



Planning Department

April 21, 2021

Via E-Mail

Raphael Breines, Senior Planner
UC Berkeley, Physical & Environmental Planning
Attention: 2021 LRDP and Housing Projects #1 and #2 Draft EIR
300 A&E Building
Berkeley, CA 94720-1382
E-Mail: planning@berkeley.edu

Re: Draft Environmental Impact Report Comments: 2021 Long Range
Development Plan and Housing Projects #1 and #2

Dear Mr. Breines:

On behalf of the City of Berkeley, the following comments on the Draft Environmental Impact Report (“DEIR”) for the 2021 Long Range Development Plan (“LRDP”) and Housing Projects #1 and #2 (collectively referred to as “Project”) are being submitted. After reviewing these documents, the City is concerned by the lack of any enforceable commitment to provide adequate housing and necessary public services for current and future students and staff. In addition, as described in detail throughout this letter, the DEIR for the Project fails to comply with California Environmental Quality Act (“CEQA”).

The City and the University of California, Berkeley (“University” or “UC Berkeley”) have a long history of working together on planning and development projects to ensure that our community remains vibrant, attractive, and safe. CEQA plays a vital role in this planning process, as it allows the City and the public to review specific development proposals, as well as longer-term planning efforts undertaken by the University, and to ensure that the impacts of such projects on the surrounding community are adequately evaluated and mitigated. It is imperative that the City and the University continue to have a cooperative relationship and to work toward a common goal of maintaining our thriving community.

To achieve this common goal, the University must comply with CEQA for this new LRDP. The University must fully disclose the impacts of its development projects and anticipated growth and mitigate the environmental impacts of those projects. Concrete, enforceable mitigation is especially important now, as the LRDP projects the University's population will increase by another 12,000 over the next 15 years. DEIR at Table 3-1 at 3-25. After adopting the 2020 LRDP, in which the University expected to add 1,650 students over 15 years, the University almost immediately surpassed those numbers, adding 7,500 students between 2005 and 2018. See, 2020 LRDP DEIR at 3.1-13 and 2019 Upper Hearst Development for the Goldman School of Public Policy and Minor Amendment to the 2020 LRDP at 44. The University did not provide on-campus housing to match this increase, much less to meet the needs of existing students, which has led to ripple effects throughout our community, including displacement of residents and increased calls for police, fire, and emergency services.

Unless the LRDP EIR is revised, the cost of mitigating these impacts will fall on the City. As you know, the City provides police, fire, and emergency response services to the University, including the students, faculty, and staff who live off-campus in Berkeley. The City's Public Health Officer also has jurisdiction over the UC campus. During the COVID-19 pandemic, the City Health Officer and Public Health Division oversaw the campus's pandemic response, and invested significant time and City resources for oversight of activities such as intercollegiate athletics and in connection with response to COVID-19 outbreaks among students residing on- and off-campus. Providing these services costs the City millions of dollars every year. While the City and the University entered a settlement agreement in 2005 that required the University to help defray the costs incurred by the City in providing public services and mitigating other impacts associated with University actions, that agreement expires this spring. The University does not contribute to the City's general fund through property taxes, which is the primary funding source for City services like police and fire, nor does the University pay development impact fees.

This letter is submitted along with the reports prepared by Kittelson & Associates, Inc., (transportation), attached as Exhibit A and Baseline Environmental, Inc. (air quality, greenhouse gases, energy and noise), attached as Exhibit B. Together they constitute the City's comments on the DEIR. I request a full response to each of the comments raised by the consultant reports in addition to responses to each of the City's comments. The Berkeley City Council held a hearing on April 13, 2021 on the LRDP DEIR. The captioner's record from that meeting, attached as Exhibit C, includes comments raised by the City Council and members of the public that also require a full response.

In addition, because UC Berkeley provided a truncated public comment period for this complex Project and lengthy DEIR and refused the City's reasonable request for an extension of the comment period, the City reserves the right to submit additional comments on the DEIR after the close of the public comment period.¹ The City also requests clarification regarding whether the Notice of Preparation (NOP) was circulated to all responsible or trustee agencies and interested parties. Given that the UC Berkeley campus falls within the Cities of Berkeley and Oakland, it is imperative that both of these agencies have been provided the required noticing and opportunities for consultation.

I. Background

In 2019, the University attempted to provide an interim update to its 2020 LRDP to address the fact that, by that time, the University had substantially exceeded the enrollment projections analyzed in the 2020 LRDP and associated EIR. In conjunction with a specific, proposed development project, the Upper Hearst Development for the Goldman School of Public Policy and Minor Amendment to the 2020 Long Range Development Plan ("Upper Hearst Project"), the University issued an EIR that purported to analyze the impacts of these enrollment increases. The City commented extensively this EIR. *See*, Letters from Tim Burroughs, City of Berkeley, to Raphael Breines, UC Berkeley, dated April 12, 2019 and May 13, 2019, attached as Exhibits D and E. In those letters, the City explained that UC Berkeley's approach to long range planning that includes accommodating substantial growth in enrollment without a commensurate commitment to providing adequate housing and services would undermine any attempts by the City to ensure the health, safety and well-being of the entire Berkeley community—of which University students comprise a substantial percentage. Now, UC Berkeley is proposing an LRDP update that once again includes no specific commitment to develop an adequate amount of housing to serve the unmet housing demand that

¹ The University claimed this short comment period was necessary to ensure the two housing projects could move forward expeditiously. However, there was simply no need to link these specific development projects together with the much larger, programmatic analysis of the LRDP. Indeed, separating these individual projects from the LRDP would have clarified the analysis of impacts and made it easier for the public and decision-makers to understand the scope and impacts of the "project." Nonetheless, the University chose to combine the three projects together for purposes of environmental review. The University made a similar decision in 2018 when it linked the Upper Hearst development with an analysis of impacts associated with increased enrollment. The result was a thoroughly confusing and contradictory environmental document.

already exists among University students, faculty, and staff as well as the demand created by the planned increase in enrollment.

This LRDP Update will have long-term consequences for the residents of Berkeley as well as for the University community, and for the region. The LRDP Update would allow for an increase of 12,000 students, faculty, and staff over the document's planning horizon through the 2036-37 academic year. The LRDP Update's proposed development program includes approximately 8,096,249 net new gross square feet of academic, residential, parking spaces, and other uses, including approximately 11,073 student beds and 549 faculty and staff beds. This development would result in serious consequences that include the potential for increased vehicle miles travelled ("VMT") and the corresponding increase in criteria and pollutant and GHG emissions, significant displacement and housing impacts, public safety impacts associated with overburdened public services, visual impacts, impacts to sensitive historic sites, and an increased risk of water pollution, to name a few.

As discussed in more detail below, and perhaps of greatest concern, the LRDP Update allows for a significant increase in enrollment without a commitment to provide the necessary on-campus housing. Adding thousands of new residents in a City that already has a housing shortage would exacerbate challenging conditions by increasing demand for housing and displacing non-student residents. Notably, Chancellor Christ has, over the past several years, identified the production of housing as a high priority, and launched an initiative to expand housing opportunities for incoming freshmen, transfer students, graduate students, and faculty. Yet the DEIR makes clear that "the LRDP does not commit UC Berkeley to any specific project" including construction of beds or housing. DEIR at 1-2 and 3.1. Thus, it is possible that the University will increase the population of students, faculty, and staff and build only a portion, or none, of the beds needed to serve the increased population. This is precisely the scenario that played out with the 2020 LRDP where the plan provided for construction of 2,600 beds, but less than half that number was constructed. SEIR for the Goldman School of Public Policy and Minor Amendment to the 2020 Long Range Development Plan at 151. To make matters worse, UC Berkeley expanded enrollment beyond the projected enrollment figures during the 2020 LRDP planning horizon. The result has been a cycle of housing demand for the campus population that significantly outpaces supply. The proposed LRDP Update would continue this cycle and exacerbate an already untenable housing shortage.

In numerous instances, the DEIR also fails to include adequate mitigation for the Project's significant impacts. For instance, the DEIR identifies significant impacts related to air quality and noise. However, instead of identifying mitigation measures to avoid or

minimize these impacts, the document relies on largely unenforceable “Continuing Best Practices” (“CBPs”) or merely kicks the can down the road, deferring mitigation to CEQA review at the project level. Such fundamental errors undermine the integrity of the EIR. As a result, the University would violate CEQA were it to certify this fatally flawed EIR.

Where, as here, the environmental review document fails to fully and accurately inform decision-makers, and the public, of the environmental consequences of proposed actions, it does not satisfy the basic goals of CEQA. *See* Pub. Resources Code § 21061 (“The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which 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.”). As a result of the DEIR’s numerous and serious inadequacies, there can be no meaningful public review of the Project. UC Berkeley must revise and recirculate the DEIR in order to permit an adequate understanding of the environmental issues at stake.

II. The EIR Is Inadequate Under CEQA.

The evaluation of a proposed project’s environmental impacts is the core purpose of an EIR. *See* CEQA Guidelines², § 15126.2(a) (“An EIR shall identify and focus on the significant environmental effects of the proposed project.”). As explained below, the DEIR fails to analyze the Project’s numerous environmental impacts. In multiple instances, the DEIR also fails to adequately analyze the Project’s cumulative impacts. These inadequacies require that the DEIR be revised and recirculated so that the public and decision-makers are provided with a proper analysis of the Project’s significant environmental impacts and feasible mitigation for those impacts. *See* CEQA Guidelines § 15002(a)(1) (listing as one of the “basic purposes” of CEQA to “[i]nform governmental decision makers and the public about the potential, significant environmental effects of proposed activities”).

The “programmatic” nature of this DEIR is no excuse for its lack of detailed analysis. CEQA requires that a program EIR provide an in-depth analysis of a large project, looking at effects “as specifically and comprehensively as possible.” CEQA Guidelines §§ 15168(a), (c)(5). Because it looks at the big picture, a program level EIR must provide “more exhaustive consideration” of effects and alternatives than an EIR for

² The CEQA “Guidelines” are found at Cal. Code Regs., tit. 14, § 15000 et seq.

an individual action, and must consider “cumulative impacts that might be slighted in a case-by-case analysis.” CEQA Guidelines §§ 15168(b)(1)-(2).

Further, it is only at this early stage that the University can design wide-ranging measures to mitigate City-wide and regional environmental impacts. *See* CEQA Guidelines § 15168(b)(4) (programmatic EIR “[a]llow[s] the lead agency to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility”). A “program” or “first tier” EIR is expressly not a device to be used for deferring the analysis of significant environmental impacts. *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 199. It is instead an opportunity to analyze impacts common to a series of smaller projects, in order to avoid repetitious analyses. Thus, it is particularly important that the DEIR for the LRDP Update analyze the overall impacts for the complete level of development it is authorizing now, rather than when individual specific projects are proposed at a later time.

Lastly, state law specifically requires the University to analyze and mitigate the impacts of potential changes in enrollment as part of this LRDP EIR. Pub. Resources Code § 21080.09(b) (“Environmental effects relating to changes in enrollment levels shall be considered for each campus ... in the environmental impact report prepared for the [LRDP].”); Education Code § 67504(b) (“The Legislature further finds and declares that the expansion of campus enrollment and facilities may negatively affect the surrounding environment. Consistent with the requirements of [CEQA], it is the intent of the Legislature that the University of California sufficiently mitigate significant off-campus impacts related to campus growth and development.”). The DEIR repeatedly falls short of this mandate, focusing almost entirely on the impacts of constructing new facilities rather than the impacts of bringing thousands of new students, faculty, and staff to the City.

The DEIR, here, fails to provide the legally required analysis of the substantial growth that the LRDP Update allows and promotes. Thus, the University must revise the DEIR to accurately disclose the impacts of the maximum density allowed by the LRDP Update. Detailed below are the specific legal inadequacies of the DEIR’s various impact sections.

A. The EIR’s Flawed Project Description Does Not Permit Meaningful Public Review of the Project.

“[E]very EIR must set forth a project description that is sufficient to allow an adequate evaluation and review of the environmental impact.” *San Joaquin Raptor*

Rescue Center v. County of Merced (2007) 149 Cal.App.4th 645, 654 (“*County of Merced*”) (citing CEQA Guidelines § 15124). “An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.” *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193. “Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal’s benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the ‘no project’ alternative) and weigh other alternatives in the balance.” *Id.* at 192-93.

“A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal’s benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the “no project” alternative) and weigh other alternatives in the balance.” *Id.* at 192-93. Thus, “[a]n accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.” *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3d 818, 830.

The DEIR’s project description is fundamentally inadequate. As discussed below, it fails to provide project information necessary to evaluate impacts of the LRDP and of the housing projects.

1. Components of the LRDP Are Not Adequately Described.

The DEIR acknowledges that the student projections in the current LRDP underestimated the amount of student population growth through 2020. DEIR at 5.2-40; 41. As a result, the existing student population is higher than the projected population in the 2020 LRDP. *Id.* While the EIR acknowledges this error, it provides no explanation of how it occurred, or what steps the University will take in the event the new LRDP’s projections are similarly flawed. At a minimum, the University must commit to updating its LRDP EIR prior to enrolling more students than are anticipated in the current document. *See generally Save Berkeley’s Neighborhoods v. The Regents of the University of California* (2020) 51 Cal.App.5th 226. Moreover, absent a commitment to ensure that University housing development keeps pace with growth at the University, environmental impacts including those relating to transportation, air quality and greenhouse gas emissions are likely to be far more severe than the DEIR discloses. The DEIR’s conclusion that housing development will mitigate the impacts of enrollment increases is unfounded, given that the University also refuses to commit to building any of the housing planned for in the LRDP.

In addition, the DEIR provides a list of properties within the “City Environs” that are identified as sites that could accommodate future development. DEIR at 3-26, 3-38 and 3-29. Three of these sites (Beverly Cleary, Co-Op Housing, and Unit 3) are identified for residential development that would add 1,780 beds, yet the DEIR provides no description of these sites or the areas adjacent to them. *Id.* This description is important for informing the analysis of potential construction and operation impacts on surrounding residents of locating additional housing in these areas.³

The DEIR also fails to adequately describe other planned project elements to be implemented as part of the LRDP. For example, the DEIR indicates that “infrastructure improvements would be needed to upgrade existing aging infrastructure as well as ensure that utilities can adequately support environmental and climate changes, and buildout and population projections.” DEIR at 3-19. However, the DEIR fails to provide any information about UC Berkeley’s plans to develop or expand infrastructure to support the development proposed by the LRDP. For example, the LRDP’s planned development of more than eight million net new gross square feet of structures and increased campus population of approximately 12,000 people is bound to result in increased runoff. DEIR at 3-20. The DEIR states that implementation of the LRDP would include replacing and upsizing existing storm drains to manage flood risk but provides no details or even conceptual plans.

Similarly, the DEIR’s description of planned upgrades to the University’s sewer infrastructure is vague and noncommittal, with specific information on only one upgrade: the upsizing of the existing sewer line beneath Centennial Drive in the Hill Campus West and the Hill Campus East. DEIR at 3-19 and 3-20. The LRDP should include information on any planned changes to UC Berkeley’s storm drain and sewer infrastructure covering the planning time horizon of the LRDP. This information is particularly important to the City because the City of Berkeley owns and operates the sewer collection system receiving the discharges from UC’s system.⁴

³ A related concern is that the DEIR alternately describes lodging for the increased campus population in terms of “beds” and “housing.” *See, e.g.*, DEIR at 1-2 and at 5.12-16. This difference introduces uncertainty regarding the DEIR estimates of accommodations since beds and housing units with multiple beds hold different implications in terms of environmental analysis.

⁴ The DEIR incorrectly states that the sewer system receiving the discharges from the UC system are owned and operated by the East Bay Municipal Utility District. A revised EIR should correct this error.

The DEIR also discloses that UC Berkeley is considering development of a wastewater treatment facility to produce non-potable water to serve demands on campus. DEIR at 3-19. The non-potable water may also be exported for use off-site. *Id.* Yet, the DEIR provides only two sentences on this project element, failing to disclose the location, size, and related infrastructure that would be associated with the treatment facility. Wastewater treatment has the potential to generate bio-solids or other solid and liquid by-products that would require disposal. Some of these waste streams could be low flow but may have high concentrations of contaminants. Treatment processes would likely also generate greenhouse gases (e.g., carbon dioxide if aerobic biological process, methane if anaerobic biological process).

With such extensive new and upgraded infrastructure, the LRDP should include an infrastructure master plan covering the planning time horizon of the LRDP. This information should be shared with the City in a timely manner to allow the City to implement infrastructure improvements to support UC Berkeley's planned development and to allow the University to develop appropriate mitigation for foreseeable impacts to the City's infrastructure. CEQA Guidelines §§ 15168(a), 15168(b)(1)-(2), (c)(5).

In another example, the DEIR states that the LRDP includes several improvements to the existing roadways on the campus and on bicycle and pedestrian circulation network. DEIR at 3-16. The DEIR also describes the potential development of mobility hubs throughout Campus Park, Clark Kerr Campus, and the City Environs Properties. However the DEIR fails to describe these improvements or their locations.

As noted in the Kittelson report, the DEIR includes a proposed parking program that is inconsistent and unclear. See Kittelson Report at 1. UC Berkeley proposes 8,562 vehicle parking spaces in 2036-37, in Table 3-1, including 22 net new parking spaces at Clark Kerr Campus. This information is inconsistent with the number of existing and proposed vehicle parking spaces identified in Table 3-2, which shows 327 existing spaces and 412 proposed spaces, or a net increase of 85 spaces at the Clark Kerr Campus. This is one example of inconsistencies in the description and documentation of the proposed parking program, which may reflect inaccuracies in the related analyses of environmental impacts in the DEIR. The information presented in the Project Description should be clarified or corrected.

All of these proposed project elements are a reasonably foreseeable consequence of approving and implementing the LRDP Update. They are planned by UC Berkeley to facilitate increased enrollment and ongoing educational services provided by the campus. The Project proposes to accommodate thousands of new students, faculty, and staff in this area. The proposed project elements would exist to serve the current and new campus

population. Moreover, without the infrastructure, improvements, and development the LRDP cannot be implemented. Therefore, the planned improvements described above are an integral part of the Project and must be analyzed as such, in this EIR. *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713. The DEIR must include a more detailed description of these improvements and a full evaluation of related impacts. Instead, it defers the necessary evaluation to an undetermined date in the future, thereby illegally segmenting the Project.

2. Components of the Housing Projects Are Not Adequately Described.

The DEIR fails to adequately describe all of the components of the two proposed housing projects. As the DEIR itself notes (DEIR at 3-3), the DEIR is intended to provide a project-level analysis of these housing projects. Yet, in some cases, aspects of the housing projects critical to its analysis are omitted altogether. For example, the DEIR states that Housing Project #2 would result in an increase in impervious surface, but it fails to disclose the amount of the increase. DEIR at 5.9-32. This information is important because increases in impervious surfaces are directly associated with decreases in groundwater supply and groundwater recharge and increases in water pollution. Without information about the percentage change of impervious surfaces, the DEIR necessarily fails to analyze the extent and severity of the housing projects impacts on stormwater runoff and groundwater recharge.

The DEIR's failure to calculate the percent change of impervious surfaces implicates the evaluation of impacts related to increased stormwater runoff. For Housing Project #2, in particular, where existing runoff likely drains to adjacent on-site landscaped areas with little or no runoff draining to City infrastructure, the DEIR fails to explain where runoff from multistory buildings will flow and how the project will achieve the established no net increase standard. DEIR at 5.9-35. As described in more detail below, this information is also necessary for determining the projects' impacts on City infrastructure. A revised DEIR should estimate the change in impervious surfaces and the corresponding change in stormwater runoff and provide details about project elements that will reduce runoff and by how much to achieve the no net increase effect.

In another example, the DEIR provides scant information regarding the construction of either housing project. The projects would undoubtedly involve a variety of construction vehicles, including haul trucks, water trucks, dump trucks, and concrete trucks, all of which would access the UC sites via City streets, yet the DEIR fails to include Construction Traffic Management Plans for each housing project. According to the DEIR, CBPs TRAN-5 and TRAN-6 describe measures for reducing or minimizing

traffic impacts during construction. DEIR at 5.15-57. These measures include preparation of a Construction Traffic Management Plan for *each* construction project. *Id.* Such plans are important to ensure that traffic and public safety impacts are minimized, especially when construction takes place in an urbanized, congested area such as these projects in downtown Berkeley. But the DEIR does not include a Construction Traffic Management Plan. (And to the extent the University would treat these plans as mitigations rather than part of the Project, their omission from the DEIR would be an impermissible deferral of mitigation.) At a minimum, UC Berkeley should submit a preliminary Construction Traffic Management Plan to the City for each housing project. These plans would then be updated and finalized prior to actual construction.

