH), benzene, toluene, ethylbenzene and xylenes (BTEX), and tert-butyl alcohol (TBA) impacts to groundwater in the northern portion of the site. The most likely source of this contamination is the railroad ROW immediately north of the Site or the former service station located approximately 175 feet north of the Site. Concentrations in soil groundwater adjacent to the former USTs at the site are low or non-detect and are not representative of impacts from the former USTs and no further action is required.

Based on a comparison of site-specific data with Tier 1 and Tier 2 ESLs, the observed presence of chemicals in soil and groundwater at the site are below the corresponding ESL and can be assumed to not pose a significant threat to human health, water-resources, or the environment. Due to the reasons cited above in the Phase II letter, a closure letter was issued completing the site investigation and remedial actions for the soil and groundwater investigation. The CEQA analysis inadvertently did not specify that the case closure is granted for the current land use as a vacant lot. Subsequent to the preparation of the CEQA Analysis, the applicant is consulting with the Alameda County of Environmental Health (ACDEH). The applicant is currently awaiting feedback, but it is expected that with certain conditions (i.e., implementation of a corrective action plan) the project site can be suitable for residential development given the site was previously developed with a partially constructed residential project under ACDEH oversight. Examples of corrective actions could include excavation of lead-impacted soil and/or offsite disposal at a permitted landfill or onsite consolidation and capping to prevent direct contact exposure, and installation of vapor mitigation engineering controls underlying the structures and hardscape to reduce the inhalation risk of exposure to volatile organic compounds (VOCs).

The appeal letter mischaracterizes that only SCA-HAZ-1 Hazardous Materials Related to Construction (#43) is used to address project site contamination, when in fact SCA-HAZ-1, SCA-HAZ-2 Hazardous Building Materials and Site Contamination (#44) and SCA-HAZ-3 Hazardous Material Business Plan (#45) are also SCA's that are cited in the CEQA Analysis as required measures to reduce potential impacts of the project related to hazardous emissions, or the handling of hazardous materials, substances, to a less-than-significant level. In addition, the letter claims that SCA-HAZ-1 fails to name the ACDEH as the regulatory agency that is notified of any development activities for review and approval prior to development; however given that SCA's are standard language across multiple projects it does not need to specifically

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describe specific agencies responsible; but rather describes that “appropriate measures shall include notifying the City and applicable regulatory agencies”...and that “work shall not resume in the area(s) affected until the measures have been implemented under the oversight of the City or regulatory agency, as appropriate.”

Under SCA-HAZ-1 Hazardous Materials Related to Construction (#43) and SCA-HAZ-2 Hazardous Building Materials and Site Contamination (#44), if new or more significant contamination is encountered during site redevelopment earthwork, the project sponsor shall confirm that any cleanup actions are performed consistent with applicable laws and local agency requirements as required. This requirement is an established and standard practice where detailed site assessment work has been conducted indicating a low likelihood of encountering significant contamination. As part of any Hazardous Materials Business Plan, testing and monitoring of soils will be required, measures that will identify whether new or more significant contamination is encountered and that, in conjunction with the other measures included in the Hazardous Materials Business Plan and proper implementation of SCA-HAZ-1 Hazardous Materials Related to Construction (#43) and SCA-HAZ-2 Hazardous Building Materials and Site Contamination (#44), and SCA-HAZ-3: Hazardous Materials Business Plan (#45) will protect human health and the environment.

As outlined in the CEQA Analysis, SCA-HAZ-3 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 Hazardous Materials Business Plan, which is required as part of the SCA to be prepared by the Project sponsor, and will comply with identified federal, state, or local regulations or requirements and specific performance criteria. In addition, the Health and Safety Plan required under SCA-HAZ-2 would adequately protect workers consistent with applicable worker health and safety standards.

In addition, long-standing case law precedent supports reliance on legal requirements as appropriate mitigation. CEQA and established case law also make clear that the CEQA Analysis can wait to specify how the measures/conditions identified will be achieved provided a determination of impact has been made prior to approval and where known measures/conditions exist that are feasible to address the impact identified. Both of these conditions are satisfied by the CEQA Analysis.

The City completed a detailed analysis regarding Hazards and Hazardous Materials prepared as part of the WOSP EIR and the CEQA Analysis and technical studies prepared for the project. The WOSP EIR analysis included an overview of the regulatory scheme, evaluated potentially significant impacts associated with development in the WOSP, analyzed applicable state, federal, and local regulatory schemes that would apply, summarized a listing of known contaminated sites in the area (including the project site, though at this time it was not issued a closure letter), and determined that compliance with the SCAs would reduce any hazardous

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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.

