A165451

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT
DIVISION FIVE

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

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

APPELLANTS' REPLY BRIEF

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I. INTRODUCTION

Appellants Make UC A Good Neighbor and The People's Park Historic District Advocacy Group ("Appellants") hereby reply to the Joint Opposition to Appellants' Opening Brief ("RB") filed by Respondents' the Regents of the University of California et al. and Real Party in Interest Resources for Community Development (collectively "UC").

UC seeks judicial deference to its discretion, but that discretion is not at issue. UC fails to rebut Appellants' showing that its Environmental Impact Report suffers from multiple errors of law, which UC has no discretion to commit.

For example, UC's excuse for the EIR's failure to analyze a alternative locations for Housing Project #2 is that UC staff had already decided what they wanted to do regardless of environmental consequences, and in defiance of CEQA's requirements that environmental review occur before committing to a course of action.

UC's reasons for the EIR's failure to analyze a lower enrollment increase alternative is riddled with legal errors and unsupported by facts or substantial evidence.

UC argues that the EIR provides adequate analyses of social noise and indirect housing displacement effects, but also argues that the EIR omits analyses of these effects because they are not cognizable under CEQA and analysis would be speculative. UC's arguments are flatly contradictory and both are incorrect. CEQA does recognize and requires adequate analyses of these effects, which the EIR fails to provide. Public comments

demonstrate that the analyses were not speculative, that the EIR omits them, and their omission was prejudicial.

Finally, UC argues that Housing Project #2 is a "good" project. (RB 21.) This is irrelevant. In the CEQA context, the Supreme Court rejected a flawed EIR for the expansive Newhall Ranch project following multiple EIRs spanning a decade. (*Center for Biological Diversity v. California Dept. of Fish and Wildlife* (2015) 62 Cal.4th 204 (*Newhall Ranch I*). Justice Kathryn Werdegar's majority opinion, noting Justice Ming Chin's dissent warning of "inordinate delay" attending an additional CEQA process, underscored that judicial review of an EIR cannot turn on the courts' assessment of the project's environmental merits: "Even if Newhall Ranch offered the environmentally best means of housing this part of California's growing population, CEQA's requirements ... would still have to be enforced. (*Id*. at 240, italics added; see also, *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 937 (*Banning Ranch*) [California Supreme Court set aside an EIR because the agency failed to "meaningfully address feasible alternatives or mitigation measures"].)

II. STANDARD OF REVIEW

Section III of UC's brief, regarding the standard of review does not state the standard applicable to any particular claim. Therefore, Appellants present the bulk of their standard of review arguments in reply in the sections of this brief addressing each claims.

UC suggests that all of Appellants' claims are subject to

deferential substantial evidence review. For example, as detailed below, UC demands deference to the Regents' purported policy-based rejections of alternatives. However, Appellants do not challenge the Regents' ultimate rejection, at the project approval stage, of alternatives analyzed in the EIR—because the EIR did not analyze these alternatives. Instead, Appellants challenge the EIR's exclusion of these alternatives as legal error, subject to de novo review.

Because the EIR provides no finding that the alternatives at issue were not "potentially feasible," UC's litigation defense strings together scattered bits of the record to argue that there are implied findings. However, no deference is due to a litigation argument that was not in the EIR. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 443 (*Vineyard*).) And whether the EIR includes the facts, analysis, and analytic route needed to inform the public and decisionmakers is subject to de novo review. (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 512, 522 (*County of Fresno*).)

UC's claim that CEQA does not consider social noise or the indirect effects of displacement to be environmental effects is also legal error. And here, the Court should review the sufficiency of the EIR's analyses of social noise and indirect displacement effects de novo. Because these analyses are simply missing, factual issues do not predominate.

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III. ARGUMENT

A. The EIR Fails to Analyze a Lower Enrollment Increase Alternative.

1. Review of this claim is *de novo*.

UC's argument that substantial evidence review applies to "factual and policy issues" (RB 27) misses the point. Appellants challenge is not to facts or policy, but to UC's failure to proceed as required by CEQA in excluding a potentially feasible alternative from analysis in the EIR for legally erroneous reasons.

