

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.*

---

**ANSWER TO PETITION FOR REVIEW**

---

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)

---

Thomas N. Lippe, SBN 104640  
Law Offices of Thomas N. Lippe, APC  
201 Mission Street, 12th Floor  
San Francisco, CA 94105  
Tel: 415-777-5604  
Email: Lippelaw@sonic.net  
Counsel for *Petitioners/Appellants*

Patrick M. Soluri, SBN 210036  
Osha R. Meserve, SBN 204240  
James C. Crowder, SBN 327653  
Soluri Meserve, A Law Corporation  
510 8<sup>th</sup> Street  
Sacramento, CA 95814  
Tel: 916-455-7300  
Emails: patrick@semlawyers.com;  
osha@semlawyers.com;  
james@semlawyers.com  
Counsel for *Petitioners/Appellants*

TABLE OF CONTENTS

Page

I. INTRODUCTION ..... 6

    A. The Court should deny review of the Opinion’s holding regarding “social noise” impacts ..... 8

    B. The Court should deny review of the Opinion’s holding regarding alternative sites for building housing in People’s Park ..... 17

II. CONCLUSION..... 24

Certificate of Compliance - Word Count..... 24

PROOF OF SERVICE ..... 25

TABLE OF AUTHORITIES

Page

Cases:

Berkeley Hillside Preservation v. City of Berkeley  
(Berkeley Hillside)  
(2015) 60 Cal.4th 1086. . . . . 9, 13

California Building Industry Assn. v. Bay Area Air  
Quality Management District  
(2015) 62 Cal.4th 369. . . . . 15

California Building Industry Assn. v. Bay Area Air  
Quality Management District  
(2016) 2 Cal.App.5th 1067. . . . . 15

Citizens of Goleta Valley v. Board of Supervisors (Goleta I)  
(1988) 197 Cal.App.3d 1167. . . . . 21

Citizens of Goleta Valley v. Board of Supervisors (Goleta II)  
(1990) 52 Cal.3d 553 . . . . . 20-23

Citizen’s Assn. for Sensible Development v. County of Inyo  
(1985) 172 Cal.App.3d 151. . . . . 15

City of Marina v. Board of Trustees of California  
State University (City of Marina)  
(2006) 39 Cal.4th 341. . . . . 10

Great Oaks Water Co. v. Santa Clara Valley Water Dist.  
(2009) 170 Cal.App.4th 956. . . . . 16

In re Bay-Delta  
(2008) 43 Cal.4th 1143. . . . . 17

Joshua Tree Downtown Business Alliance v.  
County of San Bernardino  
(2016) 1 Cal.App.5th 677. . . . . 10

TABLE OF AUTHORITIES (con't) Page

Cases (con't):

Keep Our Mountains Quiet v. County of Santa Clara  
 (2015) 236 Cal.App.4th 714 . . . . . 8, 9

Laurel Heights Improvement Assn. v. Regents of University  
 of California (Laurel Heights I)  
 (1988) 47 Cal.3d 376 . . . . . 17, 18, 23

Mission Bay Alliance v. Office of Community  
 Inv. & Infrastructure  
 (2016) 6 Cal.App.5th 160 . . . . . 14

No Oil, Inc. v. City of Los Angeles (No Oil)  
 (1974) 13 Cal.3d 68 . . . . . 9, 13

North Coast Rivers Alliance v. Westlands Water Dist.  
 (2014) 227 Cal.App.4th 832 . . . . . 16

Protect the Historic Amador Waterways v.  
 Amador Water Agency  
 (2004) 116 Cal.App.4th 1099 . . . . . 9

Save Tara v. City of West Hollywood  
 (2008) 45 Cal.4th 116 . . . . . 23

Sierra Club v. County of Fresno  
 (2018) 6 Cal.5th 502 . . . . . 15

Union of Medical Marijuana Patients, Inc. v.  
 City of San Diego (Medical Marijuana)  
 (2019) 7 Cal.5th 1171 . . . . . 11, 14

Vineyard Area Citizens for Responsible Growth, Inc. v.  
 City of Rancho Cordova (Vineyard)  
 (2007) 40 Cal.4th 412 . . . . . 23

TABLE OF AUTHORITIES (con't) Page

Cases (con't):

Visalia Retail, LP v. City of Visalia  
 (2018) 20 Cal.App.5th 1 . . . . . 9

Statutes and Regulations:

Public Resources Code (CEQA) -

- § 21065 . . . . . 14
- § 21080.01 . . . . . 16
- § 21080.02 . . . . . 16
- § 21080.03 . . . . . 16
- § 21080.05 . . . . . 16
- § 21080(b) . . . . . 16
- § 21081(a)(1) . . . . . 10
- § 21083(b)(3) . . . . . 14, 15

Cal. Code Regs., title 14 (Guidelines) -

Appendix G,

- § XII, subs. (a) . . . . . 14
- § XII, subs. (d) . . . . . 14
- § 15064(d)(3) . . . . . 14
- § 15064(e) . . . . . 15
- § 15091(a)(1) . . . . . 10
- § 15092(b)(2)(A) . . . . . 10
- § 15092(b)(2)(B) . . . . . 10
- § 15093(a) . . . . . 10
- § 15093(b) . . . . . 10
- § 15131(a) . . . . . 14
- § 15251(f) . . . . . 22
- § 15384(b) . . . . . 9

## I. INTRODUCTION

The Court should deny the Regents of the University of California's ("UC") petition for review because it does not meet the court's criteria for granting review.