**Comment 2** (D2 March 3 letter): The Adams Broadwell appeal asserts that dewatering impacts have not been adequately addressed in the CEQA Analysis because it does not consider specific handling and disposal requirements if contaminated groundwater is encountered during dewatering. The Adams Broadwell appeal asserts that an EIR must be prepared to identify the Regional Water Quality Control Board's (RWQCB) dewatering requirements.

**Response 2:** The CEQA analysis acknowledges that dewatering will be necessary on pages 52-53 and references the Geotechnical Study prepared for the project site and its associated recommendations. The CEQA Analysis goes on to state that implementation of SCA-GEO-2: Seismic Hazards Zone (#39) will require the project to implement the recommendations of the 2020 site-specific geotechnical report prepared by SALEM Engineering. Compliance with this SCA will ensure that potential impacts associated with dewatering are reduced to a less-than-significant level.

Further, no rationale or substantial evidence is presented by the commenter as to why an EIR needs to be prepared. The commenter fails to demonstrate that the project would have a new significant impact related to dewatering. While not required to be discussed, additional details regarding dewatering and compliance with applicable regulations are provided for informational purposes below. These are specific requirements that would apply to the project, and all similarly situated projects that require dewatering. They clearly establish that a detailed and thorough body of regulatory controls and requirements apply and that the reliance of the CEQA Analysis on that body of regulatory controls and requirements is appropriate.

Dewatering activities are common and are typically conducted by either pumping water directly from open excavations or by installing dewatering wells adjacent to the open excavation. In either case (but more so with open excavation dewatering), dewatering effluent may contain turbid water (i.e., water that contains sediment). This turbid water, if discharged directly to receiving waters without treatment, could cause degradation of the receiving water quality.

Any groundwater dewatering would be limited in duration and the water removed would be discharged in accordance with permits issued by the East Bay Municipal Utility District (EBMUD) or the RWQCB, depending on whether the discharge is made to the sanitary sewer system or the storm sewer system. These permits contain effluent limitations protective of receiving waters.

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Under existing State law, it is illegal to allow unpermitted non-stormwater discharges to receiving water. As stated in the Construction General Permit Order<sup>1</sup> for receiving water limitations:

- The discharger shall ensure that storm water discharges and authorized non-storm water discharges to any surface or ground water will not adversely affect human health or the environment.
- The discharger shall ensure that storm water discharges and authorized non-storm water discharges will not contain pollutants in quantities that threaten to cause pollution or a public nuisance.
- The discharger shall ensure that storm water discharges and authorized non-storm water discharges will not contain pollutants that cause or contribute to an exceedance of any applicable water quality objectives or water quality standards contained in a Statewide Water Quality Control Plan, the California Toxics Rule, the National Toxics Rule, or the applicable Regional Water Boards' Water Quality Control Plan (Basin Plan).

The RWQCB Construction General Permit allows the discharge of dewatering effluent if the water is properly filtered or treated, using appropriate technology that meets regulatory standards. These technologies include, but are not limited to, retention in settling ponds or tanks (where sediments settle out prior to discharge of water) and filtration using gravel and sand filters (to mechanically remove the sediment). If the dewatering activity is deemed by the RWQCB not to be covered by the Construction General Permit, then the discharger would prepare a Report of Waste Discharge for approval by the RWQCB and be issued site-specific Waste Discharge Requirements (WDRs) under the National Pollutant Discharge Elimination System regulations. Site-specific WDRs contain rigorous monitoring requirements and performance standards that, when implemented, ensure that receiving water quality is not substantially degraded and meets regulatory discharge standards.

If the water is not suitable for discharge to the storm drain (receiving water), as discussed above, dewatering effluent may be discharged to the EBMUD sanitary sewer system if special discharge criteria are met. These include, but are not limited to, application of treatment technologies or Best Management Practices (BMPs) which will result in achieving compliance with the wastewater discharge limits. Discharges to EBMUD's facilities must occur under a Special Discharge Permit. Per the EBMUD Wastewater Ordinance, "Wastewater may be discharged into community sewers for interception, treatment, and disposal by the District provided that such wastewater does not contain substances prohibited, or exceed limitations of

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<sup>1</sup> SWROB, General Construction Activity Storm Water Permit Order (General Construction Permit), 2009 (as amended 2010 and 2012), Available at: [https://documents.geotracker.waterboards.ca.gov/regulators/deliverable\\_documents/7701037347/CL\\_PP\\_2016-10-19.pdf](https://documents.geotracker.waterboards.ca.gov/regulators/deliverable_documents/7701037347/CL_PP_2016-10-19.pdf), accessed April 7, 2021.

