Qume and Commerce Project

Final Environmental Impact Report (FEIR)

File Nos. H21-040, T21-040, and ER21-054

SCH#2022010603

Prepared by

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

February 2023

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Appendices

SECTION 1.0 INTRODUCTION

This Response to Comments, together with the Draft Environmental Impact Report (Draft EIR), technical appendices, and other written documentation prepared during the EIR process, as those documents may be modified by the City Council at the time of certification, constitute the Final EIR, as defined in the State CEQA Guidelines, Section 15132 for the Qume and Commerce Project.

1.1 PURPOSE OF THE ENVIRONMENTAL IMPACT REPORT

In conformance with the California Environmental Quality Act (CEQA) and CEQA Guidelines, the Final EIR provides objective information regarding the environmental consequences of the proposed project. The Final EIR also examines mitigation measures and alternatives to the project intended to reduce or eliminate significant environmental impacts. The Final EIR is intended to be used by the City of San José in making decisions regarding the project.

As described in CEQA Guidelines Section 15090(a), prior to approving a project, the lead agency shall certify that:

1) The Final EIR has been completed in compliance with CEQA;
2) The Final EIR was presented to the decision-making body of the lead agency, and the decision-making body reviewed and considered the information contained in the final EIR prior to approving the project; and
3) The Final EIR reflects the lead agency's independent judgment and analysis.

1.2 CONTENTS OF THE FINAL EIR

Pursuant to CEQA Guidelines Section 15132, the Qume and Commerce Project Final EIR consists of the following contents:

a) The Draft EIR or a revision of the Draft;

b) Comments and recommendations received on the Draft EIR either verbatim or in summary;

c) A list of persons, organizations, and public agencies commenting on the Draft EIR;

d) The Lead Agency's responses to significant environmental points raised in the review and consultation process; and

e) Any other information added by the Lead Agency.

1.3 PUBLIC REVIEW

In accordance with CEQA and the CEQA Guidelines (Public Resources Code Section 21092.5[a] and CEQA Guidelines Section 15088[b]), the City shall provide a written response to a public agency on comments made by that public agency at least 10 days prior to certifying the Final EIR. The Final EIR and all documents referenced in the Final EIR are available for public review at the Dr. Martin Luther King Jr. Library located at 150 E. San Fernando Street, San José, CA 95112 or by appointment at the City of San José Permit Center located at 200 E. Santa Clara Street, San José, CA 95112. Should you wish to review a hard copy by appointment, please contact the environmental planner, Cassandra van der Zweep by email at Cassandra.vanderZweep@sanjoseca.gov. The Final EIR is also available for review on the City's Active EIRs website: https://www.sanjoseca.gov/your-government/departments/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs.

SECTION 2.0 DRAFT EIR PUBLIC REVIEW SUMMARY

The Qume and Commerce Project Draft Environmental Impact Report (EIR), dated July 2022, was circulated for public review for a 45-day review period from July 8, 2022 through August 22, 2022. The City of San José undertook the following actions to inform the public of the availability of the draft EIR:

- A Notice of Availability of the Draft EIR was published on the City's Active EIR website (www.sanjoseca.gov/activeeirs) and in the San José Mercury News
- The Notice of Availability (NOA) of the Draft EIR was mailed and/or emailed to neighboring cities, tribal contacts, environmental protection organizations, and individual members of the public who indicated an interest in the project or requested notice of projects in the City;
- The NOA was sent to members of the public who signed up for City notices via Newsflash;
- The Draft EIR was delivered to the State Clearinghouse and Santa Clara County Clerk's Office on July 8, 2022, as well as sent to various governmental agencies, organizations, businesses, and individuals (see Section 3.0 for a list of agencies, organizations, businesses, and individuals that received the Draft EIR); and
- Copies of the Draft EIR were made available on the City's website at https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-review/environmental-review-documents#ActiveEIRs and the State Office of Planning and Research website at https://ceqanet.opr.ca.gov/2022010603.

SECTION 3.0 DRAFT EIR RECIPIENTS

CEQA Guidelines Section 15086 requires that a local lead agency consult with and request comments on the Draft EIR prepared for a project of this type from responsible agencies (government agencies that must approve or permit some aspect of the project), trustee agencies for resources affected by the project, adjacent cities and counties, and transportation planning agencies. The following agencies received a copy of the Draft EIR via the State Clearinghouse:

The following agencies received a copy of the Draft EIR via the State Clearinghouse:

- California Department of Conservation (DOC),
- California Department of Fish and Wildlife,
- Bay Delta Region 3 (CDFW),
- California Department of Forestry and Fire Protection (CAL FIRE),
- California Department of Parks and Recreation,
- California Department of Resources Recycling and Recovery,
- California Department of Transportation, District 4 (DOT),
- California Department of Water Resources (DWR),
- California Fish and Game Commission (CDFGC),
- California Highway Patrol (CHP),
- California Natural Resources Agency, California Public Utilities Commission (CPUC),
- California Regional Water Quality Control Board,
- San Francisco Bay Region 2 (RWQCB),
- Department of Toxic Substances Control,
- Office of Historic Preservation, State Water Resources Control Board, Division of Drinking Water,
- California Native American Heritage Commission (NAHC),
- California Air Resources Board (ARB)

The NOA for the Draft EIR was emailed with delivery and read receipts to adjacent jurisdictions and local agencies, as well as members of the public who had indicated interest in the Project. The following agencies received an emailed or mailed copy of the Draft EIR or NOA from the City or via the State Clearinghouse:

- Valley Transportation Authority, Plan Review
- Santa Clara County, Roads and Airports Department
- Jack Broadbent, Bay Area Air Quality Management District (BAAQMD)
- Wally Charles, Association of Bay Area Governments
- Kristin Garrison, California Department of Fish and Wildlife
- San Francisco Bay National Wildlife Refuge, US Fish and Wildlife Service
- California Energy Commission, Media Office

- Kalin Kipling-Mojaddedi, California Environmental Protection Agency
- California Air Resources Board
- Henry Hilken, Director, Planning & Climate Protection, BAAQMD;
- Ellen Talbo, Santa Clara County Roads and Airports Department
- Elizabeth Bugarin, Metro Transportation Commission
- California Department of Transportation, District 4
- Philip Crimmins, Senior Transportation Planner, California Department of Transportation
- Colleen Haggerty, Valley Water
- Ben Aghegnehu, Santa Clara County Roads and Airports
- Pacific Gas and Electric (PG&E), Plan Review
- Jake Walsh, San José Water Company
- Bill Tuttle, San José Water Company
- Jakki Kehl
- Chairman Valentin Lopez, Amah Mutsun Tribal Council
- Timothy Perez, North Valley Yokuts Tribe
- Chairperson Irene Zwierlein, Amah Mutsun Tribal Band of Mission San Juan Bautista
- Chairperson Katherine Perez, North Valley Yokuts Tribe
- Kanyon Sayers-Roods, MLD Contact, Indian Canyon Mutsun Band of Costanoan
- Andrew Galvan, The Ohlone Indian Tribe
- Chairperson Ann Marie Sayers, Indian Canyon Mutsun Band of Costanoan
- Kenneth Woodrow, Tribal Chair. Wuksache Indian Tribe/Eshom Valley Band
- Charlene Nijmeh, Tribal Chairwoman, Muwekma Ohlone Tribe
- Alan Leventhal
- Confederated Villages of Lisjan;
- Vice Chairwoman Monica Arellano, Muwekma Ohlone Indian Tribe of the SF Bay Area
- Chairwoman Quirina Geary, Tamien Nation
- Ada Marquez, San José State University, School of Social Sciences, Department of Environmental Studies
- Santa Clara Valley Audubon Society
- Shani Kleinhaus, Santa Clara Valley Audubon Society
- Law Office of Joann Broderick Harms
- Kathy Sutherland
- Scott Knies, San José Downtown Association

- William T. Brooks, Brooks & Hess
- Erik Schoennauer, The Schoennauer Company
- Sierra Club, Loma Prieta Chapter
- Jean Dresden
- Larry Ames
- Laura Tolkoff, San Francisco Bay Area Planning and Urban Research Association (SPUR)
- Amanda Brown-Stevens, Greenbelt Alliance
- Santa Clara Valley Open Space Authority, Clerk
- Anne Christie, SPUR
- Preservation Action Council of San José (PAC*SJ)
- Andre Luthard, PAC*SJ
- California Native Plant Society, Santa Clara Valley Chapter
- Janet Laurain, Adams Broadwell Joseph & Cardozo
- Michael Lozeau, Lozeau Drury, LLP
- City of Campbell, Planning Division, Director of Community Development
- City of Cupertino, Director of Community Development
- City of Fremont, Community Development Director
- Ned Thomas, City of Milpitas
- City of Milpitas
- City of Palo Alto, Planning Division
- City of Santa Clara, Director of Planning and Inspection
- Reena Brilliot, Planning Manager, City of Santa Clara
- John Davidson, Principal Planner, City of Santa Clara
- Andrew Crabtree, Director of Community Development, City of Santa Clara
- Debbie Pedro, City of Saratoga Community Development Department
- Frances Reed, City of Saratoga Community Development Department
- Amber Blizinski, City of Sunnyvale Community Development
- Trudi Ryan, City of Sunnyvale Community Development Department
- Mark Connolly, Santa Clara County, Planning
- Leza Mikhail, County of Santa Clara Department of Planning and Development
- Rob Eastwood, City of Campbell Community Development Department
- Town of Los Gatos, Planning
- City of Morgan Hill, Planning Division

- Terry Linder, City of Morgan Hill, Community Development Department
- City of Mountain View, Planning Division
- Michael Fossati, City of Milpitas
- Helen Ebert
- Mike Sodergren, PAC*SJ
- Shree Dharasker, Valley Water
- Michael Martin, Valley Water
- Lola Torney, Valley Transportation Authority
- Janet Laurain, Adams Broadwell Joseph & Cardozo
- Bill Osterman
- Dennis W
- Vicki Moore
- Rhonda Berry
- Adam Salcido
- Duke Fishman
- Susan Butler-Graham
- Kevin Johnston
- Mark Leong, District Branch Chief California Department of Transportation
- Bay Area Metro
- Orchard Elementary School District
- East Side Union High School District
- Harry Freitas, Director of Santa Clara County Roads and Airports

SECTION 4.0 RESPONSES TO DRAFT EIR COMMENTS

In accordance with CEQA Guidelines Section 15088, this document includes written responses to comments received by the City of San José on the Draft EIR. Comments are organized under headings containing the source of the letter and its date. The specific comments from each of the letters and/or emails are presented with each response to that specific comment directly following. Copies of the letters and emails received by the City of San José are included in their entirety in Appendix A of this document. Comments received on the Draft EIR are listed below.

Comment Letter and Commentor **Page of Response**

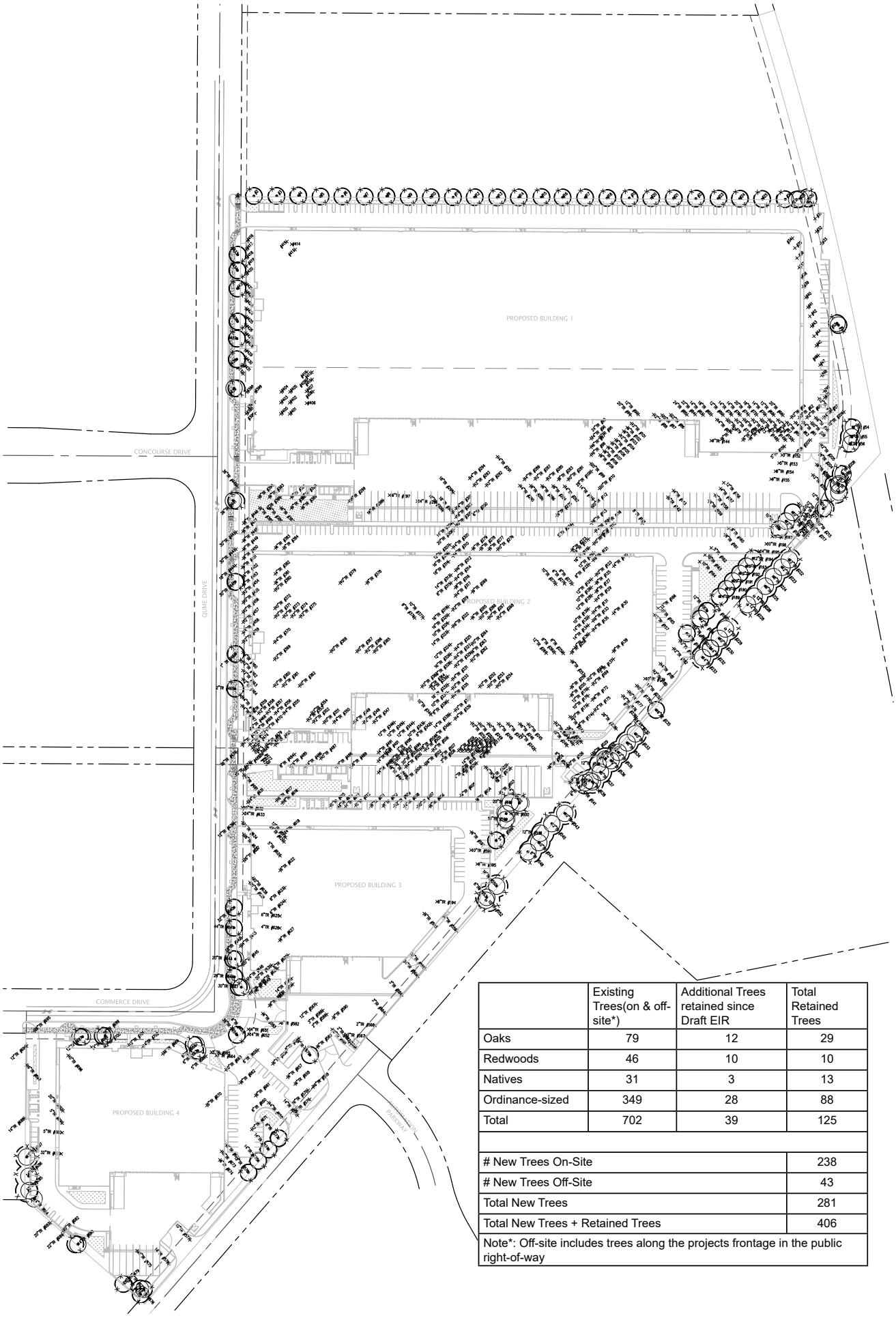
SECTION 4.1 TOPIC RESPONSE: PROJECT TREES AND PLANTING

Many of the comments received during the public circulation of the Draft EIR raised similar concerns and questions regarding the Project's proposed removal of site trees and landscaping. Therefore, a topic response regarding Project trees and planting has been prepared to respond to those common concerns and questions. Additionally, this topic response discusses commitments made in the Final EIR for the further protection of birds in the area. The purpose of the topic response is to provide comprehensive answers in one location and to avoid redundancy throughout the individual responses. Cross references to this topic response are made, when appropriate, in individual responses.

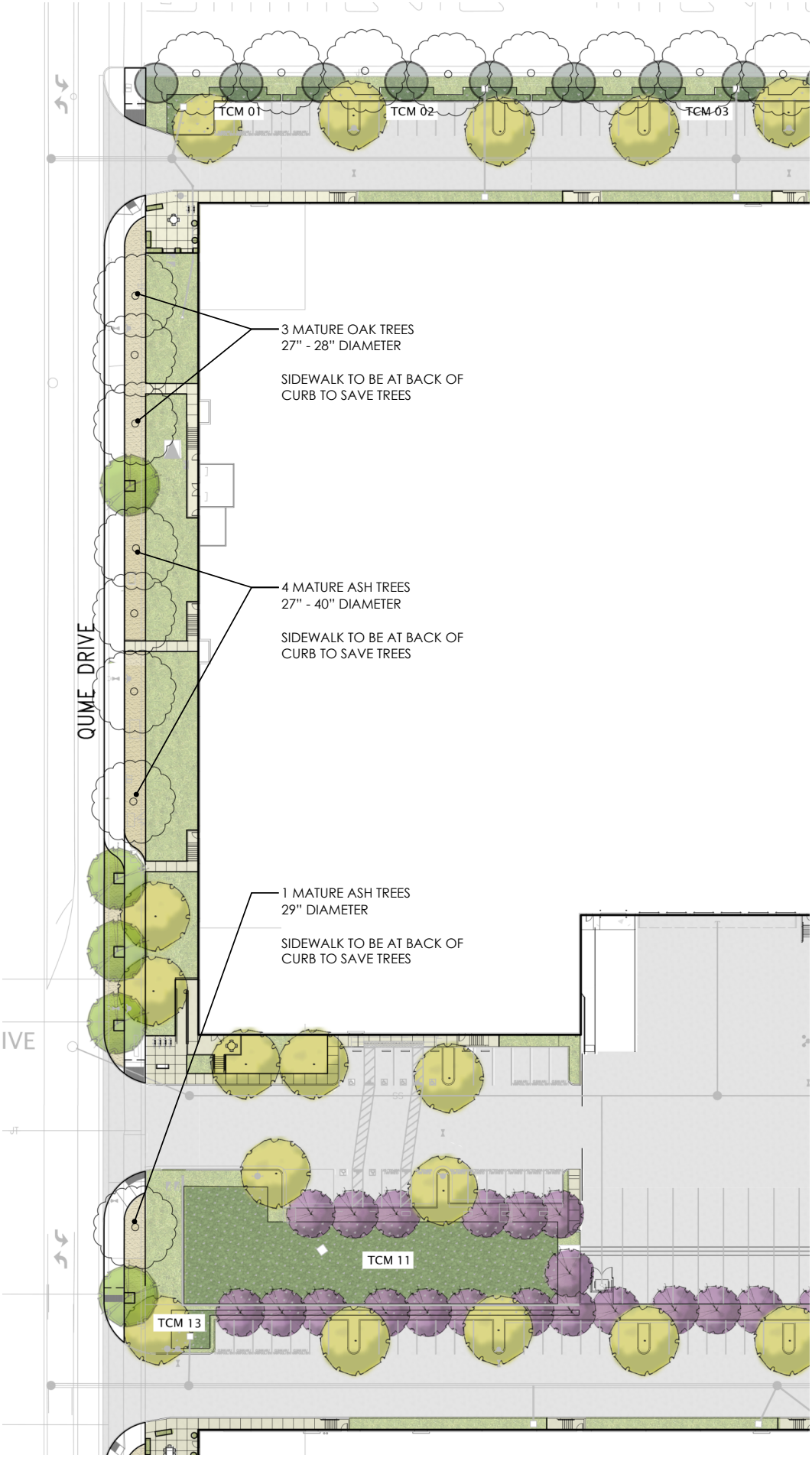
In response to comments received on the Draft EIR, significant due diligence has been conducted since publication and circulation of the Draft EIR to further analyze the site's conditions and determine ways to preserve additional trees on and off the property while maintaining the Project objectives. The Project's civil engineers, architects, landscape architects, and arborist worked in coordination on design changes that focused on saving additional existing mature trees on-site. The Project team also worked with the City of San José's Department of Public Works and City Arborist to examine alternate sidewalk configurations to retain additional trees. These re-design efforts included:

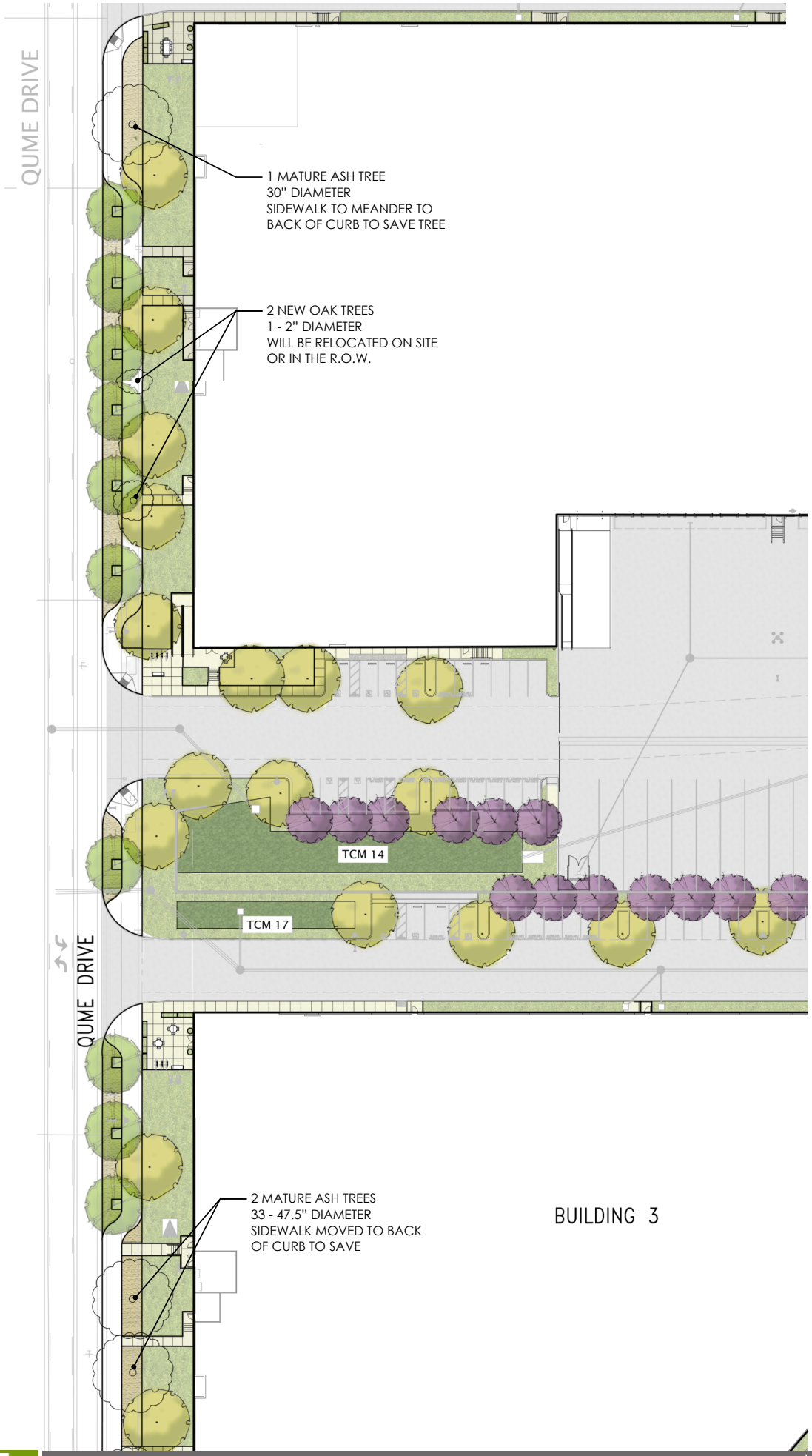
- Modifying the proposed public right-of-way sidewalks;
- Re-routing and relocating underground utilities, which required longer lengths of piping, to avoid disturbing tree root systems;
- Relocating and reconfiguring bio-treatment basins and modifying drainageplans;
- Adjusting the site's grading; and
- Re-configuring parking areas and modifying parking stall sizes.

Project design changes made since publication of the Draft EIR will preserve additional Live Oak, Evergreen Ash, and Red Oak trees within the public right-of-way on Qume Drive and Commerce Drive. On-site parking areas have also been altered to provide more generous planting islands for existing London Plane trees to allow them to continue to provide shade for paved areas. Project design changes made to preserve additional trees are depicted in Figures 1 through 6 of this Topic Response and an updated landscape plan is included as Figure 2-7: Proposed Landscape Plan in Section 5.0: Draft EIR Text Revisions. Additionally, a certified arborist has reviewed the updated landscaped plan, and an updated Arborist Report is included Section 5.0: Draft EIR Text Revisions (as Appendix D) (which updates the Arborist Report included in Appendix E of the Draft EIR).



	Existing Trees(on & off-site*)	Additional Trees retained since Draft EIR	Total Retained Trees
Oaks	79	12	29
Redwoods	46	10	10
Natives	31	3	13
Ordinance-sized	349	28	88
Total	702	39	125
# New Trees On-Site			238
# New Trees Off-Site			43
Total New Trees			281
Total New Trees + Retained Trees			406
Note*: Off-site includes trees along the projects frontage in the public right-of-way			


TCM 01
TCM 02
TCM 03
3 MATURE OAK TREES
27" - 28" DIAMETER
SIDEWALK TO BE AT BACK OF
CURB TO SAVE TREES
QUME DRIVE
4 MATURE ASH TREES
27" - 40" DIAMETER
SIDEWALK TO BE AT BACK OF
CURB TO SAVE TREES
1 MATURE ASH TREES
29" DIAMETER
SIDEWALK TO BE AT BACK OF
CURB TO SAVE TREES
IVE
TCM 11
TCM 13


QUME DRIVE
1 MATURE ASH TREE
30" DIAMETER
SIDEWALK TO MEANDER TO
BACK OF CURB TO SAVE TREE
2 NEW OAK TREES
1 - 2" DIAMETER
WILL BE RELOCATED ON SITE
OR IN THE R.O.W.
TCM 14
TCM 17
QUME DRIVE
2 MATURE ASH TREES
33 - 47.5" DIAMETER
SIDEWALK MOVED TO BACK
OF CURB TO SAVE
BUILDING 3


TCM 09
TCM 10
11 TREES
SYCAMORE, PEAR, ASH OLIVE
UTILITIES AND HARDSCAPE TO AVOID TREES SO THEY MAY BE SAVED
TCM 12
20 TREES
SYCAMORE, PEAR, ASH
UTILITIES TO AVOID TREES SO THEY MAY BE SAVED


TCM 15
TCM 16
24 TREES
OAKS, PEARS, ASHES
MATURE VALLEY OAK TREE
#542 AT 65" DIAMETER TO BE
PROTECTED IN PLACE AND
SAVED


5 MATURE ASH TREES
23" - 47" DIAMETER
SIDEWALK AT BACK OF CURB
TO SAVE TREES
1 MATURE OAK
1 MATURE EUCALYPTUS
12" - 39" DIAMETER
SIDEWALK TO BE AT BACK
OF CURB TO SAVE
1 MATURE ASH TREE
35" DIAMETER
MEANDER WALKWAY TO
SAVE TREE
COMMERCE DRIVE
TCM 18
TCM 19
TCM 21
TCM 22
TCM 23
TCM 24
2 REDWOOD TREES
6.5" - 9" DIAMETER
UTILITIES AND HARDSCAPE
WILL TRY TO AVOID TO SAVE
BUILDING 4
TCM 20
4 OAK TREES
9" - 14" DIAMETER
5' SIDEWALK AT BACK OF
CURB TO SAVE TREES
TCM 25
TCM 26
MCKAY DRIVE

As shown in Figures 1 through 6 of this Topic Response and the Project's updated landscape plan provided in Section 5.0 below, an additional 39 trees will be retained on-site or along the Project's street frontage. The additional retained trees include 28 ordinance-size trees, 12 oaks (8 of which are ordinance size), and 10 redwoods (8 of which are ordinance-size). In total, 125 trees would be retained including 88 ordinance-size trees. The Project would also plant 281 new trees on-siteand off-site (within the Project frontage/public right of way), resulting in a total of 406 trees on the Project site after development build out. Of the 31 existing native trees on- and off -site(including Coast Live Oak, Valley Oak, and Mulberry) , the Project would retain 13 native trees and remove 18 native trees, however, as discussed on page 73 of the Draft EIR, nine of the native trees to be removed are either dead or in fair health, with poor to fair structural condition. The remaining nine native trees to be removed are located within the development's footprint.

	Existing Trees (on-site and off-site*)	**Additional Trees Retained in Final EIR Landscape Plan, Compared to Draft EIR**	**Total Trees Retained**
Oaks	79	12	29
Redwoods	46	10	10
Natives	31	3	13
Ordinance-size (includes some oaks, redwoods and native trees)	349	28	88
Total Trees	702	39	125
		# New Trees On-Site	238
		# New Trees Off-Site*	43
		Total New Trees	281
		Total New Trees + Retained Trees	406
*Off-site refers to trees located along the project frontage/roadway, within the public right-of way			

The Project would be required to pay the off-site tree replacement fee to the City for the equivalent of 1,043 replacement trees that could not be accommodated on the Project site.

In addition to the greater number of trees that have been preserved on- and off-site, further changes have been made in response to comments as reflected in the updated Project landscape plan. The updated Project landscape plan now includes the following changes:

- All replacement trees planted on-site and within the street frontage have been increased in size to 36" box trees, from the originally proposed 24" box tree size;
- Replacement trees will consist of 100 percent California native species;
- Smaller plants will consist of 100 percent California native shrubs;
- The originally proposed Chinkapin Oaks have been replaced with native oak species including Quercus agrifolia and Quercus lobata; and
- The originally proposed Heavenly Bamboo has been replaced with native species such as Toyon and Gold Tonyon.

Careful consideration has also been made to preserving the mature and significant Valley Oak tree located near McKay Drive. While this tree is currently in a very small planting area near utility structures, the Project has expanded the size of available root zone around the tree as shown in the Project's landscape plan (Figure 2-7: Proposed Landscape Plan in Section 5.0: Draft EIR Text Revisions). By enlarging the planting area and designing around this tree, the Project will give the Valley Oak tree a better chance at long-term success than in its existing condition. Therefore, the growing conditions for the Valley Oak will be improved with implementation of the Project. While the Draft EIR identified no potential significant impacts to the Valley Oak, to further minimize the possibility of potential impacts, the applicant proposes to implement the following measures whose implementation would be confirmed through a Permit Condition of Approval:

Condition of Approval: Valley Oak

With respect to the Valley Oak labeled #542 in the Arborist Report included in the Final EIR, the following measures shall be taken:

- Any changes to the Project site plan that have the potential to impact the Valley Oak shall be reviewed by a certified arborist;
- A certified arborist shall be on-site during any ground disturbing activities that occur within 60 feet of the Valley Oak;
- Protective fencing shall be installed around the planter area of the Valley Oak at the limit of permitted grading, and fencing shall be left on-site after construction to ensure protection of the tree;
- No landscaping shall be installed around the Valley Oak within the protective fencing; and
- No pruning of the Valley Oak shall be conducted unless necessary for hazard reduction, and then shall be supervised by a certified arborist.

Additional commitments have also been made in the Final EIR for the further protection of birds in the area. With respect to the Project's outdoor lighting, while the Draft EIR identified no significant impacts to migratory birds, to further minimize any possibility of potential impacts the applicant will implement the following measures, consistent with the International Dark Sky Association's Principles for Responsible Outdoor Lighting. Compliance with this identified measures would be ensured through a project Permit Condition of Approval:

Condition of Approval: Exterior Lighting

- Where color temperature of outdoor lighting exceeds 2400K, the Project's exterior lighting design will use lower intensity light fixtures;
- All outdoor security lighting shall be fully shielded;
- Illuminances shall use the miniminum light levels required for task-related needs;
- Exterior lighting fixtures shall be capable of accepting controls; and
- All glazed surfaces shall utilize a bird safety product with a threat factor rating of no more than 20, as rated by the American Bird Conservancy.

Additionally, Mitigation Measure BIO-2 has also been modified to require a pre-construction nesting bird survey no more than 14 days prior to the initiation of construction activities throughout the entire breeding season (February 1st through August 31st, inclusive). Previously, BIO-2 permitted a nesting bird survey no more than 30 days prior to the initiation of construction activities during the late part of the breeding season (May 1st through August 31st, inclusive). The original mitigation measure was based on

standard industry protocols for nesting bird surveys; however, the updated mitigation measure would provide a more conservative approach.

BIO-2: Preconstruction Bird Surveys

Nesting Bird Surveys: The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 31st (inclusive). If demolition and construction are scheduled to occur between February 1st through August 31st ~~August 31st and January 31st~~ (inclusive), pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests shall be disturbed during Project implementation. This survey shall be completed no more than 14 days prior to the initiation of construction activities during the entire nesting season. ~~early part of the breeding season (February 1st through April 30th inclusive) and no more than 30 days prior to the initiation of these activities during the late part of breeding season (May 1st through August 31st inclusive).~~ During this survey the qualified ornithologist shall inspect all trees and other possible nesting habitats within 250 feet of the construction areas for nests.

The Project will also be responsible for payment of replacement fees to the City of San José as a result of the tree removals that will occur on- and off-site along the Project's frontage. These in-lieu replacement fees will be used to plant trees within the City.

Finally, a key concern identified in the DEIR public circulation comment period identified that tree resources in San José are 90 percent trees located on private lands with little to no maintenance, resulting in poor survivorship of existing trees. Consistent with this concern, the existing trees on the Project site do not appear to have been properly maintained, as discussed on page 64 of the Draft EIR. Pruning practices, including lion's-tailing (removal of interior foliage), excessive canopy raising, clearance pruning from buildings, root damage from landscape activities and insufficient irrigation are all affecting overall health of trees on the Project site. The proposed Project will address this deficiency by removing poor health trees and providing for on-going and high-quality maintenance of the existing remaining and newly planted tree resources on the redeveloped Project site. Therefore, redevelopment of the Project site and implementation of proposed landscape plans will provide higher quality habitat for the retained and replanted trees, as compared to existing conditions.

The purpose of the plan revision, minor text changes, and added conditions of approval identified above, is to amplify and strengthen the avoidance and mitigation strategies of the EIR. Further, the revisions respond to the concerns raised during the public review process, and design the Project to avoid more tree removals and replace tree removals with native species with a focus on long term success of existing retained and newly planted replacement trees. The net result is fewer trees removed and greater protection for nesting birds. None of the clarifications or amplifications change the basic conclusions of the EIR or warrant recirculation pursuant to CEQA Guidelines Section 15088.5.

GOVERNMENT AGENCIES

A. Santa Clara Valley Transportation Authority (dated July 13, 2022)

Comment A.1: VTA appreciates the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the Qume and Commerce Project. VTA has reviewed the document and has the following comments: Vehicle Miles Traveled (VMT) Analysis: VTA supports the intent of mitigation measure TRANS-1 to reduce project generated VMT below the City's threshold by improving multimodal connectivity and providing traffic calming and pedestrian improvements in the vicinity of the project. For the new bicycle/pedestrian pathway connecting the cul-de-sacs at McKay Drive/Automation Parkway and Commerce Drive/Qume Drive, VTA recommends that the City require this connection to be open to the public in perpetuity, i.e., not allowing the current or future land owner to fence or gate this connection.

