LETTER O4 ADAMS BROADWELL JOSEPH & CARDOZO

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Comment O4-1

On behalf of Silicon Valley Residents for Responsible Development ("Silicon Valley Residents"), we submit these comments on the Draft Environmental Impact Report ("DEIR") for the San Jose State University ("SJSU") Campus Master Plan (SCH No. 2023030435) ("Project") proposed by the California State University ("CSU") Board of Trustees ("Trustees").

The Campus Master Plan would include the demolition and replacement of approximately 1,065,000 gross square feet ("gsf") of existing academic, administrative, housing, and support facilities to allow the campus to add density in both the Main and South campuses while maintaining and increasing the amount of open space on the Main Campus.[1] Approximately 1,400,000 gsf of academic, research, and administrative space and an additional 400,000 gsf of student support space would be added.[2] The Master Plan Area encompasses the Main Campus, 88.5 acres in downtown San José at 1 Washington Square; the South Campus, 62 acres located approximately 8 blocks or 1.3 miles southeast of the Main Campus; and several additional properties owned and operated by SJSU in Santa Clara County.[3]

Silicon Valley Residents' review of the DEIR demonstrates that the DEIR fails to comply with the California Environmental Quality Act[4] ("CEQA") for the reasons discussed below. The DEIR fails as an informational document and lacks substantial evidence to support its conclusions that the Project's significant impacts would be mitigated to less than significant levels. The DEIR also fails to adequately characterize the Project site's environmental setting. Furthermore, there is substantial evidence demonstrating that the Project's potentially significant environmental impacts are far more extensive than disclosed in the DEIR.

Silicon Valley Residents reviewed the DEIR, its technical appendices, and reference documents with the assistance of air quality experts, Matt Hagemann and Dr. Paul Rosenfeld of Soil Water Air Protection Enterprises ("SWAPE")[5]; noise expert, Jack Meighan[6] of Wilson Ihrig; and transportation expert, Norm Marshall.[7] These consultant comments and curriculum vitae are attached hereto and are fully incorporated by reference as if fully set forth herein and must be considered part of the record for this Project. Silicon Valley Residents and its expert consultants identified numerous potentially significant impacts that the DEIR either mischaracterizes, underestimates, or fails to identify. Moreover, many of the mitigation measures described in the DEIR will not, in fact, mitigate impacts to the extent claimed.

The CSU Board of Trustees cannot approve the Project until the errors and omissions in the DEIR are remedied, and a revised DEIR is recirculated for public review and comment and which fully discloses and mitigates the Project's potentially significant environmental impacts. Silicon Valley Residents reserve the right to submit supplemental comments at any later hearings and proceedings related to the Project.[8]

[1] DEIR, p. 2-21.

[2] *Id.* at p. 2-21.

[3] *Id*. at pp. 2-1, 2-4.

[4] Pub. Resources Code ("PRC") §§ 21000 et seq.

[5] See Exhibit A, Matt Hagemann and Paul Rosenfeld, Ph.D., Comments on the Draft Environmental Impact Report for SJSU Master Plan Project ("SWAPE Comments").

[6] See Exhibit B, Jack Meighan, Comments on the Draft Environmental Impact Report for SJSU Master Plan Project ("Meighan Comments").

[7] See Exhibit C, Norm Marshall, Comments on the Draft Environmental Impact Report for SJSU Master Plan Project ("Marshall Comments").

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

Response O4-1

The comment summarizes the commenter's understanding of the Campus Master Plan and claims that the Draft EIR fails to comply with CEQA for the reasons discussed later in the comment letter. The comment also states that there are numerous potentially significant impacts that the Draft EIR either mischaracterizes, underestimates, or fails to identify, and that many of the mitigation measures described in the Draft EIR will not mitigate impacts to the extent claimed. The comment asserts that the Trustees cannot approve the Campus Master Plan until the errors and omissions in the Draft EIR are remedied and a revised Draft EIR is recirculated for public review and comment.

The comment is introductory in nature and provides an overview of the more detailed comments that follow. The specific comments raised following this introduction are listed separately, along with SJSU's individual responses. As noted in and evidenced by the responses below, the Draft EIR (as amended as part of the Final EIR) presents an analysis of the potential physical environmental effects associated with implementation of the Campus Master Plan, consistent with CEQA requirements. Recirculation of a revised Draft EIR is not necessary in order for the Trustees to consider the EIR for certification and the Campus Master Plan for approval.

Comment O4-2

I. STATEMENT OF INTEREST

Silicon Valley Residents 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 Will Smith, Emmanuel Zendejas, the International Brotherhood of Electrical Workers Local 332, Plumbers & Steamfitters Local 393, Sheet Metal Workers Local 104, Sprinkler Fitters Local 483, along with their members, their families, and other individuals who live and work in the City of San Jose.

Individual members of Silicon Valley Residents live, work, recreate, and raise their families in the City and in the surrounding communities. Accordingly, they would be directly affected by the Project's environmental, 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 on site.

In addition, Silicon Valley Residents 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 businesses and industries 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.

Response O4-2

The comment states that Silicon Valley Residents is an unincorporated association of individuals and labor organizations and that individual members live, work, recreate, and raise their families in the City and in the surrounding communities. The comment states that Silicon Valley Residents has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its

members. The comment is informational in nature and does not address the adequacy or conclusions of the Draft EIR; therefore, no further response is required.

Comment O4-3

II. LEGAL BACKGROUND

CEQA requires public agencies to analyze the potential environmental impacts of their proposed actions in an EIR.[9] "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."[10]

CEQA has two primary purposes. First, CEQA is designed to inform decisionmakers and the public about the potential significant environmental effects of a project.[11] "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.'"[12] 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."[13] 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."[14]

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.[15] 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."[16] 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."[17]

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."[18] 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."[19] "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.'"[20]

[9] PRC § 21100.

[10] *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal* ("*Laurel Heights I*") (1988) 47 Cal.3d 376, 390 (internal quotations omitted).

[11] PRC § 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.").

[12] *Citizens of Goleta Valley*, 52 Cal.3d at p. 564 (quoting *Laurel Heights I*, 47 Cal.3d at 392).

[13] *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).

[14] CEQA Guidelines § 15003(b).

[15] 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.

[16] CEQA Guidelines § 15002(a)(2).

[17] PRC § 21081(a)(3), (b); CEQA Guidelines §§ 15090(a), 15091(a), 15092(b)(2)(A), (B); Cov*ington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 883.

[18] *Berkeley Jets*, 91 Cal.App.4th at p. 1355 (emphasis added) (quoting *Laurel Heights I*, 47 Cal.3d at 391, 409, fn. 12).

[19] *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).

[20] *Sierra Club*, 6 Cal.5th at p. 516 (quoting *Laurel Heights I*, 47 Cal.3d at 405).

Response O4-3

The comment provides excerpts of PRC, the State CEQA Guidelines, and certain case law as they relate to CEQA requirements. The comment is introductory in nature and does not address specific examples related to the adequacy or conclusions of the Draft EIR; therefore, no further response is required.

Comment O4-4

III. THE DEIR'S DESCRIPTION OF THE ENVIRONMENTAL SETTING IS INADEQUATE

The DEIR fails to adequately describe the environmental setting against which the Project's environmental impacts are to be measured. This contravenes the fundamental purpose of the environmental review process, which is to determine whether there is a potentially substantial, adverse change compared to the existing setting. CEQA requires that a lead agency include a description of the physical environmental conditions, or "baseline," in the vicinity of the project as they exist at the time environmental review commences.[21] As the courts have repeatedly held, the impacts of a project must be measured against the "real conditions on the ground."[22] The description of the environmental setting constitutes the "baseline" physical conditions against which the lead agency assesses the significance of a project's impacts.[23]

[21] CEQA Guidelines § 15125(a); *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal. 4th 310, 321 ("CBE v. SCAQMD").

[22] *CBE v. SCAQMD*, 48 Cal. 4th at 321; *Save Our Peninsula Com. v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 121-22; *City of Carmel-by-the-Sea v. Bd. of Supervisors of Monterey County* (1986) 183 Cal.App.3d 229, 246.

[23] CEQA Guidelines § 15125(a); *CBE v. SCAQMD*, 48 Cal. 4th at 321.

Response O4-4

The comment claims that the Draft EIR fails to adequately describe the environmental setting, citing the CEQA Guidelines and case law, which stipulate that the description of the environmental setting constitutes the "baseline" physical conditions against which the lead agency assesses the significance of a project's impacts. The comment makes a general claim that the environmental setting in the Draft EIR is inadequate; however, the comment does not provide any specific examples or other details in this comment to which SJSU may respond. Refer to Responses to Comments O4-5 through O4-9, which respond to specific comments related to the adequacy of the environmental setting from the Draft EIR. As demonstrated in the responses below, the Draft EIR's analysis is both adequate and in accordance with CEQA requirements.

Comment O4-5

a. The DEIR Fails to Adequately Disclose the Existing Environmental Setting Related to the Project's Population, Housing, and Employment Impacts

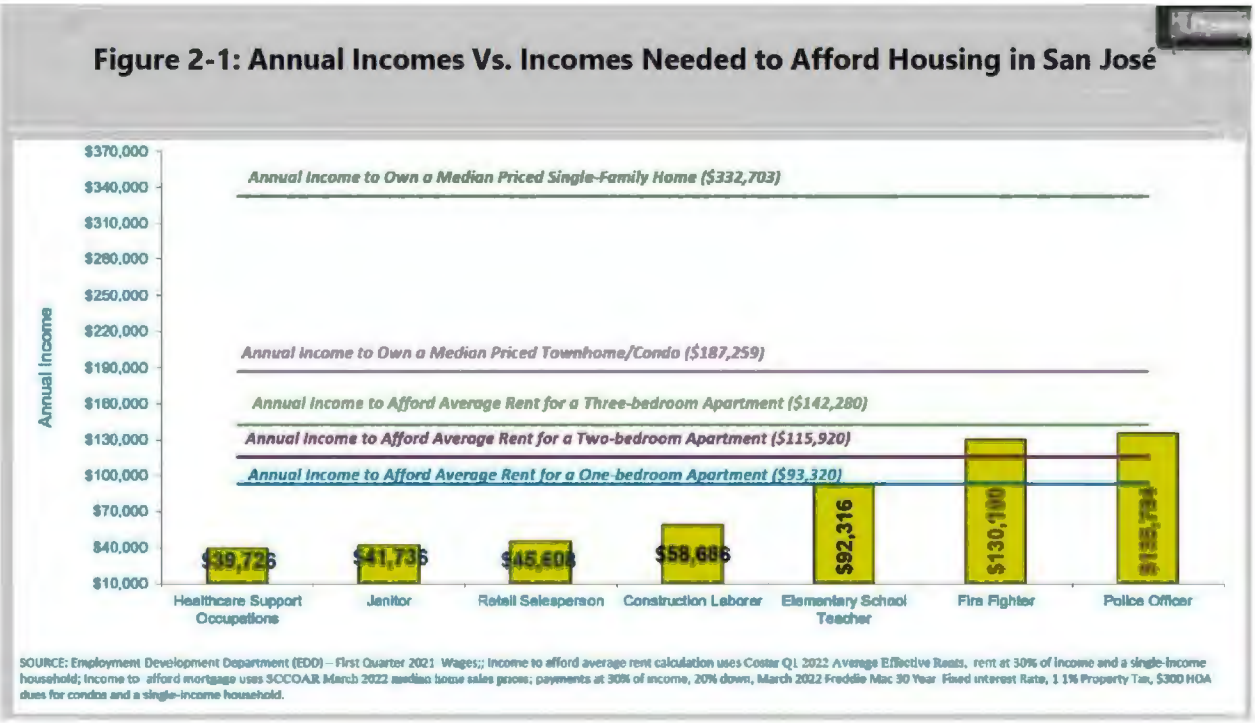
The DEIR fails to adequately disclose the existing environmental setting related to San Jose's severe workforce housing shortage and analyze how the Project will exacerbate these conditions. This renders the Project's population, employment, and housing impacts analysis inaccurate and incomplete under CEQA.

To properly assess the environmental impacts of a project under CEQA, it is essential to consider the setting in which it takes place.[24] A project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant.[25] Therefore, the DEIR's evaluation of the Project's population, employment, and housing impacts should account for the existing environmental and socio-economic burdens faced by the affected community. This includes assessing whether the Project's effects would cause substantial adverse impacts on human beings, either directly or indirectly.[26]

The City of San Jose's 2023-2031 Housing Element underscores the severity of the local housing crisis, particularly for the City's workforce, stating:

> San Jose continues to be one of the most expensive places to live in the country, with median housing prices pulling ever further out of reach for essential workers. In the first quarter of 2022, the median single-family home was $1.7 million, the median condo/townhome was $900,000, and median monthly rent was $2,595. Figure 2-1 shows how these housing costs are unaffordable for a cross-section of workers who are essential for the continued functioning of our economy and society.[27]

Figure 2-1: Annual Incomes Vs. Incomes Needed to Afford Housing in San José



[24] *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718.

[25] *Id.*; see CEQA Guidelines §§ 15125(a), 15126.2(a) (EIR shall analyze any significant environmental effects project might cause or risk exacerbating by bringing development and people into affected area).

[26] PRC § 21083(b)(3); *see also* CEQA Guidelines § 15126.2 (project may cause a significant effect by bringing people to hazards).

[27] City of San Jose 2023-2031 Housing Element, Chapter 2: Summary of Housing Needs & Assessment of Fair Housing, p. 2-3, available at: https://www.sanjoseca.gov/home/showpublisheddocument/107418/638370204943430000 (last visited 2/25/25).

Response O4-5

The comment asserts that the Draft EIR fails to adequately disclose the existing environmental setting related to San José's severe workforce housing shortage and analyze how the Campus Master Plan will exacerbate these conditions. The comment claims that this renders the Campus Master Plan's population, employment, and housing impacts analysis inaccurate and incomplete under CEQA. The comment summarizes CEQA requirements related to the environmental setting and provides general background information related to workforce housing that is presented in the City of San José 2023-2031 Housing Element. With respect to workforce housing and per the California Statewide Communities Development Authority (CSDCA), workforce housing is generally defined as middle- or moderate-income housing that is intended for individuals and families typically earning between 60 and 120 percent of the area median income (CSDCA 2025). Per the US Census Bureau, the median household income in the City of San Jose is $141,565 (US Census Bureau 2024), which would correspond to an income range of ~$85,000 to $170,000 for households seeking workforce housing. Based on the definitions and date provided and considering the bar graph provided in this comment and in the City's Housing Element, it appears that the majority of individuals seeking workforce housing within the City of San José would fall within the range of affordability for housing in the City of San José.

Further, the City's Housing Element (as provided in its Chapter 3) includes programs and strategies to increase housing affordability within the City. SJSU as a major employer within the City is included within the City's growth projections and potential off-campus housing needs are incorporated into the housing needs projections provided in the 2023-2031 Housing Element, as cited by the comment.

The availability of housing to accommodate growth associated with implementation of the Campus Master Plan was appropriately considered, including the City's plans for additional housing proximate to the campus. For example, the Diridon Station Area Plan, which is located west of the main campus, includes up to 12,900 new residential units, and per the Diridon Affordable Housing Implementation Plan, a goal of 25 percent of all housing units (approximately 3,200) would be affordable (i.e., more affordable than workforce housing) (City of San José 2021). Further, and as noted on page 3.12-19, the average annual growth rate of students and faculty/staff as a result of Campus Master Plan implementation would be within the assumed growth rates, inclusive of Diridon Station Area Plan, for the City of San José and within the broader county. Moreover, the Campus Master Plan includes new housing development at the site of the Alquist Building that would provide up to 1,000 residential units with up to 500 workforce housing units for faculty, staff, and graduate students. Therefore, contrary to the statements made in this comment, the Draft EIR appropriately considers the potential impacts of Campus Master Plan implementation and considered potential implications of housing affordability and shortages in the area.

Comment O4-6

Given these existing challenges, the Project's potential to exacerbate workforce housing shortages must be carefully considered. The DEIR fails to disclose this baseline information and fails to analyze the extent to which the Project's impacts will exacerbate these existing conditions. As Mr. Marshall's comments explain, the DEIR projects an increase of approximately 990 employees, with a significant portion being lower-paid staff in maintenance, food service, and administrative roles.[28] Despite this, the proposed workforce housing falls far short of meeting this demand.[29] Of the 500 workforce housing units proposed as part of the redevelopment of the Alquist Building, 450 are expected to be occupied by graduate students, leaving only 50 units–just 5% of the projected employment increase–for faculty and staff.[30] Furthermore, while an additional 500 market-rate housing units are planned, lower-paid staff will be unable to afford them.[31] As a result, the Project will further strain San Jose's already limited affordable workforce housing, exacerbating the existing housing shortage for lower-income employees.[32]

[28] Marshall Comments, p. 8.

[29] *Id*. at p. 9.

[30] *Id*. at p. 9.

[31] *Id*. at p. 9.

[32] *Id*. at p. 9.

Response O4-6

The comment asserts that the Draft EIR fails to disclose baseline information related to existing workforce housing shortages in the City of San José and fails to analyze the extent to which the Campus Master Plan's impacts would exacerbate these existing conditions. The comment suggests that a significant portion of the approximately 990 additional employees generated by the Campus Master Plan (1,188 employees) would be lower-paid staff in maintenance, food service, and administrative roles. As noted in Response O4-5, workforce housing (as defined by CSDCA) is not equivalent to affordable housing. Further, no reference, authority, or other substantial evidence is provided for Mr. Marshall's assumption regarding the nature and pay scale of prospective future SJSU staff employment. Contrary to what is stated in the comment, the new employees would consist of faculty as well as staff, administrators, and research staff. Even if it were to be assumed that some of the projected faculty/staff increase would qualify for affordable housing, the City (as noted in Response O4-5) has extensive plans (e.g., the Diridon Affordable Housing Implementation Plan) that would provide up to approximately 3,200 units of affordable housing west of the Main Campus, and it is reasonable to assume that affordable housing (through local and regional planning efforts, including adopted plans) would be available in the future.

An EIR is required to evaluate the environmental impacts of a project (Public Resources Code § 21100); the "economic and social effects of a project shall not be treated as significant effects on the environment." (CEQA Guidelines § 15131(a). Thus, under CEQA and the implementing guidelines, economic or social effects that are not related to physical impacts need not be evaluated in an EIR. The focus on physical impacts is reflected throughout CEQA, including Appendix G of the CEQA Guidelines which outlines the thresholds of significance for various impact areas. Each of these thresholds' focus is on physical environmental impacts, and not on social or economic impacts. General social and economic effects, such as affordable housing opportunities, are not considered physical environmental effects under CEQA because they do not affect the physical environment. The comment does not demonstrate how affordable workforce housing in the City, or a lack thereof, is a physical impact of the project on the environment.

In addition, the comment assumes that all of the housing needs associated with future employment opportunities under the Campus Master Plan would be attributed to workforce housing, which, again, appear to be equated in this comment to affordable housing; however, this assumption is incorrect. Moreover, as discussed in greater detail in Response O4-7 below, increases in employment associated with the Campus Master Plan would occur gradually over the approximately 20-year planning period and not immediately upon approval of the Campus Master Plan. Taken into consideration with the planned housing development in the vicinity of the campus (e.g., Diridon Station Area Plan) and in Santa Clara County (see Table 4-2 in Chapter 4, "Cumulative Impacts"), the projected increase in employment of the University is anticipated to be accommodated by existing and planned housing opportunities, as presented in Section 3.12, "Population and Housing" and Chapter 4 of the EIR. The analysis presented in the Draft EIR as it relates to population and housing is adequate and in accordance with CEQA requirements.

Comment O4-7

This lack of adequate workforce housing will also lead to additional indirect environmental impacts that CEQA requires an agency to evaluate in a DEIR. As Mr. Marshall explains, San Jose already has large clusters of workers who commute long distances into the city, primarily due to a shortage of workforce housing.[33] The Project will only worsen this issue, forcing many of the Project's lower-paid employees to seek housing farther from their workplace, increasing commute times, traffic congestion, and associated air quality impacts.[34] Longer commutes also place additional strain on regional transportation infrastructure.

[33] *Id*. at p. 8.

[34] *Id*. at p. 8.

Response O4-7

The comment suggests that a lack of adequate workforce housing will also lead to additional indirect environmental impacts. The comment claims that the Campus Master Plan will worsen this issue and force lower-paid employees to seek housing farther from their workplace, increasing commute times, traffic congestion, and associated air quality impacts. As discussed in Section 3.12, "Population and Housing" of the Draft EIR and Responses O4-5 and O4-6 above, adequate housing (inclusive of affordable and workforce housing) is considered to be available in the area during

Campus Master Plan implementation. Further, based on the transportation modeling conducted for the project, as shown in Section 3.14, "Transportation" of the Draft EIR, VMT is anticipated to decrease. The City of San Jose Travel Model (CSJ Travel Model) was used for the Campus Master Plan's VMT assessment based on its consistency with Plan Bay Area 2050, as well as its consideration of local planning efforts, including the Diridon Station Area Plan. Further, the citation provided for the statement alleging that the project will worsen the shortage of workforce housing and force "lower-paid" employees to seek housing farther from their workplace does not directly correlate to any statements made on page 8 of Mr. Marshall's comments and is unsupported and speculative. The analysis, as presented in the Draft EIR, is appropriate and consistent with CEQA requirements related to the provision of reasoned analysis based on available information, including local and regional plans for the provision of housing.

Comment O4-8

Lastly, the DEIR fails to analyze whether the Project will contribute to displacement pressures in surrounding neighborhoods, where rising demand could drive up rental prices and push out existing residents.

