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.

REPLY IN SUPPORT OF 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)

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I. INTRODUCTION

Make UC A Good Neighbor and The People's Park Historic District Advocacy Group ("Good Neighbor") hereby reply to the Regents of the University of California's ("UC") answer to Good Neighbor's petition for review. Contrary to UC (Answer, 8, 19) review is warranted and Good Neighbor did justify review.

II. WHY REVIEW SHOULD BE GRANTED

A. Review Is Necessary to Resolve a Conflict in the Law.

By creating a new rule governing the selection of alternatives to analyze in an EIR, the Opinion conflicts with the fundamental rule that an EIR is required to evaluate a reasonable range of alternatives.

The Opinion holds that an EIR is not required to analyze alternatives that would "change the nature of the project" and that an alternative changes the nature of the project if the process for formulating that alternative is not set out in or constrained by the formal project objectives. (Op., 12-14.) This judge-made procedure should not be added to CEQA. (*California Oak Foundation v. Regents of Univ. of Cal.* (2010) 188 Cal.App.4th 227, 265-66; CEQA, § 21083.1)[1]

The new rule would severely limit the application of the fundamental rules that (1) the formal project objectives constrain the selection of potentially feasible alternatives for analysis only to the extent that the alternatives must meet a

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[1]The California Environmental Quality Act is codified at Public Resources Code section 21000 et seq, and is cited herein as "CEQA."

majority of the objectives and (2) the EIR must evaluate a reasonable range of potentially feasible alternatives that would avoid or lessen significant impacts. (See Petition, 40-41.) An agency may reject an alternative for analysis in the EIR for failure to meet the majority of a project's objectives, but nothing in CEQA allows an agency to reject an alternative for analysis simply because the EIR's formal statement of objectives do not provide policy, values, or tradeoffs to affirmatively shape such an alternative.

Good Neighbor demonstrated this conflict in the appellate decisions, and the prejudicial effect of the Opinion's holding, by showing that (1) a population plan or projections is required as part of the LRDP project by statute (Petition, 14-15; 24-27; 39-41) and, regardless, UC in fact adopted a population plan or projections in its LRDP (Petition, 16, 30-31); (2) a lower population growth alternative does not change the nature of this project, either under the statute or as it was in fact proposed (Petition, 27-33); (3) potentially feasible alternatives may consist of activities different than the preferred project as long as they are consistent with the majority of project objectives (Petition, 28-30, 41); (4) here, in light of significant impacts due to population growth, the failure to assess a reduced population growth alternative was manifestly unreasonable and rendered the EIR informationally inadequate (Petition, 33-38).

B. Review is Necessary to Settle Important Questions of Law.

The Opinion construes CEQA to allow an agency to omit

analysis of smaller or less environmentally damaging alternatives from a Draft EIR by the simple expedient of excluding any guidance for developing such alternatives from the EIR's formal statement of objectives. This new rule would relieve the agency of any obligation to evaluate a potentially feasible smaller project alternative. "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 (*Bay-Delta*).) By allowing agencies to dispense with the "core" of CEQA, the Opinion raises an important question of law.

The Opinion also presents an important question of law in its erroneous holding that CEQA section 21080.09, as recently amended by SB 118, exempts UC from assessing alternatives to the LRDP's population plan adopted pursuant to this statute. The case for review is strengthened by UC's arguments that the statutory term "population plan" is undefined, and that an LRDP's population "projections" are not a "population plan" despite the equation of these terms in subdivisions (d) and (e) of by section 21080.09.

III. DISCUSSION

A. Good Neighbor Raised its Interpretation of Section 21080.09 in the Court of Appeal.

Contrary to UC (Answer, 9, 19-20), Good Neighbor argued its interpretation of section 21080.09 below, and the Opinion erroneously interprets section 21080.09 to relieve UC of any obligation to analyze a reduced enrollment growth alternative.

Good Neighbor consistently argued below that section

21080.09 requires UC to analyze the environmental impacts of its population and enrollment plans. In the trial court, Good Neighbor argued that UC has the authority to cap, restrict, or phase enrollment and demonstrated that it has done so at other campuses. (JA 75-76.)[2] Good Neighbor also argued that SB 118 reinforces the responsibility to study the effects of population increases, pointing out that "SB 118 requires that UC review the impacts of increases in campus population. . . ," citing the recent amendments to section 21080.09, subd. (d) and (e). (JA 279-280.)