The Court should deny review of the issue presented regarding noise impacts for three reasons. First, the holding does not implicate an important question of law. Instead, it represents a routine application of the "fair argument" standard of review to facts in the record. Second, it creates no conflict in the appellate case law and UC points to none. Third, UC's petition on this issue is a thinly disguised request for an exemption from CEQA and, as such, is directed to the wrong branch of government.

UC should not blame CEQA or the Opinion's application of CEQA to the facts of this case. The responsibility for this holding lies with UC's stubborn refusal to include in its EIR any investigation or analysis whatsoever of the impact of student generated noise on UC's neighbors.

Much of UC's argument is based on an unfounded fear that CEQA will be "abused" to discriminate against people based on social classifications. This argument could be made about any law that gives people the right to file a lawsuit. The remedy for any such abuse is not to eviscerate the law; the remedy is careful judicial oversight applying well-developed legal principles. In this case, the governing legal principle is "substantial evidence." Careful judicial oversight is exactly what the Court of Appeal provided here.

The same is true regarding the issue involving building

housing in People’s Park. UC should stop blaming CEQA and the Opinion’s application of CEQA to the facts because the responsibility for this holding lies with UC’s decades-long mismanagement of the gross imbalance between student enrollment and student housing at UC Berkeley. The Opinion describes this imbalance as follows:

UC Berkeley provides housing for only 23 percent of its students, by far the lowest percentage in the UC system. For years, enrollment increases have outpaced new student housing (or “beds”). The prior long range development plan, adopted in 2005, called for construction of just 2,600 beds through 2021. This was 10,000 beds short of the projected enrollment increases over the same period. The university only constructed 1,119 of those planned beds. Making matters worse, within two years of adopting the 2005 plan, the university increased enrollment beyond the plan’s 2021 projection. By the 2018-2019 academic year, student enrollment exceeded the 2005 projections by more than 6,000 students. With a population of 39,708 students, the university provides housing for fewer than 9,000. ¶¶ This has transpired in the midst of a decades-long regional housing crisis.

(Op. 3.) The Opinion also notes that UCB’s own survey demonstrates that “approximately 10 percent of undergraduates and approximately 20 percent of doctoral students had experienced homelessness while attending the university.” (Op. 43.)

While UC’s readiness to build more student housing is long overdue, its history of failing its students in this way cannot be

used as an excuse to violate CEQA and run roughshod over all other environmental values in the community, including the value of preserving a local, state, and national historic resource such as People's Park.

Similar to the noise issue, the Opinion's ruling on housing in People's Park does not implicate an important question of law because it merely applies to the specific facts of this case well-established principles governing an EIR's selection — for analysis — of a range of reasonable alternatives. Nor does it create a conflict in the appellate case law, despite UC's failed attempt to manufacture one.

UC's petition is also singularly myopic in its mistaken belief that UC had the administrative prerogative to prematurely commit to the Peoples Park site as the only potentially feasible site for the proposed housing and that its own pre-commitment trumps CEQA's requirements for public participation and disclosure.

**A. The Court should deny review of the Opinion's holding regarding "social noise" impacts.**

Contrary to UC, the Opinion's holding that CEQA applies to "social noise" is not "unprecedented." (Petition, 9.) In *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, a case involving CEQA analysis of noise caused by social events, the Court of Appeal held that "There is substantial evidence in the record supporting a fair argument that music played by a DJ during events on the Property may have significant noise impacts on surrounding residents" (*Id.* at 733)

and “substantial evidence in the record supports a fair argument that Project-related crowd noise may have significant noise impacts on surrounding residents.” (*Id.* at 734.) Therefore, the Opinion’s holding that the record contains substantial evidence supporting a fair argument that adding more college students to Berkeley neighborhoods may cause significant noise impacts is not unprecedented.

UC’s hyperventilated fear that the Opinion may give the public a legal club with which to discriminate against social groups based on stereotyping is also entirely unfounded. CEQA is elegantly constructed to eliminate such concerns.

Under CEQA, the potential significance of noise impacts generated by any group of people, however identified, must meet the “fair argument” standard to trigger any obligation to study the issue in an environmental impact report (“EIR”). (*Visalia Retail, LP v. City of Visalia* (2018) 20 Cal.App.5th 1, 13; *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109.) The fair argument standard is met when “it can be fairly argued on the basis of substantial evidence that the project may have a significant environmental impact.” (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1111 (*Berkeley Hillside*), quoting *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75 (*No Oil*)). “Substantial evidence” means facts or reasonable assumptions predicated on facts. (Guidelines, § 15384, subd. (b).) It does not include predictions based on stereotypes. (See Op., 34-35.) “Complaints, fears, and suspicions about a project’s potential environmental

impact likewise do not constitute substantial evidence.