In sum, the DEIR fails to describe the Project components with sufficient accuracy and specificity. The failure to describe the whole of the project is a serious and pervasive deficiency, as it renders faulty the environmental impact analyses as well as the discussion of potential mitigation measures to minimize those impacts. A revised environmental document must provide accurate information including, but not limited to, a sufficient description of anticipated construction activities and any other Project details relevant to its potential environmental impacts. This information is necessary to allow decision-makers, the public, and responsible agencies to evaluate potential environmental impacts.

B. The DEIR Lacks Support for Its Decision to Use Different Baselines for Different Impact Analyses.

Under CEQA, an EIR “must include a description of the physical environmental conditions in the vicinity of the project. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. . . . The purpose of this requirement is to give the public and decision makers the most accurate and understandable picture practically possible of the project’s likely near-term and long-term impacts.” CEQA Guidelines § 15125(a).

In describing the environmental setting, lead agencies should generally describe conditions on the ground at the time the notice of preparation is published. CEQA Guidelines § 15125(a)(1). Where conditions fluctuate over time, “and where necessary to provide the most accurate picture practically possible of the project’s impacts, a lead agency may define existing conditions by referencing historic conditions, or conditions expected when the project becomes operational, or both, that are supported with substantial evidence. In addition, a lead agency may also use baselines consisting of both existing conditions and projected future conditions that are supported by reliable projections based on substantial evidence in the record.” *Id.*

Here, the DEIR uses baseline conditions from different points in time to analyze different impact areas. As the DEIR states, “The baseline represents the existing conditions on the ground (“physical conditions”) at the time that the Notice of Preparation was issued (April 7, 2020). However, some baseline conditions, in particular those related to population, apply 2018 data due to the disruptions created by the current coronavirus disease 2019 (COVID-19) pandemic.” DEIR at 5-4 to 5-5. However, as the DEIR itself recognizes, whether and how long the COVID-19 pandemic will continue into the future is uncertain. All we know now is that pandemic conditions currently exist. Thus, the appropriate approach would have been to analyze potential impacts against both the current conditions (i.e., conditions as they existed in 2020, when the NOP was issued), and the 2018 conditions. This is especially true because the two Housing Projects are planned to be built in the near term, while the LRDP would be implemented over the next 15 years. At the very least the DEIR should have disclosed the current conditions so that the public and decision-makers could compare those conditions to what existed in 2018.

As the DEIR also notes, the 2018 enrollment and population numbers used as a baseline in this DEIR are significantly higher than the enrollment and population projections contained in the 2020 LRDP. DEIR at 5.2-41. This is because the University increased enrollment above what was projected in the 2020 LRDP without conducting additional environmental review. This gap between the highest enrollment analyzed in the 2020 LRDP EIR and the “baseline” numbers for this LRDP update conflicts with the state law requirement that “[e]nvironmental effects relating to changes in enrollment levels shall be considered for each campus ... in the environmental impact report prepared for the [LRDP].” Pub. Resources Code § 21080.09(b); *see also* Education Code § 67504(b) (finding that “the expansion of campus enrollment and facilities may negatively affect the surrounding environment” and the University must “sufficiently mitigate significant off-campus impacts related to campus growth and development”).

The University purported to analyze the impacts of these interim enrollment increases after the fact in its 2019 Supplemental EIR for the Upper Hearst Development for the Goldman School of Public Policy and Minor Amendment to the 2020 Long Range Development Plan (“Upper Hearst EIR”). However, that EIR provided conflicting signals to the public about whether the increases were part of the project (e.g., the University was amending its LRDP to include increased enrollment projections) or part of the baseline. Moreover, the analysis of those impacts was plainly inadequate under CEQA. *See* Exhibits D and E (Letters from City of Berkeley, dated April 12, 2019 and May 13, 2019). There are currently two lawsuits challenging the Upper Hearst EIR on these grounds. Given the inadequacy of the interim environmental review, the University

should have corrected the analysis here, in the DEIR for the LRDP update. Instead, it ignored that analytical gap along with any mitigation of the impacts caused by the interim increases in enrollment.

Since the Upper Hearst EIR was published, the Court of Appeal has made it clear that the University's enrollment decisions are not statutorily exempt from CEQA. *Save Berkeley's Neighborhoods v. The Regents of the University of California* (2020) 51 Cal.App.5th 226, 241. Thus, these decisions must undergo environmental review. To the extent the University wishes to rely on this programmatic LRDP EIR to support future enrollment increases, it must ensure that the impacts of those decisions are adequately analyzed. As discussed below, they are not.

C. General Comments on the DEIR

1. The DEIR Contains an Insufficient Study Area.

The DEIR presents an artificially constrained study area, which is insufficient for evaluating the far-reaching impacts of the proposed LRDP Update. The DEIR analysis focuses on campus properties near the Campus Park in downtown Berkeley and the immediately adjacent areas. The DEIR asserts that it excludes other UC Berkeley-owned properties within and outside the city of Berkeley from the scope of this analysis because these areas are sufficiently distant from the Campus Park and its environs. DEIR at 3-8. This use of an overly constrained study area distorts the DEIR's analysis of the LRDP's impacts. For example, as discussed in more detail below, the DEIR focuses the analysis of the LRDP's transportation impacts *only* on Campus Park and fails to analyze potential impacts to the Campus Hills East, Campus Hills West, Clark Kerr, City Environs, or other planning areas that would occur as a result of implementation of the LRDP Update. Other University-owned properties within the City of Berkeley and in neighboring jurisdictions are excluded. However, as described throughout this letter, the UC Berkeley population lives and works not only in the Campus area, but throughout the City and in surrounding cities within the region. Impacts from the LRDP, such as those related to transportation, air quality, housing, public services, and utilities are not limited to the arbitrary boundary delineated in the DEIR and would be exacerbated if UC fails to build the housing discussed in the LRDP. A revised EIR must correct this flaw and analyze LRDP impacts to a broader study area.

Similarly, the DEIR frequently limits the scope of the Project analyzed to the physical development described in the LRDP. For example, as discussed further below, the DEIR's transportation analysis focuses only on Campus Park and fails to analyze potential impacts to the Campus Hills East, Campus Hills West, Clark Kerr, City

Environs, or other planning areas that would occur as a result of implementation of the LRDP. Kittelson Report at 16. But the LRDP also includes enrollment increase projections. Under state law, these increases must be analyzed as part of the Project as well. Pub. Resources Code § 21080.09(b) (“Environmental effects relating to changes in enrollment levels shall be considered for each campus ... in the environmental impact report prepared for the [LRPS].”); Education Code § 67504(b) (“The Legislature further finds and declares that the expansion of campus enrollment and facilities may negatively affect the surrounding environment. Consistent with the requirements of [CEQA], it is the intent of the Legislature that the University of California sufficiently mitigate significant off-campus impacts related to campus growth and development.”). This is especially true for impact areas like Public Services and Population and Housing, where it is the additional residents, not just the development of buildings, that will cause the most significant impacts.

2. The DEIR Presents Unsupported Assumptions.

The DEIR relies on a series of unfounded assumptions without providing the background technical documentation to enable the public to verify the accuracy of these assumptions or the corresponding impact analyses. For example, as discussed below, despite the proposed substantial increase in the University’s population, the DEIR does not estimate the number of pedestrians, bicyclists, transit riders, and drivers generated by the Project. It also fails to analyze how the increase in all modes of traffic would impact circulation and safety or how the increase in traffic has the potential to exacerbate existing deficiencies in the transportation network.

Similarly, the DEIR determines that the LRDP Update would not contribute a significant amount of GHG emissions because it assumes an unspecified amount of GHG emission reductions from unspecified measures contained within the University’s Sustainability policy and plans and its energy plan. DEIR at 5.7-34.

These gaps in data combined with an artificially constrained study area and vague project description combine to provide an unstable foundation for the DEIR’s analysis and undermine it as an informational document.

3. The DEIR Improperly Attempts to Avoid Analysis and Mitigation of the LRDP’s Impacts by Concluding That They Are Significant and Unavoidable.

Where all available and feasible mitigation measures have been proposed, but are inadequate to reduce an environmental impact to a less-than-significant level, an EIR

may conclude that the impact is significant and unavoidable. *See* CEQA Guidelines § 15126.2. If supported by substantial evidence, the lead agency may make findings of overriding considerations and approve the project in spite of its significant and unavoidable impacts. *Id.* at §§ 15091, 15093. However, the lead agency cannot simply conclude that an impact is significant and unavoidable and move on. A conclusion of residual significance does not excuse the agency from (1) performing a thorough evaluation and description of the impact and its severity before and after mitigation, and (2) proposing *all* feasible mitigation to “substantially lessen the significant environmental effect.” CEQA Guidelines § 15091(a)(1); *see also id.* § 15126.2(c) (requiring an EIR to discuss “any significant impacts, *including those which can be mitigated but not reduced to a level of insignificance*” (emphasis added)). “A mitigation measure may reduce a significant impact without avoiding the impact entirely.” 1 Stephen Kostka & Michael Zischke, *Practice Under the California Environmental Quality Act* § 14.6 (2d ed. March 2021 Update); *see also* CEQA Guidelines § 15370(b).

The DEIR finds that the University’s plans for future growth and development as set out in the LRDP Update will result in 16 significant and unavoidable impacts in six different topic areas. DEIR at 7-6 to 7-7. As detailed below, in numerous instances, the DEIR fails to thoroughly assess impacts deemed to be significant and unavoidable or to identify all feasible mitigation measures to reduce the severity of the impacts.

4. The DEIR’s Approach to Mitigation Does Not Comply with CEQA.

(a) The DEIR Improperly Relies on Unenforceable and Inadequate Mitigation Measures.

CEQA’s central mandate is that “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects.” *Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs.* (2001) 91 Cal.App.4th 1344, 1354 (quoting Pub. Resources Code § 21002). CEQA requires lead agencies to identify and analyze all feasible mitigation, even if this mitigation will not reduce the impact to a level of insignificance. CEQA Guidelines § 15126.4(a)(1)(A) (discussion of mitigation measure “shall identify mitigation measures for each significant environmental effect identified in the EIR”); *see also Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 724 (“The EIR also must describe feasible measures that could minimize significant impacts.”).

Mitigation is especially crucial when an agency prepares a Program EIR. An advantage of a Program EIR is that it allows the lead agency “to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts.” CEQA Guidelines § 15168(b)(4).

Moreover, the EIR cannot simply assume that applying laws and regulations to future projects obviates the potential for cumulative impacts. *Californians for Alternatives to Toxics v. Department of Food & Agriculture* (2005) 136 Cal.App.4th 1, 15-17 (compliance with an environmental regulatory program cannot displace an agency’s separate obligation to consider whether a project’s environmental impacts are significant).

The DEIR violates this mandate. The DEIR concedes that the Project will result in many significant unavoidable impacts, but in many cases, fails to identify feasible mitigation to reduce these impacts. *See, e.g.*, DEIR at 5.2-45, 5.2-53, and 5.2-61. Instead, the DEIR largely relies on inadequate mitigation measures, many of which provide no evidence of minimizing impacts. For instance, measures to address air quality rely on compliance with existing standards and regulations and coordination with agencies. DEIR at 2-10 to 2-12 and 5.2-45. Here, the DEIR provides no basis for assuming that regulatory compliance or coordination with agencies alone would ameliorate any potential project or cumulative impacts.

The measures to mitigate significant impacts related to public services are equally lacking. See DEIR at 2-29: mitigation measures PS-5 and PS-6. These measures require nothing more than UC Berkeley’s annual reporting of housing production projections to the Berkeley Unified School District. DEIR at 2-29. However, the requirement to report increases in housing production that will lead to the need for new school facilities does nothing to address the impacts of construction of new school facilities.

Moreover, mitigation measures proposed in an EIR must be “fully enforceable” through permit conditions, agreements, or other legally binding instruments. Pub. Resources Code § 21081.6(b); CEQA Guidelines § 15126.4(a)(2). The DEIR relies on a number of vague measures to mitigate significant environmental impacts. For example, the DEIR fails to provide enforceable measures that reduce construction noise for LRDP projects. Instead, the DEIR includes Mitigation Measure NOI-1, which fails to include a performance standard and includes ambiguous language that does not ensure the measure would be implemented. DEIR at 2-23 and 2-24.

Here, the DEIR's vague, unenforceable, and noncommittal measures allow the University to decide to take no action and thus fail to mitigate impacts. As a result, the DEIR cannot ensure that the measures relied on will in fact be implemented to mitigate the LRDP's and the Housing Projects' impacts. Therefore they cannot serve as CEQA mitigation. *See Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1186-87.

(b) The DEIR Relies on CBPs That Are Noncommittal and Unenforceable to Mitigate the Project's Significant Impacts.

Similarly, the DEIR cannot rely on noncommittal CBPs to mitigate the Project's significant impacts. For example, the DEIR relies on LRDP CBPs TRAN-5 and TRAN-6 for reducing or minimizing traffic impacts during construction projects. These measures include preparation of a Construction Traffic Management Plan for each construction project. However, as presented in the DEIR, the CBPs do not include, as they should, City review and approval of the Construction Traffic Management Plans. (All construction traffic will utilize City of Berkeley streets.) The City of Berkeley *Guidelines for Development of Traffic Impact Reports* requires coordination with City staff when evaluating traffic impacts. *City of Berkeley Guidelines for Development of Traffic Impact Reports* at 1. A revised analysis should include provision for City review and approval of the Construction Traffic Management Plans prior to issuing relevant permits.

In another example, the DEIR also relies in part on CBP PS-1 and CBP PS-2 to reduce impacts on police and fire services. These measures call for a continued partnership between the University, the City, and other relevant public agencies to review service levels. DEIR at 5.13-5, 5.13.17. While the partnership is necessary and useful, coordination alone does nothing to address gaps in service or the need for increased staffing, especially in fire in which the City is the primary service provider for a densely populated campus. Without concrete steps and performance standards to address changed service ratios, the gaps in service will result in public safety impacts that remain unmitigated in this DEIR.

Similarly, vague, unenforceable, hortatory language makes up Continuing Best Practices related to air quality, greenhouse gases, energy, noise, and many other impact topic areas. These CBPs cannot be relied upon to reduce impacts to less than significant levels.

(c) The DEIR Ignores Feasible Mitigation That Would Minimize Significant Impacts.

For several of the LRDP Update's significant and unavoidable impacts, notably the Project's significant impacts related to vehicle miles travelled, air quality, and greenhouse gases, the DEIR provides inadequate mitigation, and in some cases, concludes that no other mitigation is available. However, the DEIR never considers such changes as limiting enrollment or staffing, or requiring housing to be constructed concurrent with increases in enrollment as potential mitigation, even though such changes could significantly reduce pollution emissions and other significant impacts disclosed in the DEIR. CEQA requires the EIR to consider such mitigation.

The University cannot approve projects with significant environmental impacts if any feasible mitigation measure or alternative is available that will substantially lessen the severity of any impact. Pub. Resources Code § 21002; CEQA Guidelines § 15126.4(a). The University is legally required to mitigate or avoid the significant impacts of the projects it approves whenever it is feasible to do so. Pub. Resources Code § 21002.1(b). "In the case of the adoption of a plan, policy, regulation, or other public project [such as the LRDP Update], mitigation measures can be incorporated into the plan, policy, regulation, or project design." CEQA Guidelines § 15126.4(a)(2). Mitigation is defined by CEQA to include "[m]inimizing impacts by limiting the degree or magnitude of the action and its implementation." CEQA Guidelines § 15370(b). In addition to proposing new "policies" as mitigation, mitigation should include changes in where development is planned, what kind of development is planned, and how dense or intense that development is planned to be.

(d) The DEIR Fails to Adequately Mitigate the LRDP Update's Substantial Increase of Local Population and Associated Housing Impacts for University Students and Other Berkeley Residents.

As the DEIR acknowledges, the Bay Area is experiencing a housing crisis of epic proportions. DEIR at 5.12-10. Moreover, UC Berkeley students are experiencing this crisis through severe housing insecurity and, in some cases, homelessness.

The LRDP Update includes a substantial increase in the campus population of 12,071 people, 8,500 of whom would be students. Table 3-1(DEIR at 3-25). The DEIR indicates that "each UC university plans for and provides student housing based on local housing markets, historical construction rates, availability of university land and infrastructure, and student needs related to housing type, location, and affordability."

DEIR at 5.12-3. However, UC Berkeley has not historically provided sufficient housing to accommodate its campus population. (UC Berkeley has added 1,119 student beds through the end of 2018, leaving a balance of almost 1,500 student beds remaining under the 2020 LRDP's development parameter of 2,600 student beds, which were intended to accommodate student enrollment of 10,000 fewer people than projected). In fact, a 2017 report prepared by the University's Office of Planning and Analysis as part of the UC Berkeley Office of the Chancellor's Housing Initiative (hereafter referred to as "Housing Survey") found that the demand for campus housing significantly outpaces supply and that UC Berkeley has the lowest percentage of beds for its study body of any UC campus in the State. See <https://chancellor.berkeley.edu/task-forces/housing-initiative>; Housing Survey Findings by UC Berkeley Office of Planning and Analysis, Fall 2017 at slide 2 available at https://housing.berkeley.edu/sites/default/files/pdf/HousingSurvey_03022018.pdf

While the City is working to increase housing citywide, available and planned housing stock in the City is not sufficient to serve the existing gap between supply and demand, much less the increased demand that will occur with the projected enrollment increase. The dearth of housing available to students has resulted in housing insecurity for many of the University's students. For example, the University's Housing Survey found that ten percent of students have experienced homelessness while attending UC Berkeley, while the number for doctoral students is twenty percent. Housing Survey Findings at slide 10.

Now, the LRDP Update projects a total campus population of 67,200 people by horizon year 2037. Table 3-1 (DEIR at 3-25). The LRDP Update includes plans for 11,731 beds for the estimated increase of 12,071 students, faculty, and staff, further adding to the housing deficit. Under the proposed LRDP Update, of the anticipated total campus population of 67,200, only about 31 percent of the University's population would be accommodated with planned housing (or 20,751 beds).⁵ *Id.* The remaining 70 percent of campus students, faculty, and staff would require housing off-campus, a large portion of which will look to housing in Berkeley.⁶

The DEIR acknowledges the shortage of University student and employee housing. DEIR at 3-3, 5.12-18. The DEIR also acknowledges that most of the additional campus population would live in Berkeley or nearby parts of the Bay Area. DEIR at 5.12-

⁵ Even if one were to account for the approximately 1,000 units provided in the University Village, only about 32 percent of the campus population would be housed.

⁶ DEIR Appendix K acknowledges that the majority or 70% of UC Berkeley students and approximately 30% of UC Berkeley employees live in the City of Berkeley.

15, 5.12-17 to 18; Appendix K at Tables 1 and 4. The DEIR indicates that future development under the proposed LRDP Update would add up to 16,193 people to the city of Berkeley population (13,902 direct population growth + 2,291 indirect population growth), which is more than 60% percent of the projected growth for the City by 2037. DEIR at 5.12-22, 23. The DEIR concludes that this increase in population is a significant impact. *Id.* However, despite reaching an accurate conclusion, the DEIR fails to identify mitigation measures to minimize the impact.

Instead, the DEIR identifies Mitigation Measure POP-1, which requires only that UC Berkeley provide annual summaries of LRDP enrollment and housing production data. DEIR at 5.12-23. The mitigation measure states that these annual summaries would serve to ensure “that local and regional planning projections account for UC Berkeley-related population changes.” *Id.* With this measure, the DEIR concludes that the significant impact associated with the population increase would be reduced to less than significant levels. *Id.* Yet, the measure does nothing to actually reduce the significant population growth or to address the housing shortage it will spur. A revised EIR should evaluate additional mitigation measures, including a requirement to actually construct the beds/housing units required to adequately house students and faculty; a plan to construct more beds/housing units than currently proposed; a requirement that construction of beds/housing be prioritized ahead of development of additional program buildings; and a requirement that construction of new beds/housing be timed to so that it is available prior to increasing enrollment. In addition, revised mitigation should include a contribution to the City’s Housing Trust Fund to fund housing projects such as the Ashby and North Berkeley BART Station Areas projects, annual updates on the University’s master leases in the City of Berkeley, and a requirement for the University to collect student, faculty, and staff information on an on-going basis to provide reliable aggregated data for future analyses.

