

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000  
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660  
FAX: (650) 589-5062  
amarshall@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350  
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201  
FAX: (916) 444-6209

KEVIN T. CARMICHAEL  
CHRISTINA M. CARO  
THOMAS A. ENSLOW  
KELILAH D. FEDERMAN  
RICHARD M. FRANCO  
ANDREW J. GRAF  
TANYA A. GULESSERIAN  
DARION N. JOHNSTON  
RACHAEL E. KOSS  
AIDAN P. MARSHALL  
ALAUARA R. MCGUIRE

Of Counsel  
MARC D. JOSEPH  
DANIEL L. CARDOZO

February 17, 2025

**Via Overnight Mail and Email**

Kara Peterson, Director of Planning  
San Diego State University  
Planning, Design & Construction  
5500 Campanile Drive  
San Diego, California 92182-1624

**Email:** [kara.peterson@sdsu.edu](mailto:kara.peterson@sdsu.edu); [evolvecomments@sdsu.edu](mailto:evolvecomments@sdsu.edu).

**Re: Comments on the Draft Environmental Impact Report for the  
Evolve Student Housing Project (SCH No. 2024080979)**

Dear Ms. Peterson:

We are writing on behalf of Californians Allied for a Responsible Economy  
("CARE CA") to provide comments on the Evolve Student Housing Project (SCH No.  
2024080979) ("Project"), proposed by San Diego State University ("SDSU").

The Project would involve construction and development of new student housing and related support facilities on SDSU's main campus. The Project would consist of two components, the Peninsula Component and the University Towers East Component.<sup>1</sup> The proposed Peninsula Component would be located on an approximately 10.57-acre site in the northwest portion of the campus, and would include demolition of all 13 existing buildings, which presently provide housing for 702 students, and the subsequent phased development of one 9-story student housing building and five student housing buildings up to 13 stories in height that would contain a total of approximately 4,450 student beds.<sup>2</sup> The proposed University Towers East Component would be developed on an approximately 1.1-acre site located immediately east of the existing University Towers building, south of Montezuma Road.<sup>3</sup> The existing parking lot adjacent to University Towers would be demolished to allow for redevelopment of the site to include a new nine-story

O5-2

<sup>1</sup> DEIR, pg. 2-6.

<sup>2</sup> *Id.* at 1-2, 1-3.

<sup>3</sup> *Id.* at 1-2.

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student housing building that would accommodate approximately 720 student beds.<sup>4</sup> Development of the Proposed Project would result in approximately 5,170 new student beds, a net increase of approximately 4,468 student beds to the main campus inventory.<sup>5</sup>

05-2  
Cont.

We reviewed the DEIR with the assistance of air quality expert James Clark, PhD,<sup>6</sup> and noise expert Ani Toncheva.<sup>7</sup>

Based upon CARE CA's review of the DEIR and supporting documentation with its experts, the record demonstrates that the DEIR fails to comply with the requirements of the California Environmental Quality Act ("CEQA")<sup>8</sup> because the DEIR fails to adequately analyze and mitigate the Project's potentially significant impacts.

05-3

Regarding air quality, the DEIR underestimates the Project's emissions by assuming the use of Tier 4 Final construction equipment and generators without including them as binding mitigation measures or conditions of approval. Regarding health risk, the DEIR concludes that the Project's emissions of toxic air contaminants ("TACs") would result in a less-than-significant impact, despite the DEIR's own health risk analysis calculating that the incremental cancer risk would reach 23.1 in one million, which exceeds the San Diego Air Pollution Control District's ("SDAPCD") significance threshold of 10 in one million for cancer risk.

05-4

Regarding noise, the DEIR fails to analyze construction noise impacts on students at neighboring Huāxyacac Hall, applies a significance threshold that does not consider the major increase in noise over ambient levels, underestimates the Project's construction and operational noise impacts, and fails to identify effective mitigation.<sup>9</sup>

05-5

Regarding energy, the DEIR inconsistently describes the Project by stating that the Project would have a 308-kilowatt rooftop solar energy system and a 163-kilowatt rooftop solar energy system.

05-6

<sup>44</sup> *Id.* at 1-2.

<sup>5</sup> *Id.* at 1-3.

<sup>6</sup> Dr. Clark's technical comments and curricula vitae are attached hereto as Exhibit A.

<sup>7</sup> Ms. Toncheva's technical comments and curricula vitae are attached hereto as Exhibit B.

<sup>8</sup> PRC § 21100 et seq.

<sup>9</sup> The noise impacts identified in Ms. Toncheva's comments and this letter are impacts that SDSU is required to disclose and mitigate pursuant to CEQA, and are not exempt from environmental review under PRC Sections 21085 and 21085.2 (AB 1307).

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Regarding public utilities, the DEIR finds that no environmental impacts would result from expansion of water infrastructure, but fails to support its conclusions with a quantitative analysis of the Project's fire flow requirements. And the DEIR similarly finds that no environmental impacts would result from expansion of police facilities needed to service the increased on-campus student population, without supporting its conclusions with substantial evidence.

05-7

As a result of its shortcomings, the DEIR lacks substantial evidence to support its conclusions, violates CEQA's disclosure and analytical requirements, and fails to properly mitigate the Project's significant environmental impacts. CARE CA urges SDSU to remedy the deficiencies in the DEIR by preparing a legally adequate revised DEIR and recirculating it for public review and comment.<sup>10</sup> CARE CA reserves the right to provide supplemental comments at any and all later proceedings related to this Project.<sup>11</sup>

05-8

## I. STATEMENT OF INTEREST

CARE CA is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards, and the environmental impacts of the Project. The coalition includes San Diego residents Justin Barnes, Terry Hermosillo, Bert Mendenhall, Conner Mick, Francisco Soto Jr., and UA Local 230, along with its members, their families, and other individuals who live and work in and around the City of San Diego.

05-9

CARE CA advocates for protecting the environment and the health of their communities' workforces. CARE CA seeks to ensure a sustainable construction industry over the long-term by supporting projects that offer genuine economic and employment benefits, and which minimize adverse environmental and other impacts on local communities. CARE CA members live, work, recreate, and raise their families in San Diego and surrounding communities. Accordingly, they would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist onsite.

<sup>10</sup> We reserve the right to supplement these comments at later hearings on this Project. Gov. Code § 65009(b); Public Resources Code § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal.App.4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal.App.4th 1109, 1121.