[Citations.]” (*Joshua Tree Downtown Business Alliance v. County of San Bernardino* (2016) 1 Cal.App.5th 677, 690.)

As the Opinion notes, the record in this case easily meets the fair argument standard:

Given the long track record of loud student parties that violate the city’s noise ordinances (the threshold for significance), there is a reasonable possibility that adding thousands more students to these same residential neighborhoods would make the problem worse. (See Guidelines, Appendix G, XIII, subd. (a), § 15384, subd. (b) [substantial evidence includes reasonable assumptions predicated on facts].)

(Op. 36.)

Second, even if an EIR, after studying noise generated by an identifiable social group based on facts and evidence-based assumptions finds that a project will cause significant noise impacts, this does not prevent the lead agency from approving the project. To do so, the lead agency is required to mitigate the impact to the extent feasible (*City of Marina v. Board of Trustees of California State University* (2006) 39 Cal.4th 341, 350, 368 (*City of Marina*); CEQA § 21081(a)(1); Guidelines § 15091(a)(1), 15092(b)(2)(A)), and for unavoidably significant impacts (meaning impacts that cannot be mitigated to a less-than-significant level), the agency must find that the social or economic benefit of the project outweighs the environmental harm. (*City of Marina, supra*, 39 Cal.4th at 350, 368; CEQA § 21081(a)(1); Guidelines § 15092(b)(2)(B), 15093(a), (b)). So UC’s speculation that applying

CEQA to “social noise” will necessarily preclude approval of housing and education projects (Petition, 13-15) is just wrong.

UC’s position would eliminate any and all fact gathering or analysis regarding noise generated by an identifiable social group based solely on fear that someone might “abuse” CEQA and file administrative comments or a lawsuit based on stereotyping. But refusing to investigate or analyze an issue is antithetical to CEQA and is exactly the problem that CEQA is intended to combat. “CEQA was enacted to advance four related purposes: to (1) inform the government and public about a proposed activity’s potential environmental impacts; (2) identify ways to reduce, or avoid, environmental damage; (3) prevent environmental damage by requiring project changes via alternatives or mitigation measures when feasible; and (4) disclose to the public the rationale for governmental approval of a project that may significantly impact the environment.” (*Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171, 1184-1185 (*Medical Marijuana*)).

As noted above, UC’s argument based on fear of abuse can be made about any law that gives people legal rights to protect their interests. The remedy is not to weaken the law; the remedy is careful judicial oversight, applying well-developed principles of “substantial evidence,” as the Court of Appeal provided here. The Opinion observes:

we agree with the Regents and RCD that stereotypes, prejudice, and biased assumptions about people served by a CEQA project — such as a church, school,

gym, or housing project — *are not substantial evidence that can support a CEQA claim under the fair argument standard.* (See Guidelines, § 15384, subd. (a) [substantial evidence does not include argument, speculation, and unsubstantiated opinion].) And we agree that the Legislature did not intend CEQA to be used as a redlining weapon by neighbors who oppose projects based on prejudice rather than environmental concerns. (See Guidelines, §§ 15002, subd. (a) [purpose of CEQA is to prevent environmental damage], 15131 [CEQA applies to environmental, not social, impacts]; cf., *Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 169-170 & fn. 5 (*Save the Plastic Bag*) [CEQA petitioner with “no demonstrable concern for protecting the environment” may lack standing].) But here, this is a straw man argument. The Regents and RCD focus on isolated statements from a noise expert who referred to the movie “Animal House,” offered colorful opinions about student attitudes toward drinking, and suggested the vast majority of loud and unruly drunk college students are male, not female. We will set those statements aside.

(Op. 34-35 (italics added).) This is careful oversight.

Indeed, the Opinion describes multiple established legal protections in place to guard against meritless claims or claims based on stereotyping:

the Regents warn that this case will encourage existing homeowners to oppose “development of a single family home on the empty lot next door” unless the lead agency studies and mitigates “typical

household noise” like “children playing or dogs barking.” We are not sure what they mean. The scenario they posit is a frivolous CEQA claim under existing case law: the alleged impact is obviously insignificant (see Guidelines, Appendix G, XIII, subd. (a)), and it affects only isolated individuals rather than the environment of people generally. (*Clews Land & Livestock, LLC v. City of San Diego* (2017) 19 Cal.App.5th 161, 196 [dismissing as insignificant CEQA claim by neighboring horse ranch that school project must address noise from “children laughing and playing”]; *Dunning v. Clews* (2021) 64 Cal.App.5th 156, 173-175 [malicious prosecution action for frivolous CEQA noise claim].) Nothing in this case suggests otherwise.

(Op. 27.) Again, this is careful judicial oversight.