Excluding a potentially feasible alternative from analysis in the EIR because it may be inconsistent with one of many objectives is legal error, and results in an informationally inadequate EIR. (*Watsonville Pilots Assn. v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1087 (*Watsonville*) ["premise" that EIR may exclude alternative for failure to meet two objectives "is mistaken"]; *Habitat & Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1305 (*Caretakers*) [defective alternatives analysis "failed to satisfy the informational purpose of CEQA"].)

Exclusion based on claiming the Regents cannot control UCB enrollment growth is also legal error. (*City of Marina v. Board of Trustees of California State University* (2006) 39 Cal.4th 341, 355-362 and *City of San Diego v. Board of Trustees of California State University* (2015) 61 Cal.4th 945, 959-961.)

UC admits that the issue here is informational adequacy of the EIR, arguing "the 'overriding issue' is whether the EIR

provides adequate information to enable the agency to make an informed decision on alternatives and to make the decisionmaker's reasoning publicly accessible." (RB 27, citing *Save the Hill Group v. City of Livermore* (2022) 76 Cal.App.5th 1092, 1109 (*Save the Hill*) [rejecting inadequate alternatives analysis as informationally inadequate].)

As *Save the Hill* holds, whether the EIR does contain sufficient information is "generally a mixed question of law and fact subject to de novo review" unless factual issues predominate. (*Id*. at 1104, citing *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 512 (*County of Fresno*).) Here, factual issues do not predominate. For example, Appellants do not dispute that a reduced growth alternative might be inconsistent with one of fourteen objectives. But because Appellants' claims do not depend on this factual question, UC's argument that it is supported by substantial evidence is irrelevant. (RB 31.) Appellants' claim that the EIR is informationally sufficient requires de novo review.

2. The Regents' policy-making discretion to ultimately reject an alternative is not at issue.

UC argues that Appellants "invite this Court to improperly encroach on policy-making discretion entrusted to The Regents." (RB 14.) But Appellants do not challenge the Regents ultimate authority to "consider an alternative's inability to meet [a particular project] objective as a reason to reject it." (RB 32.) Appellants challenge the informational adequacy of the EIR due to its exclusion of a "potentially feasible" alternative based on two legal errors. Because the EIR did not analyze the alternative, the

Regents did not "reject" it at the project approval stage of the CEQA process; they merely ratified the EIR's error.

UC mischaracterizes Appellants' argument as a challenge to what *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 999 (*CNPS*) calls the "ultimate determination of feasibility" (emphasis added). UC admits the critical distinction between an EIR's informationally adequate discussion of alternatives, which requires identification and analysis of "potentially feasible" alternatives, and the decisionmakers' ultimate decision whether to "reject these alternatives as being infeasible when it comes to project approval." (RB 26, quoting *CNPS* at 999.) As *CNPS* holds, "different considerations and even different participants may come into play at each of the two phases." (*CNPS* at 999, citing *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 489 (*Mira Mar*).)

In the ultimate decision to approve a project, decisionmakers may be able to reject alternatives as infeasible because they do not meet policy objectives even where the EIR properly found them "potentially feasible" and analyzed them. (*Watsonville, supra*, 183 Cal.App.4th at 1087 [citing *CNPS, supra*, at 981, 999-1000 and *Mira Mar, supra*, at 489]; Guidelines, § 15091(a)(3).) The informationally adequate EIR needed to inform that ultimate decision may not exclude an alternative that reduces significant impacts simply because it does not meet all project objectives. (*Caretakers, supra*, 213 Cal.App.4th at 1304;

Watsonville, supra, 183 Cal.App.4th at 1087; see also *Save the Hill, supra*, 76 Cal.App.5th at 1112 [informationally adequate alternatives analysis "shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly" [italics in original].) (See Appellants' Opening Brief ("AOB") 26-31.)

Here, the EIR improperly rejects a reduced enrollment growth alternative solely because that alternative would not meet one of fourteen LRDP objectives. (AOB 23-25 [facts], 26-31 [argument].) As *Watsonville* holds, "[w]hile the lead agency may ultimately determine that the potentially feasible alternatives are not actually feasible due to other considerations, the actual infeasibility of a potential alternative does not preclude the inclusion of that alternative among the reasonable range of alternatives." (*Watsonville, supra*, 183 Cal.App.4th at 1087, emphasis added.) It is simply not relevant to Appellants' argument that the Regents might have rejected a reduced enrollment alternative had it been analyzed in the EIR.