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wastewater strength, set forth in this Ordinance” (Title II, Section 1). In addition, per the EBMUD Wastewater Ordinance “All dischargers, other than residential, whose wastewater requires special regulation or contains industrial wastes requiring source control, shall secure a wastewater discharge permit” (Title IV, Section 1). As demonstrated above, EBMUD regulates the inputs into its facilities. EBMUD also operates its wastewater treatment facilities in accordance with WDRs issued by the RWQCB, which require rigorous monitoring of effluent to ensure discharges do not adversely impact receiving water quality.

If the project’s dewatering effluent was to contain levels of contamination that could exceed the discharge standards of EBMUD, the water would likely be treated to the standards required by the Special Discharge Permit program using proven technologies (e.g., filtration to remove sediment and/or advanced treatment technologies to remove other pollutants) to the degree the effluent could be discharged (under permit) to the storm or sanitary sewers. Compliance with permit requirements would ensure that the water is tested prior to discharge to ensure that the treatment technologies are effective.

Proper management of dewatering effluent is covered by existing state and local regulations, and implementation of these regulations would protect receiving water quality in accordance with applicable regulatory standards. Compliance with these requirements is routine and neither peculiar nor severe. Therefore, the conclusions in the CEQA Analysis are valid and preparation of an EIR is not warranted.

## **Section B. Air Quality Impacts and Risk to Human Health**

*The appellant argues the City’s applied CEQA exemptions are not applicable since the project CEQA Analysis concluded that Air Quality impacts related to construction and operations were less than significant with the application of SCA’s while the WOSP EIR concluded that they were significant and unavoidable, and that the exact emissions of individual projects could not be known at the time of the preparation of the WOSP EIR. Further, they argue that the Project should have incorporated all feasible mitigation to reduce health impacts to the greatest extent feasible, which the City’s SCA’s do not do. The appellant included the following specific arguments with regard to Air Quality Impacts:*

**Comment 1:** *(C.1 March 12 letter, E.1 March 3 letter) The appellant claims that criteria pollutants were not adequately analyzed or mitigated with regard to construction and operational emissions because the BAAQMD’s screening levels for criteria air pollutant emissions are not applicable to the proposed project, and that the technical analysis (through CALLEEMOD) prepared by the City’s consultant was flawed. The appellant claims that the project would result in NO<sub>x</sub> and ROG emissions that would exceed the BAAQMD thresholds and thus an EIR must be prepared.*

**Response 1:** The CEQA Analysis identified two reasons for the project’s impacts related to criteria air pollutant emissions being less or equally severe than the impact analyzed in the WOSP EIR. First and most significantly, according to the WOSP EIR, an individual project

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consistent with the WOSP would unlikely result in a significant impact due to the generation of operational-related criteria air pollutants if the project would not exceed 494 units in a mid-rise apartment or 540,000 square feet within a light industrial building; the proposed project is significantly smaller than this threshold. As a result, it can easily be supported that the project's potential impacts related to criteria pollutants were adequately analyzed in the WOSP EIR and no further analysis is needed. Second, the project size would be less than the BAAQMD's screening levels for criteria air pollutant emissions for construction and operation. The appellant challenged the use of the BAAQMD's screening levels in the CEQA Analysis because the screening levels only apply to "Apartments, mid-rise," and not high-turnover restaurants. The high-turnover restaurants were proposed as an accessory land use of 1,600 square feet. As stated in the title of the BAAQMD CEQA Guidelines, the screening criteria are provided as guidelines and as shown in Table 1, the project's proposed 222 residential units and 1,600 square feet of high-turnover restaurants would be equivalent to about 94 percent of the BAAQMD's construction screening levels and 54 percent the BAAQMD's operational screening levels. Therefore, the combined land uses would still be below the BAAQMD's screening thresholds for both construction and operational emissions of criteria air pollutants. As a result, the criteria air pollutant emissions have been adequately analyzed in the CEQA Analysis.

Additionally, it is noted that the 1,600 square feet of retail was ultimately removed as part of the final project plans, and the analysis in the CEQA document actually represents a more conservative analysis than what is ultimately proposed.

The Soil Water Air Protection Enterprises (SWAPE) attachment to the comment letter also argues that the CEQA Analysis incorrectly relies on the conclusions of the WOSP EIR regarding criteria pollutant emissions and that the CEQA Analysis should have quantified the criteria pollutant emissions. As discussed above, because the project's land uses would be below the BAAQMD's screening level sizes for construction and operational emissions of criteria pollutants, the project is not required to quantify criteria pollutant emissions and its impacts related to criteria pollutant emissions would not be more severe than those already identified in the WOSP EIR. Therefore, SWAPE's comments regarding the project's criteria pollutant emissions are inaccurate.