Moreover, as the City explained in previous comments on the Goldman School of Public Policy Project, a substantial number of housing units constructed in the City of Berkeley are being leased to the University for exclusive use by students. Specifically, multiple new developments built by private developments have been ‘master leased’ by the University and have been taken off the market for other users. These projects include the New Sequoia Apartments at 2441 Haste, the Garden Village Apartments at 2201 Dwight Way, and the Shattuck Studios at 2711 Shattuck. The City has also seen a trend of landlord preference to rent housing units to students, often at higher resident densities than usual and not in household arrangements. These trends combine to effectively displace non-student Berkeley residents from the housing market in the City. The lack of adequate campus housing for students reduces available supply of housing for nonstudent

residents and displaces existing residents, including residents in historically low income neighborhoods such as South and West Berkeley. This has the effect of reducing the racial and economic diversity of Berkeley.

The use of master leasing, whether through the purchasing of existing units or earmarking units that are proposed or under construction, places even more of a burden on the Berkeley community as this removes units from the general rental market, making it more difficult to achieve the City's housing goals. While solutions to the student housing shortage should be multi-pronged, it should not be done at the expense of housing availability in the greater community.

Homelessness—whether it results from students who are unable to afford housing or residents who are displaced by students living off campus and driving up rents—also leads to physical impacts on parks, streets and other public spaces, public safety issues related to homeless encampments locating in unsafe locations, and an increase in public health problems.

The DEIR fails to discuss any of the aforementioned impacts, particularly for the LRDP Update. *See* DEIR at 5.12-24 (where displacement is mentioned for the two housing projects, but not for the LRDP). It provides no data on current and anticipated housing stock within the City of Berkeley and surrounding communities. It provides no data regarding the number of homeless UC Berkeley students and fails to analyze how the substantial increase in campus population will contribute to higher housing insecurity for both students and residents of Berkeley.

In addition, the DEIR's analysis of cumulative impacts with the respect to population and housing is inadequate. The DEIR fails to consider the following projects already in the City's development pipeline:

- 3100 San Pablo: re-tenanting vacant Marshant Building re-branded Foundry 31. In August 2020 ZAB approved approximately 17,700 square feet of an oncology testing laboratory and medical office and 69,800 square feet of research and development (R&D) space in an existing 402,742 square-foot building.

- 1050 Parker: 60,670 square-foot Kaiser medical office (under construction)

- 600 Addison: construct a research and development (R&D) campus containing two buildings totaling 461,822 square feet (Initial Study comment period closed March 11, anticipated ZAB review June, 2021)

- 811 Carleton: currently vacant Macaully Foundry site - preserve or construct approximately 150,000 square feet of manufacturing and R&D (application under review)

- Steelwave: 10 parcels in West Berkeley (Allston-Bancroft-Third-Fifth), many sites vacant, proposed for improvements and upgrades, tenanted with approximately 75,000 square feet of light manufacturing and R&D (pieces of applications and building permits under review)

The City also has multiple plans that have either just been approved or are in process. These include:

- The Adeline Corridor Plan, adopted on Dec. 8, 2020. This plan includes a buildout projection that represents the foreseeable maximum development that the City has projected can reasonably be expected to occur in the Plan Area through the plan horizon year (2040). This plan anticipates the development of 1,450 housing units and 65,000 square feet of commercial space.

- North Berkeley and Ashby BART Station Area Plan, NOP Circulated Nov 20, 2020. This plan includes up to 1,200 dwelling units and 50,000 square feet of nonresidential space at the Ashby BART station, and up to 1,200 dwelling units and 25,000 square feet of non-residential space at the North Berkeley BART station.

- Southside Zoning Ordinance Amendments Project, Initial Study circulated July 2020, Draft EIR to be published May/June 2021. This project includes zoning modifications that could result in up to 4,597 new units or 10,344 new residents in the Southside of the City.

Finally, the DEIR fails to consider other cumulative projects outside of the City of Berkeley. Cumulatively, these projects would affect the City's population and housing calculus and should have been considered in the DEIR's analysis.

D. The DEIR's Analysis of and Mitigation for the Project's Environmental Impacts Are Inadequate.

The evaluation of a proposed project's environmental impacts is the core purpose of an EIR. *See* CEQA Guidelines § 15126.2(a) (“[a]n EIR shall identify and focus on the significant environmental effects of the proposed project”). The statute requires that the EIR identify measures that would effectively mitigate a proposed project's significant effects on the environment. Pub. Resources Code § 21002.1(a). As explained below, the DEIR fails to analyze the Project's numerous environmental impacts, including those

affecting air quality, climate change, traffic and transportation, noise, geology, hydrology and water quality. It also fails to identify effective mitigation measures for the Project's significant effects.

1. The LRDP Update's Increased University Population Will Result in a Substantial Increase in Service Population That Will Significantly Impact the City's Public Services.

The DEIR is especially lacking in its analysis of the LRDP's impacts to public services. Massive increased enrollment at the University results in direct and indirect impacts to a broad range of City services, including but not limited to, fire and emergency services and police services. Under CEQA a project has significant impacts if it would result in the need for new or altered facilities that would cause significant environmental impacts "in order to maintain acceptable service ratios, response times, or other performance objectives" for fire and police protection, schools, parks, and other public facilities. CEQA Guidelines Appendix G, § XV.a. Here, the Project will increase the University's enrollment and population by approximately 12,000 people, which has the potential to increase service ratios, decrease response times or negatively impact other performance standards for public services, as well as require new or expanded facilities. Therefore, the DEIR has an obligation to fully adequately evaluate these impacts.

2. The DEIR Fails to Adequately Analyze and Mitigation Impacts Related to Wildfire Risk.

Wildfires pose one of the most serious risks to people and the environment in California today. California has recently endured two of the most devastating and deadly fire seasons on record. The 2018 wildfire season saw a total of over 7,500 fires burning an area of over 1,670,000 acres. This batch of wildfires included the Camp Fire, which killed at least 85 people in and around the rural foothill town of Paradise and destroyed more than 18,000 structures, becoming California's deadliest wildfire on record. That same year, the Mendocino Complex Fire, which burned more than 459,000 acres, became the largest complex fire in the state's history. This record was shattered last year when California's August Complex Fire burned over 1 million acres, becoming the state's first "gigafire." See, <https://www.smithsonianmag.com/smart-news/californias-first-ever-gigafire-blazes-through-state-scorching-more-one-million-acres-180976034/>. By the end of 2020, nearly 10,000 fires had burned over 4.2 million acres, making 2020 the "largest wildfire season recorded in California's modern history." Over four percent of the state was on fire over the course of that year. And in the coming decades, climate change will continue to alter temperatures, winds, precipitation, and species, with potentially substantial fire hazard impacts. Noting this steady escalation in wildfire risk and severity,

lawmakers have introduced legislation aimed at limiting or preventing development in wildfire areas.⁷

Despite the severe risks associated with wildfires, the DEIR failed to adequately analyze how the addition of residents and increase in density in a Very High Fire Hazard Severity Zone (“VHFHSZ”) would impact the campus population and the environment. First, the DEIR fails to analyze whether implementing the LRDP would increase evacuation times for the campus population. CEQA specifically requires lead agencies to analyze whether a proposed project would “[e]xpose people or structures...to significant risk of loss, injury or death involving wildland fires.” Guidelines, Appendix G, Section VIII.h. CEQA also requires an EIR to discuss any “health and safety problems caused by physical changes” in the environment and any significant environmental effects the project might cause or risk exacerbating by bringing development and people into the area affected.” Guidelines, § 15126.2(a). Here, where the University has proposed a project that would add approximately 12,000 people to the campus population over the next 15 years in a VHFHSZ, those risks unquestionably exist and a thorough analysis of these impacts is crucial. Guidelines, Appendix G, Section VIII.h. The DEIR’s analysis of fire evacuation risk is utterly deficient. Rather than analyzing the impacts of increased density on emergency evacuations, the DEIR asserts that compliance with existing regulations and the LRDP’s objectives related to reducing wildfire risk will reduce impacts to less than significant levels. DEIR at 5.18-19. Compliance with existing regulations is required by law, but is inadequate to reduce wildfire hazard impacts to an insignificant level in the wildland urban interface. In addition, the DEIR provides no evidence that the stated objectives will reduce impacts.

Given the state’s recent experience with devastating fires, common sense dictates that an EIR should *at least* consider (1) the estimated number of cars attempting to evacuate the Project area; (2) the amount of time needed to implement a full evacuation of the Project area; (3) an assessment of whether the evacuation could be accomplished within an acceptable time period; (4) an evaluation of the adequacy of the primary evacuation routes; and (5) any impacts to emergency personnel attempting to respond while an evacuation is underway. *See Save the Plastic Bag Coal. v. City of Manhattan*

⁷ Proposed housing legislation encourages “green infill” (Gov. Code § 65852.150(6)) and specifically *discourages* new housing development, like the LRDP, in Very High Fire Severity Zones. *See, e.g., id.* § 65913.4(a)(6)(D) (projects proposed in “very high fire hazard severity zones” are not eligible for streamlining under SB 35); § 66300(f)(4) (Housing Crisis Act of 2019 does not apply to housing developments located in a very high fire hazard severity zone).

Beach (2011) 52 Cal.4th 155, 175 (“Common sense ... is an important consideration at all levels of CEQA review”). The EIR, however, contains no meaningful analysis.

The eastern portion of the UC Berkeley campus and portions of the City Environs are located within a VHFHSZ. DEIR Figure 5.18-1 and 5.18-2 Fire Hazard Severity Zones at 5.18- 12 and 13. Because wildfire risk is part of the existing landscape, it is especially important for UC Berkeley to provide adequate analysis and implement effective mitigation measures to minimize safety risks to the extent possible. Unfortunately, as discussed further below, the DEIR falls short in both instances.

UC Berkeley has identified potential areas of new development and redevelopment that could accommodate additional housing on the Clark Kerr Campus and the City Environs Properties. DEIR at 3-13. However, some of these areas are within the VHFHSZ. For example, the LRDP proposes to add residential beds on the Clark Kerr campus and at the Foothill La Loma building north of the campus core and west of the Lawrence Berkeley National Laboratory, for a total increase of 1,598 beds. DEIR at 3-13 and Table 3-2 at 3-27 and 3-28. Both of these areas are identified as being the VHFHSZ. DEIR at Figure 5.18-1. The DEIR acknowledges that potential future projects within the Hill Campus East area would result in significant unavoidable impacts even with identified mitigation. DEIR at 5.18-23. However, the DEIR fails to evaluate impacts from increasing residential density on the Clark Kerr Campus and City Environs properties within the VHFHSZ.

Moreover, the DEIR’s proposed mitigation measures associated with the project exacerbating wildfire risk are insufficient. Here the DEIR proposes continued implementation of CBPs that call for compliance with state regulations, continued implementation of the Wildland Vegetation Fuel Management Plan and programs to reduce wildland fires, and continued collaboration with other agencies. DEIR at 5.18-22. The DEIR identifies mitigation measure WF2a and WF2b, which call for new development projects to prepare Wildfire Management Plans and for vegetation and wildland management activities to comply with state regulations. DEIR at 5.18-23. However, these measures fail to address the impacts of increased fire risk at the programmatic level.

Importantly, while the DEIR acknowledges that Alameda County has an updated Community Wildfire Protection Plan (“CWPP”) that includes specific recommendations for reducing wildfire risk, the LRDP fails to incorporate these recommendations. Specifically, the Alameda County CWPP recommends increasing public awareness of hazard conditions; restricting certain equipment or work during high fire danger weather; maintaining and enforcing defensible space around buildings and reducing fuel sources

adjacent to buildings; planting fire-resistant plants and using fire-resistant building materials; managing vegetation responsibly; and creating collaborative partnerships between local communities, natural resource, and fire response groups. DEIR at 5.18-6. A revised and recirculated DEIR should include all of these recommendations as specific mitigation measures that would be applied to all future development projects.

In addition, as the DEIR itself acknowledges, the City of Berkeley has Fire Zone overlays with requirements for fire resistance. DEIR at 5.18-8. However, the DEIR fails to evaluate the LRDP's consistency with these requirements.

The Public Services and the Wildfire sections fail to mention the Berkeley Building Code Chapter 19.28.030 that amends the basic California Building Code language contained in the main building code to further address fire danger. This chapter applies to building materials, systems, and/or assemblies used in the exterior design and construction of new buildings and structures, additions, alterations, repairs and re-roofs located within a Wildland-Urban Interface Fire Area. Examples include but are not limited to roof materials, spark arrestors, exterior wall coverings, undergrounding of utilities, fire warning systems, and automatic fire sprinklers. To reduce potential significant impacts, and because UC Berkeley relies on the Berkeley Fire Department for fire protection services, the Mitigation Measures for Wildfire must incorporate implementation of Berkeley Building Code Chapter 19.28.030 or the contents there of.

3. The DEIR Fails to Disclose or Mitigate Impacts to Fire and Emergency Medical Services.

The DEIR's evaluation of LRDP-related impacts to fire protection and emergency medical services is deficient. The DEIR acknowledges that the Project would increase the service population for fire protection. DEIR at 5.13-16. Yet, the DEIR presents a truncated analysis of the impacts related to increasing the University's population and density.

While UC Berkeley has its own fire inspection and code enforcement personnel, it does not employ firefighters or Emergency Medical Services ("EMS") staff. As a result, the Berkeley Fire Department ("BFD") provides the vast majority of fire and emergency medical protection for the campus. The City estimates that 37 percent of the BFD's total cost of service in 2018 was attributable to the University. See, Letter from Tim Burroughs, City of Berkeley, to Raphael Breines, UC Berkeley dated April 12, 2019, Attachment A, Memorandum from Economic & Planning Systems, Inc. March 27, 2019 at pps. 3 and 4. As described below, actual BFD costs attributable to the University could be even greater due to the complex firefighting and emergency medical services

environment created by the unique, high-density and/or high capacity structures owned and operated by UC Berkeley.

In addition, UC Berkeley and Berkeley Labs have extensive amounts of hazardous materials, including nuclear hazards, which require high risk operations by Berkeley firefighters. The unique circumstances of the campus, its buildings, facilities (stadium, labs, etc.) and chemical, biological, nuclear and other materials requires special training that would not be required of a normal fire department, and exposes BFD to significant additional risk, far above and beyond a normal fire department. In addition, the campus topography, tall buildings, canyon, location on the Hayward fault, vegetation, large venues such as Memorial Stadium, Edwards Stadium, Hass Pavilion, Greek Theater, and Zellerbach Hall all are hugely impactful to our firefighters and paramedics.

The increase in building height and densities, such as is found with higher density apartment buildings to accommodate students, also present unique challenges for fire fighters and medical personnel. Personal Communication, J. Klein, Director of Planning, City of Berkeley and D. Brannigan, Fire Chief, City of Berkeley, October, 2020. Responding to calls for service in these housing environments requires twice the staff on fire engines and trucks because these calls require evacuation and management of hundreds of people. *Id.* Nonetheless, the DEIR claims that the dramatic expansion of student enrollment will not increase the need for expanded services and dismisses potential impacts as insignificant, without any analysis or support. DEIR at 5.13-18. To the contrary, the dramatic increase correlates with an increase in the City's residential population, which in turn will result in an increase in service calls for fire protection and for emergency medical services provided by the BFD. Having failed to adequately evaluate the Project's impacts on response times and service level, the DEIR also fails to identify mitigation for this impact. Once again, the DEIR relies on vague "Best Practices" to mitigate any impacts. *Id.*

The DEIR acknowledges that "projected population growth and development proposed by UC Berkeley over the buildout horizon of the proposed LRDP Update would require significant additional resources and facilities in order for the BFD to adequately respond to calls for service." DEIR at 5.13-17. These resources would include an aerial ladder truck, type 1 fire engine, ambulance, mobile air supply truck, and a battalion chief to accommodate the increased density and height of projects under the proposed LRDP Update. *Id.* The DEIR also acknowledges that BFD would require a new facility close to the Campus Park to house these additional resources, and the BFD's Division of Training building would need to be expanded to meet additional training demands of a larger department. *Id.*

Rather than identifying need for expanded facilities described above as a significant impact of the LRDP, the DEIR points to CBP PS-2 as a means to minimize the impact. DEIR at 5.13-17, -18. CBP PS-2 provides for a “partnership” with Lawrence Berkeley National Laboratory, Alameda County Fire Department, OFD, and Berkeley Fire Department to “ensure adequate fire and emergency service levels to UC Berkeley facilities.” *Id.* But the CBP fails to include performance standards and fails to include *any* information whatsoever regarding what this partnership would entail and how it would “ensure” adequate service levels. Such unenforceable CBPs that are largely hortatory and vague cannot be relied upon to reduce impacts.

Moreover, the DEIR also improperly relies on the Project’s compliance with existing regulations to conclude that the LRDP would not result in significant impacts related to an induced need for new facilities. DEIR at 5.13-18; *id.* Under CEQA, a lead agency may not rely on compliance with existing statutory and regulatory obligations to conclude that a project will not result in impacts. *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1108-09 (environmental effect may be significant despite compliance with such requirements). Even if a project complies with all applicable regulations, the project is still subject to CEQA’s full disclosure requirements. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 716-17. Consultation and compliance with other agencies’ rules do not cure the errors in an environmental document that “leave the reader in the dark about what land management steps will be taken, or what specific criteria or performance standard will be met.” *County of Merced*, 149 Cal.App.4th at 670. Here, because the DEIR fails to assure that complying with other agencies’ permitting requirements will actually mitigate the Project’s impacts on water quality, the document leaves “the reader in the dark.” *Id.*

The DEIR concludes that it is not UC Berkeley’s responsibility to build the required fire station. DEIR at 5.13-18. Instead, the DEIR asserts that the University would “negotiate” its proportional share of funding for the mitigation of any environmental impacts resulting from the construction of the facility. The DEIR then concludes that the LRDP’s impacts would be less than significant because the BFD would expand to meet the needs of the growing community and UC Berkeley population, with or without the proposed LRDP Update. *Id.* This approach does not comply with CEQA. Given that the LRDP will facilitate increased enrollment and increased population, both on and off campus, that will result in the need for new and expanded fire-fighting facilities, the DEIR must identify the need for new facilities as a significant impact and identify feasible mitigation measures to reduce impacts. Saying that the University will “negotiate” its mitigation in the future improperly defers mitigation

without any performance standard, and in fact suggests, contrary to law, that the University's compliance with this measure is wholly voluntary. In the absence of a mitigation measure specifying that the University would pay its fair portion of the cost to construct additional facilities, the City cannot be assured that UC Berkeley will make such a contribution.

The DEIR also improperly includes mitigation measures for public safety impacts (i.e., the promise to negotiate a fair-share contribution) as part of the project description. CEQA requires that the Project's significant impacts must be determined first, and then the EIR must identify enforceable mitigation that will "offset" the impacts. *See Lotus v. Dept. of Transportation* (2014) 223 Cal.App.4th 645, 655-56, 658 (rejecting EIR that relied on project designs to find no significant impact, instead of identifying significant impacts and considering potential mitigation measures). In *Lotus*, the court held that an EIR was legally inadequate where it assumed certain mitigation techniques would be incorporated into the project, and thus the EIR did not disclose the impacts of the project without those special techniques. *See id.* 655-56. Further, the court in *Lotus* criticized the EIR's failure to consider whether other possible mitigation measures would be more effective than the ones that were assumed to be incorporated into the Project. *Id.* at 657. Here, by listing what are effectively mitigation measures as part of the Project, the EIR replicates the error made by the agency in *Lotus*.