Sequoyah, cited by UC, is not to the contrary. (RB 30, citing *Sequoyah Hills Homeowners Ass'n v. City of Oakland* (1993) 23 Cal.App.4th 704, 715 fn3 (*Sequoyah*).) UC cites footnote dicta that "if decision-maker correctly determines alternative is infeasible, EIR will not be found inadequate for failing to include detailed analysis of that alternative." (RB 30, citing *Sequoyah* at 715, n3.)

Sequoyah's footnote cites *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 566 for the rule that evidence of infeasiblity supporting the decision makers' ultimate finding need not be in the EIR. (*Id*. at 715, fn3.) However, unlike here, the 36-unit reduced density alternative at issue was analyzed in the EIR (*Sequoyah* at 710), and petitioners were challenging decisionmakers' ultimate findings, arguing "there is not substantial evidence to support the city council's finding that the 36-unit alternative and, by implication, any other decreased density alternative would not be feasible" (*Sequoyah* at 714-715). The location and sufficiency of evidence for ultimate infeasibility findings at the project approval stage is not at issue here.

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. Appellate decisions are not authority for propositions not expressly considered. (*People ex rel. City of Santa Monica v. Gabriel* (2010) 186 Cal.App.4th 882, 891.)

In sum, the Regents' subsequent finding that a reduced enrollment growth alternative conflicts with one project objective (RB 29-30, 33) did not cure the EIR's informational inadequacy.

3. *Watsonville* and *Caretakers* are on point.

UC admits the DEIR excluded the reduced graduate student enrollment growth alternative because it would conflict with "the LRDP's objective of maintaining, supporting, and

enhancing UCB's status ...." (RB 29.) Thus, *Watsonville's* holding that exclusion of a reduced growth alternative for inconsistency with two of twelve objectives is directly on point. (*Watsonville, supra*, 183 Cal.App.4th at 1087.)

UC vainly attempts to distinguish *Watsonville* by arguing that CEQA only requires that an EIR explain the agency's reason for excluding an alternative from analysis. (RB 28-30.) UC observes that *Watsonville* found "no justification for the FEIR's failure to include within its alternatives analysis a reduced development alternative that would have satisfied the 10 objectives of the project that did not require the level of development contemplated by the project." (RB 28, quoting *Watsonville* at 1090.) UC then argues that "by contrast ... the EIR and the Regents explained their justification numerous times." (*Id*., emphasis added.) The problem for UC is that the EIR explanation is based on legal error. (See AOB 24-26 [facts], 26-33 [argument].) An explanation based on legal error is no more compliant with CEQA than no explanation.

Moreover, *Watsonville* does not hold that an agency's failure to *explain* exclusion of the reduced growth alterative was error.[1] The *Watsonville* error was the same as here: the legally unjustified exclusion of a potentially feasible alternative on a mistaken legal premise.

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[1]The *Watsonville* opinion does not discuss whether or how the agency explained in the record the EIR's exclusion of analysis of a reduced growth alternative.

UC also argues that *Watsonville* and *Caretakers* can be distinguished because those cases "'failed to discuss any feasible alternative,'" whereas here, "the EIR contains information and analysis on numerous feasible and infeasible alternatives." (RB 31.) Not so. *Watsonville* did not base its holding on a finding the EIR "failed to discuss any feasible alternative." To the contrary, *Watsonville* explains that the EIR analyzed two alternatives that would have relocated growth areas and a no-project alternative; and neither the EIR, the decisionmakers, nor the Court found any of these infeasible. (*Watsonville* at 1088.)

Caretakers holds a "potentially feasible alternative that might avoid a significant impact must be discussed and analyzed in an EIR," and it was error to exclude analysis of the limited-water alternative based on the "unanalyzed theory that such an alternative might not prove to be environmentally superior to the project." (*Caretakers* at 1304, 1305, italics in original.) Although one consequence of the erroneous exclusion in *Caretakers* was the EIR's failure to analyze any feasible alternatives (*Id*. at 1306), the basis for *Caretakers* holding is directly on point here: it is erroneous to exclude an alternative from analysis "solely because it would impede to some extent the attainment of the project's objectives." (*Id*. at 1304.)