**TABLE 1 CRITERIA AIR POLLUTANT AND PRECURSOR SCREENING LEVEL SIZES**

Land Use	Unit	Project Size <sup>a</sup>	Screening Levels		Project Land Use Percentages of Screening Levels	
			Construction	Operation	Construction	Operation

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Apartments, Mid-Rise	Dwelling Units	222	240	449	93%	49%
High Turnover Restaurant	Square Feet	1,600	277,000	33,000	<1%	4.8%
<b>Total Percentage of Project Land Uses Compared to Screening Levels</b>					<b>93%</b>	<b>54%</b>

Source: Bay Area Air Quality Management District (BAAQMD), 2017. CEQA Air Quality Guidelines, May.

**Comment 2 (C.2 , E.2 and E.3 March 3 letter):** *The appellant argues that SCA-AIR-2 constitutes impermissibly deferred mitigation. The appellant includes an argument that a Health Risk Assessment (HRA) is required pursuant to SCA's AIR-4 (Exposure to Air Pollution) and AIR-5 (Stationary Sources of Air Pollution), which were not prepared. In their argument they included an HRA they prepared that claims that the excess cancer risk exceeds the BAAQMD thresholds and those identified in the WOSP EIR, and thus an EIR should be prepared.*

**Response 2 (C.2 , E.2 and E.3 March 3 letter):**

The appellant's argument that the City's SCAs are deferred mitigation measures is incorrect. The project would not be granted a construction related permit unless the project complies with SCA-AIR-2 Criteria Air Pollutants- Construction Related (#21), SCA-AIR-3 Diesel Particulate Matter Controls – Construction Related (#22), SCA-AIR-4 Exposure to Air Pollution (Toxic Air Contaminants) (#23), and SCA-AIR-5 Stationary Sources of Air Pollution (Toxic Air Contaminants) (#24). SCA- AIR-3, 4 and 5, require the project to either prepare an HRA on existing and future sensitive receptors, or to incorporate health risk reduction measures. In addition, long-standing case law precedent supports reliance on legal requirements as appropriate mitigation. CEQA and established case law also make clear that the CEQA Analysis can wait to specify how the measures/conditions identified will be achieved provided a determination of impact has been made prior to approval and where known measures/conditions exist that are feasible to address the impact identified. Both of these conditions are satisfied by the CEQA Analysis.

According to the West Oakland Community Action Plan, Appendix A, the project is located in an area where the cumulative cancer risk and PM<sub>2.5</sub> concentrations currently exceed the BAAQMD's thresholds of significance. With the implementation of these SCAs (SCA-3, SCA-4 and SCA-5), the project would likely be required to implement additional health risk reduction measures from the SCAs to reduce the health risks impacts of the surrounding environment on the project residents. For instance, the project may need to install air filtration devices with a Minimum Efficiency Reporting Value (MERV) of 13 or 16, which would reduce levels of indoor diesel particulate matter and PM<sub>2.5</sub> by at least 85 and 99 percent, respectively, relative to the incoming outdoor air. These additional health risk reduction measures in the SCAs will reduce the health risk impacts of the surrounding environment on the project resident to below the BAAQMD's thresholds of significance. Therefore, the resulting health risks of the project with implementation of these SCAs would be less severe than the corresponding plan-level health



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risks impacts identified in the WOSP EIR. The CEQA Analysis is correct in relying on compliance with the relevant SCAs to ensure that the project's health risks impacts are no more severe than those identified in the WOSP EIR.

The SWAPE comment letter, on which the appellant's argument is partially based, also argued that diesel particulate matter (DPM) health risks impacts were inadequately evaluated in the CEQA Analysis. However, the SWAPE comment letter incorrectly concluded that the CEQA Analysis includes the HRAs needed to meet the requirements of SCA-AIR-3 Diesel Particulate Matter Controls – Construction Related (#22), SCA-AIR-4: Exposure to Air Pollution (Toxic Air Contaminants) (#23), and SCA-5 Stationary Sources of Air Pollution (Toxic Air Contaminants) (#24). The HRA on existing and proposed future sensitive receptors or project-specific health risk reduction measures will be provided and submitted for the City's approval following the completion of CEQA Analysis, as a requirement of SCA-AIR-3, SCA-AIR-4 and SCA-AIR-5, and therefore the applicant has a choice to either prepare a HRA or to include project-specific health risk reductions. The SWAPE comment letter also incorrectly argued that the CEQA Analysis did not identify or exhaust feasible mitigation measures. As pointed out previously, feasible health risk reduction measures, if needed, will be included in the project design and submitted for the City's approval.