Finally, the DEIR concludes that the LRDP would exacerbate wildfire risks and result in significant unavoidable impacts related to the development of projects within the Hill Campus East, which is in a Very High Fire Hazard Severity Zone and related to installation and maintenance of infrastructure. DEIR at 2-31, 2-32, 5.18-22 to 23, 5.18-25 to 26. These impacts would translate to additional services by BFD and potentially for additional equipment to address wildfires. The DEIR does not consider these wildfire impacts in its analysis of impacts to fire and emergency services.

4. The DEIR Fails to Adequately Analyze and Mitigate Impacts to Police Services.

The DEIR's evaluation of Project-related impacts to police protection services is equally deficient. The DEIR acknowledges that the City provides police services to the University, but presents outdated information on Berkeley Police Department's ("BPD") current staffing. DEIR at 5.13-4. Specifically, the DEIR states that the BPD has 285 full time equivalent employees; however, recent budget cuts have resulted in a reduced number of positions so that the department has only 248 full time equivalent employees with 157 sworn officers budgeted.

The DEIR also acknowledges that the City is experiencing reduced police staffing due to budget reductions. *Id.* Yet, the DEIR provides no information about the ramifications of this reduced level of service. At the same time, the DEIR acknowledges that the UC Berkeley Police Department's ("UCPD") staffing is below its staffing level goal, which is stated to be "one sworn officer per 1,000 members of the UC Berkeley population." DEIR at 5.13-6. [Note that this figure conflicts with UC Berkeley's stated goal of 1.6 officers per 1,000 campus population presented in the 2019 SEIR for the Goldman School of Public Policy and Minor Amendment to the 2020 Long Range Development Plan. SEIR at 153.] The DEIR states that current UCPD staffing is at 0.9 sworn officers per 1,000. DEIR at 5.13-06. The DEIR then states that the University "has not identified a need to expand its police facilities during the 2036-37 buildout horizon of this analysis." The DEIR fails to provide any information on the process the University followed to determine that there is no need for additional staffing for the UCPD.

This conclusion is particularly curious given that the 2019 SEIR acknowledged that the increased enrollment at that time exacerbated the University's police department staffing shortfall. In 2019, the SEIR disclosed that the UCPD had 68 sworn officers for a service ratio of 1.2 per 1,000 members of the UC Berkeley population. SEIR at 153. Now, the number of UCPD sworn officers is down to 48 for a ratio of 0.9 per 1,000. Assuming UCPD maintains the current staffing, the ratio of sworn officers to UC Berkeley population will go down further to 0.7 during the buildout horizon of the LRDP [(48 sworn officers) X (1,000) /67,200], or *less than half* the stated goal ratio for sworn officers from 2019. The DEIR fails to disclose this reduced service ratio or to evaluate the Project's inconsistency with UCPD's staffing goals whether the goal is 1.6 officers per 1,000 or 0.9 officers per 1,000.

The DEIR also fails to evaluate the impacts of relying more heavily on the City's police department to fill the gap in services and it fails to analyze potential changes in response times due to the increased service population. Rather than conducting this evaluation of impacts to policing services in the context of the proposed development under the LRDP Update, the DEIR concludes that because the LRDP does not expand the service area, increases in demand for police services would be incremental and resulting impacts would be less than significant. DEIR at 5.13-5. The DEIR fails to provide any evidence to support this conclusion.

Whether or not implementation of the LRDP would expand the geographic service area is beside the point. Common sense dictates that increasing population density is likely to increase the need for police services, because it is people who call the police, not buildings. UCPD relies on BPD for such police services as training programs, special events security, and investigation of serious crimes. DEIR at 5.13-3. In addition, BPD

provides extensive back up and off campus services related to the student population and the University. With the limited amount of on-campus housing, more students live off campus and thus within the sole jurisdiction of BPD. The City's recent experience serving new student housing facilities off-campus strongly indicates that the planned massive enrollment increase will adversely affect response times. For example, the BPD routinely directs several officers in the nuisance abatement unit to monitor and respond to calls in the Clery crime reporting area of the City, which is predominantly occupied by students. An increase in off-campus student housing to accommodate the large enrollment jump will require increased police services.

UCPD and BPD staffing reductions will impact community safety by increasing response times and reducing services. For the City, rebuilding to previous staffing levels is estimated to take at least two to three years, depending on the City's budget resources, and staffing needed to recruit, hire, and train new personnel. With the return of the full University student and staff population post-COVID 19, the City may not be able to staff certain assignments (e.g., bike patrol to increase neighborhood safety) and to provide pre-COVID level services.

Moreover, the DEIR fails to address the University's need to rely on City of Berkeley police services for large scale, and sometimes unplanned or unpredictable, events connected to campus activities or historically significant locations. These services require a significant commitment of City resources both in terms of service hours and fiscal resources, and likely correspond to reduced service ratios and increased response times that may necessitate the need for additional personnel and equipment. The DEIR fails to analyze these impacts and its conclusion that impacts related to police protection services would be less than significant lacks evidentiary support.

Finally, the DEIR takes the position that these increased response times and thus reduction in services are irrelevant as long as the City has no imminent plans to build new facilities. Of course, if the City does not have the resources to increase staff, it may be unnecessary to build new facilities at this time. However, the LRDP is the University's long-range planning document. It is short-sighted and irresponsible for the University to take the position that it will continue to increase enrollment without providing either increased campus security services or the resources the City needs to ensure the safety of the University community. As part of the LRDP effort, the University must take a responsible approach to development that ensures all projected growth can be safely accommodated.

5. The DEIR Fails to Adequately Analyze and Mitigate the Transportation Impacts Resulting from the LRDP.

Along with Kittelson & Associates, the City has have reviewed the relevant sections of the DEIR pertaining to transportation. We have determined that the DEIR fails to adequately analyze and mitigate the Project's transportation impacts. Set forth below is a summary of our conclusions. We direct you to the full Kittelson Report (Exhibit A) for a detailed description of the DEIR's deficiencies.

(a) The DEIR's Inadequate Project Description Makes It Impossible to Evaluate the Project's Transportation Impacts.

According to the DEIR, the LRDP would improve upon UC Berkeley's existing Transportation Demand Management ("TDM") strategies to reduce drive-alone mode shares. This would involve "an updated pedestrian network on the Campus Park and the Clark Kerr Campus," "an updated bicycle network on the Campus Park and the Clark Kerr Campus," "Campus Park Edge Improvements," and enhanced transit and shuttle service." DEIR at 3-16 through 3-18. The DEIR does not identify or describe any of these specific improvements. In the absence of a detailed description of these project components, it is not possible to evaluate how growth associated with the LRDP would impact the local and regional transportation network (roads, bicycle and pedestrian). The revised DEIR must provide specific information regarding these key components of the LRDP. In particular there needs to be a clear definition of the "Campus Park Edge Improvements" and explanation of the boundaries of the Campus Park Edge that accounts for safety, capacity, and functionality of the pedestrian, bike, and transit facilities between the Campus Park and the off-campus facilities to and from which students, faculty and staff may travel. Such off-campus facilities should include student housing, administrative and educational facilities, transit stops, existing low stress bike routes, parking, and other public or private facilities commonly used by the campus community.

In addition, the DEIR simultaneously refers to UC Berkeley's CBPs as part of the proposed LRDP and as mitigation for the LRDP's impacts. *See e.g.*, DEIR at 3-24 ("[t]he proposed project includes updates to the existing CBPs to reflect evolving standards, practices, and current regulations"); DEIR at 5.15-49 ("[a]s part of the proposed project, UC Berkeley and future development projects would implement the transportation (TRAN) CBPs"); DEIR at 5.15-58 ("with adherence to these CBPs during the construction phase of potential future development projects, impacts during the construction phase would be less than significant"). Project elements are not "mitigation." An EIR must "separately identify and analyze the significance of impacts

. . . before proposing mitigation measures.” *Lotus*, 223 Cal.App.4th at 658. When an agency folds discussion of mitigation into discussion of the project and impacts, this “subverts the purposes of CEQA,” because it results in omission of “material necessary to informed decision-making and informed public participation.” *Id.*; see also *Cleveland National Forest Foundation v. San Diego Assn. of Govs.* (2017) 17 Cal.App.5th 413, 433 (questioning whether measures already incorporated into a project “even qualify as mitigation measures”).

(b) The DEIR Lacks Basic Data Necessary to Evaluate the Project’s Transportation Impacts.

The LRDP would increase enrollment by 5,068 undergraduate students, 3,424 graduate students, and 3,579 faculty/staff (DEIR at 3-25), yet the DEIR does not estimate the number of people walking, biking, taking transit, and driving that would be generated by the Project. It also fails to analyze how the increase in traffic (all modes) would affect transportation and circulation and traffic safety or how the increase in traffic has the potential to exacerbate existing deficiencies in the transportation network. Nor does the DEIR address how exacerbation of existing deficiencies and capacity limitations in the transportation network may limit the viability of their proposed TDM efforts, or how use of some alternative modes such as rideshare via Transportation Network Companies may reduce one impact (parking demand) and increase another impact (vehicle trips) with the potential to have a net increase in detriment to the environment and public safety.

(c) The DEIR’s Transportation Analysis Relies on a Truncated Study Area.

The DEIR’s analysis focuses on Campus Park and does not analyze potential impacts to the Campus Hills East, Campus Hills West, Clark Kerr, City Environs, or other planning areas that would occur as a result of implementation of the LRDP. See Kittelson Report at 16. CEQA requires that an EIR analyze environmental impacts over the entire area where one might reasonably expect these impacts to occur. See *Kings County Farm Bureau*, 221 Cal.App.3d at 721-24. This principle stems directly from the requirement that an EIR analyze all significant or potentially significant environmental impacts. Pub. Resources Code §§ 21061, 21068. An EIR cannot analyze all such environmental impacts if its study area does not include the geographical area over which these impacts will occur. The revised DEIR must broaden its study area to encompass Campus Hills East, Campus Hills West, Clark Kerr, City Environs, and other planning areas that would occur as a result of implementation of the LRDP.

(d) The DEIR Fails to Adequately Analyze and Mitigate Impacts Relating to the Project's Conflicts with Transportation-related Plans and Policies (Impact Tran-1).

(i) UC Berkeley Plans

The DEIR determines that the LRDP would conflict with the UC Sustainable Practice Policy and UC Berkeley Sustainability Plan because UC Berkeley *currently* does not meet its single occupancy vehicle (“SOV”) targets. DEIR at 5.15-50. The DEIR determines this impact is significant. *Id.* Although this significance conclusion may be correct, the DEIR errs because it does not analyze how SOV mode share would change as a result of the LRDP (i.e., the anticipated increase in students, faculty and staff). CEQA Guidelines § 15126.2 (“An EIR shall identify and focus on the significant effects of the proposed project on the environment.”).

Furthermore, the DEIR fails to identify other ways the LRDP would potentially conflict with policies established by UC Berkeley. For example, the UC Sustainable Practices Policy calls for consistency with the State of California goal of increasing alternative fuel – specifically electric – vehicle usage. *See* UC Sustainable Practices Policy at 11, July 24, 2020. To this end, the Policy requires the University to promote purchases and support investment in alternative fuel infrastructure at each campus. By 2025, each location shall strive to have at least 4.5% of commuter vehicles be ZEV. By 2050, each campus shall strive to have at least 30% of commuter vehicles be ZEV. *Id.* The DEIR does not analyze the effect of the LRDP and Housing Projects #1 and #2 on the ability of UC Berkeley to increase alternative fuel vehicle usage and meet established targets for use of zero emission vehicles.

Nor does the DEIR describe the Project's consistency with the UC Sustainable Practices Policy calling for the University to partner with local agencies on opportunities to improve sustainable transportation access to and around university facilities in addition to developing its own transportation programs. *See* UC Sustainable Practices Policy at 26. The DEIR vaguely describes potential initiatives to support an integrated, connected, and coordinated multimodal transportation network providing access to, from, and within the UC Berkeley campus. *See* Mobility Systems Element § 3.5.1.5; DEIR at 3-16. The DEIR also states that the LRDP's Mobility Systems Element contemplates several potential initiatives such as the integration of the campus bicycle network within the broader City of Berkeley bicycle network; the development of mobility hubs throughout Campus Park, Clark Kerr Campus, and City Environs Properties; and modifications to curb management practices, sidewalk design, and gateway treatments at the Campus Park

edge, and that these initiatives would require coordination with City of Berkeley and other local agencies. Finally, the LRDP includes several objectives calling for the University to partner and collaborate with the University on projects and initiatives that enhance pedestrian, bicycle, transit, and vehicular connections and safety between university properties and surrounding areas. DEIR at 5.15-48. However, the DEIR fails to describe how UC Berkeley will partner with local agencies and the City of Berkeley in particular, during development of the LRDP Update and Housing Projects #1 and #2. This collaboration will require funding to support City expenses for staffing, consulting, and construction.

The DEIR also fails to discuss the Sustainable Practices Policy calling for parking management and pricing strategies to support emissions reduction and sustainable transportation goals, including variable pricing and unbundling parking and housing costs. *See* UC Sustainable Practices Policy at 26. The DEIR states that the LRDP would maintain the parking supply at the same ratio as the current parking supply. DEIR at 3-16. The document fails to acknowledge that the provision of vehicle parking at the current parking ratio (as opposed to a reduced ratio) implies construction of additional parking and is inconsistent with the UC Sustainable Practices Policy to implement parking management and pricing strategies and would not support SOV targets, emissions reduction, and sustainable transportation goals.

(ii) City of Berkeley Plans

Although the DEIR includes a section intended to address the Project's consistency with the City of Berkeley Plans, its analysis is incomplete, vague and cursory. As discussed below, the City has adopted numerous plans intended to improve access throughout the City's transportation network with an emphasis on non-auto modes. Given that the UC Berkeley Sustainability Plan and Policy also call for supporting an integrated, connected, and coordinated multimodal transportation network providing access to, from, and within the UC Berkeley campus, one would expect that the DEIR would have provided a comprehensive analysis of the LRDP's consistency with the City's plans.

(A) City of Berkeley General Plan

The DEIR cherry picks a few policies from the City's General Plan and concludes the LRDP project would be consistent. DEIR at 5.15-52. The DEIR lacks the thorough analysis CEQA requires because it does not identify all of the relevant General Plan policies and provides a cursory discussion of the few policies it does analyze. A review of the City's General Plan reveals that the Project would be inconsistent with numerous

provisions in the General Plan. We direct the University to the Kittelson Report for examples of these inconsistencies. Kittelson Report at 5, 6. It is important to note that Kittelson's investigation should not be viewed as a substitute for a more thorough analysis which should be conducted by the EIR preparers and included in the revised DEIR.

(B) City of Berkeley Bicycle Plan

Rather than comprehensively analyze the LRDP's consistency with the City of Berkeley Bicycle Plan, the DEIR discusses one policy (D-1) and summarily concludes that the Project would be consistent with the Bicycle Plan. DEIR at 5.15-52. The DEIR suggests that the University is working with the City to: (a) minimize transit-vehicle interactions; (b) optimize transit service and operations; and (c) provide low stress bike-to-transit access (DEIR at 5.15-52), but it does not explain how specifically the University is accomplishing these actions, and how it could continue to do so without extending and increasing the fair-share payments the University makes to the City under the 2005 settlement agreement between the parties. Nor does the DEIR accurately depict the City's existing or proposed bicycle network. *See* Kittelson Report at 6, 7. A review of the City's Bicycle Plan reveals that the Project would be inconsistent with numerous provisions in the Plan. We direct the University to the Kittelson Report for examples of these inconsistencies. Kittelson Report at 6, 7. Again, it is important to note that Kittelson's investigation should not be viewed as a substitute for a more thorough analysis which should be conducted by the EIR preparers and included in the revised DEIR.

(C) City of Berkeley Pedestrian Plan

The DEIR gives short shrift to the City's Pedestrian plan, devoting just one paragraph to the LRDP's consistency with it. As an initial matter, the DEIR analyzes an outdated version of the Plan. The City's Pedestrian Plan was published in November 2020 and adopted by the City in January 2021; however, the DEIR analyzes the LRDPs consistency with a 2010 version of the Plan. *See* Kittelson Report at 7.

Here too, the DEIR cherry picks a few policies from the City's Pedestrian Plan and concludes, absent evidentiary support, that the LRDP would not conflict with the City's Plan. Moreover, although the DEIR states that the LRDP proposes pedestrian improvements, including projects at the gateway to the campus, and that these improvements would not impede the City's policies (DEIR at 3-7, 5.15-53), the specific pedestrian network modifications contemplated by the LRDP are not identified or described. The revised DEIR must identify the specific projects that would be

implemented by the LRDP and then evaluate these specific proposals against the City's Pedestrian Plan. The DEIR should be revised to make clear whether these projects will happen on campus property or in the public right of way, and how pedestrian improvements in the public right of way may conflict with the ability of the City to use the limited space in the public right of way to implement bicycle, transit, or pedestrian facility improvements consistent with adopted City plans.

Yet another critical oversight is the DEIR's failure to illustrate or describe the City's Pedestrian High-Injury Streets. As the Kittelson Report explains, there are numerous High-Injury Streets located near Campus Park that are considered the City's highest priorities for investments to improve pedestrian safety. *See* Kittelson Report at 8, 9. The DEIR should have identified and discussed the Pedestrian High Injury Streets, Priority Streets, and pedestrian network recommendations, as presented in the City's 2020 Pedestrian Plan and then analyzed the impact of the LRDP and Housing Projects #1 and #2 on this network.

(D) City of Berkeley Vision Zero Resolution and Vision Zero Action Plan

The DEIR devotes just one sentence to the City's Vision Zero Resolution and Vision Zero Action Plan (DEIR at 5.15-53) and does not evaluate the Project's consistency with the Resolution or the Plan. Vision Zero is a data-driven strategy to eliminate all traffic fatalities and severe injuries while increasing safe, healthy, and equitable mobility for all.⁸ The DEIR asserts that the LRDP contains several objectives that support the Vision Zero goals, but it does not identify the specific objectives nor does it discuss how the LRDP would be consistent with the Vision Zero goals. In addition, while the DEIR identifies the roadways in the Project study area, it does not identify the collision history or existing collision rates (vehicular, bicycle, pedestrian) on those roadways.

The DEIR should have analyzed the effect that the LRDP and Housing Projects #1 and #2 would have on traffic safety on these Vision Zero High-Injury Streets. It should also have analyzed how the LRDP might interfere with the City's capital projects contemplated for these streets.

Had the DEIR conducted the appropriate analyses described above, it would have determined the impacts would likely be significant. Consequently, the revised EIR must

⁸ <https://www.cityofberkeley.info/visionzero.aspx>

identify mitigation for these impacts. Specifically, the revised EIR should mitigate for these impacts. Consistent with the priority of the Vision Zero Action Plan, the University should commit to “Proactively build capital-intensive and quick-build safety projects on all Vision Zero High-Injury Streets on a schedule to complete such projects by 2028.” An appropriate mitigation measure would be to work with the City to identify a fair-share contribution to transportation safety projects on the High-Injury Streets identified in the Vision Zero Plan.

(iii) AC Transit’s and BART’s Plans

The DEIR identifies potential conflicts with transit plans in its thresholds of significance (DEIR at 5.15-40), but it does not analyze how the LRDP would impact the plans, services or facilities of local transit providers, including AC Transit and BART.

The DEIR identifies AC Transit’s existing operations (Table 5.15-1 at 5.15-15), but it does not identify the capacity of the bus routes currently serving the campus nor does it analyze how the LRDP would affect bus service or operations. As the Kittelson Report explains, the LRDP would increase transit demand potentially causing overcrowding of buses and the potential for drivers to pass-up waiting passengers. Kittelson Report at 10. The addition of vehicle traffic generated by the LRDP could also increase delay and reduce the ability of AC Transit to meet on-time performance and schedule goals. According to the Kittelson Report, “[t]his could cause people to switch to using private vehicles, increasing the low-occupancy vehicle share of trips and resulting greenhouse gas emissions, and causing secondary safety impacts from the increased number of motor vehicles on Berkeley streets, which would conflict with the UC Sustainable Practice Policy and UC Berkeley Sustainability Plan and further impede the ability of the University to achieve its established SOV targets.” Kittelson Report at 10.

