Supreme Court Case No. S279242

IN THE SUPREME COURT
OF THE
STATE OF CALIFORNIA

MAKE UC A GOOD NEIGHBORHOOD, et al.,
Petitioners and Appellants
v.
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al.,
Respondents,

RESOURCES FOR COMMUNITY DEVELOPMENT,
Real Party in Interest.

SUPPLEMENTAL ANSWER BRIEF

After a published opinion of the Court of Appeal,
First Appellate District, Division 5, Case No. A165451

Appeal from July 29, 2022, Order and August 2, 2022, Order and Judgment of the Alameda Superior Court; Hon. Frank Roesch, Dept. 17, tel: 510-267-6933, Case No. RG21110142 (Consolidated for Purposes of Trial Only with Case Nos. RG21109910, RG21110157 and 21CV000995)

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I. INTRODUCTION

Make UC A Good Neighbor and The People's Park Historic District Advocacy Group ("Good Neighbor") hereby answer the Opening Supplemental Brief ("OSB") filed by the Regents of the University of California ("UC").

The relevant questions posed by the adoption of AB 1307 are whether it moots any of Good Neighbor's pending claims by making it impossible for the Court to grant effective relief, and if so, whether the Court should nevertheless decide the claims because they raise issues of broad public interest that are likely to recur.

> 'An appeal should be dismissed as moot when the occurrence of events renders it impossible for the appellate court to grant appellant any effective relief.' [Citation.] There are three discretionary exceptions to the rules regarding mootness allowing a court to review the merits of an issue: '(1) when the case presents an issue of broad public interest that is likely to recur [citation]; (2) when there may be a recurrence of the controversy between the parties [citation]; and (3) when a material question remains for the court's determination.'

(*Department of Water Resources Cases* (2021) 69 Cal.App.5th 265, 275, quoting *Santa Monica Baykeeper v. City of Malibu* (2011) 193 Cal.App.4th 1538, 1547-1548.)

Good Neighbor concedes that new CEQA section 21085 prevents the court from requiring project-level CEQA analysis of the effects of "social noise" associated with Housing Project #2 as

sited in People's Park.[1] But it does not moot Good Neighbor's pending social noise claim because the claim does not arise from UC's project- level CEQA review of a "residential project." Instead, it arises from UC's program-level CEQA review of its Long Range Development Plan ("LRDP"). New section 21085 does not excuse UC's program environmental impacts report ("EIR") for the LRDP from conducting program-level analysis of noise impacts throughout Berkeley's neighborhoods caused by all of the students included in the LRDP's projected enrollment-driven population increase, whether housed in UC residential projects or not.

As discussed below, Good Neighbor concedes that Good Neighbor's claim arising the from the EIR's failure to analyze alternative locations for Housing Project #2 is moot, but the Court should decide the issue anyway because it raises issues of broad public interest that are likely to recur.

UC fails to discuss whether AB 1307 moots either of Good Neighbor's pending legal claims or the case law governing how amendments to CEQA affect pending litigation. Instead, UC appears to assume, incorrectly, that AB 1307 is declarative of existing CEQA law regarding social noise impacts. Based on this invalid assumption UC then argues that the Court of Appeal's ruling on Good Neighbor's social noise claim was incorrect *when issued* and, therefore, this Court should reverse that ruling. The

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[1]"CEQA" refers to the California Environmental Quality Act, codified at Public Resources Code section 21000 et. seq.

Court should reject UC's attempt to misconstrue the adoption of AB 1307 and its legal effect, for several reasons.

First, UC does not cite relevant case law governing when a statutory amendment is declarative of existing law or base its assumption on reasoned legal argument; therefore, the argument is waived. (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956 (*Cahill*).)

Second, whether AB 1307 is declarative of existing CEQA law regarding social noise impacts is irrelevant to this claim because AB 1307's social noise provision is limited to "residential projects," while Good Neighbor's social noise claim arises from the LRDP EIR's failure to analyze noise impacts caused by students included the LRDP's projected enrollment-driven population increase, which is not a "residential project," and therefore, is not affected by new CEQA section 21085.