The appellant prepared a preliminary HRA by SWAPE to document the project's construction and operational impacts to nearby existing sensitive receptors. While there are different standards in which to conduct screening level assessments, there are several major differences in the HRA that resulted in the appellants conclusion that there would be potential health risk impacts posed by the project construction and operation versus standards that are typically used in City of Oakland CEQA documents. First, more than 90 percent of diesel particulate matter (DPM) is less than 1 micron in diameter, and thus is a subset of PM<sub>2.5</sub>.<sup>2</sup> The SWAPE screening assessment used PM<sub>10</sub> exhaust to represent the construction DPM emissions, which generally results in an overestimate of 5 to 10 percent compared to the emissions estimate using PM<sub>2.5</sub> exhaust to represent DPM emissions.

Secondly, SWAPE's analysis relied on the AERSCREEN dispersion model to estimate DPM concentrations at sensitive receptor locations. AERSCREEN is a screening-level model that estimates maximum 1-hour pollutant concentration based on theoretically "worst-case" meteorological conditions (i.e., wind speed, wind direction, temperature, and atmospheric stability). It should be noted that these worst-case meteorological conditions would rarely, if ever, occur for 1 hour in the Bay Area. SWAPE then scaled the maximum 1-hour DPM concentration estimated in AERSCREEN over a year without consideration for the readily available local data of hourly meteorological conditions that would significantly disperse and dilute the DPM concentrations over time. SWAPE then assumed that a nearby resident would

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<sup>2</sup> California Air Resources Board (CARB), 2016. Overview: Diesel Exhaust and Health. Available at: <https://www.arb.ca.gov/research/diesel/diesel-health.htm>, accessed January 13, 2017. Last updated April 12, 2016.

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be continuously exposed to this overly conservative annual DPM concentration for 30 years. This approach relies on a significantly large degree of uncertainty to estimate overly conservative health risks without any justification to support the methodology.

Thirdly, SWAPE's HRA included operational emissions of DPM from energy use associated with building electricity and natural gas. Energy use does not generate diesel exhaust and any emissions from electricity generation would occur at offsite facilities permitted by the BAAQMD. As a result, SWAPE overestimated the project's annual DPM emissions by at least 45 percent.

As noted in the project's CEQA Analysis, and described above, implementation SCA-AIR-3 Diesel Particulate Matter Controls – Construction Related (#22), which would require equipment and diesel trucks to be equipped with Best Available Control Technology and meet the California Air Resources Board's most recent certification standard, would reduce emissions of diesel particulate matter during construction. In order to comply with SCA-AIR-3, the project sponsor would be required to ensure that construction equipment meet Tier 4 emissions standards, which can reduce emissions of diesel particulate matter by at least 85 percent relative to equipment without emission control technologies installed. With the incorporation of Tier 4 emission standard construction equipment, the estimated maximum cancer risks to infants, children, and adults would not exceed the BAAQMD's cancer risk significance threshold of 10 in one million during construction.

**Comment 3 (C.3 March 12 letter, E.4 March 3 letter):** *The appellant argues that additional mitigation is required to address impacts from gaseous TAC's, which were not addressed in the WOSP EIR or the City's SCA's.*

**Response 3:** The CEQA analysis pages 44-45, discusses potential impacts related to cancer and health risks and consistent with the findings of the WOSP EIR concludes the following:

- **Diesel Particulate Matter** - While the site planning and filtration methods will capture/screen out airborne particulate matter and will reduce PM<sub>2.5</sub> concentrations to less-than- significant levels. As a result, no further mitigation measures are needed.
- **Gaseous TAC Emissions.** There are no known feasible technologies or site planning considerations that have been shown to reduce risks of gaseous TACs. Therefore, impacts related to gaseous TACs would be significant and unavoidable, since SCA requirements are not sufficient to reduce the risk to acceptable levels.

The project would comply with all applicable SCAs and would not result in impacts greater than those identified in the WOSP EIR, regardless of their significant determination. The appellant incorrectly stated that mitigation measures should have been considered to reduce the impacts related to gaseous TACs. Furthermore, existing gaseous TACs emissions sources that contribute to cumulative health risks will be quantified if the project applicant chooses to perform an HRA required by SCA-AIR-3, SCA-AIR-4, and SCA-AIR-5. This is because the BAAQMD CEQA Guidelines require the cumulative HRA to account for the existing and

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foreseeable future stationary and mobile sources, including those emitting gaseous TACs, such as mobile vehicle exhaust from freeways and local roadways. Some health risk reduction measures from the above SCAs, if any are required, would reduce the health risks at the sensitive receptors from gaseous TACs. Such measures include, but are not limited to: phasing of residential construction, locating sensitive receptors far away from freeways, planting vegetation barriers, etc. Therefore, no mitigation measures are necessary to reduce the impacts related to gaseous TACs beyond the requirements of the SCAs.