Response O4-8

The comment states that the Draft EIR fails to analyze whether the Campus Master Plan will contribute to displacement pressures in surrounding neighborhoods, where rising demand could drive up rental prices and push out existing residents. The comment is speculative and does not provide substantial evidence to support the claim that the displacement of existing residents is a reasonably foreseeable outcome of Campus Master Plan implementation, and therefore is not an issue subject to CEQA (PRC Section 21082.2[c]). Nonetheless, in recognition of the need to provide additional student housing, SJSU recently completed the SVP Student Housing Project, which involved renovation of the underutilized South Tower of the existing Signia by Hilton hotel proximate to campus. The project included remodeling 264 hotel rooms to accommodate 700 student beds, converting the existing second-floor pedestrian bridge into a study lounge, renovating the second-floor hotel lounge to include student support services and amenities, and modifying the entrance along Paseo de San Antonio. In addition to providing student housing, this project is contributing to additional economic benefit to the area west of campus (including local ground floor retail businesses).

Comment O4-9

Because the DEIR does not disclose relevant information pertaining to the existing workforce housing problems facing the communities near the Project, it fails to provide decisionmakers and the public with an accurate characterization of the Project's environmental setting. This renders the DEIR's subsequent analysis of the Project's population, employment, and housing impacts unsupported and makes its significance conclusions unverifiable. The DEIR must be revised to fully disclose and address these housing-related impacts.

Response O4-9

The comment restates the assertion that the Draft EIR's analysis of the Campus Master Plan's population, employment, and housing impacts is unsupported and makes its significance conclusions unverifiable because it does not disclose relevant information related to the existing workforce housing problems in the City. The comment summarizes statements made in Comments O4-4 through O4-8. Refer to Responses O4-4 through O4-8 above. As noted in those responses and contrary to this comment, the Draft EIR's analysis is adequate and consistent with CEQA requirements. Further revision of the Draft EIR is not necessary in response to this comment.

Comment O4-10

b. The DEIR Fails to Accurately Describe the Project's Student and Employment Populations

As Mr. Marshall's comments demonstrate, the DEIR includes three different estimates of the Project's expected increase in student and staff populations.[35] Specifically, the DEIR's project description states that the student enrollment will increase from 32,432 to 37,500;[36] whereas Appendix E, Table 24 says the student population will increase from 27,084 to 35,625[37]. At the same time, Appendix E, Table 20 shows an increase from 30,194 to 39,724 students[38]. These inconsistencies make it impossible to fully evaluate the impacts of the proposed Project.[39]

For instance, each estimate will likely yield different traffic generation rates, affecting the total number of trips expected to be generated by the Project. Additionally, if the DEIR relies on a lower estimate, it may underestimate the traffic impacts, leading to inadequate mitigation measures. The population estimates also inform the analysis of whether existing transportation infrastructure can accommodate the anticipated demand. Discrepancies in population estimates can affect infrastructure needs, leading to potential congestion or access issues if not adequately assessed.

[35] *Id*. at pp. 2-4.

[36] DEIR, p. 2-18.

[37] DEIR, Appendix E, Table 24, p. 77.

[38] DEIR, Appendix E, Table 20, p. 72.

[39] Marshall Comments, p. 4.

Response O4-10

The comment states that Draft EIR includes three different estimates of the Project's expected increase in student and staff populations. The comment asserts that the Draft EIR's use of inconsistent population estimates may underestimate the traffic impacts, leading to inadequate mitigation measures.

The Campus Master Plan estimated future space needs using total headcount and Full-Time Equivalent Students (FTES). Both the Draft EIR and transportation analysis (Appendix E) take into consideration the Campus Master Plan's student, faculty, and staff estimates in terms of headcount and FTES. Further, academic year 2018-2019 (AY 2018-2019) was generally used as baseline conditions for the transportation analysis as it represents the most recent, full academic year prior to the 2020 Covid-19 pandemic. While SJSU is open, operations are still in a state of returning to "normal" and as such, use of AY 2018-2019 conditions is considered appropriate.

As noted in Chapter 2, "Project Description" of the Draft EIR, headcount represents the total number of individual students, whereas FTES takes into account the number of units required to graduate for students. Therefore, headcount is always larger than FTEs and is used to determine housing, student services, and student activities that are related to actual number of people (individuals) in a campus community, whereas FTES is used for enrollment targets, operating budget, and daily faculty and staff requirements that are related to academic instruction and personnel on the campus daily. Further, FTES is considered to be the most appropriate and accurate representation of daily campus population and operational conditions at SJSU, and is a widely accepted metric for this purpose at universities generally. As stated on page 2-16 of the Draft EIR, the Campus Master Plan projects overall student enrollment to increase from a total headcount of 35,475 students (AY 2018-2019) to 44,000 students under the Campus Master Plan. Table 2-4 on page 2-17 of the Draft EIR shows the ratio between academic year FTES and fall student headcount (AY FTES to Fall HC Ratio for each AY). Depending on the academic year these FTES to HC ratios range from 73 percent to 89 percent.

As noted in footnote #3 of Table 1 of Draft EIR Appendix E, the student population headcount studied in the transportation analysis is from Table 2-4, "Fall Student Headcount and Full-Time Equivalent Students," in Chapter 2 of the Draft EIR. The Draft EIR (page 2-16) states that the total headcount of 35,475 students (AY 2018-2019) would increase to 44,000 students under the Campus Master Plan. This demonstrates consistency in the student population headcount between the Draft EIR and the transportation analysis, contrary to statements made in the comment. The source of each subsequent headcount population number is provided as a table footnote.

Table 2-5 of the Draft EIR provides additional details regarding student enrollment and faculty and staff headcount. As noted in footnote #3 of Table 3 of the Draft EIR Appendix E, the student population FTES studied in the transportation analysis is from Table 2-4, "Fall Student Headcount and Full-Time Equivalent Students," in Chapter 2 of the Draft EIR. The Draft EIR (page 2-16) states the total AY 2018-2019 FTE of 28,127 would increase to 39,200 under the Campus Master Plan. This demonstrates consistency in the student population FTEs between the Draft EIR and the transportation analysis. The source of each subsequent headcount population number is provided as a table footnote. The footnotes of Table 3 are clarified as shown below.

Footnote #4 of Table 3 on page 8 of Appendix E is amended as follows to reflect the correct table reference.

Original:
Special session students as summarized in Table A (SJSU Full-Time Equivalents) with supplemental data from Institutional Research (data provided August 11, 2023).

Revised:
Special session students as summarized in Table B (SJSU Full-Time Equivalents) of the Campus Master Plan with supplemental data from Institutional Research (data provided August 11, 2023).

Footnote #5 of Table 3 on page 8 of Appendix E is amended as follows to reflect the correct table reference.

Original:
Faculty headcount as summarized in Table 2-5 titled "Student Enrollment, Faculty, and Staff Headcount" of the environmental project description.

Revised:
Faculty FTEs as summarized Table B (SJSU Full-Time Equivalents) of the Campus Master Plan for 2018-2019 academic year provided by Institutional Research on August 11, 2023.

Footnote #6 of Table 3 on page 8 of Appendix E is amended as follows to reflect the correct table reference.

Original:
Includes staff, administrators, and research staff as summarized in Table 2-5 titled "Student Enrollment, Faculty, and Staff Headcount" of the environmental project description.

Revised:
The staff, administrators, and research staff FTEs are from Table B (SJSU Full-Time Equivalents) of the Campus Master Plan for 2018-2019 academic year provided by Institutional Research on August 11, 2023.

These clarified table references are clerical in nature and do not constitute substantial new information, as defined by the State CEQA Guidelines Section 15088.5, as they do not result in a new or substantially more significant impact. As such, recirculation of the Draft EIR is not required under CEQA standards and is not required prior to consideration by the Trustees for certification.

As expressed in Table 24 of Draft EIR Appendix E, the transportation analysis uses service population, which is the sum of all members of the campus community (including students from kindergarten to 12th grade), employees (including faculty, staff, and management), and university students. Students in Table 24 of Appendix E of the Draft EIR are expressed in terms of FTES and are consistent with line C in Table 3 summarizing the Students on Campus.

Since the comment omits the population units (e.g., headcount, FTES, etc.) and uses inconsistent time comparisons, the following addresses each of the enrollment numbers raised in the comment:

a) Student enrollment 32,432 to 37,500: is the on-campus fall student headcount growth between academic year 2022-2023 and Campus Master Plan projection is shown in the on-campus fall headcount line in Table 2-5 of the Draft EIR.

b) Student enrollment 27,084 to 35,625: is the on-campus student growth between academic year 2018-2019 to the Campus Master Plan projection expressed as FTEs on line C of Table 24 of Draft EIR Appendix E.

c) Student enrollment 30,194 to 39,724: is the campus population FTE that includes students, faculty, and staff between academic year 2018-2019 to the Campus Master Plan projection on line G of Table 3 of Draft EIR Appendix E or line B and E of Table 20 of Draft EIR Appendix E.

As previously stated, headcount and FTEs are used for different campus planning purposes. The campus vehicle trip rates are expressed using the campus population FTES, which are documented in Table 16 of Draft EIR Appendix E. These rates are similar to other college campus trip rates (from campus counts or travel surveys) and Institute of Transportation Engineer (ITE) trip rates – refer to Table 17 of the Draft EIR Appendix E. Chapter 6 of Draft EIR Appendix E provides a step-by-step description of the VMT forecasts per the following steps:

- Trip generation

- Trip distribution
- Trip length
- Service population
- Vehicle miles traveled

Chapter 6 of Appendix E expresses the trip generation and VMT rates using FTEs. There is not any mixing and matching of trip rates using headcount and FTEs. In fact, headcount is not used in the transportation analysis after the initial project description is presented in Chapter 1 of Appendix E. Therefore, no changes to the Draft EIR or Appendix E are required in response to this comment, and as shown above, there are no inconsistencies between the data presented or evaluated.

Comment O4-11

In addition to these inconsistencies, Mr. Marshall identifies a mathematical error in Appendix E's Table 20, which purports to calculate the campus trip generation.[40] However, Mr. Marshall was unable to calculate the correct expected student population because of the incorrect figures provided in the table.[41] This further highlights the inaccuracy in the DEIR's analysis of the Project's transportation impacts.

The DEIR lacks a stable description of the existing student population, and includes conflicting estimates of Project-related increases. A revised DEIR must be prepared to correct these deficiencies and reanalyze the Project's potential transportation impacts.

[40] *Id*. at p. 4.

[41] *Id*. at p.4.

Response O4-11

The comment states that there is a mathematical error in Table 20 of Appendix E related to the campus trip generation. The comment claims that this highlights the inaccuracy in the Draft EIR's analysis of transportation impacts. The Trip Generation Subtotal (B+C+D) line item in Table 20 of Draft EIR Appendix E is referring to the actual trips associated with each campus. However, the campus population number shown in the third column reflects the total SJSU campus population for both Main and South campuses. As noted in this table, the data presented therein was based on parking availability and likely distribution of future vehicle trips. In response and to clarify the typo, the FTE campus population number has been removed. No further revisions are needed to Table 20 of Appendix E. This revision does not require an update to the quantitative analysis in Appendix E or the Draft EIR or reflect a material deficiency or error in the transportation analysis. This change does not constitute substantial new information, as defined by the State CEQA Guidelines Section 15088.5 as it does not result in a new or substantially more significant impact. As such, recirculation of the Draft EIR is not required under CEQA standards and is not required prior to consideration by the Trustees for certification.

Comment O4-12

c. The DEIR Fails to Establish Accurate Baseline Noise Levels for the Project

The DEIR provides an incomplete and inaccurate description of the Project's existing noise environment.[42] Because of this, the DEIR underestimates the severity of the Project's noise impacts, rendering its analysis incomplete and inaccurate.

Establishing baseline noise conditions is a critical step in assessing the potential noise impacts of a project.[43] This baseline is typically determined through long-term noise monitoring.[44] Mr. Meighan's comments demonstrate that without a comprehensive and representative set of noise measurements, it is impossible to accurately evaluate whether a project will result in significant noise impacts.[45]

Here, the DEIR fails to include the southern portion of the Project area ("South Campus") in its long-term noise measurements.[46] Instead, long-term measurements were conducted only on the northern portion ("Main Campus"), which is miles away.[47] Unlike the Main Campus, which is in a more urbanized setting near downtown San Jose, the

South Campus is located near Kelley Park, where conditions are quieter. [48] Mr. Meighan explains that by omitting the South Campus from its analysis, the DEIR applies higher noise thresholds, ultimately underestimating the Project's potential noise impacts.[49]

[42] Meighan Comments, p. 2.

[43] *Id*. at, p. 2.

[44] *Id*. at p. 2.

[45] *Id*. at p. 2.

[46] *Id*. at p. 2.

[47] *Id.* at p. 2.

[48] *Id.* at p. 2.

[49] *Id.* at p. 2.

Response O4-12

The comment asserts that baseline noise measurements were inadequate, and therefore, the analysis underestimated the severity of the project's impacts. Specifically, the comment suggests that long-term noise measurements were omitted from the South Campus area, and because of this, the Draft EIR applied higher noise thresholds, which underestimate the project's noise impacts. For responses to the more specific comments provided in "Mr. Meighan's comments," please refer to Response O4-46.

Contrary to the assertions made in the comment, the Draft EIR evaluated long-term noise conditions and impacts at the South Campus. As described on page 3.11-10 in Section 3.11, "Noise and Vibration," of the Draft EIR, the existing ambient noise environment was established and described using a combination of existing noise measurement data and noise modeling methods. Table 3.11-7 of the Draft EIR summarizes the results of the six separate short-term (ST) measurements that were conducted to establish daytime average hourly noise levels, two of which were located on the South Campus, while Table 3.11-8 summarizes the results of the long-term (LT) measurements conducted. In addition, Table 3.11-9 includes a summary of existing 24-hour CNEL (modeled) noise levels based on existing average daily traffic (ADT) volumes. Specifically, as shown in Table 3.11-9, existing 24-hour CNEL noise levels were modeled for roadways near South Campus (i.e., 7th Street from East Humboldt Street to East Alma Ave, 10th Street from East Humboldt Street to East Alma Ave, and Senter Road from Story Road to East Alma Ave). This combination of methods ensures that daytime and nighttime average hourly noise levels were captured during the measurement periods, which was supplemented by using existing traffic volumes to calculate 24-hour noise levels generated by nearby roadways (i.e., 24-hour traffic noise modeling supplements measurements taken to all periods of the day are captured). Short-term, spot measurements are typically conducted to capture localized noise sources (e.g., stationary mechanical equipment, onsite campus-related noise such as people talking), whereas primary community ambient noise levels are influenced largely by roadway noise. Due to fluctuations in daily traffic volumes and associated noise levels, which can occur for many reasons (e.g., traffic volumes are heavier during peak periods and lighter during holidays), using existing ADT volumes to calculate 24-hour noise levels provides a consistent and accurate method that eliminates the multitude of variables that influence noise on a daily or seasonal basis.

Beginning on page 3.11-15 of the Draft EIR, Impact 3.11-1 includes an assessment of anticipated maximum construction noise levels and anticipated increases over existing noise levels, using the noise monitoring data collected for the Campus Master Plan. The comment asserts that the short-term noise monitoring data was insufficient to accurately define the existing baseline noise, and therefore, the analysis underestimated project impacts. Construction noise increases were appropriately compared to existing noise data and specific representative sensitive receptor locations, as shown in Table 3.11-11 of the Draft EIR, to calculate anticipated increases in noise, which were found to be substantial (i.e., over 5 dBA increase) and therefore a significant impact. Further, the methods used to conduct existing short-term noise measurements were appropriate for capturing daytime hourly noise levels and consistent with applicable guidance provided in the Federal Highway Administration's Noise Measurement Handbook (FHWA, 2018). See more details provided in Response O4-46.

Regarding long-term increases in 24-hour noise levels, as described under Impact 3.11-3 and shown in Table 3.11-12 of the Draft EIR, project-generated long-term increases in 24-hour noise levels due to anticipated increases in ADT volumes on affected roadways were evaluated using site-specific existing ADT volumes and project-specific trip generation rates, to model anticipated increases in noise. Thus, the existing long-term noise monitoring data at South Campus, or lack thereof according to the comment, has no bearing on the operational traffic noise analysis and thresholds applied because this analysis was conducted using project-specific and location-specific 24-hour ADT and associated 24-hour CNEL noise levels. Therefore, existing ambient noise levels were adequately characterized and short-term and long-term project generated increases in noise were evaluated using appropriate methods for each noise source (i.e., construction noise, long-term traffic noise). No changes to the Draft EIR are required in response to this comment.

Comment O4-13

Additionally, Mr. Meighan comments that without a reliable baseline, it is impossible to set appropriate significance thresholds for operational and construction noise.[50] For example, the significance threshold for the Project's operational noise is based on the Community Noise Equivalent Level ("CNEL").[51] Because the CNEL excludes noise data from the South Campus, it does not accurately reflect existing conditions, making it impossible to assess whether operational noise will exceed acceptable levels or require additional mitigation.[52]

[50] *Id.* at p. 2.

[51] *Id.* at p. 2.

[52] *Id.* at p. 2.

Response O4-13

The comment states that because inadequate existing noise measurements were conducted, the appropriate thresholds for construction and operational noise impacts are not accurately reflective of existing conditions. This statement is misleading and inaccurate because construction noise and operational noise thresholds were not derived solely based on existing ambient noise levels. Rather, noise thresholds were derived from applicable regulatory agencies (i.e., Federal Transit Administration [FTA] and City of San José Municipal Code) and the concept of perception of noise increases. Specifically, as described on page 3.11-8, the Draft EIR explained that:

> *"In typical noisy environments, changes in noise of 1–2 dB are generally not perceptible. However, it is widely accepted that people can begin to detect sound level increases of 3 dB in typical noisy environments. Further, a 5-dB increase is generally perceived as a distinctly noticeable increase, and a 10-dB increase is generally perceived as a doubling of loudness (Caltrans 2013:2-10)."*

Regarding construction thresholds, as shown on page 3.11-14 of the Draft EIR, the Draft EIR established an incremental increase in construction noise significance threshold of 5 dBA and a maximum noise limit in accordance with FTA guidance. Further, long-term increases in traffic noise were evaluated using the perception threshold of 3 dBA, as described under Impact 3.11-3 of the Draft EIR. These thresholds would not be affected by existing noise levels, as these are the established and substantiated incremental increases in noise that people can perceive, regardless of what the existing noise levels are. Therefore, no changes to the Draft EIR are required in response to this comment.

Comment O4-14

Similarly, the DEIR relies on a single 15-minute measurement as the significance threshold for construction noise.[53] Mr. Meighan explains that this fails to capture the full variability of construction noise, which can fluctuate by up to 10 dBA throughout the day. [54] Without accounting for these fluctuations, the DEIR's conclusions on construction noise impacts are unreliable. [55] Mr. Meighan states that a more appropriate construction threshold would be based on the quietest daytime hour recorded within the Project's anticipated hours of construction.[56]

[53] *Id.* at p. 2.

[54] *Id.* at p. 2.

[55] *Id.* at p. 2.

[56] *Id.* at p. 2.

Response O4-14

The comment incorrectly states that a "single 15-minute measurement" was used as the significance threshold for construction noise and that the 15-minute measurement insufficiently captures existing noise levels due to fluctuations in daytime construction noise, thus resulting in unreliable conclusions in the Draft EIR. As discussed above under Response O4-13, the thresholds used for construction noise do not rely on existing noise levels but rather rely on the perceived increase in noise (i.e., 5 dBA). Further, and as described in more detail below under Response O4-46, when conducting noise measurements to establish hourly average (i.e. L_{eq}) noise levels where noise sources can fluctuate by 10 dB, a measurement duration of 10 minutes is recommended and sufficient (FHWA 2018). Therefore, existing short-term noise measurements adequately characterized daytime average noise levels and are appropriate for the noise evaluation in the Draft EIR to demonstrate anticipated short-term increases in noise from project construction. No changes to the Draft EIR are required in response to this comment.

Comment O4-15

Given these critical flaws in describing the existing noise setting in the Project area, the DEIR does not provide the thorough, accurate analysis required under CEQA. A revised DEIR must be prepared that includes a complete noise assessment and proposes additional mitigation measures where feasible.

Response O4-15

As described in Responses to Comments O4-12 through O4-14, the Draft EIR employed a combination of short-term measurements, long-term measurements, and 24-hour traffic noise modeling to characterize existing noise levels at both the Main Campus and South Campus and applied recommended thresholds derived by appropriate regulatory agencies. The analysis disclosed potential noise increases based on project-specific information and conservative assumptions available at the time of the Draft EIR's preparation. No further analysis or changes to the Draft EIR are required in response to this comment.

Comment O4-16

IV. THE DEIR'S CONCLUSIONS REGARDING THE PROJECT'S ENVIRONMENTAL IMPACTS ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

a. The DEIR Lacks Substantial Evidence to Conclude That the Project's GHG Impacts Will Be Less Than Significant

The DEIR concludes that the Project will not result in significant greenhouse gas ("GHG") impacts after the implementation of Mitigation Measures 3.7-1a and 3.7-1b.[57] This conclusion is not supported by substantial evidence because, contrary to the DEIR's conclusion, the Project as proposed would not meet the Bay Area Air Quality Management District's ("BAAQMD") qualitative threshold of significance.[58]

This threshold states that "[i]f a project would contribute its 'fair share' of what is needed to achieve the State's long-term GHG reduction goals, then the lead agency can find that the project is adequately contributing to solving the problem of global climate change and that [the] project's impact is not significant."[59]

The Air District has identified the necessary design elements required of new land use projects and plans being built today in order to achieve California's long-term climate goal of carbon neutrality by 2045.[60] If these design elements are incorporated into the design and construction of a project, then the project would contribute its portion of what is necessary to achieve California's long-term climate goals--its "fair share"--and a lead agency reviewing the project under CEQA can conclude that the project would not make a cumulatively considerable contribution to global climate change.[61] These design elements must include:

- The project will not include natural gas appliances or natural gas plumbing (in both residential and nonresidential development);
- The project will not result in any wasteful inefficient or unnecessary energy use as determined by the analysis required under CEQA section 21100(b)(3) and Section 15126.2(b) of the State CEQA Guidelines;

- The Project will achieve a reduction in project generated vehicle miles traveled below the regional average consistent with the current version of the California Climate Change Scoping Plan (currently 15 percent) or meet a locally adopted Senate Bill 743 VMT target that reflects the recommendations provided in the Governor's Office of Planning; and Research's *Technical Advisory Evaluating Transportation Impacts in CEQA*
- The project will achieve compliance with off-street electric vehicle requirements in the most recently adopted version of CalGreen Tier 2.[62]

[57] DEIR, p. 3.7-19.