Response A.1: As discussed on page 172 of the Draft EIR, the Project would provide a bicycle/pedestrian pathway as required by Mitigation Measure TRANS-1. The Project does not include fencing that would restrict public access to the bicycle/pedestrian path and public access would be provided from both McKay Drive/Automation Parkway and Commerce Drive/Qume Drive. As discussed on page 24 of Appendix L of the Draft EIR, the identified multimodal improvements, including the bicycle/pedestrian pathway would satisfy VMT reduction strategies identified in the City's Transportation Analysis Handbook and would effectively reduce Project VMT to a less than significant level. The comment did not raise any new issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment A.2: VTA also requests clarification regarding the proposed traffic calming component of mitigation measure TRANS-1. The DEIR states that the Project applicant shall prepare plans to "…shift existing curb lines along the Commerce Drive and Qume Drive frontages 10 feet inwards to achieve a future 40-foot curb-to-curb width along both streets" (DEIR p. 11) and the TA report includes similar language stating that these traffic calming improvements would occur along the Project frontages. However, the San José VMT Evaluation Tool Report (Project With VMT Reduction Strategies) output on Page 26 of the TA report states for Traffic Calming Measures: "Are improvements provided beyond the project frontage? Yes". VTA requests clarification of this point, and we recommend that the project should be required to provide traffic calming measures beyond its own frontage to maintain consistency with the studies and the research supporting this VMT reduction measure. This could include moving the curb line inward and constructing sidewalks on the other side of Commerce Drive and Qume Drive, moving the curb line and constructing sidewalks from the project's frontage to Lundy Avenue, or both. Thank you again for the opportunity to review this project. If you have any questions, please do not hesitate to contact me at 408-321-5830 or lola.torney@vta.org.

Response A.2: As discussed on page 172 of the Draft EIR, , the proposed Project would provide traffic calming improvements by implementing a road diet along the Qume Drive and Commerce Drive Project frontages, consistent with the City's VMT evaluation tool. The proposed road diet would calm traffic by shifting the existing curblines inward to reduce the roadway width and slow vehicle speeds along the corridor. Proposed improvements beyond the Project frontage include striping and signing improvements to transition from the 40-foot curb-to-curb width along the Project frontage to the existing 50-foot-wide roadway cross section. The roadway would conform back to the existing roadway cross-section beyond the Project site boundary. Therefore, improvements would be implemented beyond the Project frontage. As discussed on pages 23 and 24 of Appendix L of the Draft EIR, the proposed Project would not be required to provide additional traffic calming measures beyond these, as the identified multimodal improvements would satisfy VMT reduction strategies identified in the City's Transportation Analysis Handbook and would effectively reduce Project VMT to a less than significant level. The comment did not raise any new issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

B. County of Santa Clara Roads and Airports (dated August 2, 2022)

Comment B.1: The County of Santa Clara Roads and Airports Department (The County) appreciates the opportunity to review the Public Notice of Availability of Draft EIR for Qume and Commerce Project. We submit the following comments: The County believes that this proposed development is part of the North San José Area Development Policy (NSJADP) which this project is within the original NSJADP, which identifies infrastructure improvements for buildout in the North San José Traffic Impact Fee Plan (2005). The following improvements within one (1) mile from the project site include:

Roadway Improvements:

- Montague Expressway Widening – As part of the Tier 1-A improvements to Montague Expressway identified by the County, Montague Expressway will be widened within North San Jose from six to eight lanes between North First Street and I-880. The project will also include the improvement of the I-880 interchange to a partial cloverleaf interchange and intersection improvement at River Oaks/Plumeria and McCandless/Trade Zone. Tier 1-B improvements to Montague Expressway include the construction of a flyover from westbound Montague Expressway to southbound Trimble Road.

Intersection Improvements:

- (10) Old Oakland Road and Montague Expressway - Needed improvements consist of the addition of a second southbound left-turn lane on Old Oakland Road. – there is already an existing double SB left turn.

Response B.1: The proposed Project is not located within the adopted NSJADP boundary and policy area and would not be subject to NSJADP traffic impact fees. Within the Project vicinity, the NSJADP is generally bounded by I-880 to the east with a portion extending further east to the intersection of Lundy Avenue and Murphy Avenue. These NSJADP boundaries are located approximately 1.05 miles west and 0.44-mile south of the Project site, respectively (City of San Jose, 2022a). Moreover, on May 17, 2022 San José City Council approved a series of amendments to the NSJADP that effectively retired the 2005 plan with respect to future development, while still requiring past entitled projects to fulfill their requirements including mitigation and payment of traffic impact fees under the policy (City of San Jose, 2022b).

The comment did not raise any new issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment B.2: The proposed development should contribute a fair share to future Montague improvement projects. The fair share contribution would go towards the Montague improvement as identified in the North San José Area Development Policy (NSJADP) which this project is within the original NSJADP. Thank you again for your continued outreach and coordination with the County. If you have any questions or concerns about these comments, please feel free to contact me at ben.aghegnehu@rda.sccgov.org.

Response B.2: As noted in Response B.1, the Project is not located within the NSJADP boundary and is not subject to the North San José Traffic Impact Fee. Moreover, new development projects such as this one are no longer subject to the NSJADP impact fees since City Council amended the NSJADP in May 2022. As noted on page 175 of the Draft EIR, the Project is anticipated to add zero total net new PM vehicle trips for traffic impact fees based on the distribution of vehicle trips accessing the identified infrastructure improvements within the NSJADP. The comment did not raise any new issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

C. Bay Area Air Quality Management District (dated August 10, 2022)

Comment C.1: This message is a follow-up to my phone call/message last Wednesday (8/3), to the City of San Jose (City) regarding the City of San Jose's Qume and Commerce Project DEIR (Project). I have not received a return call yet and since the message had two areas of concern about the Project, I want to restate them via email. Projects that are within 1000 feet (ft.) of a school are required to include a student analysis in the health risk assessment (HRA). Brooktree Elementary School is 900 ft from the project site.

Response C.1: The Project Health Risk Assessment (HRA) was prepared in accordance with the BAAQMD Health Risk Assessment Modeling Protocol (December 2020) and the California Office of Environmental Health Hazard Assessment (OEHHA) Risk Assessment Guidance Manual for Preparation of Health Risk Assessments (February 2015). According to Bay Area Air Quality Management District (BAAQMD) CEQA Guidelines (May 2017) the zone of influence is 1,000-foot radius from property line of source or receiver. The HRA prepared for the Project evaluated cancer risk for all receptors within the zone of influence by focusing on the nearest (i.e., worst case) sensitive receptor (resident), identified as the Project's maximally exposed individual (MEI). As stated on pages 57 and 58, and tables 3.1-6 (page 56) and 3.1-7 (page 58) of the Draft EIR, the MEI for the Project is located 140 feet from the Project site and the modeling included age sensitivity factors, 95th percentile breathing rates and 24-hour exposure over 30 years (for operations) and 3 years (for construction); this is more conservative than analyzing the school located 900 feet from the site. A school exposure is 8 hours per day for 9 years, which is less than that of a resident and the Brooktree Elementary School is located 900 feet from the Project site, as discussed on page 39 of the Draft EIR. The 30-year risk calculation includes child risk adjustments (age sensitivity factors) and the 30-year exposure starts at the 3rd trimester (i.e., a worst-case scenario). Worker receptors have a 25-year exposure duration (and eight-hour per day breathing rates) and school child exposure is nine years. As mentioned previously, per BAAQMD and OEHHA guidance, the HRA calculations include age sensitive factors that account for the increased vulnerability of younger age groups. However, the shorter exposure durations for students would result in lower risk levels compared to the analysis that was used in the Draft EIR. The approach in the Draft EIR and HRA is conservative and disclosed the worst case scenario because shorter exposure durations of students would have resulted in lower calculated risk.

Draft EIR Table 3.1-7 (page 58) shows that worst-case residential cancer risk level due to operations of the Project would be 0.48 in one million and Draft EIR Table 3.1-6 (page 56) demonstrated that the residential cancer risk level due to construction would be 1.71 in one million, both below the BAAQMD 10 in one million threshold.

For disclosure purposes, the worst case scenario modeling in the Draft EIR discussed above also showed that the student cancer health risk would be 0.72 per one million during construction and 0.20 per one million during operations. These levels would be below BAAQMD's threshold of significance for health risk impacts for children. The highest concentration would be located at the northwest corner of the field. Indoors the concentration would be even less.

While the Project's Air Quality and Greenhouse Gas Emission impacts are already less than significant, the applicant is incorporating sustainability commitments into the Project by including the following Condition of Approval to further minimize the Project's influence on air quality.

Sustainability Commitments Condition of Approval:

- Sufficient solar panels shall be installed on the building rooftops to provide net-neutral electricity demand for each warehouse building;
- The Project shall install 80 EV- ready electrical conduits within the Project's truck courts or at the dock doors to allow for future plug-in charging stations for trucks;

- A minimum of 20 percent of automobile parking spaces shall be equipped with electric vehicle (EV)-ready electrical conduits;
- A minimum of 10 percent of automobile parking spaces shall be equipped with EV chargers;
- Each of the Project's buildings shall meet the Leadership in Energy and Environmental Design (LEED) Silver certified level at a minimum, however good faith efforts shall be made to meet the LEED Gold standard;
- Prior to issuance of any Certificate of Occupancy for the Project, the occupant shall provide to the Director of the Department of Planning, Building, and Code Enforcement (PBCE), or Director's designee, proof of enrollment in the San José Community Energy (SJCE) TotalGreen program,a Community Choice Energy program that receives and provides approximately 100 percent renewable energy from distributed sources. Neither the occupant, nor any future occupant, may opt out of the TotalGreen program without additional permit review;
- Project buildings shall include dual-pane/low emissions glass and highly efficient light emitting diode (LED) outdoor lighting fixtures controlled by photocells;
- The Project will utilize recycled water for outdoor landscaping, and will install water efficient landscaping;
- Trucks shall be prohibited from idling longer than two minutes while on-site per CARB's recommendation. Signage would be posted on-site stating the two-minute limit which would be enforced through the building lease agreement;
- All off-road equipment (non-street legal), such as forklifts and street sweepers, used onsite for warehouse operations shall be powered by alternative fuels, electrical batteries or other alternative/non-diesel fuels that do not emit diesel particulate matter, and that are low or zero emission; and
- Only electric landscaping equipment, such as lawn mowers and leaf blowers, shall be used onsite which would be enforced through the building lease agreement.

The comment did not raise any new issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment C.2: Additionally, the Project construction site could emit hazardous air emissions, and per health and safety code requirements, the city must consult with the school district about any potential impacts or significant finding in the DEIR. Please incorporate a student analysis into the HRA and consult with the school district as required by code. For more information about school requirements, the link to the school guidelines is located on the Air District's website under CEQA Resources/Handbooks and Guidelines https://www.epa.gov/schools/view-download-or-print-school-siting-guidelines.

Response C.2: The cited US EPA School Siting Guidelines are intended for the public and school siting committees to ensure schools are not located within areas found to have potential concerns. The EPA developed the "voluntary School Siting Guidelines that [ ] encourage, inform and improve consideration of environmental factors in local school siting decision-making processes without infringing on local decision-making authority." (page 1). There is nothing in this referenced Health and Safety Code section or Voluntary School Siting Guidelines that require a local agency to consult with a school district prior to approving a land use project outside of the CEQA process. As discussed in Response C.1, the HRA for the Project evaluated the adjacent sensitive receptor, also known as maximally exposed individual (MEI), and the worst case scenario. Draft EIR Tables 3.1-6 (page 56) and Table 3.1-7 (page 58) shows that worst-case residential cancer risk level due to operations of the Project would be far below the BAAQMD 10 in one million threshold. As shown above, students at a

school farther away than the nearby residence would experience an exposure time and duration less than a child living at the nearby residence and therefore would have lower predicted risk levels. Therefore the analysis included in the Draft EIR provides a worst-case scenario. Per CEQA Guidelines Section 15186 projects are required to consult and notify affected schools within 0.25 mile if the project involves the construction or alteration of a facility that might be anticipated to emit hazardous air emissions or handle extremely hazardous substances. As shown above, the Project would not emit hazardous air emissions as Project emissions remain far below BAAQMD thresholds and the Project would not handle hazardous substances on-site. Therefore, per CEQA Section 15186, the Health and Safety Code section, and the Voluntary School Siting Guidelines, consultation is not required. In addition, both the Orchard Elementary School District and East Side Union High School District were mailed copies of the Notice of Availability of the Draft EIR which circulated from July 8, 2022 through August 22, 2022 and did not provide any comments on the Project or the Draft EIR.

Comment C.3: The DEIR did not state whether the site would be used for cold storage or if there is a possibility that trucks visiting the site would use transportation refrigeration units (TRUs) at some point in the future. TRUs can contribute a significant amount of local air pollution. We encourage the City to restrict TRUs for future operations via conditions of approval or site lease agreements. Additionally, the City should prohibit the use of TRUs on the property unless an amendment is granted to the conditions of approval or site lease agreement. Please contact me if you have questions.

Response C.3: The Project does not include cold storage or the possibility of trucks with TRUs. To clarify, the following Condition of Approval for the Project is added:

Condition of Approval – Dry Storage Use: Approved operations under this permit include dry storage only and do not include cold storage (e.g., the transport and storage of goods under mechanical/powered refrigeration). If inclusion of cold storage use is desired in the future, additional environmental review and permitting would be required.

The comment did not raise any new issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

D. Department of Toxic Substances Control (dated August 22, 2022)

Comment D.1: The Department of Toxic Substances Control (DTSC) received a Draft Environmental Impact Report (EIR) for the Qume and Commerce Project (Project). The Lead Agency is receiving this notice from DTSC because the Project includes one or more of the following: groundbreaking activities, work in close proximity to a roadway, and/or importation of backfill soil. DTSC recommends that the following issues be evaluated in the Hazards and Hazardous Materials section of the EIR:

Response D.1: This comment is a summary of the Project where it concerns the area of interest for the commenter. The comment did not raise any issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment D.2: The EIR acknowledges that historic site activities have resulted in the release of hazardous wastes/substances on the project site. Historic site uses detailed in the EIR included agriculture, office buildings, research and development, manufacturing/assembling, and other commercial purposes. The Project site is currently developed with an industrial/business park complex containing three buildings that total approximately 425,433 square feet and is used by a medical device company. Adjacent uses are generally comprised of commercial and industrial properties. According to the Draft EIR, a Phase I Environmental Site Assessment, a Soil and Soil Vapor Investigation, Agricultural Chemical Sampling Report were prepared by Ardent Environmental Group, Inc. to address potential impacts concerning hazards and hazardous materials associated with implementation of the Project.

Response D.2: This comment is a summary of the Draft EIR analysis of Hazards and Hazardous Materials. The comment did not raise any issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment D.3: DTSC recognizes the rationale for these activities given the historic and current uses of the Project site and adjacent properties. However, the EIR does not identify an appropriate agency that has provided regulatory oversight and concurrence that the proposed project is protective of human health and the environment. A regulatory agency such as DTSC or Regional Water Quality Control Board (RWQCB), or a qualified local agency that meets the requirements of Assembly Bill 304 (AB304) should provide regulatory concurrence that the site is safe for construction and the proposed use. The City of San José Environmental Services Department does not currently meet the requirements of a local agency that meets the criteria of AB304.

Response D.3: Mitigation Measure HAZ-1 provided on page 33 of the Draft EIR includes performance criteria (applicable regulatory screening levels and regulatory oversight from the Regional Water Quality Control Board, Department of Toxic Substances Control, or the Santa Clara County Department of Environmental Health under their Site Cleanup Program) that needed to be satisfied prior to issuance of the building permit.

Since publication of the Draft EIR, access to the buildings was obtained and additional testing performed. See Appendix B of the Final EIR.

Soil vapor sampling results from this additional characterization were consistent with or lower than the prior sampling event with the exception of chloroform in one exterior location. All soil vapor results from sample points collected beneath the existing building pads were below all applicable screening levels. Soil vapor results from four sample locations outside the footprint of the existing building pads were above conservative Water Board environmental screening levels for chloroform and tetrachloroethene (PCE). Applying the attenuation factor for a future commercial building indicates these concentrations would not result in human health risk to future occupants due to

possible vapor intrusion.

In addition, laboratory results of all soil samples collected from borings drilled beneath the existing building pads and outside the footprint of the existing building pads indicated no detectable concentrations of chloroform and PCE. Based on these results, Enercon concluded that there is no evidence of a significant release, and no human health risk is present to the current or future occupants due to possible vapor intrusion or threat to groundwater. The chloroform concentrations detected in soil vapor outside the building pad are possibly due to a breakdown of chlorine in drinking water which is applied to raised bed vegetable gardens in the location of these sample points. To assess human health risks to future occupants through possible vapor intrusion, the concentrations of all soil vapor samples were compared to the DTSC Human and Ecological Risk Office (HERO) Note 3 and EPA ambient air screening values modified for soil vapor using an attenuation factor of 0.0005 for a future commercial building. Based on these criteria, none of the soil vapor results exceed these guidelines, and therefore, no human health risk is present due to possible vapor intrusion into a future commercial building.

Mitigation Measure HAZ-1 provided on page 33 of the Draft EIR provides that if the results of additional soil gas testing reveal concentrations of VOCs above applicable regulatory environmental screening levels for an industrial use, the applicant shall obtain regulatory oversight from the Regional Water Quality Control Board, Department of Toxic Substances Control, or the Santa Clara County Department of Environmental Health under their Site Cleanup Program. The City will not issue a building permit for the Project until the applicant compiles with Mitigation Measure HAZ-1. The comment did not raise any new issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment D.4: Table ES-1: Summary of Significant Impacts and Mitigation Measures states construction activities associated with the proposed Project would disturb potentially volatile organic compound (VOC) contaminated soils beneath existing building slabs within proposed parcels 244-15-026 and 244-15-003, which could result in impacts to construction workers and future site occupants from exposure to soil and/or soil vapor that is in exceedance of the Commercial/Industrial Environmental Screening Levels for VOCs. The first mitigation measure includes preparation of a Construction Health and Safety Plan (Plan) that shall be prepared by a qualified environmental professional and submitted to the City of San José Environmental Services Department. This Plan should be submitted to DTSC or other qualified regulatory agency for review and approval. Appropriate regulatory oversight is necessary to ensure the health of construction workers and the surrounding community is protected during construction activities.

Response D.4: This comment raises the potential for disturbance of VOC contaminated soils beneath existing building slabs within parcels 244-15-026 and 244-15-003. As discussed in Response D.3 and demonstrated in Appendix B, additional testing was conducted for the site, including below the slabs.

In addition, Mitigation Measure HAZ-1 provided on page 33 of the Draft EIR provides that if the results of additional soil gas testing reveal concentrations of VOCs above applicable regulatory environmental screening levels for an industrial use, the applicant shall obtain regulatory oversight from the Regional Water Quality Control Board, Department of Toxic Substances Control, or the Santa Clara County Department of Environmental Health under their Site Cleanup Program. The City will not issue a building permit for the Project until the applicant compiles with Mitigation Measure HAZ-1. This will ensure that the health of construction workers and the surrounding community is protected during construction activities.

Additionally, this comment proposes that the Construction Health and Safety Plan be submitted to the DTSC or another qualified regulatory agency for review and approval. The Construction Health and Safety Plan will use standard protocols and procedures to ensure the protection of construction

workers. As noted above, Mitigation Measure HAZ-1 provides that if the results of additional soil gas testing reveal concentrations of VOCs above applicable regulatory environmental screening levels, the applicant will obtain regulatory oversight prior to issuance of a building permit for the Project. Regulatory agencies typically ask for such plans to be submitted for filing only (not approval), as already contemplated by the Draft EIR on page 133. The comment did not raise any new issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment D.5: The second mitigation measure addressing VOC contaminated soil is for the applicant to conduct additional soil gas testing in the areas where VOC exceedances were detected to determine soil gas concentrations and to submit the data to the City of San José Environmental Services Department for review. The EIR states that if the results from soil gas testing indicate that concentrations of VOCs are above applicable regulatory environmental screening levels for an industrial use, that the applicant shall obtain regulatory oversight from the RWQCB, DTSC, or the Santa Clara County Department of Environmental Health (SCCDEH). DTSC, RWQCB, or a qualified local agency should provide regulatory oversight of soil gas sampling activities, including planning, from the onset. Appropriate regulatory oversight is necessary to ensure the nature and extent of contamination is determined and evaluated using current industry standards.

Response D.5: Please see response to Comment D.3 above. Mitigation Measure HAZ-1 provides that if the results of additional soil gas testing reveal concentrations of VOCs above applicable regulatory environmental screening levels for an industrial use, the applicant shall obtain regulatory oversight from the Regional Water Quality Control Board, Department of Toxic Substances Control, or the Santa Clara County Department of Environmental Health under their Site Cleanup Program. The City will not issue a building permit for the Project until the applicant compiles with Mitigation Measure HAZ-1. The comment did not raise any new issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment D.6: The EIR should identify the mechanism(s) to initiate any required investigation and/or remediation and the qualified government agency that will be responsible for providing appropriate regulatory oversight.

Response D.6: Please see response to Comment D.3 above. Prior to issuance of a building permit, the City will review the results of additional soil gas testing reveal concentrations of VOCs above applicable regulatory environmental screening levels for an industrial use, the applicant shall obtain regulatory oversight from the Regional Water Quality Control Board, Department of Toxic Substances Control, or the Santa Clara County Department of Environmental Health under their Site Cleanup Program. The City will not issue a building permit for the Project until the applicant compiles with Mitigation Measure HAZ-1. The comment did not raise any new issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment D.7: Refiners in the United States started adding lead compounds to gasoline in the 1920s in order to boost octane levels and improve engine performance. This practice did not officially end until 1992 when lead was banned as a fuel additive in California. Tailpipe emissions from automobiles using leaded gasoline contained lead and resulted in aerially deposited lead (ADL) being deposited in and along roadways throughout the state. ADL-contaminated soils still exist along roadsides and medians and can also be found underneath some existing road surfaces due to past construction activities. Due to the potential for ADL-contaminated soil, DTSC recommends collecting soil samples for lead analysis under guidance from an approved oversight agency prior to performing any intrusive activities for the project described in the EIR.

Response D.7: ADL-testing is typically required for projects located on roads identified as concerns (freeways) and other large-volume roadways. Given the size and traffic volume of the roads closest to the Project site, including Qume Drive and Commerce Drive, ADL testing was not identified as a potential environmental concern by the environmental consultant. As noted on page 17 of the Draft EIR, the freeways nearest to the Project site include Interstate 680 (I-680) and Interstate 880 (I-880) which are located approximately 0.51 mile east and 1.0-mile west. As part of the pesticide sampling completed in accordance with DTSC guidelines, lead was analyzed from 11 shallow soil samples collected throughout the site at depths from surface to 0.5-foot. Laboratory results of soil samples indicated no detectable to low concentrations of lead, well below the DTSC and SFRWQCB screening levels for the protection of human health through dermal contact, inhalation, and ingestion. The comment did not raise any new issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment D.8: If any projects initiated as part of the proposed project require the importation of soil to backfill any excavated areas, proper sampling should be conducted to ensure that the imported soil is free of contamination. DTSC recommends the imported materials be characterized according to DTSC's 2001 Information Advisory Clean Imported Fill Material.

Response D.8: Imported materials will be characterized in accordance with DTSC's 2001 Information Advisory Clean Imported Fill Material. The comment did not raise any new issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment D.9: DTSC appreciates the opportunity to comment on the EIR. Should you choose DTSC to provide oversight for any environmental investigations, please visit DTSC's Site Mitigation and Restoration Program page to apply for lead agency oversight. Additional information regarding voluntary agreements with DTSC can be found at DTSC's Brownfield website. If you have any questions, please contact me at (916) 255-3710 or via email at Gavin.McCreary@dtsc.ca.gov.

Response D.9: This comment provides a conclusion to DTSC's letter. The comment did not raise any issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

E. Valley Water (dated August 22, 2022)

Comment E.1: Valley Water has reviewed the Draft Environmental Impact Report for 2222 and 2350 Qume Drive and 2150 Commerce Drive Development project. Based on our review of the report we have the following comments: Valley Water records show 1 active well on APN:244-15-003, 5 active wells on APN:244-15-020, and 1 active well on APN: 244-15-026. If the wells will continue to be used following permitted activity, they must be protected so that they do not become lost or damaged during completion of permitted activity. If the wells will not be used following permitted activity, it must be properly destroyed under permit from the District. While the District has records for most wells located in the County, it is always possible that a well exists that is not in the District's records. If previously unknown wells are found on the subject property during development, they must be properly destroyed under permit from the District or registered with the District and protected from damage. Additionally, it should be clarified that well construction, including borings 45 feet or more in depth, and destruction permits are required under Valley Water's Well Ordinance 90-1. Under Valley Water's Water Resources Protection Ordinance, projects within Valley Water property or easements are required to obtain permits.

Response E.1: The Project does not propose to use the wells. Further, a visual inspection of the Property was undertaken in September 2022 to identify the groundwater wells referenced by Valley Water. None were identified. Additionally, a metal detector was used to attempt to locate the wells and none were located. If any wells are located during construction and development activities, they will be properly destroyed under the Valley Water Well Ordinance 90-1 permit. The comment did not raise any new issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment E.2: The water use comparison uses 2020. Given this is currently an office building, was 2020 use pretty low compared to historic use at the site because of COVID? What is the change going to be compared to a more normal year?

Response E.2: Appendix M of the Draft EIR is the Water Supply Assessment (WSA), prepared for the Project by San Jose Water Company (SJWC), used 2020 water use to compare existing and projected water demand Additional data provided by SJWC in September 2022 identified an on-site water usage of 7,378 gallons per day in 2019 as compared to the 5,537 gallons per day identified for 2020 (SJWC, personal communication, September 14, 2022). The 2019 water usage is 25-percent more than the 2020 water usage considered in Draft EIR and the WSA from existing uses. Net water usage is calculated based on subtracting the existing usage from the proposed usage. Because the Draft EIR used the lower 2020 data for existing usage (5,537 gpd), the calculated net increase in water usage in the Draft EIR from the Project is higher than it would be if it was calculated with the 2019 existing usage data (7,378 gpd). Therefore the Draft EIR's use of the 2020 data is more conservative as it results in a higher net increase in water usage by the Project. The water demand for existing uses on the Project site was based on actual water usage data collected by SJWC, and future water demand for the proposed Project was estimated using SJWC's Industrial Space demand factor of 0.5 gallon per day per square foot. The comment did not raise any new issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment E.3: Water use efficiency is a key pillar of Valley Water's program to maintain and improve water supply reliability into the future. Valley Water recommends that the developers include water efficient appliances and landscaping. Where feasible, landscaping should get fed with recycled water and the developer could discuss with San Jose the feasibility of a hookup to the South Bay's recycled water system. In addition, Valley Water recommends the developer include recommended actions from our Model New Development Water Efficient Ordinance. If there are any further questions or concerns please

contact Raihan Saleh at rsaleh@valleywater.org and reference Valley Water file 34633.

Response E.3: As stated on page 20 of the Draft EIR and identified on Draft EIR Figure 2-7, the proposed Project would meet the City of San José Water Efficient Landscape Requirements. As described on page 20 of the Draft EIR, Project features would include a low flow irrigation system equipped with a weather based smart controller with a rain or soil moisture sensor. On-site landscaping would meet State water efficient landscape standards provided in the California Model Water Efficient Landscape Ordinance (MWELO), California Green Building Standards Code, and the State's stage 2 drought restrictions. Further, as noted on page 110 of the Draft EIR, the proposed Project would utilize recycled water for outdoor landscaping.

The proposed warehouse buildings would incorporate water efficient design features including low-flow water fixtures, high-efficiency toilets, and faucet aerators to reduce water demand. Additionally, the proposed warehouse buildings would meet LEED Silver certification standards**.** The comment did not raise any new issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

ORGANIZATIONS, BUSINESSES, AND INDIVIDUALS

F. Kanyon Konsulting LLC (dated July 17, 2022)

Comment F.1: Kan rakat Kanyon Sayers-Roods. I am writing this on behalf of the Indian Canyon Band of Costanoan Ohlone People as requested, responding to your letter

As this project's Area of Potential Effect (APE) overlaps or is near the management boundary of a potentially eligible cultural site, I am interested in consulting and voicing our concerns. With some instances like this, usually we recommend that a Native American Monitor and an Archaeologist be present on-site at all times during any/all ground disturbing activities. The presence of a Native monitor and archaeologist will help the project minimize potential effects on the cultural site and mitigate inadvertent issues.

Kanyon Konsulting, LLC has numerous Native Monitors available for projects such as this, if applicable, we recommend a Cultural Sensitivity Training at the beginning of each project. This service is offered to aid those involved in the project to become more familiar with the indigenous history of the peoples of this land that is being worked on.

Kanyon Konsulting is a strong proponent of honoring truth in history, when it comes to impacting Cultural Resources and potential ancestral remains, we need to recognize the history of the territory we are impacting. We have seen that projects like these tend to come into an area to consult/mitigate and move on shortly after - barely acknowledging the Cultural Representatives of the territory they steward and are responsible for. Because of these possibilities, we highly recommend that you receive a specialized consultation provided by our company as the project commences, bringing in considerations about the Indigenous peoples and environment of this territory that you work, have settled upon and benefit from.

As previously stated, our goal is to Honor Truth in History. And as such we want to ensure that there is an effort from the project organizer to take strategic steps in ways that #HonorTruthinHistory. This will make all involved aware of the history of the Indigenous communities whom we acknowledge as the first stewards and land managers of these territories.

We look forward to working with you. Tumsan-ak kannis [Thank You}. Kanyon Sayers- Rood. Consultant/ Tribal Monitor (ICMBO). Kanyon Konsulting LLC.

Response F.1: As noted on page 80 of Appendix B to the Draft EIR, in accordance with AB 52, on January 31, 2022 the City sent the Notice of Preparation to all tribes affiliated with the San José geographic region, including the Indian Canyon Band of Costanoan Ohlone People, and tribes have sent written requests for notification of projects to the City. No comments or requests for consultation were received during the Notice of Preparation period or during the preparation of the Draft EIR.

Page 88 of the Draft EIR notes, "a review of literature and maps did indicate a moderate to high potential of historic-period activity within the Project area for unrecorded historic-period archeological resources in the proposed Project area." As noted on page 20 of Appendix F2 of the Draft EIR, the Project's APE is within an area associated with historic ethnographic villages. The Project would comply with City of San José Standard Permit Conditions concerning subsurface cultural resources and human remains, as stated on pages 89 and 90 of the Draft EIR. If recommended by a qualified archeologist pursuant to the Subsurface Cultural Resources Standard Permit Condition, the Project would implement Mitigation Measures CUL-1 and CUL-2, which require the preparation of a cultural resources treatment plan and evaluation of encountered prehistoric or historic resources. Further, Mitigation Measure CUL-1 has been revised to clarify that, if required, a cultural resources report would be <u>prepared by a qualified archaeologist in consultation with a Native American representative registered with the Native American Heritage Commission for the City of San Jose and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3.</u>

See Section 5.0 Draft EIR Text Revisions in this Final EIR for proposed text amendments. The comment did not raise any new issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

G. Advocates for the Environment

On August 16, 2022 the City received a comment letter from Advocates for the Environment. The August 16, 2022 comment letter is included as Comment Letter G1 in Appendix A of this FEIR. Subsequent to the Draft EIR public circulation period, the City received an email from Dean Wallraff, Executive Director at Advocates for the Environment with a comment letter attached. The February 1, 2023 comment letter states that it is withdrawing its comment letter and requests that the City not include its comment letter in the Final EIR. The February 1, 2023 comment letter is included as Comment Letter G2 in Appendix A of this FEIR. Responses to the content of Comment Letters G1 and G2 are included below.

G.1 Advocates for the Environment (dated August 16, 2022)

Comment G.1: Advocates for the Environment submits the comments in this letter regarding the proposed Qume Commerce Project (Project) located at 2222 and 2350 Qume Drive and 2150 Commerce Drive in the City of San José, Santa Clara County, California. Currently, the project site is developed with an industrial/business park complex containing three buildings comprising 425,433 square feet. The Project involves demolishing all existing buildings and removing the mature landscape vegetation—including 620 trees—and constructing four new industrial warehouse buildings, totaling 714,419 square feet. We have reviewed the Draft Environmental Impact Report (DEIR) released in July 2022 and submit comments regarding the sufficiency of the DEIR's Greenhouse-Gas (GHG) analysis under the California Environmental Quality Act (CEQA).

Response G.1: The comment generally summarizes the Project and makes no direct comment for the Draft EIR. Pursuant to State CEQA Guidelines Section 15088(a), a lead agency is only required to evaluate and respond to comments raised on environmental issues, and thus no further response is necessary.

Comment G.2: Greenhouse gas emissions from buildings, including indirect emissions from offsite generation of electricity, direct emissions produced onsite, and from construction with cement and steel, amounted to 21% of global GHG emissions in 2019. (IPCC Sixth Assessment Report, Climate Change 2022, WGIII, Mitigation of Climate Change, p. 9-4.) This is a very large portion of global GHG emissions. It is much less expensive to construct new building projects to be net-zero than to obtain the same level of GHG reductions by retrofitting older buildings. Climate damages will keep increasing until we reach net zero GHG emissions, and there is a California state policy requiring the state to be net-zero by 2045. It therefore makes no sense to construct new buildings that are not net-zero. Two of the largest mixed-use development projects in the history of California, Newhall Ranch (now FivePoint Valencia), and Centennial (part of Tejon Ranch) decided, after environmental groups sued and won under CEQA, to move forward as net-zero communities. This proves it is feasible. The Applicant for this project should do the same. We urge the City to adopt net-zero as the GHG significance threshold for this project, and require full fair-share litigation. The CARB 2017 Scoping Plan states that "achieving no net additional increase in GHG emissions, resulting in no contribution to GHG impacts, is an appropriate overall objective for new development." (p. 101.) Moving this Project forward as a net-zero project would be the right thing for the City to do, and would also protect the City and the Applicant from CEQA GHG litigation.