Additionally, as noted in the CEQA Analysis and the WOSP EIR, CEQA requires the analysis of potential adverse effects of a project on the environment. Potential effects of the environment, including those such as health risks described above, on a project are legally not required to be analyzed or mitigated under CEQA. However, the WOSP EIR nevertheless analyzed potential effects of the environment on the project (i.e. siting new receptors near existing TAC sources) in order to provide information to the public and decisionmakers (Impact Air-10).

The project site is within 500 feet of I-880 and subject to emissions from the I-880 freeway that are indicated to result in a risk of contracting cancer. According to the West Oakland Community Action Plan, the cumulative health risks at the project site currently exceed the applicable thresholds recommended by the BAAQMD. The site planning and filtration methods as a part of the SCA requirements will reduce these cumulative health risk effects of the environment on the project.

**Comment 4 (C.4 March 12 letter, E.5 March 3 letter):** The appellant argues that the WOSP EIR Mitigation Measure AIR-9 requires a Health Risk Reduction Plan due to the inclusion of a backup generator on-site and that the application of the City's more recent SCA AIR-5 (Stationary Sources of Air Pollution) in the CEQA Analysis for the Project as a replacement is not sufficient. Further, they argue that SCA AIR-5 includes "if feasible" language to measures, which does not make the measures mandatory or ensure the efficacy of the SCA. Thus, the CEQA Analysis is inconsistent with the WOSP EIR and a new EIR is required.

**Response 4:** Similar to the appellant's argument refuted in response to Air Quality Impacts and Risk to Human Health 2, the appellant's argument that compliance with SCA-AIR-5 is deferred mitigation is incorrect. The appellant also incorrectly stated that Mitigation Measure Air-9A from the WOSP EIR is not replaceable by SCA-AIR-5. SCA-AIR-5 can replace Mitigation Measure Air-9A because it contains the same health risk reduction measures as Mitigation Measure Air-9A that a project could apply, if needed, and further clarifies the compliance timeline for Mitigation Measure Air-9A by specifying that compliance shall be demonstrated prior to approval of construction-related permits. Therefore, the project does not need to submit and obtain approval of a Risk Reduction Plan or the equivalents until application of construction-related permits. Furthermore, the BAAQMD also requires any new engines greater than 50 horsepower to apply for a permit to operate and to complete an HRA form. The site-specific information from the HRA form is used by the BAAQMD to perform an HRA to

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ensure that the new engine would not result in health risks impacts higher than the health risks thresholds specified in the BAAQMD's Regulation 2, Rule 5, New Source Review of Toxic Air Contaminants, namely, a cancer risk of 10 in a million, a chronic hazard index of 1.0, and an acute hazard index of 1.0. Therefore, the requirements in both SCA-AIR-5 and the BAAQMD's permitting application will ensure that the proposed backup generator would not exceed the applicable health risks thresholds. As for the feasibility of the SCA, the SCA builds on this permitting requirement and demonstrates specific pathways through which the health risk thresholds can be met. The CEQA Analysis conservatively stated that the project's operational impacts related to TACs emissions would be potentially significant and unavoidable without any HRA or health risk reduction measures required by SCA-AIR-5, which is consistent with the findings of the WOSP EIR.

**Comment 5 (C.5 March 12 letter, E.6 March 4 letter):** The appellant argues that mitigation measures to address Odor impacts should have been included for the project and the reliance on the WOSP findings of Significant and Unavoidable is not supported by substantial evidence.

**Response 5:** The appellant's argument that the impact determination related to odors is not supported by substantial evidence is incorrect, because the CEQA Analysis contains details on the nearby odor source (EBMUD WWTP) and distance to the project site. The CEQA Analysis concludes, based on these evidences, that odor impacts of the project would be significant and unavoidable due to lack of SCAs and mitigation measures from the WOSP EIR. Even though some of the health risk reduction measures might also reduce the odor impacts, such as siting of the sensitive receptors, the CEQA Analysis correctly determines that the project's odor-related impact would be no more severe than that already identified in the WOSP EIR.

In conclusion, the CEQA Analysis is correct in relying on the BAAQMD CEQA Guidance, the existing qualitative analysis, and the City's SCAs to conclude that the project's impacts related to air quality are no more severe than those identified in the WOSP EIR. Contrary to the appellant's statement, the CEQA Analysis is adequate, and the project does not need to be analyzed in an EIR.