<sup>11</sup> Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

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In addition, CARE CA has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making the area less desirable for new businesses and new residents. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

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## II. CEQA LEGAL BACKGROUND

CEQA requires public agencies to analyze the potential environmental impacts of their proposed actions in an EIR.<sup>12</sup> “The foremost principle under CEQA is that the Legislature intended the act to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.”<sup>13</sup>

CEQA has two primary purposes. First, CEQA is designed to inform decisionmakers and the public about the potential significant environmental effects of a project.<sup>14</sup> “Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR ‘protects not only the environment but also informed self-government.’”<sup>15</sup> The EIR has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.”<sup>16</sup> As the CEQA Guidelines explain, “[t]he EIR serves not only to protect the environment but also to demonstrate to the public that it is being protected.”<sup>17</sup>

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<sup>12</sup> PRC § 21100.

<sup>13</sup> *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal* (“*Laurel Heights I*”) (1988) 47 Cal.3d 376, 390 (internal quotations omitted).

<sup>14</sup> Pub. Resources Code § 21061; CEQA Guidelines §§ 15002(a)(1); 15003(b)-(e); *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 517 (“[T]he basic purpose of an EIR is to provide public agencies and the public in general with detailed information about the effect [that] a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.”).

<sup>15</sup> *Citizens of Goleta Valley*, 52 Cal.3d at p. 564 (quoting *Laurel Heights I*, 47 Cal.3d at 392).

<sup>16</sup> *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810; see also *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal.App.4th 1344, 1354 (“*Berkeley Jets*”) (purpose of EIR is to inform the public and officials of environmental consequences of their decisions before they are made).

<sup>17</sup> CEQA Guidelines § 15003(b).

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Second, CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring consideration of environmentally superior alternatives and adoption of all feasible mitigation measures.<sup>18</sup> The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to “identify ways that environmental damage can be avoided or significantly reduced.”<sup>19</sup> If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment” to the greatest extent feasible and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.”<sup>20</sup>

05-10  
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While courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference.’”<sup>21</sup> As the courts have explained, a prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process.”<sup>22</sup> “The ultimate inquiry, as case law and the CEQA guidelines make clear, is whether the EIR includes enough detail ‘to enable who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.’”<sup>23</sup>

### III. THE PROJECT DESCRIPTION IS INADEQUATE

The DEIR does not meet CEQA’s requirements because it fails to include an accurate and complete Project description, rendering the entire analysis inadequate.

05-11

<sup>18</sup> CEQA Guidelines § 15002(a)(2), (3); *see also Berkeley Jets*, 91 Cal.App.4th at 1354; *Citizens of Goleta Valley*, 52 Cal.3d at p. 564.

<sup>19</sup> CEQA Guidelines § 15002(a)(2).

<sup>20</sup> PRC § 21081(a)(3), (b); CEQA Guidelines §§ 15090(a), 15091(a), 15092(b)(2)(A), (B); *Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 883.

<sup>21</sup> *Berkeley Jets*, 91 Cal.App.4th at p. 1355 (emphasis added) (quoting *Laurel Heights I*, 47 Cal.3d at 391, 409, fn. 12).

<sup>22</sup> *Berkeley Jets*, 91 Cal.App.4th at p. 1355; *see also San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722 (error is prejudicial if the failure to include relevant information precludes informed decision making and informed public participation, thereby thwarting the statutory goals of the EIR process); *Galante Vineyards*, 60 Cal.App.4th at p. 1117 (decision to approve a project is a nullity if based upon an EIR that does not provide decision-makers and the public with information about the project as required by CEQA); *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946 (prejudicial abuse of discretion results where agency fails to comply with information disclosure provisions of CEQA).

<sup>23</sup> *Sierra Club*, 6 Cal.5th at p. 516 (quoting *Laurel Heights I*, 47 Cal.3d at 405).

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California courts have repeatedly held that “an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.”<sup>24</sup> CEQA requires that a project be described with enough particularity that its impacts can be assessed.<sup>25</sup> Without a complete project description, the environmental analysis under CEQA is impermissibly limited, thus minimizing the project’s impacts and undermining meaningful public review.<sup>26</sup> Accordingly, a lead agency may not hide behind its failure to obtain a complete and accurate project description.<sup>27</sup>

CEQA Guidelines section 15378 defines “project” to mean “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.”<sup>28</sup> “The term “project” refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term project does not mean each separate governmental approval.”<sup>29</sup> Courts have explained that a complete description of a project must “address not only the immediate environmental consequences of going forward with the project, but also all “*reasonably foreseeable* consequence[s] of the initial project.”<sup>30</sup> “If a[n]... EIR... does not adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences of the project, informed decisionmaking cannot occur under CEQA and the final EIR is inadequate as a matter of law.”<sup>31</sup>

05-11  
Cont.

#### A. The Description of the Project’s Photovoltaic Systems is Internally Inconsistent

The DEIR states that the Project proposes a 308-kilowatt rooftop solar energy system estimated to produce 528,254 kWh per year of renewable energy.<sup>32</sup> But elsewhere, the DEIR states that the Project would include a 163 kW solar energy

05-12

<sup>24</sup> *Stopthemillenniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th 1, 17; *Communities for a Better Environment v. City of Richmond* (“*CBE v. Richmond*”) (2010) 184 Cal.App.4th 70, 85 89; *County of Inyo v. City of Los Angeles* (3d Dist. 1977) 71 Cal.App.3d 185, 193.

<sup>25</sup> 14 CCR § 15124; see, *Laurel Heights I, supra*, 47 Cal.3d 376, 192-193.

<sup>26</sup> *Id.*

<sup>27</sup> *Sundstrom v. County of Mendocino* (“*Sundstrom*”) (1988) 202 Cal.App.3d 296, 311.

<sup>28</sup> CEQA Guidelines § 15378.

<sup>29</sup> *Id.*, § 15378(c).

<sup>30</sup> *Laurel Heights I*, 47 Cal. 3d 376, 398 (emphasis added); see also *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 449-50.

<sup>31</sup> *Riverwatch v. Olivenhain Municipal Water Dist.* (2009) 170 Cal. App. 4th 1186, 1201.

<sup>32</sup> DEIR, pg. 4.5-9.

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system.<sup>33</sup> This inconsistency is not resolved in the DEIR, which does not commit to any minimum size solar energy system as a mitigation measure or binding condition of approval.

↑ 05-12  
Cont.