Response G.2: The greenhouse gas (GHG) thresholds applicable to the Project are described on pages 102-104, and 106 of the Draft EIR and are summarized in the following paragraph. The City used thresholds adopted by the BAAQMD Board of Directors on April 20, 2022. In developing its thresholds, BAAQMD "analyzed what will be required of new land use development projects to achieve California's long-term climate goal of carbon neutrality by 2045." The Air District found that a project that is consistent with a qualified GHG reduction strategy does its "'fair share' of implementing the goal of carbon neutrality by 2045." A qualified GHG reduction strategy meets the criteria of CEQA Guidelines Section 15183.5(b)(1). If a project is consistent with a qualified GHG reduction strategy, "it will contribute its portion of what is necessary to achieve California's long-term climate goals—its "fair share"—and an agency reviewing the project under CEQA can conclude that the project will not make a cumulatively considerable contribution to global climate change" (BAAQMD Justification Report, page 1-3).

In November 2010, the City adopted the Envision San José 2040 General Plan and certified an associated Program Environmental Impact Report (EIR). In December 2015, the City approved a Supplemental Environmental Impact Report (SEIR) prepared to provide additional analysis and information on greenhouse gas emissions to supplement the Envision San José 2040 General Plan.

The potential impact of greenhouse gas emissions related to the implementation of the General Plan were analyzed in the SEIR and based on this analysis, the City adopted a Greenhouse Gas Reduction Strategy (GHGRS) as a part of the General Plan.

The City first prepared a GHGRS together for the Envision San José 2040 General Plan to ensure that implementation of the General Plan aligns with the greenhouse gas reduction targets set by AB 32. In November 2020, the City of San José adopted the updated 2030 GHG Reduction Strategy (2030 GHGRS) which meets the definition of a qualified GHG reduction strategy for purposes of tiering and streamlining under CEQA. One of the objectives of the 2030 GHGRS is to serve as a GHG reduction plan to streamline GHG emissions analysis of future development and plans within the City, in accordance with CEQA Guidelines Sections 15152, 15183, and 15183.5. The 2030 GHGRS includes strategies designed to reduce the City's greenhouse gas emissions levels to 40 percent below 1990 levels by the year 2030 to meet the long-term target of carbon neutrality by 2045. This is consistent with CARB's 2022 Scoping Plan that was approved on December 15, 2022. The CEQA Guidelines and new BAAQMD thresholds require a qualified climate action plan to specify measures or a group of measures, including performance standards that substantial evidence demonstrates, if implemented on a Project-by-Project basis, would collectively achieve the specified emissions level.

As stated on page 24 of the San José 2030 GHGRS, a Project that is compliant with the mandatory measures and "consistent with an adopted qualified GHG reduction strategy would not have a significant GHG emissions impact" (City of San José, 2020). Section 2.3.1 of the 2030 GHGRS provides a brief overview of how the 2030 GHGRS is consistent with the BAAQMD requirements for a qualified GHG reduction strategy. There is no requirement in the 2030 GHGRS or the BAAQMD thresholds that new buildings be net-zero.

The Project's Greenhouse Gas Emission impacts are identified as less than significant on pages 108 and 109 of the Draft EIR because the Project is consistent with the local GHG reduction plan and would not conflict with any applicable policy, plan, or regulation adopted for the purposes of reducing the GHG emissions. While no GHG impacts have been identified, consistent with the commenter's request, additional sustainability commitments have been incorporated into the Project as conditions of approval to further minimize impacts as shown in Response C.1 above. The comment did not raise any new issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment G.3: Although the Greenhouse Gas Emissions Assessment, Appendix I to the DEIR, included a summary output of GHG emissions from CalEEMod, the DEIR itself failed to include key information regarding the Project's overall operational emissions. It is customary to amortize construction emissions for 30 years (an approximate building lifespan) and add it to the total annual operational emissions. As applied here, this would result in annual emissions of approximately 9,441.58 metric tons carbon dioxide equivalent (MTCO2e).[5]

Response G.3: The CalEEMod outputs in Appendix I to the Draft EIR include the calculated construction GHG emissions. With respect to GHG emissions from long-term operations, these model runs are unrefined, and did not include Project design features and benefits, such as the implementation of green building measures, that include enrollment in the SJCE TotalGreen Program, Pedestrian, Bicycle, and Transit design measures, such as the inclusion of bicycle lanes, parking and storage. The Project also includes water conservation measures such as water efficient landscaping

[5] Emissions metrics obtained from CalEEMod summary printouts.
Project's mitigated construction emissions = 989.7621 MTCO2e ÷ 30 years = 32.99 MTCO2e/year construction emissions.
Total mitigated operational emissions = 9,408.5851 MTCO2e/year
9,408.5851 MTCO2e/year + 32.99 MTCO2e/year = 9,441.5751 MTCO2e/year, rounded to the nearest hundredths-place.

and recycled water usage, and a zero waste goal which were not included in the CalEEMod outputs. Finally, additional sustainability commitments have been included in the Project as described in Response G.2 in response to public comments.

These design features and sustainability benefits were not included in the CalEEMod outputs in Appendix I to the Draft EIR because the BAAQMD did not establish or recommend a quantitative, mass-emission project-level threshold and does not require quantified emissions. See *CEQA Thresholds for Evaluating the Significance of Climate Impacts from Land Use Projects and Plans Justification Report* (April 2022). The Justification Report states that the Air District "recommends using an approach endorsed by the California Supreme Court in the Center for Biological Diversity decision known as 'fair share,'" and "This approach evaluates whether a project's GHG emissions are cumulatively considerable based on 'their effect on the state's effort to meet [those] goals'". The Supreme Court also states that "'consistency with meeting statewide goals is permissible significance criterion for Project emissions'… and an agency's choice to use that criterion does not violate CEQA.." Therefore, incorporation of the GHG reduction measures described above are not necessary and not included. As such, it is not appropriate or accurate to use these emissions for evaluation of operational GHG impacts.

The 2030 GHGRS Development Consistency Checklist (Attachment A in the 2030 GHGRS) applies to all discretionary reviews through the City's Planning, Building and Code Enforcement Department (PBCE). "Pursuant to CEQA Guidelines Sections 15064(h)(3), 15130(d), and 15183(b), a project's incremental contribution to a cumulative GHG emissions effect may be determined not to be cumulatively considerable if it complies with the requirements of the GHGRS." (compliance checklist page 1).

To help facilitate the implementation of the 2030 GHGRS, each greenhouse gas reduction strategy contains implementation information that identifies the strategy's GHG reduction potential by 2030, the performance standards associated with the GHG reduction estimates, and the initial implementation steps to help achieve the reduction levels. The purpose of the Development Consistency Checklist is to apply the 2030 GHGRS to provide a streamlined review process for proposed new development projects subject to discretionary review and the environmental review under CEQA. Implementation of applicable reduction actions in new development projects will help the City achieve incremental reductions toward its target. The checklist for the Project is provided on pages 4-13 in Appendix B of the Greenhouse Gas Emissions Assessment (Appendix I). Consistency with Table A, Strategy 1 (Consistency with the Land Use/Transportation Diagram [Land Use and Density]) and compliance with Table B (2030 Greenhouse Gas Reduction Strategy Compliance) are the primary basis for consistency with the 2030 GHGRS.

Per General Plan Policies IP -3.7 and IP-17.2, the 2030 GHGRS demonstrates progress towards achieving required State GHG reduction targets and allows the City to develop and maintain a 2030 GHGRS that reduces GHG emissions within the City. The 2030 GHGRS contains strategies to reduce GHG emissions to achieve the 2030 target. These strategies are organized in order of calculated $MTCO_2e$/year reductions. For instance, on page 55 of the 2030 GHGRS, GHGRS 1 San José Clean Energy is estimated to be approximately 655,104 $MTCO_2e$/year reduction, or approximately 55 percent of the total emissions reductions per year for the City. While consistency with all strategies is the goal, as noted previously in this response, compliance with GHGRS 1 is the primary criterion to ensure that the Project is consistent with the City's reduction targets.

The 2030 GHGRS leverages other important City plans and policies; including the General Plan, Climate Smart San José, and the City Municipal Code in identifying reductions strategies that achieve the City's target. As described in the 2030 GHGRS, these GHG reductions will occur through a combination of

City initiatives in various plans and policies and will provide reductions from both existing and new developments. Per the 2030 GHGRS, the City will monitor strategy implementation and make updates, as necessary, to maintain an appropriate trajectory to the 2030 GHG target.

Application of the 2030 GHGRS to development review through the planning entitlement process will ensure that the GHG reduction measures translate to on-the-ground results to achieve the interim 2030 reduction target. As the 2030 GHGRS leverages existing plans and policies, including Municipal Code requirements, several of the Development Consistency Checklist Items are required by Municipal and/or State Building Code. The goals, policies, and measures address green building practices, transportation strategies, energy use, water conservation and water reduction and collectively these sectors contribute to the City's GHG reductions and advancement of its broad sustainability goal (refer to Response H.24, below, for additional details). None of the comments raised by this commenter or others represents new significant information that would warrant recirculation of the EIR.

Comment G.4: The DEIR included the following two GHG significance thresholds: "Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment" (GHG-1) and "Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases" (GHG-2) (DEIR, 108-109). An agency must consider a project's land use patterns over time to reasonably evaluate the GHG emissions impacts (*Cleveland Nat'l Forest Foundation v. San Diego Ass'n of Governments* (2017) 3 Cal.5th 497, 513). Therefore, the full analysis of the GHG impact of the Project should likewise include the likely GHG emissions through the year 2055, because buildings on average last about 30 years and the first operational year is predicted to be 2025. Thus, the Project must show consistency on a long-term scale—including climate goals for 2050—to comply with CEQA.

Response G.4: As explained above in Response G.3, the BAAQMD recommends that compliance with a qualified GHG reduction plan results in a less than significant impact under both questions included in the Appendix G checklist used by the City in the Draft EIR. With respect to threshold GHG-1, these impacts are discussed on Draft EIR pages 108 and 109. With respect to threshold GHG-2, these impacts are discussed on Draft EIR pages 108 through 116.

The 2030 targets listed in the 2030 GHGRS are "tailored for application to development reviews and examinations of greenhouse gas emissions and their reductions for future projects under land use planning and the California Environmental Quality Act (CEQA)." The 2030 GHGRS adds that the shorter time horizon target serves as a "focused" and "qualified climate action plan" for the reduction of GHGs.

The San José 2030 GHGRS "is consistent with Climate Smart San José" and its 2050 goals, therefore projects that are consistent with the GHGRS would also be consistent with Climate Smart San José's 2050 goals. The 2030 GHGRS establishes strategies designed to reduce designed to reduce the City's greenhouse gas emissions levels to 40 percent below 1990 levels by the year 2030 to meet the long-term target of carbon neutrality by 2045 (2030 GHGRS, page 3 and 7). Moreover, the 2030 GHGRS includes "various goals, policies, and measures to reduce GHG emissions through the buildout of the General Plan and beyond to 2050." (2030 GHGRS, page 7). Therefore the Project's consistency with the goals and policies 2030 GHGRS does account for consistency on a long-term scale – including climate goals for 2050 and beyond – as requested by the commenter.

Furthermore, the Project itself would be consistent with 2050 goals established by Climate Smart San José through compliance with the San José Building Reach Code. Consistency with the Climate Smart San José and its goals means the Project is showing consistency on a long-term scale. Climate Smart San José lists nine strategies to reduce carbon emissions. The Project's compliance with the 2030

GHGRS and Building Reach Code Ordinance would reduce carbon emissions to make the Project consistent with the relevant strategies. Strategy 1.1 and 1.2 discusses a transition to renewable energy and creating locations that are low water use and attractive which are both addressed on page 26 of Appendix I. Strategies 2.1, 2.3, and 2.4 all develop goals for transportation. They state the Project needs to increase walkability and cycling, enable clean and electric mobility choices, and develop integrated and accessible public transportation. The Project would include pedestrian improvements to the existing facilities along Project frontages on Commerce Drive, Qume Drive, and McKay Drive. These improvements include 10-foot wide sidewalk for improved pedestrian access and safety. Additionally, the Project includes a Tier 2 multi-modal infrastructure that would construct an internal bicycle/pedestrian pathway connecting the cul-de-sacs at McKay Drive/Automation Parkway and Commerce Drive. Additional sustainability commitments have been included in the Project as described in Response G.2 in response to public comments. These include 20 percent of automobile parking spaces equipped with EV-ready electrical conduits and 10 percent of automobile parking spaces equipped with EV chargers. These strategies are addressed in pages 108-109 of the Draft EIR, in pages 24-25 of Appendix I and pages 6-8 of Appendix B in the Greenhouse Gas Emissions Assessment (Appendix I). Strategy 3.1 ensures the location of Project is creating local jobs for residents in areas that save on the expenses of commuting. The Project's location near existing transit facilities ensure that Project is consistent with this strategy. Strategies 2.2, 3.2 and 3.3 would not apply to the Project. Strategy 2.2 and 3.2 describe strategies for residential and commercial buildings which the Project is not proposing to build. Strategy 3.3 discusses fleet management practices and the efficient movement of commercial goods through the City which would not pertain to the development of the Project. Therefore, the Project is consistent with Climate Smart San José and the relevant strategies it has developed for the City.

As explained on page 20 of Appendix I in the Draft EIR, the "Reach Code Ordinance to reduce energy-related GHG emissions [is] consistent with the goals of Climate Smart San José." The analysis concludes on page 109 of the Draft EIR that the Project is consistent with the Building Reach Code which would, therefore, make it consistent with Climate Smart San José. Pages 108-116 of the Draft EIR demonstrate that the Project would be consistent with the City's 2030 GHGRS. Therefore, the Draft EIR explains that Project would not conflict with the City's climate goals for 2050, as requested by the commenter. Additionally, it should be noted that the Project would benefit from implementation of current and potential future regulations (e.g., improvements in vehicle emissions and fleet turnover, SB 100/renewable electricity portfolio improvements, etc.) enacted to meet an 80 percent reduction below 1990 levels by 2050. The State has adopted various regulations to reduce energy and mobile source GHG emissions. SB 100 requires the 60 percent of California's electricity to be renewable by 2030 and 100 percent renewable by 2045 (CEC, 2022). CARB's Advanced Clean Truck Regulation requires truck manufacturers to transition from diesel trucks and vans to electric zero-emission trucks beginning in 2024. By 2035, 75 percent of Class 4-8 straight truck sales and 40 percent of truck tractor sales must derive from zero-emission truck/chassis sales (CARB, 2021). Executive Order N-79-20 expands on the Advanced Clean Trucks Regulation and requires every new truck sold in California is required to be zero-emission by 2045 (State of California, 2020). Additionally, CARB is developing the Advanced Clean Fleets Regulation to require medium and heavy-duty zero-emission fleets to be zero-emissions by 2045 (CARB, 2022).

The Advanced Clean Truck Regulation, Executive Order N-79-20, and the proposed Advanced Clean Fleets Regulation accelerate the transition of zero-emission medium-and heavy-duty vehicles from Class 2b to Class 8. CARB's Mobile Source Strategy takes an integrated planning approach to identify the level of transition to cleaner mobile source technologies needed to achieve all of California's targets by increasing the adoption of ZEV buses and trucks (CARB, 2021). Additionally, CARB's Advanced Clean Cars II Rule requires 100 percent of new cars and light trucks sold in California to be

zero-emission vehicles by 2035 (CARB, 2022b). Implementation of these regulations would directly reduce the Project's energy and mobile source emissions consistent with the State's long-term goals. None of the comments raised by this commenter or others represents new significant information that would require recirculation of the EIR.

Finally, in the case cited by the commenter, the California Supreme Court noted that CEQA requires public agencies, including the City, to ensure that its analysis of GHG impacts "stay in step with evolving scientific knowledge and state regulatory schemes." Here, the City did just that and used BAAQMD's very recent (2022) thresholds to evaluate the Project's GHG impacts. This approach is entirely consistent with CEQA and CEQA case law.

Comment G.5: Under threshold GHG-2, the City analyzed consistency with the three following documents: City of San José 2030 Greenhouse Gas Reduction Strategy (GHGRS) Compliance Checklist, 2017 CARB Scoping Plan, and Plan Bay Area. However, the Project would be inconsistent with these identified applicable plans, and therefore this discussion of consistency is inaccurate. Further, the language of the adopted threshold demands that the EIR analyze the Project's consistency with all applicable plans, not just a select number of plans that the lead agency prefers.

Response G.5: The Draft EIR explains that the Project is consistent with three plans (City of San José 2030 Greenhouse Gas Reduction Strategy (2030 GHGRS) Compliance Checklist, 2017 CARB Scoping Plan, and Plan Bay Area) that are most relevant to the Project according to the City as described on pages 109 to 116 of the Draft EIR and in responses G.1 through G.4 above.

Since publication of the Draft EIR, CARB approved its 2022 Scoping Plan in November 2022. The 2022 Scoping Plan has a goal of carbon neutrality by 2045 and advocates for compliance with a local GHG reduction strategy (CAP) consistent with Guidelines 15183.5. The 2030 GHGRS is a local GHG reduction strategy with a goal of carbon neutrality by 2045.

The 2030 GHGRS specifically states that consistency with the 2030 GHGRS Checklist in conjunction with the GHGRS provides a path for streamlined CEQA review process for discretionary review for future projects (2030 GHGRS page 9). The 2030 GHGRS is the most applicable plan to evaluate the Project because it specifically outlines how the City and future development within the City will meet the State's GHG reduction targets, including those in the 2022 Scoping Plan, pursuant to State CEQA Guidelines Section 15183.5 and the BAAQMD. The comment does not contain or specifically refer to readily available information, or does not explain the relevance of evidence submitted with the comment. Therefore, under CEQA Guidelines Section 15088(c), no further response is necessary.

Comment G.6: Overall, the City should have concluded that the impact would be significant under threshold GHG-2 and must adopt mitigation to the fair share extent. The discussion of whether the Project exceeds threshold GHG-2 was centered on the GHGRS as an applicable plan. The GHGRS consistency analysis exclusively focused on a brief procedure, consistency checklist (Checklist), contained in the GHGRS which purportedly analyzes a project's consistency with the GHGRS to bypass the consistency analysis required by the threshold GHG-2 that the lead agency adopted. The Checklist declares that conforming with the steps, demonstrates that a project's contribution to cumulative GHG emissions may be determined not to be cumulatively considerable under CEQA Guidelines sections 15064(h)(3), 15130(d), and 15183(b). The Checklist largely disregards the GHGRS goals by suggesting that adherence to the Checklist alone is sufficient to demonstrate consistency with the GHGRS. When adhered to, this procedure allows consistency with the GHGRS to be analyzed without considering any of the guidance within the GHGRS. As a result, the DEIR circumvented analysis of San Jose's adopted emission intensity target for 2030, as identified in the GHGRS, which is 2.94 MTCO2e per service population. Because the Project's net operational GHG emissions minus existing emissions are estimated to be 5173.352 MTCO2e/year, and the Project will have 715 employees, the Project's per-capita GHG emissions would be

approximately 7.24 MTCO2e/service population, greatly exceeding San Jose's emissions intensity from 2017, as well as the future target. [6] Therefore, the Project is not compliant with the GHGRS emissions target overall, and compliance with the Checklist cannot, in itself, cure this defect. Moreover, although the DEIR purports to comply with the Checklist, the Project has not sufficiently demonstrated compliance with the Checklist. Therefore, even if the Checklist is deemed a sufficient substitute for the GHGRS itself, the Project is not consistent with the GHGRS because it does not comply with all of the mandatory measures on the Checklist.

Response G.6: As stated in the 2030 GHGRS Attachment A Compliance Checklist, the purpose of the Checklist is to "implement GHG reduction strategies from the 2030 GHGRS to new development projects" and to "provide a streamlined review process for proposed new development projects that are subject to discretionary review and trigger environmental review pursuant to the California Environmental Quality Act." (GHGRS Project Compliance Checklist, page 1) A proposed project demonstrates conformance with the City of San José 2030 Greenhouse Gas Reduction Strategy by completing the checklist. As stated in page 2 of Attachment A of the 2030 GHGRS, "projects need to demonstrate consistency with the GHGRS reduction strategies listed in Table B or document why the strategies are not applicable or are infeasible" (City of San José, 2020). Therefore, the Project does not have to comply with all mandatory measures on the checklist. The 2.94 $MTCO_2e$ service population is not intended to be a Project target or CEQA threshold, but a City-wide target using the emissions sectors included in the City's inventory to assist the City with tracking progress towards target achievement. For additional details regarding the Compliance Checklist, refer to Response G.3, Response G.7, Response G.8, and Response G.9.

The commenter is challenging the checklist itself, which was adopted by the City in November 2020 as part of the approval of the GHGRS. The GHGRS was approved in combination with the Initial Study/Addendum prepared for the San José Greenhouse Reduction Strategy 2030 Update in August 2020. The Notice of determination (NOD) filing date was November 19, 2020. The 2030 GHGRS was not challenged and the statute of limitations for such a challenge is well past. Moreover, and as explained above, consistency with a qualified climate action plan to support a less than significant impact on climate change is endorsed by the expert air district (BAAQMD). BAAQMD reviewed the CEQA document and did not provide any comments on the GHG analysis. None of the comments raised by this commenter or others represents new significant information that would warrant recirculation of the EIR.

Comment G.7: According to the descriptions and explanations below each Checklist measure, the Project would not be compliant with three of the required measures identified in the Checklist.

First, MS-2.7 involves "encourag[ing] installation of solar panels or other clean energy power generation sources over parking areas." The lead agency responded by saying that tenants "would be able to take advantage of incentives that are in place at the time of construction," without actually including any infrastructure that would encourage the installation of solar panels. For example, simply constructing an overhead canopy to provide space for solar panel installation would encourage the installation of solar panels in parking lots. The lead agency made no effort to demonstrate voluntary actions which would comply with this measure other than encouraging factors that are already in existence and have no

[6] Emissions metrics obtained from CalEEMod summary printouts and service population obtained from the DEIR.
Project's mitigated operational emissions = 9,408.5851 MTCO2e
Existing site emissions (baseline) = 4,235.235 MTCO2e
9,408.5851 MTCO2e − 4,235.235 MTCO2e = 5,206.342 MTCO2e
5,206.342 MTCO2e ÷ 715 employees = 7.24, rounded to the nearest hundredths-place.
San Jose 2017 Emissions Inventory intensity = 3.96 MTCO2e/service population (GHGRS p. 35)
2030 Emissions Intensity Target = 2.94 MTCO2e/service population (GHGRS p. 51).

relation to the Project, or more specifically, parking areas on the Project site.

Response G.7: As stated in Response G.3 and discussed in the Draft EIR, the City's 2030 GHGRS serves as a Qualified GHG reduction strategy under CEQA. On page 24 of the 2030 GHGRS it states that a "Project consistent with a qualified GHG reduction strategy would not have significant GHG emissions impacts" (City of San José, 2020). The Development Compliance Checklist serves as a tool to measure how well a Project achieves the 2030 GHGRS, as applicable. Consistency with Table A, Strategy 1 (Consistency with the Land Use/Transportation Diagram [Land Use and Density]) and compliance with Table B (2030 Greenhouse Gas Reduction Strategy Compliance) are the primary basis for consistency with the 2030 GHGRS. The City continues implementation and enforcement of the 2030 GHGRS Development Checklist throughout the plan approval and Project development process. Compliance with applicable 2030 GHGRS policies will be enforced as standard conditions and would be verified during design review, plan check, and permit issuance. As stated in page 2 of Appendix B of the 2030 GHGRS, "projects need to demonstrate consistency with the GHGRS reduction strategies listed in Table B or document why the strategies are not applicable or are infeasible" (City of San José, 2020). Therefore, compliance with all policies is not required to show consistency with the Development Compliance Checklist. Rather, the Development Compliance Checklist is a tool to identify the applicable measures for development projects on a consistent basis.

Further, as explained in the Draft EIR, MS-2.7 "encourages" but does not require installation of solar panels over parking areas, therefore the Project is consistent with this measure. This measure is implemented by the City, and is not a requirement for every project. The Project also does not include natural gas; all energy used onsite will be sourced from renewable resources through SJCE's TotalGreen program. Finally, as discussed in Response G.2, additional sustainability commitments have been made by the applicant which will be implemented as Project Conditions of Approval. These include installing sufficient solar on the building rooftops to provide net-neutral electricity demand for each Project building. None of the comments raised by this commenter or others represents new significant information that would warrant recirculation of the EIR

Comment G.8: Second, MS-16.2 requires promoting "neighborhood-based" distributed renewable energy. However, the lead agency's response reflects an individual Project-based renewable energy effort, which is not the same as the community-based strategy outlined in this measure. As this measure requires a community effort to provide an alternate means of investing in renewable energy to groups and individuals who may otherwise not be able to install systems on their own property, to be compliant with this measure the lead agency must demonstrate that they would promote a community effort in some other way beyond simply using renewable energy sources for the Project.

Response G.8: Refer to Response G.3 and Response G.7, above. Measure MS-16.2 cited in the comment is to "promote" but does not require neighborhood-based distributed renewable energy. It should be noted that this measure promotes neighborhood based distributed renewable energy– not site specific distributed renewable energy on the Project site. The Project is consistent with this measure as explained in the 2030 GHGRS Checklist prepared for the Project (see Appendix B of the Project Greenhouse Gas Emissions Assessment [Appendix I of the Draft EIR]), because it would enroll in SJCE TotalGreen, which supports San José's investments in new renewable energy sources and reliability. SJCE Total Green is a Community Choice Energy program that receives and provides renewable energy from distributed sources. The Project through SJCE TotalGreen is meeting the intent of the policy by utilizing 100 percent renewable energy. In addition, and though not required by this General Plan policy or the City's code, the Project will install sufficient solar panels to ensure that the Project's buildings have net-zero electricity demand. The City will verify and enforce compliance with this measure through the plan review and permit approval process. None of the comments raised by this commenter or others represents new significant information that would

warrant recirculation of the EIR

Comment G.9: Third, TR-8.5 intends for projects to "[p]romote participation in car share programs to minimize the need for parking spaces in new and existing development." However, rather than discussing the implementation of car share programs, the explanation of the Project's compliance with this measure made no mention of car share programs in the response, and rather focused on the availability of bike parking spaces and the fact that the Project would be located near existing transit and bicycle facilities. To be compliant with this measure, the Project should take some active role in car share programs specifically, for its future tenants and their employees to be encouraged to share cares when commuting to work.

Response G.9: Page 1 of the City's 2030 GHGRS Checklist explains that implementation of applicable reduction actions in new development projects will help the City achieve incremental reductions toward its target. Not every measure in the 2030 GHGRS Checklist is expected to be applicable to every future development project. The Project is consistent with this measure based on its location close to transit and the fact that bicycle parking spaces are required. The policy does not "require" carshare programs and the Project does not impede the City's ability to promote carshare programs throughout the City.

As the majority of the vehicle trips to the Project site would be trucks delivering goods and employee car trips, a car share program would not be the most effective at reducing vehicle trips for the Project because the trucks must transport goods to and from the Project. However, the Project would provide bicycle parking spaces and Tier 2 multi-modal infrastructure, which includes an internal bicycle/pedestrian pathway connecting the cul-de-sacs at McKay Drive/Automation Parkway and Commerce Drive, to support the goal of minimizing employee vehicle trips and to achieve the objective of this measure. Furthermore, truck emissions are being addressed through various regulations such as CARB's Advanced Clean Truck Regulation, which requires every new truck sold in California is required to be zero-emission by 2045. CARB's Advanced Clean Cars II Rule requires 100 percent of new cars and light trucks sold in California to be zero-emission vehicles by 2035. Implementation of these regulations among various others would directly reduce the Project's energy and mobile source emissions consistent with the State's long-term goals. None of the comments raised by this commenter or others represents new significant information that would warrant recirculation of the EIR

Comment G.10: Ultimately, this DEIR consistency analysis cannot stand because complying with the Checklist is not adequate to show consistency with the GHGRS. While the chosen threshold GHG-2 encourages comparison between the proposed Project and relevant GHG emissions plans, it does not permit an applicable plan to circumvent CEQA Guidelines by prescribing its own separate procedure to demonstrate CEQA compliance. Therefore, the City must show consistency with all applicable plans, including the GHGRS generally, notwithstanding the Checklist procedure.

Response G.10: As stated in Response G.3, Response G.6, and Response G.7 above, the 2030 GHGRS is the qualified climate action plan for determining CEQA compliance. Reliance on the Compliance Checklist to demonstrate consistency with the 2030 GHGRS is explicitly established page 65 of the City of San José 2030 GHGRS: "The purpose of the Development Consistency Checklist is to apply the 2030 GHGRS to provide a streamlined review process for proposed new development projects subject to discretionary review and that trigger the environmental review under the California Environmental Quality Act (CEQA)." As mentioned previously, on page 24 of the City of San José 2030 GHGRS, "in accordance with the BAAQMD May 2017 CEQA Air Quality Guidelines… a project consistent with an adopted qualified GHG reduction strategy would not have a significant GHG emissions impacts" (City of San José, 2020). As mentioned above and shown in Section 2.3.1 of the 2030 GHGRS, the GHG

Reduction Strategy is a qualified climate action plan and, therefore, consistent with CEQA. According to page 65 of the GHGRS, the purpose of the Development Consistency Checklist is to apply the 2030 GHGRS to provide a streamlined review process for proposed new development projects subject to discretionary review and that trigger environmental review under CEQA. None of the comments raised by this commenter or others represents new significant information that would require recirculation of the EIR.

Comment G.11: The DEIR briefly analyzed consistency with the 2017 Scoping Plan from the California Air Resources Board (CARB), but there are significant inconsistencies which the analysis failed to find. The Scoping Plan was developed to facilitate California's compliance with SB 32, which requires statewide GHG emissions to be reduced to 40% below 1990 levels by 2030 (Health & Safety Code § 38566). Although a discussion of consistency with the CARB 2017 Scoping Plan was briefly included in the DEIR, it notably omitted a discussion of how the Project is consistent with any of the goals, including the 2050 goal of 80% below 1990 levels. The 2017 CARB Scoping Plan sets out statewide goals for total GHG emissions targets of 6 MTCO2e/capita by 2030, and 2 MTCO2e/capita by 2050 (CARB Scoping Plan, p. 99). The Project's per service population metric of 7.24 MTCO2e/service population exceeds both the 2030 and 2050 CARB 2017 Scoping Plan targets. Additionally, because the statewide targets of 6 MTCO2e/capita by 2030 and 2 MTCO2e/capita by 2050 account for the GHG emissions from all sectors, including high-emission industries like oil refineries and cement manufacturers, any per-capita estimate purporting to be consistent with the 2017 CARB Scoping Plan for a warehouse this one must be significantly lower than the statewide goal.

Response G.11: Refer to Response G.4, above regarding consistency with the State's GHG reduction goals for 2050. Draft EIR pages 108-116 demonstrate that the Project would be consistent with the City's 2030 GHGRS and would not conflict with climate goals for 2050. The evaluation of consistency with the CARB's 2017 Scoping Plan was included for disclosure purposes and to demonstrate the various state programs that would benefit the Project. The Project would benefit from implementation of current and potential future regulations (e.g., SB 100/renewable electricity portfolio improvements, improvements in vehicle emissions such as CARB's Advanced Clean Truck Regulation, CARB's Advanced Clean Cars II Rule, etc.) enacted to meet an 80 percent reduction below 1990 levels by 2050. The State has adopted various regulations to reduce energy and mobile source GHG emissions.

The comment incorrectly applies the CARB 2017 Scoping Plan per capita goals as Project level GHG thresholds. The CARB 2017 Scoping Plan per capita goals are not Project level thresholds for new development projects. The Scoping Plan per capita goals are statewide goals that account for statewide regulations and programs that are outlined in the Scoping Plan as well as future reduction programs that have not been developed yet. As analyzed in Draft EIR Section 3.4, the Project is evaluated for consistency with the City's 2030 GHGRS, which is a qualified GHG reduction plan under State CEQA Guidelines Section 15183.5. Furthermore, it should be noted that the comment incorrectly calculates a project service population based on emissions that do not account for implementation of Project design features and benefits, such as the implementation of green building measures, such as enrollment in the SJCE TotalGreen Program, Pedestrian, Bicycle, and Transit design measures, such as the inclusion of bicycle lanes, parking and storage. The service population metric calculated in the comment also does not account for implementation of state reductions such as the renewable portfolio standard, as well as CARB programs and reduction measures, among others. As discussed in page 110 of the Draft EIR, the consistency with the 2030 GHGRS checklist was used to make the Less Than Significant determination for GHG emissions.

Since publication of the DEIR, CARB approved its 2022 Scoping Plan. The 2022 Scoping Plan does not contain any per capita goals. Instead, it encourages local agencies to develop qualified GHG reduction

plans that will allow the State to meet its goal of carbon neutrality by 2045. As explained above, the City's 2030 GHGRS is a qualified GHG reduction plan with a goal of carbon neutrality by 2045. Because the Project is consistent with the 2030 GHGRS, the City has determined that the Project will have a less than significant impact for GHG emissions. None of the comments raised by this commenter or others represents new significant information that would warrant recirculation of the EIR

Comment G.12: The DEIR did not analyze consistency with Executive Order B-55-18. EO B-55-18 requires the State to achieve carbon neutrality—net zero GHG emissions—by 2050. The Project is inconsistent with EO B-55-18 because it will use gasoline and diesel and burning such non-renewable fuels results in substantial GHG emissions.

Response G.12: The EO B-55-18 establishes a future goal for carbon neutrality by 2050 as measured State-wide, accounting for GHG emissions and sequestration across all sectors. It does not prohibit the use of non-renewable fuels. Additionally, refer to Response G.4 regarding 2050 goals and statewide regulations that have been enacted and proposed that will help the state meet the 2050 goals. None of the comments raised by this commenter or others represents new significant information that would require recirculation of the EIR.

Comment G.13: Because the Project is inconsistent with the GHGRS, 2017 CARB Scoping Plan, and EO B-55-18, its emissions will be significant under Threshold GHG-2. Thus, the DEIR's conclusion of no significance violates CEQA.