In the Court of Appeal, Good Neighbor argued that the fundamental purpose of the LRDP was to accommodate projected enrollment and population projected for the 2036-37 horizon year as evidenced by the EIR (AR9549) and section 21080.09, subd. (a)(2). (Appellants' Opening Brief ("AOB") 30.) Good Neighbor also argued that UC concedes that population projections are part of the LRDP project, again citing the EIR and section 21080.09, subd. (a)(2). (Appellants' Reply Brief ("ARB") 30-31.)

When the Court of Appeal first suggested that SB 118 provides a partial exemption from CEQA's requirement that a Draft EIR analyze a range of reasonable alternatives in its tentative opinion issued on December 22, 2022, Good Neighbor argued that section 21080.09 as adopted and as amended by SB 118 does not excuse UC "from CEQA's core requirement to analyze mitigation or alternatives to such campus population plans." (January 3, 2023, Letter Brief, 6; see also ARB, 31-33.)

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[2]Joint Appendix.

Also, contrary to UC, the Opinion does depend on its erroneous interpretation of section 21080.09 and its recent amendment:

> But nothing in CEQA section 21080.09 indicates that the Legislature intended to force the Regents to consider alternatives to its process for setting enrollment levels whenever they adopt a new development plan. Indeed, in a recent amendment to the statute, the Legislature exempted enrollment and enrollment increases from the definition of a project under CEQA.

(Op., at 17.)

UC faults Good Neighbor for not arguing below that section 21080.09 requires UC to adopt a population plan as part of its LRDP. But Good Neighbor argued that the enrollment and population projections were part of the LRDP project regardless whether it was expressly included in the project description. (ARB 23; Letter Brief, 2.) Good Neighbor focused on the argument that, since the legislature requires assessment of the effects of the population plan, it did not exempt the population plan from the obligation to assess alternatives to that plan. (Letter Brief, 5-6; Reply, 31-33). Good Neighbor argued that there was an obligation to assess a reduced population growth alternative whether the population plan is part of the project description or simply treated as "a related feature of campus growth that must be mitigated under CEQA." (Reply 31, quoting *SBN I, supra,* 51 Cal.App.5th at 239)

The Opinion rules that the LRDP's population plan was not

part of the CEQA "project"; that an EIR is not required to analyze an alternative that changes the nature of the project; and that "nothing in CEQA section 21080.09 indicates that the Legislature intended to force UC to consider alternatives to its process for setting enrollment levels whenever they adopt a new development plan." (Op., 18.) In response, Good Neighbor emphasizes that section 21080.09 requires adoption of a population plan and that UC adopted such a plan in the LRDP. (Petition, 24-27, 30-31.) But the Petition does not depend on this Court ruling that section 21080.09 mandates adoption of a population plan or projection because, as discussed in Section III.C below, UC did adopt a population plan or projection.

B. UC's Argument That Section 21080.09 Does Not Make Adoption of a Population Plan Part of an LRDP Demonstrates the Need for Review.

UC raises four objections to Good Neighbor's discussion of the statutory background. (Answer, 20-21.) The first three are trivial and the fourth is legally incorrect and immaterial.

First, UC objects that "Education Code section 67504 does not require UC campuses to adopt long range development plans; it only finds and declares that, periodically, they do develop such plans. (Ed. Code, § 67504, subd. (a)(1).)" (Answer, 20.) This is irrelevant here because UC adopted an LRDP. The issue now is whether UC complied with CEQA when it did so.

Second, UC objects that Good Neighbor miscited Ed. Code, § 67504, subd. (c)(1), which applies to CSU campuses, for the proposition that an LRDP must be based on academic goals and

projected enrollment levels for an established time horizon, instead of citing subd. (a)(1), which applies to UC campuses. (Answer, 20, 26-27.) The obligation for UC and CSU campuses is the same.

Third, UC objects that, in quoting the legislative history of CEQA section 20180.09, Good Neighbor replaced the phrase "constitute compliance with CEQA" with "comply with CEQA" to "mislead the Court." (Answer, 20-21.) UC does not explain how this change, made for ease of reading, is misleading.

UC's fourth objection is its claim that section 21080.09 does not require any UC campus that does adopt an LRDP to adopt a "campus population plan." (Answer, 9, 19-21.) Since UC did adopt an LRDP for its Berkeley campus, this objection is immaterial.