The “fair argument” standard has been in place for almost 50 years since this Court’s seminal opinion in *No Oil, supra*. It has stood the test of time. (See *Berkeley Hillside, supra*.) UC makes no argument that judicial application of the “fair argument” standard cannot distinguish legitimate CEQA causes of action from those that fail.

In short, the Opinion’s holding regarding noise impacts is not about stereotypes, it is about evidence. The reason that increasing student population at UCB may cause significant noise impacts, and thus require study and possible mitigation, is not because people are “college students” per se, it is because entirely undisputed evidence in the record shows that UCB students have created a lot of noise in the past and it is reasonable to expect

they will do so in the future.

UC's argument that noise created by an identifiable social group is a "social" effect, not a change in the physical environment, borders on frivolous. (See Petition, 22.) The EIR defines "sound" as "a disturbance created by a vibrating object, which when transmitted by pressure waves through a medium such as air, is capable of being detected by the human ear or a microphone" and "noise" as "sound that is loud, unpleasant, unexpected, or otherwise undesirable." (AR 10040.) Thus, noise is a "physical change in the environment." (CEQA, § 21065; see also Guidelines, Appendix G, § XII, subds. (a), (d) [noise impacts cognizable]; *Mission Bay Alliance v. Office of Community Inv. & Infrastructure* (2016) 6 Cal.App.5th 160, 192-193 [upholding Appendix G noise thresholds].)

Even characterizing the increase in enrollment as causing this effect "indirectly" does not help UC because CEQA recognizes a "significant effect on the environment" where "effects of a project will cause substantial adverse effects on human beings, either directly or *indirectly*." (CEQA, § 21083(b)(3) (italics added); see also, CEQA § 21065 ["an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable *indirect* physical change in the environment"] (italics added); *Medical Marijuana, supra*, 7 Cal.5th at 1197 ["a 'reasonably foreseeable' *indirect* physical change is one that the activity is capable, at least in theory, of causing"] (italics added); citing Guidelines, § 15064(d)(3).)

Further, Guidelines section 15131(a) explains the

relationship between a project’s social or economic effects and physical effects:

An EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes.

Guidelines section 15064(e) further elaborates:

If the physical change causes adverse economic or social effects on people, those adverse effects may be used as a factor in determining whether the physical change is significant. For example, if a project would cause overcrowding of a public facility and the overcrowding causes an adverse effect on people, the overcrowding would be regarded as a significant effect.

(See also, *Citizen’s Assn. for Sensible Development v. County of Inyo* (1985) 172 Cal.App.3d 151, 170-71 [“the lead agency shall consider the secondary or indirect environmental consequences of economic and social changes”]; *Sierra Club v. County of Fresno*, (2018) 6 Cal.5th 502, 521 [EIR must discuss human health impacts associated with project’s environmental impacts]; *California Building Industry Assn. v. Bay Area Air Quality Management District* (2015) 62 Cal.4th 369, 386 [“Section 21083(b)(3) ... requires a finding of a ‘significant effect on the environment’ [citation] whenever the ‘environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly”]; *California Building Industry Assn. v. Bay Area Air Quality Management District* (2016) 2

Cal.App.5th 1067, 1077-78.)

Here, both the DEIR and expert comments provided substantial evidence of the adverse effects on people and their health from excessive noise. (See AR10042-43 [DEIR discusses psychological and physiological effects of noise, including body tensions affecting blood pressure, heart function, and the nervous system and potential hearing damage]; AR1594-1595 [noise expert Watry discusses adverse effects of noise, including induced hearing loss, speech interference, sleep disturbance, cardiovascular and physiological effects, and impaired cognitive performance].)

In the face of this legal authority and these facts, UC's position that noise generated by an identifiable social group such as college students is not subject to CEQA's requirements for investigating facts and providing analysis is, at its core, a request for an exemption from CEQA. "Projects and activities can be made wholly or partially exempt, as the Legislature chooses, regardless of their potential for adverse [environmental] consequences." (*North Coast Rivers Alliance v. Westlands Water Dist.* (2014) 227 Cal.App.4th 832, 850; quoting *Great Oaks Water Co. v. Santa Clara Valley Water Dist.* (2009) 170 Cal.App.4th 956, 966, fn. 8.) CEQA contains many "statutory exemptions." (See, e.g., CEQA, §§ 21080(b); 21080.01; 21080.02; 21080.03; 21080.05.) UC is free request an exemption from the Legislature, but not from this Court.

//

//

**B. The Court should deny review of the Opinion’s holding regarding alternative sites for building housing in People’s Park.**

UC’s petition regarding building housing in People’s Park misdirects the inquiry. Despite UC’s repeated argument that it *considered* alternative locations for this housing, Good Neighbors’ claim is not that UC’s staff failed to consider alternative sites *in their private deliberations*; its claim is that *UC circulated and certified an EIR that failed to analyze any of them*, which precluded the public from commenting on the environmental merits of alternative locations relative to People’s Park.