[58] Bay Area Air Quality Management District ("BAAQMD") 2022 CEQA Guidelines, Chapter 3: Thresholds of Significance, p. 3-6.

[59] BAAQMD 2022 CEQA Guidelines, Chapter 3: Thresholds of Significance, p. 3-5.

[60] BAAQMD 2022 CEQA Guidelines, Chapter 3: Thresholds of Significance, p. 3-6.

[61] *Id*.

[62] *Id*.

Response O4-16

The comment suggests that because certain project design features are not consistent with BAAQMD's recommended project design features to reduce GHG emissions, the Draft EIR's less than significant GHG conclusion is not substantiated.

First, the distinction between a "project design feature" as referenced by BAAQMD and a mitigation measure under CEQA should be made clear. The BAAQMD's CEQA Guide makes it clear that projects designed to meet certain criteria would achieve their "fair share" in GHG reductions, and therefore result in a less than significant GHG impact. If the project is required to revise its design to comply with mitigation measures that achieve the same outcomes intended by BAAQMD, then the project effectively is redesigned such that it does meet those specific criteria. In this case, whether the requirements are met through a mitigation measure or inherently part of the project design has no bearing on the ultimate conclusion, and revision of the Draft EIR is not required. If the project achieves the BAAQMD-recommended GHG reductions (by design or required by mitigation), the project would be consistent with BAAQMD's GHG thresholds and less than significant.

In the case of the project, the Campus Master Plan would not result in new natural gas demand or infrastructure, all landscaping equipment would be fully electric, and on-site solar systems are included; thus, by design the project does meet the no natural gas criteria and the project would not result in any wasteful, inefficient, or unnecessary energy use.

Further, regarding reductions in vehicle miles traveled (VMT), page 3.14-27 of the Draft EIR explains that the Campus Master Plan's contribution of VMT would be more than 15 percent below the regional average. Campus Master Plan implementation would result in a low per-service-population VMT of 13.66 compared to the higher target (15 percent reduction) of 15.36 VMT per service population. As the project would achieve and exceed OPR's 15 percent reduction target, thereby resulting in a less than significant VMT impact, this would also satisfy BAAQMD's recommendation for reducing a project's GHG emissions. This criterion is also satisfied by the design of the project.

Last, Mitigation Measure 3.7-1b requires that EV chargers be installed that meet CalGreen Tier 2 standards, consistent with BAAQMD's recommended criterion for this GHG emission sector. Although no new parking is proposed, Mitigation Measure 3.7-1b requires that EV charging equipment be installed to retrofit existing spaces, as new development occurs throughout the Master Plan Area. This requirement goes above and beyond what BAAQMD recommends as these standards would only normally apply to proposed parking spaces. Nonetheless, as the Campus Master Plan is implemented and existing parking spaces are retrofitted with EV charging equipment, the Campus Master Plan would be contributing its fair share of GHG reductions consistent with BAAQMD guidance.

Comment O4-17

i. The DEIR Lacks Substantial Evidence to Conclude That the Project Will Not Include Natural Gas Appliances or Natural Gas Plumbing

The DEIR concludes that the Project will comply with BAAQMD's requirement that new projects prohibit the use of on-site natural gas because "[n]ew land uses under the Campus Master Plan would be designed to be fully electric (i.e., no natural gas infrastructure)."[63] However, this is not included as a formal mitigation measure or condition of approval in the DEIR and is thus not binding.

Mitigation measures must be fully enforceable through permit conditions, agreements or other legally binding instruments.[64] Failure to include enforceable mitigation measures is considered a failure to proceed in the manner required by CEQA.[65] In order to meet this requirement, mitigation measures must be incorporated directly into the EIR to be enforceable.[66]

Therefore, the DEIR fails to provide substantial evidence that the Project will not use natural gas infrastructure in new residential and non-residential developments. As such, the DEIR lacks substantial evidence to conclude that the BAAQMD qualitative threshold is met.

[63] DEIR, p. 3.7-16.

[64] CEQA Guidelines § 15126.4(a)(2).

[65] *San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th 645, 672. 66 *Lotus v. Dept. of Transportation* (2014) 223 Cal.App.4th 645, 651-52.

Response O4-17

The comment suggests that project design features to exclude natural gas are not binding and should be included as mitigation. This comment contradicts prior comments in this letter (O4-16), which suggested that all GHG-reduction measures should in fact be project design features, not mitigation measures. Refer to Response O4-16 above, explaining the difference between a project design feature and mitigation measure.

To respond directly to the comment, the analysis provided within the Draft EIR, as well as the assumptions used in the supporting modeling, were based on the Campus Master Plan as currently proposed. This includes the lack of new natural gas infrastructure and reflects compliance with adopted CSU policies, all of which are contained throughout the Draft EIR (e.g., Project Description, GHG analysis, Energy analysis, Air Quality analysis). All of this information is publicly available and once the EIR is certified, CSU will be bound to the commitments and design anticipated by this Draft EIR. If for any reason subsequent implementation of Campus Master Plan projects was to differ substantially from what was proposed and evaluated in this EIR, CEQA requires review to determine whether additional environmental review is required for the proposed development. Therefore, project design features included as part of the project and used for purposes of technical analyses are binding. No changes to the Draft EIR are required in response to this comment.

Comment O4-18

ii. The DEIR Lacks Substantial Evidence to Conclude That the Project Will Not Result in Wasteful, Inefficient, or Unnecessary Energy Use

The DEIR fails to adequately analyze the Project's potentially significant construction and operation-related energy use. As such, the DEIR lacks substantial evidence to conclude that the Project will not result in wasteful, inefficient, or unnecessary energy use.

CEQA requires an environmental document to discuss mitigation measures for significant environmental impacts, including "measures to reduce the wasteful, inefficient, and unnecessary consumption of energy."[67] The CEQA Guidelines require discussion of energy conservation measures when relevant, and provide the following examples in Appendix F:

- Potential measures to reduce wasteful, inefficient and unnecessary consumption of energy during construction, operation, maintenance and/or removal. The discussion should explain why certain measures were incorporated in the project and why other measures were dismissed.
- The potential of siting, orientation, and design to minimize energy consumption, including transportation energy, increase water conservation and reduce solid waste.
- The potential for reducing peak energy demand.
- Alternate fuels (particularly renewable ones) or energy systems.
- Energy conservation which could result from recycling efforts.[68]

Courts have rejected CEQA documents that fail to include adequate analysis investigation into energy conservation measures that might be available or appropriate for a project.[69] In *California Clean Energy Commission v. City of Woodland* ("*CCEC*"), the Court of Appeal reviewed an EIR for a shopping center on undeveloped agricultural land.[70] Similar to the DEIR here, the EIR in CCEC concluded that, due to the proposed project's compliance with Title 24 guidelines and regulations, the project would be expected to have a less-than-significant impact regarding the wasteful, inefficient, or unnecessary consumption of energy.[71] But the lead agency's EIR did not include a discussion regarding the different renewable energy options that might be available or appropriate for the project.[72] The Court held "the City's EIRs failed to comply with the requirements of Appendix F to the Guidelines by not discussing or analyzing renewable energy options."[73] The lead agency argued that compliance with the Building Code sufficed to address energy impact concerns for the project.[74] But the Court explained:

Although the Building Code addresses energy savings for components of a new commercial construction, it does not address many of the considerations required under Appendix F of the CEQA Guidelines… These considerations include whether a building should be constructed at all, how large it should be, where it should be located, whether it should incorporate renewable energy resources, or anything else external to the building's envelope. Here, a requirement that Gateway II comply with the Building Code does not, by itself, constitute an adequate assessment of mitigation measures that can be taken to address the energy impacts during construction and operation of the project.[75]

The Supreme Court of California agreed with the CCEC court's decision in League to Save Lake Tahoe Mtn. Area Preservation Found. v County of Placer ("Save Lake Tahoe"), holding that even projects that find a less-than-significant energy impact must "discuss whether any renewable energy features could be incorporated into the project."[76] In Save Lake Tahoe, the Court considered an EIR for a land use specific plan and rezoning to permit residential and commercial development and preserve forest land near Truckee and Lake Tahoe.[77] The EIR did not consider whether it was feasible to power the project on 100 percent renewable electrical energy or some lesser percentage, nor evaluate strategies for reducing reliance on fossil fuels, increasing reliance on renewable resources, reducing peak loads, and reducing the impacts of relying on remote generation facilities.[78] The lead agency reasoned that this analysis was not required because energy impacts would be less than significant.[79] Citing CEQA Guidelines Section 15126.2, subdivision (b) and the decision in CCEC, the Court held that when an EIR analyzes the project's energy use to determine if it creates significant effects, it should discuss whether any renewable energy features could be incorporated into the project.[80] The Court found that the EIR violated CEQA for not discussing whether the project could increase its reliance on renewable energy sources to meet its energy demand.[81] As discussed below, the DEIR here suffers from the same flaws.

[67] PRC § 21100(b)(3); *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912, 930.

[68] CEQA Guidelines § 15126.4(a)(1)(C) (stating "'Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant.").

[69] *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 CA4th 256; *Spring Valley Lake Ass'n v. City of Victorville* (2016) 248 CA4th 91.

[70] *CCEC* (2014) 225 Cal.App.4th 173.

[71] *Id*. at 184.

[72] *Id*. at 213.

[73] *Id*. at 213.

[74] *Id*. at 210, 211.

[75] *Id*. at 211.

[76] Save Lake Tahoe (2022) 75 CA5th 63, 167–68.

[77] *Id*. at 70.

[78] *Id*. at 165-166.

[79] *Id*. at 166.

[80] *Id.* at 167-168.

[81] *Id.* at 168.

Response O4-18

The comment suggests that the analysis is deficient and lacks substantial evidence to conclude that the Project will not result in wasteful, inefficient, or unnecessary energy use. The comment also states that the analysis does not address the requirements of Appendix F of the CEQA Guidelines by not discussing or analyzing renewable energy options.

The analysis under Impact 3.5-1, in Section 3.5, "Energy," includes a discussion of how development as part of the Campus Master Plan would include arrays of PV solar systems and development would comply with the mandatory provisions of the California Energy Code and CalGreen Code as it pertains to energy efficiency and EV charging. Moreover, as detailed in Section 2.6.8 of Chapter 2, "Project Description," the Campus Master Plan requires that new facilities and campus infrastructure be environmentally sound and energy efficient, and that measures are implemented to ensure that the University meets or exceeds the CSU Sustainability Policy goals to reduce energy consumption from fossil fuels, enhance electrical demand flexibility, promote energy resilience using available economically feasible technology for on-site renewable generation, microgrids, and other fossil fuel-free energy storage solutions, and procure 60 percent of electricity needs from renewable sources by 2030. The specific measures of the Campus Master Plan related to energy use are presented in Section 2.6.8 of Chapter 2, "Project Description", and a discussion of these measures as it relates to wasteful, inefficient, or unnecessary energy use is presented in Section 3.5, "Energy." Therefore, the analysis adequately discusses the project's effect on wasteful, inefficient, or unnecessary energy use, as well as the project's renewable energy options, consistent with CEQA requirements. No further analysis or changes to the Draft EIR are required in response to this comment.

Comment O4-19

1. The DEIR Fails to Analyze Feasible Energy Conservation Measures for the Project's Construction Related Energy Use as required by CEQA

The DEIR concludes that the Project's construction related energy use will not be wasteful, inefficient, or unnecessary because it would be temporary, follow standard practices, and align with regional norms.[82] The DEIR also states that as vehicle efficiency improves, fuel consumption will decrease, meaning only the necessary energy will be used.[83]

However, similar to *Save Lake Tahoe*, the DEIR fails to discuss whether any renewable energy features could be incorporated into the Project's construction activities. For example, the DEIR fails to consider using fuel-efficient, hybrid, or electric construction vehicles and machinery; using alternative fuel sources; installing LED lighting for construction sites; or sourcing materials locally to reduce transportation energy. This lack of analysis violates CEQA.

[82] DEIR, p. 3.5-12.

[83] *Id.*

Response O4-19

The comment suggests that the analysis is flawed because the analysis fails to discuss whether any renewable energy features could be incorporated into construction activities. Energy required for construction would be minor and only the necessary amount required to power temporary security lighting and potential construction trailer hookups to reduce generator/fuel usage; thus, construction-related energy use would not be considered wasteful or inefficient. Further, as described in Mitigation Measure 3.7-1a, the project would be required to adhere to construction practices to reduce electricity use, increase the use of recycled materials, and use locally sources materials to reduce construction-related transportation fuels. Moreover, related to transportation energy use, CSU's transportation policies require the development of trip reduction strategies for all campuses in an effort to reduce VMT and fossil fuel consumption from the transportation sector beyond what would normally occur. These efforts will further reduce fuel consumption from the transportation sector for all transportation modes, during both construction and operation. This is adequately addressed in the Draft EIR. No further analysis or changes to the Draft EIR are required in response to this comment.

Comment O4-20

2. The DEIR Fails to Adequately Analyze the Project's Operation Related Energy Use

The DEIR concludes that operational energy use under the Campus Master Plan would not be wasteful, inefficient, or unnecessary.[84] It supports this conclusion by stating that the Project would include PV solar arrays, use all electric infrastructure in new construction, and comply with the California Energy Code ("CEC") and CalGreen Code requirements for energy efficiency and EV charging infrastructure.[85] However, there are several deficiencies in this reasoning.

[84] DEIR, p. 3.5-13.

[85] *Id.*

Response O4-20

The comment suggests that the Draft EIR analysis is flawed in that the Draft EIR fails to adequately analyze the project's operation-related energy use. The comment makes a general claim that the operation-related energy analysis in the Draft EIR is inadequate; however, the comment does not provide any specific examples or other details in this comment to which SJSU may respond. Refer to Response O4-18 above and Responses O4-21 through O4-24 below for detailed responses.

Comment O4-21

First, there is no mitigation measure or condition of approval that prohibits the use of natural gas infrastructure in new development or requires the installation of solar arrays. Thus, these measures are not binding and cannot be used as substantial evidence to support the DEIR's significance determination.

Response O4-21

The comment suggests that project design features are not binding and cannot be used to make CEQA determinations. See Response O4-17 which discusses how project design features are actually binding.

Comment O4-22

Second, even though the DEIR states that CEC energy efficiency standards will be met, this does not ensure that an adequate amount of solar energy will be provided.[86] For instance, Title 24 requires all new commercial buildings to install solar photovoltaic systems that meet a minimum size requirement based on the building's floor area and electrical load demand.[87] As the cases above demonstrate, compliance with Title 24 regulations alone does not support the conclusion that energy impacts will be less than significant. Therefore, in order to comply with CEQA, the DEIR would have to discuss the installation of solar panels beyond what is required by Title 24. Currently, the DEIR fails to disclose the amount of solar that is planned, making it impossible to determine whether this requirement is met.

[86] *Id*.

[87] Cal. Code Regs. tit. 24 § 140.10.

Response O4-22

The comments suggest that additional discussion needs to be included in the Draft EIR regarding how solar generation beyond building code requirements will be met and asserts that meeting building code, alone, is not sufficient for an Energy analysis under CEQA.

When evaluating a project under CEQA for energy consumption, all components of energy demand (e.g., construction, operations, vehicle, building) are considered. In addition, one key component is the project's commitment to reduction in nonrenewable fuel sources and increased adoption of renewable sources.

On page 3.5-13 of the Draft EIR, it is explained how the project would not result in new natural gas demand. Further, as explained on page 3.7-17, "the Campus Master Plan's contribution of VMT would be 26 percent below the regional average for the San Francisco Bay Area. This exceeds OPR's 15-percent reduction target, thereby resulting in a less than significant VMT impact, which would also satisfy BAAQMD's recommendation for reducing a project's GHG emissions." In turn, by design the project is VMT-efficient, which also makes it more efficient from an energy (i.e., fuel) standpoint. Last, and as elaborated on pages 3.7-3 through 3.7-8 of the Draft EIR, SJSU is subject to CSU's Sustainability Policy, which includes policies that touch on all sectors of sustainability, including renewable energy transitions from fossil fuel, energy conservation and carbon reductions, and water conservation. Specifically, CSU requires that all new buildings or major renovations are constructed to meet or exceed the minimum requirements equivalent to LEED Silver, which are standards that exceed California Building Code requirements. Refer to Section I (Sustainable Building & Lands Practices) of the CSU Sustainability Policy for further information.

Considering that all CSU buildings will be constructed to meet the stringent CSU energy requirements, the project would not include new natural gas demand or infrastructure, would be VMT-efficient, the analysis conducted in the Draft EIR is adequate and in accordance with CEQA requirements. In addition, the formal design of on-campus structures identified in the Campus Master Plan has yet to be initiated. As such, the available surface area for the installation of solar panels is not and cannot be known. CEQA (refer to Sections 15144, 15145, and 15384 of the State CEQA Guidelines regarding speculation and forecasting) requires that an EIR does not speculate regarding conditions that cannot be determined with reasonable certainty at this time, in light of evidence. As such, no further analysis is necessary, contrary to statements made in this comment.

Comment O4-23

Lastly, as discussed in detail below, the DEIR underestimates the number of EV chargers and EVSE that are needed to satisfy the CalGreen Tier 2 requirements. Therefore, as currently proposed, the Project would not satisfy CalGreen requirements for EV charging.

Response O4-23

The comment suggests that the Draft EIR underestimated the required number of EV and EVSE parking spaces. See Response O4-25 below for a detailed response.

Comment O4-24

In sum, the DEIR's energy analysis fails to adequately analyze measures that would reduce the wasteful, inefficient, and unnecessary consumption of energy, and fails to meaningfully address Appendix F's considerations of whether a building should be constructed at all, how large it should be, where it should be located, whether it should incorporate renewable energy resources, or anything else external to the building's envelope.[88] This analysis must be provided in a revised and recirculated EIR.

[88] *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 CA4th 256, 264.

Response O4-24

The comment states that the Draft EIR's energy analysis is inadequate. Refer to Response O4-22 above.

Comment O4-25

iii. The DEIR Lacks Substantial Evidence to Conclude That the Project Will Comply with CalGreen Tier 2 EV Charging Requirements

The DEIR incorrectly concludes that Mitigation Measure 3.7-1b will meet CalGreen Tier 2 electric vehicle ("EV") charging requirements, which would satisfy the BAAQMD qualitative threshold and support the conclusion that no significant GHG impacts will result.[89]

CalGreen Tier 2 requires 45 percent of the Project's total parking spaces to be EV capable and 33 percent of the EV-capable spaces to be equipped with electric vehicle supply equipment ("EVSE").[90] Mitigation Measure 3.7-1b states that 2,878 EV-capable spaces with 950 of those spaces having EVSE will satisfy this requirement.[91] However, this is based on two incorrect assumptions.

First, the DEIR calculates the required amount of EV and EVSE parking spaces based on a total of 6,396 parking spaces.[92] This only accounts for the parking spaces on SJSU's Main Campus. When the parking spaces on South Campus are also included, this equates to a total of 8,400 total parking spaces.[93] Accordingly, to satisfy CalGreen Tier 2 non-residential requirements, 3,780 EV-capable spaces with 1,247 of those spaces having EVSE must be installed.

[89] DEIR, p. 3.7-19.

[90] CalGreen Code, Table A5.106.5.3.3 Tier 2.

[91] DEIR, p. 3.7-19.

[92] *Id*.

[93] DEIR, p. 2-33.

Response O4-25

The comment states that the total number of available existing parking spaces on campus was underreported and therefore the required number of EV and EVSE parking spaces, as required by Mitigation Measure 3.7-1b, were underestimated. The comment is correct that only existing parking spaces associated with the Main Campus were used in the calculations for EV charging requirements in Mitigation Measure 3.7-1b. This is primarily due to the fact that existing parking at the South Campus currently has EV chargers installed. As the comment explains, CalGreen residential Tier 2 standards require a minimum of 15 percent of total parking spaces to be equipped with EVSE and the nonresidential Tier 2 standards specify that 45 percent of total parking spaces shall be EV-capable (EVSE spaces count toward the EV capable requirement). In consideration of this comment, while also acknowledging that some EV charging already exists on campus, and to ensure that EV charging capacity is installed to the extent required by the CalGreen Tier 2 standards, the EV requirements were recalculated and the third and fourth paragraphs of Mitigation Measure 3.7-1b are clarified as follows:

> **Original:**
> As a mixed-use project that is primarily proposing nonresidential development, compliance with the Tier 2 nonresidential portion of the CalGreen of the CalGreen Code shall be sufficient to demonstrate consistency with BAAQMD's thresholds of significance. Per the CalGreen Tier 2 Code Table A5.106.5.3.2, 45 percent of total parking spaces shall be EV-capable and 33 percent of EV-capable spaces shall be equipped with EVSE. In total, the Main Campus currently provides 6,396 parking spaces provided at the North Parking Facility, the South Parking Facility, the West Parking Facility, and various surface parking lots throughout the Main Campus. Based on the CalGreen nonresidential standards, this equates to a total requirement of 2,878 EV-capable spaces with 950 of those spaces having EVSE.
>
> The Campus Master Plan does not introduce new parking spaces; however, to comply with the recommendations of BAAQMD's CEQA guide, SJSU shall renovate one parking space to be EVSE per every 1,286 square feet of new development (calculated by dividing the required total number of EV capable spaces [2,878] into the total GSF of anticipated new development [3,700,000] until 950 EVSE have been installed then all subsequent renovations can be EV capable. Alternatively, decreased rates of EVSE

installations may occur, so long as the total number of EV charging spaces are achieved (i.e., 2,878 EV capable with 950 of those having EVSE) over the course of project development.