Third, even if the question were relevant, new CEQA section 21085 is not declarative of exiting law; it changes the law.

Finally, UC does not argue that AB 1307 applies retroactively to its approval of either the LRDP or Housing Project # 2 and the Court should allow UC to do so on reply. Also, there is nothing in AB 1307 to rebut the strong presumption that the statute applies prospectively. (*McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 475 (*McClung*) ["Generally, statutes operate prospectively only .... "[A] statute may be applied retroactively only if it contains express language of retroactivity or if other sources provide a clear and unavoidable implication that the Legislature intended retroactive

application"].)

II. ARGUMENT

A. AB 1307 Does Not Moot Good Neighbor's Social Noise Claim.

1. Good Neighbor's "social noise" claim does not arise from a "residential project."

CEQA section 21080.09 requires CEQA review, in an EIR or tiered analysis, of LRDP population plans. (See *Save Berkeley's Neighborhoods v. Regents of University of California* (2020) 51 Cal.App.5th 226 (*SBN I*).) The Legislature is presumed to know existing statutory and case law when it enacts or amends a statute. (*In re W.B.* (2012) 55 Cal.4th 30, 57; *Price v. Superior Court of Riverside County* (2023) 93 Cal.App.5th 13, 60.)

AB 1307 adds new section 21085 to CEQA, providing: "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."

Good Neighbor's "social noise" claim does not arise from a "residential project." Instead, it arises from the LRDP EIR's failure to analyze noise impacts likely to be caused by students included the LRDP's projected enrollment-driven population increase. (AR1596-98, 1142, 14762-63 [comment letters]; Good Neighbor's Opening Brief in the Court of Appeal (GNOB), pp. 48-52; Court of Appeal Slip Opinion ("Slip Op."), pp. 30-38.)

Good Neighbor cited substantial evidence that social noise generated outside UC residential facilities at private student residences and on Berkeley streets increases significantly due to

the increase in the number of students living in South Berkeley, whether those students happen to live in UC housing or elsewhere. (AR 1596-1598, 14762-63, 1142 [comment letters], GNOB, pp. 44-48, Slip Op. 32-36.).) While social noise generated by students that happen to be housed in Housing Projects #1 and #2 while attending parties elsewhere forms a part of Good Neighbor's evidentiary showing on the issue, Good Neighbor's legal claim does not concern noise at UC residential projects.

Good Neighbor's claim arises from the EIR's failure to assess the noise impacts generated at private residences and city streets generated throughout South Berkeley by the addition of 12,071 persons to the UC population, 5,068 of whom will be undergraduate students and 3,424 will be graduate students. (AR9572.) Indeed, UC will not even provide housing, i.e., the "residential projects" subject to AB 1307, for many of these persons. (AR10114-1011116.) And whether housed by UC or not, students will generate social noise impacts off campus in Berkeley's neighborhoods and streets. (AR 1596-1598, 14762-63, 1142; GNOB, pp. 44-48; Slip Op. 32-36.) Good Neighbor's expert pointed out that the UC dorm rules barring noise and alcohol require that students who seek late night parties and alcohol to attend parties off-campus. (AR1599-1600.) UC's LRDP EIRs cannot ignore off-campus impacts. (*City of Marina v. Board of Trustees of California State University* (2006) 39 Cal.4th 341, 359-360 (*City of Marina*).)

By its terms, AB 1307 exempts only "residential projects" from CEQA analysis of "the effects of noise generated by project

occupants and their guests on human beings."[2] In mandamus proceedings, "the law to be applied is that which is current at the time of judgment in the appellate court." (*Citizens for Positive Growth & Preservation v. City of Sacramento* (2019) 43 Cal.App.5th 609, 625-26 (*Positive Growth*).)