UC’s petition on this issue borders on the frivolous because it entirely ignores the public participation goals of CEQA and the public participation purposes of an EIR and of an EIR’s analysis of alternatives. As such, it flies directly in the face of decades of Supreme Court and appellate case law.

The purpose of an EIR is to give the public and government agencies the information needed to make informed decisions, thus protecting “not only the environment but also informed self-government.” [citation omitted] The 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.)

In *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376 (*Laurel Heights I*), this Court rejected a UC-certified EIR for failing to analyze alternative locations for a proposed biomedical facility in San

Francisco, stating:

the EIR's statutory goal of public information regarding a proposed project has not been met; the EIR provides no information to the public to enable it to understand, evaluate, and respond to the bare assertion of nonavailability of alternative space. "The key issue is whether the selection and discussion of alternatives fosters informed decisionmaking and informed public participation." (Guidelines, § 15126, subd. (d)(5), italics added.)"

(*Id.*, at 404.)

UC ignores this legal framework and authority. UC's misdirection is evident in the wording of UC's second "issue presented." The "issue" as stated vaguely asks if, once an agency "identifies potential sites for future development" in a program, is it "required to *revisit* alternative locations for a proposed site-specific project within the program." (Petition, 8 (italics added).) The issue presented does not mention any legal requirements that apply to an EIR.

Similarly, UC contends "The Court of Appeal also faulted the University for not adequately *considering* alternative locations, other than People's Park ...." (Petition, 10 (italics added).) In another example, UC contends "The Opinion also improperly substitutes the Court of Appeal's judgment for that of the lead agency, faulting the Regents for not *considering* potentially feasible alternative sites for the People's Park Project." (Petition, 11 (italics added).)

This wording reflects UC's stubborn, but irrelevant,

insistence that it “considered” alternative sites before selecting People’s Park. In fact, UCB’s consultants — in the privacy of UC’s administrative process — identified at least fifteen other properties in the immediate vicinity of the UCB campus and People’s Park where it could build new student housing. (AR28187-292). Sites near the Campus Park include the Anna Head school site (AR28195-99); 2000 Carleton (AR28214-17); Oxford Tract (AR28226-28); Channing Ellsworth (AR28249-51); Unit 3 (AR28260-62); Foothill North (AR28271-74); and Clark Kerr (AR28286-90). Sites within the Campus Park include Alumni House, Bancroft Parking Structure, and North Field (AR25540); Dwinelle Parking Lot (AR25558); Cesar Chavez Student Center (AR25576-78); Tolman Hall (AR25557); Evans Hall (AR25569); and Edwards Field (AR25581).

Three of these sites could accommodate more beds than the project proposed at People’s Park and would not require demolishing People’s Park, which is listed on the National Register of Historic Places and the California Register of Historic Resources and is a City of Berkeley landmark. These are (1) Channing Ellsworth, bordered by Channing Way, Haste Street and Ellsworth Street, covering most of the city block (AR24149; see also, AR9575-76); (2) the Golden Bear Center parking lot at 1995 University Avenue, between University Avenue, Berkeley Way, Milvia Street and Bonita Avenue (AR 24148 [“The Center’s parking lot covers half of the block” and “was originally approved with the intention of building over the lot, and the parking structure is therefore designed to support construction above”]),

see also, AR9575-76); and (3) the Lower Hearst parking garage (AR24150). (See Op. 26.)

Yet in preparing its EIR, UC omitted analysis of any alternative site for the housing proposed in People's Park. Legally, this is incomprehensible. The Opinion, more charitably, characterizes UC choice as "puzzling." (Op. 22.)

UC also attempts to manufacture a conflict between the Opinion and this Court's decision in *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553 (*Goleta II*). UC asserts that a conflict exists because the Opinion "ignores the context of the People's Park Project within the LRDP planning process," which, according to UC is that "From its inception, this project was intended and designed to remake People's Park." (Petition, 11.)

There is no such conflict. In UC's erroneous view, once it decides where it wants to build a project, there are no circumstances in which CEQA would require that it analyze an alternative location in the project EIR. UC's argument, not the Opinion, is directly at odds with *Goleta II*, which holds that in evaluating the reasonableness of a range of alternatives, "[e]ach case must be reviewed on the facts, and the facts must, in turn, be reviewed in light of the purpose of CEQA's alternatives requirement." (*Goleta II, supra*, 52 Cal.3d at 566.) *Goleta II* also holds that "[t]he statutory requirements for consideration of alternatives must be judged against a rule of reason." (*Id.* at 565.)

More specifically, in *Goleta II*, this Court again emphasized the importance of EIRs analyzing alternative locations for

projects, stating:

we here reaffirm the principle that an EIR for any project subject to CEQA review must consider a reasonable range of alternatives to the project, *or to the location of the project*, which: (1) offer substantial environmental advantages over the project proposal (Pub.Resources Code, § 21002); and (2) may be “feasibly accomplished in a successful manner” considering the economic, environmental, social and technological factors involved.

(*Id.*, at 566 (italics added).)