Response G.13: Refer above to Response G.10, Response G.11, and Response G.12. The Project is consistent with GHGRS, 2017 CARB Scoping Plan, and EO B-55-18. The conclusion in the Draft EIR, of less than significant impacts, is substantiated by evidence after the City's review of analyses performed in accordance with applicable State, regional and City guidance. The comment did not raise any new information with respect to the determination of significance or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment G.14: An EIR should include a "sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences" (*Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal. 4th 20, 26.) Here, in both the CalEEMod results printout and the DEIR itself, the analysis lacked sufficient detail about vegetation's impact on the overall GHG emissions. This deprives decision-makers of the opportunity to account for the full impact of tree removal and other site modifications to vegetation, which is likely to have an effect not only on the biological ecosystem but also on the sequestration capacity of the soil and foliage.

CalEEMod was used as a model to estimate existing project emissions to serve as the baseline, as well as the expected construction and operational emissions for the proposed Project. The CalEEMod summary printout was included in Appendix A of Appendix I to the DEIR, but it omitted the vegetation detail. The lead agency must provide sufficient detail to aid in the decision-making process. Here, this includes the outcome of the vegetation section by the CalEEMod analysis because the Project involves removing 640 trees, and this should be accounted for. CalEEMod treats tree removal as a net gain of GHG emissions from what otherwise would occur, so to leave this portion out is not only misleading, but also erroneous. CalEEMod should be rerun with the inclusion of vegetation to get a more accurate estimation of Project GHG emissions.

Further, within the vegetation analysis, CalEEMod has the capacity to estimate sequestration from healthy soils, or alternatively emissions from unhealthy soils, according to location, climate, and soil type. By not including the vegetation portion of the CalEEMod run, the outputs are not representative of the Project's full emissions.

There is substantial evidence that tree removal, especially of the healthy, ordinance-sized trees on the

property, will contribute to GHG emissions that would have not otherwise occurred but for the Project's construction and operations. The i-Tree Cooperative (consisting of the USDA Forest Service among other organizations[7]) allows the public to use a tool called the i-Tree Planting Calculator that gives an estimate for the emissions saved and sequestered by trees throughout the duration of a project's operations.[8] Using this calculator reveals that if the ordinance-size trees of good condition (or very good condition, as identified in the arborist report identified for removal instead remained on the property for 30 years, they could sequester up to 344 MTCO2e.[9] Additionally, if the City allowed those large, healthy trees to remain, it could further avoid 154,412.6 pounds of CO2, or roughly 70 MTCO2e.

However, because the lead agency may have more information regarding specifics of the trees to be removed and the site characteristics they are located, as well as the resources to do a full study, it is feasible for the City to estimate not only the largest and healthiest trees, but all of the trees on the site. This estimate is likely to be more accurate and even larger. Additionally, i-Tree outputs can be used as inputs to CalEEMod to integrate with the rest of the Project's quantified emissions.

Response G.14: As stated in the CalEEMod User's Guide (for CalEEMod 2020.4.0 dated 2021), the removal of trees for the construction phase is included in the Site Preparation Phase and as stated on page 51 of the Draft EIR, the CalEEMod modeling done for the Project included a site preparation phase. Therefore, emissions from the tree removal equipment is included in the construction greenhouse gas emission calculation. For Project operation, tree removal emissions are not necessary to include in the emission calculation as quantified operational emissions are not required by CEQA.

As discussed in the Final EIR Topic Response, significant diligence has been conducted since circulation of the Draft EIR to further analyze the site's conditions and determine ways to preserve additional on- and off-site trees. As shown in the Project's updated landscape plan, included in Section 5.0: Draft EIR Text Revisions of this Final EIR, an additional 39 trees will be retained on-site and within the public right-of-way street frontage. The newly retained trees include an additional 28 ordinance-size trees. In total, 125 trees will be retained, including 88 ordinance-sized trees. The Project will also plant 281 new trees, resulting in a total of 406 trees on the Project site after development. Furthermore, the Project's in-lieu tree replacement fees would be used to plant additional trees in other off-site locations around the City. None of the comments raised by this commenter or others represents new significant information that would warrant recirculation of the EIR

Comment G.15: Altogether, these potential benefits of keeping the trees simultaneously represent tree removal emissions, and therefore if it is not added to CalEEMod inputs, it should be considered as demolition emissions of the Project. Just as construction and demolition emissions are typically amortized over the average lifespan of a building, these emissions related to the tree removal should be divided by 30 years and added to the existing calculation of demolition emissions. Tree removal would account for roughly 30% of the updated estimate of the Projects' construction and demolition emissions, a notable

[7] In addition to the USDA Forest Service, organizations involved in the i-Tree Cooperative include the Davey Tree Expert Co., National Arbor Day Foundation, Society of Municipal arborists, International Society of Aboriculture, and Casey Trees.

[8] https://planting.itreetools.org/

[9] According to a review of the Project's Arborist Report (Appendix E to the DEIR) by Advocates for the Environment, the 67 ordinance-sized trees of good or very good condition were identified for removal. The estimate used https://planting.itreetools.org/, set to the location of San Jose, Santa Clara County, California, with tree specifications tree type, diameter at breast height (**DBH**), and condition input, the rest of the values left at default. For Project Parameters, Energy Emissions Factors of 210 CO2 lbs/MWh for electricity and 53.02 for natural gas were from the City of San Jose 2017 Inventory of Community Greenhouse Gas Emissions. The resulting output was 154,412.6 lbs CO2 (70.04 MTCO2e) avoided and 758,677.4 lbs CO2 (or 344.13 MTCO2e) sequestered.

contribution.[10]

Response G.15: Refer to Response G.14 above. As stated in page 32 of the CalEEMod 2020.4.0 User's Guide (2021), emissions from landscape vegetation removal is already included in the Site Preparation Phase of CalEEMod. Therefore, tree removal emissions were correctly calculated and further analyses are not required.

Comment G.16: The DEIR indicated a less than significant biological impact, but this is an erroneous conclusion. Although the lead agency analyzed the impact according to six significance thresholds, a determination of significance under just one of those thresholds is enough to conclude that the overall biological impact would be significant. And that is the issue presented here because the tree removal proposed as part of the Project would have a severe impact on bird populations; this impact is directly relevant to Threshold Bio-4, which asks whether the Project would "interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites."

The DEIR mentions four species of birds which use the Project site and surrounding areas as a nesting site and rely upon the trees there, many of which are mature. The identified species that will undoubtedly be impacted by tree removal include the House Finch, Northern Mockingbird, Anna's Hummingbird, and California Towhee. The DEIR discounts the impact to any wildlife corridors and nesting sites, indicating that the Project site is disturbed, and as such is not amenable to many species of wildlife, especially those that are of protected status or immediate concern. But Threshold Bio-4 makes no distinction based on protected status, and the only apparent reservation is that the wildlife species be a "native resident" or that the nursery sites represent "native wildlife." Both are the case here, as 21 identified native trees are planned to be cut down through the implementation of this Project, which make up nesting sites for native birds, and the existence of the non-native tree community allows for the support of the native birds. Although the definition of "native" can be disputed, when applied here it is clear that, as the House Finch, Anna's Hummingbird, and California Towhee are all native to California, and the Northern Mockingbird is native to the US, there are at least some native birds that rely on the nesting sites.

Response G.16: Live Oak Associates, Inc., a biological resources consultant, was engaged as part of the Final EIR to provide additional supporting information regarding the Project's potential impacts to habitats and wildlife species. A technical memorandum addressing these resources was prepared by Live Oak Associates, Inc. and is included in the Final EIR as Appendix C. As described in the Draft EIR, pages 62 through 66, the Project site is an urban developed property within the urban developed/suburban region of the City of San José. Urban developed sites are used by relatively common native wildlife that are abundant regionally and common within the developed landscapes of San José and the surrounding cities. The appropriate scale for ascertaining if redevelopment of the Project site results in a significant impact to foraging or nesting habitat (e.g., nesting birds) for native wildlife is considering whether the loss of mature trees can cause a regional decline of a species that currently uses the site. This requires consideration of the proportional loss of mature trees from the Project site against the region. The Project site supports primarily non-native landscape trees and shrubs common throughout urban habitats in San José. Therefore, the reduction of foraging and nesting habitat from redevelopment of the Project site does not represent a significant loss of foraging or nesting habitat available regionally for native wildlife. This supporting information is consistent

[10] 414.17 MTCO2e ÷ 30 years = 13.80 MTCO2e/year
Total Mitigated Construction Emissions (CalEEMod) = 989.7621 MTCO2e
989.7621 MTCO2e ÷ 30 years = 32.99 MTCO2e/year
32.99 MTCO2e/year + 13.80 MTCO2e/year = 46.79 MTCO2e/year
13.80 MTCO2e ÷ 46.79 MTCO2e/year = 0.294, or about 30% rounded to the nearest percent

with the less than significant impact conclusion of the Draft EIR on page 72.

With regard to wildlife corridors, as stated in the Draft EIR and the Final EIR Biological Resources Technical Memorandum, Appendix C, the existing development on the site is not located within or adjacent to any migratory wildlife corridors or waterways supporting migratory fish as it is a developed site surrounded by developed sites. Thus, the Project site does not provide a conduit to suitable non-developed habitat. Any terrestrial wildlife species using the site or moving through it would continue to move through the area after Project development. As noted on page 73 through 74, the migratory or nesting birds could use the trees on-site for nesting or foraging. Therefore, in order to reduce any potentially significant impact, the Draft EIR requires that the Project implement Mitigation Measure BIO-1 and 2. Mitigation BIO-1 included on page 74 of the Draft EIR, requires the preparation of a Tree Protection Plan for all on-site trees to remain, including the 13 native trees. Implementation of Mitigation Measure BIO-1 would ensure that these trees would not be impacted by Project construction and would be able to provide nesting sites upon completion of construction. Mitigation Measure BIO-2, included on page 75 of the Draft EIR, requires pre-construction bird surveys be performed by a qualified ornithologist. In response to comments, this Mitigation Measure has been modified to require a pre-construction nesting bird survey no more than 14 days prior to the initiation of construction activities throughout the entire breeding season to ensure no damage to active nests. If any nesting birds are found to be using the on-site trees during pre-construction surveys, Mitigation Measure BIO-2 would ensure impacts would be avoided by implementing buffer zones around active nests until a qualified ornithologist determines the nest is no longer active or the nesting season ends. Therefore, construction-related impacts would be less than significant.

The comment did not raise any other issues or evidence with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment G.17: The Project features include replacing the removed trees with 339 new 24-inch box trees, but such small trees will not provide the nesting habitat necessary for the local birds until the trees have grown substantially, a process that will take decades. It only roughly replaces the number of trees by half the amount that is being removed and exacerbated by the fact that many of the current site's trees are tall and several are mature, so even of the trees that are being replaced it is not sufficient to substitute them in capacity for nesting habitat. The finding of less than significant impact with mitigation incorporated implies that the DEIR is discounting the severity of the impact that it will have on local birds. Even ecologically disturbed, urban communities are important ecosystems that are key to maintaining wildlife, and existing habitat disruption does not warrant further destruction of this extraordinary scale. CEQA requires mitigation measures to be at least partially effective at mitigating the environmental impact, but the mitigation measures identified for Threshold 4 of the biological significance analysis are unlikely to achieve any better outcome for the nesting birds on site.

Response G.17: As discussed under Response G.16, potential impacts to nesting birds were addressed by Draft EIR Mitigation Measures BIO-1 and BIO-2. As noted on page 74 of the Draft EIR, with the incorporation of these mitigation measures, the Project would result in a less than significant impact on nesting/foraging migratory birds and raptors.

The proposed Project's tree replacements are not a mitigation measure to reduce potential impacts to nesting birds. As discussed on pages 75 and 76 of the Draft EIR, the proposed Project's tree replacements would be required to comply with the City's Standard Permit Conditions for tree replacement, as required by the City's Tree Removal ordinance. The Tree Removal Ordinance helps the City to maintain its urban forest through on-site replacement and/or payment of the in lieu tree

replacement fee. Accordingly, tree replacements were not considered mitigation for nesting birds by the Draft EIR.

Notwithstanding, the proposed tree replacements would support nesting birds on the Project site by providing nesting habitat for local birds upon Project completion. As described in the Final EIR's Topic Response, all replacement trees to be planted on-site will be 36" box size, larger than the originally proposed 24" box size, to provide a larger nesting habitat upon planting of the replacement trees. Further, the Project's in-lieu fees would provide for planting of off-site trees which would also provide suitable habitat for bird populations throughout the City. These fees would be paid in compliance with City Standard Permit Condition for Tree Replacement, discussed on page 77 of the Draft EIR.

Further, as noted on page 76 of the Draft EIR, while some of the trees proposed for removal are mature, as discussed on page 64 of the Draft EIR, the existing landscape does not appear to be properly maintained. Pruning practices, including lion's-tailing (removal of interior foliage), excessive canopy raising, clearance pruning from buildings, root damage from landscape activities and insufficient irrigation are all affecting overall tree health. The proposed Project will address this deficiency by providing for on-going maintenance of the tree resources on the redeveloped Project site. Therefore, redevelopment of the Project site and implementation of proposed landscape plans will provide higher quality habitat for the retained and replanted trees, as compared to existing conditions.

The comment did not raise any issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment G.18: Mitigation Measure 1 is focused on the well-being of the trees, but comprehensive studies should have already been completed before the decision to cut down the majority of the trees on and surrounding the Project site. The failure to complete such an accurate analysis before incorporating this as a Project feature would be a violation of CEQA by not allowing the public important information and decision-makers the necessary details to make an informed decision.

Response G.18: As part of the Draft EIR, comprehensive studies were completed to evaluate existing trees on the Project site and potential tree removals. As stated on page 62 of the Draft EIR, an Arborist Report (provided as Appendix E to the Draft EIR and updated as Appendix D to this Final EIR) was prepared to analyze and address potential impacts associated with Project implementation and tree removal. The Arborist Report is provided as Appendix E to the Draft EIR and was made available as part of the Draft EIR public review period from July 8, 2022 to August 22, 2022, and its findings were discussed throughout Section 3.2 of the Draft EIR.

As stated on Page 2 of Appendix E to the Draft EIR, the Arborist Report: (1) identified all trees on, or overhanging, the Project area that may be affected by proposed construction; (2) noted ordinance-size trees; (3) assessed proposed improvements for potential encroachment on trees; (4) and provided recommendations for preservation based on tree health, structure, and species susceptibility. Evaluation of existing trees considered the health and structural condition rating, tree size, age, and potential construction-related impacts including dripline encroachment and site plan conflicts. These findings and recommendations were considered in the Draft EIR; page 10 of Appendix E to the Draft EIR identifies preliminary tree recommendations that were incorporated into the Draft EIR's Mitigation Measure BIO-1.

Further, the Project applicant has updated the Project's landscape plan in response to Draft EIR circulation comments and the updated landscape plan is described in the Final EIR's Topic Response and included in Section 5.0: Draft EIR Text Revisions. This updated landscape plan has likewise been evaluated by a certified arborist, and an updated Arborist Report has also been included in the Final

EIR as Appendix D. Please refer to the Final EIR's Topic Response for additional information regarding the updates made to the Project's landscape plan.

Comment G.19: If the DEIR does contain a complete and accurate analysis of the trees to be cut down, a Tree Protection Plan would not add any protections in that it would not ensure that any less trees would be cut than already chosen to cut down. Indeed, it could have a positive impact on birds by ensuring that, the health is maintained in the 51 trees chosen to remain, and that the tree loss is limited to 640, but this does not mitigate the already severe impact to bird populations of removing so many trees all at once.

Response G.19: Page 9 of Appendix E of the Draft EIR includes a complete Tree Inventory and Assessment Table, which summarizes the health, structural condition, dripline, and age of all 702 on- and off-site trees that could be affected by Project construction activities. As detailed in Response G.27 above, the Draft EIR properly disclosed information about the existing trees. The comment did not raise any issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment G.20: Overall, these two mitigation measures would not be sufficient to deem the remaining impact "less than significant." The lead agency should determine that the Project has a significant impact under this threshold, requiring mitigation to less than significant levels. And there is one apparent and feasible means to do so. Assuming that the Project maintains its goal of cutting down 640 of the existing Project trees, it should replace them with at least the equivalent number of trees, perhaps in locations that are more preferable for the planners but nonetheless provide roughly the equivalent amount of shelter for nesting birds that are accustomed to living on the site and surrounding areas.

Response G.20: Please refer to the Final EIR's Topic Response for additional information regarding the Project's updated landscape plan. Based on the updated Tree assessment and landscape plan, the Project would retain an additional 39 trees for a total of 125 retained trees and 281 new tree plantings. Consistent with Standard Permit Condition for tree replacement identified on page 77 of the Draft EIR and the commenter's suggestion, the Project applicant is required to plant replacement trees consistent with Table 3.2-3 on-site and if on-site tree replacement is not feasible for all trees given insufficient areas to plant the replacement trees the permitting is subject to payment of off-site tree replacement fees to the City so that trees may be planted off-site. The applicant will work with the City to ensure that the Project's tree replacement fees are used to plant trees at off-site locations in places where they will provide shelter to nesting birds and where there is currently a lack of tree canopy, would be beneficial in reducing the heat island effect, and/or would be more accessible to the public. None of the comments raised by this commenter or others represents new significant information that would warrant recirculation of the EIR

Comment G.21: While payment of fees in-leu of replacing the remaining 529 24-inch trees that the Project will not replant (as required by the City's tree replacing ratios) may satisfy the City's Standard Permit Conditions for Tree Replacement, it is not sufficient to mitigate the Project's impact on the native bird populations, especially given that the total number of trees will effectively be reduced by about 45%, from 702 to 390.[11] Observing the trees and respecting bird nests in the remaining and newly planted trees is not going to eliminate the significant impact of culling the number and reducing the age of the trees on the Project site (and surrounding area) to be removed by the Project.

Response G.21: As discussed under Response G.17, the Project's proposed tree replacements are in compliance with the City's Standard Permit Conditions and the City's Tree Ordinance and are not

[11] 702 trees (existing) – 390 trees (remaining after Project construction) = net 312 trees removed
312 ÷ 702 = 0.444… or 44.44%

applied to the Project to mitigate impacts to nesting birds. However, the proposed replacement trees would support nesting birds by providing nesting habitat for local birds upon project completion.

As shown in the Project's updated landscape plan, included in Section 5.0: Draft EIR Text Revisions of this Final EIR, an additional 39 trees will be retained on-site and within the street frontage, resulting in a new total of 125 trees to be retained. A total of 281 new trees will be planted, resulting in 406 trees on- and off-site after development. In addition, all of the newly planted trees will now be 36" box size, larger than originally proposed. Upon Project implementation, the overall health and longevity of on-site trees would be improved as compared to existing conditions due to the poor health and maintenance of the majority of existing landscape trees. Please refer to the Final EIR's Topic Response for additional information regarding the updates made to the Project's landscape plan. Finally, the proposed Project would also pay in-lieu fees which would be used to plant trees elsewhere in the City. The proposed Project's updated landscape plan and its value as habitat for birds, along with discussion of in lieu fees and City Standard Permit Conditions is provided under Response G.17 above. None of the comments raised by this commenter or others represents new significant information that would warrant recirculation of the EIR.

Comment G.22: CEQA requires an EIR to "describe a range of reasonable alternatives" to "avoid or substantially lessen any of the significant effects of the project" (14 CFR §15126.6). An adequate discussion of alternatives should include renovation of the three existing buildings rather than demolition, because building retrofit and renovation can lower GHG emissions for nearly all buildings.[12]

Response G.22: Consistent with the commenter's suggestion, the Draft EIR does analyze an Alternative that includes reuse of the existing buildings rather than demolition. As discussed on page 194 of the Draft EIR, the Re-Use and Reduced Density Alternative considers adapting and reprogramming existing buildings on-site for a warehouse/distribution Project. Under this alternative, the Project would maintain the existing building footprint and overall site layout. The Re-Use and Reduced Density Alternative would represent a 32-percent decrease in building area as compared to the proposed Project.

However, given the age of the existing building and energy efficiency that can be captured by new buildings, reuse of the existing buildings would not necessarily result in lower GHG emissions. This is explained on Page 195 of the Draft EIR that states, "However, the Re-Use and Reduced Size Alternative would result in potentially greater impacts associated with energy use and operational greenhouse gas emissions associated with off-site generation of electrical power due to limited building-design, sustainability, and utility infrastructure improvements." Page 196 of the Draft EIR states, "…due to significant changes in building standards, new buildings offer a much higher level of energy efficiency and provide benefits including lower energy consumption through the use of high efficiency mechanical systems and compliance with more stringent insulation requirements and glazing values." Therefore, while the Re-Use and Reduced Density alternative would result in a smaller building area as compared to the Project, design limitations and feasibility of retrofit would limit the potential for GHG emissions reductions. The comment did not raise any issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Additionally, as discussed in Section 3.4 of the Draft EIR and Response G.2, Response G.3, Response G.4, and Response G.13, the proposed Project would result in less than significant impacts to

[12] Preservation Green Lab. "The Greenest Building: Quantifying the Environmental Value of Building Reuse," 2011, p. 66. "[R]ehabilitation and retrofit still outperform new construction, yielding fewer impacts over a 75-year lifespan (see Figures 11 – 14). This is true for all impact categories and building types, except the warehouse-to-multifamily conversion case study." https://living-future.org/wpcontent/uploads/2016/11/The_Greenest_Building.pdf

greenhouse gas emissions. As noted on page 108 of the Draft EIR, the Project construction would occur over 18 months and would not interfere with implementation of AB32. Further, the Project would be consistent with the City's 2030 GHGRS through enrollment in SJCE TotalGreen, exceedance of construction and demolition waste diversion requirements, and implementation of water conservation measures. Accordingly, no significant effects concerning greenhouse gas emissions that would require mitigation or consideration in Project alternatives would occur. None of the comments raised by this commenter or others represents new significant information that would warrant recirculation of the EIR.

Comment G.23: Further, renovated buildings have the greatest short-term GHG savings because they have fewer materials inputs.[13] The City did not account for the GHG impact of demolition. Had the EIR found a significant impact of GHG overall, as it should have according to the comments above, it would need to discuss reasonable alternatives to substantially lessen the GHG impact. Renovation of the three existing buildings is reasonable because the Project goals would be achieved by constructing less new buildings, and contribute to less GHG emissions.

Response G.23: As discussed in Response G.22, page 195 of the Draft EIR states that "the Re-Use and Reduced Size Alternative would result in potentially greater impacts associated with energy use and operational greenhouse gas emissions associated with off-site generation of electrical power due to limited building design, sustainability, and utility infrastructure improvements." Page 196 of the Draft EIR states that "new buildings offer a much higher level of energy efficiency and provide benefits including lower energy consumption through the use of high efficiency mechanical systems and compliance with more stringent insulation requirements and glazing values." Therefore, the Re-Use and Reduced Density Alternative would limit the potential for GHG emissions reductions due to the existing building's design limitations.

Additionally, as discussed in Section 3.4 of the Draft EIR, the proposed Project would result in less than significant impacts to Greenhouse Gas Emissions. As noted on page 108 of the Draft EIR, the Project construction would occur over 18 months and would not interfere with implementation of AB32. Further, the Project would be consistent with the City's 2030 GHGRS through enrollment in SJCE TotalGreen, exceedance of construction and demolition waste diversion requirements, and implementation of water conservation measures. Accordingly, no significant effects concerning greenhouse gas emissions that would require mitigation or consideration in Project alternatives would occur. For additional information see Responses G.2 and G.3 above. None of the comments raised by this commenter or others represents new significant information that would warrant recirculation of the EIR.

Comment G.24: For the reasons given in this letter, the city should update the DEIR to remedy the defects we have identified. Notably, the City should have concluded that the Project would have a significant GHG emissions impact because it is not consistent with applicable plans for the reduction of GHGs, and it would have a significant biological impact because the reduction of trees would negatively impact bird populations. Therefore, the EIR ought to include all feasible mitigation to reduce the GHG emissions to the fair share extent and limit biological impact to less-than-significant levels, as required by CEQA. Also, please add Advocates for the Environment to your list of interested parties so that we may be notified of further action regarding the Qume Commerce Project.

Response G.24: Refer to Responses G.1 through G.23. The commenter has been added to the environmental interested parties list and will be notified of the posting of this document along with

[13] Preservation Green Lab. "The Greenest Building: Quantifying the Environmental Value of Building Reuse," 2011, p. 72. "In particular, renovated buildings with fewer material inputs have the potential to realize the greatest short-term carbon savings." https://living-future.org/wpcontent/uploads/2016/11/The_Greenest_Building.pdf

all other commenters. Substantial evidence supports the City's conclusion that the Project would not have a significant impact on either GHG or biological resources. The comment fails to provide substantial evidence to the contrary and the Draft EIR does not need to be revised. The comment did not raise any new information with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required. None of the comments raised by this commenter or others represents significant information that would warrant recirculation of the EIR.

G.2 Advocates for the Environment (dated February 1, 2023)

Comment G.25: I write on behalf of Advocates for the Environment, regarding the Qume and Commerce Project (SCH Number 2022010603) ("Project").

Advocates for the Environment hereby withdraws its August 16, 2022 comment letter and no longer opposes the Project. We request that the City not include our comment in the Final EIR.

> **Response G.25:** This comment withdraws Advocates for the Environment comment letter (Letter G1 provided above). The comment is noted and responses to Letter G1 have been included in this FEIR for informational purposes. None of the comments raised by this commenter represents new significant information that would warrant recirculation of the EIR.

H. Blum Collins & Ho, LLP

On August 19, 2022 the City received a comment letter from Blum Collins & Ho, LLP on behalf of Golden State Environmental Justice Alliance. The August 19, 2022 comment letter is included as Comment Letter H1 in Appendix A of this FEIR. Subsequent to the Draft EIR public circulation period, the City received an email from Gary Ho, Partner at Blum Collins & Ho, LLP with a comment letter attached. The December 14, 2022 comment letter is from Golden State Environmental Justice Alliance and states that it is withdrawing its comment letter and requests that the City not include its comment letter in the Final EIR. The December 14, 2022 comment letter is included as Comment Letter H2 in Appendix A of this FEIR. Responses to the content of Comment Letters H1 and H2 are included below.

H.1 Blum Collins & Ho, LLP (dated August 19, 2022)

Comment H.1: Thank you for the opportunity to comment on the Environmental Impact Report (EIR) for the proposed Qume and Commerce Project. Please accept and consider these comments on behalf of Golden State Environmental Justice Alliance (GSEJA). Also, GSEJA formally requests to be added to the public interest list regarding any subsequent environmental documents, public notices, public hearings, and notices of determination for this project. Send all communications to Golden State Environmental Justice Alliance P.O. Box 79222 Corona, CA 92877

The project proposes the construction and operation of four new industrial warehouse buildings with associated incidental office use totaling 714,491 square feet (sf) on an approximately 32.80- gross acre site. There will be approximately 694,491 sf of total warehouse space and 20,000 sf of total office space. The buildings are programmed and designed to attract users such as logistics, e-commerce, warehouse/distribution and wholesaling, and industrial services. The project is proposed to operate 24 hours a day, daily.

Response H.1: This comment provides a summary of the Project. The commenter is already a part of the environmental notification list for the Project and has been added to the Project hearing mailing list, consistent with the commenter's request. The comment did not raise any issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment H.2: The EIR does not include a floor plan, grading plan, or detailed site plan. The basic components of a Planning Application include a site plan, floor plan, grading plan, elevations, and written narrative. The site plan provided in Figure 2-5 has been edited for public review and does not provide any detailed information such as the earthwork quantity notes, parking requirements, site coverage, floor area ratio, etc. The edited version of the site plan inserted for public review is meaningless and provides no useful information. The EIR has excluded these required application items from public review, which does not comply with CEQA's requirements for adequate informational documents and meaningful disclosure (CEQA § 15121 and 21003(b)). Incorporation by reference (CEQA § 15150 (f)) is not appropriate as these documents contribute directly to analysis of the problem at hand. Providing this information is vital as the Project Description states that the project "requires approximately 5,000 cubic yards of soil material to be exported from the Project site," and there is no method for public verification of this statement. The EIR must be revised to include all application items for review, analysis, and comment by the public and decision makers.

Response H.2: The State CEQA Guidelines Section 15124 states that a Project description shall the following information:

(a) The precise location and boundaries of the proposed Project, shown on a detailed map;

(b) A statement of objectives sought by the proposed Project;

(c) A general description of the Project's technical, economic, and environmental characteristics; and

(d) A statement briefly describing the intended uses of the EIR.

The Draft EIR Project Description meets the requirements of State CEQA Guidelines Section 15124 and provides the necessary information:

- Page 18 of the Draft EIR describes the precise location and boundaries on the Project site in text and pages 27 and 28 of the Draft EIR identify the Project site on regional- and local- scale maps;
- Pages 24 and 25 of the Draft EIR list the Project objectives;

- Pages 18 to 24 of the Draft EIR describe the development that would occur under the proposed Project;
- Page 25 of the Draft EIR states the intended use of the EIR.

The commentor states that the Draft EIR does not include information required for evaluation and review of environmental impact. The Draft EIR Project Description contains all required information noted in the comment:

- Table 2-3 on page 18 of the Draft EIR summarizes the proposed building area, distribution of warehouse/office space, automobile and trailer parking, and dock doors.
- Page 18 includes the Project FAR of 0.51.
- Page 21 identifies grading quantities.
- Figure 2-5 on page 30 of the Draft EIR provides the reader with an overview of how the Project would be laid out on the Project site, including site circulation and where ingress/egress are located.

Further, State CEQA Guidelines Section 15124 states that an EIR Project description should not supply extensive detail. Further, CEQA Guidelines 15147 states, "…an EIR shall include summarized technical details, maps…and similar relevant information…Placement of highly technical and specialized analysis and data in the body of an EIR should be avoided…" The Draft EIR Project Description provides sufficient information for environmental review of the Project and is not required to include additional technical detail.

Additionally, the commentor erroneously states that the EIR has excluded these required application items from public review. A Project application package is distinct from a CEQA Project Description and is subject to separate requirements. As discussed above, the Draft EIR meets the State CEQA Guidelines requirements for a project description. The comment did not raise any new issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment H.3: California's Building Energy Code Compliance Software (CBECC) is the State's only approved energy compliance modeling software for non-residential buildings in compliance with Title 24.[1] CalEEMod is not listed as an approved software. The spreadsheet-based modeling in Appendix G does not comply with the 2022 Building Energy Efficiency Standards and under-reports the project's significant Energy impacts and fuel consumption to the public and decision makers. Since the EIR did not accurately or adequately model the energy impacts in compliance with Title 24, a finding of significance must be made. A revised EIR with modeling using the approved software (CBECC) must be circulated for public review in order to adequately analyze the project's significant environmental impacts. This is vital as the EIR utilizes CalEEMod as a source in its methodology and analysis, which is clearly not the approved software.

Response H.3: This comment identifies compliance modeling software approved by the California Energy Commission (CEC) to show compliance with Title-24 Standards using the performance method. The comment then implies that only these modeling programs can be used to estimate energy consumption for CEQA energy analysis. The City disagrees with the assertions that the Draft EIR must use the approved compliance modeling software for non-residential buildings and that the Draft EIR does not comply with the 2022 Building Energy Efficiency Standards. Showing compliance with Title-24 Standards is not a requirement of CEQA analysis and CEQA does not require the use of specific

[1] California Energy Commission 2022 Energy Code Compliance Software https://www.energy.ca.gov/programs-and-topics/programs/building-energy-efficiency-standards/2022- building-energy-efficiency-1

programs. The software listed by the CEC and referenced in the comment are to be utilized for performance approach (energy budget) method of compliance for Title 24 Energy Standards and are to be used for demonstrating performance compliance. As stated in the CalEEMod User's Guide, CalEEMod utilizes widely accepted methodologies for estimating emissions combined with default data. The sources for the methodologies include studies commissioned by the CEC and also utilize energy conservation standards subject to Title 24.[2] The energy analysis and associated thresholds are provided on Draft EIR Appendix B (pages 31 through 41). The analysis specifically responds to the guidance for energy analysis in the State CEQA Guidelines Appendix F, which requires a determination on if a Project would increase the need for new energy supplies. The analysis is used to disclose the amount of energy that the Project would require, and is not utilized to demonstrate compliance for performance. Additionally, the Draft EIR discloses the Project's electricity consumption, natural gas consumption, and transportation fuel consumption and determined that the Project's energy consumption would not be inefficient or wasteful as the Project will be required by the CALGreen Code to comply with the Title 24 Building Energy Efficiency Standards (Nonresidential) published by the CEC, which contain stringent mandatory standards for mechanical systems, lighting (indoor and outdoor), and appliances to minimize energy use. Therefore, the Project used the appropriate model to calculate and disclose the Project's energy use, and also demonstrated that the Project would be required to comply with the CALGreen Code and Title 24. None of the comments raised by this commenter or others represents new significant information that would warrant recirculation of the EIR.

Comment H.4: The IS states that the project will employ "an estimated total of 715 employees" based on the City's employee generation rate for industrial space. The source for this calculation is noted as the City's 2040 General Plan Draft EIR[3] calculation that industrial uses generate 1 employee per 1,000 square feet of building area. However, our review of the City's General Plan EIR did not determine that this calculation is located within the document. A revised EIR must be prepared to disclose the page number within the City's General Plan EIR in order to comply with CEQA's requirements for meaningful disclosure and incorporation by reference as the validity of the source calculation contributes directly to analysis of the problem at hand (CEQA § 15150 (f)). Additionally, a revised EIR must provide a calculation of the construction jobs generated by the proposed project in order to provide an adequate, accurate environmental analysis.

Response H.4: The proposed Project employee generation rate of 1 employee per 1,000 square feet is calculated based on the employment density table provided in the San José Market Overview and Employment Lands Analysis prepared for the City's Four-Year General Plan Review (Strategic Economics, 2016, p. 76). This citation has been updated in the Final EIR as shown below:

[27] Strategic Economics. San Jose Market Overview and Employment Lands Analysis, prepared for the City of San Jose Four-Year General Plan Review. ~~City of San Jose. Envision 2040 General Plan Draft EIR.~~ Available at https://www.sanjoseca.gov/home/showpublisheddocument/22529/636688929663530000 ~~https://www.sanjoseca.gov/home/showpublisheddocument/22041/636688304350830000~~. Accessed March 7, 2022.