### **Section C. Greenhouse Gas Emissions**

**Comment (D March 12 letter, F.1 March 3 letter):** *The appellant argues the Greenhouse Gas (GHG) emissions analysis by the City's CEQA consultant were underestimated and that the project is not consistent with the City's ECAP. They provided an analysis that they had prepared that indicated that the project's reactive organic gases (ROG) and nitrogen oxides (NOx) emissions exceed BAAQMD thresholds for TAC's. They argue that the analysis provided to demonstrate that a GHG Reduction plan is not required for the project is not based on substantial evidence, thus an EIR should be prepared to provide adequate evaluation and mitigation.*

**Response:** The claim that the project's GHG Analysis is insufficient is incorrect. First, the appellant referred to the SWAPE comment letter and calculations to argue that the project's

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ROG and NOx emissions would exceed the applicable BAAQMD's thresholds. However, ROG and NOx are criteria air pollutants. While some species of ROG and NOx have global warming potential, carbon dioxide equivalents of the emissions of these species from the proposed project are negligibly small compared to the CO<sub>2</sub> emissions from the proposed project. Therefore, ROG and NOx emissions from the proposed project are largely irrelevant to GHG emissions and climate change impacts of the project. In addition, the SWAPE's CalEEMod output incorrectly relied on maximum daily emissions of ROG and NOx from project construction to compare against the BAAQMD's thresholds, which are based on daily average emissions.

Secondly, the appellant relies on SWAPE's comment letter which incorrectly concludes that the GHG emissions estimated in the CEQA Analysis using CalEEMod were incorrect and unsubstantiated, and the GHG threshold used was outdated. However, the GHG emissions estimated in the CEQA analysis were based on conservative and accurate parameters for the following reasons:

1. **Energy use values.** The CEQA Analysis used energy use values based on the 2019 Building Efficiency Standards to revise the CalEEMod default values that are based on the 2016 Standards. The appellant argued that the 2019 Standards do not guarantee that any measures will be implemented and result in actual reductions locally on the project. The project is subject to SCA #85, Green Building Requirements, which requires projects to comply with Title 24 of the current version of the California Building Energy Efficiency Standards and enforces the City of Oakland Green Building Ordinance (Chapter 18.02 of the Municipal Code). Although the details on energy use of the project would not be finalized until prior to approval of construction-related permit, the 2019 Standards are mandated through SCA #85 and other City regulations. Therefore, the basis for the energy use values in CalEEMod is valid.
2. **Material import and export volumes.** The CEQA Analysis assumed that two feet of cut and imported fills would be required on the entire project site. As stated in the CalEEMod file, this assumption allowed for a conservative estimation of the amounts of materials exported and imported to the project site (approximately 3,000 cubic yards). The appellant's argument that the CEQA Analysis fails to mention or justify the amount of material export or import is baseless.
3. **Solid waste generation rates.** The City-specific solid waste diversion rates of 49 percent for residential land uses and 33 percent for commercial land uses were based on two sources: the CalEEMod default (statewide)<sup>3</sup> diversion rates of 37 percent for residential land uses in 1999<sup>4</sup> and 52 percent for commercial land uses in 2005,<sup>5</sup> and the

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<sup>3</sup> California Department of Resources Recycling and Recovery (CalRecycle), 2019. California's Estimated Statewide Diversion Rates Since 1989. <https://www.calrecycle.ca.gov/LGCentral/GoalMeasure/DisposalRate/Graphs/EstDiversion/>, accessed on June 26, 2019.

<sup>4</sup> California Integrated Waste Management Board, 1999. Statewide Waste Characterization Study Results and Final Report, December.

<sup>5</sup> California Integrated Waste Management Board, 2006. Targeted Statewide Waste Characterization Study: Waste Disposal and Diversion Findings for Selected Industry Groups, June.

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City's 2020 land use-average diversion rate of 68 percent.<sup>6</sup> The appellant's argument that the City's 2020 solid waste diversion rate is not applicable to specific projects is incorrect. Although the details on solid waste generation of the project would not be available until tenant occupancy of the project, the project is required to comply with the relevant regulations, including but not limited to, SCA-UTIL-1: Construction and Demolition Waste Reduction and Recycling (#82), SCA UTIL-3: Recycling Collection and Storage Space (#84), and SCA UTIL-4: Green Building Requirements (#85). The 68 percent solid waste diversion rate assumed in the CEQA Analysis is a reasonable assumption for new developments.