To support an asserted conflict between the Opinion and *Goleta II*, UC implies — because it must in order to make its argument — that *Goleta II*'s rule of decision is that whenever a lead agency adopts a “program” and certifies a “program EIR,” then a project-specific EIR is not required to analyze alternative locations for the specific project. This is legally incorrect because, as discussed above, *Goleta II* holds that in evaluating the reasonableness of a range of alternatives, “[e]ach case must be reviewed on the facts, and the facts must, in turn, be reviewed in light of the purpose of CEQA’s alternatives requirement.” (*Goleta II*, *supra*, 52 Cal.3d at 566.)

Moreover, *Goleta II* is also factually inapposite to the instant case. In *Goleta II*, the Court of Appeal had previously rejected an initial EIR for a coastal hotel project because it failed to analyze any alternative locations. (*Goleta II*, *supra*, at 560, citing *Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167 (*Goleta I*.) Thereafter, the county prepared a

supplemental EIR that analyzed an alternative location at Santa Barbara Shores. (*Goleta II, supra*, at 560.) Therefore, unlike the instant EIR, the EIR at issue in *Goleta II* did analyze an alternative location in detail.

The CEQA petitioners in *Goleta II* also claimed that the supplemental EIR failed to analyze several additional alternative sites that the petitioners proposed for analysis very late in the process. This Court rejected the claim, because unlike here, the Local Coastal Plan portion of the respondent county’s General Plan contained an extensive analysis of potentially suitable alternate sites for locating hotels in the coastal zone and the EIR excluded analysis of these alternative sites because the county’s LCP findings had already determined alternative sites were infeasible. (*Goleta II, supra*, at 570–573.)

Importantly, the county had adopted the Local Coastal Plan pursuant to and after an extensive “CEQA equivalent” public review process. (*Id.*; Guidelines, §15251(f).) Here, the LRDP EIR, functioning as both a program and project-specific EIR, does not analyze any alternative sites; and UC did not engage in any other public CEQA process to assess alternative sites, either in a program or project-specific EIR, before committing to the People’s Park site.

Here, the Opinion finds that the EIR “not only declined to analyze any alternative locations; they [the Regents] failed to provide a valid reason for that decision” despite “plenty of evidence that alternative sites exist.” (Op. 18.) This holding creates no conflict with *Goleta II*.

Finally, UC's attempt to use its staff's years-in-the-making commitment to build housing in People's Park as a basis for certifying an EIR that fails to analyze any alternative locations for that housing also directly contravenes decades of this Court's decisions. CEQA's purpose is to require environmental review before the "bureaucratic and financial momentum ... behind a proposed project ... provid[es] a strong incentive to ignore environmental concerns." (*Laurel Heights I, supra*, 47 Cal.3d at 395.) In language directly applicable to the instant case, *Laurel Heights I* observes that "This problem may be exacerbated where, as here, the public agency prepares and approves the EIR for its own project." (*Id.*)

Since *Laurel Heights I*, this Court has repeatedly interpreted CEQA as prohibiting agencies from using their own commitment to a project as a reason to limit CEQA review. For example, in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412 (*Vineyard*), this Court observed that an EIR must sound its 'environmental alarm bell' before the project has taken on overwhelming "bureaucratic and financial momentum." (*Id.* at 441, quoting *Laurel Heights I*, at 395.) In *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, this Court held that an agency cannot lawfully commit to carrying out a project before it completes CEQA review. (*Id.* at 132.)

UC's argument that its legal obligations under CEQA are somehow curtailed by its own pre-commitment to building desired housing in People's Park is directly contrary to these precedents

and would turn CEQA on its head.

## II. CONCLUSION

The Court should deny review of UC's issues presented.

DATED: April 12, 2023

LAW OFFICES OF THOMAS N. LIPPE, APC

By: Tom Lippe  
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 Appellants Make UC A  
Good Neighbor and The People's Park Historic District Advocacy  
Group, hereby certify that the word count of this Answer to  
Petition for Review is 4,326 words according to the word  
processing program (i.e., Corel Wordperfect) used to prepare it  
Dated: April 12, 2023

LAW OFFICES OF THOMAS N. LIPPE, APC

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

## **PROOF OF SERVICE**

I am a citizen of the United States, employed in the City and County of San Francisco, California. My business address is 50 California Street, Suite 1500, San Francisco, CA 94111. I am over the age of 18 years and not a party to the above entitled action. On April 12, 2023, I served the following on the parties below, as designated:

### **●Answer to Petition for Review**

#### **MANNER OF SERVICE**

- By Mail: In the ordinary course of business, I caused each such envelope to be placed in the custody of the United States Postal Service, with postage thereon fully prepaid in a sealed envelope.
- By Email: I caused such document to be served via electronic mail equipment transmission (email) from my email: kmhperry@sonic.net on the parties as designated on the attached service list by transmitting a true copy to the following email address(es) listed under each addressee below.
- By TrueFiling I caused such document to be served via TrueFiling electronic service on the parties in this action by transmitting and uploading a true copy to TrueFiling interface by providing the following email address(es) listed under each addressee below.