[28] The City calculates on job per 1000 SF of industrial space. (Strategic Economics, 2016) ~~City of San Jose Envision 2040, 2011~~) (714,491 SF Industrial/ 1,000 SF = 715 jobs)

[2] CalEEMod User's Guide. (2021). Retrieved from: http://www.aqmd.gov/docs/default-source/caleemod/user-guide-2021/01_user-39-s-guide2020-4-0.pdf?sfvrsn=6.

[3] City of San José. Envision 2040 General Plan Draft EIR https://www.sanjoseca.gov/home/showpublisheddocument/22041/636688304350830000.

Refer to Section 5.0 Draft EIR Text Revisions in this Final EIR for the proposed text amendments. The comment did not raise any issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment H.5: The EIR also utilizes the unsubstantiated claim that the existing business at the project site has 1,150 on-site employees to determine that the proposed project will have a less than significant impact. The EIR has not provided any documentation of the number of employees of the existing business, which does not comply with CEQA's requirements for meaningful disclosure and adequate informational documents. Providing meaningful evidence to support the claim that the existing business at the project site has 1,150 on-site employees is vital as this information is also utilized for other areas of environmental analysis, such as Transportation. The EIR must be revised to include meaningful evidence to support the claim that the existing business at the project site has 1,150 on-site employees.

Response H.5: As stated on page 17 of the Draft EIR, per information provided by the Applicant, the existing use on the Project site has approximately 1,150 employees. This information was confirmed in discussion with the current tenant for existing buildings on-site. The employee population was determined using data from pre-March 2020 and reflects the site population at full capacity. The comment did not raise any issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment H.6: Further, the EIR concludes that impacts to Population and Housing will be less than significant because "employees during both construction and operational phases of the Project are expected to come from the surrounding area." The "surrounding area" of the project site is undefined and relying on the entire labor force within an undefined distance, notably the greater Bay Area region, to fill the project's construction and operational jobs will increase VMT and emissions during all phases of construction and operations. A revised EIR must be prepared to account for longer worker trip distances. Additionally, the revised EIR must also provide demographic and geographic information on the location of qualified workers to fill these positions in order to provide an accurate environmental analysis.

Response H.6: The statement on page 66 of Appendix B to the Draft EIR regarding where temporary and permanent employees on the Project site may reside was provided as context specifically for the CEQA thresholds relevant to Population and Housing. The Draft EIR makes a general assumption that most workers would typically originate from within the region (Santa Clara County/City of San José), within a reasonable distance between home and work. Existing workers likely come from the surrounding region, and future workers are expected to come from the same areas upon Project implementation. However, Comment H.6 points to this statement in terms of adequacy of the VMT analysis. The Project's VMT analysis was prepared using City of San José's VMT Evaluation tool. The VMT Evaluation Tool was created and adopted by the City, with specific inputs and assumptions below, specifically for estimating the VMT of any particular project, including the proposed Project. As discussed on pages 171 through 173 of the Draft EIR, the proposed Project would result in a less than significant impact to VMT with implementation of Mitigation Measure TRANS-1. The comment did not raise any issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment H.7: The EIR does not discuss the project's compliance with the Association of Bay Area Governments (ABAG) RTP/SCS (Plan Bay Area 2050). Plan Bay Area 2050's Growth Pattern[4] notes that the East Santa Clara County area (portions of Milpitas and San Jose including the project site) will add 49,000 jobs between 2015 - 2050. Utilizing the EIR's calculation of 715 employees, the project represents 1.5% of the East Santa Clara County area employment growth from 2015 - 2050. A single project accounting for

[4] Plan Bay Area 2050 Growth Pattern https://www.planbayarea.org/sites/default/files/FinalBlueprintRelease_December2020_GrowthPattern_Ja n2021Update.pdf

this amount of the projected employment and/or population over 35 years represents a significant amount of growth. The EIR must be revised to include this analysis, and also provide a cumulative analysis discussion of projects approved since 2015 and projects "in the pipeline" in San Jose and Milpitas to determine if the project will exceed Plan Bay Area 2050's employment and/or population growth forecast for East Santa Clara County.

Response H.7: As required by SB375, RTP/SCS such as Plan Bay Area must be based on the most recently available planning assumptions, including local general plans. As noted in the Plan Bay Area 2050 Forecasting and Modelling Report, development capacity was determined using zoning and general plan data for all jurisdictions within the ABAG planning area (ABAG/MTC, 2021). As noted on page 18 of the Draft EIR, the Project site is designated as Industrial Park (IP) by the General Plan and is zoned as Industrial Park (IP). Both the IP General Plan designation and IP Zoning District allow for warehouse/distribution uses. Therefore, the proposed Project would be consistent with the existing General Plan designation and Zoning District and associated employment growth would be consistent with modelling assumptions utilized for preparation of Plan Bay Area 2050. Further, as discussed in Draft EIR Appendix B page 66, the proposed Project would have a less than significant impact concerning Population and Housing. The proposed Project would result in an estimated 715 jobs on-site. As noted in Response H.5, page 17 of the Draft EIR notes that the existing use on the Project site has approximately 1,150 employees. Therefore, the Project would not result in a net increase in jobs and would not contribute to a cumulative impact concerning employment and/or population growth forecast. The comment did not raise any issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment H.8: Utilizing the City's February 2022 Development Activity Forecast[5] and assuming the EIR's assertion that industrial projects generate 1 employee per 1,000 square feet, it can be concluded that the City has forthcoming 920 employees from industrial projects constructed in 2020-21; 5,965 employees from industrial projects under construction; and 24,910 employees from industrial projects approved but not yet constructed for a total of 31,795 employees. Utilizing the cumulative industrial employment generated since 2020 and the proposed project, the City's 32,510 industrial employees represents 66.3% of its projected job growth from 2015-2050.

Response H.8: The City's February 2022 Development Activity Forecast states that the industrial construction category includes office buildings, industrial manufacturing buildings, and warehouse space. Table 2 of the Forecast, provided on page 6, projects 5,250,000 square feet of industrial growth in the City through 2027. Based on the City's employee generation rates for industrial development, this would result in 5,250 employees. As noted in Response H.7, the proposed Project would result in 715 jobs on-site. Page 17 of the Draft EIR notes that the existing use on the Project site has approximately 1,150 employees. Therefore, the Project would not result in a net increase in jobs and would not contribute to a cumulative impact concerning employment and/or population growth forecast. The comment did not raise any issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment H.9: Please refer to attachments from SWAPE for a complete technical commentary and analysis. The EIR does not include for analysis relevant environmental justice issues in reviewing potential impacts, including cumulative impacts from the proposed project. This is especially significant as the surrounding community is highly burdened by pollution. According to CalEnviroScreen 4.0[6], CalEPA's

[5] San Jose February 2022 Development Activity Forecast. https://www.sanjoseca.gov/home/showpublisheddocument/83462/637835432878970000

[6] CalEnviroScreen 4.0 https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40

screening tool that ranks each census tract in the state for pollution and socioeconomic vulnerability. The proposed project's census tract (6085504322) ranks worse than 61% of the rest of the state overall in pollution burden. The surrounding community, including Brooktree Elementary School and residences to the east, bears the impact of multiple sources of pollution and is more polluted than average on several pollution indicators measured by CalEnviroScreen. For example, the project census tract ranks in the 87th percentile for diesel particulate matter (PM) and 65th percentile for traffic impacts, which are both typically attributed to high rates of heavy truck traffic in the area.

The census tract ranks in the 99th percentile for impacts related to cleanup sites. Chemicals in the buildings, soil, or water at cleanup sites can move into nearby communities through the air or movement of water[7]. The census tract also ranks in the 93rd percentile for hazardous waste impacts. Hazardous waste generators and facilities contribute to the contamination of air, water and soil near waste generators and facilities can harm the environment as well as people[8]. The project census tract also ranks in the 90th percentile for impacts related to groundwater threats. People who live near contaminated groundwater may be exposed to chemicals moving from the soil into the air inside their homes[9].

Further, the census tract is a diverse community including 69% Asian-American, 10% African- American, and 7% Hispanic residents, which are especially vulnerable to the impacts of pollution. The community has a high rate of low educational attainment, meaning 41% of the census tract over age 25 has not attained a high school diploma, which is an indication that they may lack health insurance or access to medical care. The community has a high rate of linguistic isolation, meaning 89% of households speak little to no English and face further inequities as a result.

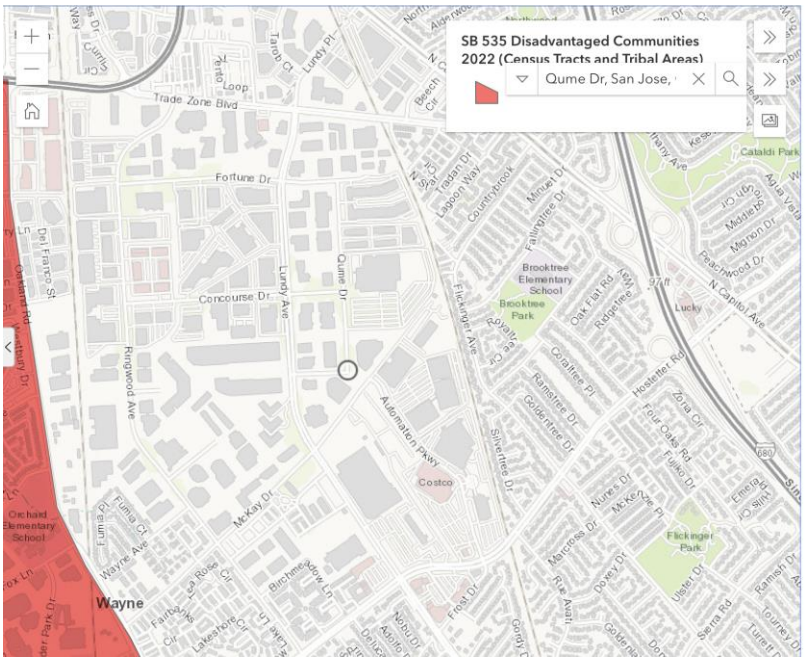
Response H.9: CalEnviroScreen is a mapping tool that helps identify California communities that are most affected by many sources of pollution, and where people are often especially vulnerable to pollution's effects. CalEnviroScreen uses environmental, health, and socioeconomic information to produce scores for every census tract in the State. The scores are mapped so that different communities can be compared. An area with a high score is one that experiences a much higher pollution burden than areas with low scores. The CalEnviroScreen score measures the relative pollution burdens and vulnerabilities in one census tract compared to others and is not a measure of health risk.

CalEnviroScreen does not include Project specific significance thresholds and was not intended to be a tool used for Project specific analysis or to be used as a health or ecological risk assessment for a specific area or site (CalEnviroScreen 1.1 Guidance and Screening Tool 2013 Update, page iii). A Project that is located in an area that CalEnviroScreen identified for pollution burden is not indicative of a CEQA impact. The CalEnviroScreen score is not an expression of health risk and does not provide quantitative information on the increases in cumulative impacts for specific sites or projects. CalEnviroScreen assists the California Environmental Protection Agency (CalEPA) in prioritizing resources and helping promote greater compliance with environmental laws. The tool is utilized for how funding is prioritized for SB 535 Disadvantaged Communities. SB 535 ensures investments of proceeds from the state's Cap-and-Trade Program are specifically targeted for disadvantaged communities throughout California. At least 25 percent of funding is allocated to disadvantaged communities (DACs) and at least 5 percent towards projects within low-income communities or benefiting low-income households and at least 5 percent towards projects within a half mile of a DAC.[10] CalEnviroScreen is the interactive map created by the California Office of Environmental Health Hazard Assessment (OEHHA) to see the disadvantaged communities that SB 535 funding could be

[7] OEHHA Cleanup Sites https://oehha.ca.gov/calenviroscreen/indicator/cleanup-sites
[8] OEHHA Hazardous Waste Generators and Facilities https://oehha.ca.gov/calenviroscreen/indicator/hazardous-waste-generators-and-facilities
[9] OEHHA Groundwater Threats https://oehha.ca.gov/calenviroscreen/indicator/groundwater-threats
[10] OEHHA SB 535 Disadvantaged Communities https://oehha.ca.gov/calenviroscreen/sb535

allocated to. As shown in Figure 1: CalEnvironScreen Map of Disadvantaged Communities, the Project site, Brooktree Elementary School, and residences to the east of the Project site are not located in a SB535 Disadvantaged Community. The nearest disadvantaged community is located west of the Project site.

Figure 1: CalEnvironScreen Map of Disadvantaged Communities



The Draft EIR included an analysis of CalEnviroScreen in the Health Risk Assessment (Appendix D). In addition, a full construction and operational Health Risk analysis was prepared using U.S. EPA AEROMD dispersion modeling. This steady-state, multiple-source, Gaussian dispersion model includes hourly meteorological data consisting of wind vector, wind speed, temperature, stability class, and mixing height (page 17 of Appendix D to the Draft EIR). As shown in Table 3.1-6 Construction Risk in the Draft EIR, the Project's construction cancer risk to the nearest sensitive receptor (residential uses 140 feet east of the site) would be less than 2 per million with implementation of Tier 4 Final construction equipment (MM AQ-1). BAAQMD threshold is 10 per one million. As shown in Table 3.1-7 Operational Risk Assessment Results in the Draft EIR, the cancer risk is 0.48 per one million to the nearest sensitive receptors. The BAAQMD threshold is 10 per one million. As shown in Table 3.1-8 Cumulative Operational Health Risk in the Draft EIR, the Project health risks were then added to the BAAQMD's stationary source data and GIS mapping tool (major street sources, highway sources, and railway sources) to evaluate the cumulative operational health risk to the community. This cancer risk for the nearest sensitive receptor would be below 17 per million, the cumulative BAAQMD threshold is 100 per one million. Therefore, the Project would not exceed air district standards for cancer risk for the nearest sensitive receptors for Project or cumulative thresholds. As discussed in Response C.1, this was the worst-case and most conservative approach. The other sensitive receptors, such as the school located 900 feet from the site, would have lower exposure and risk. None of the comments raised by this commenter or others represents new significant information that would warrant recirculation of the EIR.

Comment H.10: Appendix L: Transportation states that the City's VMT per employee threshold for industrial land uses is 14.37. The proposed project is anticipated to generate a VMT per employee of 14.82 (excluding any VMT reduction strategies). The City's VMT evaluation tool estimates that the project would exceed the City's industrial VMT per employee threshold and would trigger a significant VMT impact.

Figures 4 and 5 within Appendix L provide the outputs of the project's analysis within the City's VMT evaluation tool. However, all inputs into the City's VMT evaluation tool are not depicted and must be included as part of a revised EIR in order to comply with CEQA's requirements for meaningful disclosure. This is vital as the City's Transportation Analysis Handbook[11] states that "when assessing an office or industrial project, the project's VMT is divided by the number of employees expected to occupy the project to determine the VMT per employee of the project." Appendix L does not provide the project's overall VMT.

Response H.10: Pages 25 and 26 of Appendix L of the Draft EIR include Figures 4 and 5 which depict the Summary Report from the City's VMT Evaluation Tool. These figures summarize the overall mitigated and un-mitigated VMT associated with industrial workers on the Project site. Both Figure 4 and Figure 5 of Appendix L of the Draft EIR provide the Project details that were inputted into the VMT Evaluation Tool, including the Project's parcel number, proposed Project square footage overall Project site area, and automobile and bicycle parking spaces, consistent with the City's Transportation Analysis Handbook requirements. Based on these inputs, the VMT per employee was determined and included in both Figure 4 and 5. Further, Figure 5 identifies the VMT reduction strategies applied to the Project, including 'Increased Network Connectivity' and 'Traffic Calming Measures.' The VMT reduction strategies inputted into the City's VMT Evaluation Tool are also described on Page 24 of Appendix L of the Draft EIR and include construction of an internal bicycle/pedestrian pathway and shifting existing curblines along the Commerce Drive and Qume Drive frontage. Therefore, Appendix L provides the necessary information required by the City's Transportation Analysis Handbook and inputted into the City's VMT Evaluation Tool to determine the VMT per employee of the Project. The comment did not raise any issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment H.11: The CalEEMod output sheets within Appendix C: Air Quality Assessment concludes that the project will generate 10,225,959 VMT annually. Utilizing the EIR's calculation of 715 project employees, this is an average of 14,302 VMT per employee annually (14,302 / 260 working days = 55.00 average daily VMT per employee). This greatly exceeds the 14.82 miles of VMT per employee calculated by the Transportation analysis and the 13.65 miles of VMT per employee calculated after VMT reduction strategies are applied. A revised EIR must be prepared to provide an adequate and accurate VMT analysis in compliance with SB 743.

Response H.11: As noted in Response G.2 and Response G.3, CEQA thresholds for greenhouse gas emissions do not need to be quantified. Therefore, the CalEEMod VMT emissions are unrefined and do not include the Project's benefits and design features. In addition, as noted in Appendix A of the 2020 CalEEMod User's Guide, the VMT calculation in CalEEMod is based on employees and delivery trucks and not just employees (Appendix A: Calculation Details for CalEEMod, page 20). Therefore, the VMT from the CalEEMod outputs and the VMT study are not directly comparable. According to Appendix A Calculation Details for CalEEMod (May 2021) on-road vehicle emissions are based on number of trips, VMT, and emission factors from EMFAC. The equation for calculating VMT in CalEEMod is:

$$VMT_d = \Sigma(\text{Average Daily Trip Rate}_i * \text{Average Overall Trip Length}_i)_n$$

Where:

n = Number of land uses being modeled.

The CalEEMod VMT equation is applied to all trip types and not just employees. Therefore, the VMT of 55 miles per employee as calculated in the comment is incorrect as it includes VMT from trucks as

[11] City of San Jose Transportation Analysis Handbook https://www.sanjoseca.gov/home/showdocument?id=28461

well as employees. The VMT per employee calculated in the Transportation Analysis is associated with employees only and does not include other trip types, such as trucks. As such, it is not accurate to directly compare the VMT per employee per day in the Transportation analysis with the total annual VMT modeled for air quality purposes. None of the comments raised by this commenter or others represents new significant information that would warrant recirculation of the EIR.

Comment H.12: Further, Appendix L includes two VMT reduction strategies:

(1) Construct an internal bicycle / pedestrian pathway connecting the cul-de-sacs at McKay Drive / Automation Parkway and Commerce Drive / Qume Drive.

(2) Shift existing curblines along the Commerce Drive and Qume Drive frontages 10- feet inwards to achieve a future 40-feet curb-to-curb width along both streets.

The EIR does not provide a quantified analysis to demonstrate that implementation of these two items will reduce project VMT to less than significant levels. The site design overall does not lend itself to VMT reduction. For example, a tract map is proposed to parcel off each building. As these buildings are sold/leased, fences and gates may be constructed at the property lines and cut off internal pedestrian access. Further, based on San Jose Municipal Code Section 20.90.060, warehouses over 25,000 square feet require 1 parking space per 5,000 square feet of building area. The project's 714,491 square feet of buildings require only 143 parking spaces. The Project Description indicates that the site provides 412 parking spaces total. This is nearly three times the quantity of parking spaces required by the code. The project encourages employees to utilize single occupant vehicles in commuting by providing an excess of required parking spaces. The EIR has not provided adequate analysis to support the conclusion that implementation of these two VMT reduction strategies will reduce project VMT to less than significant levels. In contrast, the project design does not support VMT reduction strategies. A revised EIR must be prepared to include an adequate and quantified analysis of the project's VMT and any associated VMT reduction strategies.

Response H.12: The VMT reduction strategies provided on page 24 of Appendix L of the Draft EIR were developed to be consistent with multimodal infrastructure improvement strategies included in the City's VMT Evaluation Tool that improve the surrounding transportation network to encourage the use of biking, walking, and transit. Each of the VMT reduction strategies identified in the City's VMT Evaluation Tool were derived from research literature and case studies (Fehr and Peers, 2018). As noted on page 24 of Appendix L of the Draft EIR, the proposed VMT reduction strategies are coordinated with the City to ensure that the proposed Project improvements are consistent with the City's overall goals for its transportation network and would effectively reduce VMT associated with the Project. Further, as noted under Response A.2, the Project is required to be constructed consistent with approved plans which do not include fencing restricting public access to the bicycle/pedestrian path. Therefore public access would be provided from both McKay Drive/Automation Parkway and Commerce Drive/Qume Drive.

The City's parking requirements provided in San José Municipal Code Section 20.90.060 identify the minimum required on-site parking. The City does not have maximum parking standard and the proposed Project would not conflict with any policies or regulations concerning parking. Specifically, General Plan Policy TR-8.2 directs the City to "[b]alance business viability and land resources by maintaining an adequate supply of parking to serve demand while avoiding excessive parking supply that encourages automobile use." The applicant has stated that the 412 parking spaces included in the Project (above the minimum required) are low given the projected 715 employees working at the site, and that any less would be unviable from a business perspective. Further, as noted under Response H.10, the Project's proposed parking supply was input into the City of San José's VMT Evaluation Tool and considered by the tool when determining Project VMT and the impact of

identified reduction strategies. The comment did not raise any issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment H.13: Appendix L models the project as ITE Land Use Code 130 - Industrial Park. The project's trip generation analysis is given several trip reduction credits. The first credit reduces the project's vehicle trips by 8% for location-based mode sharing. The EIR applies this reduction because "the project location is designated as a "Suburb with multi-family housing" area with a vehicle mode share of 92 percent for industrial land uses." However, the EIR has not demonstrated that the project's census tract is designated as a "Suburb with multi-family housing." These designations are sourced from CARB's 2014 report: Quantifying the Effect of Local Government Actions on VMT[12]. Even though the surrounding area may visually appear to be a suburb with multi-family housing in the project vicinity, that does not mean that the project census tract was designated as a "Suburb with multi-family housing" in the CARB data. The EIR must be revised to provide supporting evidence of the project census tract's CARB designation in order to demonstrate that the location-based mode sharing trip reduction credit is appropriate.

Response H.13: As discussed in the City's VMT Evaluation Tool User Guide, each parcel in San José is assigned a 'place type' based on its Census geography, as evaluated in the California Air Resources Board's report, "Quantifying the Effect of Local Government Actions on VMT" (Fehr and Peers, 2018). The City of San José has 5 place types, including "Suburb with Multifamily Housing." The City's VMT Evaluation Tool automatically determines a Project site's place type based on the Project site APN input into the tool. Page 25 and 26 of Appendix L of the Draft EIR provide the City of San José VMT Evaluation Tool Summary for the Project site. The summary table identifies the Project site's 'parcel type' designation as "Suburb with Multifamily Housing." Therefore, the Project site's 'place type' designation is consistent with CARB's 2014 report. The comment did not raise any issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment H.14: The next credit reduces the project's vehicle trips by giving credit for the vehicle trips generated by the existing business that operates at the project site. The existing business is modeled as ITE Land Use Code 760 - Research and Development Center. Appendix C within Appendix L includes Intersection, Roadway, and Freeway Traffic Counts for the project vicinity. Appendix E within Appendix L includes an Intersection Operations Analysis for the project vicinity. Nothing within Appendix L provides observed traffic counts at the existing business on the project site to provide an accurate dataset of the daily vehicle trips generated by the existing business.

Response H.14: Due to the COVID-19 pandemic, many employees on the existing Project site were working from home and review of aerial imagery before and after March 2020 indicated a significant drop in the number of parked vehicles on-site. Therefore, based on discussions with the City Public Works Department, collection of driveway counts was determined to be an inaccurate measure for the existing trip credit. Accordingly, ITE rates (with the number of employees as the independent variable) were used to determine existing trips for the Project site and provide a more accurate analysis of existing operations on the Project site. Based on ITE Land Use Code 760, gross project trips were assigned to existing driveways on the Project site to analyze on-site queuing and circulation. The comment did not raise any issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment H.15: The EIR concludes that the existing on-site business generates 3,876 average daily vehicle trips based on an unsubstantiated 1,150 employees and the ITE Land Use Code 760. The proposed project

[12] California Air Resources Board: Quantifying the Effect of Local Government Actions on VMT 2014. https://ww2.arb.ca.gov/sites/default/files/classic/research/apr/past/09-343.pdf

receives a trip reduction credit for these alleged existing vehicle trips, resulting in the proposed project generating negative 1,530 daily trips (net 0 daily trips). Even though Appendix L includes technical documents that observed traffic counts in the project vicinity, there were no traffic counts taken at the project site to observe the actual number of daily vehicle trips for the existing business. Analyzing the existing business based on an unsubstantiated number of employees is not acceptable. The EIR has not provided any documentation of the number of employees of the existing business, which does not comply with CEQA's requirements for meaningful disclosure and adequate informational documents. Additionally, trip generation analysis is based on the building use and the square footage of the building. Utilizing an unsubstantiated number of employees is not appropriate and does not provide an accurate analysis of daily vehicle trips. The EIR has misled the public and decision makers by providing traffic counts for the project vicinity but explicitly excluding any traffic counts of the existing project driveways, which would present an accurate count of existing daily vehicle trips at the project site. The EIR must be revised to remove the trip reduction credits for the existing business because the methodology is fundamentally flawed and not supported by substantial evidence.

Response H.15: See Response H.5 for a discussion of existing employee numbers and Response H.14 for discussion of existing on-site operations analysis. As discussed above, due to the COVID-19 pandemic, many employees on the existing Project site were working from home. Based on discussions with the City Public Works Department, collection of driveway counts was determined to be an inaccurate measure for the existing trip credit. Therefore, ITE rates (with the number of employees as the independent variable) were used to determine existing trips for the Project site and provide a more accurate analysis of existing operations on the Project site. Similarly, pre-COVID traffic counts for the Project vicinity were determined to be representative of traffic conditions in the surrounding area. All assumptions for trip generation and trip credits are consistent with professional industry standards and fully disclosed in the Draft EIR. The comment did not raise any issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment H.16: Further, the EIR concludes that impacts to Population and Housing will be less than significant because "employees during both construction and operational phases of the Project are expected to come from the surrounding area." The "surrounding area" of the project site is undefined and relying on the entire labor force within an undefined distance, notably the greater Bay Area region, to fill the project's construction and operational jobs will increase VMT and emissions during all phases of construction and operations. A revised EIR must be prepared to account for longer worker trip distances, which will be much longer than 13.65 VMT per employee utilized to conclude the project will have a less than significant impact.

Response H.16: See Response H.6 addressing this comment. The comment did not raise any issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment H.17: For the foregoing reasons, GSEJA believes the EIR is flawed and a revised EIR must be prepared for the proposed project and circulated for public review. Golden State Environmental Justice Alliance requests to be added to the public interest list regarding any subsequent environmental documents, public notices, public hearings, and notices of determination for this project. Send all communications to Golden State Environmental Justice Alliance P.O. Box 79222 Corona, CA 92877.

Response H.17: The general summation of comments is noted for the record and addressed in Responses H.1 through H.16 above. The comments provided by the commenter do not accurately represent the Project's potential impacts. Substantial evidence supports the City's conclusions and the comment letter fails to provide substantial evidence to the contrary. The Draft EIR does not need to be revised. The comment did not raise any new information with respect to the disposition of

significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required. Additionally, the commenter has been added to the interest list to receive emails and notifications regarding the proposed Project.

Attachment A: Comments on the Qume and Commerce Project by SWAPE Technical Consultation

Comment H.18: We have reviewed the July 2022 Draft Environmental Impact Report ("DEIR") for the Qume and Commerce Project ("Project") located in the City of San Jose ("City"). The Project proposes to construct 694,491 square feet ("SF") of warehouse space, 20,000-SF of office space, and 511 parking spaces on the 32.8-acre site.

Our review concludes that the DEIR fails to adequately evaluate the Project's hazards, hazardous materials, air quality, and greenhouse gas impacts. As a result, emissions associated with construction and operation of the proposed Project are underestimated and inadequately addressed. A revised EIR should be prepared to adequately assess and mitigate the potential hazards, hazardous materials, air quality, and greenhouse gas impacts that the project may have on the environment.

> **Response H.18:** This comment provides a summary of the Project. A discussion of the Draft EIR's evaluation of Project's hazards, hazardous materials, air quality, and greenhouse gas impacts is provided in comments H.19 through H.26 below.

Comment H.19: According to a soil vapor study prepared for the Project, the site is contaminated with benzene, tetrachloroethelene (PCE), chloroform, and ethylbenzene. The impact is described in the DEIR as:

> "Impact HAZ-1: Project construction activities would disturb potentially volatile organic compound (VOC)-contaminated soils beneath building slabs within proposed APNs 244-15-026 and 244-15-003, which could result in impacts to construction workers and future site occupants from exposure to soil and/or soil vapor that is in exceedance of the Commercial/Industrial Environmental Screening Levels for VOCs" (p. 9).

To address this contamination, the DEIR includes Mitigation Measure ("MM") HAZ-1 which states:

> "Prior to issuance of a building permit, the applicant shall conduct additional soil gas testing in the areas where VOC exceedances were detected to determine soil gas concentrations and shall submit this data to the City of San José Environmental Services Department for review. If the results of the soil gas testing reveal concentrations of VOCs above applicable regulatory environmental screening levels for an industrial use, applicant shall obtain regulatory oversight from the Regional Water Quality Control Board, Department of Toxic Substances Control, or the Santa Clara County Department of Environmental Health under their Site Cleanup Program. Implementation of the mitigations described above will reduce contaminant exposure impacts to construction workers and future site occupants from exposure to soil and/or soil vapor to a less than significant level through compliance with existing regulations" (p. 10).

The mitigation is inadequate because it is deferred until after Project approval and therefore fails to disclose existing site conditions, i.e., a complete understanding of the extent and the severity of the soil vapor contamination. The mitigation is also inadequate because any necessary soil removal activities will involve the use of heavy equipment, which will result in unaccounted-for air and air toxics emissions. Finally, the mitigation is inadequate because it fails to provide for warnings for the presence of California Proposition 65-listed chemicals (e.g., benzene and PCE) which are known by the State of California to cause cancer.

A revised EIR is necessary to include the results of a soil gas study that fully discloses contamination concentrations and evaluates potential worker exposures. The revised EIR should include regulatory approval of any studies that are necessary to evaluate contaminants that are above health-based screening levels. Finally, the revised EIR should provide for, as mitigation, Proposition 65-compliantwarnings to workers that listed contaminants are present on the Project site.

Response H.19: See Response D.3 above. Additional characterization of soil and soil vapor was undertaken following circulation of the Draft EIR and that data has been included in Appendix B in the Final EIR. Soil vapor sampling results were consistent with or lower than the prior sampling event with the exception of chloroform in one exterior location. Applying the attenuation factor for a future commercial building indicates concentrations would not result in human health risk to future occupants due to possible vapor intrusion. All soil vapor results from sample points collected beneath the building pads were below all applicable screening levels. The only soil vapor results with concentrations above conservative Water Board environmental screening levels were located outside the building pads. In addition, laboratory results of all soil samples collected from borings drilled beneath the existing building pads and outside the footprint of the existing building pads indicated no detectable concentrations of chloroform and tetrachloroethene (PCE). Based on these results, there is no evidence of a significant release and no human health risk is present to future or current occupants due to possible vapor intrusion or threat to groundwater. The chloroform concentrations detected in soil vapor outside the building pad are possibly due to a breakdown of chlorine in drinking water which is applied to raised bed vegetable gardens in the location of these sample points. To assess human health risks to future occupants through possible vapor intrusion, the concentrations of all soil vapor samples were compared to the DTSC HERO Note 3 and EPA ambient air screening values modified for soil vapor using an attenuation factor of 0.0005 for a future commercial building. Based on these criteria, none of the soil vapor results exceed these guidelines, and therefore, no human health risk is present due to possible vapor intrusion into a future commercial building. In light of all of this data, soil removal activities will not generate unaccounted-for air and air toxics emissions and Proposition 65 notices are not required.

The mitigation measure is not deferred. As explained above and in the Draft EIR, the site has been thoroughly characterized and there is a thorough understanding of the site conditions. The identified impacts are the kinds in which mitigation is known to be feasible, and the City is committed to eventually devising such mitigation measures. This type of mitigation was upheld by the courts in *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1029. In that case, the court held that. "[w]here 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. Where future action to carry a project forward is contingent on devising means to satisfy such criteria, the agency should be able to rely on its commitment as evidence that significant impacts will in fact be mitigated." Sacramento Old City Assn. v. City Council (1991) 229 Cal.App.3d 1011, 1029.

Mitigation Measure HAZ-1 includes performance criteria (applicable regulatory screening levels and regulatory oversight from the Regional Water Quality Control Board, Department of Toxic Substances Control, or the Santa Clara County Department of Environmental Health under their Site Cleanup Program) that need to be satisfied prior to issuance of the building permit. Since publication of the Draft EIR, access to the buildings was obtained and additional testing performed. See Appendix B of the Final EIR. As explained above the additional testing confirms that there is no risk to human health or the environment. Mitigation Measure HAZ-1 provides that if the results of additional soil gas testing reveal concentrations of VOCs above applicable regulatory environmental screening levels for an industrial use, the applicant shall obtain regulatory oversight from the Regional Water Quality Control Board, Department of Toxic Substances Control, or the Santa Clara County Department of Environmental Health under their Site Cleanup Program. The City will not issue a building permit for the Project until the applicant compiles with Mitigation Measure HAZ-1. The comment did not raise any new information with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment H.20: The DEIR's air quality analysis relies on emissions calculated with California Emissions

Estimator Model ("CalEEMod") Version 2020.4.0 (p. 51). [13] CalEEMod provides recommended default values based on site-specific information, such as land use type, meteorological data, total lot acreage, project type and typical equipment associated with project type. If more specific project information is known, the user can change the default values and input project-specific values, but the California Environmental Quality Act ("CEQA") requires that such changes be justified by substantial evidence. Once all of the values are inputted into the model, the Project's construction and operational emissions are calculated, and "output files" are generated. These output files disclose to the reader what parameters are utilized in calculating the Project's air pollutant emissions and make known which default values are changed as well as provide justification for the values selected.

When reviewing the Project's CalEEMod output files, provided in the Air Quality Assessment ("AQ Assessment") as Appendix C to the DEIR, we found that several model inputs were not consistent with information disclosed in the DEIR. As a result, the Project's construction and operational emissions may be underestimated. A revised EIR should be prepared to include an updated air quality analysis that adequately evaluates the impacts that construction and operation of the Project will have on local and regional air quality.