Similarly, the DEIR describes BART’s existing service and daily ridership (5.15-14), but it does not identify the capacity of the service nor does it analyze how the LRDP would affect BART service and operations. The revised DEIR must provide a comprehensive analysis of the Project’s potential to impact the plans, services, or facilities of these local transit providers, particularly AC Transit and BART. If the impacts are determined to be significant, UC Berkeley must identify feasible mitigation measures capable of addressing these impacts.

(iv) The DEIR Fails to Identify Feasible Mitigation Measures Capable of Reducing These Impacts to a Less-Than-Significant Level.

The DEIR fails to identify feasible mitigation for the Project's significant plan-related impacts. The document identifies only one mitigation measure—MM Trans-1—which calls for UC Berkeley to continue to survey students and employees and to use the results to adjust travel demand programs to achieve UC Berkeley's SOV targets. DEIR at 5.15-50. The DEIR concludes that this sole measure would reduce impacts to a less than significant level. *Id.* To conclude as the DEIR does, that an impact is less than significant, substantial evidence must demonstrate that mitigation measures will reduce an impact to a less-than-significant level. Substantial evidence consists of "facts, a reasonable presumption predicated upon fact, or expert opinion supported by fact," not "argument, speculation, unsubstantiated opinion or narrative." Pub. Resources Code § 21080(e)(1)-(2). Because the DEIR's conclusion of insignificance is premised on unsupported assumptions, it falls far short of this threshold.

There is no assurance that a mitigation measure that merely calls for surveying would be feasible and efficacious. Moreover, simply listing a handful of non-specific options (University should "adjust travel demand programs") does not actually require the University to take action. Finally, the mitigation measure's suggestion that the University should implement the same travel demand programs that are already required by the University's Sustainability Plan and its Sustainability Policy makes no sense because the University has demonstrated it is not capable of meeting its current sustainability goals. Consequently, there is no evidence that a continuation of these policies would result in a substantial reduction in SOV use.

UC Berkeley can and must do more to mitigate the significant transportation-related impacts that will result from the LRDP. The LRDP will have extensive impacts beyond the University's borders yet the DEIR fails to adequately analyze these impacts. Specifically, the DEIR only addresses impacts to Campus Park; it ignores the LRDP's impacts to other areas within the City including but not limited to Campus Hills East, Campus Hills West, Clark Kerr, and City Environs.

The City of Berkeley constructs and maintains virtually all of the roads and pedestrian and bicycle paths in the City. City services include, but are not limited to, street and sidewalk improvement, repair, and cleaning, signalization, construction of traffic calming measures, transit planning, and maintenance of transportation infrastructure. With respect to the University, the most significant impacts to City transportation activities and expenditures are the heavy daily University-related traffic

volumes (vehicular, pedestrian, and bicycle); road wear associated with large-scale construction; and the provision of services specifically tailored to the University, such as circulation design measures, signalization, street and sidewalk maintenance near campus, and pedestrian and bicycle crossing construction and maintenance near campus.

As the student, faculty, and staff population would expand upon implementation of the LRDP, the City will require additional capital and maintenance expenditures to maintain current transportation infrastructure and service standards. CEQA and the Education Code require that UC mitigate for the impacts to the City of Berkeley transportation infrastructure from this growth. Pub. Resources Code § 21080.09(b) (“Environmental effects relating to changes in enrollment levels shall be considered for each campus ... in the environmental impact report prepared for the [LRDP].”); Education Code § 67504(b) (“The Legislature further finds and declares that the expansion of campus enrollment and facilities may negatively affect the surrounding environment. Consistent with the requirements of [CEQA], it is the intent of the Legislature that the University of California sufficiently mitigate significant off-campus impacts related to campus growth and development.”).

City data reveal four primary areas of quantifiable UC impact. These include: (1) capital costs associated with street improvements; (2) the suite of street, sidewalk, street light, and traffic signal maintenance expenditures around campus; (3) the capital cost of traffic signalization; and (4) TDM measures that serve UC and the City as a whole. To this end, the City seeks fair share contributions toward the list of projects identified in the Kittelson & Associates Report (Attachment A: Transportation Project List).

In addition to contributing its fair share to off-campus capital improvements, the revised EIR must evaluate the feasibility of the following measures:

- reducing the amount of on-campus parking;
- contributing to AC Transit and BART operations and capital improvements; and,
- installing additional electric vehicle charging equipment.

Furthermore, UC Berkeley’s Mobility Survey contained numerous suggestions as to how to improve pedestrian and biking (e.g., better lighting, better sidewalks, safer street crossings; further discounted transit passes). We request that the University examine the suggestions in the Mobility Survey and report on *specific* additional actions that can be taken to improve opportunities for pedestrian and bicyclists.

Finally, the University must identify enhanced mitigation measures to reduce VMT and analyze the feasibility of these enhanced measures in the revised DEIR. Clearly

enhanced VMT-reduction measures are available as DEIR Alternative C: Reduced Vehicle Miles Traveled calls for UC to incorporate additional project features to reduce VMT. *See* DEIR at 6-8; 6-44.

(e) The DEIR Fails to Adequately Analyze and Mitigate Impacts Relating to the Project’s Conflict with CEQA Guidelines § 15064.3 (Impact Tran-2).

The DEIR concludes that the LRDP would result in a net reduction in student commuters and that all UC Berkeley’s VMT metrics fall below thresholds of significance. However, the DEIR lacks evidentiary support for this conclusion.

As an initial matter, as discussed above, the DEIR fails to calculate how many trips (all modes) would be added to the transportation network. As the Kittelson Report explains, the DEIR Appendix M, Transportation Data, does not provide travel demand estimates, traffic volumes, mode share data, travel survey data, or calculations to support the impact analysis or conclusions. Kittelson Report at 11. Without these basic data, it is not possible to verify the accuracy of the DEIR’s VMT estimates.

In addition, the DEIR likely underestimates the number of commuters.⁹ The University contemplates 8.1 million square feet of net new growth and development in 2036-37, yet the DEIR forecasts that the commuting population would increase by just 449 commuters. Historically, UC Berkeley has not developed sufficient housing for its students, faculty, and staff (e.g., the current (2020) LRDP estimated a substantial increase in residential development yet this development never materialized). This precise scenario is likely to play out in the future as the DEIR admits that the proposed LRDP includes no specific commitment to develop an adequate amount of housing to meet the University’s anticipated growth. DEIR at 3.1. If the University does not achieve the target residential development contemplated by the LRDP, students will commute to campus at far greater levels than the DEIR anticipates. The revised EIR must reevaluate its VMT analysis based on realistic on-campus residential development projections.

(f) The DEIR Fails to Adequately Analyze and Mitigate Impacts Relating to the Project’s Potential to Increase Traffic Hazards (Impact Tran-3).

Given the increase in growth contemplated by the LRDP and the roadway, bicycle, and pedestrian changes on- and off-campus, the Project has the potential to increase

⁹ The DEIR also does not define “commuter.”

transportation-related hazards and the number of people exposed to such hazards. Rather than comprehensively analyze these potential hazards, the DEIR focuses primarily on how new buildings might create wind hazards. There are numerous flaws with the DEIR's analysis.

First, the DEIR fails to include thresholds for determining the significance of impacts. One of the first steps in any analysis of an environmental impact is to select a threshold of significance. Here, the DEIR contains no thresholds of significance for the Project's transportation hazards impacts. This flaw leads to a cascade of other failures: without a threshold, the DEIR cannot do its job. For example, although the Project would result in an unspecified increase in automobile trips, the document provides no standard by which to evaluate how these trips might impact pedestrian and bicycle safety in the study area. The revised DEIR must include thresholds of significance for these types of impacts and evaluate the Project's impacts against these thresholds.

Second, the LRDP includes campus-wide roadway, bicycle, and pedestrian network changes. DEIR at 5.15-46, 47, 56. The Project also includes a number of streetscape changes including installation of a cycletrack on Oxford Street, provision of a vehicle driveway on Walnut Street, and provision of freight loading spaces on Berkeley Way. Housing Project #2 proposes a number of streetscape changes including installation of a sidewalk extension and an uncontrolled midblock crossing on Haste Street. DEIR at 3-17, 3-44, 3-60. Additionally, modifications would be made at several access points near the Campus Park edge to restrict most private vehicle access to the Campus Park interior. *Id.*

These are substantive changes to the University study area, yet the DEIR fails to evaluate how these access modifications and streetscape changes could create hazardous conditions for people walking, biking, driving, or taking transit. Instead it looks to "industry standard roadway design and safety guidelines" and the implementation of vague CBPs related to construction activities to conclude impacts would be less than significant. The revised DEIR must analyze the potential hazards associated with all of these modifications and identify feasible mitigation measures for any impacts that are determined to be significant.

Third, rather than analyze how construction of Housing Projects #1 and #2 could potentially impact automobile drivers, bicyclists, and pedestrians, the DEIR looks to CBP Tran-6 that calls for a contractor to eventually prepare a Construction Traffic Management Plan. This Plan would purportedly reduce construction-period impacts on circulation and parking and will address job-site access, vehicle circulation, bicycle and pedestrian safety. DEIR at 5.15-57. This approach is inconsistent with CEQA. Courts

have allowed deferral of impact analysis and mitigation only in very limited circumstances. “[F]or kinds of impacts for which mitigation is known to be feasible, but where practical considerations prohibit devising such measures early in the planning process . . . , the agency can commit itself to eventually devising measures that will satisfy specific performance criteria articulated at the time of project approval.” *Sacramento Old City Assn. v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011, 1028-29. Here, the DEIR does not explain why the University could not conduct this analysis of impacts from the construction of Housing Projects #1 and #2 now. Nor does the DEIR identify specific performance criteria that would ensure that construction does not adversely impact people walking, biking, driving, or taking transit.

Had the DEIR conducted the required analysis of construction-related impacts, it likely would have determined that such impacts would be significant. Consequently, the DEIR should have identified feasible mitigation for these impacts. At a minimum, the revised DEIR should include the following measures:

- UC Berkeley shall develop and maintain a public information website re: Project status, scheduled lane closures, and other construction-related traffic impacts.
- UC Berkeley shall cooperate with City staff to provide residents with advance notice of construction-related lane closures and traffic impacts.
- UC Berkeley shall at a minimum meet City standards which call for maintenance of safe pedestrian and bike routes, as well as access to transit and businesses.
- UC Berkeley shall evaluate and recommend to City staff potential modification of timing of traffic signals to address construction-related traffic impacts.
- UC Berkeley shall undertake a process, in coordination with the City, to mitigate haul route pavement damage incurred as a result of the Project. This process would involve development of a baseline Pavement Condition Index (“PCI”) for key roadways identified by City prior to initiation of construction work. Following completion of the Project, the PCI evaluation process would be repeated, and UC Berkeley would commit to undertaking any necessary pavement repairs, repaving, or roadway reconstruction, to the satisfaction of the City.
- UC Berkeley shall adopt the Caltrans Temporary Pedestrian Access Routes Handbook (2020) and utilize it for construction projects in the public right of way. *See* City of Berkeley Pedestrian Plan, Table 8. All temporary traffic controls are subject to approval and inspection by City staff.

(g) The DEIR Fails to Adequately Analyze and Mitigate Impacts Relating to Emergency Access (Impact Tran-4).

The DEIR states that the emergency access analysis was conducted to determine if the LRDP has the potential to impact emergency vehicle access by creating conditions that would substantially affect the ability of drivers to yield the right-of-way to emergency vehicles or preclude the ability of emergency vehicles to access streets within the EIR Study Area. DEIR at 5.15-62. Despite this statement, the DEIR does not actually conduct any analysis. The DEIR does acknowledge that “additional vehicles associated with implementation of the proposed LRDP Update could increase delays for emergency response vehicles during peak commute hours, especially in the immediate vicinity of the Campus Park” but again there is no actual analysis. DEIR at 5.15-62. Instead the DEIR simply refers to a City of Berkeley policy calling for the City to maintain adequate emergency response times. *Id.*

In addition, the DEIR describes how modifications would be made at several access points near the Campus Park edge to restrict most private vehicle access to the Campus Park interior (at 3-17), yet the DEIR fails to specify what these changes to vehicle access are, where they would occur, and how they would affect emergency vehicle access. Moreover, the DEIR claims that the proposed transportation network would not conflict with fire access routes. Yet here too, the DEIR fails to analyze the potential for these vehicle restrictions to impede or delay emergency access. Finally, the DEIR errs because it fails to analyze how traffic from the LRDP would affect the ability of emergency responders to maneuver through congested intersections and roadways.

The revised DEIR must conduct a thorough analysis of the Project’s emergency response impacts and identify feasible mitigation if these impacts are determined to be significant.

(h) The DEIR Fails to Adequately Analyze and Mitigate the Project’s Cumulative Transportation Impacts (Impact Tran-5).

The DEIR inappropriately focuses its cumulative analysis on VMT and wind hazards (at 5.15-63) and makes no attempt to address how the Project, together with other projects in the study area, would affect roadway hazards and emergency access. The DEIR identifies several projects in the City of Berkeley (*see* Table 5-2 – Pending Projects in the City of Berkeley, DEIR at 5-11); it should have taken these projects into account and analyzed the effect that all of this development would have on roadway hazards and emergency access. Once this analysis is conducted, the revised DEIR must identify mitigation if the impacts are determined to be significant.

6. The DEIR Fails to Adequately Analyze and Mitigate the Project's Air Quality Impacts.

Along with Baseline Environmental, we have reviewed the DEIR's air quality impact analysis. We have determined that the DEIR fails to adequately evaluate the air quality impacts that would result from the LRDP and Housing Projects #1 and #2. In addition, the DEIR fails to provide feasible mitigation capable of reducing the Project's significant air quality impacts. A summary of our comments follows. We direct the University to Baseline Environmental's full Report for a detailed accounting of the deficiencies in the DEIR's air quality chapter; this Report is Exhibit B to this letter.

(a) The DEIR's Analysis of the Project's Inconsistency with the 2017 Bay Area Clean Air Plan Is Deficient (Impact Air-1).

The DEIR determines that the LRDP would conflict with the 2017 Bay Area Clean Air Plan ("2017 CAP") because the LRDP includes additional population and faculty/staff growth through 2036. DEIR at 5.2-41, 5.2-45. The DEIR concludes that this conflict constitutes a significant impact. *Id.* While we agree that the DEIR arrives at the correct conclusion, it fails to conduct the thorough impact analysis CEQA requires.

As an initial matter, although the DEIR concludes that the LRDP would conflict with the 2017 CAP and that this impact would be significant, it includes several sub-analyses under the impact heading Air-1 and determines for most of these sub-analyses that the impacts are less than significant.¹⁰ The contradictory conclusions subsumed within the Air-1 impact analysis are confusing and therefore undermine the integrity of the DEIR. Moreover, in each instance in which the DEIR determines that impacts are less than significant, the DEIR lacks evidentiary support for its conclusion.

For example, under the heading "2017 Clean Air Plan Control Measures," the DEIR determines that the LRDP would not hinder the Bay Area Air Quality Management District ("BAAQMD") from implementing the control measures contained in the 2017 CAP and that the LRDP's impacts would be less than significant. DEIR at 5.2-42. The

¹⁰ The sub-analyses are "reduce population exposure and protect public health" (less than significant impact); "reduce GHG emissions and protect the climate" (less than significant impact); "2017 Clean Air Plan control measures" (less than significant impact); and "regional growth projections for VMT and population" (less than significant impact). DEIR at 5.2-41 through 5.2-44.

DEIR, however, does not conduct the *full* analysis required by the BAAQMD. To be consistent with the 2017 CAP, a lead agency must demonstrate that a project includes all air quality control measures that can feasibly be incorporated into the project design or applied as mitigation; it is not sufficient to not hinder the BAAQMD from implementing the measures.¹¹ The DEIR makes no attempt to address whether the LRDP would implement the 85 control measures included in the 2017 CAP. Nor does it explain why the incorporation of such measures would be infeasible.

Moreover, the DEIR does not adequately evaluate whether the LRDP would hinder attainment of the 2017 CAP's control measures. Here, the DEIR superficially discusses general categories of these measures and contains vague references to the relationship between the LRDP and the 2017 CAP's measures; but it does not include the detailed analysis CEQA requires. *See, e.g.*, DEIR at 5.2-42 (“[t]he UC Berkeley 2020 Sustainability Plan identifies several transportation measures that would ensure consistency of the proposed LRDP Update with the transportation control measures of the 2017 Clean Air Plan.”). To be adequate under CEQA, the DEIR must actually identify the specific control measures and explain how the LRDP would or would not hinder attainment of each applicable measure. In the absence of these analyses, the document lacks support for its conclusion that the LRDP would not interfere with the ability of the San Francisco Bay Area to achieve attainment of the California and National Ambient Air Quality Standards.

Second, under the subheading “regional growth projections for VMT and population,” a less than significant determination would require that the LRDP's VMT increase by less than or equal to the projected population increase. DEIR at 5.2-44. The DEIR determines that overall VMT per person (students and faculty and staff) is anticipated to decrease by just 1% compared to existing conditions. DEIR at 5.2-44. Based on this reduction, the DEIR concludes that impacts would be less than significant. As we have explained, the DEIR likely underestimates the amount of commuting (and therefore also underestimates its forecast VMT) because it may have underestimated the amount of on-campus residential development that would be built. If, in fact, VMT is underestimated, the LRDP's VMT could exceed its projected population increase which would, according to the BAAQMD, constitute a significant impact.

¹¹ BAAQMD Guidelines at 9-2, 9-3' available at: https://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf?la=en; accessed April 13, 2021.

Third, under the heading “reduce population exposure and protect public health,” the DEIR relies on the analysis conducted under the Impact Air-3 (project would expose sensitive receptors to substantial pollutant concentrations) to conclude that the LRDP would not expose sensitive receptors to a significant health risk and therefore would not be inconsistent with the 2017 CAP. DEIR at 5.2-41. Yet, as we explain below, the DEIR’s health risk assessment (“HRA”) and cumulative HRA are flawed and likely underestimate the health effects from the LRDP and Housing Projects #1 and #2. Consequently, if the LRDP and the housing projects result in significant health effects, the LRDP would be inconsistent with the 2017 CAP.

The DEIR also fails to identify feasible and effective measures to mitigate for the LRDP’s inconsistency with the 2017 CAP. As discussed, the DEIR determines that the growth in student population would be inconsistent with the 2017 CAP and that this impact would be significant. DEIR at 5.2-45. The DEIR identifies one Mitigation Measure—POP-1—which calls for UC Berkeley to provide its enrollment and housing data to the City of Berkeley and the Association of Bay Area Governments (ABAG). DEIR at 5.12-23. The DEIR concludes that even with Measure POP-1 the Project’s impact would be significant and unavoidable. DEIR at 5.2-45. A measure calling for UC Berkeley to provide data to other agencies would do nothing to ensure that implementation of the LRDP would not interfere with attainment of the California and National Ambient Air Quality Standards. UC Berkeley can and must do more. A lead agency cannot simply conclude that an impact is significant and unavoidable and move on. A conclusion of residual significance does not excuse the agency from (1) performing a thorough evaluation and description of the impact and its severity before and after mitigation (which, as discussed above, was not done here), and (2) proposing all feasible mitigation to “substantially lessen the significant environmental effect.” CEQA Guidelines § 15091(a)(1); *see also id.* § 15126.2(c) (requiring an EIR to discuss “any significant impacts, including those which can be mitigated but not reduced to a level of insignificance”).

(b) The DEIR Fails to Adequately Analyze and Mitigate Impacts Relating to the Project’s Potential to Result in a Cumulatively Considerable Net Increase of Criteria Pollutants (Impact Air-2).

(i) Construction-Related Impacts

The DEIR determines that construction activities associated with the LRDP could generate fugitive dust and construction equipment exhaust that would exceed the BAAQMD significance thresholds. DEIR at 5.2-48. The DEIR identifies mitigation for

this impact. Mitigation measure Air-2.1 calls for UC Berkeley to use equipment that meets the USEPA's Tier 4 *Interim* emission standards. *Id.* As the Baseline Report explains, this mitigation measure is inadequate because there is a significant difference between the nitrogen oxide ("NOx") emission standards for Tier 4 Interim and Tier 4 Final engines. Baseline explains that based on the emissions rates from the California Air Resources Board's ("CARB's") Off-Road Emissions Inventory Model (OFFROAD2011), the emission rates for NOx from Tier 4 Final engines are about 80 to 88 percent lower than Tier 4 Interim engines for off-road equipment ranging between 75 and 750 horsepower. Baseline Report at 5. Baseline also makes clear that off-road diesel equipment with Tier 4 Final engines should be readily available in the Bay Area. Therefore, requiring the use of Tier 4 Final or higher engines (instead of Tier 4 Interim engines) during implementation of the LRDP is a feasible mitigation measure that could maximize future reductions in criteria air pollutant emissions during construction. UC Berkeley should revise Mitigation Measure Air-2.1 to require Tier 4 Final or higher engines.

