Supreme Court of California
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Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 9/8/2023 by Karissa Castro, Deputy Clerk

HORVITZ & LEVY LLP

September 8, 2023

Chief Justice Guerrero and Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102-4797

Re: ***Make UC A Good Neighbor et al. v. The Regents of the University of California et al.***
Supreme Court Case No. S279242

Dear Chief Justice Guerrero and Associate Justices:

We write to advise the Court of the enactment of Assembly Bill No. 1307 (2023–2024 Reg. Sess.) (AB 1307), emergency legislation that was signed by the Governor on September 7, 2023, and is effective immediately. A copy of the bill as enacted is attached.

AB 1307 clarifies that, for purposes of a lead agency's review of residential projects under CEQA, "noise generated by project occupants and their guests on human beings is not a significant effect on the environment." AB 1307 also clarifies that a university need not consider alternatives to the location of a proposed infill residential or mixed-use housing project if the project has already been evaluated in the environmental impact report for the most recent long-range development plan for the applicable campus and meets other requirements. AB 1307 thus presents a pure question of law based on the undisputed evidence in this case regarding its direct effect on both issues under review and should be considered by this Court as part of its decision.

Given the importance of AB 1307, the Regents request that the Court order concurrent supplemental opening and reply briefs to address the new law, with opening briefs due September 18 and reply briefs due October 2. The Court has already recognized that this case is entitled to calendar preference. (See 7/6/2023 Order.) A prompt supplemental briefing schedule along the lines suggested here will permit this additional briefing to conclude within the time period for amicus briefing and answers thereto, and avoid any undue delay in this Court's decision.

The Legislature passed this urgency legislation to overrule the Court of Appeal's opinion in this matter with respect to the People's Park Project, making clear its determination that it is of vital public importance that this project resume construction forthwith. UC Berkeley had previously started construction until blocked by a stay order from the Court of Appeal. As the Senate Committee on

Housing explained, the bill "will enable UC Berkeley to move forward expeditiously with its People's Park project." (Sen. Com. on Housing, Analysis of Assem. Bill. No. 1307 (2023–2024 Reg. Sess.) as amended June 26, 2023, p. 6.)

Governor Newsom also emphasized that the Legislature enacted "AB 1307 in light of a court decision earlier this year that amassed national attention by allowing challengers to use CEQA to block the construction of student housing at UC Berkeley." (*California Tackles Roadblocks to Housing Construction* (Sept. 7, 2023) Office of Governor Gavin Newsom <https://tinyurl.com/cagov0923> [as of Sept. 8, 2023].) Governor Newsom explained that money is currently appropriated to resume construction of the People's Park project. (*Ibid.*)

Prompt setting of oral argument and resolution of the important issues raised by this legislation by this Court is essential so that construction can resume and students can secure the housing they need.

Respectfully submitted,

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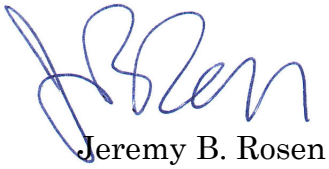
By: 
Jeremy B. Rosen

Attorneys for **THE REGENTS OF THE UNIVERSITY OF CALIFORNIA**

cc: See attached Proof of Service

AB-1307 California Environmental Quality Act: noise impact: residential projects. (2023-2024)

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Date Published: 08/29/2023 09:00 PM

ENROLLED AUGUST 29, 2023

PASSED IN SENATE AUGUST 17, 2023

PASSED IN ASSEMBLY AUGUST 28, 2023

AMENDED IN SENATE JUNE 26, 2023

AMENDED IN ASSEMBLY MAY 18, 2023

AMENDED IN ASSEMBLY MARCH 16, 2023

CALIFORNIA LEGISLATURE— 2023–2024 REGULAR SESSION

ASSEMBLY BILL NO. 1307

Introduced by Assembly Members Wicks, Hoover, and Luz Rivas
(Principal coauthor: Assembly Member Ting)

February 16, 2023

An act to add Sections 21085 and 21085.2 to the Public Resources Code, relating to environmental quality, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1307, Wicks. California Environmental Quality Act: noise impact: residential projects.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

This bill would specify that the effects of noise generated by project occupants and their guests on human beings is not a significant effect on the environment for residential projects for purposes of CEQA.

This bill would specify that institutions of public higher education, in an EIR for a residential or mixed-use housing project, are not required to consider alternatives to the location of the proposed project if certain

requirements are met.

This bill would declare that it is to take effect immediately as an urgency statute.
Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 21085 is added to the Public Resources Code, to read:

21085. For purposes of this division, for residential projects, the effects of noise generated by project occupants and their guests on human beings is not a significant effect on the environment.

SEC. 2. Section 21085.2 is added to the Public Resources Code, to read:

21085.2. (a) For purposes of this section, the following definitions apply:

(1) "Long-range development plan" means a physical development and land use plan to meet the academic and institutional objectives for a particular campus or medical center of public higher education.

(2) "Public higher education" means the institutions described in subdivision (a) of Section 66010 of the Education Code.

(3) "Residential or mixed-use housing project" means a project consisting of residential uses only or a mix of residential and nonresidential uses, with at least two-thirds of the square footage of the development designated for residential uses.

(4) "Substantially surrounded" means at least 75 percent of the perimeter of the project site adjoins, or is separated only by an improved public right-of-way from, parcels that are developed with qualified urban uses.

(b) Notwithstanding any other law or regulation, institutions of public higher education shall not be required, in an environmental impact report prepared for a residential or mixed-use housing project, to consider alternatives to the location of the residential or mixed-use housing project if both of the following requirements are met:

(1) The residential or mixed-use housing project is located on a site that is no more than five acres and is substantially surrounded by qualified urban uses.

(2) The residential or mixed-use housing project has already been evaluated in the environmental impact report for the most recent long-range development plan for the applicable campus.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

Currently in California there is a substantial housing crisis. To ensure housing projects are not subject to further uncertainty, delay, or risk of lawsuit, it is necessary for this act to take effect immediately.

PROOF OF SERVICE

Make UC A Good Neighbor v. UC Regents
Case No. S279242

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 3601 West Olive Avenue, 8th Floor, Burbank, CA 91505-4681.

On September 8, 2023, I served true copies of the following document(s) described as **LETTER RE AB1307** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling) as indicated on the attached service list:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 8, 2023, at Burbank, California.

Ryan McCarthy

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Case No. S279242

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Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
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STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **MAKE UC A GOOD NEIGHBOR v. REGENTS OF THE UNIVERSITY OF CALIFORNIA (RESOURCES FOR COMMUNITY DEVELOPMENT)**
Case Number: **S279242**
Lower Court Case Number: **A165451**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **jrosen@horvitzlevy.com**

3. I served by email a copy of the following document(s) indicated below:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

9/8/2023

Date

/s/Jeremy Rosen

Signature

Rosen, Jeremy (192473)

Last Name, First Name (PNum)

Horvitz & Levy LLP

Law Firm