This inconsistency undermines the DEIR's analysis of the Project's impacts because the DEIR's analysis of the Project's energy consumption and operational emissions assumes that the Project would include a 308 kW solar system.<sup>34</sup> The Project's actual energy consumption and emissions would be substantially higher if the Project does not use a 308 kW solar system. Because there currently is no binding requirement in the DEIR that the Project include a 308 kW solar energy system, it is equally likely that the Project would use a 163 kW or smaller solar energy system. The DEIR's analysis of energy consumption and operational emissions of criteria air pollutants, GHGs, and TAC emissions assumes the reductions associated with use of a 308 kW solar system, and is therefore not supported by substantial evidence.

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The DEIR must be revised and recirculated to resolve this inconsistent description of the Project's solar energy system and correct the unsupported air quality and energy analysis.

05-14

#### IV. THE DEIR FAILS TO DISCLOSE, ANALYZE AND MITIGATE POTENTIALLY SIGNIFICANT IMPACTS

An EIR must fully disclose all potentially significant impacts of a Project and implement all feasible mitigation to reduce those impacts to less than significant levels. The lead agency's significance determination with regard to each impact must be supported by accurate scientific and factual data.<sup>35</sup> An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.<sup>36</sup>

05-15

Even when the substantial evidence standard is applicable to agency decisions to certify an EIR and approve a project, reviewing courts will not 'uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference.'<sup>37</sup>

<sup>33</sup> DEIR, pg. 6-5, 6-9, 6-14.

<sup>34</sup> DEIR, Appendix C, pg. x.

<sup>35</sup> CEQA Guidelines § 15064(b).

<sup>36</sup> *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732.

<sup>37</sup> *Berkeley Jets*, 91 Cal.App.4th at 1355.

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Moreover, the failure to provide information required by CEQA is a failure to proceed in the manner required by CEQA.<sup>38</sup> Challenges to an agency's failure to proceed in the manner required by CEQA, such as the failure to address a subject required to be covered in an EIR or to disclose information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.<sup>39</sup> In reviewing challenges to an agency's approval of an EIR based on a lack of substantial evidence, the court will "determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements."<sup>40</sup>

O5-15  
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CEQA also requires agencies to commit to all feasible mitigation measures to reduce significant environmental impacts.<sup>41</sup> In particular, the lead agency may not make required CEQA findings, including finding that a project impact is significant and unavoidable, unless the administrative record demonstrates that it has adopted all feasible mitigation to reduce significant environmental impacts to the greatest extent feasible.<sup>42</sup>

**A. The DEIR Fails to Adequately Analyze and Mitigate Potentially Significant Air Quality Impacts**

**1. The DEIR Improperly Compresses Analysis of the Project's Unmitigated and Mitigated Impacts and Lacks Binding Mitigation**

The DEIR finds that the Project would result in less-than-significant emissions of criteria air pollutants and would not result in a significant health risk impact. The DEIR's analysis of the Project's unmitigated impacts assumes that the Project would exclusively use Tier 4 Final equipment during construction<sup>43</sup> and use Tier 4 Final emergency generators during operation.<sup>44</sup> Neither of these conditions are included in the DEIR as binding mitigation measures or conditions of approval, and neither are required under existing law or regulatory requirements. This

O5-16

<sup>38</sup> *Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1236.

<sup>39</sup> *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

<sup>40</sup> *Id.*, *Madera Oversight Coal., Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102.

<sup>41</sup> CEQA Guidelines § 15002(a)(2).

<sup>42</sup> PRC § 21081(a)(3), (b); CEQA Guidelines §§ 15090, 15091; *Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 883.

<sup>43</sup> DEIR, pg. 4.2-18.

<sup>44</sup> DEIR, pg. 4.2-27.

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approach violates CEQA's requirements that an EIR analyze the Project's unmitigated impacts and separately identify binding mitigation.

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Cont.

In *Lotus v. Department of Transportation*, an EIR prepared by the California Department of Transportation contained measures to help minimize potential stress on redwood trees during highway construction, such as restorative planting, invasive plant removal, watering, and use of an arborist and specialized excavation equipment.<sup>45</sup> The Court of Appeal held that the EIR improperly compressed the analysis of impacts and mitigation measures into a single issue because the EIR did not disclose the severity of the impact prior to mitigation and did not designate impact reduction measures as mitigation, yet concluded that because of the measures, no significant impacts were anticipated.<sup>46</sup> The Court explained that a significance determination must first be made independent of mitigation, then mitigation can be incorporated, and the effectiveness of those measures evaluated.<sup>47</sup> As the court explained, "Absent a determination regarding the significance of the impacts to the root systems of the old growth redwood trees, it is impossible to determine whether mitigation measures are required or to evaluate whether other more effective measures than those proposed should be considered."<sup>48</sup>

O5-17

Other CEQA cases, including *Citizens for Environmental Responsibility v. State ex rel. 14th District Agricultural Association*,<sup>49</sup> *Berkeley Hills Watershed Coalition v. City of Berkeley*,<sup>50</sup> and *Berkeley Hillside Preservation v. City of Berkeley*,<sup>51</sup> similarly provide that in order to be considered a design feature, a measure cannot be taken "mitigate or offset the alleged adverse environmental impacts" of the Project.<sup>52</sup>

<sup>45</sup> (2014) 223 Cal.App.4th 645, 658 (compression of mitigation measures into project design without acknowledging potentially significant impact if effects were not mitigated violates CEQA).

<sup>46</sup> *Id.* at 656.

<sup>47</sup> *Id.* at 654-656.

<sup>48</sup> *Id.* at 656.

<sup>49</sup> (2015) 242 Cal.App.4th 555.

<sup>50</sup> (2019) 31 Cal.App.5th 880.

<sup>51</sup> (2015) 241 Cal.App.4th 943.

<sup>52</sup> *Berkeley Hills Watershed, supra*, 31 Cal.App.5th 880 (holding that measures were not "mitigation measures" because they were developed as part of the project design to meet building code requirements for properties located in seismic zones and address preexisting conditions on the site as opposed to being "proposed subsequent actions by the project's proponent to mitigate or offset the alleged adverse environmental impacts" of the project).

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Here, the DEIR's approach violates CEQA because the DEIR fails to disclose the severity of the Project's impacts prior to mitigation,<sup>53</sup> incorrectly concluding that individual and cumulative air quality and health risk impacts are less than significant with no mitigation required.<sup>54</sup> The DEIR also fails to quantify the emissions reductions that would be achieved with the proposed use of Tier 4 final construction and operational equipment, and fails to require Tier 4 final equipment as binding mitigation. As a result, actual emissions and health risk may be underreported.