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

//

Executed on April 12, 2023, in the County of Contra Costa,  
California.

*Kelly Marie*

Kelly Marie Perry

### SERVICE LIST

Alison Krumbein  
Charles F. Robinson  
Office of General Counsel  
University of California  
1111 Franklin Street, 8th  
Floor  
Oakland, CA 94607  
tel: (510) 987-0851  
emails:  
alison.krumbein@ucop.edu  
charles.robinson@ucop.edu

*Attorneys for  
Respondents/Defendants:*  
THE REGENTS OF THE  
UNIVERSITY OF  
CALIFORNIA; MICHAEL  
DRAKE;  
UNIVERSITY OF  
CALIFORNIA, BERKELEY;  
and CAROL T. CHRIST

David Robinson  
UC Berkeley, Office of Legal  
Affairs  
200 California Hall, #1500  
Berkeley, CA 94720  
tel: 510-642-7791  
email:  
dmrobinson@berkeley.edu

*Attorney for  
Respondents/Defendants:*  
THE REGENTS OF THE  
UNIVERSITY OF  
CALIFORNIA; MICHAEL  
DRAKE;  
UNIVERSITY OF  
CALIFORNIA, BERKELEY;  
and CAROL T. CHRIST

Nicole Hoeksma Gordon  
Margaret Moore Sohagi  
Mark J. Desrosiers  
The Sohagi Law Group, PLC  
11999 San Vicente Blvd,  
Suite 150  
Los Angeles, CA 90049  
tel: 310-475-5700  
emails:  
msohagi@sohagi.com;  
ngordon@sohagi.com;  
mdesrosiers@sohagi.com

Charles Olson  
Philip J. Sciranka  
Carolyn Lee  
Lubin Olson Niewiadomski  
LLP  
The Transamerica Pyramid  
600 Montgomery St., 14<sup>th</sup> Fl.  
San Francisco, CA 94111  
tel: (415) 981-0550  
emails: colson@lubinolson.com;  
clee@lubinolson.com;  
psciranka@lubinolson.com;  
msaephan@lubinolson.com  
(staff); jwilson@lubinolson.com  
(staff)

Douglas C. Straus  
Alicia C. Guerra  
Buchalter APC  
55 Second Street, Suite 1700  
San Francisco, CA 94105-3493  
tel: (415) 227-0900  
emails:  
dstraus@buchalter.com;  
aguerra@buchalter.com;  
agetzell@buchalter.com (staff)

*Attorneys for*  
*Respondents/Defendants:*  
THE REGENTS OF THE  
UNIVERSITY OF  
CALIFORNIA; MICHAEL  
DRAKE;  
UNIVERSITY OF  
CALIFORNIA, BERKELEY;  
and CAROL T. CHRIST

*Attorneys for*  
*Respondents/Defendants:*  
THE REGENTS OF THE  
UNIVERSITY OF  
CALIFORNIA; MICHAEL  
DRAKE;  
UNIVERSITY OF  
CALIFORNIA, BERKELEY;  
and CAROL T. CHRIST

*Attorneys for Real Party In*  
*Interest:*  
RESOURCES FOR  
COMMUNITY  
DEVELOPMENT

Michael Lozeau  
Rebecca Davis  
Brian B. Flynn  
Lozeau Drury LLP  
1939 Harrison St., Suite 150  
Oakland, CA 94612  
tel: (510) 836-4200  
emails:  
michael@lozeaudrury.com;  
rebecca@lozeaudrury.com;  
brian@lozeaudrury.com;  
hannah@lozeaudrury.com  
(staff)

*Attorneys for:*  
American Federation of State,  
County & Municipal, et al., v  
The Regents of the Univ. of  
CA, et al., Case Nos.  
RG21110157 and 21CV000995

Leila H. Moncharsh  
Veneruso & Moncharsh  
5707 Redwood Road, Suite 10  
Oakland, California 94619  
tel: (510) 482-0390  
email: 101550@msn.com

*Attorney for:*  
Berkeley Citizens for A Better  
Plan v The Regents of the  
Univ. of CA, et al., Case No.  
RG21109910

Whitman F. Manley  
Christopher L. Stiles  
Nathan O. George  
REMY MOOSE MANLEY,  
LLP  
555 Capitol Mall, Suite 800  
Sacramento, CA 95814  
tel: (916) 443-2745  
emails:  
wmanley@rmmenvirolaw.com;  
cstiles@rmmenvirolaw.com;  
ngeorge@rmmenvirolaw.com

*Attorneys for Real Parties in  
Interest:*  
HELEN DILLER  
FOUNDATION, a domestic  
non-profit public benefit  
corporation;  
PROMETHEUS REAL  
ESTATE GROUP,  
INC., a California  
Corporation; and OSKI 360,  
a limited liability California  
company  
Case No. RG21109910

Mary G. Murphy  
Sara Ghalandari  
GIBSON, DUNN &  
CRUTCHER LLP  
555 Mission Street, Suite 3000  
San Francisco, CA 94105  
tel: (415) 383-8200  
emails:  
mgmurphy@gibsondunn.com;  
SGhalandari@gibsondunn.com