Since AB 1307 changed CEQA for residential projects to exempt from CEQA review noise impacts caused by occupants of residential projects and their guests, Good Neighbor concedes that even if this Court were to rule in favor of Good Neighbor on its claim, AB 1307 prevents the court from requiring project-level CEQA analysis of the effects of "social noise" associated with Housing Project #2 as sited in People's Park because the law no longer requires such an analysis. (See e.g., *Committee for Sound Water & Land Development v. City of Seaside* (2022) 79 Cal.App.5th 389, 407 (*Committee for Sound Water*) ["The relief requested by the Committee—that City renotice and conduct a consistency hearing regarding the Campus Town project—cannot be granted due to the intervening change in law repealing the consistency requirement"].)

But the LRDP is not a "residential project" and the LRDP EIR is a program EIR for the LRDP's population plan that adds thousands of persons and their social noise impacts to Berkeley's neighborhoods. This noise will be caused, not just by UC's

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[2]The legislative history also shows that the Legislature was concerned that the Court of Appeal's ruling might be used to delay housing projects. (See e.g., MJN 44.)

residential "project occupants and their guests," but by all of the persons added to Berkeley's neighborhoods, many of whom UC will not house.

The Legislature is presumed to be aware of CEQA section 21080.09, which requires CEQA review, in an EIR or tiered analysis, of LRDP population plans. The Legislature could have amended CEQA to provide that "for LRDPs, noise generated by LRDP population plans is not a significant effect on the environment," but it did not. Indeed, Section 2 of AB 1307 defines "Long Range Development Plans" (see new section 21085.2, subd. (a)(1) and amends CEQA's alternatives analysis requirements for "an environmental impact report prepared for a residential or mixed-use housing project." Yet, in new section 21085, the Legislature elected not to amend UC's existing legal obligations to assess the impacts of its population plans, which includes noise of all types. "A recognized rule of statutory construction is that the expression of certain things in a statute necessarily involves exclusion of other things not expressed—*expressio unius est exclusio alterius*. (*Henderson v. Mann Theatres Corp.* (1976) 65 Cal. App. 3d 397, 403.) Here, the Legislature expressed an intent to provide an exemption for residential projects, not LRDPs and their population plans.

UC argues that AB 1307 "leaves no doubt the Legislature meant to stop CEQA from considering the noise generated by students." (OSB, 7, citing MJN 42.) To the contrary, AB 1307's new section 21085 does not even mention students. Section 21085 excludes from CEQA review noise generated by a proposed

residential project's "occupants and their guests" regardless of the type of tenant.

Further, UC does not specify the text from MJN 42 to which it refers. The only text on MJN 42 that might be construed as supporting UC's overbroad interpretation of new CEQA section 21085 is the text attributed to the "Author's Statement." But the author's statement is not relevant to, much less dispositive of, the Court's construction of new CEQA section 21085, because "statements of an individual legislator, including the author of a bill, are generally not considered in construing a statute, as the court's task is to ascertain the intent of the Legislature as a whole in adopting a piece of legislation." (*Quintano v. Mercury Casualty Co.* (1995) 11 Cal.4th 1049, 1062, citing *Williams v. Garcetti* (1993) 5 Cal.4th 561, 569; *Grupe Development Co. v. Superior Court* (1993) 4 Cal.4th 911, 922; *California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 699–700; *In re Marriage of Bouquet* (1976) 16 Cal.3d 583, 589.)

Also, the term "residential project" is not ambiguous. Therefore, legislative history is irrelevant and inadmissable on this point. (*Pandazos v. Superior Court* (*Thompson*) (1997) 60 Cal.App.4th 324, 326 ["When interpreting the meaning of a statute, '[w]e look first to the language selected by the Legislature and only review legislative history materials when there is ambiguity in the statute' "].)