Revised:

As a mixed-use project that would include both residential and nonresidential uses, nonresidential EV-capable and residential EVSE requirements were applied, per the CalGreen Tier 2 Code Table A5.106.5.3.2, 45 percent of total parking spaces shall be EV-capable and for residential projects with more than 20 dwelling units, 15 percent of all parking spaces shall be equipped with EVSE. In total, the Main Campus currently provides 5,896 parking spaces at the North Parking Facility, the South Parking Facility, the West Parking Facility, and various surface parking lots throughout the Main Campus, while the South Campus currently provides 2,480 spaces, for a total of 8,376 existing parking spaces. Based on the CalGreen standards, this equates to a total campuswide requirement of 3,769 EV-capable spaces with 1,256 of those spaces having EVSE. This number may be adjusted to reflect updated regulations.

The Campus Master Plan does not introduce new parking spaces; however, to comply with the recommendations of BAAQMD's CEQA guide, SJSU shall renovate one parking space to be EVSE per every 982 square feet of new development (calculated by dividing the total GSF of anticipated new development [3,700,000] by the required total number of EV-capable spaces [3,769]), until 1,256 EVSE have been installed; thereafter, all subsequent renovations can be EV-capable. Alternatively, decreased rates of EVSE installations may occur, so long as the total required number of EV charging spaces is achieved (i.e., 3,769 EV-capable with 1,256 of those having EVSE, based on currently regulations) over the course of Campus Master Plan implementation.

The above-listed change does not constitute substantial new information, as defined by the State CEQA Guidelines Section 15088.5 as it does not result in a new or substantially more significant impact but refines the performance standard related to EV parking provisions. As such, recirculation of the Draft EIR is not required under CEQA standards and is not required prior to consideration by the Trustees for certification. For consistency, a corresponding change has been made to Table ES-1 on page ES-22 of the Executive Summary.

Comment O4-26

Second, the DEIR assumes that "[a]s a mixed-use project that is primarily proposing nonresidential development, compliance with Tier 2 nonresidential portion of the CalGreen Code [is] sufficient to demonstrate consistency with BAAQMD's thresholds of significance."[94] This assumption is not supported by substantial evidence. CalGreen divides EV charging requirements into separate sections for residential and nonresidential uses.[95] There is no exception in CalGreen Code that allows a mixed-use project to apply only one set of standards. Absent such an exemption, a mixed-use project must comply with Tier 2 EV charging requirements for both its residential and nonresidential uses. By omitting this analysis, the DEIR does not accurately disclose the amount of Level 2 EVSE chargers the Project is required to install. More specifically, CalGreen requires residential projects proposing 20 or more dwelling units to install a minimum of 15 percent of a project's total parking spaces with Level 2 EVSE chargers.[96] Accordingly, because the Project proposes to add at least 1,000 residential units, it must ensure that a minimum of 15 percent of its 8,400 total parking spaces are installed with Level 2 EVSE.[97] This equates to 1,260 parking spaces that must have Level 2 EVSE chargers installed.

[94] DEIR, p. 3.7-19.

[95] CalGreen Code §§ 4.106.4, 5.106.3

[96] DEIR, p. 3.7-14.

[97] ES-3.

Response O4-26

The comment asserts that the Draft EIR inappropriately applied CalGreen Tier 2 EV parking space requirements to the Campus Master Plan and that the project should comply with both nonresidential and residential EV charging requirements. In response to this comment, clarifications were made to Mitigation Measure 3.7-1b, as described in

detail above in Response O4-25. No further changes or refinements to Mitigation Measure 3.7-1b beyond what is provided above.

Comment O4-27

Therefore, the DEIR fails to accurately assess the Project's compliance with CalGreen Tier 2 EV charging requirements, leading to an underestimation of required EV-capable and EVSE-equipped spaces. By excluding South Campus parking spaces from its calculations and incorrectly applying only nonresidential standards to a mixed-use project, the DEIR does not fully disclose the Project's actual EV infrastructure obligations. As a result, the assumption that Mitigation Measure 3.7-1b brings the project into compliance with CalGreen Tier 2 requirements and automatically satisfies BAAQMD's threshold of significance is unsupported by substantial evidence. The DEIR must be revised to: (1) accurately calculate required EV and EVSE parking spaces using the total number of parking spaces on campus, and (2) apply both residential and nonresidential Tier 2 EV requirements as required by CalGreen. Without these corrections, the Project does not satisfy BAAQMD's threshold of significance and the Project's GHG impacts remain significant and unmitigated.

Response O4-27

The comment is a summary of Comments O4-25 and O4-26 regarding the miscalculation of EV charging requirements. See revised mitigation under Response O4-25 and in Section 3.7, "Greenhouse Gas Emissions and Climate Change," of the Final EIR. Further, as demonstrated in the Response O4-25 and Section 3.7, the GHG impacts of the Campus Master Plan would be less than significant with incorporation of feasible mitigation, contrary to the statement made in this comment.

Comment O4-28

b. The DEIR Fails to Adequately Analyze and Disclose The Project's Potential Hazards

The DEIR concludes that impacts related to the potential release of hazardous materials from unknown contamination sites will be less than significant after mitigation.[98] This conclusion is not supported by substantial evidence because the DEIR fails to adequately disclose and analyze the potential unknown contamination sites within the Master Plan Area, as required by CEQA. Instead of conducting this required analysis, the DEIR impermissibly defers the investigation, characterization and remediation of potential hazards by relying on Mitigation Measure 3.8-2a.[99]

CEQA requires than an EIR "evaluate any potentially significant environmental effects of the project, including those resulting from locating the project near, or attracting people to, existing or potential sources of hazardous materials."[100] An EIR should be prepared with enough analysis to provide decisionmakers with the information necessary to make an informed decision that considers the environmental consequences.[101] While the evaluation of environmental effects need not be exhaustive, the sufficiency of an EIR is assessed based on what is reasonably feasible.[102] A lead agency may determine that an impact is too speculative for evaluation after considering whether a reasonably feasible analysis of the impact can be conducted.[103] However, when a standard, accepted methodology is available to assess a significant impact, an EIR must evaluate that impact unless a reasoned basis for not doing so is provided.[104]

Here, the DEIR acknowledges that "the Master Plan Area could contain undocumented sites of contamination or hazardous building materials present in older buildings on campus that are slated for demolition or renovation" and that "impacts related to reasonably foreseeable upset and accident conditions involving release of hazardous materials into the environment could occur."[105] Yet, rather than identifying and disclosing any previously unknown sites of contamination, the DEIR defers this analysis by relying on Mitigation Measure 3.8-2a, which only requires consultation with SJSU's Environmental Health and Safety Division after project-specific planning begins.[106] By deferring a full identification of contamination risks, the DEIR deprives the public of the ability to comment on these impacts before project approval, and fails to provide the decisionmakers with necessary information regarding the Project's environmental impacts. This violates CEQA's informational requirements.[107]

[98] DEIR, p. 3.8-16.

[99] DEIR, p. 3.8-15.

[100] CEQA Guidelines § 15126.2(a).

[101] CEQA Guidelines § 15151.

[102] *Id*.

[103] CEQA Guidelines §§ 15144, 15145; *East Oakland Stadium Alliance v. City of Oakland* (20230 89 CA5th 1226, 1249-1251; *City of Long Beach v. Los Angeles Unified Sch. Dist*. (2009) 176 CA4th 889, 914; *Anderson First Coalition v. City of Anderson* (2005) 130 CA4th 1173, 1182.

[104] *Berkeley Jet* (2001) 91 CA4th 1344, 1370.

[105] DEIR, p. 3.8-13.

[106] DEIR, p. 3.8-15.

[107] CEQA Guidelines § 15144; *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 449-450.

Response O4-28

The comment cites the conclusion from the Draft EIR that impacts related to the potential release of hazardous materials from unknown contamination sites will be less than significant after mitigation. The comment claims that this conclusion is not supported by substantial evidence because the Draft EIR fails to adequately disclose and analyze the potential unknown contamination sites within the Master Plan Area.

The Campus Master Plan is a long-range planning document that guides the development and use of campus lands through 2045. As explained in the CEQA Guidelines, "[t]he degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR. An EIR on a construction project will necessarily be more detailed in the specific effects of the project than will be an EIR on the adoption of a local general plan or comprehensive zoning ordinance because the effects of the construction can be predicted with greater accuracy." Given the long-range nature of the Campus Master Plan, the Draft EIR was prepared as a program EIR as defined by Section 15168 of the State CEQA Guidelines. As a long-range planning guide, no specific development proposal is tied to the Campus Master Plan itself. As such, the extent of the discussion of existing hazardous materials sites is reflective of the programmatic nature of the project.

Contrary to the assertions made in this comment, the Draft EIR included an appropriate level of detail for a programmatic analysis of potential hazardous materials impacts. Considering the program-level analysis of the Campus Master Plan and fact that no specific development project is proposed at this time, it would not be appropriate or practical to conduct a development-specific evaluation such as a Phase I Environmental Site Assessment as part of the Draft EIR, which is valid for up to one year per the American Society for Testing and Materials (ASTM) standards (ASTM 2021). Instead, Section 3.8, "Hazards and Hazardous Materials," of the Draft EIR appropriately included a database search to document the potential known hazard and hazardous materials conditions in the Master Plan Area. Reports and data sources that were reviewed consisted of available literature, including documents published by federal, state, County, and City agencies, and the California Environmental Protection Agency's Cortese List Database, including SWRCB's GeoTracker website and DTSC's EnviroStor website. According to GeoTracker, there are a total of six sites identified as former LUST sites on the Main Campus. However, every one of these hazardous sites has a cleanup status of "case closed." No hazardous sites are associated with the South Campus, but due in part to industrial uses in the area, several cleanup sites are identified in the area. Although the database search did not identify any known hazardous materials sites, Impact 3.8-2 in Section 3.8 of the Draft EIR acknowledged the potential for future Campus Master Plan project construction activities to encounter hazardous substances present in the soil or groundwater that are not anticipated based on available information about existing site conditions. In addition, the mitigation measures (as drafted) would require SJSU to provide updated checks of available information to ensure that hazardous materials are either not present or handled appropriately. At this program-level of analysis, every potential source of contamination within the Master Plan Area cannot be reasonably identified. Even if a full campus evaluation was completed, there would still be the potential to encounter previously

unknown hazardous materials and contamination during construction activities. Therefore, given this unknown potential, the Draft EIR identified a potentially significant impact and proposed appropriate mitigation measures to reduce this impact to less than significant.

The comment also claims that the Draft EIR impermissibly defers the investigation, characterization, and remediation of potential hazards by relying on Mitigation Measure 3.8-2a, which only requires consultation with SJSU's Environmental Health and Safety Division after project-specific planning begins. However, the comment is incorrect and misleading. To address potentially significant impacts associated with unknown sites of contamination and the presence of potentially hazardous materials within older buildings within the Master Plan Area, the Draft EIR proposes Mitigation Measures 3.8-2a through 3.8-2d. Mitigation Measure 3.8-2a (as cited in the comment) requires that a preliminary site investigation be completed at the time development is considered. If the potential presence of hazardous materials is identified, SJSU would implement Mitigation Measure 3.8-2b, which requires SJSU to conduct soil sampling within the boundaries of the development and renovation site prior to initiation of renovation, demolition, grading, or other ground-disturbing activities in accordance with ASTM standards. If the results indicate that contamination exists at levels above regulatory action standards, Mitigation Measure 3.8-2b requires the development and renovation site to be remediated in accordance with recommendations made by applicable regulatory agencies, including the County's Hazardous Materials Compliance Division, which is the Certified Unified Program Agency for the City of San José, the San Francisco Bay RWQCB, and Department of Toxic Substances Control. Further, this mitigation measure requires SJSU to prepare and implement a work plan that includes measures ensuring the safe transport, use, and disposal of contaminated materials removed from the development/renovation site. In addition to these two mitigation measures, the Draft EIR identifies Mitigation Measure 3.8-2c, which requires the preparation and implementation of a hazardous materials contingency plan, and Mitigation Measure 3.8-2d, which requires the proper identification, removal, packaging, and disposal of hazardous materials in accordance with applicable federal, state, and local laws and regulations. In combination, the implementation of these mitigation measures would reduce potential impacts related to potential release of hazardous materials from a site of known or unknown potential contamination to less than significant.

In summary, the Draft EIR included an appropriate level of evaluation of potential hazardous materials given the programmatic nature of the Campus Master Plan and allows for future implementation with performance metrics, consistent with CEQA requirements. Because it is not practical or reasonable to evaluate every building on the campus for the potential presence of hazardous materials, particularly due to the one-year shelf life of a Phase I ESA per ASTM standards and fact that the Campus Master Plan is a long-range planning document, the Draft EIR outlines the specific steps and requirements for subsequent projects carried out under the Campus Master Plan through Mitigation Measures 3.8-2a through 3.8-2d. For these reasons, the Draft EIR did not improperly defer the analysis of potential unknown contamination within the Master Plan Area. Therefore, no changes to the Draft EIR are required in response to this comment.

Comment O4-29

Moreover, by deferring the analysis of contamination risks, the DEIR fails to provide substantial evidence to support the conclusion that the Project's impacts will be less than significant. For example, the DEIR does not disclose the location, scope, or severity of potential contamination sites in the Master Plan Area, nor does it assess the potential impacts of hazardous materials. Without this analysis, it is impossible to conclude that the impacts related to hazardous materials will be less than significant. The DEIR also fails to include a justification for not including this analysis. The mitigation measure itself states that "EHS shall consider the cases on file at SJSU, on GeoTracker, and on EnviroStor, and use information on historical uses in the area to be impacted, such as old maps and photos."[108] This is all readily accessible information, which the DEIR could have reviewed to assess known contamination sites in the area. Since a reasonably feasible method to conduct the analysis is available, the DEIR must include this in its analysis of the Project's impacts.

Therefore, the DEIR must be revised to include a comprehensive analysis of potential contamination sites within the Master Plan Area and to propose specific, enforceable mitigation measures to address these risks.

[108] DEIR, p. 3.8-15.

Response O4-29

The comment states that, by deferring the analysis of contamination risks, the Draft EIR fails to provide substantial evidence to support the conclusion that the Campus Master Plan's hazardous materials impacts will be less than significant. The comment asserts that the Draft EIR does not disclose the location, scope, or severity of potential contamination sites in the Master Plan Area or assess the potential impacts of hazardous materials. The comment also asserts that the Draft EIR must be revised to include a comprehensive analysis of potential contamination sites within the Master Plan Area and to propose specific, enforceable mitigation measures to address these risks.

As described in Response O4-28, Section 3.8 of the Draft EIR included a database search to document the potential known hazard and hazardous materials conditions in the Master Plan Area. Reports and data sources that were reviewed consisted of available literature, including documents published by federal, state, County, and City agencies, and the California Environmental Protection Agency's Cortese List Database, including SWRCB's GeoTracker website and DTSC's EnviroStor website. The results of the database search were compiled and disclosed in the Draft EIR (see pages 3.8-7 through 3.8-10) and formed the basis for the impact analysis in Impact 3.8-2 of Section 3.8, which determined that potential impacts associated with these known sites would be less than significant based on all available information. This approach provides an appropriate level of detail for a programmatic analysis of potential hazardous materials impacts. Therefore, contrary to statements made in the comment, the Draft EIR did include a review of readily accessible information, including the sources cited in Mitigation Measure 3.8-2a, and used this information to disclose and assess the location, scope, severity of known and potential contamination sites in the Master Plan Area, and assessed the potential hazards and hazardous materials impacts associated with these sites in Section 3.8 of the Draft EIR. Also refer to Response O4-28 regarding required mitigation (as identified in the Draft EIR) that would be implemented if potential contamination sites are identified. The Draft EIR's analysis is appropriate, adequate, and in accordance with CEQA requirements.

Comment O4-30

c. The DEIR Fails to Adequately Disclose and Analyze the Project's Significant Impacts to Historic Resources

The DEIR concludes that the impacts on historical resources will be significant and unavoidable.[109] However, the DEIR fails to adequately disclose and analyze the Project's specific impacts on historical resources. The DEIR's failure to adequately analyze these impacts renders its impact analysis deficient, prevents decisionmakers from being properly informed, and makes it impossible to determine what mitigation may be feasible.

Under CEQA, a substantial adverse change in the significance of a historical resource is a significant impact.[110] "Substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired."[111] This requires not only an assessment of a Project's direct physical changes to historical resources but also indirect effects on its setting, such as impacts on its surroundings, views, and overall relationship to the area.[112]

The DEIR states that six buildings on the SJSU campus are eligible for listing in the National Register of Historic Places ("NHRP") and are therefore automatically listed in the California Register of Historical Resources ("CRHR").[113] These buildings include Washington Square Hall, Dwight Bentel Hall, Morris Dailey Auditorium, Yoshihiro Uchida Hall, Central Classroom Building, and Tower Hall.[114] The SJSU Final Master Plan outlines plans to demolish and construct buildings near Dwight Bentel Hall, Washington Square Hall, Tower Hall, and Central Classroom Building.[115] There are also plans to renovate Washington Square Hall and Morris Dailey Auditorium.[116]

However, the DEIR fails to disclose the specific construction activities that could adversely impact these historic resources. For example, the planned renovation of Washington Square Hall will likely be extensive because it involves demolishing the adjoining science building addition, which will expose the side of Washington Square Hall.[117] The DEIR does not discuss these activities or the potential impacts on the visual integrity and historic setting of these buildings. Instead, it provides only a generalized statement that the Master Plan "proposed general types of campus development and land uses" and that this "could result in damage to or destruction of a historic building or structure."[118] By not fully disclosing and analyzing these project components, the DEIR provides an incomplete analysis that prevents both decisions-makers and the public from understanding the full scope of potential impacts.

[109] DEIR, p. 3.4-17.

[110] CEQA Guidelines § 15064.5(b).

[111] CEQA Guidelines § 15064.5(b)(1).

[112] *Protect Niles v. City of Fremont* (2018) 25 Cal.App.5th 1129, 1145-1147.

[113] DEIR, p. 3.4-11; PRC § 5024.1.

[114] DEIR, pp. 3.4-12–3.4-13.

[115] SJSU Final Master Plan, p. 7-9.

[116] *Id*.

[117] *Id*.

[118] DEIR, p. 3.4-15.

Response O4-30

The comment claims that the Draft EIR fails to adequately disclose and analyze the Campus Master Plan's specific construction activities that could adversely impact historical resources. The comment also claims that the Draft EIR's failure to adequately analyze these impacts renders its impact analysis deficient, prevents decisionmakers from being properly informed, and makes it impossible to determine what mitigation may be feasible.

As indicated in Response O4-28, the Campus Master Plan is a long-range planning document that guides the development and use of campus lands through 2045. Given the long-range and programmatic nature of the Campus Master Plan, the Draft EIR was prepared as a program EIR as defined by Section 15168 of the State CEQA Guidelines. Contrary to the assertions made in this comment, the Draft EIR included an appropriate level of detail for a programmatic analysis of potential historical resources impacts. As a long-range planning document, no specific development proposal is tied to the Campus Master Plan itself; thus, no specific design details are available for any of the potential projects included in the Campus Master Plan. Accordingly, the Draft EIR evaluates, at a program-level, the general types of activities and uses that would have the potential to adversely affect historical resources within the Master Plan Area. As discussed in Section 3.4, "Cultural Resources," of the Draft EIR, these activities would have the potential to damage or destroy a building or structure that is a designated historic resource, eligible for listing as a historic resource, or a potential historic resource that has not yet been evaluated, which would be a substantial adverse change in its historical significance. Because no specific design details are available for any of the potential projects included in the Campus Master Plan, the specific project-level impacts to existing historic resources within the Master Plan Area cannot be determined at this time. However, as discussed in Section 2.7, "Intended Uses of the EIR" of the Draft EIR (beginning on page 2-41), future projects implemented under the Campus Master Plan would be subject to subsequent evaluation to determine whether the need exists for subsequent detailed CEQA review. As individual projects are proposed for implementation, each would be individually reviewed for consistency with the Campus Master Plan EIR and approved for implementation by the Trustees or its designee. Project changes, changes in a project's circumstances, or the potential for new or more severe impacts may require additional environmental review, as necessary. As such, the Draft EIR's analysis is appropriate, adequate, and in accordance with CEQA requirements.

Comment O4-31

Additionally, because the DEIR does not adequately analyze the impacts on historical resources, it is impossible to evaluate whether feasible mitigation measures exist or whether all such measures have been exhausted. Therefore, the DEIR lacks substantial evidence to support its conclusion that impacts to historical resources will be significant and unavoidable.

Response O4-31

The comment suggests that it is not possible to evaluate whether feasible mitigation measures exist or whether all such measures have been exhausted because the Draft EIR does not adequately analyze the impacts on historical

resources. The comment also states that the Draft EIR lacks substantial evidence to support the conclusion that historical resources impacts will be significant and unavoidable. As discussed in Response O4-30, the Draft EIR included an appropriate level of detail for a programmatic analysis of potential historical resources impacts given the long-range nature of the Campus Master Plan. As a long-range planning document, no specific development proposal is tied to the Campus Master Plan itself; thus, no specific design details are available for any of the potential projects included in the Campus Master Plan. Accordingly, the Draft EIR evaluates, at a program-level, the general types of activities and uses that would have the potential to adversely affect historical resources within the Master Plan Area.

Because no specific design details are available for any of the potential projects included in the Campus Master Plan, the Draft EIR outlines the specific steps and requirements for subsequent projects carried out under the Campus Master Plan through Mitigation Measures 3.4-1a through 3.4-1c. Despite the implementation of these mitigation measures, the potential for permanent loss of a historic resource or its integrity cannot be precluded at this time, and as such, the Draft EIR concludes that the Campus Master Plan's impact on historical resources would remain significant and unavoidable. However, as discussed in Section 2.7 of the Draft EIR (beginning on page 2-41), future projects implemented under the Campus Master Plan would be subject to subsequent evaluation to determine whether the need exists for subsequent detailed review under CEQA, as well as the adopted mitigation measures of the EIR. As individual projects are proposed for implementation, each would be individually reviewed for consistency with the Campus Master Plan EIR and approved for implementation by the Trustees or its designee. The mitigation measures, as provided in the Draft EIR, are adequate and consistent with CEQA requirements.