This objection also demonstrates the need for judicial review. Referencing the "the obligations of public higher education pursuant to this division to consider the environmental impact of academic and *campus population plans*," subdivision (d) of section 21080.09 provides that "any such plans shall become effective . . . only after the environmental effects of those plans have been analyzed as required by this division in a long-range development plan environmental impact report or tiered analysis based upon that environmental impact report . . .." Thus, a campus that adopts an LRDP cannot meet this requirement without identifying its "campus population plan" and analyzing its impacts. And clearly that population plan is only "effective" after this EIR is certified.

Subdivision (e) explains how the population projections

"adopted" in an LRDP effectively constrain campus growth. Subdivision (e) provides for judicial review, an order to prepare additional CEQA review, and potential injunctive relief if "increases in campus population exceed the projections adopted in the most recent long-range development plan and analyzed in the supporting environmental impact report, and those increases result in significant environmental impacts . . .." Subdivision (e) provides a remedy when a campus exceeds the campus population projections in its LRDP. Thus, the campus population "projections adopted in the most-recent long-range development plan and analyzed in the supporting environmental impact report" referenced in subdivision (e) must be equivalent to the "campus population plans" referenced in subdivision (d), because subdivision (d) requires CEQA review in the LRDP EIR before "any such plans shall become effective." Here, UC adopted a population plan and projection in the LRDP and the LRDP EIR evaluated the plan for environmental impacts. (AR57, 9571.)

UC argues that subdivision (e) does not provide any sort of ceiling or "require UC campuses to undertake additional environmental review to accommodate additional population." (Answer 27.) But subdivision (e) plainly states that where a LRDP's population projection is exceeded, resulting in significant impacts, a court may order "a new, supplemental, or subsequent environmental impact report" and may "enjoin increases in campus population that exceed the projections adopted in the most recent long-range development plan and analyzed in the supporting environmental impact report." As a result, the LRDP's

population plan or projection sets limits on the extent to which UC can exceed the LRDP's projection before it must conduct additional CEQA review.[3]

UC's argument that subdivision (e) does not operate as a ceiling is based entirely, but without explanation, on its recitation of the SB 118 amendment to subdivision (d) that provides "[e]nrollment or changes in enrollment, by themselves, do not constitute a project as defined in Section 21065." (Answer, 27.) This language, which was adopted in SB 118 together with subdivision (e), can be harmonized with subdivision (e) by understanding it to apply to the annual changes in enrollment that do not "exceed the projections adopted in the most recent long-range development plan and analyzed in the supporting environmental impact report." Otherwise, subdivision (e) would be rendered surplusage and of no effect. (*Arnett v. Dal Cielo* (1996) 14 Cal. 4th 4, 22 ["Courts should give meaning to every word of a statute if possible, and should avoid a construction making any word surplusage"].)

UC argues that the term "population plan" is not defined by statute (Answer, 21) and professes ignorance of its meaning, other than to express its confidence that "planning for potential growth is manifestly not the same as adopting a 'population plan,' whatever that term may mean." (Answer, 26). Since UC is the agency tasked with implementing and complying with section

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[3]UC's claim that the LRDP does not "drive" population growth but instead "responds to population projections" (Answer, 10) fails to recognize that those population projections operate as a ceiling.

21080.09, its own professed ignorance of the meaning of a key term in the statute means requires this Court's immediate intervention.

UC argues that "UCB did not adopt any such plan in connection with its approval of the LRDP." (Answer, 23; see also 26, 23 fn. 4.) However, it is difficult to understand how UC could have complied with subdivision (d) if the population projections it adopted in its LRDP (AR57) and analyzed in the LRDP EIR (AR9571) are not the substance of the "population plan" that subdivision (d) *requires it to analyze* in the LRDP EIR.

By arguing that "population plan" is meaningless and that UC did not adopt a population plan, UC effectively argues that it is not subject to "the obligations of public higher education pursuant to this division to consider the environmental impact of academic and campus population plans" set forth in section 21080.09(d). This view represents a radical evisceration of the statute.

Thus, the case for review is strengthened, not weakened, by UC's arguments that "population plan" remains a mysterious undefined term; that its LRDP's population "projections" are not a "population plan" despite the equation of these terms by subdivisions (d) and (e); and that UC somehow met the mandates of section 21080.09 subdivision (d) without adopting the very population plan that subdivision (d) required it to evaluate in the LRDP EIR before it became "effective." UC clearly needs this Court's guidance.

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C. Good Neighbor's Arguments Do Not Depend on the Obligation to Adopt a Population Plan or Projections under Section 21080.09 Because UC Did in Fact Adopt Such a Population Plan or Projections.