In sum, what matters here was the EIR's legally erroneous exclusion of the potentially feasible alternative, prejudicially excluding any informed consideration of a reduced growth alternative where impacts are "due to the impacts of growth

itself." (*Watsonville* at 1089.) The EIR's evaluation of other alternatives that do not reduce growth cannot cure this error.

Finally, contrary to UC, the Final EIR does not justify the Draft EIR's failure by providing "numerous reasons" for the draft EIR's refusal to consider a reduced enrollment growth alternative. (RB 30-31.) UC identifies only two reasons. One reason, that reducing enrollment of a different student category, non-resident undergraduates, would conflict with the academic status objective constitutes the same error as the DEIR made: exclusion of an alternative for failure to meet just one of fourteen objectives.[2] The other reason, ie., that the LRDP "does not determine future UCB enrollment or population, or set a future population limit" (RB 30), is legally erroneous, as shown in Section II.A.6, *post*.

4. *Bay-Delta* is inapposite.

UC argues that "Appellants ask the Court to ignore the underlying educational mission of UCB and discount the Regents' inherent discretion to weigh the advantages and disadvantages of the proposed project and the alternatives presented." (RB 32; see AOB 29-31, citing *In Re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1162 (*Bay-Delta*).) Using *Bay-Delta's* language, UC argues that the academic status objective is "the 'underlying fundamental

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[2]UC's claim that enrollment growth is "primarily" from California residents is both irrelevant and false. (RB 15.) UC's statistics demonstrate undergraduate growth is dominated by non-residents. (AR14554, 14555, 16904.)

purpose' of the LRDP." (RB 31; see Joint Appendix ("JA") 144:5-8.) UC's reliance on *Bay-Delta* is misplaced because it is inapposite.

First, UC repeatedly misstates the record in claiming the academic status objective was "the underlying fundamental purpose" of the LRDP. (RB 31; JA141:24; JA142:21; JA143:21; JA144:7; JA145:22.) The EIR's project description in Section 3 includes fourteen LRDP Update project objectives, one of which is the academic status objective. (AR9551-53.) None are described as the "core" or "primary" or "key" objective, much less as "the underlying fundamental purpose." The EIR only uses the phrase "a core objective" in Section 6 to justify rejecting analysis of the reduced graduate program and research alternative (AR10356) and in comment responses to justify rejecting analysis of the reduced enrollment alternative. (AR14218.)

Also, the EIR's opportunistic use of the term "a core objective" is a far cry from "the underlying fundamental purpose" referenced in *Bay-Delta*. Therefore, *Bay-Delta* is inapposite.

Moreover, the EIR's unanalyzed assumption that the magnitude of the LRDP's projected enrollment increase is necessary, and no smaller increase is sufficient, to maintain UCB's academic status is not supported by any facts or evidence in the EIR. "To facilitate CEQA's informational role, the EIR must contain facts and analysis, not just the agency's bare conclusions or opinions." (*Caretakers, supra*, 213 Cal.App.4th at 1304, quoting *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 404 (*Laurel Heights*

I.) In language that is directly on point, *Caretakers* holds that the agency failed to justify exclusion of a potentially feasible alternative: "[w]ithout analysis, the theory posited by the City and the Regents is purely speculative and is not supported by any facts discussed in the draft EIR or the final EIR." (*Caretakers, supra*, 213 Cal.App.4th at 1304.)

Further, the EIR and CEQA findings identify the academic status objective only as "a" core project objective, not "the" core objective. (AR10356, 14218, 203.) Nowhere is the academic status objective identified as "the fundamental" or "the fundamental core" or "the fundamental underlying" objective. The EIR does not rank the LRDP's fourteen objectives, does not elevate the academic status objective above other objectives, and does not claim that attaining any of the other objectives depends on attaining the status objective.

Second, even if the academic status objective were "a core objective," case law is clear that an alternative need not meet a project's "key," "primary," or "fundamental" objective if it meets most objectives. (*CNPS, supra*, 177 Cal.App.4th at 991; *Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1400; *Mira Mar, supra*, 119 Cal.App.4th at 488-489.)