In support of its attempt to broaden the reach of new CEQA section 21085 beyond housing projects, UC also cites to MJN 32 and 56. Again, since the statute is not ambiguous, this legislative

history is not relevant. Even if deemed relevant, the text quoted from MJN 32 must be understood in context. The first version of this bill as proposed on February 16, 2023, proposed an exemption limited to "residential projects." (Good Neighbor's Motion for Judicial Notice ("GNMJN"), Ex 1).) Therefore, all comments on the committee reports provide reasons to adopt this limited exemption, not a broader exemption that was not proposed.[3]

Because AB 1307 does not address the effects of noise generated by students included in the LRDP's projected enrollment-driven increase in population, it does not exempt the LRDP program EIR from conducting the analysis required by the Court of Appeal's ruling. The law on this claim remains unchanged; it is the law as stated by the Court of Appeal in its Opinion below, which is correct for the reasons argued in Good Neighbor's Answer Brief.

The Court may still grant effective relief on this claim because a ruling in Good Neighbor's favor would require that UC revise the 2021 LRDP EIR to analyze the effects of noise generated by students included in UC's projected enrollment-driven increase in population. This would be "effective relief," as it is the primary form of relief available under CEQA. (See Pub. Res. Code § 21168.9.)

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[3]UC also cites MJN 56, but this is page contains only statements of support and opposition from third parties, it does not reflect legislative intent.

2. UC's failure to argue that AB 1307 is declarative of existing law waives the argument.

As noted, UC assumes that AB 1307 is declarative of existing law. For example, UC argues that "AB 1307 *confirms* that CEQA does not require an EIR to analyze the noisiness of future project occupants" and that "AB 1307 *confirms* that CEQA does not require an agency to consider alternatives at a project level that it considered at a programmatic level" (OSB, 5 (italics added).) But UC offers reasoned legal argument based on citation to legal authority that AB 1307 *confirms*, rather than *changes*, existing law. Therefore, the argument is waived. (*Cahill, supra*.)

3. UC's assumption that AB 1307 is declarative of existing law regarding noise impacts is irrelevant.

As discussed above, AB 1307's noise provision (i.e., new CEQA section 21085) relates only to residential projects. Since Good Neighbor's "social noise" claim arises from the LRDP EIR's failure to analyze noise impacts from students included the LRDP's projected enrollment-driven population increase and does not arise from a residential project, it is unaffected by new CEQA section 21085 regardless of whether the provision is declarative of existing law or new law.

UC's unargued assumption that new CEQA section 21085 is declarative of existing law is based entirely on the legislative history it submitted. But this history is irrelevant because the conclusion it purportedly supports is irrelevant.

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4. UC's assumption that AB 1307 is declarative of existing law regarding noise impacts is incorrect.

AB 1307 is not declarative of existing law regarding noise impacts; it represents a change to existing law. Existing law is accurately described in Good Neighbor's Answer Brief (at pp. 30-49) and in the Court of Appeal's opinion, i.e., analysis of "social noise" is required for any CEQA project where there is substantial evidence supporting a fair argument of a significant impact.

This is readily apparent from the face of the law. AB 1307's purpose is to facilitate construction of more housing by exempting housing projects from CEQA analysis of social noise impacts. Since it does not exempt all projects from CEQA analysis of social noise impacts, it clearly does not reject, *and it implicitly affirms*, the Court of Appeal's ruling that such analysis is required for all other types of projects where substantial evidence supports a fair argument that such effects may be significant.

UC's assumption that AB 1307 is declarative of existing law regarding noise impacts is not supported by the text of the statute and the Legislature did not state in the legislative history that AB 1307 is declarative of existing law. (See *McClung, supra,* 34 Cal.4th at 475.)[4] Even if it had, the courts retain authority to

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[4]In *McClung*, despite legislative history that the statutory amendment was intended to "clarify" the law's original meaning, the reference served "only to demonstrate that clarification was necessary, not as positive assertions that the law always" reflected the newly asserted meaning. (*Id.* at 476.)

decide if it is so.

> . . . a declaration of a later Legislature as to what an earlier Legislature intended is entitled to consideration. [Citation] But even then, "a legislative declaration of an existing statute's meaning" is but a factor for a court to consider and "is neither binding nor conclusive in construing the statute." [Citations] This is because the "Legislature has no authority to interpret a statute. That is a judicial task.