Brief only by mail:  
Rob Bonta  
Attorney General of CA  
1300 "I" Street  
Sacramento, CA 95814-2919

*Attorneys for Real Parties in  
Interest:*  
HELEN DILLER  
FOUNDATION, a domestic  
non-profit public benefit  
corporation; and OSKI  
360, a limited liability  
California company  
Case No. RG21109910

Brief only by mail:  
Hon. Frank Roesch, Dept. 17  
Alameda Superior Court  
Administration Building  
1221 Oak Street  
Oakland CA 94612

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: **Lippelaw@sonic.net**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
ANSWER TO PETITION FOR REVIEW (WITH ONE TIME RESPONSIVE FILING FEE)	UCPFR001f SENT Answer to UC PFR

Service Recipients:

Person Served	Email Address	Type	Date / Time
Patrick Soluri Soluri Meserve, A Law Corporation 210036	patrick@semlawyers.com	e-Serve	4/12/2023 7:24:26 PM
Leila Moncharsh Veneruso & Moncharsh 74800	101550@msn.com	e-Serve	4/12/2023 7:24:26 PM
Thomas Lippe Law Offices of Thomas N. Lippe, APC 104640	Lippelaw@sonic.net	e-Serve	4/12/2023 7:24:26 PM
Whitman Manley Remy Moose Manley, LLP 130972	wmanley@rmmenvirolaw.com	e-Serve	4/12/2023 7:24:26 PM
Cheron McAleece The Sohagi Law Group, PLC	cmcaleece@sohagi.com	e-Serve	4/12/2023 7:24:26 PM
Charles Olson Lubin Olson & Niewiadomski LLP 130984	colson@lubinolson.com	e-Serve	4/12/2023 7:24:26 PM
Douglas Straus Buchalter, A Professional Corporation 96301	dstraus@buchalter.com	e-Serve	4/12/2023 7:24:26 PM
Alison Krumbein Office of the General Counsel - University of California	alison.krumbein@ucop.edu	e-Serve	4/12/2023 7:24:26 PM
Michael Lozeau Lozeau Drury LLP 142893	michael@lozeaudrury.com	e-Serve	4/12/2023 7:24:26 PM
Nicole Gordon The Sohagi Law Group, PLC	ngordon@sohagi.com	e-Serve	4/12/2023 7:24:26 PM

240056			
David Robinson UC Berkeley, Office of Legal Affairs	dmrobinson@berkeley.edu	e-Serve	4/12/2023 7:24:26 PM
Kelly Perry	kmhperry@sonic.net	e-Serve	4/12/2023 7:24:26 PM
Charles Robinson	charles.robinson@ucop.edu	e-Serve	4/12/2023 7:24:26 PM
Margaret Sohagi 126336	msohagi@sohagi.com	e-Serve	4/12/2023 7:24:26 PM
Mark Desrosiers 302309	mdesrosiers@sohagi.com	e-Serve	4/12/2023 7:24:26 PM
Carolyn Lee 294161	clee@lubinolson.com	e-Serve	4/12/2023 7:24:26 PM
Philip Scrianka 287932	psciranka@lubinolson.com	e-Serve	4/12/2023 7:24:26 PM
M Saephan (staff)	msaephan@lubinolson.com	e-Serve	4/12/2023 7:24:26 PM
J Wilson (staff)	jwilson@lubinolson.com	e-Serve	4/12/2023 7:24:26 PM
Alicia Guerra 188482	aguerra@buchalter.com	e-Serve	4/12/2023 7:24:26 PM
A Getzell (staff)	agetzell@buchalter.com	e-Serve	4/12/2023 7:24:26 PM
Rebecca Davis 271662	rebecca@lozeaudrury.com	e-Serve	4/12/2023 7:24:26 PM
Brian Flynn 314005	brian@lozeaudrury.com	e-Serve	4/12/2023 7:24:26 PM
Hannah (staff)	hannah@lozeaudrury.com	e-Serve	4/12/2023 7:24:26 PM
Christopher Stiles 280816	cstiles@rmmenvirolaw.com	e-Serve	4/12/2023 7:24:26 PM
Nathan George 303707	ngeorge@rmmenvirolaw.com	e-Serve	4/12/2023 7:24:26 PM
Mary Murphy	mgmurphy@gibsondunn.com	e-Serve	4/12/2023 7:24:26 PM
Sara Ghalandari	SGhalandari@gibsondunn.com	e-Serve	4/12/2023 7:24:26 PM
Osha Meserve 204240	osha@semlawyers.com	e-Serve	4/12/2023 7:24:26 PM
James Crowder	james@semlawyers.com	e-	4/12/2023

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

4/12/2023

Date

/s/Kelly Perry

Signature

Lippe, Thomas (104640)

Last Name, First Name (PNum)

Law Offices of Thomas N. Lippe, APC

Law Firm