Bay-Delta's holding that the EIR at issue need not evaluate an alternative that "cannot achieve the project's underlying fundamental purpose" does not apply here. (*Bay-Delta, supra*, 43 Cal.4th at 1167.) Unlike CALFED's extended pre-EIR process to develop project objectives (see AOB 29-31), UC did not develop substantial evidence that there was one underlying fundamental

purpose requiring each of four primary objectives to be met to make any alternative even potentially feasible. (*Id*. at 1163-1167; see AOB 23-24.) Unlike *Bay-Delta*, here the EIR identifies fourteen distinct project objectives without priority among them. UC simply fails to address the substance of Appellants' argument that *Bay-Delta* does not apply here because the Regents did not make an evidence-based determination that there was a single underlying fundamental purpose that potentially feasible alternatives must meet.

Recognizing it made no such determination, UC argues that "an express finding" is not required. (RB 32.) UC then cobbles together a litigation argument in support of an implied finding that purportedly "informed the Regents ultimate finding that a reduced enrollment growth alternative is not feasible." (RB 31.) However, the material UC cites does not support an implied finding that academic status was the "underlying fundamental purpose of the LRDP."

UC's cites demonstrate only that UC has already attained academic status, that UC seeks to be a low-growth campus, and that UC complies with a Sustainable Practices Policy. (RB 32-33.) These claims are neither disputed nor relevant to whether the EIR identifies maintaining academic status as the "underlying fundamental purpose of the LRDP" such that no limit on enrollment growth could be even potentially feasible. Nor do references to UC's "educational mission" in the EIR's discussion of Population and Housing address whether academic status, as opposed to any other aspect of UCB's educational mission, is "the

underlying fundamental purpose of the LRDP." (RB 33, citing AR10103, 10118.) And again, nowhere does the record even purport to identify a minimum level of enrollment growth required to achieve the academic status objective.

There is no substantial evidence to support a finding that a reduced enrollment growth alternative was not potentially feasible, because neither the EIR nor the record grounds that finding with facts or discloses the analytic route between facts and conclusions. (*Laurel Heights I, supra*, 47 Cal.3d at 404 ; *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 514-515.) Further, UC's argument, advanced for the first time in litigation, purporting to tie random citations together as the basis for an implied finding cannot cure a defective EIR.

> That a party's briefs to the court may explain or supplement matters that are obscure or incomplete in the EIR, for example, is irrelevant, because the public and decision makers did not have the briefs available at the time the project was reviewed and approved.

(*Vineyard, supra,* 40 Cal.4th at 443 (*Vineyard*).)

Finally, even if these considerations somehow implicitly "informed the Regents ultimate finding that a reduced enrollment alternative is not feasible" (RB 33), again, the issue is not the Regents' ultimate finding, but the informational inadequacy of the EIR due to the EIR's failure to analyze a potentially feasible reduced enrollment growth alternative.

In sum, Appellants do not "invite this Court to find fault with the Regents policy determination" (RB 34) but to find that

the exclusion of a reduced enrollment growth alternative from analysis in the EIR was legally erroneous.

5. Because UC has authority to limit enrollment growth at UCB, exclusion of a reduced enrollment growth alternative from the EIR was legally erroneous.

Despite the Regents agreements to limit enrollment growth at three other UC campuses in connection with their LRDPs, UC argues that the Regents had no such authority at UCB. UC argues that (1) those agreements tied enrollment to housing, and (2) the growth caps were "commensurate with the growth projections analyzed in each campus' LRDP EIR." (RB 36.) UC's arguments are unavailing.

Tying enrollment growth to housing is precisely the same objective the public sought here. (AR14535 ["Other UC system campuses such as UC Santa Cruz, UC Davis, and UC Santa Barbara have established enrollment caps or have agreed to only increase enrollment as student housing capacity comes online"], 15046 ["The DEIR alternatives analysis should likewise consider an alternative that manages impacts associated with population increases by limiting campus population increases to housing beds constructed"]; see also, AR14261-64, 14360.)

And UC cites no evidence that its previous enrollment cap agreements were "commensurate with the growth projections analyzed in each campus's LRDP EIR." Any such evidence would also be irrelevant because UC concedes that LRDP enrollment projections are not legally binding. (AR14176.)