In addition, as Baseline explains, Mitigation Measure AIR-2.1's requirement that any emissions controls used on Tier 3 off-road diesel equipment achieve emissions reductions equivalent to the Tier 4 Interim emissions standards is not technically feasible. Tier 4 Interim emission standards for respirable particulate matter (PM₁₀) are about 91 to 96 percent lower than the Tier 3 emission standards for off-road diesel equipment ranging between 75 and 750 horsepower. The most effective Verified Diesel Emissions Control Strategies available for controlling PM₁₀ emissions from most Tier 3 off-road diesel equipment cannot achieve reductions that would be equivalent to the Tier 4 Interim emission standards. Baseline Report at 7, 8.

(ii) Operational Impacts

The DEIR's analysis of operational air quality impacts is flawed in numerous respects. First, the DEIR evaluates the Project's potential to result in a cumulatively considerable net increase in emissions by identifying emissions in 2036-2037 and comparing them to a business as usual ("BAU") forecast. We question the validity of this approach. While the BAAQMD does recommend subtracting existing emissions from the emissions estimated from a new land use, this methodology is only appropriate if a project involves the removal of existing emission sources. BAAQMD Guidelines at 4-2. The LRDP would not remove sources of emissions. The revised EIR should treat the emissions from the various LRDP sectors (*see* Table 5.2-12 (DEIR at 5.2-50)) as new emissions and compare these new emissions to the BAAQMD significance thresholds. Moreover, to the extent the DEIR uses BAU as a future conditions baseline, that is only appropriate if substantial evidence in the record shows that using existing conditions

would be misleading or without informative value to decision-makers and the public. CEQA Guidelines § 15125(a)(2). “Use of projected future conditions as the only baseline must be supported by reliable projections based on substantial evidence in the record.” *Id.* No such projections or evidence are presented in the DEIR.

Second, as the Baseline Report explains, the DEIR relies on a questionable methodology for calculating future emissions for the cogeneration plant. Because the cogeneration plant is the predominant source of criteria air pollutant emissions in the LRDP study area, an accurate methodology for estimating the 2036 criteria air pollutant emissions is critical for evaluating the significance of potential air quality impacts. The DEIR estimates emissions based on a BAU option that assumes continued operation of the cogeneration plant with maintenance and equipment replacement. DEIR at 5.2-33. Baseline explains that it would be reasonable to conclude that the criteria air pollutants emissions estimated for the existing year (2018) would be the same as the BAU option for 2036; however the DEIR shows that the criteria air pollutant emissions from the cogeneration plant would be about 10 percent lower in 2036 than in 2018. *See* Table 5.2-12 (DEIR at 5.2-50). Since there are no measures in the DEIR that would require maintenance and replacement of the existing cogeneration plant under the BAU option, it would be reasonable to assume that the efficiency of the cogeneration plant would deteriorate with time and require more natural gas use, which would increase the criteria air pollutant emissions above baseline conditions. As a result, the unsubstantiated estimates of criteria air pollutants from the cogeneration plant in 2036 introduces a significant level of uncertainty to the air quality analysis. Baseline Report at 9.

Third, the DEIR determines there would be a nominal increase in NO_x and PM_{2.5} emissions compared to BAU generated by commuting students, faculty and staff. DEIR Table 5.2-12 (DEIR at 5.2-50). As we have explained, if the DEIR underestimates VMT, it also underestimates the increase in NO_x and PM_{2.5} as these pollutants are by-products of fuel combustion, (i.e., motor vehicle usage) DEIR at 5.2-2, 5.2-3.

Fourth, the DEIR fails to discuss the specific human health effects that would occur as a result of the Project’s significant air pollutant emissions. CEQA requires such an analysis. *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 517-22. The DEIR determines that the Project’s ROG emissions would exceed the BAAQMD thresholds of significance and that these emissions would contribute to the ozone nonattainment designations of the San Francisco Bay Area Air Basin. DEIR at 5.2-51. Accordingly, the DEIR should have related the Project’s emissions to likely health consequences so that the public is apprised of these impacts and so decision-makers are able to make informed decisions regarding the costs and benefits of the Project. However, the DEIR declines to

conduct an analysis of the health outcomes associated with these emissions. DEIR at 5.2-52.

The DEIR offers several reasons why its authors did not conduct the necessary analysis, including that BAAQMD has not provided methodology to conduct the analysis and because such analyses can be complex. There is nothing in CEQA that relieves a lead agency from its obligation to determine significant effects simply because the impact is related to a rapidly-evolving area of science and policy. Rather, the DEIR preparer must “use its best effort to find out and disclose all that it reasonably can” regarding the health consequences of a project’s significant air pollutant emissions. *Citizens to Preserve the Ojai v. County of Ventura* (1986) 176 Cal.App.3d 421, 431 (quoting CEQA Guidelines § 15144); see also *Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 399 (“We find no authority that exempts an agency from complying with the law, environmental or otherwise, merely because the agency’s task may be difficult.”).

Given the magnitude of the reactive organic gas (“ROG”) emissions associated with the LRDP, as well as the fact that the Bay Area is in non-attainment of the ozone standards (Table 5.2-3 (DEIR at 5.2-17)), it is hard to imagine a project more deserving of photochemical grid modeling than this one. The EIR must be revised to relate the expected adverse air quality impacts (pollutant concentrations) to the Project’s likely health consequences.

(c) The DEIR Fails to Adequately Analyze and Mitigate Impacts Relating to the Project’s Potential to Expose Sensitive Receptors to Substantial Pollutant Concentrations (Impact Air-3).

(i) LRDP Construction Impacts

The DEIR acknowledges that future construction within the scope of the LRDP would elevate concentrations of toxic air contaminants (TACs) and diesel-PM_{2.5} in the vicinity of sensitive land uses. The DEIR makes no attempt to estimate these emissions or the potential health effects of these emissions. Instead, the DEIR states that potential future projects would be subject to “basic control measures.” DEIR at 5.2-60. The DEIR also looks to Mitigation Measure Air-3 explaining that it would reduce emissions but not to a less than significant level. DEIR at 5.2-60, 5.2-61. There are several flaws in the DEIR’s approach.

First, the DEIR does not describe the “basic control measures” that would be implemented to reduce emissions. As the Baseline Report explains, the BAAQMD’s basic control measures described under CBP AIR-2 would reduce fugitive dust emissions, but these measures would not reduce diesel-PM_{2.5} emissions. Baseline Report at 9. Moreover, the DEIR mentions the use of diesel particulate filters and electric-powered equipment but it never explains how or when such actions would be employed. DEIR at 5.2-60.

Second, as regards Mitigation Measure Air-3, the DEIR calls for HRAs to be prepared but only under very specific circumstances (e.g., an HRA would be prepared only on sites that are one acre or greater, within 1,000 feet of sensitive land uses, and for projects that would be under construction for more than 12 months). The DEIR attributes these specific criteria to the HRA Guidance Manual prepared by the California Office of Environmental Health Hazard Assessment (“OEHHA”). DEIR at 5.2-60. Yet, as the Baseline Report states, the OEHHA Guidance does not provide any criteria as to when to prepare a construction HRA. Moreover, the Baseline Report explains that many compact infill development projects include mid- to high-rise buildings that are less than one acre in size, but still result in construction emissions that can cause significant health risks. Baseline Report at 11.

Third, notwithstanding the limited circumstances under which the DEIR asserts the University would have to prepare an HRA, Mitigation Measure Air-3 identifies thresholds for when the University would be required to implement feasible control measures (e.g., if the HRA determines that the incremental cancer risk exceeds 10 in a million). DEIR at 5.2-60, 5.2-61. Yet, these thresholds are not sufficient to protect public health. Baseline Report at 11, 12. As the Baseline Report explains, the mitigation measure does not require that PM_{2.5} concentrations would need to be reduced below the BAAQMD threshold, only the cancer risk and hazard index. Baseline Report at 12. In addition, in an egregious oversight, Measure AIR-3 does not require an evaluation of a project’s cumulative contribution to health risks based on the BAAQMD’s cumulative thresholds. *Id.* As a result, Mitigation Measure AIR-3 fails to reduce health risks to the maximum extent feasible during construction of the LRDP.

(ii) LRDP Operational Impacts

The HRA prepared in connection with the LRDP identifies the cancer risk from operational emissions of TACs and determines that these risks are less than significant. DEIR at 5.2-61 through 5.2-64. However, this HRA evaluated health risks only to existing sensitive receptors located off-campus. Baseline Report at 12. There are existing sensitive receptors located on the UC Berkeley campus, such as childcare facilities and

family housing, that could be exposed to future sources of TACs during operation of the proposed LRDP Update. *Id.* The revised DEIR must undertake a new HRA and this HRA must include existing sensitive receptors located on-campus.

(iii) Construction Health Risks from Housing Projects #1 and #2

The methodology used to calculate health risk for the LRDP's Housing Projects is flawed. As the Baseline Report explains, the average ambient concentration that a sensitive receptor would be exposed to during construction was diluted to account for the calendar months of the year when no construction would be occurring. There is no justification provided for this approach and it is not supported by OEHHA Guidance. Baseline Report at 13. Had the HRA employed the correct methodology, a discussed below, the cumulative-level impact would be potentially significant without mitigation.

(d) The DEIR Fails to Adequately Analyze and Mitigate the Project's Cumulative Health Risks (Impact Air-5).

The DEIR's cumulative HRA was not conducted in accordance with BAAQMD Guidance and is flawed for the following reasons. First, the cumulative HRA included health risks from stationary sources located at the Lawrence Berkeley National Laboratory; however, it did not include any other existing stationary sources within 1,000 feet of the LRDP study area. Baseline Report at 14, 15. According to the DEIR there are 16 other existing stationary sources of TACs and/or PM_{2.5} emissions located within 1,000 feet of the EIR Study Area that are not affiliated with UC Berkeley. Figure 5.2-2 (DEIR p.5.2-21). The list of sources that were omitted from the DEIR's HRA are shown on Table 5 in Baseline's Report at p. 15.

Second, the HRA omitted the City of Berkeley's pending projects shown in DEIR Table 5-2 (DEIR at 5-11). As the Baseline Report explains, in accordance with the California Building Code, these projects would require an emergency generator to support elevator operations. It would be reasonable to assume that at least one diesel emergency generator would be maintained at each of these developments that would be a source of future TAC and PM_{2.5} emissions. Baseline Report at 16.

Third, although the cumulative HRA included health risks from roadways with more than 30,000 average daily trips ("ADT"), it did not include health risks from roadways with more than 10,000 ADT as the BAAQMD Guidelines recommends. Baseline Report at 16. According to the DEIR, there are 17 roadway segments with more

than 10,000 average daily trips within 1,000 feet of the LRDP study area (Table 7) that would be sources of TAC and PM_{2.5} emissions. *See* DEIR at 5.11-16, 5.11-17.

Fourth, the cumulative HRA assumes the implementation of Mitigation Measure Air-2, which as discussed above, is flawed largely because it would allow Tier 4 Interim rather than Tier 4 Final emission standards. The HRA should be recalculated to show the unmitigated health risk.

Fifth, although the cumulative HRA included the emissions from construction of Housing Projects #1 and #2, it did not include emissions from the other construction projects that would occur with implementation of the proposed LRDP Update. Baseline Report at 17.

Sixth, because the DEIR concludes that the cumulative health risk would be less than significant it does not identify any mitigation for cumulative health risks. The revised DEIR must identify feasible mitigation that would require future projects implemented under the LRDP to evaluate and reduce (if necessary) construction health risks below the BAAQMD's cumulative thresholds of significance.

As the Baseline Report explains, based on a screening-level cumulative analysis of mobile and stationary sources in the Bay Area, the BAAQMD has mapped localized areas of elevated air pollution that exceed an excess cancer risk of 100 in a million or PM_{2.5} concentrations of 0.8 micrograms per cubic meter, or are within 500 feet of a freeway, 175 feet of a roadway with more than 30,000 AADT, or 500 feet of a ferry terminal. Baseline Report at 17. Within these localized areas of elevated air pollution, the BAAQMD encourages local governments to implement best practices to reduce exposure to and emissions from local sources of air pollutants. As shown on Figure 2 in the Baseline Report, the purple shaded areas show elevated levels of TAC and/or PM_{2.5} pollution currently extend across a substantial portion of the LRDP study area. The BAAQMD's screening-level cumulative analysis of health risks in the vicinity of the EIR Study Area is significantly different than the findings presented in the DEIR, which is likely due to all the sources of TACs and PM_{2.5} described above that have been excluded from the cumulative analysis.

In conclusion, the existing cumulative HRA is incomplete because it was not performed in accordance with BAAQMD guidance, and the DEIR provides no assurance that future construction projects under the LRDP Update would not pose a cumulatively significant health risk to sensitive receptors.

7. The DEIR Fails to Adequately Analyze and Mitigate the Project's Climate Change Impacts.

Along with Baseline Environmental, we have reviewed the DEIR's greenhouse gas ("GHG") impact analysis. We have determined that the DEIR fails to adequately estimate the Project's GHG emissions from the LRDP and Housing Projects #1 and #2. In addition, it fails to adequately evaluate the Project's consistency with plans and policies intended to reduce GHG emissions. A summary of our comments follows. We direct the University to Baseline Environmental's full Report for a detailed accounting of the deficiencies in the DEIR's climate change chapter; this Report is Exhibit B to this letter.

(a) Legal Standards

Like all significance determinations under CEQA, "[t]he determination of the significance of GHG emissions calls for a careful judgment by the lead agency." CEQA Guidelines § 15064.4(a); *see also id.*, § 15064(b) (significance determination "calls for careful judgment . . . based to the extent possible on scientific and factual data"). Where, as here, an agency uses a model or methodology to quantify project emissions, it must support its chosen methodology with substantial evidence, and must "explain the limitations of the particular model or methodology selected for use." *Id.*, § 15064.4(c). An EIR's failure to disclose the information CEQA requires, in a manner that deprives the public and decision-makers with a "full understanding of the environmental issues" raised by a project, is legal error. *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 942. In addition, in assessing GHG emissions, an EIR must "reasonably evaluate [the] downstream impacts" of long-range projects that remain in the environment for many years, exerting an influence on travel behavior and emissions. *Cleveland National Forest Foundation v. San Diego Assn. of Govs.* (2017) 3 Cal.5th 497, 513. The LRDP—which will have profound effects for decades to come—requires a comprehensive and honest analysis.

(b) The DEIR's Estimate of Project-Related Emissions Lacks Transparency (Impact GHG-1).

The DEIR concludes that implementation of the LRDP would not contribute a significant amount of GHG emissions and that the Project's impact on climate change would be less than significant. DEIR at 5.7-34. Yet the DEIR fails to provide the information necessary to judge whether modeled emissions estimates are correct. A discussion of the DEIR's deficiencies follows.

First, the DEIR assumes that implementation of the UC Sustainable Practices Policy, UC Berkeley's 2020 Sustainability Plan, and Campus Energy Plan would result in GHG emission reductions. DEIR at 5.7-34. However, it is not possible to verify the accuracy of the emission estimates because the DEIR fails to: (1) identify the specific measures from the aforementioned plans and policy; (2) provide the required assurance that these measures would achieve the emissions reductions assumed by the DEIR; and (3) identify the specific emission reduction attributable to each measure within the plans and policy.

Based on the limited information in the DEIR, it is not possible to determine how the DEIR preparers arrived at the various 2036 emission scenarios (*see* Table 5.7-9 (DEIR at 5.7-35)). The DEIR contains one set of 2036 GHG emission estimates for the 2036 Adjusted BAU Forecast Scenario and a second set of emission estimates entitled "2036 Sustainability Scenario." Both scenarios include varying amount of assumed emissions reductions from implementation of the measures contained within the UC Sustainable Practices Policy, UC Berkeley's 2020 Sustainability Plan, and Campus Energy Plan. Yet because the DEIR does not identify the specific measures or attribute specific emission reductions to those measures, the estimates contained in DEIR Table 5.7-9 are essentially meaningless. This complete lack of transparency deprives the public and decision-makers of information CEQA requires—information necessary to understand and comment meaningfully on the Project's impacts.

Second, the DEIR's treatment of emissions from the University's cogeneration plant is deficient. The DEIR states that 2036 emissions for the cogeneration plant fuel use are based on the 2020 UC Berkeley Campus Energy Plan BAU design option. Table 5.7-8 (DEIR at 5.7-30). The DEIR does not provide sufficient information about how emissions associated with the cogeneration plant were calculated including the BAU scenario. As the Baseline Report explains, because the cogeneration plant is the predominant source of GHG emissions in the LRDP study area, describing the methodology for estimating the 2036 GHG emissions is critical for evaluating the significance of the LRDP's GHG impacts. Baseline Report at 25. The DEIR's Project Description identifies three options for the cogeneration system (DEIR at 3-21, 3-2), yet the DEIR does not explain the relationship between the BAU design option and these three options (i.e., how much GHG (and criteria air pollutants) would be generated from the cogeneration system under these various options?).

As the Baseline Report explains, the BAU option assumes continued operation of the cogeneration plant with maintenance and equipment replacement. DEIR at 5.7-32. GHG emissions from the BAU option for the cogeneration plant in 2036 (111,393 metric tons of carbon dioxide equivalents (MTCO₂e)) would be about 10 percent lower than in

2018 (123,888 MTCO₂e). Table 5.7-9 (DEIR at 5.7-35). However, according to Table 4 (p.17) of the 2020 Campus Energy Plan, operation of the BAU option for the cogeneration plant in 2036 would generate 141,000 MTCO₂e, which is about 14 percent higher than the 2018 emissions. Baseline Report at 20. This would result in a net increase in overall GHG emissions under the LRDP, which the DEIR should have determined to be a potentially significant impact based on the no net increase threshold.

Further complicating matters, the DEIR's treatment of the Hybrid Nodal Recovery system lacks sufficient detail to verify the accuracy of the cogeneration plants' forecasted emissions. As the Baseline Report explains, according to footnote "a" in DEIR Table 5.7-9, the 2036 Sustainability Scenario assumes the cogeneration plant will be converted to a Hybrid Nodal Recovery system. Based on the 2020 Campus Energy Plan, operation of the Hybrid Nodal Recovery system in 2036 would generate 21,000 MTCO₂e, which is about 26 percent higher than the value reported in DEIR Table 5.7-9 (16,667 MTCO₂e). There is no apparent explanation or evidence in the 2020 Campus Energy Plan or the DEIR for this deviation. Moreover the EIR must explain how the Hybrid Nodal Heat Recovery option would meet the UC Berkeley carbon neutrality initiatives while continuing to use natural gas.

Third, if the intent of including a 2036 Sustainability Scenario shown in Table 5.7-9 is to conservatively show the unmitigated GHG reductions that will be required and enforced through the UC Sustainable Practices Policy and UC Berkeley Sustainability Plan, then the level of analysis shown in Table 5.7-9 and the absence of a supporting discussion is severely flawed. Most notably, there is no quantification or discussion of potential GHG reductions that could be achieved through specific on-site measures identified in the UC Sustainable Practices Policy and UC Berkeley Sustainability Plan. For example, the DEIR indicates that some of the new building projects will be prohibited from using natural gas for space and water heating, laundry, and cooking. The GHG emission reduction from these features should have been quantified in the 2036 Sustainability Scenario. DEIR at 5.7-32, 5.7-33. Similarly, the prohibition of natural gas for space and water heaters would result in an increase in electric heaters that use heat pumps with refrigerants; consequently, the emission reductions from the use of refrigerants should also have been quantified and shown in Table 5.7-9. This level of analysis of unmitigated GHG emissions forecast under the LRDP is missing from Table 5.7-9 and the GHG chapter in general.