4. **Operational vehicle trip rates.** The appellant incorrectly argued that the CalEEMod model should not set vehicle trip rates to zeros. However, the reason for this change of default has been clearly laid out in the CEQA Analysis: "The project meets the criteria for a residential or mixed use "transit priority project" and is located within a "Regional Center" Priority Development Area (PDA) pursuant to the Plan Bay Area, which represents the Sustainable Communities Strategy (SCS) for the greater San Francisco Bay Area (MTC, 2013). Environmental documents for such projects need not analyze global warming impacts resulting from cars and light duty trucks. Consequently, if the project meets the requirements of a transit priority project, its mobile sources need not be included in the assessment of GHG impacts. For this reason, Table 5 in the CEQA Analysis presents the project-related GHG emissions without the mobile emissions, as permitted per CEQA Guidelines Section 15183.5(c). GHG emissions from heavy-duty trucks generated by project operation are less than five percent of total fleet, and were therefore excluded from the Analysis and the comparison to the GHG efficiency metric."
5. **Wastewater treatment parameters.** Because the East Bay Municipal Utility District (EBMUD) has been producing more energy onsite from its cogeneration system powered by digester gas than is needed to run the wastewater treatment facility, it is justified to assume that the percentage of the digester gas combusted is 100 percent.<sup>7</sup> In addition, the appellant incorrectly argued that the percentage of wastewater being treated aerobically by the EBMUD should be less than 100 percent. The reference provided by the appellant is related to the treatment of food waste, instead of wastewater. In addition, a review of the EBMUD indicates that wastewater treatment plants managed by the EBMUD use aeration as a primary step in water treatment, and does not have facultative lagoons at their facilities. Because of its urban setting, the project does not propose on-site water treatment in septic tanks. Therefore, percentages of wastewater treated by facultative lagoons and septic tanks are zero, and the percentage of wastewater treated by aerobic processes is 100 percent for the EBMUD.

The appellant also argued, incorrectly, that the quantitative GHG threshold was outdated. Because the focus of the CEQA Analysis is to compare whether the project's impact related

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<sup>6</sup> City of Oakland, 2006. Zero Waste Strategic Plan. November.

<sup>7</sup> East Bay Municipal Utility District, 2021. Recycling Water and Energy. Available at: <https://www.ebmud.com/wastewater/recycling-water-and-energy/>. Accessed on April 9, 2021.

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GHG emissions would be more severe than those analyzed under the WOSP EIR, the same GHG emissions thresholds used in the WOSP EIR should be applied to the project. The appellant's statement that the CEQA Analysis "fails to estimate and evaluate the proposed project's GHG emissions based on any quantitative thresholds whatsoever" is clearly inaccurate, because the CEQA Analysis provided a quantitative Analysis.

#### **Section D. Noise and Vibration**

**Comment (E March 12 letter, G.1 March 3 letter,):** *The appellant argues that the application of the City's SCA's to address noise and vibration issues by requiring approval of a vibration reduction plan prior to permit issuance and requiring compliance with operational noise performance standards is inadequate since the efficacy of those measures is unknown at this time. Thus, an EIR must be prepared to provide enforceable mitigations with support of evidence as to the noise reduction that would be achieved.*

**Response:** As concluded on page 4.7-32 and 4.7-41 of the WOSP DEIR, the applicable SCA (SCA-NOI-5, (WOSP SCA #31 Interior Noise), SCA-NOI-6 (WOSP SCA #32 Operational Noise-General), and SCA-NOI-7, (WOSP SCA- SCA #38 Vibration,)) is comprehensive in their content and for practical purposes represent all feasible measures available to mitigate operational noise, and noise exposure/compatibility to meet applicable noise performance standards. Therefore, implementation of these measures would reduce operational impacts and noise exposure/compatibility associated with extreme noise actions to less-than-significant levels.

Furthermore, impacts of the environment on the project as they relate to ambient noise are not within the scope of CEQA. However, CEQA does require consideration of whether the project might exacerbate existing environmental hazards.

Because the project would not substantially increase the level of significance of the operation noise impact identified in the WOSP DEIR, or create noise exposure impacts more severe than identified in the WOSP EIR or result in new significant operational noise impacts that have not already been considered, implementation of applicable SCAs would reduce impacts from operational impacts and noise exposure/land use compatibility associated with noise actions to less-than-significant levels, the same conclusion determined in the WOSP DEIR.

In addition, CEQA and established case law also make clear that the CEQA Analysis can wait to specify how the measures/conditions identified will be achieved provided a determination of impact has been made prior to approval and where known measures/conditions exist that are feasible to address the impact identified. Both of these conditions are satisfied by the CEQA Analysis. The City completed a detailed analysis regarding Noise prepared as part of the WOSP EIR and the CEQA Analysis prepared for the Project. The WOSP DEIR analysis included an overview of the regulatory scheme, evaluated potentially significant impacts associated with development in the BVDSP, analyzed applicable state, federal, and local regulatory schemes that would apply, analyzed impacts to construction noise and vibration, operational noise and

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vibration, traffic noise, airport noise, noise exposure/land compatibility and cumulative noise , and determined that compliance with the SCAs and/or mitigation measures would reduce any noise impact, and any cumulative noise impact, to a less than significant level. The regulations or requirements identified include specific performance criteria that must be met before starting construction (in the case of SCA-NOI-5 and NOI-7) and the ongoing in the case of SCA-NOI-6. Project must comply with the mitigation measures and regulatory schemes that were identified to reduce the impacts as identified in the CEQA Analysis.