Comment O4-32

The DEIR must be revised to fully disclose the planned construction activities, thoroughly analyze both the direct and indirect impacts of the Project on historical resources and consider appropriate mitigation measures.

Response O4-32

The comment asserts that the Draft EIR must be revised to disclose the planned construction activities, analyze both the direct and indirect impacts of the Campus Master Plan on historical resources, and consider appropriate mitigation measures. The comment summarizes concerns raised within Comments O4-30 and O4-31; refer to Responses O4-30 and O4-31.

Comment O4-33

d. The DEIR Lacks Substantial Evidence to Support Its Estimate of the Project's VMT

The DEIR concludes that the Project's VMT impacts will be less than significant because they will not exceed the significance threshold of 15.36 total project-generated VMT per service population.[119] However, the DEIR fails to support this conclusion with substantial evidence.

CEQA requires an agency to set forth the bases for its findings on a project's environmental impacts; a bare conclusion without an explanation of its factual and analytical basis is not a sufficient analysis of an environmental impact.[120]

Here, the DEIR calculates that the Campus Master Plan would result in a total project-generated VMT per service population of 13.66.[121] To reach this conclusion, the DEIR relies on the CSJ Travel Model, which is documented in Appendix D of the DEIR's Appendix E (Traffic Impact Study). [122] This documentation includes updates to the model that reflect 2015 conditions.[123] However, as Mr. Marshall explains in his comments, the DEIR fails to provide critical information on the "trip generation inputs" used in the model, inputs that are essential for determining how many trips the proposed project is expected to generate.[124] The DEIR merely states that the trip generation assumptions in the new model update are the same as those used in the previous version, leaving no clear explanation of how trips are being calculated.[125] Without this information, it is impossible to verify whether the model's assumptions are accurate or consistent, which could lead to misleading conclusions about the Project's VMT impacts.[126]

[119] DEIR, p. 3.14-26.

[120] *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1988) 47 C3d 376, 404; *Sierra Watch v. County of Placer* (2021) 69 CA5th 86, 101; *City of Maywood v. Los Angeles Unified Sch. Dist.* (2012) 208 CA4th 362, 393.

[121] DEIR, p. 3.14-26.

[122] DEIR, Appendix E: Transportation Analysis for the Environmental Review, p. 81; Marshall Comments, p. 5.

[123] *Id.*

[124] Marshall Comments, pp. 5-6.

[125] *Id.* at p. 6.

[126] *Id.* at p. 6.

Response O4-33

The comment claims that the Draft EIR's conclusion that VMT impacts associated with the Campus Master Plan would be less than significant is not supported by substantial evidence. The comment asserts that the Draft EIR fails to provide critical information on the "trip generation inputs" used in the model, inputs that are essential for determining how many trips the Campus Master Plan is expected to generate. The comment further claims that without this information, it is impossible to verify whether the model's assumptions are accurate or consistent, which could lead to misleading conclusions about the Campus Master Plan's VMT impacts.

Section 3.14, "Transportation," of the Draft EIR is supported by the transportation analysis in Appendix E of the Draft EIR, which was prepared by Fehr & Peers, a transportation planning and engineering firm. The VMT approach and analysis methods are documented in Chapter 2 of Appendix E. The chapter summarizes the following:

- the use of CEQA prior to SB 743,
- an overview of SB 743 and legal framework,
- and VMT assessment approach decisions and VMT analysis methods.

The approach section in Appendix E specifically describes the process that the CSU Chancellor's office went through to prepare the 2020 California State University Transportation Impact Study Manual (2020 CSU TISM), which includes selecting the vehicle miles traveled thresholds and methods that this analysis follows. Table 12 in Section 5.1.2 of Appendix E describes the CSU Significance Thresholds and the Calculated Numeric Threshold for the Campus Master Plan, thus demonstrating how the VMT thresholds documented in the 2020 CSU TISM were used for this project.

The vehicle trip rates from the travel model are not used to estimate the campus trip generation. Rather, the trip generation rates used for the campus are documented in Chapter 6 and supporting appendices of Appendix E of the Draft EIR. The chapter also includes reasonableness checks of the vehicle trip rates used to estimate the campus trip generation under Existing Conditions and Project Conditions by comparing it to similar sites and vehicle rates from other data sources. With respect to model inputs and perceived inconsistencies between the Campus Master Plan, Chapter 2, "Project Description" of the Draft EIR, and Appendix E, refer to Response O4-10.

The step-by-step process of calculating the VMT forecasts, starting with the vehicle trip generation, are cited below (from page 64 of Draft EIR Appendix E). Each of these items is discussed in greater detail within Chapter 6 of Appendix E and was available during public review for the Draft EIR. A summary of the methodology from Appendix E of the Draft EIR is provided below:

- **Trip Generation:** Daily and peak hour trip generation rates for the Main Campus and South Campus were derived using StreetLight data (Appendix B provides a summary of the data and methods used). The daily and peak hour trip generation rates for the Alquist Redevelopment are from the City of San José (CSJ) Travel Model.
- **Trip Distribution:** Trip distribution for the SJSU trips were derived using StreetLight data and spring 2023 zip code data, though we used the trip distribution rates from the CSJ Travel Model.
- **Trip Length:** Trip lengths for the SJSU trips were estimated from StreetLight data, though we used the trip lengths from the CSJ Travel Model.

- **Service Population:**[1] For this analysis, the residential and employee populations are derived from the 2017 Association of Bay Area Governments (ABAG) land use projections for adjacent communities and the SJSU's Campus Master Plan estimates and projections for students, faculty, and staff.
- **Vehicle Miles Traveled:** The total VMT and boundary VMT were developed using the CSJ Travel Model. The VMT estimates are also presented on a per service population basis to distinguish the effects of population and/or employment growth from the effects of changes in personal travel behavior.[2] (The total VMT metric and calculation methods and the Project's effect on VMT using boundary VMT are described in Chapter 2 and illustrated in Figure 4 of Appendix E)
- **City of San José Travel Model:** The City of San José (CSJ) Travel Model was used to develop the VMT forecasts for this study.

Therefore, contrary to statements made in this comment, the requested information is provided in a manner that allows for reasoned interpretation of the modeling results. No changes to the Draft EIR or Appendix E are required in response to this comment.

Comment O4-34

The significance of these missing details is underscored by the discrepancies in the DEIR's population estimates and the high sensitivity of the VMT analysis to such assumptions. As Mr. Marshall's comments explain, regional travel models typically rely on inputs like housing units, employment numbers, and student populations.[127] Meanwhile, service population (which represents all individuals affected by the project, like residents, employees, and students) is not directly entered into the model, but is instead used as the divisor.[128] Specifically, the model estimates VMT changes based on changes in housing units, employment, and student populations, and then divides the change in VMT by the service population.[129]

When the population estimates in the DEIR are used in this model there is a lot of variability due to the inconsistencies discussed in section III.b., above. For example, the DEIR presents conflicting estimates of the student population: Appendix E Table 24 shows an increase of 8,541, while DEIR Table 2-5 shows only an increase of 5,068.[130] Substituting the lower student population estimate results in a decrease in the overall project service population from 47,959 to 44,486, which changes the VMT per service population from 13.66 to 14.73.[131] This shift bring the VMT closer to the threshold, which highlights the importance of ensuring an accurate analysis is presented in the DEIR.[132]

[127] *Id*. at p. 6.

[128] *Id*.

[129] *Id*.

[130] *Id*.

[131] *Id*.

[132] *Id*.

Response O4-34

The comment claims that the discrepancies in the Draft EIR's population estimates bring the calculated VMT closer to the threshold when using service population as a metric. The service population is an appropriate and necessary VMT metric to evaluate how efficiently people at a location travel. As stated in Chapter 2 of Appendix E (page 18):

> *A commonly used efficiency metric is "total VMT per service population," in which the denominator, called "service population," includes all the variables that generate vehicle trips in the models that estimate VMT; in*

[1] Service population is the sum of all residents (including students from kindergarten to 12th grade), employees (including faculty, staff, and management), and university students.

[2] For example, population growth may cause an increase in total VMT, but if travelers change their behavior by using different travel modes or decreasing their trip lengths, then the VMT per service population metric could decrease.

> *most instances, this will be the total number of all residents (including students from kindergarten to 12th grade), employees (including faculty, staff, and management), and university students in the analysis area or project.*

The use of service population is further discussed in Section 6.5 of the Draft EIR Appendix E and describes why service population is used (page 78 of the Draft EIR Appendix E):

> *This service population method is used to ensure the VMT rate is expressed properly (i.e., that the numerator and denominator include the generators of both trip ends of the VMT), the total VMT is divided by the service population (residential population, employment population, and student population)—the generator of both trip ends of the VMT. In other words, the travel model uses residential population, employment population, and student population to estimate trips and to develop a VMT rate the total VMT needs to be divided by the service population that generated the VMT.*

This means that the total VMT per service population is a VMT rate. A VMT rate is derived from dividing the total VMT by the population that generates the VMT. A VMT rate allows for the evaluation of the Campus Master Plan's contribution to a more efficient use of the transportation system with lower VMT per person when compared to a no project condition.

The comment's suggestions of alternate VMT rates are not, in fact, VMT rates because the population used to generate total VMT is different from the population used in the denominator. Mixing and matching populations for the numerator and denominator is not a valid calculation methodology. In addition, the comment suggests that the VMT accounting methods for what the campus VMT rate and the VMT threshold is based on can be different. This is not appropriate since the comparison needs to be apples-to-apples and, if not, could lead to errant conclusions about the significance of the environmental impacts of the Campus Master Plan. It is especially important that the project VMT rate of the campus and the VMT threshold use the same VMT accounting methods. Therefore, no changes to the Draft EIR or Appendix E are required in response to this comment. Also refer to Response O4-10 above regarding the population estimates used for the Draft EIR and VMT analysis of the Campus Master Plan.

Comment O4-35

Mr. Marshall further explains that the Project's components have conflicting effects on VMT.[133] For example, the residential components (i.e., student housing, faculty housing, market-rate housing) mitigate the VMT impacts of the non-residential components (i.e., increased employment).[134] Therefore, the DEIR's VMT analysis may underestimate the Project's true impacts because of the inconsistencies in population assumptions and the CSJ Travel Model's high sensitivity to these assumptions.[135]

For these reasons, the DEIR should be revised and recirculated to address these discrepancies and provide the necessary data to support a valid and accurate VMT analysis.

[133] *Id.*

[134] *Id.*

[135] *Id.*

Response O4-35

The comment suggests that the Campus Master Plan's components have conflicting effects on VMT and that the Draft EIR's VMT analysis may underestimate the Campus Master Plan's impacts because of the inconsistencies in population assumptions and the CSJ Travel Model's high sensitivity to these assumptions. As described in the introduction to Section 6.2 of the Draft EIR Appendix E (page 64 and 65):

> The trip generation approach and technical methods were tailored for the Project because of the size of the SJSU campus and the unique travel behavior of the Main Campus and South Campus under Existing Conditions and Project Conditions. In establishing conditions tailored for the Project, the Project trip generation is based on observed Existing Conditions SJSU travel characteristics using a campus-specific trip generation rate expressed in vehicle trips per FTE. The Project Conditions is derived from the combination of the existing campus vehicle trip

rates and the vehicle trip adjustments to account for the six key changes in the campus population characteristics due to the SJSU Campus Master Plan:

- Increase student course load
- Increase in the portion of special session students
- Increase in the portion of students living on campus
- Increase in the portion of online and off-site classes
- Increase in the portion of staff and management working remotely
- Addition of faculty, staff, and management living on campus

The existing Parking Management and TDM measures would remain in place on the SJSU campus; those measures continue to be effective in reducing vehicle trip making and encouraging the use of other modes of travel. Because the Main Campus parking lots are near capacity for most of the day and the SJSU Campus Master Plan is not building a new parking supply on the Main Campus, the increase in vehicle growth is assigned to the South Campus and a shuttle system will transport students, faculty, and staff to/from the Main Campus. Specifically, the net new Project traffic is the difference in the Project Conditions and Existing Conditions SJSU campus trip generation.

The subsequent discussion in Section 6.2.1 of Appendix E of the Draft EIR explains that "…the existing SJSU campus vehicle trip generation, shown in Table 15, is derived from StreetLight data for the spring 2019 semester (January 22, 2019, to May 24, 2019) and draws from two separate zones for the Main Campus and South Campus. The trip generation values are for an average mid-week (Tuesday to Thursday) daily, AM peak hour (8:00 to 9:00 AM) and PM peak hour (4:00 to 5:00 PM)." The campus trip generation rate is shown in Table 16 of the Draft EIR Appendix E report.

The Alquist Redevelopment trip generation is described in Section 6.2.3 of the Draft EIR Appendix E, which states that "The Alquist Redevelopment residential trip generation is derived from the City of San José Travel Model (see **Table 19** [of the Draft EIR Appendix E]). Vehicle trip rates were compared to other sources (StreetLight Data, other downtown San José residential projects, and Institute of Transportation Engineers (ITE) Trip Generation Manual), and can be found in **Appendix C** [of the Draft EIR Appendix E]."

And finally, the project conditions of the SJSU Campus trip generation are documented in Section 6.2.4 of the Draft EIR Appendix E, and states the following:

Based on parking occupancy data, the Main Campus is currently near parking capacity under Existing Conditions. For the Existing with Project Conditions and Cumulative with Project Conditions, the trips generated by the Project (implementation of the SJSU CMP) would be added to the South Campus, as the South Parking Garage was not open in Existing Conditions. Table 20 shows the existing trip generation for the Main and South Campuses and the Project trip generation at the South Campus. The table also includes the additional shuttle trips between the Main and South Campuses to transport the people who park at South Campus and need to go to Main Campus, along with the trips generated by the residents in the market-rate apartments in Alquist.

Table 20 includes the trip adjustments to account for the six key changes in the campus population characteristics due to the SJSU Campus Master Plan:

1. **Increased student course load:** The increase in student commute trips adjustment is accounted for in the increase in the student population between Existing Conditions and Project Conditions and the SJSU trip generation rates shown in Table 16. No additional adjustment is needed.
2. **Increase in the portion of special session students:** The change in the portion of special session students is accounted for in the change in the student population between Existing Conditions and Project Conditions. Because special session students do not travel to the SJSU campus, they do not generate vehicle trips. No additional adjustment is needed.

3. **Increase in the portion of students living on campus:** The change in student commute trips adjustment is accounted for by multiplying the increase in the student population between Existing Conditions and Project Conditions (2040) by the percent adjustment in the campus trip rates presented in Table 21, and the SJSU trip generation rates presented in Table 16.
4. **Increase in the portion of online and off-site classes:** The decrease in student commute trips adjustment is accounted for by multiplying the increase in the student population between Existing Conditions and Project Conditions (2040) by the percent adjustment in the campus trip rates presented in Table 21 (50% reduction), and the SJSU trip generation rates presented in Table 16. The 50% reduction in the campus trip rate means that half of the increased portion of students taking online and off-site classes do not come to the campus.
5. **Increase in the portion of staff and management working remotely:** The decrease in staff commute trips adjustment is accounted for by multiplying the increase in the portion of staff and management working remotely between Existing Conditions and Project Conditions (2040) by the percent adjustment in the campus trip rates presented in Table 21 (100% reduction), and the SJSU trip generation rates presented in Table 16. Staff and management that work remotely will not travel to/from the campus.
6. **Addition of faculty, staff, and management living on campus:** The decrease in staff commute trips adjustment is accounted for by multiplying the addition of staff living on campus between Existing Conditions and Project Conditions (2040) by the percent adjustment in the campus trip rates presented in Table 21 (100% reduction). Staff and management that live at Alquist Redevelopment will not make any vehicle trips to/from the campus.

Collectively this analysis presents a complete and detailed understanding of the existing and project trip generation. Paired with the additional VMT forecasting steps in Chapter 6 of the Draft EIR Appendix E, this level of detail ensures a high degree of accuracy when determining the project's effects on the environment. As such, no changes to the Draft EIR or Appendix E are required in response to this comment.

Comment O4-36

e. The DEIR Fails to Adequately Disclose and Analyze the Project's Construction Noise Impacts

The DEIR concludes that construction noise impacts will be significant and unavoidable.[136] However, this conclusion is not supported by substantial evidence because the DEIR fails to disclose several significant noise impacts that will result from the Project's construction activities.[137]

Identification of a project's significant environmental effects is one of the primary purposes of an EIR and is necessary to implement the stated public policy that agencies should not approve projects if there are feasible mitigation measures or project alternatives available to reduce or avoid significant environmental impacts.[138]

Mr. Meighan explains that the DEIR underreports construction impacts because it uses the incorrect significance threshold in its analysis.[139] For example, the DEIR models construction noise levels using a detailed assessment methodology, which considers equipment usage factors, multiple machines operating at once, and receiver distances.[140] Despite this, the DEIR applies a 90 dBA significance threshold, which is intended for a general assessment.[141] A general assessment assumes a centralized noise source and a 100% equipment usage factor.[142] As a result, the significance threshold used is 10 dBA higher than the FTA's recommended 80 dBA significance threshold for residential receivers under a detailed assessment.[143]

As currently analyzed, the DEIR only identifies that all 10 of the sensitive receptors exceed the ambient noise increase threshold (i.e., 5 dBA over ambient).[144] Mr. Meighan's comments demonstrate that when the correct significance threshold is used, 6 out of 10 sensitive receptors would exceed both the ambient noise increase threshold and the maximum noise limit threshold (80/100dBA limit).[145] These impacts were not disclosed in the DEIR and may require additional mitigation measures that were not previously considered.

For these reasons, the DEIR fails as an informational document. Additionally, by failing to adequately disclose the Project's noise impacts, it is impossible to determine what mitigation should have been proposed. Therefore, the DEIR

lacks substantial evidence to conclude that the Project's construction noise impacts will be significant and unavoidable. The DEIR must be revised and recirculated to fix these informational deficiencies.

[136] DEIR, p. 3.11-19.

[137] Meighan Comments, pp. 3-4.

[138] PRC §§ 21002, 21002.1(a). 7762-003acp

[139] Meighan Comments, p. 3.

[140] *Id*.

[141] *Id*. 142 Id. 143 Id.

[144] DEIR, p. 3.11-17.

[145] Meighan Comments, p. 4.

[146] CEQA Guidelines § 15126.4(a)(1)(B).

Response O4-36

The comment summarizes more detailed comments provided below in Comment O4-46, pertaining to 1) the appropriate selection and application of construction noise thresholds, and 2) inadequate disclosure of significant impacts due to the thresholds selected. As provided in greater detail below in Response O4-46, the construction noise analysis did rely on appropriate FTA guidance and meets the criteria recommended by FTA for conducting a construction noise analysis for a program-level CEQA document. In addition, project impacts were determined based on the anticipated increase in noise levels over existing noise conditions. As described on page 3.11-19 of the Draft EIR, construction noise would be required to be reduced by as much as 24.1 dBA to ensure that a substantial increase in noise would not occur. Therefore, lowering the absolute noise level threshold as the comment suggests does not in turn result in additional undisclosed impacts. The Draft EIR adequately applied an absolute noise threshold, based on substantial evidence, and also evaluated the increase in noise and the associated effects to sensitive receptors. Refer to Response O4-46 for further information.

Comment O4-37

V. THE DEIR INCLUDES IMPROPERLY DEFERRED MITIGATION

CEQA Guidelines Section 15126.4(a)(1)(B) provides that formulation of mitigation measures shall not be deferred until some future time.[146] "An agency may [only] defer selection of specific mitigation measures when it approves a project if the measures that will be considered subsequently are described, performance criteria are identified, and the agency commits to devising measures that will satisfy those criteria."[147] If these requirements are not met, mitigation lacks the necessary specificity and performance criteria necessary to ensure that they can be effectively implemented.

[146] CEQA Guidelines § 15126.4(a)(1)(B).

[147] *Sacramento Old City Ass'n v. City Council* (1991) 229 CA3d 1101, 1029.

Response O4-37

The comment cites CEQA requirements related to the deferral of mitigation measures. The comment is informational in nature and does not address the adequacy or conclusions of the Draft EIR; therefore, no further response is required.

Comment O4-38

a. The DEIR Impermissibly Defers Mitigation for the Project's Operational Noise Impacts

The DEIR concludes that the Project's operational noise levels associated with the construction of the baseball stadium would be significant and unavoidable.[148] However, this conclusion is not supported by substantial evidence because it relies on Mitigation measure 3.11-4a, which constitutes impermissibly deferred mitigation under CEQA.

Mitigation Measure 3.11-4a states that "[n]oise reduction measures shall be incorporated to reduce increases in projected operational noise levels (i.e., 5 dBA, or greater) at nearby noise-sensitive land uses, including the single-family homes along E. Humbold Street. Such measures may include, but are not limited to, the incorporation of structural shielding, enclosed bleachers, and optimal placement for amplified sound system speakers."[149] While this suggests that noise reduction measures will be incorporated, it fails to specify the performance criteria necessary for those measures to be deemed effective. For example, it does not define the required level of noise reduction needed to ensure that operational noise remains below significant levels. As a result, this lack of specificity constitutes impermissibly deferred mitigation.

Consequently, the DEIR's conclusion that operational noise impacts are significant and unavoidable is unsupported. The DEIR must be revised to include effective mitigation measures and a reassessment of the remaining operational noise impacts after mitigation.

[148] DEIR, p. 3.11-24.

[149] DEIR, p. 3.11-24.