Review of the CalEEMod output files demonstrates that the "Bridge Qume" model includes the entirety of the warehouse space as unrefrigerated (see excerpt below) (Appendix C, pp. 71, 155, 98, 181). As demonstrated above, the model fails to include the proposed refrigerated warehouse space. However, this is incorrect for two reasons. First, according to the DEIR:

> "Operational GHG emissions would also result from indirect sources, such as off-site generation of electrical power over the life of the Project, the energy required to convey water to, and wastewater from the Project site, the emissions associated with solid waste generated from the Project site, and any fugitive refrigerants from air conditioning or refrigerators" (emphasis added) (p. 108).

As demonstrated above, the DEIR indicates that the Project would generate operational greenhouse gas emissions from "any fugitive refrigerants from air conditioning or refrigerators." As such, the proposed Project may include refrigerated warehouse space.

Second, the DEIR indicates that the future tenants of the proposed warehouses are currently unknown. Specifically, the DEIR states:

> "The project description and future tenant for the four industrial use buildings is under negotiation at this time; however, the speculative project building could be a warehouse for distribution" (Appendix L, pp. 30).

Thus, as future site tenants are unknown, the proposed warehouse may require cold storage for operation. Therefore, as refrigerated warehouse space is the most energy-intensive, the Project should have included all of the proposed warehouse space as cold storage in order to conduct the most conservative analysis.

This presents an issue, as refrigerated warehouses release more criteria air pollutant and GHG emissions when compared to unrefrigerated land uses for three reasons. First, warehouses equipped with cold storage, such as refrigerators and freezers, are known to consume more energy when compared to warehouses without cold storage.[14] Second, warehouses equipped with cold storage typically require refrigerated trucks, which are known to idle for much longer when compared to unrefrigerated hauling

[13] "CalEEMod Version 2020.4.0." California Air Pollution Control Officers Association (CAPCOA), May 2021, *available at:* http://www.aqmd.gov/caleemod/download-model.

[14] "Warehouses." Business Energy Advisor, *available at*: https://ouc.bizenergyadvisor.com/article/warehouses.

trucks.[15] Lastly, according to a July 2014 *Warehouse Truck Trip Study Data Results and Usage* presentation prepared by the South Coast Air Quality Management District ("SCAQMD"), hauling trucks that require refrigeration result in greater truck trip rates when compared to non-refrigerated hauling trucks.[16] Furthermore, as discussed by SCAQMD, "CEQA requires the use of 'conservative analysis' to afford 'fullest possible protection of the environment.'"[17] As such, the model should have included the warehouse land use as refrigerated in order to account for the additional emissions that refrigeration requirements may generate.

By failing to account for potential cold storage requirements, the model may underestimate the Project's operational emissions and should not be relied upon to determine Project significance. A revised EIR should be prepared to account for the possibility of refrigerated warehouse needs by all future tenants.

Response H.20: The CalEEMod User's Guide (May 2021) instructs the user to consider the accuracy of the equipment and phase duration estimations and using Project specific construction schedules, when available, which is what the Project's technical studies utilized. Project specific construction phasing was provided which was utilized in the CalEEMod run. Additionally, as stated in Response G.3 above, the Project would not include cold storage or TRUs and a condition of approval will be applied to the Project to ensure the use does not include TRUs unless additional permit and environmental analysis is conducted. Any future proposal to convert to cold storage would require additional environmental review." Therefore, CalEEMod did not underestimate the emissions related to the Project and the City's analysis represents substantial evidence to support a finding of less than significant. The comment did not raise any new information with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment H.21: According to the DEIR, the proposed Project includes 20,000-SF of office space (see excerpt below) (p. 18, Table 2-3):

As such, the model should have included 20,000-SF of office space. However, review of the CalEEMod output files demonstrates that the "Bridge Qume" model includes all 714,491-SF as "Unrefrigerated Warehouse-No Rail" (see excerpt below) (Appendix C, pp. 71, 155, 98, 181).

As you can see in the excerpt above, the model fails to distinguish between the proposed warehouse and office spaces. These inconsistencies present an issue, as CalEEMod includes 63 different land use types that are each assigned a distinctive set of energy usage emission factors.[18] Thus, by failing to include the proposed office land use, the model may underestimate the Project's operational emissions and should not be relied upon to determine Project significance.

Response H.21: According to the CalEEMod User's Guide (May 2021), office space use is included in certain industrial uses as a portion of the building area. The office space would be located within the building area modeled for the Project (Appendix C). The trips associated with the office space are included in the traffic data provided in the Transportation Analysis (Appendix L). The proposed Project buildings would not include natural gas and would use energy from TotalGreen (100 percent

[15] "Estimation of Fuel Use by Idling Commercial Trucks." Transportation Research Record Journal of the Transportation Research Board, January 2006, p. 8, *available at:* https://www.researchgate.net/publication/245561735_Estimation_of_Fuel_Use_by_Idling_Commercial_Trucks.

[16] "Warehouse Truck Trip Study Data Results and Usage" Presentation. SCAQMD Mobile Source Committee, July 2014, *available at:* http://www.aqmd.gov/docs/default-source/ceqa/handbook/high-cube-warehouse-trip-ratestudy-for-air-quality-analysis/finaltrucktripstudymsc072514.pdf?sfvrsn=2, p. 7, 9..

[17] "Warehouse Truck Trip Study Data Results and Usage" Presentation. SCAQMD Inland Empire Logistics Council, June 2014, *available at*: http://www.aqmd.gov/docs/default-source/ceqa/handbook/high-cube-warehouse-triprate-study-for-air-quality-analysis/final-ielc_6-19-2014.pdf?sfvrsn=2..

[18] "Appendix D – Default Data Tables" California Air Pollution Control Officers Association (CAPCOA), June 2021, *available at:* https://www.aqmd.gov/caleemod/user's-guide, p. D-305.

renewable energy) through SJCE. Therefore, the different land use would not result in greater air quality emissions than analyzed in the Draft EIR. The comment did not raise any new information with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment H.22: Review of the CalEEMod output files demonstrates that the "Bridge Qume" model includes several changes to the default individual construction phase lengths (see excerpt below) (Appendix C, pp. 72, 99, 156, 182). As a result of these changes, the model includes the following construction schedule (see excerpt below) (Appendix C, pp. 76, 103, 160, 187):

As demonstrated above, the demolition phase is increased by 87%, from the default value of 30 to 56 days; the site preparation phase is decreased by 75%, from the default value of 20 to 5 days; the grading phase is decreased by 11%, from the default value of 45 to 40 days; the building construction phase is decreased by 48%, from the default value of 500 to 262 days; the architectural coating phase is increased by 391%, from the default value of 35 to 172 days; and the paving phase is decreased by 17%, from the default value of 35 to 29 days. As previously mentioned, the CalEEMod User's Guide requires any changes to model defaults be justified. [19] According to the "User Entered Comments & Non-Default Data" table, the justification provided for these changes is: "Per construction timeline" (Appendix C, pp. 72, 99, 156, 182).

Furthermore, regarding the Project's anticipated construction schedule, the DEIR states:

> "The Project would be constructed over approximately 18 months, beginning in the second quarter of 2024. The Project would be constructed in one comprehensive phase and would follow a conventional construction sequence of demolition, site preparation, grading/earthwork, paving, building construction, and architectural coating. Operations would be anticipated to commence in the fourth quarter of 2025" (p. 21-22).

However, these changes remain unsupported for two reasons.

First, the DEIR and associated documents fail to provide the above-mentioned construction timeline. As such, we cannot verify the revised construction phase lengths are accurate.

Second, while the DEIR indicates the total construction duration, the DEIR fails to mention or justify the individual construction phase lengths. This is incorrect, as according to the CalEEMod User's Guide:

> "CalEEMod was also designed to allow the user to change the defaults to reflect site- or project specific information, when available, provided that the information is supported by substantial evidence as required by CEQA." [20]

Here, as the DEIR only justifies the total construction duration of 18 months, the DEIR fails to provide substantial evidence to support the revised individual construction phase lengths. As such, we cannot verify the changes.

These unsubstantiated changes present an issue, as the construction emissions are improperly spread out over a longer period of time for some phases, but not for others. According to the CalEEMod User's Guide, each construction phase is associated with different emissions activities (see excerpt below). [21]

Thus, by disproportionately altering and extending some of the individual construction phase lengths

[19] "CalEEMod User's Guide." California Air Pollution Control Officers Association (CAPCOA), May 2021, *available at:* https://www.aqmd.gov/caleemod/user's-guide, p. 1, 14.
[20] "CalEEMod User's Guide." California Air Pollution Control Officers Association (CAPCOA), May 2021, *available at:* https://www.aqmd.gov/caleemod/user's-guide, p. 12.
[21] "CalEEMod User's Guide." CAPCOA, November 2017, *available at:* http://www.aqmd.gov/docs/defaultsource/caleemod/01_user-39-s-guide2016-3-2_15november2017.pdf?sfvrsn=4, p. 31.

without proper justification, the model assumes there are a greater number of days to complete the construction activities required by the prolonged phases. As such, there will be less construction activities required per day and, consequently, less pollutants emitted per day. As a result, the model may underestimate the peak daily emissions associated with some phases of construction and should not be relied upon to determine Project significance.

Response H.22: As discussed in Response H.20 above, users are able to make changes to the CalEEMod defaults with justification. It is true that edits have been made to the default construction phase-lengths to reflect Project-specific information to more accurately model Project emissions. Default phase lengths in CalEEMod are based on South Coast Air Quality Management District (SCAQMD) construction surveys conducted in 2008 and 2010 (CalEEMod Appendix A: Calculation Details for CalEEMod and Appendix E: Technical Source Information). CalEEMod uses the total Project acreage entered into the land use screen to estimate construction time and equipment based on survey information received. If the total acreage of a Project falls between the acreage of two construction sites surveyed, the phase length for the greater acreage is used. Since the default phase lengths are based on 2010 construction equipment and building methods, these phases are extremely conservative, due to improvements over the past 10 years. Project specific construction information was provided by the applicant and entered into the model. As stated by the commenter, this approach is consistent with the CalEEMod User's Guide (for CalEEMod 2020.4.0, May 2021) which instructs the user to consider the accuracy of the equipment and phase duration estimations and using project specific construction schedules, when available. The changes to the construction phasing are based on applicant information, industry standards, and experience with similar projects. The CalEEMod default schedule does not take into account new building methods, such as concrete tilt-up construction which dramatically reduces construction time compared to traditional methods. Concrete placement is fast and easy because panels are poured on-site and assembled using cranes. Formwork placement is faster and simpler, including block-outs for door and window openings.[22] For this reason, project specific construction phases are more accurate than default values, which are outdated and do not represent the project. Project specific information was entered into the model and noted as "Construction Schedule" as recommended in the *CalEEMod User's Guide*. As such, the modifications to the construction stage durations represent reasonable assumptions. CalEEMod default construction phase timing is more appropriately used when project-specific information is not available. The comment did not raise any new information with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment H.23: In an effort to more accurately estimate the Project's construction-related and operational emissions, we prepared an updated CalEEMod model, using the Project-specific information provided by the DEIR. In our updated model, we included all of the proposed land use types and proportionally altered the individual construction phase lengths to match the proposed 18-month construction duration. [23] Our updated analysis estimates that the VOC and NOX emissions associated with Project construction exceed the applicable BAAQMD thresholds of 54-pounds per day ("lbs/day"), as referenced by the DEIR (p. 51, Table 3.1-4) (see table below).

As demonstrated above, construction-related VOC and NOX emissions, as estimated by SWAPE, increase by approximately 358% and 89%, respectively, and exceed the applicable BAAQMD significance thresholds. Thus, our updated modeling demonstrates that the Project would result in a potentially significant air quality impact that was not previously identified or addressed by the DEIR. As a result, a revised EIR should be prepared to adequately assess and mitigate the potential air quality impacts that

[22] https://www.cement.org/cement-concrete/paving/buildings-structures/concrete-homes/building-systems-for-every-need/tilt-up-concrete
[23] See Attachment B for updated air modeling.

the Project may have on the environment.

Response H.23: The comment presents modeling results conducted by SWAPE. Based on a review of the SWAPE model outputs, several inaccuracies were identified to indicate that the commenter's modeling does not represent the proposed Project. For example, SWAPE ran refrigerated warehouse instead of unrefrigerated warehouse as proposed by the Project. As discussed in Response C.3, only dry storage is proposed and it will be confirmed through application of a Project condition of approval. If conversion of cold storage is desired in the future, additional environmental review would be required. Therefore, the modeling of cold storage is incorrect for this Project. Second, SWAPE modeled the incorrect construction phasing schedule. As discussed in Response H.22, the CalEEMod User's Guide (for CalEEMod 2020.4.0 dated May 2021) instructs the user to consider the accuracy of the equipment and phase duration estimations and using Project specific construction schedules, when available. The Project analysis includes modification to the default construction phase lengths based on applicant information, industry standards, and experiences with similar projects. The City's analysis utilized project-specific construction schedule estimations, based on information provided by the applicant's Project engineers (also refer to Response H.22). SWAPE did not include CARB Tier 4 Final construction equipment in the mitigated run (MM AQ-1) as shown on page 57 of the Draft EIR. CARB Tier 4 Final resulted in a 55 percent decrease in NO_x emissions. The comment did not raise any new information with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment H.24: The Draft EIR relies upon the Project's consistency with the City's 2030 Greenhouse Gas Reduction Strategy ("GHGRS") in order to conclude that the Project would result in a less-than-significant greenhouse gas ("GHG") impact (p. 109-110). However, review of Table A: General Plan Consistency and Table B: 2030 Greenhouse Gas Reduction Strategy Compliance within the Compliance Checklist, provided as Appendix B to the Draft EIR, reveal that the Project is inconsistent with numerous measures, including but not limited to those listed below:

GHGRS Compliance Checklist[24]	
Table A: General Plan Consistency	
Implementation of Green Building Measures	
MS-2.2: Encourage maximized use of on-site generation of renewable energy for all new and existing buildings.	Here, the Compliance Checklist states: "The Project would be solar-ready by including building roof space for a "Future PV Array" per California Code. The Project would also enroll in San José Clean Energy (SJCE) TotalGreen program which includes 100 percent renewable energy. Additionally, the Project would meet U.S. Green Building Council LEED Silver requirements through various credits related to optimized energy performance and other sustainable features." (Appendix I, pp. 142). However, this response is insufficient for three reasons. First, by simply stating that the Project would include "building roof space for a 'Future PV Array' per California Code," the GHG Report commits to the bare minimum requirements. As such, the Compliance Checklist fails to demonstrate how the Project would encourage maximized use of on-site renewable energy for all new and existing buildings. Second, the Project's enrollment in the San José Clean Energy ("SJCE") TotalGreen program does not provide any evidence that

[24] "GHGRS Project Compliance Checklist." City of San José Department of Planning, Building, and Code Enforcement, *available at*: https://www.sanjoseca.gov/Home/ShowDocument?id=63603.

GHGRS Compliance Checklist[24]	
	the Project would encourage maximized use of on-site generation of renewable energy because the program addresses procurement of renewable energy generated off-site. Third, the DEIR fails to mention the "Future PV Array" or the Project's proposed enrollment in the SJCE TotalGreen program anywhere other than the Compliance Checklist. The inclusion of a PV array and enrollment in the SJCE TotalGreen program is not included as a mitigation measure or a binding condition of approval, making both Project Design Features ("PDFs") speculative and unenforceable. This is incorrect, as according to the AEP CEQA Portal Topic Paper on mitigation measures: "While not "mitigation," a good practice is to include those Project design feature(s) that address environmental impacts in the mitigation monitoring and reporting program (MMRP). Often the MMRP is all that accompanies building and construction plans through the permit process. If the design features are not listed as important to addressing an environmental impact, it is easy for someone not involved in the original environmental process to approve a change to the Project that could eliminate one or more of the design features without understanding the resulting environmental impact" (emphasis added).[25] As you can see in the excerpts above, PDFs are not mitigation measures and may be eliminated from the Project's design. Here, as the DEIR fails to require the Project to incorporate a PV array or enroll in the SJCE Total Green program, we cannot guarantee that these measures would be implemented, monitored, and enforced on the Project site. As a result, we are unable to verify the Project's consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.
MS-2.3: Encourage consideration of solar orientation, including building placement, landscaping, design and construction techniques for new construction to minimize energy consumption.	Here, the Compliance Checklist states: "The Project would comply with the latest energy efficiency standards. The State goal is to increase the use of green building practices. The Project would implement required green building strategies through existing regulation that requires the Project to comply with various CalGreen requirements Additionally, the Project would be enrolled in San José Clean Energy (SJCE) Total Green program which includes 100 percent renewable energy and meet LEED Silver requirements." (Appendix I, pp. 142). However, this response is insufficient for two reasons. First, by simply stating that the Project would include "comply with the latest energy efficiency standards" and "implement required green building strategies through existing regulation," the Project commits to the bare minimum requirements. As such, the Compliance Checklist fails to demonstrate that the Project would encourage consideration of solar orientation or other techniques to minimize energy consumption. Furthermore, the Compliance Checklist fails to provide any evidence of concrete actions or measures proposed to satisfy this measure. Second, the Project's enrollment in the SJCE Total Green program

[25] "CEQA Portal Topic Paper Mitigation Measures." AEP, February 2020, *available at:* https://ceqaportal.org/tp/CEQA%20Mitigation%202020.pdf, p. 6.

GHGRS Compliance Checklist[24]	
	does not provide any evidence that the Project would encourage consideration of building placement, landscaping, design and construction techniques to minimize energy consumption. As a result, we are unable to verify the Project's consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.
MS-2.7: Encourage the installation of solar panels or other clean energy power generation sources over parking areas.	Here, the Compliance Checklist states: "This measure is to increase solar throughout California, which is being done by various electricity providers and existing solar programs. Future tenants within the Project would be able to take advantage of incentives that are in place at the time of construction" (Appendix I, pp. 142). However, this response is insufficient for two reasons. First, simply stating that "electricity providers and existing solar programs" are already making efforts "to increase solar throughout California" fails to indicate Project-specific measures that would encourage the installation of solar panels or other clean energy power generation sources over parking areas. Furthermore, while the Compliance Checklist states that the Project would include "building roof space for a 'Future PV Array' per California Code," it fails to indicate that the Project intends to install solar panels over parking areas specifically. Thus, the Compliance Checklist fails to provide any evidence of concrete actions or measures proposed to satisfy this measure. Second, the DEIR fails to mention the inclusion of a "Future PV Array" anywhere other than the Compliance Checklist. Furthermore, the inclusion of a "Future PV Array" is not certain because it is not included as a mitigation measure. This is incorrect, because, as discussed above, Project design features are not mitigation measures and may be eliminated from the Project's design. As the DEIR fails to require the Project to include a "Future PV Array," we cannot guarantee that this measure would be implemented, monitored, and enforced on the Project site. As a result, we are unable to verify the Project's consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.
MS-2.11: Require new development to incorporate green building practices, including those required by the Green Building Ordinance. Specifically, target reduced energy use through construction techniques (e.g., design of building envelopes and systems to maximize energy performance), through architectural design (e.g., design to maximize cross ventilation and interior daylight) and through site design techniques (e.g., orienting buildings on sites to maximize the effectiveness of passive solar design).	Here, the Compliance Checklist states: "The State goal is to increase the use of green building practices. The Project would implement required green building strategies through existing regulation that requires the Project to comply with various CalGreen requirements to reduce energy use. The Project would also meet the LEED Silver requirements." (Appendix I, pp. 142). However, this response is insufficient, as the Compliance Checklist fails to demonstrate how the Project would incorporate green building practices to minimize energy consumption. Specifically, the Compliance Checklist and DEIR should have discussed and considered a Project design that includes building envelopes and systems to maximize energy performance, the maximization of cross ventilation and interior daylight, and the orientation of buildings. Furthermore, the DEIR fails to provide any evidence of concrete actions designed to target reduced energy use.

GHGRS Compliance Checklist[24]	
	As a result, we are unable to verify the Project's consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.
Pedestrian, Bicycle & Transit Site Design Measures	
CD-2.1: Promote the Circulation Goals and Policies in the Envision San José 2040 General Plan. Create streets that promote pedestrian and bicycle transportation by following applicable goals and policies in the Circulation section of the Envision San José 2040 General Plan	Here, the Compliance Checklist states: "The proposed Project is in an industrial area. There are existing Class II bike lanes on both sides of Lundy Avenue and McKay Drive that will remain. The Project would not alter existing bike lanes but would construct 10-foot wide City standard attached sidewalks along Qume Drive, Commerce Drive, and McKay Drive Project frontages. Additionally, the proposed Project would include 21 bicycle parking spaces, a Class I bike lane on site connecting McKay Drive to Qume Drive, as well as bicycle and pedestrian access on the driveways. Additionally, the Project would include Tier 2 multi-modal infrastructure that would construct an internal bicycle/pedestrian pathway connecting the cul-de-sacs at McKay Drive/Automation Parkway and Commerce Drive. Finally, the Project would reduce roadway widths along Qume Drive and Commerce Drive to reduce vehicle speeds and promote pedestrian and bicyclist safety" (Appendix I, pp. 143). However, this response is insufficient, as the Compliance Checklist fails to mention elements that increase driver awareness, attractive street furniture, pedestrian oriented lighting, mid-block pedestrian crossings, pedestrian-activated crossing lights, bulb-outs and curb extensions at intersections, de-coupled parking, or on-street parking that buffers pedestrians from vehicles. Thus, the Project fails to demonstrate consistency with all aspects of this measure. As a result, we are unable to verify the Project's consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.
CD-3.2: Prioritize pedestrian and bicycle connections to transit, community facilities (including schools), commercial areas, and other areas serving daily needs. Ensure that the design of new facilities can accommodate significant anticipated future increases in bicycle and pedestrian activity.	Here, the Compliance Checklist states: "There are existing Class II bike lanes on both sides of Lundy Avenue and McKay Drive that will remain. The Project would not alter existing bike lanes but would construct 10-foot wide City standard attached sidewalks along Qume Drive, Commerce Drive, and McKay Drive Project frontages. Additionally, the proposed Project would include 21 bicycle parking spaces, a Class I bike lane on site connecting McKay Drive to Qume Drive, as well as bicycle and pedestrian access on the driveways. Additionally, the Project would include Tier 2 multi-modal infrastructure that would construct an internal bicycle/pedestrian pathway connecting the cul-de-sacs at McKay Drive/Automation Parkway and Commerce Drive." (Appendix I, pp. 144). However, this response is insufficient, as the DEIR fails to mention or support how the proposed bicycle and pedestrian network will prioritize connections to transit, community facilities, and other areas service daily needs. Furthermore, the DEIR fails to mention how the proposed Project will accommodate significant anticipated future increases in bicycle and pedestrian activity. As a result, we are unable to verify the Project's consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.

GHGRS Compliance Checklist[24]	
CD-2.5: Integrate Green Building Goals and Policies of the Envision San José 2040 General Plan into site design to create healthful environments. Consider factors such as shaded parking areas, pedestrian connections, minimization of impervious surfaces, incorporation of stormwater treatment measures, appropriate building orientations, etc.	Here, the Compliance Checklist states: "The proposed Project would include landscaping and landscaped shading of the parking areas and walkways. Approximately 21 percent of the site would be landscaped, resulting in a total of 14 percent pervious area on site. The Project would comply with all applicable stormwater regulations" (Appendix I, pp. 143). However, this response is insufficient. As previously discussed, PDFs are not mitigation measures and may be eliminated from the Project's design. Here, the DEIR fails to require shaded parking areas, minimization of impervious surfaces, and incorporation of stormwater treatment measures as formal mitigation. As such, we cannot guarantee that this measure would be implemented, monitored, and enforced on the Project site. As a result, we are unable to verify the Project's consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon
TR-8.5: Promote participation in car share programs to minimize the need for parking spaces in new and existing development.	Here, the Compliance Checklist states: "The Project would be located near existing transit and bicycle facilities which would encourage alternative transportation. Additionally, the Project includes bike parking spaces" (Appendix I, pp. 145). However, this response is insufficient, as the DEIR fails to mention or support how the proposed bicycle parking spaces and distance to transit facilities will promote participation in car share programs. As a result, we are unable to verify the Project's consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.
Water Conservation and Urban Forestry Measures	
MS-3.1: Require water-efficient landscaping, which conforms to the State's Model Water Efficient Landscape Ordinance, for all new commercial, institutional, industrial and developer-installed residential development unless for recreation needs or other area functions.	Here, the Compliance Checklist states: "The proposed Project would comply with the State's Model Water Efficient Landscape Ordinance and the City's Water-Efficient Landscape Ordinance (Chapter 15.11 of the San José Municipal Code). Project landscaping would include all water efficient landscaping" (Appendix I, pp. 146). However, this response is insufficient. As previously discussed, PDFs are not mitigation measures and may be eliminated from the Project's design. Here, the DEIR fails to require the water-efficient landscaping as formal mitigation. As such, we cannot guarantee that this measure would be implemented, monitored, and enforced on the Project site. As a result, we are unable to verify the Project's consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.
MS-19.4: Require the use of recycled water wherever feasible and cost-effective to serve existing and new development.	Here, the Compliance Checklist states: "The City provides recycled water in the vicinity of the Project site. The Project would utilize recycled water for the outdoor landscaping based on availability" (Appendix I, pp. 146). However, this response is insufficient. As previously discussed, PDFs are not mitigation measures and may be eliminated from the

GHGRS Compliance Checklist[24]	
	Project's design. Here, the DEIR fails to require the use of recycled water as formal mitigation. As such, we cannot guarantee that this measure would be implemented, monitored, and enforced on the Project site. As a result, we are unable to verify the Project's consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.
MS-26.1: As a condition of new development, require the planting and maintenance of both street trees and trees on private property to achieve a level of tree coverage in compliance with and that implements City laws, policies or guidelines.	Here, the Compliance Checklist states: "The Project would comply with City landscaping requirements including planting of site and street trees, and payment of applicable tree removal fees" (Appendix I, pp. 146). However, this response is insufficient. Simply stating that the Project would comply with City landscaping requirements fails to provide substantial evidence that this goal would be implemented, monitored, and enforced on the Project site. As a result, we are unable to verify the Project's consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.
ER-8.7: Encourage stormwater reuse for beneficial uses in existing infrastructure and future development through the installation of rain barrels, cisterns, or other water storage and reuse facilities.	Here, the Compliance Checklist states: "The Project would comply with all MRP requirements and incorporate measures to minimize stormwater runoff. Proposed features include landscape design elements, pervious parking areas and walkways, source control measures, and on-site bioretention" (Appendix I, pp. 147). However, this response is insufficient. As previously discussed, PDFs are not mitigation measures and may be eliminated from the Project's design. Here, the DEIR fails to require pervious parking areas and walkways, source control measures, and on-site bioretention as formal mitigation. As such, we cannot guarantee that these measures would be implemented, monitored, and enforced on the Project site. As a result, we are unable to verify the Project's consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.
Table B: 2030 Greenhouse Gas Reduction Strategy Compliance	
Part 2: Residential and Non-Residential Projects	
Zero Waste Goal 1. Provide space for organic waste (e.g., food scraps, yard waste) collection containers, and/or 2. Exceed the City's construction & demolition waste diversion requirement. **Supports Strategies:** GHGRS #5	Here, the Compliance Checklist states: "The proposed development includes an exterior trash enclosure with space for recycling and organic waste collection. Additionally, construction and demolition waste would be diverted to exceed City requirements. At least 75 percent of construction and demolition waste and 100 percent of metal would be recycled. Additionally, all concrete and asphalt would be crushed for onsite reuse" (Appendix I, pp. 149). However, this response is insufficient. Simply stating that the Project would provide space for organic waste collection and exceed the City's construction demolition and waste diversion requirement fails to provide substantial evidence that these goals would be implemented, monitored, and enforced on the Project site.

GHGRS Compliance Checklist[24]	
	As a result, we are unable to verify the Project's consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.

Response H.24: The comment challenges the ability of the City to enforce, implement, and monitor the strategies and measures outlined. As discussed above in Response G.3 the City enforces and implements the 2030 GHGRS Development Checklist through plan approval and Project development process. Prior to the issuance of construction and building permits, plans must be prepared and submitted to the City for review and approval. Plan check involves review of the submitted plans by various City departments to meet its respective code requirements (including GHGRS Checklist requirements). Once the plans have been approved by all applicable city departments, the Planning Division and Building Division will be authorized to issue the respective permits.

However, additional sustainability commitments have been included in the Project as described in Response G.2 in response to public comments. These include installing sufficient solar panels on building rooftops to provide net-neutral electricity demand, enrolling in SJCE TotalGreen program, using only electric landscaping equipment, meeting LEED Silver certified level at a minimum, and equipping 10 percent of vehicle parking spaces with EV chargers as well as others. As a mitigation measure, these additional sustainability commitments will be implemented and enforced through the Project's MMRP. The comment did not raise any new information with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment H.25: The DEIR's analysis demonstrates that the Project would result in a potentially significant air quality impact that should be mitigated further. In an effort to reduce the Project's emissions, we identified several mitigation measures that are applicable to the proposed Project. Feasible mitigation measures can be found in the Department of Justice Warehouse Project Best Practices document.[13] Therefore, to reduce the Project's emissions, consideration of the following measures should be made:

- Requiring off-road construction equipment to be zero-emission, where available, and all diesel-fueled off-road construction equipment, to be equipped with CARB Tier IV-compliant engines or better, and including this requirement in applicable bid documents, purchase orders, and contracts, with successful contractors demonstrating the ability to supply the compliant construction equipment for use prior to any ground-disturbing and construction activities.
- Prohibiting off-road diesel-powered equipment from being in the "on" position for more than 10 hours per day.
- Requiring on-road heavy-duty haul trucks to be model year 2010 or newer if diesel-fueled.
- Providing electrical hook ups to the power grid, rather than use of diesel-fueled generators, for electric construction tools, such as saws, drills and compressors, and using electric tools whenever feasible.
- Limiting the amount of daily grading disturbance area.
- Prohibiting grading on days with an Air Quality Index forecast of greater than 100 for particulates or ozone for the project area.
- Forbidding idling of heavy equipment for more than two minutes.
- Keeping onsite and furnishing to the lead agency or other regulators upon request, all equipment maintenance records and data sheets, including design specifications and emission control tier

classifications.

- Conducting an on-site inspection to verify compliance with construction mitigation and to identify other opportunities to further reduce construction impacts.
- Using paints, architectural coatings, and industrial maintenance coatings that have volatile organic compound levels of less than 10 g/L.
- Providing information on transit and ridesharing programs and services to construction employees.
- Providing meal options onsite or shuttles between the facility and nearby meal destinations for construction employees.
- Requiring that all facility-owned and operated fleet equipment with a gross vehicle weight rating greater than 14,000 pounds accessing the site meet or exceed 2010 model-year emissions equivalent engine standards as currently defined in California Code of Regulations Title 13, Division 3, Chapter 1, Article 4.5, Section 2025. Facility operators shall maintain records on-site demonstrating compliance with this requirement and shall make records available for inspection by the local jurisdiction, air district, and state upon request.
- Requiring all heavy-duty vehicles entering or operated on the project site to be zero-emission beginning in 2030.
- Requiring on-site equipment, such as forklifts and yard trucks, to be electric with the necessary electrical charging stations provided.
- Requiring tenants to use zero-emission light- and medium-duty vehicles as part of business operations.
- Forbidding trucks from idling for more than two minutes and requiring operators to turn off engines when not in use.
- Posting both interior- and exterior-facing signs, including signs directed at all dock and delivery areas, identifying idling restrictions and contact information to report violations to CARB, the air district, and the building manager.
- Installing and maintaining, at the manufacturer's recommended maintenance intervals, air filtration systems at sensitive receptors within a certain radius of facility for the life of the project.
- Installing and maintaining, at the manufacturer's recommended maintenance intervals, an air monitoring station proximate to sensitive receptors and the facility for the life of the project and making the resulting data publicly available in real time. While air monitoring does not mitigate the air quality or greenhouse gas impacts of a facility, it nonetheless benefits the affected community by providing information that can be used to improve air quality or avoid exposure to unhealthy air.
- Constructing electric truck charging stations proportional to the number of dock doors at the project.
- Constructing electric plugs for electric transport refrigeration units at every dock door, if the warehouse use could include refrigeration.
- Constructing electric light-duty vehicle charging stations proportional to the number of parking spaces at the project.
- Installing solar photovoltaic systems on the project site of a specified electrical generation capacity, such as equal to the building's projected energy needs.

- Requiring all stand-by emergency generators to be powered by a non-diesel fuel.
- Requiring facility operators to train managers and employees on efficient scheduling and load management to eliminate unnecessary queuing and idling of trucks.
- Requiring operators to establish and promote a rideshare program that discourages single-occupancy vehicle trips and provides financial incentives for alternate modes of transportation, including carpooling, public transit, and biking.
- Meeting CalGreen Tier 2 green building standards, including all provisions related to designated parking for clean air vehicles, electric vehicle charging, and bicycle parking.
- Achieving certification of compliance with LEED green building standards.
- Providing meal options onsite or shuttles between the facility and nearby meal destinations.
- Posting signs at every truck exit driveway providing directional information to the truck route.
- Improving and maintaining vegetation and tree canopy for residents in and around the project area.
- Requiring that every tenant train its staff in charge of keeping vehicle records in diesel technologies and compliance with CARB regulations, by attending CARB-approved courses. Also require facility operators to maintain records on-site demonstrating compliance and make records available for inspection by the local jurisdiction, air district, and state upon request.
- Requiring tenants to enroll in the United States Environmental Protection Agency's SmartWay program, and requiring tenants to use carriers that are SmartWay carriers.
- Providing tenants with information on incentive programs, such as the Carl Moyer Program and Voucher Incentive Program, to upgrade their fleets.

These measures offer a cost-effective, feasible way to incorporate lower-emitting design features into the proposed Project, which subsequently, reduce emissions released during Project construction and operation. A revised EIR should be prepared to include all feasible mitigation measures, as well as include an updated air quality analysis to ensure that the necessary mitigation measures are implemented to reduce emissions to below thresholds. The revised EIR should also demonstrate a commitment to the implementation of these measures prior to Project approval, to ensure that the Project's significant emissions are reduced to the maximum extent possible.