Although this Court is squarely presented with the opportunity to interpret CEQA section 21080.09, it need not reach the question whether section 21080.09 requires adoption of a population plan or projections because, contrary to UC (Answer, 10-12, 22-27), UC did adopt a population plan or projection in the LRDP. The LRDP contains a separate section providing "population projections . . . developed in consultation with UC Berkeley leadership and enrollment planners." (AR57.) The EIR used those projections to meet its obligation to assess the effects of population changes. (AR9571.)

UC argues that because it is not required to *attain* all of this planned growth, the projections are not a population plan. (Answer, 26.) But, as explained, the population plan or projections in the LRDP represent a limit on future enrollment increases because any such increases that cause significant impacts are subject to additional CEQA review and can be enjoined without it. (Petition, 31-32; CEQA 21080.09(e)(1).) Thus, as part of the CEQA "project" — either by statutory mandate or simply by UC's own choice — the LRDP's population plan or projections are subject to CEQA review, including CEQA's core requirements regarding alternatives.[4]

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[4]Further, this Court need not even find that a population plan or projections is part of the LRDP "project" under CEQA to find that UC abused its discretion by failing to evaluate a reduced growth

UC implies that the population plan or projections in the LRDP and EIR are somehow not relevant to the CEQA obligation to consider a reduced population alternative because UC also makes annual enrollment decisions for each campus and has from time to time adopted long-range system-wide enrollment plans. (Answer, 10-12, quoting Opinion, 10-11.) This merely demonstrates that UC makes *other* enrollment-related decisions in *other* fora.[5] It does not demonstrate that when UC adopts a population plan or projections in an LRDP it is not required to comply with CEQA's rules governing alternatives, which here required that the Draft EIR analyze a lower enrollment/population growth alternative.

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alternative. CEQA does not limit alternatives to modification of measures that are included in the project description. (Petition, 28-29.) Also, regardless of what the EIR includes in the formal project description and objectives, enrollment and population are "related features of campus growth that must be mitigated under CEQA." (*Save Berkeley's Neighborhoods v. Regents of Univ. of Cal.* (2020) 51 Cal.App.5th 226, 239 (*SBN I*); see also Ed. Code, § 67504(b)(1).

[5]Significantly, UC does not evaluate these other enrollment related decisions under CEQA. (Petition, 26 [citing legislative history that the intent of 21080.09 was to ensure that CEQA review of enrollment changes occur only at the campus level rather than at the system-wide basis].) Thus, the LRDP EIR prepared in compliance with CEQA Section 21080.09 and Education Code Section 67504(b)(1) is the sole forum to assess, mitigate, and evaluate alternatives to reduce the impacts of campus population and development increases.

D. The Opinion's New Rule — That a Draft EIR Need Not Analyze an Alternative Unless its Activities Are Identified in the Project's Formal Statement of Objectives — Is Inconsistent with the Rule of Reason That Guides the Selection of Alternatives for an EIR to Analyze.

The opinion establishes a novel criterion unsupported by CEQA precedent to judge whether alternative activities must be analyzed in a draft EIR, i.e., whether the project's objectives refer to those activities.[6] (See, e.g., Op., 15 ["None of the objectives would have helped the Regents craft alternatives to address the public policy considerations, institutional values, or tradeoffs involved in limiting enrollment at its premier campus"].) CEQA case law has established criteria for selection of alternatives for analysis, i.e., whether the alternative activity would reduce potentially significant impacts and whether it is "potentially" feasible, which is determined based on consistency with a majority of project objectives. The criteria are judged by a "rule of reason" based on the facts of the case.[7]

There is no authority for the opinion's proposed new rule requiring that the EIR's statement of objectives provide specific guidance for the agency to "craft alternatives to address the public policy considerations, institutional values, or tradeoffs."

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[6]See CEQA, section 21065 ["project means an activity"].)

[7]Petition, 40-41; *Habitat & Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1304 (*Caretakers*); *Watsonville Pilots Assn. v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1089 (*Watsonville*); Guidelines, § 15126.6(a), (c).

(Op., 15.) This new rule is flatly inconsistent with CEQA, which, with respect to project objectives, requires only that an alternative subject to evaluation in the EIR, i.e., a "potentially feasible" alternative, not be inconsistent with the majority of the objectives. CEQA does not require that the crafting of alternatives be affirmatively guided by policy, values, or tradeoffs contained in the formal statement of objectives or limit alternatives to modifications of measures included in the project description. Thus, alternatives, like mitigation measures, are not disqualified from analysis in an EIR just because they call for actions that are not expressly described in the EIR's formal statement of objectives or included in the project description.[8] (Petition, 28-29.)