(*McClung, supra*, 34 Cal.4th at 473; see also, *City of Emeryville v. Cohen* (2015) 233 Cal.App.4th 293, 300, 308-09 [in spite of Legislature declaring an amendment to a statute declarative of existing law, court found the amendment operated prospectively only]; *J.A. Jones Construction Co. v. Superior Court* (1994) 27 Cal.App.4th 1568, 1583–1584 ["An individual legislator may make a statement that his or her amendment was merely a clarification of existing law in an attempt to give the amendment a retroactive effect when the whole of the legislature would never have given the change such effect if the matter had been put before the legislature explicitly"]; *In re Marriage of Bouquet*, *supra*, 16 Cal.3d at 589 [court refused to consider the motives or understandings of individual legislators, including the author of the bill in controversy]; *Matter of Tarnow* (7th Cir.1984) 749 F.2d 464, 467 ["If a legislature decides to change a statute, some of the legislators may wish to give its change retroactive force, by describing it on the floor or in a committee report as a merely 'clarifying' change, though formally the change is only prospective and a majority of the legislature would not have voted to make it

retroactive."].)

In sum, UC's assumption that AB 1307 is declarative of existing law regarding noise impacts is waived, irrelevant, and incorrect.

5. UC's failure to argue that AB 1307 operates retroactively waives the argument.

As noted above, UC does not argue that AB 1307 applies retroactively to its approval of either the LRDP or Housing Project # 2. Therefore, the argument is waived. (*Cahill, supra.*)

Consequently, other than this brief note, Good Neighbor also does not brief the issue except to note that there is nothing in AB 1307 to rebut the strong presumption that the statute applies prospectively only. (*McClung, supra,* 34 Cal.4th at 475.)

B. AB 1307 Moots Good Neighbor's Alternative Sites Claim, but the Court Should Decide the Claim Because it Raises Issues of Broad Public Interest That Are Likely to Recur.

1. New CEQA section 21085.2 moots Good Neighbor's alternative sites claim.

Good Neighbor concedes that its claim arising the from the EIR's failure to analyze alternative locations for Housing Project #2 is moot. Because the project meets the criteria specified in new CEQA section 21085.2 for exemption from further CEQA review (e.g., the "project has already been evaluated in the environmental impact report for the most recent long-range development plan for the applicable campus"), the Court cannot grant effective relief as to this particular project because it cannot issue an order requiring that UC subject the project to CEQA

alternative site analysis. (*Positive Growth, supra*; *Committee for Sound Water, supra*.)

That said, the Court should decide Good Neighbor's claim because — as explained below — it raises issues of broad public interest that are likely to recur.

2. The Court should decide Good Neighbor's alternative sites claim because it raises issues of broad public interest that are likely to recur.

UC contends that it intends to build housing on many, if not all, of the sites that it characterizes as part of the LRDP's Housing Program. (See UC's Opening Brief ("OB"), 14, 49, 56.) Good Neighbor concedes that it is likely that UC will build on at least some of the potentially feasible alternative sites identified in the LRDP EIR. (See AR 9574-75, 9580.) Indeed, UC has begun the process for two housing sites identified in the EIR, by issuing Requests for Qualifications for the Channing Student Housing Project at the Channing Ellsworth site and for the Bancroft - Fulton Student Housing Project at the Fulton-Bancroft site. (See AR 9574-75; GNMJN, Exs 2, 3.)

If this Court were to order the dismissal of Good Neighbor's claim that the EIR prejudicially failed to analyze alternative locations for Housing Project #2 as moot, UC is likely to build its future housing projects without conducting any additional CEQA analysis of alternative sites for these projects. Indeed, UC has strenuously advocated its view that CEQA does not require including alternative sites analysis in either the LRDP EIR's programmatic or project-specific analyses because its staff

considered alternative locations in their private administrative deliberations. These deliberations include the Channing Ellsworth site and the Fulton-Bancroft site (AR 9574-75; AR 28249-51; 28299; 28324-26). Thus, this issue is likely to recur. (*In re Shelton* (2020) 53 Cal.App.5th 650, 673; *Chantiles v. Lake Forest II Master Homeowners Ass'n* (1995) 37 Cal.App.4th 914, 921; *Eye Dog Found. v. State Bd. of Guide Dogs for Blind* (1967) 67 Cal.2d 536, 541–42; *Conservatorship of Wendland* (2001) 26 Cal.4th 519, 524, n.1.)