Fourth, the DEIR relies on UC Berkeley achieving a carbon neutral fleet by the end of calendar year 2025 and that zero emissions/hybrid vehicles will account for at least 50 percent of all new light-duty vehicle acquisitions by the same year. DEIR at 5.7-32. Given that the 2036 forecast includes use of electric vehicles for the campus

passenger fleet to reflect carbon-neutral fleet emissions, the DEIR must disclose details about the University's current status as regards the percentage of zero emissions/hybrid vehicles (i.e., how close is the University to achieving its 2025 goals?).

Fifth, it is also important to reiterate that the DEIR may have underestimated VMT from the LRDP. If this is the case, the DEIR further underestimated the Project's potential GHG emissions.

(c) The DEIR Lacks the Evidentiary Basis to Conclude That the Project Would Not Conflict with Plans, Policies and Regulations Adopted for the Purpose of Reducing GHG Emissions (Impact GHG-2).

(i) 2017 Climate Change Scoping Plan

The DEIR lacks evidentiary support for the conclusion that the LRDP would not conflict with the 2017 Climate Change Scoping Plan. As an initial matter, the DEIR takes the position that the 2017 Scoping Plan is not applicable to UC Berkeley because it does not require the University to adopt policies, programs, or regulations to reduce GHG emissions. DEIR at 5.7-36. The DEIR further asserts that growth at UC Berkeley is guided by policies and initiatives including the UC Sustainable Practices Policy and UC Berkeley Sustainability Plan, including the Carbon Neutrality Initiative, and that the Policy, Plan and Initiative aligns the reductions at the UC system with SB 32 and long-term goals identified in the 2017 Scoping Plan. DEIR at 5.7-36, 5.7-38. The fact that UC Berkeley has such plans, policies and initiatives, as admirable as they are, is not sufficient to demonstrate that the LRDP would achieve the emission limit of 260 MMTCO₂e for the year 2030.

What the University has done is set forth a significance threshold calling for an analysis of the Project's potential to conflict with plans adopted for the purpose of reducing GHG emissions, and then simply ignored the threshold without further analysis. The CEQA Guidelines instruct a lead agency to determine "[t]he extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions." CEQA Guidelines § 15064.4 (b)(3). The DEIR failed to do so here. Finally, common sense dictates that individual projects—and especially large scale projects such as the LRDP—must be held accountable for their roles in achieving or interfering with GHG reduction goals.

(ii) Executive Order B-55-18

The DEIR does address the LRDP's consistency with Executive Order B-55-18 (achieve carbon neutrality no later than 2045), and concedes that the LRDP's total 2036 BAU emissions are projected to exceed the emission targets established in Executive Order B-55-18 (DEIR at 5.7-40). Despite this conclusion, the DEIR inexplicably fails to identify this projected exceedance as a significant impact.

Notwithstanding its failure to recognize this impact as significant, the DEIR sets forth a mitigation measure to mitigate that impact. Mitigation Measure GHG-2 contains two options to reduce GHG emissions: Option 1 calls for UC Berkeley to implement on-site GHG reduction actions specified in the UC Sustainable policies and plans while Option 2 calls for calls for UC Berkeley to offset its GHG emissions. DEIR at 5.7-40.

As regards Option 1, the DEIR errs because it fails to identify the specific on-site actions that would ensure that the University achieves carbon neutrality by 2045 let alone provide evidentiary support that such actions would effectively reduce emissions. When a lead agency relies on mitigation measures to find that project impacts will be reduced to a level of insignificance, there must be substantial evidence in the record demonstrating that the measures are feasible and will be effective. *Sacramento Old City Assn.*, 229 Cal.App.3d at 1027; *Kings County Farm Bureau*, 221 Cal.App.3d at 726-29. As the Baseline Report explains, the DEIR discusses options for replacing and upgrading the cogeneration plant, which is the predominant source of GHG emissions at the University, but the DEIR includes no measures that would actually require the University to change the existing cogeneration plant operations. Baseline Report at 24.

The DEIR also lacks evidentiary support that an offset program would achieve emission reductions sufficient to reduce impacts to a less-than-significant level. A mitigation measure requiring the purchase of offset credits operates as a kind of mitigation fee. CEQA does not allow mitigation fees unless there is substantial evidence of a functioning, enforceable, and effective implementation program. Courts have found mitigation fees inadequate where the amount to be paid for traffic mitigation was unspecified and not "part of a reasonable, enforceable plan or program" (*Anderson First Coalition*, 130 Cal.App.4th at 1189); where a proposed urban decay mitigation fee contained no cost estimate and no description of how it would be implemented (*Cal. Clean Energy Com. v. City of Woodland* (2014) 225 Cal.App.4th 173, 198); and where there was no specific traffic mitigation plan in place that would be funded by mitigation fees (*Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1122). Mitigation must be enforceable through permit conditions, agreements, or other legally-binding instruments. *Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5th 467, 506 (citing Pub. Resources Code, § 21081.6(b)). In the context of carbon offset credits, that generally means credits must be "real, permanent, quantifiable,

verifiable, enforceable, and additional to any GHG emission reduction otherwise required by law or regulation, and any other GHG emission reduction that otherwise would occur.” *Id.* As explained below, the DEIR provides no evidence that the offset program would be enforceable or effective, let alone achieve real, permanent, quantifiable, verifiable, or additional.

Of particular concern, the DEIR does not identify the source of the offsets nor does it provide any evidence that credits are even available. Moreover, even the most sophisticated offset programs have failed. A 2016 report prepared for the EU Directorate General for Climate Action concluded that nearly 75 percent of potential certified offset projects had a low likelihood of actually contributing additive GHG reductions, and less than 10 percent of such projects had a high likelihood of additive reductions. *See How Additional Is the Clean Development Mechanism? Analysis of the application of current tools and proposed alternatives*, Institute of Applied Ecology, March, 2016 at 11, attached as Exhibit F; *see also* Carbon Credits Likely Worthless in Reducing Emissions, Study Says, Inside Climate News, April 19, 2017, attached as Exhibit G. Because of these known problems with enforcement and efficacy, agencies typically permit offsets to constitute only a very small part of an overall emission reduction program. For example, California’s cap and trade program allows no more than eight percent of GHG reductions to come from offsets, which will drop to four percent in 2021, at which point at least half of the offsets used “provide direct environmental benefits in state.” Health & Saf. Code § 38562(c)(2)(E). Here there is simply no evidence that an undefined, unenforceable offset program will cause any meaningful reduction to mitigate the permanent increase in GHG emissions resulting from the LRDP.

E. The DEIR Fails to Adequately Analyze the Project’s Impacts Related to Energy Use.

The DEIR presents an incomplete evaluation of the LRDP Update’s impacts related to energy use. First, as described in the Baseline Report, the DEIR describes three options for upgrading or replacing the existing Cogeneration Plant to a more efficient system. Table 5.5-4 (DEIR at 5.5-17). Not surprisingly, the LRDP fails to commit to any of the three options or specify the timing for the new or upgraded system implementation. The DEIR fails to include any measures that would prevent newly constructed buildings under the LRDP Update from connecting to the existing cogeneration plant prior to a system upgrade or replacement. This would result in an inefficient use of available energy systems. In the absence of more definitive commitments to implementing upgrades or replacement of the cogeneration plant, and in the absence of specific commitments to have all newly constructed buildings powered by new or upgraded

energy systems, the DEIR should have identified such use of non-transportation energy associated with the LRDP Update as potentially significant.

Second, the DEIR's transportation analysis assumes full buildout of the LRDP Update in 2036, which would minimize off-campus commuter trips. However, there are no control measures identified in the DEIR that would ensure future University housing would be constructed on a timeline to accommodate student, faculty, and staff population increases. As a result, estimates of fuel use from commuter trips may be significantly underestimated and the failure to control off-campus commuter trips would result in wasteful and unnecessary transportation energy demands. Without a mitigation measure requiring the University to construct housing ahead of increasing enrollment, transportation energy impacts associated with the LRDP Update would be potentially significant.

A revised DEIR should correct these flaws.

F. The DEIR Fails to Adequately Analyze the Project's Inconsistency with Applicable Plans and Policies.

The DEIR asserts that UC Berkeley is generally exempt from local policies and regulations for the communities surrounding the campus. DEIR at 5.10-3. However, the fact that an agency is not subject to the City's jurisdiction does not eliminate its obligation to consider a project's effects on the surrounding area. Instead, "an EIR may not ignore the regional impacts of a project proposal, including those impacts that occur outside of its borders." *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 575; *see also City of Marina v. Bd. of Trustees of California State University* (2006) 39 Cal.4th 341, 360 ("CEQA requires a public agency to mitigate or avoid its projects' significant effects not just on the agency's own property but 'on the environment', with the 'environment' defined for these purposes as 'the physical conditions which exist within the area which will be affected by a proposed project.'" (quoting Pub. Resources Code §§ 21002.1, 21060.5)).

Here, as discussed throughout this letter, the DEIR fails to adequately evaluate many of the foreseeable impacts of the proposed LRDP. In addition, also described throughout this letter, the Project is inconsistent with multiple policies in the City of Berkeley's General Plan and other plans including the City's Bicycle Plan, the City's Pedestrian Plan, and the City's Vision Zero Plan. Accordingly, the University must disclose and analyze these impacts in a revised EIR. In many cases, the University could certainly avoid these impacts by bringing the Project into alignment with local land use policies.

In addition, the University fails to identify inconsistencies with the City's code. For example:

- **Public Art.** Municipal Code Chapter 23C.23 provides that construction projects incorporate publicly accessible art or contribute a percentage of the project cost for public art elsewhere in the City. Municipal Code § 23C.23.050 General Requirements. The LRDP and both housing projects fail to do either and are thus inconsistent with the City's code.
- **Historic Resources.** The Berkeley General Plan Urban Design and Preservation Element includes a policy calling for the use of "a wide variety of regulatory, incentive, and outreach techniques to suitably protect Berkeley's existing built environment and cultural heritage." To enact this policy, the General Plan calls for the "identif[ication] and protect[ion] [of] historically significant structures, sites, districts, and neighborhoods." Policy UD-1. Despite this policy, the LRDP and both housing projects have the potential to adversely impact locally designated historic resources within the City. *See* DEIR at 5.4-32, 5.4-33. Yet, the DEIR fails to identify this inconsistency as a significant impact. This inconsistency undermines the General Plan's goal of protecting the City's cultural heritage.
- **Affordable Housing and Child Care.** The General Plan's Housing Element expressly identifies the need for the University of California to "maximize the supply of appropriately located, affordable housing for its students and also to expand housing opportunities for faculty and staff." Policy H-21. Similarly, the General Plan's Land Use Element seeks to "[m]inimize the negative impacts of the size of the University population and University expansion on adjacent neighborhoods and the city as a whole." Policy LU-36. The General Plan also calls more generally for the encouragement of "housing production adequate to meet City needs and the City's share of regional housing needs." Policy H-32. The LRDP Project does not appear to provide any housing dedicated as affordable, and thus is inconsistent with these policies. As discussed above, the DEIR acknowledges that future development under the LRDP would increase the population in the City of Berkeley by more than 16,000, which is approximately 60 percent of the projected growth for the City by 2037. DEIR at 5.12-22, -23. DEIR at 5.12-22 and 23. The additional student, faculty and staff population would exceed anticipated growth in UC Berkeley-provided housing, placing greater demand on the private housing

market and exacerbating housing demand and prices. In addition, the University also is not paying the City's affordable housing mitigation fee (BMC § 22.20.065(A)8; Resolution No. 68, 074-N.S) or the affordable child care fee (Resolution 66,618-N.S.).

New development – whether it be commercial, residential, or institutional – generates increased demand for services, and associated demand for affordable housing and childcare services. These mitigation fees are meant to offset the impacts of new development by enabling the City to help fund housing and childcare that satisfies increased demands. Although UC is not legally subject to those fees, it still generates those impacts. Additionally, although UC's exemption from the fees is solely related to their educational mission, they've demonstrated a pattern of developing space on their property for uses not associated with their mission (e.g., leased office space to Microsoft).

- **Noise.** The Berkeley Municipal Code provides exterior noise standards according to zoning districts, and based on the time of day. BMC § 13.40.050. In particular, the Municipal Code provides noise standards between 7 A.M. and 10 P.M. which differ from the standards that apply between 10 P.M. and 7 A.M. *Id.* at Table 13.40-1. The LRDP and the housing projects fail to comply with these noise standards.
- **Project Labor Agreements.** The City of Berkeley has established a WorkSource program, a referral service for Berkeley residents seeking jobs. The University should commit to participating in the City's WorkSource program.

Second, the City's Municipal Code provides that the Zoning Adjustments Board can approve buildings exceeding the allowable height limits (i.e., 75 feet or 120 feet per BMC sections 23E.68.090 and 23E.68.070 respectively) if it can make findings that the project would result in significant community benefits that may include, but are not limited to: affordable housing, supportive social services, green features, open space, transportation demand management features, job training, and/or employment opportunities. These public benefits must be assured through implementation as conditions of approval and/or written agreements that would be binding on all successors in interest. The University should commit to including significant community benefits—including,

potentially, a Project Labor Agreement—in both proposed Housing Projects and in future developments planned within the City Environs.

G. The DEIR Fails to Adequately Analyze and Mitigate the Project’s Noise Impacts.

The DEIR’s analysis of Project-related noise impacts contains numerous deficiencies that must be remedied in order for the public and decision-makers to fully understand noise impacts resulting from implementation of the LRDP and the housing projects. Specifically, the evaluation of the Project’s noise impacts must be revised to address: (1) improper thresholds of significance; (2) underestimation of construction and operation noise impacts; and (3) failure to identify all feasible mitigation measures for significant impacts. The Baseline Report, attached as Exhibit B, provides detailed comments on the shortcomings in the DEIR’s noise impacts analysis. We incorporate the Baseline Report into these comments and discuss some of most problematic errors below.

1. Thresholds of Significance

The DEIR’s thresholds of significance for noise impacts are vague and unclear. For example, in some instances the DEIR states that the City of Berkeley’s noise standards are used to determine thresholds of significance, but in others, it states that the University “may consider” the City’s standards when evaluating noise and vibration impacts from future development projects that implement the proposed LRDP Update, including Housing Projects #1 and #2. DEIR at 5.11-10. In this way, the DEIR introduces uncertainty about how future project-level evaluations will be conducted and whether proposed measures will be implemented.

For construction noise, the DEIR cites to the City noise standards, but fails to specify a quantitative threshold for the maximum allowed noise level during construction. The DEIR also fails to present any quantitative analysis of expected construction noise compared to the significance thresholds along with the implementation of CBP NOI-2 and CBP NOI-3 based on the thresholds of significance. DEIR at 5.11-32. Instead, the DEIR incorrectly compares construction noise for future project scenarios under the LRDP Update to ambient noise levels to make a significance determination. DEIR at 5.11-32. This approach to evaluating noise levels is inconsistent with the City’s Municipal Code. *See* Berkeley Municipal Code Section 13.40.050. The Code has noise standards that specify noise limits within specific time periods, with more stringent limits between the hours of 10:00 p.m. and 7:00 a.m. *Id.* A revised environmental document should assess noise levels associated with the project for this time period.

The threshold of significance for impacts related to traffic noise during both construction and operation are described using L_{dn} , which is the energy-average of the A-weighted sound levels during a 24-hour period, with a 10 dB adjustment added from 10:00 p.m. to 7:00 a.m. DEIR at 5.11-1. Construction traffic usually occurs during daytime and would not expand to a 24-hour period. Therefore, it is inappropriate to use the day/night average unit for the construction traffic noise analysis. In addition, this approach results in an underestimation of construction traffic noise increase because construction trips are averaged over a 24-hour period, while in reality the project would generate construction trips only during daytime hours.

2. Construction Noise

The DEIR discloses that construction noise from future projects associated with implementation of the proposed LRDP Update would generate high levels of construction noise, with noise levels ranging from 73 dBA L_{max} to 101 dBA L_{max} . DEIR at 5.11-29. The DEIR states that construction would have the potential to affect noise-sensitive land uses in the vicinity of an individual project. *Id.* However, the DEIR fails to actually conduct any analysis. As a result, it is not possible to evaluate if the proposed mitigation and CBPs would be effective at reducing the impact or to what degree. A revised DEIR should estimate maximum construction traffic noise based on the potential development sites listed in DEIR Table 3-2 Potential Areas of New Development and Redevelopment (DEIR at 3-28), evaluate the potential severity of the impact by comparing it to an appropriate threshold of significance, and recommend mitigation measures to reduce the potential impact.

In addition, the DEIR fails to adequately analyze impacts from construction vibration, particularly at the proposed Housing Project #1 site (Berkeley Landmark #50, University Garage at 1952 Oxford Street). The DEIR states that there are no historic resources subject to potential vibration damage near the site. DEIR at 5.11-19. In fact, there are several historic resources near the site, including the Macfarlane Building (2101, 2105 and 2111 University Avenue), the Sills Grocery and Hardware Building (2145 University), the Acheson's Physicians Building (2133 and 2129 University), and the Morgan Building (2051 Berkeley Way). The Sills Grocery and Hardware Building and the Acheson's Physicians Building are approximately 100 feet from the proposed project site. According to the DEIR construction vibration screening analysis, pile driving could cause vibration impacts to structures within 136 feet. DEIR at 5.11-46. Therefore, these resources are located within the distance where vibration levels could cause building damage. The DEIR fails to analyze or mitigate this potential impact.

The DEIR also understates construction vibration annoyance impacts. The DEIR discusses the potential vibration annoyance due to the housing projects by calculating vibration levels using the spatially averaged distances from the construction site to the nearest receptor building façade.(DEIR at 5.11-50, 5.11-53. This approach understates the vibration annoyance impacts because using an average distance does not represent the worst-case scenario that could occur (i.e., when vibration causing equipment is operating at the boundary of the project site and in a closer proximity to the nearby receptors).

3. Mitigation

As pointed out throughout this letter, the DEIR's proposed mitigation measures and CBPs are frequently vague, unenforceable, ineffective, and inadequate; the proposed measures for noise impacts fare no better. The DEIR proposes only minimal measures to lessen the severity of noise impacts and few measures to avoid them. For instance, even though the DEIR discloses that construction noise associated with implementation of the LRDP could be significant, the DEIR fails to include adequate mitigation measures for these noise impacts. DEIR at 5.11-29. The DEIR relies on CBP NOI-2, CBP NOI-3, and Mitigation Measure NOI-1 to address the potential construction noise impacts. DEIR at 5.11-31. However, these measures include ambiguous language that makes them unenforceable and unreliable. For example, CBP NOI-2 requires construction activities to be limited to a schedule to minimize disruption to uses "as much as possible" but it does not specify what schedule would be followed or what limits would be imposed. The CBP also does not commit to implementing these measures so that there is no way to ensure they will actually be used, that they would reduce construction noise impacts to receptors, or by how much.

In another example, the DEIR discloses that stationary equipment for future buildings constructed under the LRDP, such as heating and air conditioning units, would result in noise. Although the DEIR fails to disclose the level of noise that would be emitted by such equipment, it relies on CBP NOI-1 to conclude that noise impacts from stationary equipment would be less than significant. However, CBP NOI-1 does not include a performance standard; with no quantitative limits the DEIR fails to support its conclusion that stationary equipment noise would not exceed the City of Berkeley noise standards.

With regard to cumulative construction noise, the DEIR concedes that noise may exceed UC Berkeley's adopted construction noise standards even with project-level mitigation and reaches the right conclusion that impacts would be significant. DEIR at 5.11-55. Here too, the document relies only on Mitigation Measure NOI-1 to reduce impacts. As discussed above, this measure fails to include a performance standard and

therefore cannot be relied upon for mitigation. Moreover, given the potential for project noise to impact thousands of receptors, the DEIR has an obligation to include additional feasible measures. For example, (1) avoid scheduling multiple projects in succession in one area so that noise disturbance would not occur for prolonged periods of time; (2) require construction schedules for future projects to comply with the time limit specified in Berkeley's noise standards so that noise disturbance during sensitive nighttime hours would be limited; (3) incorporate performance standards and construction noise monitoring to ensure that proper implementation of best management practices and mitigation measures and that construction noise standards are not exceeded.