Further, even if the Opinion's novel rule were consistent with CEQA, the Opinion narrowly limits its inquiry as to the bounds of permissible alternatives to the EIR's *formal* statement of objectives, suggesting that where that formal statement of objectives does not affirmatively guide the crafting of an alternative, the EIR may exclude that alternative from analysis in the EIR. As argued, there is no authority for limiting an alternative to just those activities guided by the EIR's formal statement of objectives. But this must be especially so where, as

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[8]Further, the EIR does contain an objective that the EIR and UC contend is directly related to, and dependent on, increasing enrollment. Here, the LRDP Update's academic status objective depends (to an unspecified extent) on achieving UC's specific enrollment projections. (AR10355-56, 9551-52; Op., 15, n. 2.)

here, the EIR acknowledges outside its formal statement of objectives that the LRDP Update has another fundamental purpose, which is to accommodate a specific projected increase in enrollment and population. (Petition, 16; AR9549; AR9486-87;[9] AR14218;[10] CEQA, § 21080.09(a)(2).)

In particular, the Opinion's claim that "[t]he [LRDP's] purpose is to guide future development *regardless of* the actual amount of future enrollment" (Op., 14 [italics added]) is factually and legally incorrect. The LRDP is intended to accommodate a specific population projection in the "horizon year." (AR57, 9571; Ed. Code 67504(a)(1); CEQA 21080.09(d).) Because a fundamental purpose of the LRDP is to accommodate a specific projected population, the Opinion is incorrect that a lower enrollment increase alternative would represent or require changing "the nature of the project." (Op., 13.)

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[9]"The proposed LRDP Update does not determine future UC Berkeley enrollment or population, or set a future population limit for UC Berkeley, but guides land development and physical infrastructure to support enrollment projections and activities coordinated by the University of California Office of the President."

[10]"[T]he proposed LRDP Update . . . guides land development and physical infrastructure to support enrollment projections and activities coordinated by the University of California Office of the President. As such, the proposed project accommodates enrollment projections that occur under separate processes."

E. The EIR's Failure to Assess a Reduced Population Growth Alternative Based on Conflict with One Project Objective Was Legal Error.

UC mischaracterizes the legal error at issue here. UC argues that the EIR "considered" a reduced enrollment growth alternative but refused to analyze it in the EIR because the draft EIR "determined this alternative would not be feasible" based on conflict with a single project objective. (Answer, 29-30; 33-34.) UC then argues that the Court should not "discount the Board of Regents' inherent discretion to weigh the advantages and disadvantages of the proposed LRDP and potential alternatives to the proposed LRDP." (Answer, 32.) UC argues that Good Neighbors "invite this Court to find fault with the Regents' policy determination" about UCB enrollment. (Answer, 36.)

UC ignores well-established case law that distinguishes a "potentially feasible" alternative, which cannot be categorically rejected for analysis in an EIR for failure to meet *all* project objectives, from an actually infeasible alternative, which an agency does have discretion to reject at the project approval stage of the CEQA process, but only after analysis in the EIR and only based on a feasibility determination by agency decisionmakers, not the EIR preparer. (Petition, 40-41; *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 981, citing *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 489.) UC also fails to recognize case law holding that it is legal error and an abuse of discretion for an EIR to omit analysis of a potentially feasible alternative that would

substantially reduce significant impacts simply because it does not meet all project objectives. (Petition, 41; *Caretakers, supra*, 213 Cal.App.4th at 1304; *Watsonville, supra*, 183 Cal.App.4th at 1087.)

UC's argument that the EIR "considered" the reduced growth alternative and rejected it for analysis, and that UC later ratified this decision, simply misses the point. The only "consideration" the EIR gave to the reduced growth alternative was to assert a legally insufficient reason to reject it from analysis in the EIR. Good Neighbor does not challenge UC's ultimate discretion to determine the feasibility of a reduced growth alternative at the project approval stage, based on "[s]pecific economic, legal, social, technological, or other considerations . . .." (CEQA 21081(a)(3).) Good Neighbor challenges the erroneous categorical exclusion of this alternative from analysis in the EIR in violation of *Watsonville* and *Caretakers*.