Response H.25: As discussed in Response H.2, Project construction and operations do not exceed BAAQMD thresholds with the mitigation that is already included in the Draft EIR. The Project will use SJCE TotalGreen energy and shall meet LEED Silver green building standards at a minimum. Additionally, the Project includes construction equipment to be CARB Tier 4 Final per MM AQ-1 (page 57 of the Draft EIR). As shown in the Draft EIR, the Project does not exceed BAAQMD criteria air quality pollutants. Therefore, there is no nexus for additional mitigation. While the Project's Greenhouse Gas Emission impacts are already less than significant, new sustainability commitments have been incorporated into the Project as conditions of approval(see Response G.2 for detailed sustainability commitments). Therefore, the comment provides additional measures that are not required as the Project does not have a significant impact. The comment did not raise any new information with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

H.2 Blum Collins & Ho, LLP (dated December 14 2022)

Comment H.26: On behalf of the Golden State Environmental Justice Alliance ("GSEJA"), I am writing to you regarding the Qume and Commerce Project (SCH Number 2022010603) ("Project").

GSEJA is withdrawing its comment letter and opposition to the Project. The Project's developer has addressed GSEJA's concerns about environmental mitigation. GSEJA asks the City not to include GSEJA'S comment letter in the Final EIR.

Response H.26: This comment withdraws GSEJA's comment letter (Letter H1 provided above). The comment is noted and responses to Letter H1 have been included in this Final EIR for informational purposes. None of the comments raised by this commenter represents new significant information that would warrant recirculation of the EIR.

I. Audubon Society and Sierra Club (dated August 22, 2022)

Comment I.1: The Santa Clara Valley Audubon Society and the Sierra Club Loma Prieta Chapter are environmental organizations that work to protect natural resources and promote the enjoyment of nature. We appreciate the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the Qume and Commerce Project. The Project proposes to demolish existing buildings and construct four new industrial warehouse buildings. Of concern, it also plans to remove 620 trees, including oak trees that provide valuable habitat to birds and insects. Please find our comments below.

Response I.1: This comment provides a synopsis of their organization and a summary of the Project. As shown in the Project's updated landscape plan, as provided in Section 5.0 of this Final EIR, and discussed in the Final EIR's Topic Response an additional 39 trees will be retained on-site and within the street frontage, for a total of 125 retained trees. Accordingly, the proposed Project would remove 577 trees. The comment did not raise any issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment I.2: The Project removes 620 existing trees, including 19 out of the 31 existing native trees and 297 ordinance-size trees, but only replaces them with 339 new trees. The DEIR acknowledges a significant impact (Impact Bio-1, Construction activities associated with the proposed Project would remove on-site trees, reducing pockets of forage and cover for native and/or migrating bird species, which could potentially interfere substantially with the movement of native resident species or movement of a migratory wildlife species). The site-specific and cumulative impact of the loss of habitat for resident and migratory bird species should be recognized as a significant unavoidable impact. The DEIR suggests that Bio-1 Mitigation Measures will reduce the impact to less-than-significant. However, this mitigation applies to the construction phase only, and does not mitigate the overall loss of habitat as the fewer, smaller trees and payment of in-lieu fees do not provide any benefit to the same migratory species in the foreseeable future and perhaps never. Therefore, Bio-1 does not mitigate the impact of "reducing pockets of forage and cover for native and/or migrating bird species, which could potentially interfere substantially with the movement of native resident species or movement of a migratory wildlife species." The impact remains significant, and, unless the Project is modified, it is unmitigable.

Response I.2: Please refer to the Final EIR's Topic Response for additional information regarding the Project's tree-related commitments.

Refer to Response G.17 for a discussion of construction-related impacts to nesting and/or migratory bird species and habitat value provided by new landscape plantings. The comment did not raise any issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment I.3: The majority of the proposed new trees are not California native trees. Native oak trees, such as the Valley Oak, support the most wildlife of all trees in our region.[26] We recommend replacing the proposed Chinkapin Oaks, which are not native to our region, with a native oak species. Not only will a native oak species support more biodiversity, it will also be more adapted to the local climate to ensure better survival. Additionally, we strongly urge the increase in the proportion of oak trees overall in relation to the dominant non-native trees. This will increase the habitat value of the new trees to help mitigate the removal of so many existing trees. Our comments are also supported by Policies MS-21.5[27] and

[26] https://www.nytimes.com/2021/03/31/realestate/oak-trees-why-you-should-plant.html

[27] MS-21.5 As part of the development review process, preserve protected trees (as defined by the Municipal Code), and other significant trees. Avoid any adverse affect [sic] on the health and longevity of protected or other significant trees through appropriate design measures and construction practices. Special priority should be given to the preservation of native oaks and native sycamores. When tree preservation is not feasible, include appropriate tree replacement, both in number and spread of canopy.

MS-21.8[28] in Envision San Jose 2040, which seek to preserve and increase the planting of native trees.

Response I.3: The trees originally proposed by the Project are included in the City's Tree Policy Manual & Recommended Best Practices. Additionally, the City of San José Tree Ordinance, provided in page 69 of the Draft EIR, does not require that replacement tree plantings be native species. Nonetheless, in response to this comment, the Project's landscape plan has been modified to replace the originally proposed Chinkapin Oaks with native oak species including Quercus agrifolia and Quercus lobata. Additionally, the Project's landscape plan has been updated to provide that 100 percent of the replacement trees planted on site are now California native species. Please refer to the Final EIR's Topic Response for additional information regarding the Project's tree-related commitments.

The proposed Project would be consistent with Policy MS-21.5 which requires preservation and protection of protected or significant trees where feasible, and appropriate tree replacement if trees are removed. All existing on-site trees were evaluated with an Arborist Report (Appendix E to the Draft EIR, and updated in Appendix D of this Final EIR) and the Arborist Recommendation's for tree protection and removal were considered throughout Draft EIR Section 3.2. Where feasible, the Project has planned to protect and maintain on-site trees and off-site trees that are in good health. These trees would be protected during construction through implementation of Mitigation Measure BIO-1 provided on page 74 for the Draft EIR which requires preparation of a Tree Protection Plan. Further, as discussed on page 76 and 77 of the Draft EIR and under Response G.26, the Project would comply with City Standard Permit Conditions for Tree Removal.

The Project would be consistent with Policy MS-21.8 which requires the selection and planting of new trees to achieve goals including, but not limited to, avoiding conflict with power lines and developed areas and incorporating native trees into urban plantings. The proposed Project would remove trees that are in conflict with utility lines and developed area if they are within 5-feet of proposed buildings or utilities. Additionally, a number of trees to be removed are in poor health and/or are non-native tree species. The comment did not raise any issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment I.4: In addition to planting more native trees, we also encourage the landscape design to include more, if not all, native shrubs and other smaller plants. Similar to native trees, native plants support more wildlife than nonnative plants.[29] Currently, the proposal includes 7 native species, a small proportion compared to the nonnative species. Moreover, one of the proposed species of nonnative shrubs, Heavenly Bamboo, is toxic to birds.[30] Please replace this with a native species that feeds birds, such as Toyon. Native willows and/or oak trees can also be planted in the proposed bioretention areas.

Response I.4: Consistent with the commenter's request, the proposed landscape plan has been revised to remove Heavenly Bamboo and replace with native species such as Toyon. In addition, as requested, the landscape plan has been updated to use 100 percent native shrubs. Refer to Section 5.0: Draft EIR Text Revisions of this Final EIR for the updated landscape plan figure. The comment did not raise any issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

[28] MS-21.8 For Capital Improvement Plan or other public development projects, or through the entitlement process for private development projects, require landscaping including the selection and planting of new trees to achieve the following goals: • Avoid conflicts with nearby power lines. • Avoid potential conflicts between tree roots and developed areas. • Avoid use of invasive, non-native trees. • Remove existing invasive, non-native trees. • Incorporate native trees into urban plantings in order to provide food and cover for native wildlife species. • Plant native oak trees and native sycamores on sites which have adequately sized landscape areas and which historically supported these species

[29] O'Keeffe, Liv. "Biodiversity is Everyone's Responsibility." Flora, vol. 1, no. 2, 2018, pp. 10-11, https://www.cnps.org/wp-content/uploads/2018/05/tallamy-article_flora-v1n2.pdf.

[30] https://ncbg.unc.edu/2022/05/04/nandina-toxic-to-birds/

Comment I.5: Please ensure all plants are not considered invasive species per the California Invasive Plant Council.[31] Of the current proposed plants, *Olea Europaea* is considered invasive in the Bay Area.

Response I.5: Consistent with the commenter's request, the proposed landscape plan has been revised and no longer proposes *Olea Europaea.* None of the proposed plantings are considered invasive species per the California Invasive Plant Council because they are sterile/non-fruiting. Refer to Section 5.0: Draft EIR Text Revisions of this Final EIR for the updated landscape plan figure. The comment did not raise any issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment I.6: DEIR p. 64 lists the number of native trees as 32, while Table 3.2-1 on the same page lists 31 native trees. Please correct this error.

Response I.6: The Final EIR has corrected this error to reflect 31 native trees. Refer to Section 5.0 Draft EIR Text Revisions in this Final EIR for the proposed text amendments. The comment did not raise any issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment I.7: Loss of trees increases the danger from extreme heat.[32,33] The unequal distribution of cooling infrastructure in Los Angeles and other cities is one of the reasons why the health impacts of worsening heat waves fall disproportionately on the poor communities.

a. The City should replace the carbon content of the trees that will be removed. Replacing just the tree count does not mitigate the public health impacts due to extreme heat and the need to stop using fossil fuels and sequester carbon to stay under Paris according to IPCC6 WGIII.

b. The City should find ways to retain more of the trees onsite.

Response I.7: Please refer to the Final EIR's Topic Response for information regarding the additional trees that will be retained by the Project. As noted therein, the applicant will work with the City to ensure that the Project's tree replacement fees are used to plant trees at off-site locations in places where there is currently a lack of tree canopy and will be beneficial in reducing the heat island effect. Further, as shown in the Project's updated landscape plan, included in Section 5.0, Draft EIR Text Revisions of this Final EIR, an additional 39 trees will be retained on-site and within the street frontage, resulting in a new total of 125 trees to be retained. A total of 281 new trees will be planted, resulting in 406 trees on- and off-site after development. In addition, all of the newly planted trees would now be 36" box size, larger than originally proposed and would increase the size of the tree canopy on the Project site. The updated landscape plantings would provide additional shading throughout the Project site and would further reduce the potential for public health impacts of extreme heat on the Project site. The comment did not raise any new information with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment I.8: The Arborist Report states that the City is requiring 10' wide sidewalks along every road, encompassing the southeast and west property lines (Arborist Report Appendix E p. 7). Large mature Ashes and Red Oaks are located along Qume Drive, directly in the path of the proposed sidewalk (Arborist Report Appendix E Figure 5). Because of their size and age, these require–and deserve–more space for preservation. The City must find a way to narrow the width or shift the sidewalk far enough into the property to save these trees.

[31] "The Cal-IPC Inventory – California Invasive Plant Council." California Invasive Plant Council, https://www.cal-ipc.org/plants/inventory/.
[32] https://www.latimes.com/environment/story/2021-10-07/la-times-investigation-extreme-heat
[33] https://www.nytimes.com/2021/07/02/climate/trees-cities-heat-waves.html

This is critically important since data indicates San Jose is losing tree canopy and hence failing to meet General Plan MS-21.2 (Provide appropriate resources to preserve, protect and expand the City's Community Forest) and MS-21.4 (Encourage the maintenance of mature trees, especially natives, on public and private property as an integral part of the community forest. Prior to allowing the removal of any mature tree, pursue all reasonable measures to preserve it). Reasonable measures to modify the Project design and/or sidewalk locations, and addressing DOT policies with flexibility, could and should save dozens of trees.

a. To reduce the multiple negative impacts of loss of trees, please consider waivers of any standards that require the removal of ordinance-size trees, and modify the plans to allow preservation of the large mature ashes and red oaks located along Qume Drive, directly in the path of the proposed sidewalk.

Response I.8: The Project applicant has met with the Department of Public Works and City Arborist to review and modify the previously proposed sidewalk design along Qume Drive and Commerce Drive. As a result of these discussions, an additional five mature Red Oak trees and one mature Ash tree and will be saved. In total, of the 19 existing street trees on Qume and Commerce Drive, 12 trees will be protected in place and two existing small (1-2") trees will be saved and transplanted; the remaining five trees will need to be removed for the future driveway entrances. There are no existing public trees along the McKay Drive frontage.

The Project's proposed landscape plan will also achieve one of the City's goals to create a more walkable environment. Qume Drive currently has no public sidewalk, and the Project will create a new, safer pedestrian walking experience that includes ADA accessibility while saving as many trees as possible by meandering the sidewalk along the street. The comment did not raise any new information with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment I.9: The centuries-old Valley Oak is considered "irreplaceable" (DEIR p. 78, Arborist Report Appendix E p. 8). The Arborist Report labels it Valley Oak #572 on page 8 and #542 on page 35. This mistake can be fatal for the irreplaceable oak since tree #572 (an Ash tree) is slated for removal (Arborist Report Appendix E p. 9 and p. 37). As pointed out in the Arborist Report, accidentally damaging a tree of this age can trigger a slow descent into death, since it may not be growing actively enough to repair damage or replace lost foliage. To protect the tree, the Arborist Report provides clear directions, all of which should be incorporated as Mitigation Measures:

a. Every detail and change to the Project must be reviewed by a consulting arborist.

b. A consulting arborist must be on-site for any ground disturbing activities that occur near/around the tree.

c. Chain-link fencing must be installed around the planter area at the limit of grading, and additional fencing should be left on-site in perpetuity to expand the protected area after demolition.

d. Pruning of the tree should not be done unless absolutely necessary for hazard reduction, and under the supervision of a consulting arborist.

These mitigations are required to avoid damage and subsequent death of the irreplaceable ancient oak, which would constitute a significant impact. In addition, weekly in the first month of operations, and yearly thereafter, monitoring during operations hours should be required to ensure that landscaping and operation activities are not damaging to the tree.

Response I.9: Page 11 of the Arborist Report has been corrected to label the Valley Oak #542.

Figure 6. Valley oak #542 ~~#572~~ is a magnificent specimen located in the telecommunications area.

Refer to Section 5.0 Draft EIR Text Revisions in this Final EIR for the proposed text amendments. This tree will not be removed.

The Project's site plan and landscape design have given careful consideration to preserving the mature and significant Valley Oak tree located near McKay Drive. While this tree is currently in a very small planting area near utility structures, the Project has expanded the size of available root zone around the tree as shown in the Project's landscape plan. By enlarging the planting area and designing around this tree, the Project will give the Valley Oak tree a better chance at long-term success than in its existing condition. While the Draft EIR identified no potential significant impacts to the Valley Oak, to further minimize the possibility of potential impacts additional steps will be taken to ensure the success of the tree , as described in the Final EIR's Topic Response.

Comment I.10: The Bay Area official bird nesting season extends from February 1st through August 31st, inclusively. This is also the date range for which preconstruction bird surveys should be conducted prior to any tree removal, demolition, and construction activities. Erroneously, Mitigation Measure BIO-2 requires preconstruction surveys in the months between August 31st and January 31st. Please correct this on pages 6 and 75 to require surveys between February 1st through August 31st, inclusively.

Response I.10: Consistent with the commenter's request, Mitigation Measure BIO-2 has been updated in the Final EIR as shown below:

BIO-2 *Preconstruction Bird Surveys*

Nesting Bird Surveys: The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 31st (inclusive). If demolition and construction are scheduled to occur between February 1st through August 31st ~~August 31st and January 31st~~ (inclusive), pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests shall be disturbed during Project implementation. This survey shall be completed no more than 14 days prior to the initiation of construction activities during the entire nesting season. ~~early part of the breeding season (February 1st through April 30th inclusive) and no more than 30 days prior to the initiation of these activities during the late part of breeding season (May 1st through August 31st inclusive).~~ During this survey the qualified ornithologist shall inspect all trees and other possible nesting habitats within 250 feet of the construction areas for nests.

Refer to Section 5.0 Draft EIR Text Revisions in this Final EIR for the proposed text amendments. Note that the first sentence of Mitigation Measure BIO-2 does correctly reference the dates of February 1st through August 31st (inclusive) and the analysis provided in the Draft EIR is accurate. Page 75 of the Draft EIR notes that the nesting season for most birds in the San Francisco Bay Area extends from February 1st through August 31st (inclusive). The comment did not raise any issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment I.11: Mitigation Measure BIO-2 states that preconstruction nesting surveys "shall be completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February 1st through April 30th inclusive) and no more than 30 days prior to the initiation of these activities during the late part of breeding season (May 1st through August 31st inclusive)" (p. 6 and 75). Preconstruction bird nesting surveys should be conducted no more than 14 days prior to any tree removal, demolition, and construction activities during the entire nesting period. This is because many of the locally common migratory bird species nest late in the season or repeatedly in these months (Mourning Dove, Dark-eyed Junco, Anna's Hummingbird, House Finch, and others). Furthermore, birds can build a nest, lay eggs, and start raising young within two weeks, and an entire reproductive cycle may start and end within 30 days. If the purpose of the survey is to protect birds, then the survey period should be based on the

minimally known nest building period for local species.

Response I.11: Consistent with the commenter's request, Mitigation Measure BIO-2 has been revised to require nesting bird surveys no more than 14 days prior to construction activities throughout the entire breeding season (February 1st through August 31st inclusive) as shown below:

BIO-2 *Preconstruction Bird Surveys*

Nesting Bird Surveys: The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 31st (inclusive). If demolition and construction are scheduled to occur between February 1st through August 31st ~~August 31st and January 31st~~ (inclusive), pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests shall be disturbed during Project implementation. This survey shall be completed no more than 14 days prior to the initiation of construction activities during the entire nesting season. ~~early part of the breeding season (February 1st through April 30th inclusive) and no more than 30 days prior to the initiation of these activities during the late part of breeding season (May 1st through August 31st inclusive).~~ During this survey the qualified ornithologist shall inspect all trees and other possible nesting habitats within 250 feet of the construction areas for nests.

Refer to Section 5.0 Draft EIR Text Revisions in this Final EIR for the proposed text amendments. The comment did not raise any issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment I.12: Any reports submitted by the qualified ornithologist and the arborist prior to tree removal or construction should be made available to the public.

Response I.12: Consistent with the commenter's request, any reports submitted pursuant to Draft EIR Mitigation Measure BIO-2 shall be made available for public review. The comment did not raise any issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment I.13: Under Section 3.4 Greenhouse Gas Emissions (DEIR p. 93), the first paragraph says, "The following discussion is based on the Greenhouse Gas Emissions Assessment and the report is included as Appendix F of this Draft EIR." However, this assessment is actually Appendix I. The same error is also seen on pages 108 and 110.

Response I.13: This correction has been made in the Final EIR, as shown below:

The following discussion is based on the Greenhouse Gas Emissions Assessment and the report is included as Appendix I ~~F~~ of this Draft EIR.

Refer to Section 5.0 Draft EIR Text Revisions in this Final EIR for the proposed text amendments. As noted on page iv of the Draft EIR, the Greenhouse Gas Emissions Assessment is provided as Appendix I of the Draft EIR. The comment did not raise any issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment I.14: We support the California Air Resources Board's Recommended Air Pollution Emission Reduction Measures for Warehouses and Distribution Centers (Appendix A p. 25) and encourage the Project to comply with these measures. Two such measures are listed below as examples.

a. Include contractual language in tenant lease agreements that requires future tenants to exclusively use zero-emission light and medium-duty delivery trucks and vans.

   Include contractual language in tenant lease agreements that requires all heavy-duty trucks

entering or on the Project site to be model year 2014 or later, expedite a transition to zero-emission vehicles, and be fully zero-emission beginning in 2023.

Response I.14: While the Project's Greenhouse Gas Emission impacts are already less than significant, new sustainability commitments have been incorporated into the Project as Conditions of Approval and are described in Response C.1 and Response G2.

Comment I.15: City policies and regulations do not seem to address the specific impacts of traffic to and from warehouses which constitute the primary contribution to GHG Emissions. For the Project, the primary emission source will be truck traffic related to the operations of the warehouses. Compliance with building codes requirements (City and State) do not mitigate this impact. It is unclear how the following will reduce GHG emissions from truck traffic: "At the State and global level, improvements in technology, policy, and social behavior can also influence and reduce operational emissions generated by a project. The state is currently on a pathway to achieving the Renewable Portfolio Standards goal of 33 percent renewables by 2020 and 60 percent renewables by 2030 per SB 100" (page 25). Ambitious statewide measures such as low carbon fuels, cleaner vehicles, cap-and-trade, and other strategies to promote sustainable communities and improved transportation choices also fail to address the Project's specific emissions from mobile and energy sources (trucks). Relying on City and State policies that are not specifically targeting warehouses and the unique emissions that are associated with their operations is inappropriate and does not mitigate GHG emissions to a less than significant impact.

Response I.15: Refer to Response C.1 for the Project's additional sustainability commitments. The Project will provide for EV-charging of electric cars, and for future charging of electric trucks. As mentioned on page 24 of the City of San José 2030 GHGRS, "a Project consistent with an adopted qualified GHG reduction strategy would not have a significant GHG emissions impacts" (City of San José, 2020). This is consistent with the current BAAQMD thresholds for GHG. As shown in Section 2.3.1 of the 2030 GHGRS, the GHGRS is a qualified climate action plan and therefore meets the minimum standards as a GHGRS threshold of significance option. A key component of the GHGRS is conformance with the General Plan Land Use/ Transportation Diagram (DEIR Appendix I p.144). The Project site has a General Plan designation of Industrial Park, the proposed warehouse is consistent with development allowed under this General Plan designation (DEIR p. 1, 18, 47). Therefore, the Project complies with this part of the GHGRS. As shown in Response G.2, Response G.3, and Response G.4, the Project is consistent with the GHGRS and therefore would have a less than significant impact on GHG. Additionally, the Project would include Tier 2 multi-modal infrastructure that would reduce the Project's per employee VMT to 13.65 which is below the 14.37 industrial VMT threshold (DEIR p. 172). The comment did not raise any new information with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment I.16: The Project objectives include, "Seek opportunities through site design, engineering, 'green' building strategies, Low Impact Development (LID), and on-going management practices to minimize environmental impacts on the local and regional environment" (DEIR p. 25). While the Project proposes to enroll in the San José Clean Energy (SJCE) TotalGreen program and build solar-ready buildings, the increased energy demand on SJCE from the operation of the Project does not support the Project's goal of minimizing impacts. Additionally, Project operation will lead to increased toxic diesel emissions and exhaust in the vicinity as well as increased GHGs as mentioned above. None of these support San Jose's goal to be carbon neutral by 2030 (part of Climate Smart San Jose) or Goal MS-11 (Minimize exposure of people to air pollution and toxic air contaminants such as ozone, carbon monoxide, lead, and particulate matter). The potential impact should be recognized and mitigation should include:

a. The installation of EV-ready infrastructure to facilitate the eventual transition to electric vehicles as envisioned in the DEIR and ready the Project to implement the mitigations described in

comment 14 above.

b. The installation of solar panels now rather than just being solar ready. With the City of San José's pledge to become carbon neutral by the end of the decade, the Project needs to exceed the base building codes of solar-ready rooftops. The Project claims to meet carbon neutral energy requirements by purchasing electricity from SJCE, but this new demand on SJCE would add to the difficulty for SJCE (and competitors for clean energy contracts) to meet its 100% clean energy goal. The Project should provide a solar roof.

c. The installation of batteries and geothermal design to reduce demand on the grid during extreme heat occurrences when blackouts are forecasted.[34]

Response I.16: Subsequent to circulation of the Draft EIR, the applicant committed to additional sustainability commitments for the Project, as described in Response C.1, including the installation of EV Chargers and EV-ready electrical conduits at parking spaces and EV-ready conduits for future plug-in charging stations for trucks. The Project would also install sufficient solar panels on the building rooftops to provide net-neutral electricity demand for each warehouse building. Installation of solar could help the local grid and promote greater proliferation of carbon free electricity. The proposed solar system would reduce Project-related impacts to the energy grid and the proposed Project would remain consistent with the City's GHGRS. Further, as the Project would enroll in SJCE's TotalGreen program, it would not contribute to GHG emissions from energy demand.

Page 110 of the Draft EIR states that, "The Project would also be enrolled in the San José Clean Energy (SJCE) TotalGreen program which includes 100 percent renewable energy and would meet U.S. Green Building Council LEED Silver requirements through various credits related to optimized energy performance and other sustainable features." The Project would use carbon-free energy sources and would therefore, not increase GHG emissions from energy use.

Further, as discussed on page 109 and 110 of the Draft EIR, the proposed development would be constructed in compliance with the City's Council Policy 6-32 and the City's Green Building Ordinance which will ensure consistency with the City's 2030 GHGRS. As noted in Response C.1 and Response G.2, the Project would meet U.S. Green Building Council LEED Silver requirements through various optimized energy performance and other sustainable features. These features would reduce the Project's overall energy demand and impacts on SJCE's energy supply.

Page 56 of the Draft EIR identifies that construction equipment and associated heavy-duty truck traffic generates diesel exhaust, a known toxic air contaminant. Impact AQ-1, page 57 of the Draft EIR notes that without mitigation, construction activities could expose sensitive receptors to TAC emissions that could exceed BAAQMD threshold for cancer risk. However, with implementation of Mitigation Measure AQ-1 (page 57 of the Draft EIR) which requires use of Tier 4 construction equipment or Tier 3 construction equipment with particulate matter emissions controls to minimize construction-period TAC emissions below applicable thresholds, impacts would be reduced to less than significant levels. Concerning operational TAC emissions, page 58 of the Draft EIR notes that the Project would have less than significant impacts concerning TAC emissions from vehicle trips. As provided in Table 3.7-2 on page 175 of the Draft EIR, with applicable trip reductions including location-based mode-share the Project would result in 2,035 new trips. However, existing uses on the Project site generate 3,565 vehicle trips, and therefore the Project would result in 0 net new vehicle trips. Additionally, as provided in Table 3.1-7 on page 58 of the Draft EIR, the highest calculated carcinogenic risk resulting from the Project operations is 0.48 per million residents, which is below the BAAQMD threshold of 10 per million. Acute and chronic hazards also would be below the BAAQMD significance threshold of

[34] https://www.latimes.com/environment/story/2020-01-22/california-needs-clean-energy-after-sundown-geothermal-could-be-the-answer

1.0. Therefore, operational impacts concerning TACs would be less than significant.

The comment did not raise any issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment I.17: Impact Bio-6 seems to suggest that the Project is exempt from the requirements of the Valley Conservation Plan. The Project is subject to the Nitrogen Deposition fees for newly generated car/truck trips.

Response I.17: Page 78 of the Draft EIR states, "The proposed Project may be subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits." The SCVHP nitrogen deposition fee applies to all projects that create new vehicle trips. As noted under Response I.16 and described on Page 175 of the Draft EIR, the Project would generate a net total of 0 additional daily trips, 0 AM, and 0 PM peak hour trips. Therefore, the Project would not be subject to the SCVHP Nitrogen Deposition fee. However, the applicant has voluntarily agreed to pay the SCVHP Nitrogen Deposition fee based on the Project trips (2,035) through the following Condition of Approval:

Condition of Approval: SCVHP Nitrogen Deposition Fee

As volunteered by the applicant, prior to the issuance of grading permits, the applicant would pay the Habitat Plan's nitrogen deposition fee for the project's overall proposed 2,035 trips in lieu of the standard requirement to pay for net trips.

Refer to Section 5.0 Draft EIR Text Revisions in this Final EIR for the proposed text amendments. The comment did not raise any issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment I.18: The evidence that Artificial Light At Night (ALAN) causes pervasive harm to human health, our ecosystems and our planet is overwhelming.[35] Most birds migrate at night and nocturnally migrating birds are attracted to light.[36] The National Audubon Society's Lights Out program[37] is a national effort to reduce the attraction of these birds to inhospitable locations. Since the operations of the warehouse are expected to be active 24/7, mitigations to reduce light pollution and harm to migratory birds should be provided. We recommend following the International Dark Sky Association guidelines and policies that focus on Principles for Responsible Outdoor Lighting. Here is a list of mitigation measures:

a. The correlated color temperature of lighting should not exceed 2400K, and where light with a larger fractional emission of short wavelengths is desired, it should be carefully controlled through stringent application of the other Lighting Principles, such as lower intensity, careful targeting, and reduced operation time.

a. All lighting fixtures should be fully shielded, and the use of up-lighting should be avoided.

b. Over-lighting relative to task-related needs should be prevented by maintaining illuminances as close as possible to the minimum levels.

c. All outdoor lighting fixtures should be capable of accepting 7-pin controls that can enable use of dimmers, timers, motion sensors, and networking. Lighting should be actively controlled through means such as dimmers and motion-sensing switches so as to reduce illuminances or extinguish lighting altogether when the light is not needed.

[35] https://www.darksky.org/wp-content/uploads/2022/06/IDA-State-of-the-Science-2022-EN.pdf
[36] https://www.nytimes.com/2021/04/10/us/bird-migration-lights-out.html
[37] https://www.audubon.org/conservation/project/lights-out

b. All glazed surfaces should utilize a bird safety measures product with a threat factor rating of no more than 20, as rated by the American Bird Conservancy.[38]

Response I.18: While impacts are less than significant, consistent with the commenter's request, the Project applicant will implement the Condition of Approval: Exterior Lighting, discussed in the Final EIR's Topic Response to ensure lighting and glare are minimized.

As provided on page 24 of Appendix A of the Draft EIR, the Project site contains existing lighting sources and the surrounding developments contain existing lighting sources, and the Project would have a less than significant impact to lighting and glare. Project implementation would not have greater potential than existing conditions to impact migrating birds. As stated on page 24 of Appendix A of the Draft EIR, "…site lighting would be reflected downwards onto the site as required by City policy. Further, while the proposed Project would include outdoor lighting, the existing Project site and surrounding area is urbanized and already illuminated. Therefore, proposed lighting conditions would be similar to those currently surrounding the Project site." These design features would avoid off-site lighting impacts from Project development. The comment did not raise any issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

[38] https://abcbirds.org/glass-collisions/products-database/

J. Mothers Out Front Silicon Valley (dated August 23,2022)

Comment J.1: Dear Mr. Keyon and Ms. Garg, Please accept my comments on the Qume and Commerce Project. As you may know, our tree canopy in San Jose is rapidly shrinking. In the face of this problem and our climate crisis, I was shocked to find out that the proposed Qume and Commerce warehouse project would remove over 600 trees, half of which are ordinance-sized. Our city council has recently committed to preserving all the trees it can, as well as increasing our city's tree canopy without any net loss. Increasing our urban forest and preserving the existing trees, especially the mature ones, is crucial in order to lower temperatures, absorb carbon, clean our air, and reduce the urban heat island effect. We cannot afford to continue removing our mature trees!

Response J.1: Refer to the Final EIR's Topic Response for updated information regarding the trees to be preserved on-site by the Project. As shown in in Figures 1 through 6 of the Topic Response and the Project's updated landscape plan (provided in Section 5.0: Draft EIR Text Revisions), an additional 39 trees will be retained on-site or along the Project's street frontage. Additional retained trees include 28 ordinance-size trees, 12 oaks (8 of which are ordinance size), and 10 redwoods (of which 8 are ordinance-size). In total, 125 trees would be retained including 88 ordinance-size trees. The comment did not raise any issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment J.2: Many of the trees to be removed are mature street trees. Why can't most of those trees be preserved during construction, as in most construction projects? According to the arborist's report in the EIR, "The City is also requiring 10' wide sidewalks along every road, encompassing the southeast and west property lines. Large mature ashes and red oaks are located along Qume Drive, directly in the path of the proposed sidewalk (Figure 5). Because of their size and age, they require more space for preservation – it would be challenging to narrow the width or shift the sidewalk far enough into the property to save them. Additionally, the proposed building(s) will come right up to the existing berms between the parking lots & Qume Drive – these will be graded down, requiring removal of all the trees planted in them." and in Figure 5, "Several mature trees, including ash #440 above, are located in the proposed City-mandated sidewalk. Grading of the berm above the sidewalk will require removal of London planetrees to its east (lower left)." According to the above, no proactive, tree protection design efforts are even being proposed by the EIR arborist in order to save these 620 trees. Why can't the sidewalk be narrowed or shifted? Why can't the specs be changed to save at least the ordinance-size trees?

Response J.2: Refer to the Final EIR's Topic Response for updated information regarding the trees to be preserved on-site by the Project and Response I.8 for a discussion of sidewalk design changes made to preserve trees.

The comment did not raise any issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment J.3: Planting new smaller trees will not balance the removal of so many large trees. It will take decades for those small replacement trees to begin to remove the equivalent carbon dioxide now being sequestered by those large established trees. If the city is serious about fighting climate change, about increasing our urban forest, and about cooling our city, much more must be done to preserve these mature trees around this development project. I and my fellow team members at Mothers Out Front are extremely concerned about this project, and hope this destruction will not be permitted.

Response J.3: See the Final EIR's Topic Response, Response G.16, and Response I.7. The amount of carbon sequestered by growing vegetation is variable and while some studies show that older trees can absorb more carbon than younger ones, other research shows the opposite. For examples, a 2016 paper published in Ecosphere and authored by USDA scientists found that "Although large trees

accumulated C[arbon] at a faster rate than small trees on an individual basis, their contribution to C[arbon] accumulation rates was smaller on an area basis, and their importance relative to small trees declined in older stands compared to younger stands (Gray, Whittier, and Harmon, 2016)." A 2016 study published in Nature found that "Newly grown rainforests can absorb 11 times as much carbon from the atmosphere as old-growth forests (Kniver, 2016)." The specific contribution from the species of trees on the site and the replacement trees that will be planted varies from trees at issue in all of these studies as the measurable effect of carbon sequestration occurs in large forests, not urban landscaping. To the extent the commenter suggests that removal of the existing trees will decrease carbon sequestration and negatively impact climate change, there is no evidence to support such a conclusion. It is equally likely that the amount of carbon absorption from the newly planted and growing trees will exceed the carbon sequestration of the existing mature trees.