UC's other arguments are also unavailing. UC points to the

Long Range Enrollment Plan as a forum for system-wide enrollment decisions. (RB 35.) However, nowhere does the cited material or the record even suggest that this Plan is inconsistent with limiting enrollment growth at UCB. (See, e.g., AR10098, 54483-84 [DEIR discussion and referenced material], 14175 [FEIR].)

UC cites an agreement with the Legislature tying UC's budget to undergraduate enrollment, but UC does not explain why this system-wide agreement somehow precludes enrollment growth limits at UCB. (RB 36, citing AR14176.)

UC argues that a limit might not "work" at UCB because of the high number of applications and because UCB "does not have space for on-campus housing." (RB 36.) But UC does not explain how the UCB application rate constrains the Regents' discretion to limit UCB enrollment growth. Qualified applicants are guaranteed only a space within the system, not at a particular campus. (AR30885-86.) And, lack of housing is the reason Appellants and the public sought enrollment growth limits.

UC labors to distinguish *City of Marina* and *City of San Diego*, which hold that California's universities violate CEQA when they misstate their legal authority to justify excluding mitigation or alternatives. (*City of Marina, supra*, 39 Cal.4th at 355-362 and *City of San Diego, supra*, 61 Cal.4th at 959-961.) UC argues that, unlike these cases, here the proposed alternative "would substantially conflict with state directives and the fundamental mission of the University." (RB 37, citing AR9548; AR14173-74; AR14178; AR30885-86.) This is not true.

No Legislative "directive" requires that UC Berkeley in particular admit a minimum number of resident undergraduates or a "reasonable proportion" of applications. The referenced directive, 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; see AR53783-53784 [Ed. Code, §§ 66011, 66205.5, requiring only accommodation "in a place within the system"].) Presumably UC has been able to honor its enrollment growth agreements at UCSB, UCSC, and UCD without violating the Master Plan. UC's litigation argument that similar caps at UCB would have a deleterious "ripple effects across the entire UC system" is speculation and unsupported by the record. (RB 37.)

UC's argument that reduced enrollment growth "could not be implemented" is unsupported by the record. (RB 26.) The EIR establishes that the LRDP does not commit UCB to "any specific level of student enrollment or overall growth" (AR10103, 14176), that enrollment at a particular campus is limited by the "physical capacity" of the campuses (AR14176), that UCB provides fewer housing units per student than any other UC campus (AR14261-62), and that the UC system as a whole meets its Master Plan obligations by "offering a seat on at least one of its nine undergraduate campuses to every California resident undergraduate applicant who meets the UC's minimum requirements." (AR14176). In short, the evidence in the record is

that meeting the Master Plan obligation is a system-wide obligation consistent with limiting UCB enrollment.

UC argues that the Court should defer to the Regents' "policy decision to allow modest growth." (RB 37.) Once again, UC confuses the decisionmakers' ultimate finding of infeasibility, which could be policy-based but is not at issue here, with the duty to prepare and consider an informationally adequate EIR, which may not exclude the potentially feasible reduced growth alternative.

Recognizing the weakness of its "no-authority" argument, UC argues that even if the Regents do have authority to limit resident undergraduate enrollment, they had no obligation to do so, citing UC's argument that enrollment growth reductions are inconsistent with the academic status objective. (RB 35.) That argument fails, as shown in Sections III.A.2 to III.A.4, *ante*. It also independently fails because the EIR identified the status objective only as an impediment to limiting graduate student and non-resident undergraduate enrollment growth, not to limiting resident undergraduate growth. (AR10355-56, 14218.) The only reason the EIR gave for not limiting resident undergraduate growth was the purported lack of authority to do so. (AR10355, 14218. 14175.) UC's litigation argument should be rejected. (*Vineyard, supra*, 40 Cal.4th at 443.)

6. UC's defense based on the LRDP not setting enrollment is legally erroneous.

UC argues that because the LRDP does not "mandate" or "commit" UCB to enrollment levels or "determine future UC

Berkeley enrollment or population" or "set a future population limit for UC Berkeley," "it would not make sense for the EIR's alternatives analysis to consider an alternative that could not be implemented and did not further the Project's purpose of developing a plan to support enrollment projections." (RB 25-26, 13, 32.) But UC fails to explain why treating enrollment levels as part of the LRDP project—or not—is relevant to whether the EIR was required to analyze a lower enrollment increase alternative.