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This approach also violates the holding in *Lotus* by assuming Tier 4 Final equipment in its analysis of the Project's unmitigated impacts. Use of Tier 4 equipment is a de facto mitigation measure because its sole purpose is to mitigate or offset emissions from construction activities. And there is no evidence in the DEIR that a requirement to use Tier 4 Final equipment is unrelated to mitigation of environmental impacts or otherwise preexists the Project. By compressing the analysis of unmitigated and mitigated impacts, the DEIR fails to disclose the Project's potential effects on public health and the environment.

05-19

SDSU must revise and recirculate the EIR to disclose the Project's significant impacts resulting from construction emissions and include use of Tier 4 Final construction equipment and generators as a binding mitigation measure in the MMRP.<sup>55</sup>

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## 2. The DEIR's Assumption that 100% of Construction Equipment Would be Tier 4 Final is Unsupported

As explained above, DEIR's air quality and health risk analyses incorrectly assume that all construction equipment would be Tier 4 Final.<sup>56</sup> This assumption further unsupported by substantial evidence because Tier 4 Final equipment is of limited availability.

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<sup>53</sup> CEQA requires that an EIR disclose the severity of a project's impacts and the probability of their occurrence before a project can be approved. 14 CCR §§ 15143, 15162.2(a); *Cal. Build. Indust. Ass'n v. BAAQMD* (2015) 62 Cal.4th 369, 388-90; *Madera Oversight Coalition*, 199 Cal.App.4th at 82; *Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs.* (2001) 91 Cal.App.4th 1344, 1370-71; CEQA Guidelines, Appendix G; *Sierra Club v. County of Fresno* at pp. 20-21 ("sufficient discussion of significant impacts requires not merely a determination of whether an impact is significant, but some effort to explain the nature and magnitude of the impact").

<sup>54</sup> DEIR, pp. 4.2-29; 4.2-31, 4.2-32.

<sup>55</sup> *Id.* at 651-52. (mitigation measures must be incorporated directly into the EIR to be enforceable).

<sup>56</sup> DEIR, pg. 4.2-18.

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Dr. Clark presents data showing that access to Tier 4 Final certified equipment necessary for the Project (excavators, rubber-tired dozers, tractors/loaders/backhoes, graders, scrapers, off-highway trucks, pavers, and rollers) are in short supply in the State.<sup>57</sup> The DEIR fails to analyze the feasibility of obtaining exclusively Tier 4 Final equipment for use during all of the Project's construction phases, and fails to require it as binding mitigation or conditions.

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CEQA requires the lead agency to adopt feasible mitigation measures that will substantially lessen or avoid a project's potentially significant environmental impacts<sup>58</sup> and describe those mitigation measures in the EIR.<sup>59</sup> A public agency may not rely on mitigation measures of uncertain efficacy or feasibility.<sup>60</sup> "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors.<sup>61</sup> Mitigation measures must be fully enforceable through permit conditions, agreements or other legally binding instruments.<sup>62</sup>

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There is no evidence in the DEIR demonstrating that SDSU or its contractors have access to Tier 4 Final equipment for necessary construction equipment. Without a binding measure requiring Tier 4 Final equipment, construction emissions would likely be greater than disclosed in the DEIR. SDSU must present evidence demonstrating that it is able to procure the necessary Tier 4 Final equipment for the duration of Project construction.

The DEIR must also be revised to identify Tier 4 Final equipment as a binding mitigation measure. Without this equipment, health risk and air quality impacts may be significant and unmitigated. For example, SDSU's health risk analysis ("HRA") finds that the offsite cancer risk would reach 7.4 in one million, which is less than the 10 in one million significance threshold.<sup>63</sup> This threshold would likely be exceeded without exclusive use of Tier 4 Final equipment because lower-tiered equipment generates much more particulate matter and other air pollutants.<sup>64</sup> Similarly, the DEIR concludes that the Project's cumulative air quality

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<sup>57</sup> Clark Comments, pg. 8-9.

<sup>58</sup> PRC §§ 21002, 21081(a).

<sup>59</sup> CEQA § 21100(b)(3); CEQA Guidelines section 15126.4.

<sup>60</sup> *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727 (finding groundwater purchase agreement inadequate mitigation measure because no record evidence existed that replacement water was available).

<sup>61</sup> CEQA Guidelines § 15364.

<sup>62</sup> *Id.* at §15126.4(a)(2).

<sup>63</sup> *Id.*

<sup>64</sup> Nonroad Compression-Ignition Engines: Exhaust Emission Standards, <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100A05.pdf> (For Tier 4 interim engines greater than 7734-004acp)

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impacts are less than significant based on its conclusion that individual Project impacts are less than significant.<sup>65</sup> This conclusion is similarly unsupported and may, in fact, be wrong once emissions are properly calculated to disclose their severity prior to mitigation.

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Cont.

### 3. The DEIR Fails to Disclose and Mitigate Significant Health Risk Impacts from Exposure to TACs

The DEIR finds that the Project would result in less-than-significant health risk impacts from exposure to TACs.<sup>66</sup> SDSU's HRA finds that the offsite cancer risk would reach 7.4 in one million, which is less than the 10 in one million significance threshold.<sup>67</sup>

Dr. Clark reviewed the HRA and observes that the HRA itself calculates higher cancer risk impacts at five other sensitive receptor locations which exceed the 10 in one million significance threshold and result in significant impacts.<sup>68</sup> The DEIR does not identify where these sensitive receptors are located, but shows that the cancer risk at these receptors range from 11.9 to 23.1 in one million.<sup>69</sup> These impacts would exceed the SDAPCD 10 in one million significance threshold and thus require mitigation. The DEIR fails to disclose this impacts, and fails to mitigate it (because these impacts already assume that the Project would exclusively use Tier 4 Final equipment). The DEIR must be revised and recirculated to identify additional feasible mitigation to reduce this significant health risk. As with the Project's other air quality impacts, the DEIR does not currently identify a significant health risk impact. Necessary revisions to the DEIR would therefore constitute significant new information requiring recirculation of the DEIR for public review.<sup>70</sup>

05-25

50 hp and less than 75 hp, PM emissions are ten times (10 x) greater than PM emissions from the same sized Tier 4 final equipment. For Tier 4 interim engines greater than 75 hp the NO<sub>x</sub> emission are eight and one-half times (8.5 x) higher than the same sized Tier 4 final equipment.); <https://www.cummins.com/news/2021/02/08/emission-regulations-diesel-engines-used-upstream-oil-and-gas-activities>.