Response O4-38

The comment suggests that Mitigation Measure 3.11-4a lacks a performance standard, lacks specificity, and therefore, is deferred mitigation. Contrary to this statement and yet pointed out in the comment, Mitigation Measure 3.11-4a specifically states that "noise-reduction measures shall be incorporated to reduce increases in projected operational noise levels (i.e. 5 dBA, or greater) at nearby noise-sensitive land uses…" The mitigation measure also prescribes that "prior to final design, a noise assessment shall be conducted by a qualified acoustical engineer or noise specialist to evaluate potential increases in noise levels associated with the proposed SJSU baseball stadium." As noted in the Draft EIR, the Campus Master Plan is a long-range planning document that guides the development and use of campus lands through 2045. As such, no specific design of the proposed SJSU baseball stadium project has been completed. Given the long-range nature of the Campus Master Plan, the evaluation of the baseball stadium is considered programmatic as defined by Section 15168 of the State CEQA Guidelines. Considering the program-level assessment that was conducted and the localized nature of noise impacts, the Draft EIR did evaluate, based on available information, the likelihood for future noise impacts to occur and identified mitigation that would require further assessment. This approach is allowable under CEQA, so long as the timing and performance criteria are included in the mitigation measure, which are cited in the comment provided. As mentioned, the mitigation measure does specify when this must occur (i.e., prior to final stadium design) and sets a performance standard (i.e., reduction of 5 dBA over existing noise levels or greater); thus, the mitigation is adequate and consistent with CEQA requirements. Therefore, no changes to the Draft EIR are required in response to this comment.

Comment O4-39

b. The DEIR Impermissibly Defers Mitigation for the Project's Hazards

The DEIR concludes that impacts related to the potential release of hazardous materials from unknown contamination sites will be less than significant after mitigation.[150] However, the DEIR relies on impermissibly deferred mitigation to support this conclusion, rendering its significance determination invalid and unsupported.[151]

Specifically, the DEIR relies on Mitigation Measure 3.8-2a, which states that:

> [d]uring planning of project-specific development under the Campus Master Plan, the SJSU Facilities and development Office, Environmental Health and Safety (EHS) Division shall be consulted to identify if any unknown sites of contamination could potentially occur in areas proposed for demolition or renovation as part of the Campus Master Plan. EHS shall consider the cases on filed at SJSU, on GeoTracker, and on EnviroStor, and use information on historical uses in the area to be impacted, such as old maps and photos. If EHS determines that there is no potential or minimal potential for contamination to occur on-site, no additional mitigation is necessary. If it is determined that contamination has the potential to exist on a project site, Mitigation measure 3.8-2b shall be implemented.[152]

This mitigation measures is improperly deferred because it lacks specific performance criteria. This measure merely requires future consultation with the Environmental Health and Safety Division ("EHS") without specifying clear timelines, methodologies, or performance standards for evaluating contamination risks. For instance, additional mitigation will only be necessary "if EHS determines that there is no potential or minimal potential for contamination to occur on-site." This lacks a quantitative or qualitative threshold for making this determination (e.g., specific contamination levels or risk assessment methodologies), making it vague and discretionary. As a result, the measure lacks the necessary enforceable commitments to ensure that contamination risks will be adequately identified and mitigated before project impacts occur.

Because CEQA prohibits deferring mitigation without specific, binding performance standards, the DEIR must be revised to include enforceable mitigation measures that ensure contamination risks are assessed and mitigated before project approval. Without such revisions, the DEIR fails to provide substantial evidence that hazardous materials impacts will be reduced to a less than significant level.

[150] DEIR, p. 3.8-16.

[151] DEIR, p. 3.8-15.

[152] DEIR, p. 3.8-15.

Response O4-39

The comment claims that the Draft EIR's conclusion that hazards and hazardous materials impacts related to unknown contamination sites would be less than significant is invalid and unsupported because the Draft EIR relies on impermissibly deferred mitigation to support this conclusion. The comment suggests that Mitigation Measures 3.8-2a is improperly deferred because it lacks specific timelines, methodologies, or performance standards for evaluating contamination risks. The comment asserts that the Draft EIR must be revised to include enforceable mitigation measures. Refer to Responses O4-28 and O4-29.

Regarding the portion of the comment related to timelines, methodologies, or performance standards for evaluating contamination risks in Mitigation Measure 3.8-2a, the mitigation measure clearly states that the preliminary site investigation will be completed during planning of project-specific development under the Campus Master Plan. In addition, the investigation will include a review of the cases on file at SJSU, on GeoTracker, and on EnviroStor, and use information on historical uses in the area to be impacted, such as old maps and photos. If, based on this information, EHS determines that contamination has the potential to exist on a future project site, then additional mitigation is required. Contrary to the claim in the comment, this determination is not discretionary, as it is based on the information available at the time the preliminary site investigation either does or does not indicate the presence of potential contamination. This is then followed by steps that shall be taken based on what is identified, thereby establishing a clear process and performance standard for mitigation implementation, consistent with CEQA requirements. No changes to the Draft EIR are required in response to this comment.

Comment O4-40

VI. THE DEIR LACKS SUBSTANTIAL EVIDENCE TO SUPPORT A STATEMENT OF OVERRIDING CONSIDERATIONS

The DEIR concludes that the Project's construction and operational air quality impacts will be significant and unavoidable.[153] However, this conclusion is not supported by substantial evidence because the DEIR fails to implement all feasible mitigation to reduce these air quality impacts to the greatest extent feasible, as required by CEQA.

When an EIR identifies significant environmental impacts that may result from a project, certification of the EIR must include certain mandatory CEQA findings. Those findings include that the EIR complies with CEQA, that the lead agency has mitigated all significant environmental impacts to the greatest extent feasible, and that any remaining significant environmental impacts are acceptable due to overriding considerations.[154] Accordingly, before an impact can be declared significant and unavoidable, the lead agency must first adopt all feasible mitigation to reduce the impact to the greatest extent feasible, and must consider feasible mitigation recommended by commenters, when such measures would substantially lessen a significant environmental effect.[155] Furthermore, the mitigation measures

that are adopted must be enforceable through conditions of approval, contracts or other means that are legally binding.[156] "As is relevant here, a public agency cannot approve a project if the EIR identifies one or more significant effects on the environment, unless the agency makes a finding with respect to each significant effect that specific economic, legal, social, technological, or other considerations make infeasible the mitigation measures or alternatives identified in the EIR and makes a statement of overriding consideration with respect to the significant effects."[157]

The DEIR states that the reactive organic gases ("ROG") emissions during Project construction and operation would exceed BAAQMD thresholds of significance.[158] To reduce these impacts, the DEIR proposes Mitigation Measures 3.2-2a through 3.2-2c.[159] However, the DEIR concludes that this would not reduce the impacts to less than significant levels because operational ROG emissions would continue to exceed BAAQMD thresholds.[160] Additionally, BAAQMD requires that for phased projects with overlapping construction and operational emissions, construction-related exhaust emissions must be combined with operational emissions during those periods.[161] Here, construction phases 2, 3, and 4 would occur concurrently with operational phases 1, 2, and 3.[162] Therefore, even though mitigation would reduce construction-related ROG emissions to less than significant levels, the DEIR finds that combined construction and operational ROG emissions during overlapping phases would exceed BAAQMD thresholds.[163] Because of this, the DEIR concludes that the Project's construction and operational air quality impacts would significant and unavoidable.[164]

SWAPE's comments identify several mitigation measures that were not included in the DEIR and that would reduce the operational emissions even further. These measures include, but are not limited to:

- Recycling leftover paint by taking it to a household hazardous waste center;
- Using pre-painted construction materials to the extent practicable;
- Conducting calculations for coverage area and thinning ratios prior to purchasing paints;
- Using natural materials such as solid wood products, natural stone, ceramic tile, and glass
- Using flooring materials that are certified as low emitting under the California Department of Public Health Standard Method v1.2 or equivalent;
- Incorporating a mechanical ventilation systems that meets ASHRAE standards 62.1 and 62.2 in all new and renovated buildings.[165]

The DEIR's failure to require additional feasible mitigation to further reduce the Project's ROG emissions renders the DEIR's proposed finding of significant and unavoidable impacts unsupported. The DEIR should be revised to include the feasible mitigation measures recommended by SWAPE to reduce the Project's significant construction and operational air quality impacts to the greatest extent feasible as required by CEQA.

[153] DEIR, p. 3.2-23.

[154] PRC § 21081(a)(3), (b); CEQA Guidelines §§ 15090, 15091.

[155] *Covington v Great Basin Unif. Air Pollution Control Dist*. (2019) 43 Cal.App.5th 867, 879-883.

[156] PRC § 21081.6(b); CEQA Guidelines § 15126.4(a)(2).

[157] *Covington v Great Basin Unif. Air Pollution Control Dist*. (2019) 43 Cal.App.5th 867, 877; PRC § 21081.

[158] DEIR, p. 3.2-20.

[159] DEIR, pp. 3.2-22–3.2-23.

[160] DEIR, p. 3.2-23.

[161] BAAQMD 2022 CEQA Guidelines, Chapter 3: Thresholds of Significance, p. 3-5. 162 DEIR, p. 3.2-21.

[163] DEIR, p. 3.2-23.

[164] DEIR, p. 3.2-23.

[165] SWAPE Comments, pp. 3-4.

Response O4-40

The comment claims that the Draft EIR's conclusion that construction and operational air quality impacts will be significant and unavoidable is not supported by substantial evidence because the Draft EIR fails to implement all feasible mitigation to reduce these air quality impacts to the greatest extent feasible, as required by CEQA. The comment identifies additional mitigation measures for air quality impacts, as recommended by SWAPE, and states that failure to require additional feasible mitigation renders the Draft EIR's proposed finding of significant and unavoidable impacts unsupported. The comment suggests that the Draft EIR be revised to include the mitigation measures recommended by SWAPE.

The comment suggests that additional mitigation measures are available that can reduce construction-related ROG/VOC emissions as recommended by SWAPE. The comment acknowledges that Mitigation Measure 3.2-2b and Mitigation Measure 3.2-2c are prescribed to reduce ROG/VOC emissions. However, the comment does not provide any evidence to support the claim that the measures suggested by SWAPE would reduce ROG/VOC emissions. Furthermore, there are feasibility issues with the measures as presented in this comment. For example, the availability of recyclable paint is dependent on several factors, and it may not be available at all or in sufficient quantities at the time of the construction of on-campus development. The use of pre-painted material and natural materials will depend on a variety of factors, including building code requirements and the type of structure that is being proposed. Additionally, the comment does not provide any evidence demonstrating that the suggested measures go beyond California Energy Code and CalGreen Code, which already regulates indoor VOCs in finishing materials (e.g., carpets, paints, materials, adhesives) as it relates to indoor air quality. Therefore, it is unclear whether these measures would do anything to reduce the severity of the significant and unavoidable air quality impact identified in the Draft EIR beyond what is already required by existing regulations and Mitigation Measures 3.2-2b and 3.2-2c. Therefore, the analysis includes all feasible mitigation measures to reduce the significant and unavoidable air quality impacts of the Campus Master Plan to the greatest extent feasible, as required by CEQA. No further analysis or changes to the Draft EIR are required in response to this comment.

Comment O4-41

VII. 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, the CSU Board of Trustees may not lawfully approve the Project.

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

Response O4-41

The comment restates the assertion that the Draft EIR is inadequate for the reasons described in prior comments. The comment also asserts that the Draft EIR must be revised to provide legally adequate analysis and mitigation and until it does, the Trustees may not lawfully approve the Campus Master Plan. Refer to Responses to Comments O4-1 through O4-40. The comment does not raise any new environmental issues regarding the adequacy or conclusions of the Draft EIR not raised previously in the letter; therefore, no further response is required. However, this comment has been included in the record for consideration by the Trustees as part of the Campus Master Plan approval process.

Comment O4-42

We have reviewed the January 2024 Draft Environmental Impact Report ("DEIR") for the San Jose State University Master Plan ("Project") located in the City of San Jose. The Project proposes to demolish 1,065,000-square-feet ("SF") of existing buildings and construct 3,700,000-SF of academic, student support, and housing space. This includes 1,000 residential units and 1,600,000-SF of renovations.

Our review suggests that the DEIR may not properly assess the potential air quality impacts associated with the Project. Emissions associated with the construction and operations of the proposed Project therefore may be

underestimated. A revised Environmental Impact Report ("EIR") should be prepared to assess and sufficiently mitigate the potential air quality impacts that the Project may have on the environment.

Response O4-42

The comment states that the commenter has reviewed the Draft EIR and summarizes the development potential of the Campus Master Plan. The comment suggests that the Draft EIR may not have properly assessed air quality impacts and emissions may be underestimated. The comment further suggests that a revised EIR should be prepared. The comment is introductory in nature and generally claims that the analysis of air quality impacts is inadequate; however, the comment does not provide any specific examples or other details in this comment to which SJSU may respond. Refer to Response O4-43 which responds to specific comments related to the adequacy of the analysis of air quality impacts from the Draft EIR.

Comment O4-43

Air Quality

Failure to Implement All Feasible Mitigation to Reduce Emissions

The DEIR concludes that the Project's construction and operational reactive organic gases ("ROG") emissions would exceed the applicable Bay Area Air Quality Management District threshold (see excerpt below) (p. 3.2-20, Table 3.2-5 and 6).

Table 3.2-5 Estimated Construction Emissions (Average Daily)

Construction Emissions	ROG	NO_X	PM_{10} Exhaust	$PM_{2.5}$ Exhaust
Average Daily Emissions (lbs/day)[1]				
Phase 1 (2025-2029)	61	28	<1	<1
Phase 2 (2030-2035)	53	20	<1	<1
Phase 3 (2035-2039)	45	17	<1	<1
Phase 4 (2040-2045)	32	15	<1	<1
BAAQMD Construction Threshold (daily)	54	54	82	54
Exceeds Threshold?	YES	NO	NO	NO

Notes: ROG = reactive organic gases; NOx = oxides of nitrogen; $PM_{2.5}$ = fine particulate matter; lb/day = pounds/day, BAAQMD = Bay Area Air Quality Management District

Average daily is based on the total emissions during each construction phase divided by the total workdays in that construction phase. Totals may not sum up due to rounding.

Source: Modeled by Ascent in 2024.

Table 3.2-6 Estimated Operational Emissions

Project Phase	ROG	NO_X	PM_{10} Exhaust	$PM_{2.5}$ Exhaust
Average Daily Emissions (lbs/day)[1]				
Phase 1	48	9	<1	<1
Phase 2	73	13	<1	<1
Phase 3	90	16	<1	<1
Phase 4	118	21	<1	<1
BAAQMD Operational Threshold (daily)	54	54	82	54
Exceeds Threshold?	YES	NO	NO	NO

The DEIR concludes that the Project's construction and operational impacts would be significant and unavoidable after the implementation of Mitigation Measures ("MM") 3.2-2a through 3.2-2c (p. 3.2-23). We acknowledge that the

DEIR would have significant construction and operational ROG emissions, however, the DEIR's assertion that that they are unavoidable lacks sufficient justification. According to the California Environmental Quality Act ("CEQA") Guidelines § 15096(g)(2), a project cannot be approved if feasible mitigation measures are available that could substantially reduce or avoid significant environmental impacts.[1] Regarding the Project document itself, CEQA Guidelines § 15126.4 requires that an EIR include a description of all feasible mitigation measures.[2] Although DEIR implements MM 3.2-2a through 3.2-2c, there are measures that the DEIR does not consider that would further reduce the estimated ROG emissions.

Additional mitigation measures, as outlined in the "Feasible Mitigation Measures Available to Reduce Emissions" section, should be incorporated to further minimize the DEIR's potential air quality impacts. Until a revised EIR is prepared to explore all the feasible mitigation measures available, the DEIR's conclusion that the Project's construction and operational ROG emissions would be significant and unavoidable is unsupported by substantial evidence.

Mitigation

Feasible Mitigation Measures Available to Reduce Emissions

To further reduce the volatile organic compounds ("VOC")/ROG emissions associated with Project construction and operation, we recommend the DEIR consider the following mitigation recommended by other land use development project:[3]

- Recycle leftover paint. Take any leftover paint to a household hazardous waste center; do not mix leftover water-based and oil-based paints.
- Keep lids closed on all paint containers when not in use to prevent VOC emissions and excessive odors.
- For water-based paints, clean up with water only. Whenever possible, do not rinse the cleanup water down the drain or pour it directly into the ground or the storm drain
- Use compliant low-VOC cleaning solvents to clean paint application equipment.
- Keep all paint- and solvent-laden rags in sealed containers to prevent VOC emissions.
- Contractors shall build with materials that do not require painting and use pre-painted construction materials to the extent practicable.
- Use high-pressure/low-volume paint applicators with a minimum transfer efficiency of at least 50 percent or other application techniques with equivalent or higher transfer efficiency.

The United States Environmental Protection Agency recommends conducting calculations for coverage area and thinning ratios prior to purchasing paints. By applying these calculations, the appropriate quantity of paint can be acquired, thereby helping to minimize waste and optimize resource use.[4]

To reduce construction VOC/ROG emissions, the California Department of Public Health recommends the use of:[5]

- Natural materials such as solid wood products (e.g., hard wood flooring and wood paneling), natural stone (e.g., granite and marble), ceramic tile, and glass.
- Composite wood products that comply with the California Air Resources Board's ("CARB") Airborne Toxic Control Measure for formaldehyde.
- Interior paints, coatings, adhesives, and sealants that comply with South Coast AQMD Rule 1168 or CARB's Suggested Control Measure for Architectural Coatings.
- Flooring materials that are certified as low emitting under the California Department of Public Health (CDPH) Standard Method v1.2 or equivalent.
- Steel cabinets instead of plywood; prefinished, nailed-down hardwood flooring instead of carpeting; and masonry flooring such as ceramic tile or marble instead of carpeting.

- Sealer on the surface of spray-on fireproofing to reduce adsorption of VOCs using a low-VOC sealer, if necessary.

To reduce operational emissions of VOC/ROG, all new and renovated buildings could incorporate a mechanical ventilation system that meets ASHRAE Standards 62.1 and 62.2, as recommended by the California Department of Public Health. [6] Heating, ventilation, and air conditioning ("HVAC") systems should be equipped with MERV 13 or higher filters to reduce indoor pollutant exposure. Prior to occupancy, buildings shall undergo a flush-out period with HVAC systems operating at full capacity for a minimum of 48 hours to remove residual VOCs and improve indoor air quality. Any ventilation systems that exhaust air to the outdoors shall comply with applicable Bay Area Air Quality Management District (BAAQMD) regulations, and the project applicant shall obtain necessary permits if required.

These measures provide feasible ways to integrate lower-emitting design features into the Project, which were not addressed in the DEIR. These measures would further reduce ROG emissions during Project construction and operation. A revised EIR should be prepared to assess all feasible mitigation measures and demonstrate commitment to their implementation before Project approval. This would ensure emissions are reduced to the maximum extent feasible as required by CEQA.

[1] "Cal. Code Regs. tit. 14 § 15096." California Legislature, available at: https://casetext.com/regulation/california- code-of-regulations/title-14-natural-resources/division-6-resources-agency/chapter-3-guidelines-for- implementation-of-the-california-environmental-quality-act/article-7-eir-process/section-15096-process-for-a- responsible-agency.

[2] "Cal. Code Regs. tit. 14 § 15126.4." California Legislature, available at: https://casetext.com/regulation/california-code-of-regulations/title-14-natural-resources/division-6-resources-agency/chapter-3-guidelines-for-implementation-of-the-california-environmental-quality-act/article-9-contents-of-environmental-impact-reports/section-151264-consideration-and-discussion-of-mitigation-measures-proposed-to-minimize-significant-effects.

[3] "Banning Commerce Center Project." Kimley-Horn and Associates, Inc., June 2024, available at: https://ceqanet.opr.ca.gov/2022090102/2; Draft Environmental Impact Report, p. 1-7.

[4] "Methods for Estimating Air Emissions from Paint, Ink, and Other Coating Manufacturing Facilities." Emissions Inventory Improvement Program, February 2005, available at: https://www.epa.gov/sites/default/files/2015-08/documents/ii08_feb2005.pdf, Volume II, Chapter 8, p. 8.3-1.

[5] "Reducing occupant exposure to volatile organic compounds (VOCs) from indoor sources: Guidelines for building occupants." California Department of Public Health, July 1996, available at: https://www.cdph.ca.gov/Programs/CCDPHP/DEODC/EHLB/IAQ/CDPH%20Document%20Library/reducing_occupant_exposure_vocs_guidelines_ADA.pdf.

[6] *Ibid*., p. xii.

Response O4-43

The comment suggests that additional mitigation measures are available that can reduce construction-related ROG/VOC emissions. The comment acknowledges that Mitigation Measure 3.2-2b and Mitigation Measure 3.2-2c are prescribed to reduce ROG/VOC emissions. However, the comment does not provide any evidence to support the claim that the measures suggested would reduce ROG/VOC emissions and to what degree such that it could be quantified. Also refer to Response O4-40 regarding the feasibility of the suggested measures.

Additionally, the comment does not provide any evidence demonstrating that the suggested measures go beyond California Energy Code and CalGreen Code, which already regulates indoor VOCs in finishing materials (e.g., carpets, paints, materials, adhesives) as it relates to indoor air quality. Therefore, it is unclear whether these measures would do anything to reduce the severity of the significant and unavoidable air quality impact identified in the Draft EIR beyond what is already required by existing regulations and Mitigation Measures 3.2-2b and 3.2-2c. Therefore, the analysis includes adequate feasible mitigation measures to reduce the significant and unavoidable air quality impacts of the Campus Master Plan to the greatest extent feasible, as required by CEQA. No further analysis or changes to the Draft EIR are required in response to this comment.

Comment O4-44
Disclaimer

SWAPE has received limited documentation regarding this project. Additional information may become available in the future; thus, we retain the right to revise or amend this report when additional information becomes available. Our professional services have been performed using that degree of care and skill ordinarily exercised, under similar circumstances, by reputable environmental consultants practicing in this or similar localities at the time of service. No other warranty, expressed or implied, is made as to the scope of work, work methodologies and protocols, site conditions, analytical testing results, and findings presented. This report reflects efforts which were limited to information that was reasonably accessible at the time of the work, and may contain informational gaps, inconsistencies, or otherwise be incomplete due to the unavailability or uncertainty of information obtained or provided by third parties.

Response O4-44
The comment provides a disclaimer regarding SWAPE's review on behalf of Adams Broadwell Joseph & Cardozo. It does not address the adequacy or conclusions of the Draft EIR; therefore, no further response is required.