In addition, while the Project's Greenhouse Gas Emission impacts are already less than significant, new sustainability commitments have been incorporated into the Project as described in Response C.1. Additional sustainability commitments for the Project include the installation of EV chargers and EV-ready electrical conduits at parking spaces and EV-ready conduits for future plug-in charging stations for trucks. The Project would also install sufficient solar panels on the building rooftops to provide net-neutral electricity demand for each warehouse building. Installation of solar could help the local grid and promote greater proliferation of carbon free electricity. The proposed solar system would reduce Project-related impacts to the energy grid and the proposed Project would remain consistent with the City's GHGRS. Further, as the Project would enroll in SJCE's TotalGreen program, it would not contribute to GHG emissions from energy demand.

Page 110 of the Draft EIR states that, "The Project would also be enrolled in the San José Clean Energy (SJCE) TotalGreen program which includes 100 percent renewable energy and would meet U.S. Green Building Council LEED Silver requirements through various credits related to optimized energy performance and other sustainable features." The Project would use carbon-free energy sources and would therefore, not increase GHG emissions from energy use.

The comment did not raise any issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

COMMENTS RECEIVED AFTER PUBLIC CIRCULATION

K. Kristen Lee (dated August 24,2022)

Comment K.1: I heard that the city is requiring large sidewalks and that this could be one of the reasons for felling mature trees in this area. If you look both short term and long term, keeping the mature trees is going to benefit the community much more than increasing the width of sidewalks. I worked in San Jose for much of my adult life (almost 14 years at Cisco and several years at Hewlett Packard Enterprise). In the areas populated by business buildings, there aren't huge crowds of people on the sidewalks. You shouldn't need to have very wide sidewalks to accommodate the walkers. I was one of those few walkers and I rarely saw others out on the sidewalks with me. If a sidewalk was narrowed to accommodate a tree, I would have appreciated the shade it would have offered. When I walk on hot days, I appreciate the shade and the respite from the heat that mature trees give (and baby trees do not). I also bicycled to work occasionally, and as you know, bikes use the street and bike lanes, not the sidewalk.

When I see rules that ask for tree-cutting to accommodate sidewalks that are not used very much, I wonder if the bigger perspective is being considered. A quick search in Google for "benefits of trees in reducing pollution" turns up the following site and many more: https://www.pca.state.mn.us/living-green/benefits-trees#

According to the Minnesota Pollution Control Agency, urban trees "Improve air quality. Leaves intercept and hold small particles on their surfaces--like dust, ash, pollen, and smoke—and absorb gaseous air pollution. Ground-level ozone formation is reduced because air temperatures in tree-filled areas are cooler." This site also lists "save energy and money," "increase property values," "reduce storm water runoff," "reduce atmospheric CO2," and "healthier communities" as benefits of trees.

Please consider this email in addition to the first one I wrote, as you look into the benefits of keeping more of the mature trees vs. cutting them down. Thank you again for considering my request. I had just heard about this issue this week.

> **Response K.1:** Refer to the Final EIR's Topic Response for updated information regarding the trees to be preserved on-site by the Project and Response I.8 for a discussion of sidewalk design changes made to preserve trees.
>
> In addition, while the Project's Greenhouse Gas Emission impacts are already less than significant, new sustainability commitments have been incorporated into the Project as Conditions of Approval to further minimize impacts. These are included in Response C.1 above.
>
> The comment did not raise any issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment K.2: I just heard today about the construction project at Qume and Commerce, and the plans to remove over 600 trees. This is the wrong direction for the city of San Jose. Mature trees cannot be replaced easily by young trees. It will take decades to centuries for the new trees to sequester the same amount of carbon stored already in the old trees. It will also take decades for newly planted trees to provide as much shade as older trees. Young trees are vulnerable and take much water and care, compared to older native trees. Mature trees also help preserve the integrity of our soil and ultimately help us keep a safe water supply.

> **Response K.2:** Refer to the Final EIR's Topic Response for updated information regarding the trees to be preserved on-site by the Project and Section 5.0: Draft EIR Text Revisions of this Final EIR for the Project's updated landscape plan. As shown in in Figures 1 through 6 of the Topic Response and the Project's updated landscape plan, an additional 39 trees will be retained on-site or along the Project's street frontage. Additional retained trees include 28 ordinance-size trees, 12 oaks (8 of which are ordinance size), and 10 redwoods (of which 8 are ordinance-size). In total, 125 trees would be retained including 88 ordinance-size trees.

Refer to Response G.16 and Response G.17 for discussion of habitat value provided by proposed landscape plantings, Response E.3 for discussion of water efficient landscaping, and Response J.3 for discussion of carbon sequestration. The comment did not raise any issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment K.3: In a warming climate, trees make a huge difference for cooling. Areas without shade can become heat islands. Trees also clear out pollution - a huge benefit, given that respiratory and pollution related illnesses reduce lifespan, particularly in urban and polluted areas. Trees also increase property attractiveness and value. In urban communities, poorer areas tend to have far fewer trees. Do they lack trees because they are poor? Or are the areas poor partially because of lack of trees? In either case, eliminating trees does not serve the community.

If the trees are kept, the people who eventually use the new buildings will appreciate it greatly. Over the long term, keeping mature trees will help San Jose hold and even increase its status as a great place to live and work. Keeping the trees preserves value that is not easily recreated; felling the trees destroys this value and once lost, it is difficult to recreate this value.

Response K.3: Refer to the Final EIR's Topic Response for updated information regarding the trees to be preserved on-site by the Project and the Project's updated landscape plan. The Project will also be responsible for payment of replacement fees to the City of San José as a result of the tree removals that will occur on- and off-site. The applicant will work with the City to ensure that the Project's tree replacement fees are used to plant trees at off-site locations in places where there is currently a lack of tree canopy, will be beneficial in reducing the heat island effect, or would be more accessible to the public. The comment did not raise any issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment K.4: As you know, San Jose has been losing its tree canopy, and city council members have been saying they want to increase it. In order to help preserve San Jose's remaining tree canopy, please ask construction companies to build in a manner that preserves most of the existing trees. At minimum, please ask the builders to protect all of the trees near the street, and any trees around or near the perimeter of each building on the property.

Response K.4: Refer to the Final EIR's Topic Response for updated information regarding the trees to be preserved on-site by the Project and the Project's updated landscape plan.. The comment did not raise any issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

L. Our City Forest (dated August 24, 2022)

Comment L.1: I had thought this Wednesday, Aug. 24 was the last day to submit comments on the draft EIR for the Qume and Commerce project that would remove 620 trees, but I am just now seeing that your July 8th email states Monday, Aug. 22nd as the last day. This appears to be quite a terrible mistake on my part. If the deadline was indeed 5 PM today, can you offer any flexibility for accepting public comments? If not, how else might people express their views about this Draft EIR? Lastly, if there is no other avenue for Draft EIR comments, when will be the next opportunity for public input on the project?

Response L.1: This comment was provided via email on August 22. The commentor indicates they missed the public comment period for the Draft EIR and requests to submit a public comment, after close of the comment period. The comment did not raise any issues with respect to the disposition of significant environmental impacts or issues evaluated in the Draft EIR and therefore, no further response is required.

Comment L.2: Thank you for the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the Qume and Commerce Project. Our City Forest is nonprofit urban forest organization serving San José and Santa Clara County since 1994. Our mission is to engage community in the understanding, appreciation, planting, care, and protection of the urban forest. The focus of our comments will be on the 1) proposed removal of 620 trees to make room for four warehouse structures; 2) the impacts of such significant tree loss; and 3) what existing City laws and policies are in place to protect against such loss of benefits to the environment and the community.

Impacts of Tree Loss: The removal of 620 trees is significant and the DEIR understates the true environmental and human health impacts that would result while overstating the benefits of the planned mitigation. The DEIR only acknowledges a significant impact as it relates to construction activities simply describing there will be tree removals. There is no discussion of impacts to local watershed health, flooding vulnerability, climate conditions/heat, migratory bird interference, or even the heavy air particulates and pollution that the 620 threatened trees now directly mitigate and whose loss will create significant negative impacts to both climate change measures and human health. With these and other significant impacts excluded from the DEIR, attempting to evaluate even the minimal proposed mitigation is not possible.

Response L.2: Refer to the Final EIR's Topic Response for updated information regarding the trees to be preserved on-site by the Project. Refer to Section 5.0: Draft EIR Text Revisions for the Project's updated landscape plan. As shown in in Figures 1 through 6 of the Topic Response and the Project's updated landscape plan, an additional 39 trees will be retained on-site or along the Project's street frontage. Additional retained trees include 28 ordinance-size trees, 12 oaks (8 of which are ordinance size), and 10 redwoods (of which 8 are ordinance-size). In total, 125 trees would be retained including 88 ordinance-size trees.

Pages 53 through 55 of Appendix B of the Draft EIR discuss potential impacts to water quality. The proposed Project would comply with the established Municipal Regional Stormwater Permit through incorporation of LID practices, such as pollutant source control measures and stormwater treatment measures during construction and operational phases. Additionally, removal and replanting of trees on the Project site would be in compliance with City Standard Permit Conditions for construction stormwater management and Municipal Regional Stormwater Permit for ongoing landscape maintenance and irrigation. Following compliance with these requirements, and City Standard Permit Conditions for construction stormwater management, impacts to water quality would be less than significant. As discussed on page 56 of the Draft EIR, the Project site is not located within a stream setback zone and or a 100-year flood zone. Further, as discussed on Draft EIR Appendix B page 54, the Project would result in a net addition of approximately 110,136 sf of impervious area. However, the

proposed Project would comply with City and State requirements and would not substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site.

Removal and replacement of trees at this scale would not have the potential to result in impacts to Air Quality or GHG associated with sequestration. The amount of carbon sequestered by growing vegetation is variable and while some studies show that older trees can absorb more carbon than younger ones, other research shows the opposite. For examples, a 2016 paper published in Ecosphere and authored by USDA scientists found that "Although large trees accumulated C[arbon] at a faster rate than small trees on an individual basis, their contribution to C[arbon] accumulation rates was smaller on an area basis, and their importance relative to small trees declined in older stands compared to younger stands (Gray, Whittier, and Harmon, 2016)." A 2016 study published in Nature found that "Newly grown rainforests can absorb 11 times as much carbon from the atmosphere as old-growth forests (Kniver, 2016). The specific contribution from the species of trees on the site and the replacement trees that will be planted varies from trees at issue in all of these studies as the measurable effect of carbon sequestration occurs in large forests, not urban landscaping.

See Response J.3 for discussion of climate conditions and heat, Response G.16 and Response G.17 for discussion of migratory birds, and Response G.14 and Response G.15 for further discussion of air quality.

Comment L.3: Design Options: The Arborist Report cites the city-directed 10'-wide sidewalks which will result in the removal of mature trees along Qume Drive. There are no suggestions for narrowing the sidewalks or shifting them to save these trees as can be done and has been done by the City in various parts of the city. The City's General Plan states that "Prior to allowing the removal of any mature tree, pursue all reasonable measures to preserve it." There are many straightforward alternatives available to save some of the trees. This measure as a remedy to save some trees should not be used in a compromising fashion to allow other trees to be removed if they could also be saved with similar thoughtful on-site design alternatives.

Response L.3: Refer to the Final EIR's Topic Response for updated information regarding the trees to be preserved on-site by the Project and Response I.8 for a discussion of sidewalk design optimization.

Comment L.4: Declining Tree Canopy: The City has recently acknowledged the continued decline of its urban forest due to tree removals, despite aggressive tree planting efforts for the past 28 years by Our City Forest. The planting of more and more young trees while simply allowing mature trees to be removed creates an unhealthy urban forest. Myriad environmental and health benefits provided by mature trees decrease as the number of mature trees declines, creating a less viable urban forest and a less healthy community in which to live. Thus, only the protection of mature trees and avoiding unnecessary removals will stop the decline of San José's urban forest.

Response L.4: Refer to the Final EIR's Topic Response for information regarding the additional trees to be retained by the Project. One of the concerns about tree resources in San José is that 90% of the trees in the City fall on private lands with little to no maintenance, resulting in poor survivorship of existing trees. Consistent with this assessment, the existing trees on the Project site do not appear to be properly maintained, as discussed on page 64 of the Draft EIR. Pruning practices, including lion's-tailing (removal of interior foliage), excessive canopy raising, clearance pruning from buildings, root damage from landscape activities and insufficient irrigation are all affecting overall tree health. The proposed Project will address this deficiency by providing for ongoing and high-quality maintenance of the tree resources on the redeveloped Project site. Therefore, redevelopment of the Project site and implementation of proposed landscape plans will ultimately provide higher quality retained and replanted trees, as compared to existing conditions.

Comment L.5: City Code: The City of San José Municipal Code Chapter/Section 13.32.010 describes the

purpose of the laws protecting trees on private property: "It is the purpose of this chapter to promote the health, safety, and welfare of the city by controlling the removal of trees in the city, as trees enhance the scenic beauty of the city, significantly reduce the erosion of topsoil, contribute to increased storm water quality, reduce flood hazards and risks of landslides, increase property values, reduce the cost of construction and maintenance of draining systems through the reduction of flow and the need to divert surface waters, contribute to energy efficiency and the reduction of urban temperatures, serve as windbreaks and are prime oxygen producers and air purification systems." The City of San José Tree Policy Manual states "The City of San Jose recognizes the value of these living assets by protecting them with the law."

Response L.5: Draft EIR Mitigation Measure BIO-1 incorporates the Arborist Report's recommendations for trees to be maintained on-site and requires preparation of a Tree Protection Plan, prior to issuance of demolition, grading, and/or building permits, whichever occurs first. This would ensure less than significant impacts during construction. Further, as noted on page 77 of the Draft EIR, proposed tree removals would occur in compliance with City Standard Permit Conditions and the proposed Project would not conflict with City policies in this regard. The Project will comply with City code by paying in lieu impact fees and obtaining the required tree removal permits. Additionally, under City Code Section 13.32.100 a permit can be granted if the City makes a finding that "the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question". Refer to the Final EIR's Topic Response for additional information on how the Project has made design changes to save additional native and other significant trees. As explained in Response L.3 above, the City and the applicant have pursued all feasible measures to retain trees onsite.

Comment L.6: New City Tree Policies: The City of San José recently adopted a Community Forest Management Plan which included a commitment from Council that there be "no net loss" of trees moving forward. This type of policy can easily be abused by simply replacing mature trees and planting the same number of young trees whether on site or off, and just plant a few more at some point to create a "no net loss". The fact is, the policy is intended to reflect "no net loss of benefits" and with hundreds of trees being removed every day, there is even greater pressure on the city to avoid unnecessary tree removals. Due to the significant value of mature trees, CSJ PBCE typically requires several trees to be planted for each mature tree removed. Other cities attach a considerable monetary value in the tens of thousands to some trees. In any event, the City's CFMP states that CSJ take measure to protect its mature trees and the reason for this is because of the significant environmental and health benefits they provide which young trees – even many of them – are unable to provide for decades.

Response L.6: The proposed Project would comply with the City's Standard Permit Conditions for tree replacement which were developed to comply with the City's Tree Removal ordinance and help the City to maintain its urban forest through on-site replacement and through the payment of in lieu tree replacement fees. Payment of in-lieu fees, in compliance with City Standard Permit Condition for Tree Replacement, provided on page 77 of the Draft EIR, would facilitate planting and maintenance of off-site trees. Payment of in lieu fees would support management of the City's existing urban forest and planting of additional trees to grow the urban forest.

Comment L.7: Construction Activity: many trees designated to be "saved" in a development project are subsequently damaged and die due to unmonitored construction activities that don't follow city regulations. It is essential that a consulting arborist with construction monitoring experience be at the site during construction to ensure trees are not damaged. To protect the trees, the city regulations and policies for fencing and such must be monitored and followed.

Response L.7: Mitigation Measure BIO-1, provided on page 74 of the Draft EIR, states, "The Tree Protection Plan shall be prepared by a certified arborist and shall consider the findings and

recommendations provided in the Project Arborist Report (Appendix E of Draft EIR).” The Tree Protection Plan would be consistent with recommendations provided by the Arborist Report to maintain trees on-site, including protection measures (e.g. fencing) and on-site monitoring by a certified arborist, as needed.

Comment L.8: Irreplaceable Valley Oak: this specimen could easily be lost without adherence to the points in #8. The City should obtain a monetary value for this tree from a consulting arborist prior to any groundbreaking and also alert the builder as to its value. Perhaps this might encourage adherence to construction regulations intended to protect trees.

Response L.8: Refer to the Final EIR’s Topic Response regarding additional commitments to preserve the Valley Oak tree.

Comment L.9: Species Selections: current species selections need review to increase local natives and to replace invasive, toxic and other unsuitable shrubs with appropriate species. Thank you for your consideration and the opportunity to submit comments

Response L.9: As described in the Final EIR’s Topic Response and the Project’s updated landscape plan (Refer to Section 5.0), all of the Project’s replacement trees will be native species. Additionally, smaller plants proposed in the project’s landscaping plan will consist of 100 percent native shrubs. No invasive, toxic, or other unsuitable shrubs are proposed.

SECTION 5.0 DRAFT EIR TEXT REVISIONS

This section contains revisions to the text of the Qume and Commerce Project Draft EIR dated July 2022. Revised or new language is underlined. All deletions are shown with a ~~line through the text~~. These text changes do not constitute substantial new information (per CEQA Guidelines Section 15088.5) and do not result in significant new impacts or the increase in severity of impacts already disclosed.

EIR Section	Text Revisions
Executive Summary, page 6	If demolition and construction are scheduled to occur between February 1st through August 31st ~~August 31st and January 31st~~ (inclusive), pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests shall be disturbed during Project implementation.
Section 2.0, Project Description, page 20	Project implementation would remove existing vegetation, including 577 trees (550 on-site trees and 27 off-site trees), 261 of which are Ordinance-sized trees. ~~620 trees (598 on-site trees and 22 off-site trees), 297 of which are Ordinance-sized trees.~~ 125 ~~51~~ existing trees would remain. Tree removals would be in accordance with San José Municipal Code Section 13.32 which requires project applicants to obtain and comply with a Tree Removal Permit. Based on the City's Tree Replacement Ratios, the Project would require a total of 1,605 15-gallon replacement trees (or 803 24-inch box trees) ~~1,736 15-gallon replacement trees (or 868 24-inch box trees)~~. The Project proposes to plant 281 new 36-inch ~~339 new 24-inch~~ box trees on-site and would pay in-lieu fees in accordance with the City's policy for the remaining 1,043 ~~1,058~~ replacement trees.
Section 2.0, Project Description, page 20	Overall, Project landscaping would cover approximately 22 percent (276,900 sf) ~~21 percent (223,606 sf)~~ of the Project site.
Section 2.0, Project Description, page 36	Source: KIER ~~KERT +~~ WRIGHT, 2022

Source: Herdman, 2022

Figure 2-5: Proposed Overall Site Plan

Qume and Commerce Drive Project
Final EIR

Not to scale

Kimley»Horn

PRELIMINARY PLANT LIST

SYMBOL	BOTANICAL NAME	COMMON NAME
TREES		
	ARBUTUS MENZIESII	MADRONE
	ACER NEGUNDO	BOX ELDER
	CERCIS OCCIDENTALIS	WESTERN REDBUD
	CORNUS GLABRAA	BROWN DOGWOOD
	QUERCUS AGRIFOLIA	COAST LIVE OAK
	QUERCUS DOUGLASII	BLUE OAK
	QUERCUS KELLOGGII	BLACK OAK
	QUERCUS LOBATA	VALLEY OAK
	QUERCUS WISLIZENI	INTERIOR LIVE OAK
SHRUBS & PERENNIALS		
LARGE SHRUBS		
	ARCTOSTAPHYLOS 'HOWARD McMINN'	MANZANITA
	ERIOGONUM FASCICULATUM 'WARRINER LYTLE'	WARRINER LYTLE BUCKWHEAT
	BACCHARIS SAROTHROIDES	DESERTBROOM
	RIBES VIBURNIFOLIUM	EVERGREEN CURRANT
	HETEROMELES ARBUTIFOLIA 'DAVIS GOLD'	GOLD TOYON
	ABUTILON PALMERI	INDIAN MALLOW
	RHAMNUS CALIFORNICA	COFFEEBERRY
MEDIUM-SMALL SHRUBS		
	ENCELIA FARINOSA	BRITTLEBUSH
	ISOMERIS ARBOREA	BLADDERPOD
	ERIOGONUM GRANDE RUBESCENS	RED BUCKWHEAT
	KECKIELLA CORDIFOLIA	PENSTEMON
	MUHLENBERGIA RIGENS	DEER GRASS
	HETEROMELES ARBUTIFOLIA	TOYON
	SALVIA LEUCOPHYLLA	PURPLE SAGE
GROUNDCOVERS		
	ACACIA REDOLENS 'DESERT CARPET'	PROSTRATE ACACIA
	ADENANTHOS CUNEATUS 'CORAL DRIFT'	FLAME BUSH
	BACCHARIS PILULARIS 'PIGEON POINT'	DWARF COYOTE BRUSH
	CEANOTHUS GRISEUS HORIZONTALIS 'YANKEE POINT'	YANKEE POINT CEANOTHUS
	ARCTOSTAPHYLOS 'EMERALD CARPET'	MANZANITA
	VERBENA LILACINA 'DA LA MINA'	VERBENA
STORMWATER		
	ARCTOSTAPHYLOS 'HOWARD MCMINN' (BANKS, UPLAND)	MANZANITA 'MCMINN'
	CAREX DIVULSA (BASIN, BANKS, UPLAND)	BERKELEY SEDGE
	JUNCUS PATENS (BASIN, BANKS, UPLAND)	CALIFORNIA GRAY RUSH
	MAHONIA AQUIFOLIUM 'COMPACTA' (BANKS, UPLAND)	OREGON GRAPE
	MUHLENBERGIA RIGENS (BANKS, UPLAND)	DEER GRASS
	RHAMNUS CALIFORNICA 'LITTLE SUR' (UPLAND)	LITTLE SUR COFFEEBERRY
CA NATIVE HYDROSEED MIX		
	CALIFORNIA COASTAL WILDFLOWER MIX	PACIFIC COAST SEED
	NATIVE ORNAMENTAL FINE FESCUE MIX	PACIFIC COAST SEED

Source: JETT, 2023

Figure 2-7: Proposed Landscape Plan

Qume and Commerce Drive Project
Final EIR

Not to scale

Kimley»Horn

Section 3.2, Biological Resources, page 64	The site has 31 ~~32~~ native trees (only 4.4 percent of the total tree population on-site).
Section 3.2, Biological Resources, page 73	The Project would largely clear the existing site (including demolition of existing structures and removal of approximately 577 trees ~~620 trees~~). While 125 ~~51~~ trees would be preserved on-site, site disturbance from construction activities and tree removal would be intensive and could interfere with the movement of migratory wildlife (avian) species using the site.
Section 3.2, Biological Resources, page 73	Of the 577 ~~620~~ trees to be removed, 32 trees, including 24 ordinance-size trees, were determined to be dead or in very poor health and recommended for removal regardless of construction activities.
Section 3.2, Biological Resources, page 73	Of the 21 existing native trees on-site and 10 existing native trees off-site, the Project would keep 13 ~~8~~.
Section 3.2, Biological Resources, page 75	Condition of Approval: Valley Oak With respect to the Valley Oak labeled #542 in the Arborist Report included in the Final EIR, the following measures shall be taken: • Any changes to the Project site plan that have the potential to impact the Valley Oak shall be reviewed by a certified arborist; • A certified arborist shall be on-site during any ground disturbing activities that occur within 60 feet of the Valley Oak; • Protective fencing shall be installed around the planter area of the Valley Oak at the limit of permitted grading, and fencing shall be left on-site after construction to ensure protection of the tree; • No landscaping shall be installed around the Valley Oak within the protective fencing; and • No pruning of the Valley Oak shall be conducted unless necessary for hazard reduction, and then shall be supervised by a certified arborist
Section 3.2, Biological Resources, page 75	Condition of Approval: Exterior Lighting • Where color temperature of lighting exceeds 2400K, the Project's exterior lighting design will use lower intensity light fixtures; • All outdoor security lighting shall be fully shielded; • Illuminances shall use the minimum light levels required for task-related needs.;

<table>
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Exterior lighting fixtures shall be capable of accepting controls; and
All glazed surfaces shall utilize a bird safety product with a threat factor rating of no more than 20, as rated by the American Bird Conservancy.

</td></tr>
<tr><td>Section 3.2, Biological Resources, page 75</td><td>
BIO-2 Preconstruction Bird Surveys

Nesting Bird Surveys: The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 31st (inclusive). If demolition and construction are scheduled to occur between February 1st through August 31st ~~August 31st and January 31st~~ (inclusive), pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests shall be disturbed during Project implementation. This survey shall be completed no more than 14 days prior to the initiation of construction activities during the entire nesting season. ~~early part of the breeding season (February 1st through April 30th inclusive) and no more than 30 days prior to the initiation of these activities during the late part of breeding season (May 1st through August 31st inclusive).~~ During this survey the qualified ornithologist shall inspect all trees and other possible nesting habitats within 250 feet of the construction areas for nests.

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<tr><td>Section 3.2, Biological Resources, page 76</td><td>
Of the 671 existing trees within the Project site, 550 ~~598~~ trees, including 250 ~~297~~ Ordinance-size trees, would be removed upon Project implementation. Of the existing trees on-site, 21 trees are native species and 13 ~~12~~ of these existing native trees will be protected and kept on-site. Of the 97 ~~31~~ existing trees adjacent to the Project site, 27 ~~22~~ trees would be removed. Table 3.2-2: Proposed Tree Removals provides a summary of proposed removals and associated replacement requirements. Appendix E, Arborist Report provides a full inventory of trees to be removed.

Table 3.2-2: Proposed Tree Removals
<table>
<tr><th>Tree Size, Category</th><th>Proposed On-Site Removals</th><th>Proposed Off-Site Removals</th></tr>
<tr><td>Less than 19 inches</td><td>126 ~~113~~</td><td>2</td></tr>
<tr><td>19 to 38 inches, non-Native</td><td>207 ~~184~~</td><td>5 ~~17~~</td></tr>
<tr><td>19 to 38 inches, Native</td><td>6 ~~7~~</td><td>0</td></tr>
<tr><td>38 inches or more, non-Native</td><td>214 ~~284~~</td><td>6 ~~3~~</td></tr>
<tr><td>38 inches or more, Native</td><td>8 ~~10~~</td><td>3 ~~0~~</td></tr>
<tr><td>Total Removals</td><td>550 ~~598~~</td><td>27 ~~22~~</td></tr>
</table>
As shown in Table 3.2-3: City of San José Tree Replacement Ratios below, the City requires 15-gallon-size replacement trees or allows 24-inch-box trees to count as two 15-gallon-size replacement trees. If there is insufficient area on the Project site to accommodate the required replacement trees, the City allows the payment of off-site tree replacement fees to the City prior to the issuance of building permit(s), in accordance with the City Council approved Fee Resolution in effect at the time of payment. The City will use the off-site tree replacement fee(s) to plant trees at
</td></tr>
</table>

	alternative sites. Since 577 ~~620~~ trees would be removed, based on the City's Tree Replacement ratios, the Project would be required to replant a total of 1,605 ~~1,736~~ 15-gallon replacement trees (or 803 ~~868~~ 24-inch box trees) to comply with the City's Tree Replacement Ratio. The proposed Project would plant 281 36-inch box trees ~~339 24-inch box trees~~ throughout the Project site, which would be equivalent to 562 ~~678~~ 15-gallon replacement trees. The species of trees to be planted would be determined in consultation with the City Arborist and the Department of Planning, Building and Code Enforcement. The proposed replacement trees, in addition to the 56 ~~51~~ existing trees to remain on-site and 69 trees to remain off-site, would result in a total of 337 ~~390~~ trees on-site and 69 trees off-site upon Project implementation. Due to site-constraints, such as available area within which to plant, replanting the entire replacement tree amount would not be feasible. Therefore, Project implementation would result in a net reduction of 264 on-site ~~312~~ trees and 17 off-site trees. However, the Project would comply with City Standard Permit Conditions which allow for payment of in-lieu fees to ensure that the removal of the 577 ~~620~~ trees would be less than significant.
Section 3.2, Biological Resources, page 77	577 ~~620~~ trees would be removed and 125 ~~51~~ existing trees would remain. Of the proposed tree removals, 128 ~~115~~ trees would be replaced at a 1:1 ratio, 212 ~~201~~ trees would be replaced at a 2:1 ratio, 6 ~~7~~ trees would be replaced at a 3:1 ratio, 220 ~~287~~ trees would be replaced at a 4:1 ratio, and the remaining 11 ~~10~~ trees would be replaced at a 5:1 ratio. The total number and size of replacement trees required to be planted is 1,605 ~~1,736~~ 15-gallon trees. The proposed Project would plant 281 36-inch box trees ~~339 24-inch box trees~~ throughout the Project site, which would be equivalent to 562~~678~~ 15-gallon replacement trees. Due to site constraints, replanting of the remaining 1,043 ~~1,058~~ replacement trees would not be feasible given the insufficient area to plant the replacement trees. The permittee would be subject to payment of Off-Site Tree Replacement Fees to the City for 1,043 ~~1,058~~ replacement trees that could not be planted on-site because of insufficient area. • Prior to the issuance of building permit(s), the permittee shall pay Off-Site Tree Replacement Fee(s) to the City for 1,043 ~~1,058~~ off-site replacement trees in accordance with the City Council approved Fee Resolution in effect at the time of payment.
Section 3.2, Biological Resources, page 78	Condition of Approval: SCVHP Nitrogen Deposition Fee As volunteered by the applicant, prior to the issuance of grading permits, the applicant would pay the Habitat Plan's nitrogen deposition fee for the project's overall proposed 2,035 trips in lieu of the standard requirement to pay for net trips.
Appendix E, Arborist Report, page 8	Figure 6. Valley oak #542 ~~#572~~ is a magnificent specimen located in the telecommunications area.

Section 3.3, Cultural Resources, page 88	CUL-1 Treatment Plan If recommended by a qualified archaeologist pursuant to the Subsurface Cultural Resources Standard Permit Condition, the Project applicant shall have a treatment plan prepared by a qualified archaeologist in consultation with a Native American representative registered with the Native American Heritage Commission for the City of San Jose and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, that reflects permit-level detail pertaining to depths and locations of excavation activities. The treatment plan shall be prepared and submitted to the Director of the City of San José Department of Planning, Building, and Code Enforcement or Director's designee prior to approval of any grading permits.
Section 3.4, Greenhouse Gas Emissions, page 93	The following discussion is based on the Greenhouse Gas Emissions Assessment and the report is included as Appendix I ~~F~~ of this Draft EIR
Section 3.4, Greenhouse Gas Emissions, page 108	The CalEEMod outputs prepared for the proposed Project (refer to Appendix I ~~F~~) calculated emissions with Project construction to be 990 $MTCO_2e$ for the total construction period (18 months).
Section 3.4, Greenhouse Gas Emissions, page 110	The GHGRS Compliance Checklist is included as Appendix I ~~F~~ of this Draft EIR.
	Condition of Approval Sustainability Commitments: • Sufficient solar panels shall be installed on the building rooftops to provide net-neutral electricity demand for each warehouse building; • The Project shall install 80 EV-ready electrical conduits within the Project's truck courts or at the dock doors to allow for future plug-in charging stations for trucks; • A minimum of 20 percent of automobile parking spaces shall be equipped with electric vehicle (EV)-ready electrical conduits; • A minimum of 10 percent of automobile parking spaces shall be equipped with EV chargers; • Each of the Project's buildings shall meet the Leadership in Energy and Environmental Design (LEED) Silver certified level at a minimum, however good faith efforts shall be made to meet the LEED Gold standard; • Prior to issuance of any Certificate of Occupancy for the Project, the occupant shall provide to the Director of the Department of Planning, Building, and Code Enforcement (PBCE), or Director's designee, proof of enrollment in the San José Community Energy (SJCE) TotalGreen program, a Community Choice Energy program that receives and provides approximately 100 percent renewable energy from distributed sources. Neither the occupant, nor any future occupant, may opt out of the TotalGreen program without additional

	permit review; • Project buildings shall include dual-pane/low emissions glass and highly efficient light emitting diode (LED) outdoor lighting fixtures controlled by photocells; • The Project will utilize recycled water for outdoor landscaping, and will install water efficient landscaping; • Trucks shall be prohibited from idling longer than two minutes while on-site per CARB's recommendation. Signage would be posted on-site stating the two-minute limit which would be enforced through the building lease agreement; • All off-road equipment (non-street legal), such as forklifts and street sweepers, used onsite for warehouse operations shall be powered by alternative fuels, electrical batteries or other alternative/non-diesel fuels that do not emit diesel particulate matter, and that are low or zero emission; • Only electric landscaping equipment, such as lawn mowers and leaf blowers, shall be used onsite which would be enforced through the building lease agreement.
	Dry Storage Use Condition of Approval Approved operations under this permit include dry storage only and do not include cold storage (e.g., the transport and storage of goods under mechanical/powered refrigeration). If inclusion of cold storage use is desired in the future, additional environmental review and permitting would be required.
Appendix B, Initial Study, page 66	[27] Strategic Economics. San Jose Market Overview and Employment Lands Analysis, prepared for the City of San Jose Four-Year General Plan Review. ~~City of San Jose. Envision 2040 General Plan Draft EIR.~~ Available at https://www.sanjoseca.gov/home/showpublisheddocument/22529/636688929663530000 ~~https://www.sanjoseca.gov/home/showpublisheddocument/22041/636688304350830000~~. Accessed March 7, 2022. [28] The City calculates on job per 1000 SF of industrial space. (Strategic Economics, 2016) ~~City of San Jose Envision 2040, 2011~~) (714,491 SF Industrial/ 1,000 SF = 715 jobs)
Appendix B, Initial Study, page 94	Strategic Economics. San Jose Market Overview and Employment Lands Analysis, prepared for the City of San Jose Four-Year General Plan Review. Available at https://www.sanjoseca.gov/home/showpublisheddocument/22529/636688929663530000. Accessed March 7, 2022.
Appendix E, Arborist Report	Provided as Appendix D to this Final EIR.

SECTION 6.0 REFERENCES

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