AB 1307 does not exempt these projects from CEQA's alternative analysis requirement because the LRDP EIR did not "evaluate" these projects for their potentially significant environmental impacts. (The LRDP EIR is the "the environmental impact report for the most recent long-range development plan for the applicable campus" as described in new CEQA § 21085.2(b)(2).)

The term "evaluate" is not defined in AB 1307 or elsewhere in CEQA. But the meaning of the term is apparent from the context in which it is used. The Legislature was focused on overruling the Court of Appeal's ruling on Good Neighbor's alternative sites claim as applied to Housing Project #2 at People's Park. (OSB, 6, citing MJN 44-45.) As a matter of fact, the LRDP EIR conducted extensive project-level analysis of the Housing Project #2's environmental impacts and identified many significant effects and mitigation measures for these effects. (See e.g., AR 9535-47; 9800-01; 9810-12; 1258-60.) Since "[t]he EIR is the heart of CEQA, and the mitigation and alternatives

discussion forms the core of the EIR" (*In re Bay-Delta* (2008) 43 Cal.4th 1143, 1162), the Legislature sensibly agreed to dispense with alternative sites analysis only where the institution of higher learning has conducted the environmental impact analysis required by CEQA in the most recent LRDP EIR or supplement thereto.

Therefore, until UC conducts project-level CEQA analysis of these new projects for their environmental impacts, they are subject to the law governing alternative sites analysis set forth in the Court of Appeal's Opinion, as subject to review by this Court in this case. It is in the public interest for this Court to determine that law now, by ruling on the issue accepted for review, to provide guidance regarding future projects to UC, the public, the trial courts, and the Court of Appeal.

The issue is also of broad public interest because UC has ten (10) campuses, six (6) academic health centers, and two (2) national laboratories;[5] and the California State University system has twenty-three (23) campuses in communities in California.[6] Conflicts between these institutions and their local communities frequently arise over population and housing and other land use issues, and these disputes often relate to UC's alleged non-compliance with CEQA. (See e.g., *City of Marina, supra*; *City of San Diego v. Board of Trustees of California State University* (2015) 61 Cal.4th 945; *Laurel Heights Improvement Assn. v.*

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[5]https://www.universityofcalifornia.edu/campuses-locations

[6]https://www.calstate.edu

Regents of University of California (1988) 47 Cal.3d 376; *Yerba Buena Neighborhood Consortium, LLC v. Regents of University of California* (Cal. Ct. App., Sept. 20, 2023, No. A166091) 2023 WL 6140332; *Claremont Canyon Conservancy v. Regents of University of California* (2023) 92 Cal.App.5th 474; *Save Berkeley's Neighborhoods v. Regents of University of California* (2023) 91 Cal.App.5th 872 (*SBN II*); *SBN I, supra,* 51 Cal.App.5th 226; *California Oak Foundation v. Regents of University of California* (2010) 188 Cal.App.4th 227; *Jones v. Regents of University of California* (2010) 183 Cal.App.4th 818; *Goleta Union School Dist. v. Regents of University of California* (1995) 37 Cal.App.4th 1025.) Therefore, it is in the public interest for this Court to determine UC's obligations under CEQA.

The issue is also of broad public interest because the Court of Appeal's ruling on this claim establishes a principle for all public agencies in California, not just UC, that agencies cannot comply with CEQA's alternatives analysis requirement by considering alternative sites *in their private deliberations*; but must conduct this analysis *in public*, in the EIR. (See Answer Brief, 68-71.)