Comment O4-45
Per your request, I have reviewed the subject matter documents for the San Jose State University Master Plan Project (Project) Draft Environmental Impact Report (DEIR) in the City of San Jose, California. The DEIR includes a noise analysis in section 3.11. The project is a master plan regarding the construction of demolition and replacement of approximately 1,065,000 square feet of existing academic, administrative, housing, and support facilities to allow the campus to add density in both the Main and South campuses.

Wilson Ihrig, Acoustical Consultants, has practiced exclusively in the field of acoustics since 1966. During our 58 years of operation, we have prepared hundreds of noise studies for Environmental Impact Reports and Statements. We have one of the largest technical laboratories in the acoustical consulting industry. We also utilize industry-standard acoustical programs such as Roadway Construction Noise Model (RCNM), SoundPLAN, and CADNA. In short, we are well qualified to prepare environmental noise studies and review studies prepared by others.

Adverse Effects of Noise[1]

Noise-Induced Hearing Loss. If a person is repeatedly exposed to loud noises, he or she may experience noise-induced hearing impairment or loss. In the United States, both the Occupational Health and Safety Administration (OSHA) and the National Institute for Occupational Safety and Health (NIOSH) promote standards and regulations to protect the hearing of people exposed to high levels of industrial noise.

Speech Interference. Another common problem associated with noise is speech interference. In addition to the obvious issues that may arise from misunderstandings, speech interference also leads to problems with concentration fatigue, irritation, decreased working capacity, and automatic stress reactions. For complete speech intelligibility, the sound level of the speech should be 15 to 18 dBA higher than the background noise. Typical indoor speech levels are 45 to 50 dBA at 1 meter, so any noise above 30 dBA begins to interfere with speech intelligibility. The common reaction to higher background noise levels is to raise one's voice. If this is required persistently for long periods of time, stress reactions and irritation will likely result.

Sleep Disturbance. Noise can disturb sleep by making it more difficult to fall asleep, by waking someone after they are asleep, or by altering their sleep stage, e.g., reducing the amount of rapid eye movement (REM) sleep. Noise exposure for people who are sleeping has also been linked to increased blood pressure, increased heart rate, increase in body movements, and other physiological effects. Not surprisingly, people whose sleep is disturbed by noise often experience secondary effects such as cognitive decline, increased fatigue, depressed mood, and decreased work performance.

Cardiovascular and Physiological Effects. Human's bodily reactions to noise are rooted in the "fight or flight" response that evolved when many noises signaled imminent danger. These include increased blood pressure, elevated heart

rate, and vasoconstriction. Prolonged exposure to acute noises can result in permanent effects such as hypertension and heart disease.

Impaired Cognitive Performance. Studies have established that noise exposure impairs people's abilities to perform complex tasks (tasks that require attention to detail or analytical processes), and it makes reading, paying attention, solving problems, and memorizing more difficult. Therefore, there are standards for classroom background noise levels, which is why offices and libraries are designed to provide quiet work environments. One societal change brought about by the COVID-19 pandemic is that many people now routinely work and learn from home, and this has given rise to more noise complaints from loud daytime activities such as construction work.

[1] More information on these and other adverse effects of noise may be found in Guidelines for Community Noise, eds B Berglund, T Lindvall, and D Schwela, World Health Organization, Geneva, Switzerland, 1999. (https://www.who.int/docstore/peh/noise/Comnoise-1.pdf)

Response O4-45

The comment provides background information regarding the qualifications of the commenter as an acoustics specialist and further provides general information related to human response and adverse effects of noise on humans. The comment does not address the adequacy or conclusions of the Draft EIR. Therefore, no further response is required.

Comment O4-46

Baseline Noise Not Established

Under the California Environmental Quality Act (CEQA), establishing baseline noise conditions is a critical step in assessing the potential environmental impacts of a project. Baseline noise levels represent the existing acoustic environment against which project-related noise impacts are measured. This baseline is typically determined through long-term noise monitoring, often expressed as the Community Noise Equivalent Level (CNEL) or the Day-Night Average Noise Level (Ldn). These metrics account for varying noise levels over a 24-hour period, with additional weighting applied to nighttime hours to reflect increased sensitivity to noise during those times. Without a comprehensive and representative set of noise measurements, it is impossible to accurately define the baseline noise conditions, which are essential for evaluating whether a project would result in a significant noise impact under CEQA guidelines.

In this case, no long-term noise measurements were taken in the southern part of the project area, which is located miles away from the northern part of the project where measurements were conducted. South campus is in a fundamentally different part of the city, bordering quiet land uses such as Kelley Park, as opposed to main campus, which borders high-activity (and presumably noisier) downtown San Jose. Noise levels are likely quieter on the south campus, which would lower the significance thresholds and underestimate impacts and underreport the magnitude of impacts.

For operational noise and discussion of mobile noise generated by the project, the DEIR's significance threshold is based on the CNEL, which is undefined in the southern campus area because no long-term noise measurements were taken. For construction noise, a single 15-minute measurement is not sufficient to find a reasonable baseline, since daytime noise can vary by as much as 10 dBA throughout a day based on traffic patterns and site-specific geometry. A more appropriate construction threshold would be based on the quietest daytime hour recorded within the anticipated hours of construction.

This omission means that the baseline noise conditions for the southern campus remain undefined, as the Ldn measurements taken at the Main Campus area are non-representative of the entire project site. Without establishing a reliable baseline for the southern area, it is not possible to set an appropriate project significance threshold or accurately assess potential noise impacts in that region. This lack of data undermines the ability to make informed decisions regarding noise mitigation measures or to determine compliance with CEQA requirements, leaving the environmental review process incomplete and flawed.

Response O4-46

The comment suggests that because no long-term measurements were taken at the South Campus location, the Draft EIR's significance thresholds for construction and operational noise were not reflective of existing noise levels, and subsequently the Draft EIR applied inappropriately lower thresholds and underestimated the magnitude of impacts. The statements made in this comment are provided as an attachment to the comment letter and mirror Comments O4-12 through O4-15. Refer to Responses O4-12 through O4-15 for a response to this comment.

Comment O4-47

Analysis Uses Incorrect Analysis from Cited Document

Table 3.11-1 of the Draft Environmental Impact Report (DEIR) presents modeled construction noise levels at representative sensitive receivers. These modeled levels are compared against two thresholds: (1) a 5 dBA increase over ambient noise levels, and (2) a 90 dBA threshold for residential receivers and a 100 dBA threshold for non-residential receivers. The DEIR identifies exceedances of the 5 dBA increase threshold at every modeled receptor. However, the analysis contains errors that, if corrected, would reveal additional undisclosed impacts.

The DEIR states that construction noise levels were modeled by "assuming that up to four pieces of equipment would be operating simultaneously along the boundary of the construction site nearest to the surrounding noise-sensitive receptors" (DEIR, page 3.11-17). Additionally, the model was developed using source levels from the Federal Highway Administration's *Roadway Construction Noise Model* (RCNM) [2], with noise levels converted from Lmax to Leq using RCNM default usage factors (DEIR, Table 3.11-10). This approach aligns with the detailed construction noise assessment methodology outlined in the Federal Transit Administration's *Transit Noise and Vibration Impact Assessment Manual* (FTA) [3]. However, the DEIR cites the 90 dBA threshold from the general FTA construction noise assessment, which is inconsistent with the detailed methodology used as explained below.

The DEIR does not differentiate between the general and detailed FTA construction noise assessment criteria. A general FTA assessment calculates noise levels based on distances from the project's central point and requires a 100% usage factor. The methodology described in the DEIR aligns more closely with a detailed FTA construction noise assessment. This approach calculates distances based on the actual separation between receivers and construction equipment, rather than measuring from the project's center. It also incorporates usage factors and models multiple pieces of equipment operating simultaneously, as noted in the footnote to Table 3.11-10.

The FTA recommends a 90 dBA threshold for residential receivers when using the general analysis, which the DEIR adopts as its significance threshold. However, since the DEIR follows the detailed assessment methodology, the more appropriate threshold would be the FTA's recommended 80 dBA for residential receivers under a detailed analysis. A summary of these findings is provided in Table 1 below.

Table 1: Summary of Different FTA Criteria and Associated Exceedances

Receiver Type	Residential	Educational
General FTA Criteria[1]	90 dBA	100 dBA
Number of Exceedances[2]	0	0
Detailed FTA Criteria[3]	80 dBA 85	dBA[4]
Number of Exceedances[2]	4	2

[1] From Table 7-2 in the FTA Manual

[2] Via modeled levels shown in 4th column of Tabel 3.11-11 in the DEIR.

[3] From Table 7-3 in the FTA Manual

[4] FTA does not have an educational/institutional construction noise limit. Commercial limits are shown as the closest approximation

The DEIR uses an improper significance threshold given the selected methodology. As shown in Table 1, when using the proper significance threshold, the Project will have significant unreported and unmitigated impacts. This should

be disclosed in a revised DEIR in order for the community to properly be informed of the levels and magnitude of threshold exceedance.

[2] https://www.fhwa.dot.gov/environment/noise/construction_noise/rcnm/

[3] https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/research-innovation/118131/transit-noise-and-vibration-impact-assessment-manual-fta-report-no-0123_0.pdf

Response O4-47

The comment suggests that the noise analysis in the Draft EIR is more consistent with the FTA's detailed analysis methodology rather than the general analysis methodology, and therefore, should have applied a lower maximum noise limit consistent with the detailed analysis methodology for the construction noise analysis.

The FTA provides two distinct approaches to conducting construction noise assessments, which vary in level of detail depending on the level of information available for the project. While each methodology does have distinct differences, ultimately the methodologies are provided by the FTA as guidelines, which also include primary considerations that should be made, as summarized here:

> *"No standardized criteria have been developed for assessing construction noise impact. Consequently, criteria must be developed on a project-specific basis unless local ordinances apply. As stated earlier in this section, local noise ordinances are typically not very useful in evaluating construction noise. They usually relate to nuisance and hours of allowed activity, and sometimes specify limits in terms of maximum levels, but are generally not practical for assessing the impact of a construction project. Project 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. While it is not the purpose of this manual to specify standardized criteria for construction noise impact, the following guidelines can be considered reasonable criteria for assessment. If these criteria are exceeded, there may be adverse community reaction." (underlined for emphasis)*

The FTA clearly states that "Project 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" and that "it is not the purpose for this manual to specify standardized criteria for construction noise impact." Thus, the guidelines presented by the FTA are available to practitioners and Lead Agencies to use and adopt as methods and thresholds; however, there is discretion allowed in applying such criteria, especially considering that it is clearly identified by the FTA as being "guidance" only. The construction noise analysis provided in Impact 3.11-1 if the Draft EIR thoroughly considered the existing noise environment, the absolute noise levels, the duration of construction, and the adjacent land uses, and thus is consistent with FTA guidance.

Regarding existing noise levels, refer to Responses O4-12 through O4-15, which explain how short-term measurements were obtained. Table 3.11-11 in the Draft EIR reports absolute modeled construction noise levels, noise levels at nearby receptors when project-generated noise was added to existing noise (addressing maximum noise levels, existing conditions, and nearby land uses), and the quantified increase in noise over existing levels to evaluate how receptors would perceive this noise. The analysis also considered the duration of construction activities consistent with the adopted City of San José Noise Control Ordinance, which defines non-temporary construction noise as more than 12-months (see thresholds of significance on page 3.11-14 of the Draft EIR). The analysis considered: 1) absolute noise limits, 2) incremental increase limits, 3) the duration of construction activities, and 4) assessed perception in noise change at nearby receptors. This approach is consistent with FTA and CEQA requirements.

Regarding the specific comments about the use of the detailed versus general FTA analysis methodology, the Campus Master Plan is a long-range planning document that guides the development and use of campus lands through 2045. As explained in the CEQA Guidelines, "[t]he degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR. An EIR on a construction project will necessarily be more detailed in the specific effects of the project than will be an EIR on the adoption of a local general plan or comprehensive zoning ordinance because the effects of the construction can be predicted with greater accuracy." Given the long-range nature of the Campus Master Plan, the Draft EIR was prepared as a program

EIR as defined by Section 15168 of the State CEQA Guidelines. A program EIR can be used as the basic, general environmental assessment for an overall program of projects developed over a multi-year planning horizon; therefore, it is an appropriate review document for the proposed Campus Master Plan.

Understanding that the assessment methods identified in this comment are provided as guidance and that there are some inherent limitations in applying the guidance, the analysis conducted for and provided within the Draft EIR is appropriate, especially where a certain level of detail is not available. For example, the detailed analysis methods recommended by the FTA require that the location of each piece of construction equipment be known such that specific distances between each piece of equipment and each receptor can be used in the noise calculations. This level of detail is not practical for evaluation of a Campus Master Plan under CEQA as the design of each potential development under the plan has not been initiated. For the Draft EIR, certain elements of both the general assessment and the detailed assessment methods were employed, such as using generalized distances between the anticipated center of construction locations and nearby receptors (more in line with the general assessment). This approach effectively combined noise from all pieces of construction equipment onto one physical hypothetical point (pieces of equipment cannot be on top of each other), thereby increasing the maximum anticipated noise level used to conduct the analysis (i.e., making the analysis conservative). This more conservative assumption is more in line with the general assessment in contrast to the detailed assessment described above, whereby if specific distances to each piece of equipment were used, residual noise at the receiving land use would actually be lower. Thus, the general approach here is consistent with applying the maximum noise limits associated with the general analysis method. The use of four pieces of equipment is more consistent with the detailed assessment, compared to the two pieces of equipment recommended by the general assessment; however, this assumption was based on project-specific information. Thus, it would have been incorrect to reduce this number to two pieces of equipment, per the general assessment, which would have underestimated noise levels. In addition, considering that equipment does not operate at full capacity for any one hour, it is reasonable to apply industry-accepted usage factors, as the comment points out (i.e., detailed assessment). Considering that the noise model used is conservatively high, applying the maximum noise limits associated with the general assessment is appropriate. In other words, the approach employed by the Draft EIR was based on FTA guidelines but adjusted using project-specific information and applying conservative methods.

Nonetheless, and as described in detail on page 3.11-19 of the Draft EIR, construction noise impacts were determined to be significant and unavoidable as a result of anticipated substantial increases in temporary noise over existing ambient noise levels. As summarized on that page "construction noise levels at some nearby land uses may need to be reduced by up to 24.1 dBA during daytime hours to achieve applicable noise standards." Even if the lower maximum noise standards from Table 1 above were used, as suggested by the comment, the impact determination in this analysis is based on the substantial increase in noise, not the maximum noise level. Restated, reducing the threshold to what the commenter recommends would not change the impact or the required mitigation in any way as the mitigation is attempting to bring project-generated noise down to ambient noise levels plus 5 dBA.

In summary, the Draft EIR's construction noise analysis employed industry-accepted methodologies to obtain existing noise levels and evaluate project-generated noise levels (e.g., FHWA, FTA), applied project-specific information where available, and made reasonably conservative assumptions, meeting the intent of FTA's guidelines to "account for the existing noise environment, the absolute noise levels during construction activities, the duration of the construction, and the adjacent land uses." This approach is also in accordance with CEQA requirements for the use of established thresholds using a combination of adopted noise standards and ones available from other agencies (i.e., City of San José Municipal Code and FTA). Therefore, no changes to the Draft EIR are required in response to this comment.

Comment O4-48
Conclusions

The noise analysis for DEIR contains substantial omissions and errors. Correcting these issues would identify that the Project would generate additional significant noise impacts and warrant additional mitigation measures to manage the anticipated impacts and full disclosure of any impacts that would remain significant.

Please feel free to contact me with any questions on this information.

Response O4-48

The comment states that the noise analysis in the Draft EIR contains substantial omissions and errors and that correcting these errors would identify additional significant noise impacts and warrant additional mitigation measures. As noted in Responses O4-12 through O4-15 and O4-45 through O4-47, the Draft EIR's evaluation of potential noise impacts is appropriate and in accordance with CEQA requirements. The comment does not raise any new environmental issues regarding the adequacy or conclusions of the Draft EIR not raised previously in the letter; therefore, no further response is required. However, this comment has been included in the record for consideration by the Trustees as part of the Campus Master Plan approval process.

Comment O4-49

I have reviewed trip generation, vehicle miles traveled ("VMT"), and workforce housing impacts discussed in the Draft Environmental Impact Report ("DEIR") for the San Jose State University Campus Master Plan for Santa Clara County Properties. I make the following findings:

1) The DEIR includes three different Project population estimates. This makes it impossible to fully evaluate the impacts of the proposed Project.

2) Future trip generation is highly uncertain because of the different population estimates, and also because the DEIR relies on assumptions about online and offsite classes and remote work that are unsupported and may be inaccurate.

3) The Project's VMT impacts also are sensitive to the different population estimates, particularly because the residential components of the project are mitigating the otherwise significant VMT impacts from the non-residential components. The VMT impacts disclosed in the DEIR are therefore unsupported.

4) The Project is proposing as few as 50 workforce housing units occupied by workers which would only house 5 percent of the planned workforce increase. This would exacerbate the City's workforce housing problems.

Response O4-49

The comment is introductory in nature and provides an overview of the more detailed comments that follow (Comments O4-50 through O4-57). The specific comments raised following this introduction are listed separately, along with SJSU's individual responses (Responses O4-50 through O4-57; in addition to Responses O4-7, O4-10, and O4-11.) As noted in and evidenced by the responses below, the EIR (as amended as part of the Final EIR) presents an analysis of the potential physical environmental effects associated with implementation of the Campus Master Plan, consistent with CEQA requirements. The comment raises similar concerns as Comments O4-7, O4-10, and O4-11; refer to Responses O4-7, O4-10, and O4-11 for detailed responses to the points raised in this comment.

Comment O4-50

The Project Population Estimates in the DEIR are Inconsistent

DEIR Table 2-5 (p. 2-18) showing assumed Project student enrollment and faculty and staff headcount is reproduced below.

Table 2-5 Student Enrollment, Faculty, and Staff Headcount

	Fall Headcount for AY 2018-2019	Fall Headcount for AY 2022-2023	Fall Headcount under Campus Master Plan	Net Change from Fall 2018	Net Change from Fall 2022
Student Enrollment[1]					
Fall Headcount	35,475	35,809	44,000	8,525	8,191
On-Campus Fall Headcount	32,828	32,432	37,500	4,672	5,068
Faculty and Staff Fall Headcount					
Faculty	2,074	2,263	2,500	426	237
Staff and Management[2]	1,998	2,007	2,760	762	753
Total Regular Employees	**4,072**	**4,270**	**5,260**	**1,188**	**990**

[1] Includes undergraduate and graduate enrollment.

[2] Includes staff, administrators, and research staff.

Source: SJSU 2024.

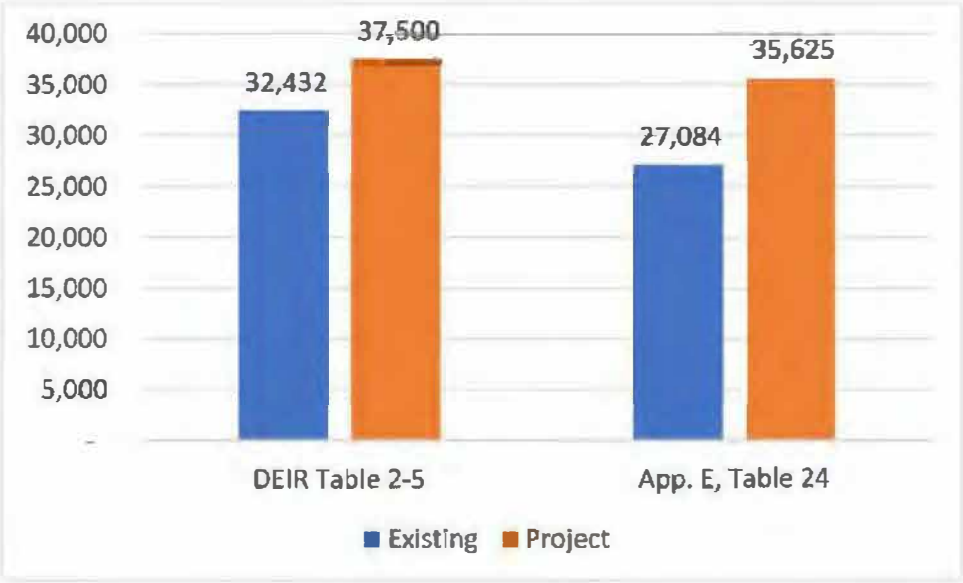
DEIR Appendix E gives different student and employment populations in Table 24 with the SJSU portion reproduced below.

Table 24: Service Population

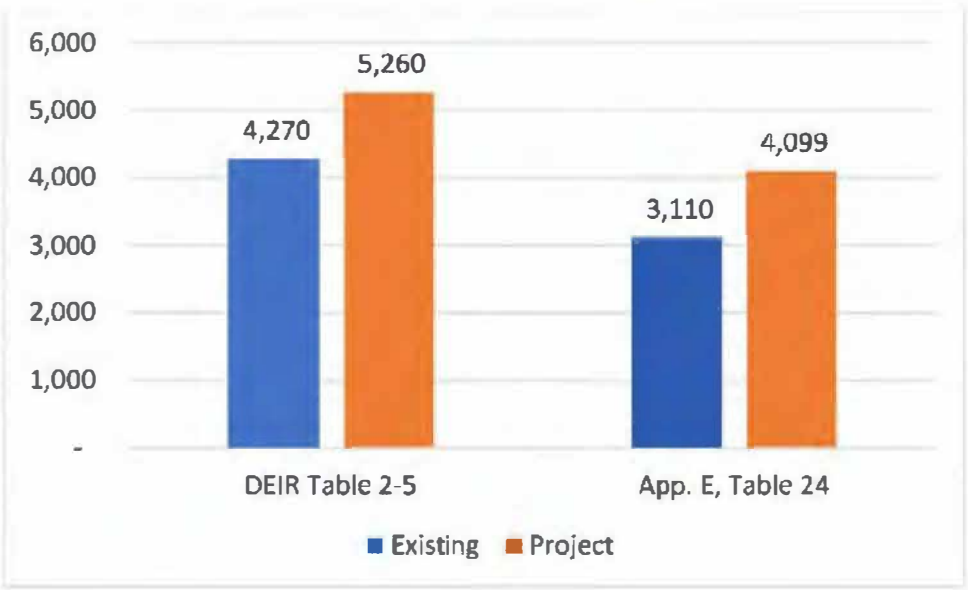
Population Type	Existing Conditions[4]	Existing with Project Conditions	Cumulative Conditions[5]	Cumulative with Project Conditions
SJSU Campus with Alquist Redevelopment[1]				
Residents (A)	4,450	8,235	4,450	8,235
Employees (B)	3,110	4,099	3,110	4,099
Students (C)	2,7084	35,625	2,7084	35,625
Service Population (A+B+C=D)	34,644	47,959	34,644	47,959

The numbers between the two tables reproduced do not match for either students or employees as summarized in the two tables below.