<sup>65</sup> DEIR, p. 4.2-32 to -33.

<sup>66</sup> DEIR, Appendix C, pg. 39-40, Table 14.

<sup>67</sup> *Id.*

<sup>68</sup> Clark Comments, pg. 5.

<sup>69</sup> DEIR, Appendix C, PDF pg. 128, 129; Clark Comments, pg. 6.

<sup>70</sup> Cal. Code Regs. tit. 14 § 15088.5 ("Significant new information' requiring recirculation include, for example, a disclosure showing that: (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.").

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**B. The DEIR Fails to Adequately Evaluate Potentially Significant Noise Impacts**

**1. The DEIR Fails to Adequately Analyze Construction Noise Impacts on the Existing Student Population**

The DEIR fails to adequately analyze construction noise impacts on sensitive receptors at Huāxyacac Hall, which is student housing to the south of the Peninsula Component. Ms. Toncheva observes that this sensitive receptor is approximately 90 feet from the Project site, which is significantly closer than the closest sensitive receptor identified in the DEIR: single family homes 510 feet to the west.<sup>71</sup> Because Huāxyacac Hall is much closer than the sensitive receptor analyzed in the DEIR, noise impacts on this receptor would be greater than analyzed in the DEIR. As such, the DEIR's analysis is incomplete and its conclusions are not supported by substantial evidence.

05-26

Ms. Toncheva demonstrates that construction noise impacts on this receptor would be significant. Specifically, grading activity at 90 feet from the site is expected to be as high as 78 dBA (12-hour Leq), which would exceed the DEIR's 75 dBA threshold.<sup>72</sup>

**2. The DEIR's Construction Noise Significance Threshold is Unsupported by Substantial Evidence**

Appendix G of the CEQA Guidelines provides that the Project would cause a significant noise impact if it would result in "[g]eneration of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies."<sup>73</sup> For this project, the DEIR provides that an average construction noise under 75 dBA over 12 hours would be less than significant.<sup>74</sup> Sole reliance on this threshold is not supported by substantial evidence for two main reasons: (1) the DEIR fails to identify a significance threshold for the increase in noise over ambient levels, and (2) hearing loss and annoyance impacts would occur at levels below SDSU's significance threshold.

05-27

<sup>71</sup> Toncheva Comments, pg. 3.

<sup>72</sup> *Id.*

<sup>73</sup> DEIR, Appendix H, pg. 11.

<sup>74</sup> *Id.*

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California courts have held that “the lead agency should consider both the increase in noise level and the absolute noise level associated with a project.”<sup>75</sup> The courts have held that reliance on a maximum noise level as the sole threshold of significance for noise impacts violates CEQA because it fails to consider whether the magnitude of changes in noise levels is significant.<sup>76</sup> In *Keep our Mountains Quiet v. County of Santa Clara*,<sup>77</sup> neighbors of a wedding venue sued over the County of Santa Clara’s failure to prepare an EIR for a proposed project to allow use permits for wedding and other party events at a residential property abutting an open space preserve. Neighbors and their noise expert contended that previous events at the facility had caused significant noise impacts that reverberated in neighbors’ homes and disrupted the use and enjoyment of their property.<sup>78</sup> The County’s EIR relied on the noise standards set forth in its noise ordinance as its thresholds for significant noise exposure from the project, deeming any increase to be insignificant so long as the absolute noise level did not exceed those standards.<sup>79</sup> The Court examined a long line of CEQA cases which have uniformly held that conformity with land use regulations is not conclusive of whether or not a project has significant noise impacts<sup>80</sup> in holding that the County’s reliance on the project’s compliance with noise regulations did not constitute substantial evidence supporting the County’s finding of no significant impacts.<sup>81</sup>

05-28

In *King and Gardiner Farms, LLC v. County of Kern*,<sup>82</sup> the Court of Appeal cited *Keep our Mountains Quiet* and decisions cited therein when it rejected the use of a single “absolute noise level” threshold of significance (construction and operational noise impacts were only deemed significant if they exceeded 65 dBA

<sup>75</sup> *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 733; see *King and Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 894 (citing *Keep Our Mountains Quiet*); *Berkeley Jets, supra*, 91 Cal.App.4th 1344, 1373 (lead agency improperly adopted a single, fixed threshold of 65 dB CNEL for determining whether the project’s noise impacts would be significant).

<sup>76</sup> *King & Gardiner Farms, LLC*, 45 Cal.App.5th at 865.

<sup>77</sup> *Keep our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714.

<sup>78</sup> *Id.* at 724.

<sup>79</sup> *Id.* at 732.

<sup>80</sup> *Id.*, citing *Citizens for Responsible & Open Government v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1338; *Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, 881–882; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1416 (project’s effects can be significant even if “they are not greater than those deemed acceptable in a general plan”); *Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 354, (“CEQA nowhere calls for evaluation of the impacts of a proposed project on an existing general plan”).

<sup>81</sup> *Id.* at 732–734; see also *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 893, as modified on denial of rehearing (Mar. 20, 2020).

<sup>82</sup> *King and Gardiner Farms, LLC, supra*, 45 Cal.App.5th 814.

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CNEL) on the grounds that the sole use of such a threshold fails to consider the magnitude or severity of increases in noise levels attributable to the project in different environments. The Court explained the lead agency failed to “refer to evidence showing why the magnitude of an increase was irrelevant in determining the significance of a change in noise.”<sup>83</sup> The use of an absolute noise threshold for evaluating all ambient noise impacts violated CEQA because it did not provide a “complete picture” of the noise impacts.<sup>84</sup>

05-28  
Cont.