UC cites *Sequoyah Hills Homeowners Ass'n v. City of Oakland* (1993) 23 Cal.App.4th 704, 715 fn 3, for the proposition that "if decision-maker correctly determines alternative is infeasible, EIR will not be found inadequate for failing to include detailed analysis of that alternative." (Answer, 30.) *Sequoyah* does not hold that an ultimate finding of infeasibility cures an EIR's failure to analyze a potentially feasible alternative, and *Sequoyah* does not address whether an EIR's failure to analyze a potentially feasible alternative that meets most project objectives is error, which is the issue here. The proposition that a decision-

maker can, at the project-approval stage, ratify an EIR's erroneous exclusion of an alternative from analysis based on its failure to meet a single project objective is in direct conflict with *Watsonville* and *Caretakers*. If such a reading of *Sequoyah* were proper, then the conflict in decisions requires review by this Court.

F. The EIR's Failure to Analyze a Lower Population Growth Alternative Based on the Claim That UC Lacks Discretion to Limit Resident Undergraduate Enrollment Was Legal Error and Not Supported by Substantial Evidence.

The EIR's categorical rejection of an alternative that would reduce some resident undergraduate enrollment was also based on legal error – the erroneous determination that UC lacks legal authority to reduce the projected growth in UCB enrollment. (Petition, 42-44.) UC has in fact agreed to cap or phase enrollment growth at three other UC campuses when adopting their LRDPs. (Petition, 42-43.) UC's claim that the Master Plan for Higher Education and the Education Code leave it without discretion to regulate UC Berkeley's resident undergraduate enrollment growth is not true. (Answer, 37-38.) The legal constraints on UC's acceptance of resident undergraduates apply across the entire UC system, not to a particular campus. The Master Plan for Higher Education mandates only that the UC and CSU systems as a whole accommodate qualified resident undergraduates "somewhere in the UC or CSU system, respectively, though not necessarily at the campus or in the major of first choice." (AR30885-86.) The Education Code only requires

their accommodation "in a place within the system." (Ed. Code, §§ 66011, 66205.5.) Presumably UC has been able to honor its enrollment growth agreements at UCSB, UCSC, and UCD without violating the Master Plan or the Education Code, because there are nine UC campuses.

Because reducing enrollment growth at UCB would not "conflict with state directives" (Answer, 39), UC cannot distinguish *City of San Diego v. Board of Trustees of Cal. State Univ.* (2015) 61 Cal.4th 945, 959-961 and *City of Marina v. Board of Trustees of Cal. State Univ.* (2006) 39 Cal.4th 341, 355-362.) UC's refusal to evaluate a potentially feasible alternative based on a legally erroneous understanding of its discretion to adopt mitigation or alternatives is precisely the same abuse of discretion.

In addition to its legal error, UC abused its discretion because there is no substantial evidence that it cannot reduce the projected growth in enrollment. UC's argument that a reduced growth alternative at UCB would have deleterious "ripple effects across the entire UC system" is speculation and unsupported by the record. (Answer, 39-40.) The record contains no evidence of the minimum resident undergraduate growth required at UCB to avoid "unintended consequences" at other campuses. (Answer, 40.) There is no evidence to support UC's contention that enrollment caps at other UC campuses were "commensurate with the growth projections analyzed in each campus's LRDP EIR" and no explanation why this would be relevant if true. (Answer, 38.) There is no explanation in the record why some lesser level of

resident undergraduate growth "would simply not work at UCB." (Answer, 38.) Indeed, if, as the EIR claims, the LRDP does not commit UCB to "any specific level of student enrollment or overall growth" (AR10103, 14176), then UC can hardly argue that UCB does in fact have to attain some specified level of enrollment growth.

IV. CONCLUSION

The Court should grant review of the important questions of law and conflicts in the case law presented here.

DATED: May 3, 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 Make UC A Good Neighbor and The People's Park Historic District Advocacy Group, hereby certify that the word count of Reply in Support of Petition for Review is 4,689 words according to the word processing program (i.e., Corel Wordperfect) used to prepare the brief.

Dated: May 3, 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

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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 May 3, 2023, I served the following on the parties below, as designated:

●REPLY IN SUPPORT OF PETITION FOR REVIEW

MANNER OF SERVICE

[x] 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(s) 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.

[x] By TrueFiling I caused such document(s) 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 May 3, 2023, in the County of Sacramento, California.

Kelly Marie Perry

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STATE OF CALIFORNIA
Supreme Court of California

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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**

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5/3/2023

Date

/s/Kelly Perry

Signature

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