Inconsistent Project Student Population Assumptions in DEIR



Inconsistent Project Employee Population Assumptions in DEIR



Response O4-50

The comment is related to the project description and the expected increase in student and staff populations. Specifically, the commenter notes that there are three different project descriptions presented for the existing and future student and staff populations. The comment raises similar concerns as Comment O4-10 related to the Campus Master Plan's population estimates and sources of campus population estimates; refer to Response O4-10.

Since the comment omits the population units (e.g., headcount, FTES, etc.) and uses inconsistent time comparisons, the following addresses each of the enrollment numbers raised in the comment (that were not directly presented in Comment O4-10):

- **Total faculty and staff population 4,072 to 5,260**: is the faculty, staff and management headcount between academic year 2022-2023 and the Campus Master Plan projection on the last line in Table 2-5 of the Draft EIR.
- **Total faculty and staff population 3,110 to 4,099**: is the faculty, staff and management FTEs between academic year 2019-2020 and the Campus Master Plan projection on line B of Table 24 in the Draft EIR Appendix E. This estimate is also summarized on line F of Table 3 in the Draft EIR Appendix E. The faculty, staff, and management FTEs are from Table B (SJSU Full-Time Equivalents) for 2018 academic year provided by Institutional Research on August 11, 2023.

Comment O4-51

DEIR Appendix E also includes a third set of population estimates in estimating trip generation. This set estimates "Campus Population (FTE)" defined as "full-time equivalent and includes students, faculty, and staff and uses the unit of FTEs." (DEIR, Appendix E, p. 73). A portion of Table 20 on p. 72 is reproduced below.

Table 20: SJSU Campus Vehicle Trip Generation for Project Conditions

ID	Location	Campus Population	Daily	AM Peak Hour In	AM Peak Hour Out	AM Peak Hour Total	PM Peak Hour In	PM Peak Hour Out	PM Peak Hour Total
	SJSU Campus Trip Rates								
A	Campus Trip Rate		1.43	0.08	0.03	0.11	0.04	0.07	0.11
	SJSU Campus Trip Generation								
B	Main Campus (Existing)	30,194	41,100	2,460	740	3,200	1,150	2,080	3,230

C	South Campus (Existing)	30,194	2,220	100	50	150	60	90	150
D	South Campus[2] (Project)	9,530	13,670	810	250	1,060	380	690	1,070
E	*Trip Generation Subtotal (B+C+D)*	*39,724*	*56,990*	*3,370*	*1,040*	*4,410*	*1,590*	*2,860*	*4,550*

At first glance, it appears that Table 20 is assuming an increase of 30,194 existing FTEs to 39,724 Project FTEs. However, line E (Project FTEs) should be the sum of lines B, C and D – as is the case for the adjacent Daily trip generation column – but it is not. The sum of those three numbers is 69,918. However, 69,918 is not the correct total either as it appears that the value in FTE column row C, "South Campus (Existing)" is incorrect and simply reproduces the value in the cell above.

Response O4-51

The comment identifies a typo in Table 20 of Appendix E of the Draft EIR. The comment raises similar concerns as Comment O4-11; refer to Response O4-11.

Comment O4-52

Even without this error, the DEIR fails to provide sufficient information to reconcile the FTEs assumed in Appendix J to the numbers in either of the other two population tables reproduced above. As shown in Table 2-5, the Student Enrollment On-Campus Fall Headcount for AY 2022-2023 was 32,432 which is higher than the Existing FTEs in Appendix J even though the 32,432 number excludes employees. This implies a large proportion of part-time students but no explicit data about part-time students is provided in either the main body of the DEIR or Appendix E. Therefore, it is impossible to determine whether the number of FTEs assumed in Appendix E for existing conditions is correct.

The DEIR includes three separate Project population estimates that are inconsistent. This makes it impossible to fully evaluate the impacts of the proposed Project.

Response O4-52

The comment states that the Draft EIR includes three different population estimates that are inconsistent and makes it impossible to fully evaluate the impacts of the Campus Mater Plan. The comment raises similar concerns as Comment O4-10; refer to Response O4-10.

Comment O4-53

Project Trip Generation is Highly Uncertain

The trip generation estimates with the Project are even more difficult to evaluate because they are based on a set of assumptions concerning areas where there is significant uncertainty including:

- Increase in portions of special session students (who do not travel to the SJSU campus (p. 70),
- Increase in the portion of online and off-site classes (p. 71), and
- Increase in the portion of staff and management working remotely (p. 71).

These assumptions may be consistent with recent trends that have been highly influenced by the Covid-19 pandemic, but are not guaranteed to be representative of Project conditions. Estimated Project trip generation is very sensitive to these assumptions. For example, Table 2-5 shows an increase of 8,191 in student headcount for an increase of only 5,068 in students on campus, i.e. 32% less.

Response O4-53

The comment states that the trip generation estimates for the Campus Master Plan are difficult to evaluate and expresses concern about the Campus Master Plan's effects on VMT. The comment raises similar concerns as Comment O4-35; refer to Response O4-35.

Comment O4-54

The Non-Residential Components of the Project Would Have a Significant VMT Impact

The DEIR uses the metric "VMT per Service Population" to evaluate VMT impacts. DEIR Table 3.14-3 (p. 3.14-27) is reproduced below.

Table 3.14-3 Total Project Generated VMT Forecasts

	Total Project Generated VMT
SJSU Campus	
Total Project Generated Vehicle Miles Traveled (A)[1]	655,270
Service Population (B)[1,2]	47,959
Total Project Generated VMT per Service Population (A/B = C)	13.66
Impact Assessment	
Total VMT per Service Population Threshold	15.36
Impact Conclusion	Less Than Significant

Notes: SJSU = San José State University; VMT = vehicle miles traveled; population values rounded to nearest 10.

[1] Rounded service population and VMT to nearest 10.

[2] Service population is defined as the sum of all residents (including students from kindergarten to 12th grade), employees (including faculty, staff and management), and university students.

Source: Fehr & Peers 2024.

The DEIR concludes:

> As detailed in Table 3.14-3, the Campus Master Plan is anticipated to generate 655,270 total VMT, or 13.66 VMT per service population. This would be less than the VMT threshold of 15.36 total VMT per service population by an additional 11 percent. (p. 3.14-27)

DEIR Appendix E states:

> The CSJ Travel Model was used to develop the VMT forecasts for this study. The CSJ Travel Model is a refinement of the Santa Clara VTA's City/County Association of Governments of San Mateo County (C/CAG) Bi-County Model (VTA Travel Model), with additional roadway and transportation analysis zone (TAZ) detail in the City of San José. It remains consistent with Plan Bay Area 2040 future year land use and transportation assumptions. The CSJ Travel Model is a 4-Step trip-based model with peak AM one hour and PM peak one hour auto vehicle assignments. Daily auto vehicle assignment is calculated by applying factors to the AM and PM peak one hour auto vehicle assignments.
>
> The CSJ Travel Model has more TAZ structure (around 740 TAZs that cover CSJ) and roadway network detail than the VTA Travel Model in the City of San José, and slightly more street detail in downtown San José. The CSJ Travel Model has similar TAZ structure and roadway network detail as the VTA Travel Model outside the City of San José. The available travel model documentation is presented in **Appendix D: City of San Jose Travel Demand Model Validation.** (DEIR Appendix E, p. 81)

The model documentation included in Appendix D of Appendix E only describes model changes made in the most recent model update to 2015 conditions completed in 2021. It does not describe trip generation inputs which it states were the same as in the previous version. The DEIR provides no information about how the Project was coded in the model, but generally in these regional travel models land use is entered as a combination of employees, housing units, and possibly students. Service population is not an input to the model. The model estimates VMT changes based on changes in housing units, employment and students, and then divides the change in VMT by the service population. Therefore, it is critical that the inputs (housing units, employment and students) are consistent with the service population divisor. The DEIR does not provide the information required to confirm that these numbers are consistent.

Given the discrepancies in the population estimates within the DEIR as documented above, this consistency cannot be assumed. DEIR Appendix E Table 24 shows the student component of the service population increasing from 27,084 to 35, 625, i.e., an increase of 8,541. In contrast DEIR 2-5 reproduced above shows an increase in fall headcount of only 5,068. If 5,068 is substituted for 8,541, the Project service population drops from 47,959 to 44,486. This would change the calculated VMT per service population from 13.66 to 14.73. This remains below the threshold but is much closer to it.

Response O4-54

The comment claims that discrepancies in the Draft EIR's population estimates bring the calculated VMT closer to the threshold when using service population as a metric due to the sensitivity of VMT analysis. The comment raises similar concerns as Comments O4-10 and O4-34; refer to Responses O4-10 and O4-34. Of note, despite the comment's recalculation of VMT and understanding of the clarifications provided above regarding population estimates used to calculate VMT, no new or substantially more significant impacts are identified.

Comment O4-55

In general, the VMT analysis is quite sensitive to the assumptions made as the VMT per service population variable is masking the separate impacts of four disparate project components:

1) Student housing – very positive VMT impact
2) Faculty, staff and graduate student housing – very positive VMT impact
3) Market-rate housing – positive VMT impact because City has a housing deficit
4) Increased employment – negative VMT impact because City has a housing deficit

In effect, the residential components of the project are mitigating the VMT impacts of the nonresidential components that would have significant VMT impacts on their own.

Response O4-55

The comment states that the residential components of implementation of the Campus Master Plan (within the modelling) mitigate for potential VMT impacts of the nonresidential components. This comment raises similar concerns as Comment O4-33. Refer to Response O4-33 for a response to this comment.

Comment O4-56

The Project Would Exacerbate the City's Workforce Housing Problems

The DEIR reports that the average commute trip length (miles) for faculty, staff and management is 17.2 miles as measured by the straight-line distance to the center of the home zip code. (DEIR, Appendix E, Table 23, p. 77)

This commute trip length is similar to the average straight-line trip length for non-SJSU workers employed in the same part of the City, 18.6 miles, as documented below. Given that commutes are not straight line, the average distance in both data sets is about 20 miles, i.e. approximately 40 miles round trip.

The U.S. Census Bureau publishes Longitudinal Employer-Household Dynamics ("LEHD") Origin-Destination Employment Statistics ("LODES") data that provide detailed geographic data about workers but that excludes non-profits including SJSU.

Focusing on workers commuting to the project area mapped in Figure 1, Figures 2 shows current home locations from 2022 LODES data (the most recent).

Figure 1: Area Used in LODES Mapping

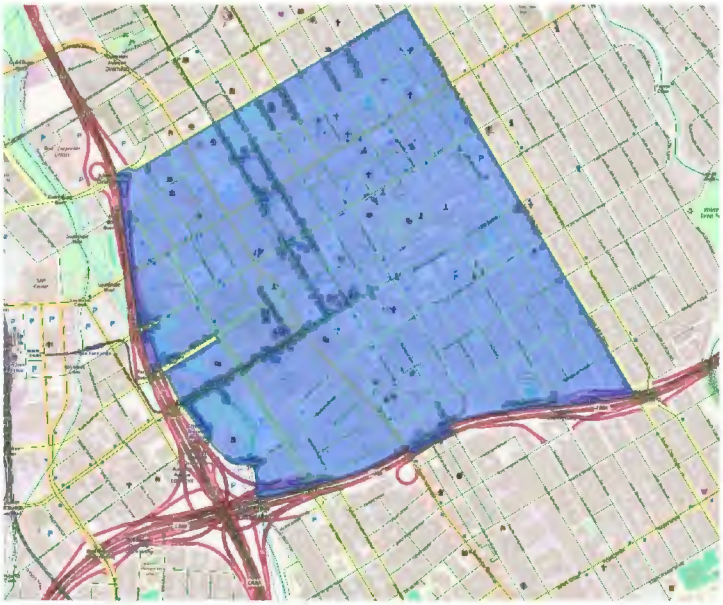
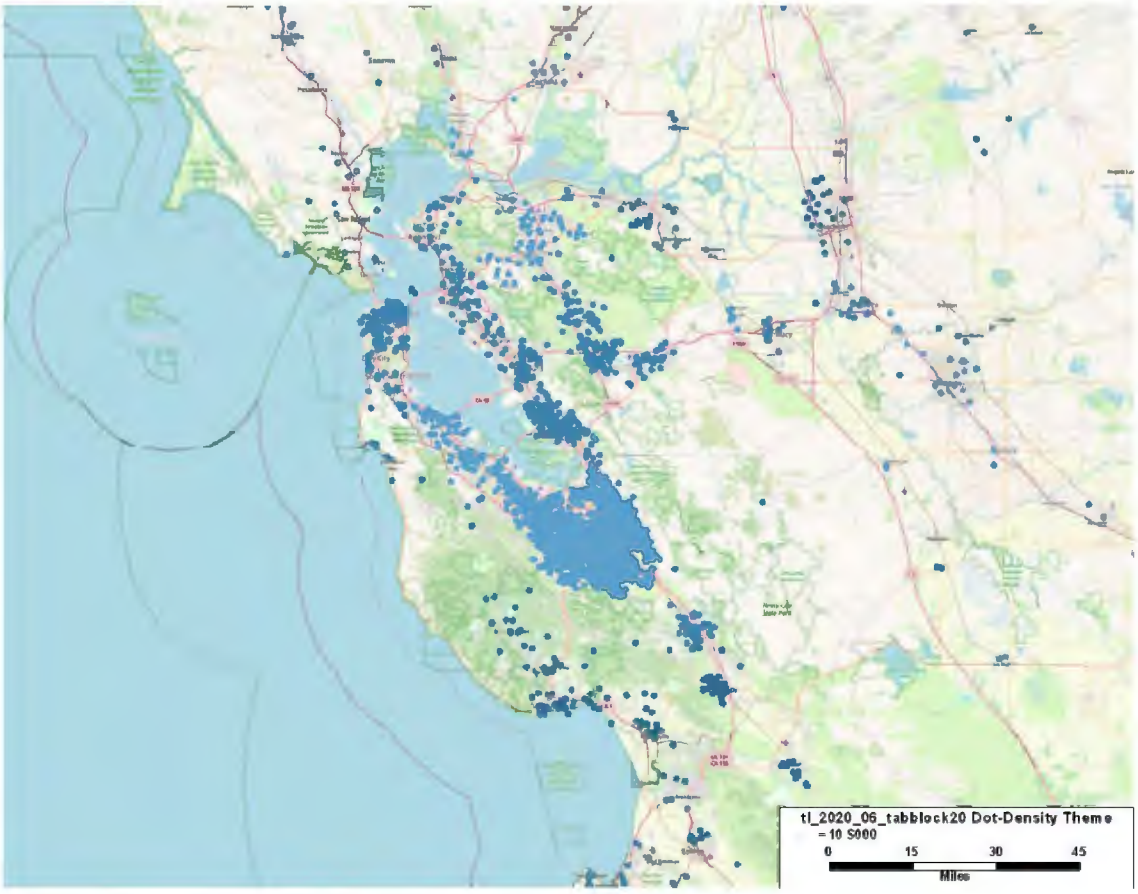


Figure 2: Workers' Home Locations for Jobs in Project Area Shown in Figure 1 [1]



As shown in Figure 2, there are many workers in the project area who live in the City of San Jose, but also large clusters with much longer commutes. A primary reason for these long commutes is a shortage of workforce housing in the City. An excerpt from the City's Draft Housing Element states:

San José continues to be one of the most expensive places to live in the country, with median housing prices pulling ever further out of reach for essential workers. In the first quarter of 2022, the median single-family home was $1.7

million, the median condo/townhome was $900,000, and median monthly rent was $2,595. Figure 2-1 shows how these housing costs are unaffordable for a cross-section of workers who are essential for the continued functioning of our economy and society.[2]

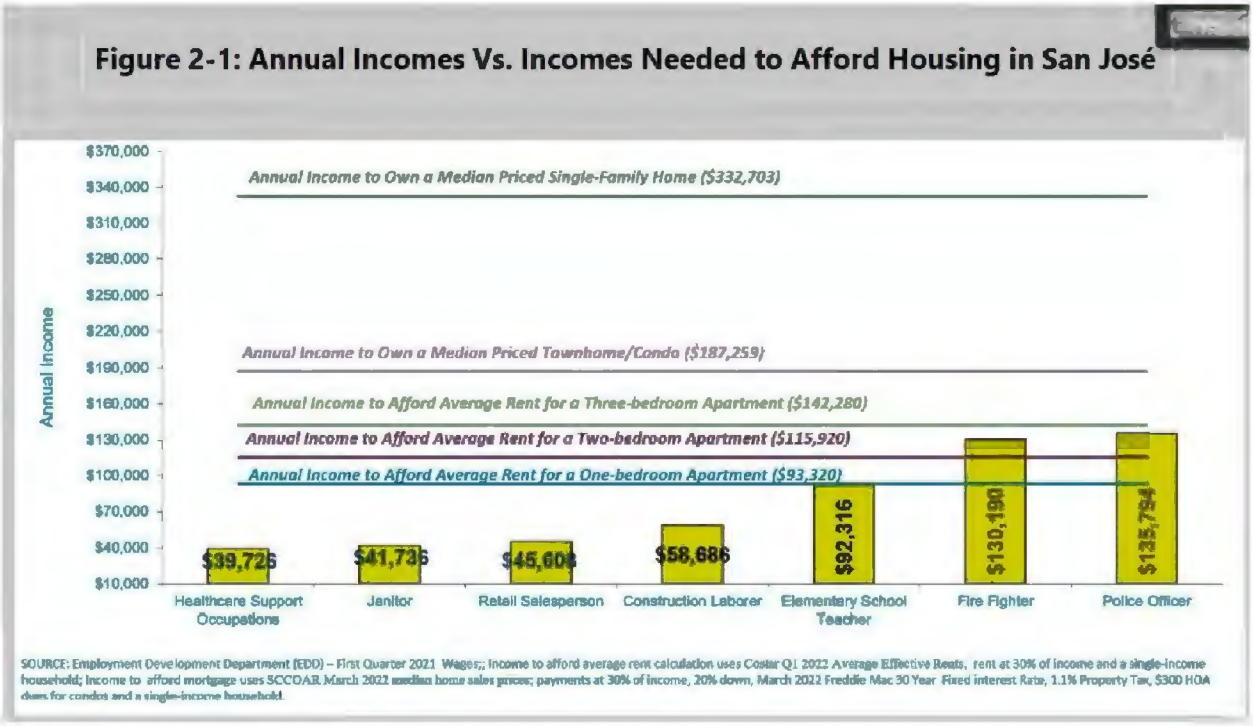


Figure 2-1 from the Draft Housing Element shows a required income of $93,320 to rent a one-bedroom apartment in the City.

[1] 2022 LODES data with each dot representing 10 commuters (https://lehd.ces.census.gov/data/.

[2] City of San Jose 2023-2031 Housing Element 2023-2031 revised November 2023, p. 2-2. https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/citywide-planning/housing-element/2023-2031-draft-housing-element

Response O4-56

The comment describes the average commute trip length (miles) for both SJSU and non-SJSU employees in the City of San José and provides general background information related to workforce housing in the City. As it relates to commute distance, the comment is informational in nature. However, the comment also states that the project would exacerbate regional workforce housing problems. Refer to Response O4-5 for a response to this concern. In addition, it should be noted that the data presented regarding housing affordability in this comment pertains to the City of San José, whereas the commute distances provided in this comment would extend as far southeast as Morgan Hill, southwest as Los Gatos, northwest as Palo Alto, and north to Fremont and Newark.

Comment O4-57

The DEIR is consistent in its estimates of future employment. An increase of 990 employees is given in DEIR Table 2-5, and an increase of 989 employees is given in DEIR Appendix E Tables 20 and 24. DEIR Table 2-5 breaks this increase down as 237 faculty plus 753 "staff & management." A large share of this latter group will be in lower-paid categories including maintenance, food service, and non-management administrative staff.

The DEIR states:

> . . . the redevelopment of the Alquist Building (as explained in greater detail below) would provide up to 500 workforce housing units that could be occupied by graduate students (in addition to faculty and staff). If 450

> of these units are occupied by graduate students, the percent of students living within SJSU properties would increase to 22 percent. (DEIR, p. 2-19 – 2-20)

If 450 of the 500 "workforce housing units" are occupied by graduate students only 50 would be available to employees (faculty and/or staff), i.e., 5 percent of the Project increase.

The DEIR states:

> An additional 500 units of market-rate housing would be provided as part of the Alquist development, which could also be available for purchase by faculty/staff.

Lower paid staff will not be able to purchase the market-rate housing, so the Project's employment growth will exacerbate the City's workforce housing problems.

Response O4-57

The comment notes that of the 500 workforce housing units proposed as part of the redevelopment of the Alquist Building, 450 are expected to be occupied by graduate students. The comment suggests that lower-paid staff will be unable to afford the remaining 500 market-rate housing units associated with the redevelopment of the Alquist Building. The comment suggests that the Campus Master Plan will further strain San Jose's already limited affordable workforce housing, exacerbating the existing housing shortage for lower-income employees. The comment raises similar concerns as Comments O4-6 and O4-7; refer to Responses O4-6 and O4-7.