Regarding CEQA's requirement to analyze alternatives, AB 1307's housing exemption for institutions of public higher education is, as UC concedes in its supplemental brief, specifically intended to facilitate construction of Housing Project #2 as proposed in People's Park by precluding judicial action requiring additional CEQA alternatives analysis for the project in

that location. (OSB at 6, 9; citing MJN 45.)

There is nothing in AB 1307 to suggest that the Legislature intended to reject the Court of Appeal's analysis of CEQA's alternative analysis requirement as applied to any type of project other than the housing projects of institutions of public higher education described in new CEQA section 21085.2. Thus, AB 1307 is a specific intervention by the Legislature for a limited purpose, not a general rejection of the Court of Appeal's analysis of CEQA's alternative analysis requirement.

Thus, new CEQA section 21085.2's scope is narrow. Many future public projects will fall outside its scope, and so judicial guidance on this important issue is in the public interest. UC Berkeley has adroitly evaded review of the off-campus environmental effects of its enrollment driven population increases for decades. (See, *SBN I, supra*; 51 Cal.App.5th 226; *SBN II, supra*, 91 Cal.App.5th 872.) In *SBN I*, a citizen's group sued UC in 2018 for failing to conduct subsequent CEQA review of the environmental effects of enrollment increases that occurred since 2005. (*SBN I, supra.*) In *SBN II*, the same citizen's group sued UC to challenge a Supplemental EIR that UC prepared and certified to provide the analysis sought in *SBN I.* (*SBN II, supra.*) The trial court recently dismissed *SBN I* as moot because the Supplemental EIR that UC prepared and certified did provide the analysis sought in *SBN I.* (GNMJN, Ex 4.) In *SBN II*, the Court of Appeal recently ordered the trial court to dismiss the EIR challenge as moot based on amendments to CEQA that UC successfully lobbied the Legislature to adopt and additional

analysis of the effects of the past enrollment increases contained in the LRDP EIR at issue in this case. (*SBN II, supra,* 91 Cal.App.5th at 892 ["the findings and judgment in connection with the increased enrollment analysis are moot"]; 893].) The trial court then dismissed the EIR challenge in *SBN II*. (GNMJN, Ex 5.)

The Court should not allow UC to evade review of this claim by obtaining passage of a statute that moots the claim.

III. CONCLUSION

UC uses a broad brush to argue that AB 1307 "rejects" the Court of Appeal's rulings regarding what CEQA requires. UC is incorrect.

The social noise exemption in AB 1307 is limited to housing projects, no more. Therefore, it does not moot Good Neighbor's "social noise" claim which arises from UC's projected increase in enrollment-driven population. Thus, this Court should proceed to decide this claim.

The housing exemption for institutions of public higher education is, as UC concedes in its supplemental brief, specifically intended to preclude judicial action requiring additional alternative sites CEQA review for Housing Project No. 2 as proposed in People's Park. As such, AB 1307 is a specific intervention by the Legislature for a limited purpose, not a rejection of the Court of Appeal's analysis of CEQA's alternative analysis requirement.

Good Neighbor's alternative sites claim is of great public interest and likely to recur. Therefore, the Court should decide

the claim.

DATED: October 4, 2023

LAW OFFICES OF THOMAS N. LIPPE, APC

By: 

Thomas N. Lippe, Attorney for Make UC A Good Neighbor and The People's Park Historic District Advocacy Group

Certificate of Compliance - Word Count

I, Thomas N. Lippe, counsel for Make UC A Good Neighbor and The People's Park Historic District Advocacy Group, hereby certify that the word count of this Supplemental Answer Brief is 4,664 words according to the word processing program (i.e., Corel Wordperfect) used to prepare it.

Dated: October 4, 2023

LAW OFFICES OF THOMAS N. LIPPE, APC

By: 
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Supreme Court of California

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Case Number: **S279242**
Lower Court Case Number: **A165451**

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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.

10/4/2023

Date

/s/Kelly Perry

Signature

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