Here, the DEIR evaluates the Project’s construction noise impacts using a single 75 dBA threshold. As in *King and Gardiner Farms*, the DEIR’s current threshold fails to consider the increase in noise and absolute noise level, without referring to any evidence showing why these metrics are irrelevant in determining the significance of a change in noise. Substantial evidence demonstrates that the increase in noise is relevant in determining the significance of a noise impact. The DEIR argues that the Federal Transit Administration (“FTA”) recommends a daytime construction noise level threshold of 80 dBA Leq,<sup>85</sup> but the FTA Manual states that “[p]roject construction noise criteria should account for the existing noise environment, the absolute noise levels during construction activities, the duration of the construction, and the adjacent land use.”<sup>86</sup> A single 75 dBA threshold does not account for the existing noise environment. Figure 3-6 of the FTA Manual presents data from case studies showing that reactions to increases in noise between 5 to 10 dBA above existing levels vary from “widespread complaints” to “threats of legal action.”<sup>87</sup> Increases in noise of 20 dBA over existing levels typically results in “vigorous action.” These responses to noise increases are caused because “[o]n average, each A-weighted sound level increase of 10 dB corresponds to an approximate doubling of subjective loudness.”<sup>88</sup> The increase in noise caused by this Project would be significant because noise levels would be 15 dB above long-term ambient at single-family homes along Hewlett Drive and 30 dB above long-term ambient at nearby student housing.<sup>89</sup> The DEIR must be revised to include a significance threshold that accounts for the increase in noise over ambient levels.

05-29

Sole reliance on a 75 dBA threshold is also inadequate here because hearing loss and annoyance impacts would occur at levels below the threshold. Courts have

05-30

<sup>83</sup> *Id.* at 894.

<sup>84</sup> *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 893.

<sup>85</sup> DEIR, Appendix H, pg. 5.

<sup>86</sup> FTA Manual, September 2018, pg. 179.

<sup>87</sup> *Id.* at 18, Figure 3-6 (Community Reaction to New Noise, Relative to Existing Noise in a Residential Urban Environment)

<sup>88</sup> FTA Manual, September 2018, pg. 206.

<sup>89</sup> Toncheva Comments, pg. 3.

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held that although lead agencies have discretion to select significance thresholds, “the fact that a particular environmental effect meets a particular threshold cannot be used as an automatic determinant that the effect is or is not significant... a threshold of significance cannot be applied in a way that would foreclose the consideration of other substantial evidence tending to show the environmental effect to which the threshold relates might be significant.”<sup>90</sup> Here, Ms. Toncheva explains that a threshold that averages noise impacts over a 12-hour period would allow noise far above 75 dBA.<sup>91</sup> Ms. Toncheva explains that this threshold could allow noise to average 86 dBA in an hour if other hours were quieter.<sup>92</sup> Annoyance and hearing loss impacts occur at levels below 86 dBA, yet would be deemed less-than-significant under SDSU’s threshold.<sup>93</sup> This is substantial evidence of a significant impact that is not considered under the DEIR’s threshold. The DEIR must be revised to identify a significance threshold that accounts for these significant impacts.

O5-30  
Cont.

### 3. The DEIR’s Construction Noise Mitigation is Inadequate

The DEIR finds that construction of the University Towers East site would result in noise levels of 83 dBA at the nearest sensitive receptor, which is 8 dBA higher than the 75 dBA significance threshold.<sup>94</sup> The DEIR states that a 9-foot noise barrier would reduce noise levels by 8 dBA.<sup>95</sup> Ms. Toncheva demonstrates that this barrier would provide only 4 dB mitigation at a second floor receptor, and no mitigation for receptors above 22 feet (above the second floor).<sup>96</sup> As a result, construction noise impacts at second floor receptors near the University Towers East site remain significant.

O5-31

<sup>90</sup> *East Sacramento Partnerships for a Livable City v. City of Sacramento* (Cal. Ct. App. 2016) 5 Cal.App.5th 281, 302-303, citing *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109; see *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 126 (the determination that a project has no significant environmental impact must be supported by substantial evidence); Cal. Pub. Resources Code § 21168.5.

<sup>91</sup> Toncheva Comments, pg. 4.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> DEIR, Appendix H, pg. 15.

<sup>95</sup> *Id.* at 16 (“Proper implementation of MM-NOI-1 would reduce noise levels by up to 8 dB if a 9-foot-tall temporary construction noise barrier is implemented during Phase 1b construction, which would correspondingly reduce the highest predicted estimated non-mitigated construction noise level from 83 to 75 dBA Leq during the grading phase, which would be within the applicable 75 dBA threshold.”)

<sup>96</sup> Toncheva Comments, pg. 5.

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Ms. Toncheva also explains that the DEIR's mitigation would not greatly reduce the increase in noise over ambient levels.<sup>97</sup> The noise levels at first floor residences near University Towers East would remain 20 dB over ambient levels even with the proposed mitigation.

05-32

The DEIR must be revised and recirculated to identify additional construction noise mitigation to reduce levels below the 75 dBA threshold and reduce the increase in noise over ambient levels.

05-33

#### 4. The DEIR Underestimates Construction Noise Impacts

Ms. Toncheva observes that the DEIR underestimates construction noise levels by adjusting noise levels twice to account for equipment usage. Specifically, construction equipment levels are adjusted once with usage factors from the Federal Highway Administration's Roadway Construction Noise Model ("RCNM") and once more for some number of hours out of the total allowable construction hours permitted by the City noise ordinance.<sup>98</sup> Ms. Toncheva explains that it is incorrect to apply both usage factors because the RCNM factors already account for the hours of operation.<sup>99</sup>

05-34

By adjusting the estimated noise levels twice, construction noise impacts are underestimated. Ms. Toncheva calculates that grading noise (as an example) would be 2 dB noisier than reported in the DEIR if only RCNM usage factors were applied, and 4 dB noisier if custom usage factors to reflect the City Ordinance requirements were applied. The DEIR must be revised to accurately disclose construction noise impacts.

#### 5. The DEIR Underestimates Operational Noise Impacts

The DEIR underestimates potentially significant noise impacts from rooftop equipment in several ways. First, the DEIR omits an analysis of noise from backup generators. The DEIR explains that the Project will include seven emergency generators, including one each at Phase 1 Peninsula Component and University Towers East Component and one each at Phase 2, Phase 3, Phase 4, Phase 5, and Phase 6 for the Peninsula Component.<sup>100</sup> The DEIR's noise analysis does not acknowledge the operational generators and incorrectly states that the only sources

05-35

<sup>97</sup> *Id.*

<sup>98</sup> Toncheva Comments, pg. 5.

<sup>99</sup> *Id.* at 6.

<sup>100</sup> DEIR, p. 4.2-27.

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of operational noise would be heating, ventilation and air conditioning ("HVAC") units.<sup>101</sup> As a result, the DEIR did not quantify noise impacts from these operational stationary sources. Backup generators can generate substantial temporary noise impacts. Even smaller generators (50 kW output) generate about 85 decibels, as much noise as city traffic.<sup>102</sup> By omitting generators from its analysis, the DEIR underestimates the Project's operational noise impacts.