In short, the DEIR's analysis of noise impacts dramatically understates the Projects' potential to significantly affect area residents. At the same time, the DEIR fails to provide effective, enforceable measures to mitigate such potentially significant impacts. To comply with CEQA, the University must prepare a revised EIR fully analyzing the Project's potential impacts to area receptors and identifying effective mitigation measures.

H. The DEIR's Analysis of Project-Related Impacts on Utilities Is Incomplete.

The DEIR's evaluation of the Project's impacts on utilities and service systems suffers from the same narrow view taken to evaluate impacts discussed throughout this letter. For example, the DEIR estimates the LRDP's increase in water supply demand based on the net increase in proposed building square footage. DEIR at 5.17-13, -14. This approach only accounts for University population water use within Campus Park, Hill Campus West and East, Clark Kerr Campus, and the City Environs Properties. *See* DEIR at Table 5.17-2 at 5.17-14 and Figure 3-2 at 3-9. The failure to evaluate increased demand for utilities within the City from new residents resulting from implementation of the LRDP results in underestimation of demand for utilities.

1. Wastewater

The DEIR's analysis of the LRDP's wastewater impacts is similarly deficient. The DEIR fails to adequately describe the existing setting of the wastewater infrastructure to which University wastewater infrastructure would connect.¹² *See*, DEIR at 5.17-29. The failure to describe the existing setting is problematic because the city has aging

¹² Consequently, the DEIR fails to include the City of Berkeley's Sewer System Management Plan (May 2019) in the list of local regulatory documents and requirements. *See* DEIR at 5.17-25.

infrastructure that is already suffering leaks and other problems. Adding additional connections to this already burdened infrastructure could result in significant impacts. The DEIR's failure to describe the existing conditions means the document fails to describe the baseline conditions, which implicates the impact analysis.

What analysis the DEIR does conduct related to wastewater collection and treatment is incomplete and inadequate. First, the DEIR provides only cursory information about estimated increases in overall wastewater. DEIR at 5.17-33. The DEIR fails to provide details such as the locations where wastewater increases would be discharged to the City's wastewater collection system. Depending on the amount and location of the wastewater discharge, the increased flows may result in adverse impacts to the City's sewer system related to capacity.

The DEIR's analysis of wastewater impacts is also incomplete because it fails to compare the existing wastewater flows to reasonably foreseeable increases in flows with buildout of the LRDP. The DEIR limits its analysis of wastewater flow to annual averages and fails to consider peak wet weather flows. This approach fails to evaluate the LRDP's potential to contribute to high wet weather flows that exceed City infrastructure capacity. A revised analysis should analyze the LRDP's wastewater flow increases during peak wet weather when collection and treatment systems are most likely to experience impacts.

In addition, the DEIR indicates that both proposed housing projects would connect to the City's sewer system. DEIR at 5.17-31. The DEIR asserts that, for the housing projects, "[E]xisting sewer capacity would need to be evaluated by the City of Berkeley Public Works Department to verify that the existing system can accept the wastewater generated by the project." *Id.* Under CEQA, it is the lead agency's responsibility to evaluate project-related impacts *prior* to approval of the project. The DEIR cannot defer its assessment of important environmental impacts until after the Project is approved. *See Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 306-07. To do so wholly undermines the DEIR's purpose as an informational document. The time for UC Berkeley to conduct the analysis of system capacity, with relevant upstream data provided by the City, to determine if LRDP-related wastewater flows can be accommodated is now, as part of this EIR. If the analysis finds that LRDP-related wastewater flows would significantly impact the system, the EIR must also identify measures to mitigate those impacts (i.e., upsizing City's sewer mains if existing mains are insufficient in meeting the projects' wastewater needs.)

Finally, the DEIR cannot rely on CBP USS-4 to reduce LRDP-related impacts on water and wastewater systems. DEIR at 5.17-34. CBP USS-4 provides that "UC Berkeley

will analyze water and sewer systems on a project-by-project basis to determine specific capacity considerations for both UC Berkeley systems and off-site municipal systems in the planning of any project proposed under the LRDP.” *Id.* CEQA prohibits such deferral. CEQA Guidelines §15378(a) (“Project” means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.”). Breaking the project into smaller sub-projects will lead to inadequate environmental review. *See, e.g., Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 283-84 (CEQA mandates that “environmental considerations do not become submerged by chopping a large project into many little ones”).

2. Stormwater

The DEIR’s analysis of the LRDP’s impacts on hydrology and water quality suffers from several major problems and fails to meet CEQA’s standards. First, the DEIR fails to adequately describe the existing hydrologic setting of the Project area. It fails to describe areas with inadequate drainage facilities despite the fact that it acknowledges that such areas could experience nuisance flooding due to project-related increased runoff. DEIR at 5.17-45. The DEIR includes a map of areas subject to flooding but limits the boundary to the Campus Park area, excluding both housing projects and areas downstream in the City that are relevant to this analysis. Without a proper description of baseline conditions, the DEIR is unable to provide an adequate analysis of Project-related contributions to changes in water quality relative to existing conditions. Thus, a revised analysis must include a Hydrology and Water Quality section that adequately describes the hydrologic setting.

Second, the DEIR includes virtually no discussion of the potential LRDP Project impacts to hydrology and water quality. The DEIR’s failure to fully describe the LRDP Project implicates the analysis. As discussed above, the DEIR acknowledges that the proposed development would increase impervious surfaces, but it fails to disclose by how much. DEIR at 5.9-33. The DEIR discloses that the LRDP could result in increased stormwater runoff, peak discharges to drainage channels, and erosion and siltation in swales and streams. *Id.* Yet, the DEIR needlessly defers critical stormwater considerations to the future and once again relies on compliance with existing regulations, vague noncommittal CBPs, and implementation of unspecified post-construction stormwater control measures to conclude that impacts would be less than significant. *See* DEIR at 5.9-27, 5.17-45. There is no reason why the DEIR could not or should not have analyzed hydrological impacts at a program level. Indeed, the University already has the ability to model pre-development runoff conditions and assess

downstream drainage and stormwater facilities. DEIR at 5.17-16. Instead, however, the DEIR once again defers this analysis, contrary to CEQA.

I. The DEIR's Mitigation Measures Addressing Significant Impacts to Cultural Resources Are Inadequate.

The DEIR evaluates impacts of the LRDP Update and of implementation of Housing Project #1 (the site of Berkeley Landmark #50, University Garage at 1952 Oxford Street) and Housing Project #2 (the site of Berkeley Landmark #84, Peoples' Park at 2525 Haste Street). The DEIR acknowledges that both the long-term projects proposed under the LRDP and the two housing projects analyzed would result in significant impacts to designated cultural resources, many of which are designated as City of Berkeley historic landmarks. DEIR at Table 5.4-3 and Table 5.4-4 and 5.4-30 and 5.4-31. Given that known resources would be impacted by implementation of the Project, one would expect thorough evaluation and mitigation measures to ensure significant impacts are minimized to the degree practicable. The DEIR fails to meet these expectations once again.

Despite the DEIR's disclosure and conclusion of significant impacts to cultural resources, the proposed mitigation measures are inadequate to ensure appropriate review and protection of the resources. For instance, for Impact CUL-1 (Future development under the proposed LRDP Update has the potential to permanently impact historic resources by demolishing or renovating historic buildings in a manner that is not in conformance with the Secretary of the Interior's Standards for Rehabilitation) the DEIR does not make clear whether the proposed mitigation measures (Mitigation Measures CUL-1.1a through CUL-1.1e) apply to the two proposed Housing Projects as well as for future development under the LRDP Update. If the measures do apply to the Housing Projects (and they should), then the DEIR mitigations for cultural resources have not been applied completely thus far. Specifically, Mitigation Measure CUL-1.1a requires a historic resource assessment be prepared for the resource. DEIR at 5.4-35. Neither the DEIR nor the accompanying technical appendix (DEIR Appendix F) appear to include the historic resources assessment. The assessment should be made available for review by the City Landmarks Preservation Commission. In addition, Mitigation Measure CUL-1.1a should be revised to provide explicit guidance to the Campus Architect for action in response to recommendations for project modifications to achieve Secretary of the Interior Standards compliance.

Consistent with CUL-1.1a, with regard to Mitigation Measures CUL-1.2a, CUL-1.3a, and CUL-4, the University should confirm whether they have received recommendations for modifications to achieve SOI Standards compliance for Housing

Project #1 (University Garage at 1952 Oxford Street) and for Housing Project #2 (Peoples' Park at 2525 Haste Street) and whether and how such recommendations would be applied to the project.

DEIR Mitigation Measures CUL-1.1c and CUL-4 provide that if any project could result in alteration of features of a historical resource that are character-defining or convey the significance of a resource, UC Berkeley shall give local historical societies or local architectural salvage companies the opportunity to salvage such features from the historical resource for public information or reuse in other locations. The City requests that the timeline for retrieving salvaged materials be increased from 30 days to 90 days in order to ensure organizations with limited resources have sufficient time to respond and to increase opportunities for salvaging historically important features.

Impact CUL-1.5 (The design of Housing Project #2 may impair the integrity of one or more of the 10 historical resources in the immediate vicinity of People's Park through incompatible design) identifies Mitigation Measure CUL-1.5 to reduce impacts to historic resources in the vicinity. DEIR at 5.4-41. The City requests that the DEIR incorporate the new design guidelines contained in the pending Southside Area Plan and include in the measure coordination with the City's Landmarks Preservation Commission to ensure that design of the proposed buildings are compatible with the historic resources in the area. The City similarly requests that Mitigation Measure CUL-4 be revised in the same way.

In addition, the City also requests that CBP AES-4 be expanded to provide a firmer commitment for the University to outreach and coordinate with the City's Landmarks Preservation Commission on City of Berkeley Landmarks and Structures of Merit sites. It would be useful if the University could clarify and provide specified guidance on coordination (terms, methods, invocation) with the City's Landmarks Preservation Commission through this planning horizon for the LRDP. In addition, we request that the DEIR add an additional mitigation measure in section 5.4 Cultural Resources, that specifically provides for informal presentations of major projects to the City's Landmarks Preservation Commission and Zoning Adjustments Board, for projects affecting City of Berkeley Landmarks and Structures of Merit sites as determined by UC campus architect.

Finally, the DEIR's approach to analyzing and mitigation potential impacts on tribal cultural resources is inconsistent with CEQA requirements. Under CEQA, if a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following: (1) whether the proposed project has a significant impact on an identified tribal cultural resource; and (2) whether

feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to subdivision (a), *avoid* or substantially lessen the impact on the identified tribal cultural resource. CEQA PRC § 21082.3; emphasis added. This CEQA provision thus includes a hierarchy of avoidance of the resource first and lessening of the impact second.

The DEIR asserts that implementation of CBP CUL-1 and implementation of Mitigation Measure CUL-2 would ensure that impacts to tribal cultural resources would be reduced to less than significant levels. DEIR at 5.16-8. However, this conclusion is erroneous for two reasons. First, CBP CUL-1 is insufficient to protect tribal cultural resources because it only provides procedures in the event that human remains are detected, despite the fact that tribal cultural resources are defined as including “a site, feature, place, cultural landscape that is geographically defined in terms of size and scope, sacred place, or object with cultural value to a California Native American tribe.” DEIR at 5.16-7. Second, Mitigation Measure CUL-2 provides for a process of collecting and recording any tribal cultural resources but fails to provide measures to avoid the resource if feasible. DEIR at 5.4-43 and 5.4-44. Such an approach does not comply with CEQA and cannot be relied upon to conclude that impacts from implementation of the LRDP would be less than significant. *See, Save the Agoura Cornell Knoll v. City of Agoura Hills* (2020) 46 Cal.App.5th 665, 731-33 (mitigation measure that requires completion of data recovery program if preservation becomes impossible does not mitigate impact to a less-than-significant level).

J. The DEIR’s Alternatives Analysis Is Inadequate.

A proper analysis of alternatives is essential to comply with CEQA’s mandate that, where feasible, significant environmental damage be avoided. Pub. Resources Code § 21002 (projects should not be approved if there are feasible alternatives that would substantially lessen environmental impacts); CEQA Guidelines §§ 15002(a)(3), 15021(a)(2), 15126(f). The primary purpose of CEQA’s alternatives requirement is to explore options that will reduce or avoid adverse impacts on the environment. *Watsonville Pilots Assn. v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1089. Therefore, the discussion of alternatives must focus on project alternatives that are capable of avoiding or substantially lessening the significant effects of the project, even if such alternatives would impede to some degree the attainment of the project objectives or would be more costly. CEQA Guidelines § 15126.6(b); see also *Watsonville Pilots*, 183 Cal.App.4th at 1089 (“[T]he key to the selection of the range of alternatives is to identify alternatives that meet most of the project’s objectives but have a reduced level of environmental impacts.”).

As a preliminary matter, the DEIR's use of an artificially constrained study area and failure to disclose the extent and severity of the LRDP's broad-ranging impacts necessarily distorts the document's analysis of Project alternatives. As a result, the alternatives are evaluated against an inaccurate representation of the Project's impacts. Proper identification and analysis of alternatives is impossible until Project impacts are fully disclosed. Moreover, as discussed above, the document's analysis is incomplete and/or inaccurate so that it is simply not possible to conduct a comparative evaluation of the Project's and the alternatives' impacts.

The DEIR prematurely rejects alternatives. As part of the DEIR's alternatives analysis, the University considered an alternative that would have included additional TDM measures. DEIR at 6-7. Such an alternative would have increased funding for additional and new transit service, long haul shuttles and local capital improvement projects including bicycle lane gap closures, and unspecified improvements to Telegraph Avenue. *Id.* The DEIR rejects this alternative as infeasible stating that UC Berkeley determined that the additional costs of the measures would be high relative to the additional benefit gained. *Id.* The DEIR further suggests that such an alternative is unnecessary as the LRDP includes an objective that focuses on partnering with the City of Berkeley on capital improvement projects that would achieve many of the same benefits of an enhanced TDM project alternative. *Id.* In order for UC Berkeley to determine that the costs of a TDM alternative outweigh its benefits, the DEIR should have included a cost benefit analysis. Without such an analysis, the DEIR does not have sufficient justification for rejecting this alternative. Furthermore, while the LRDP has an objective calling for partnering with the City, as this letter explains, the LRDP would result in numerous impacts that would benefit from enhanced TDM measures. It is not sufficient for the DEIR to include an objective calling for a partnership with the City when the University could take real action to strengthen TDM measures such as funding for additional and new transit service, long haul shuttles, and local capital improvement projects to increase bicycle and pedestrian use.

In any case, the DEIR improperly circumscribes its analysis of potential LRDP Update alternatives and makes no serious attempt to describe an alternative that avoids or substantially minimizes the impacts of the Project. The DEIR identifies three build alternatives. Alternative B, the Reduced Development Program alternative, includes a 25 percent reduction in undergraduate beds and academic life square footage and a 25 percent reduction in beds in the two proposed housing projects. Alternative C, the Reduced Vehicle Miles Travelled alternative, incorporates additional project features to reduce VMT, such as incorporating more remote learning and working opportunities, increased transportation demand management measures, reducing parking on campus

with zero net new parking spaces, and adding 500 beds for faculty and staff for a total of 12,231 beds for students, faculty, and staff. Alternative D, the Additional Faculty and Staff Housing alternative would add an additional 1,000 beds for faculty and staff in the Hill Campus East and the Clark Kerr Campus.

The DEIR identifies Alternative C as the environmentally superior alternative. DEIR at 6-76. By minimizing VMT, this alternative would be more consistent with UC Berkeley's Sustainability Plan and Policy. This alternative would also be more in line with the City of Berkeley's goals to deliver significant benefits to travel by pedestrians, bicycle, or transit, and/or reduced impacts on air quality, greenhouse gas emissions, and safety. (See City of Berkeley General Plan Policy T-18 Transportation Impact Analysis and for the purposes of CEQA, Vehicle Miles Traveled).

However, the DEIR failed to consider a comprehensive alternative that would address multiple impacts and concerns. For example, at a minimum, the DEIR should have considered a Reduced Enrollment Growth Alternative as was done in the EIR for the 2020 LRDP. 2020 LRDP DEIR at 5.1-1 to 5.1-7. The DEIR should have also considered other alternatives that would provide substantially more housing to address the issue of unhoused students, faculty, and staff. For instance, the DEIR should have analyzed an alternative that reduces the square footage of some 'campus life' uses for use of the space for residential uses. The LRDP Buildout includes an increase in the campus life square footage per student from the current 49 campus life square feet/student to 59 square feet/student at Buildout. The average residential square footage per bed also increases, which also indicates reduced density. Currently, residential square footage is 224 residential square feet/bed, but the LRDP Buildout proposes 282 residential square feet/bed. If the LRDP Buildout residential square footage was built at the current 224 residential square feet/bed average, the University could implement a substantial number of additional beds. When combined, these changes represent an opportunity cost of prioritizing campus life and lower density over provision of beds/housing.

The DEIR should have also considered additional locations to implement more housing. These could include, but are not limited to, additional housing within the Campus Core, additional housing on the Mills College campus (which UC Berkeley will be using as a satellite campus), and construction of additional housing in Albany Village¹³. At the latter location, the existing housing is mostly two- to three-story buildings so the University could consider more dense housing in that area.

¹³ Albany Village is located approximately 3.5 miles from the Core Campus and thousands of students, faculty and staff commute via bicycle and mass transit.

In addition, because the DEIR identifies significant/unavoidable impacts associated with increased development in the Very High Fire Hazard Severity Zone, it should have considered an alternative that avoids or reduces this impact. A revised DEIR should analyze an alternative that considers alternative off-site locations for building additional housing, whether on-campus or off, that would house people out of harm's way.

Finally, the DEIR should have considered an alternative that combines Alternative C and Alternative D, which would be more effective to address the campus's housing shortage.

III. A Revised EIR Must Be Prepared And Recirculated.

CEQA requires recirculation of a revised draft EIR “[w]hen significant new information is added to an environmental impact report” after public review and comment on the earlier draft EIR. Pub. Resources Code § 21092.1. The opportunity for meaningful public review of significant new information is essential “to test, assess, and evaluate the data and make an informed judgment as to the validity of the conclusions to be drawn therefrom.” *Sutter Sensible Planning, Inc. v. Sutter County Bd. of Supervisors* (1981) 122 Cal.App.3d 813, 822; *see also City of San Jose v. Great Oaks Water Co.* (1987) 192 Cal.App.3d 1005, 1017.

In order to cure the panoply of the LRDP EIR defects identified in this letter, UC Berkeley must obtain substantial new information to adequately assess the proposed Project's environmental impacts, and to identify effective mitigation and alternatives capable of alleviating the Project's significant impacts. This new information will clearly necessitate recirculation. CEQA requires that the public have a meaningful opportunity to review and comment upon this significant new information in the form of a recirculated draft supplemental EIR.

IV. Conclusion

As described above, the DEIR violates CEQA in numerous respects. For these reasons, the City urges UC Berkeley to revise and recirculate the environmental analysis, particularly for the LRDP Update. Through the environmental review process, UC Berkeley has an opportunity to develop an LRDP that minimizes the Project's significant impacts and complies with CEQA, while at the same time ensuring that the City and the community do not unreasonably bear the burden of the University's growth. The revised EIR should include specific commitments to mitigate significant impacts through fair

Raphael Breines
April 21, 2021
Page 75

share contributions and should include a specific commitment to construct an adequate amount of housing to serve planned and foreseeable increases in enrollment.

Sincerely,



Jordan Klein
Director, Planning & Development Department
City of Berkeley

Exhibits:

- Exhibit A Kittelson & Associates, Inc. Report dated April 14, 2021.
- Exhibit B Baseline Environmental, Inc. Report dated April 16, 2021.
- Exhibit C Captioner's Record from Berkeley City Council hearing on the LRDP EIR, April 13, 2021.
- Exhibit D Letter from Timothy Burroughs, City of Berkeley, to Raphael Breines, UC Berkeley, dated April 12, 2019.
- Exhibit E Letter from Timothy Burroughs, City of Berkeley, to Raphael Breines, UC Berkeley, dated May 13, 2019.
- Exhibit F How Additional Is the Clean Development Mechanism? Analysis of the application of current tools and proposed alternatives, Institute of Applied Ecology, March, 2016.
- Exhibit G Carbon Credits Likely Worthless in Reducing Emissions, Study Says, Inside Climate News, April 19, 2017.