05-35  
Cont.

Second, the DEIR underestimates noise impacts from the Project's HVAC units. Ms. Toncheva observes that Figure 5 in the Noise Report illustrates predicted levels for the University Towers East component, showing a 40-dB contour at the edge of the Project site. But Ms. Toncheva calculates, based on the reference data for the rooftop equipment provided in the DEIR, the noise levels should be closer to 60 dB.<sup>103</sup> These noise levels would exceed the thresholds of significance criteria presented in the Noise Report for operational noise.<sup>104</sup>

05-36

Ms. Toncheva also observes that the DEIR's noise model does not appear to account for reflections from the adjacent multi-story buildings.<sup>105</sup> These reflections may increase modeled levels. Additionally, the noise study does not analyze operational noise impacts on upper floors of the nearby apartment buildings, which would be closer to the source and therefore noisier than the first floor receptors analyzed in the DEIR.<sup>106</sup> The DEIR must analyze impacts on all receptors.

05-37

As a result of these errors, the DEIR underestimates operational noise impacts and fails to support its conclusions with substantial evidence. The DEIR should be revised and recirculated to correct these errors and omissions.

05-38

## 6. The DEIR Underestimates Potentially Significant Vibration Impacts

The DEIR fails to analyze construction vibration impacts from pile driving. The DEIR's geotechnical investigation states that piled foundations may be needed

05.39

<sup>101</sup> DEIR, pp. 4.11-12 to -13.

<sup>102</sup> See e.g. Noise Pollution in Diesel Generators, Worldwide Power Products, available at <https://www.wpowerproducts.com/blog/power-generation-equipment-resources/diesel-generator-noise-pollution/> (last visited 2/17/25).

<sup>103</sup> Toncheva Comments, pg. 7.

<sup>104</sup> DEIR, Appendix H, pg. 11 ("Project-attributed stationary source noise must adhere to the maximum exterior Leq for single-family residential land uses of 50 dBA hourly Leq during daytime hours (7:00 a.m. to 7:00 p.m.), 45 dBA hourly Leq during evening hours (7:00 p.m. to 10:00 p.m.), and 40 dBA hourly Leq during nighttime hours (10:00 p.m. to 7:00 a.m.)")

<sup>105</sup> Toncheva Comments, pg. 7.

<sup>106</sup> *Id.*

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for Building No. 6 of the Peninsula site.<sup>107</sup> The DEIR does not include a mitigation measure or condition of approval prohibiting pile driving at the University Towers East component, which would be 45 feet from the nearest residential sensitive receptors. Ms. Toncheva observes that if pile driving is needed at the University Towers East component, levels at these receptors would be 0.3 to 0.6 ips PPV, which exceed vibration thresholds.<sup>108</sup> The DEIR must be revised to disclose this potentially significant impact and limit pile driving at the University Towers East component.

05-39  
Cont.

### C. The Project May Result in Potentially Significant, Unmitigated Public Utilities Impacts

Under CEQA, a public utilities impact is considered significant if a project would "[r]equire or result in the relocation or construction of new or expanded water, wastewater treatment or storm water drainage, electric power, natural gas, or telecommunications facilities the construction or relocation of which could cause significant environmental effects."<sup>109</sup> The DEIR fails to analyze the extent of water infrastructure upgrades that may be required to support fire protection at the Project site, and lacks supporting evidence for its conclusion that no major upgrades would be required.

05-40

The DEIR states at the University Towers East Component, an existing 12-inch water main located along the site frontage, on Montezuma Road, serves as a combined domestic water and fire water main, and is expected to handle the increased demand from the new development based on preliminary investigation.<sup>110</sup> Regarding the Peninsula Component, the DEIR states that an onsite 8-inch water main would be adjusted but would not require substantial modifications to the overall water distribution system.<sup>111</sup> The DEIR asserts that construction of water conveyance facility improvements and the potential physical impacts to the environment associated with this ground disturbance were considered in the DEIR as part of Project implementation and construction activities.<sup>112</sup> However, the DEIR's conclusions are not supported by substantial evidence because the DEIR fails to analyze the Project's fire flow requirements or the scope of water infrastructure improvements necessary to facilitate adequate fire flow.

05-41

<sup>107</sup> DEIR, Appendix F-2, pg. 14.

<sup>108</sup> Toncheva Comments, pg. 6.

<sup>109</sup> DEIR, pg. ES-28.

<sup>110</sup> DEIR, pg. 4.15-12.

<sup>111</sup> DEIR, pg. 4.15-12.

<sup>112</sup> DEIR, pg. 4.15-13.

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Fire flow refers to the rate of a water supply that is available at surrounding fire hydrants for firefighting purposes.<sup>113</sup> Fire flow is critical to fire protection. The DEIR does not analyze fire flow. Without analyzing the fire flow requirements applicable to each of the Project components, SDSU lacks the information necessary to evaluate the extent of water infrastructure improvements required for the Project. Fire flow requirements applicable to the Project's components would be higher than existing uses due to the increased total floor area proposed by the Project.<sup>114</sup> Here the Project proposes large increases in total floor area: the University Towers East component would be replacing a parking lot with no substantial fire flow requirements, and the Peninsula component proposes an increase in density.<sup>115</sup> But the DEIR does not evaluate the amount of additional fire flow that would be required, the extent to which existing water mains can or cannot accommodate this flow, and the extent of water infrastructure improvements needed to facilitate increase fire flow to required levels. These facts are needed to support the DEIR's analysis of the public utilities impacts, but are missing from the DEIR.

05-42

Moreover, the DEIR's unsupported assumption that the Project would not require offsite water infrastructure improvements precludes full analysis of the Project's environmental impacts. Construction of water infrastructure upgrades typically require street excavation and subsequent repair to access water mains. Excavation would require demolition, disruption, and removal of portions of the street along the entire length of water main upgrade. This would entail excavation and removal of asphalt, soils, and trench backfill materials. These construction activities may result in significant environmental impacts in several areas, including traffic, noise, vibration, and health risk. Impacts may occur closer to sensitive receptors than analyzed in the DEIR because construction of utilities improvements may occur offsite and potentially closer to sensitive receptors.

05-43

In sum, the DEIR assumes that no major water infrastructure improvements would be required, without having gathered the requisite data. The DEIR must be

05-44

<sup>113</sup> NFPA, How Much Water Do Fire Hydrants Provide for Firefighting (January 12, 2024)

<https://www.nfpa.org/news-blogs-and-articles/blogs/2024/01/12/fire-hydrant-flow>.

<sup>114</sup> California Fire Code, Title 24, Part 9, Appendix B, Section B102.1 – Definitions ("Fire flow calculation area. The floor area, in square feet (m<sup>2</sup>), used to determine the required fire flow"); Tables B105.1 and B105.2 (showing that fire flow requirements increase with increased fire-flow calculation area; NFPA, Calculating the Required Fire Flow (March 22, 2024), <https://www.nfpa.org/news-blogs-and-articles/blogs/2022/03/22/calculating-the-required-fire-flow> ("Fire flow is calculated based on the fire flow area of the building. The flow area is the total floor area of all floor levels of a building").

<sup>115</sup> DEIR, pg. 2-6 ("Replace outdated, low-density, inefficient student housing with more modern, attractive, and energy efficient facilities.") pg. 4.1-17 ("the increased scale and density of residential development on the Peninsula Component site would not substantially damage scenic resources"); 7734-004acp

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revised and recirculated to analyze potentially significant impacts associated with providing adequate fire flow to the Project site and all associated physical improvements.

05-44  
Cont.

#### **D. The DEIR Fails to Adequately Analyze Public Services Impacts Related to Police Services**

CEQA requires an analysis of whether the Project would result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives.<sup>116</sup> The DEIR lacks an adequate analysis of this impact.

Despite acknowledging that the Project would generate additional demand for police services by adding 4,468 new student beds to the campus,<sup>117</sup> the DEIR claims that no additional police facilities would be required to support the Project.<sup>118</sup> The DEIR lacks a quantitative analysis of the Project's impacts on police response times at existing facilities, and therefore fails to meaningfully consider whether additional police facilities would need to be constructed to support the Project. The DEIR also fails to meaningfully consider cumulative impacts on police services and the local community resulting from its assumption that the Project's new student population would be served by existing police stations, and ignores potentially significant cumulative impacts that may result from SDSU's concurrent Mission Valley expansion project.

05-45

The DEIR's analysis of the Project's impacts on police response times is based on a letter from the San Diego State University Police Department ("SDSUPD"). The letter states that an increase of 4,486 student residents would be a 53% increase in the number of students living on campus,<sup>119</sup> and would result in an approximate 55% increase in Priority 1 calls generated from on-campus residences (818 additional calls annually).<sup>120</sup> Because the Project has the potential to generate an increased demand on University Police Department ("UPD") services, SDSUPD states that "SDSUPD would need an increase in staffing to handle the increase in

05-46

<sup>116</sup> DEIR, pg. 4.13-13.

<sup>117</sup> DEIR, pg. 4.13-14.

<sup>118</sup> DEIR, pg. 4.13-16.

<sup>119</sup> Letter from Amanda Stills, re: Information Request for Proposed SDSU Evolve Student Housing Project Environmental Impact Report (October 30, 2024), pg. 5.

<sup>120</sup> DEIR, pg. 4.13-15.

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call for service.”<sup>121</sup> An email from SDSUPD states that “[w]e do not require any additional space related specifically to this expansion. When you factor in this expansion and the Mission Valley site expansion, we will need additional space at that time.”<sup>122</sup>

The DEIR interprets this email as concluding that no expansion of police facilities would be required to serve the Project. The DEIR reasons that, because the Mission Valley Campus Master Plan<sup>123</sup> would include a planned SDSUCP substation, no expansion of police facilities would be individually caused by this Project.<sup>124</sup> However, the DEIR’s reasoning ignores that SDSUPC correspondence identifies potentially significant cumulative impacts resulting from combined impacts on police service times from the Project and the Mission Valley Campus Master Plan.<sup>125</sup> Even if the planned Mission Valley substation would adequately service the Mission Valley project, SDSU lacks substantial evidence to demonstrate that the proposed and existing substations would adequately serve both the Project’s increased student population and the Mission Valley Campus population.

05-46  
Cont.

The DEIR’s analysis fails to meet CEQA’s standards because it does not attempt to estimate the impact on police response times, compare the new response times to objective performance standards, or determine whether additional police facilities would be required to serve the Project in light of SDSU’s multiple student housing projects. The CEQA Guidelines provides that substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.<sup>126</sup> The SDSUPD correspondence contains conclusions regarding the potential need for additional police facilities, but the DEIR does not include any analysis of the impact.

05-47

The DEIR’s analysis is also inadequate because it does not consider impacts on City of San Diego Police Department (“SDPD”) response times and the resultant need for additional facilities. The DEIR acknowledges that SDPD provides backup to support the UPD (and vice versa) response times of SDPD officers are relevant to

05-48

<sup>121</sup> Letter from Amanda Stills, re: Information Request for Proposed SDSU Evolve Student Housing Project Environmental Impact Report (October 30, 2024), pg. 5.

<sup>122</sup> Email from Amanda Stills to Mollie Brogan re: Information Request (Friday, November 22, 2024 10:48 AM); DEIR, pg. 4.13-15.

<sup>123</sup> SCH. No. 2019011042, documents available at <https://missionvalley.sdsu.edu/documents/public-review-draft-eir>.

<sup>124</sup> DEIR, pg. 4.13-16.

<sup>125</sup> SCH. No. 2019011042, documents available at <https://missionvalley.sdsu.edu/documents/public-review-draft-eir>.

<sup>126</sup> Cal. Code Regs. Tit. 14, § 15384.

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the discussion.”<sup>127</sup> The City of San Diego’s General Plan response time goals for SDPD are 7 minutes for Priority 1 calls, 12 minutes for Priority 2 calls, and 30 minutes for Priority 3 calls.<sup>128</sup> The DEIR does not evaluate whether these response times will be met with the addition of the Project. The DEIR must be revised to analyze impacts on these response times resulting from a 53% increase in the number of students living on campus.

05-48  
Cont.

## V. CONCLUSION

For the reasons discussed above, the DEIR for the Project is inadequate under CEQA. It must be revised to provide legally adequate analysis of, and mitigation for, all of the Project’s potentially significant impacts. These revisions will necessarily require that the DEIR be recirculated for additional public review. Until the DEIR has been revised and recirculated, as described herein, SDSU may not lawfully approve the Project.

05-49

Thank you for your consideration of these comments. Please include them in the record of proceedings for the Project.

Sincerely,



Aidan P. Marshall

APM:

<sup>127</sup> DEIR, pg. 4.13-15.

<sup>128</sup> DEIR, pg. 4.13-15.

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