First, UC cites no authority precluding a reduced growth alternative even if enrollment is not included in the project description. CEQA provides that mitigation, which serves the same function as alternatives (CEQA § 21002.1(a)), can be either part of the project proposed by proponents or be "other measures proposed by the lead ... agency or other persons which are not included but the lead agency determines could reasonably be expected to reduce adverse impacts ..." (Guidelines § 15126.4(a)(1)(A).) There is no authority that an alternative cannot include "other measures" that are not part of the project description. (See *City of Rancho Palos Verdes v. City Council* (1976) 59 CA3d 869, 893 ["description of the option as a 'mitigating measure,' rather than an 'alternative,' is not significant"].)

Second, UC implicitly concedes that the LRDP's projected enrollment levels are part of the CEQA project at issue, because UC argues that realizing this projection is necessary to achieve the project's status objective. Indeed, UC argued below that "[c]apping or reducing enrollment across the board ... changes the

basic nature of the project ...." (JA143:22-23.) Indeed, the LRDP Update would not be needed if it were not for projected enrollment growth because the purpose of the LRDP Update is physical development to accommodate increased population. (See AOB 23, 30, citing CEQA, § 21080.09(a)(2); AR9549.)

Third, regardless of the project description, 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*).) UC concedes that the LRDP's enrollment projection "guides land development and physical infrastructure to support enrollment projections." (RB 25.) The Legislature has acknowledged that the expansion of campus enrollment and facilities may negatively affect the surrounding environment, and stated its intent that UC mitigate significant off-campus impacts related to campus growth and development. (Ed. Code, § 67504(b)(1); *SBN I, supra*, 51 Cal.App.5th at 231 ["[G]rowth includes student enrollment increases, which the Legislature has acknowledged 'may negatively affect the surrounding environment'"]; CEQA § 21080.09.)

Senate Bill 118 (effective March 14, 2022) amending CEQA Section 21080.09 reinforces the responsibility to study population increases. (Stats. 2022, ch. 10, § 1 (SB 118).) SB 118 amends the text of subdivisions (b) and (d) as follows:

> (b) The selection of a location for a particular campus and the approval of a long range development plan are subject to this division and require the

> preparation of an environmental impact report. Environmental effects relating to changes in enrollment levels shall be considered for each campus or medical center of public higher education in the environmental impact report prepared for the long range development plan for the campus or medical center.
>
> (d) Compliance with this section satisfies the obligations of public higher education pursuant to this division to consider the environmental impact of academic and enrollment campus population plans as they affect campuses or medical centers, provided that any such plans shall become effective for a campus or medical center 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 for that campus or medical center, and addressed as required by this division. Enrollment or changes in enrollment, by themselves, do not constitute a project as defined in Section 21065.

(Stats. 1989, ch. 659, § 1; SB 118.) SB 118 also amended Section 21080.09 by adding new subdivision (e).

SB 118 requires that UC review the impacts of increases in campus population, which includes student enrollment. (See, CEQA, §§ 21080(a); 21100; Ed. Code, § 67504(b)(1).) This is confirmed by the amendment to subdivision (d) of Section 21080.09 ("the obligations of public higher education pursuant to this division to consider the environmental impact of academic and campus population plans") and the addition of subdivision (e)

("If a court determines that increases in campus population exceed the projections adopted in the most recent long-range development plan and analyzed in the supporting environmental impact report ..."). Given the Legislature's express direction that UC conduct CEQA review of the effects of increases in campus population, it makes no sense to exempt the LRDP EIR from analyzing a lower enrollment alternative, especially since enrollment increases make up almost all of the projected population increase.

7. Prejudice.

Contrary to UC's argument (RB 44-45), the Regent's post-EIR incorporation of the EIR's legally erroneous reasons for rejecting any analysis of a reduced enrollment growth did not cure prejudice. Again, UC confuses the obligation to prepare and consider an informationally adequate EIR with the discretion to ultimately reject an alternative that it has actually assessed.

Caretakers holds an informationally inadequate alternatives analysis is prejudicial regardless whether the agency would have chosen that alternative:

> Noncompliance with information disclosure provisions which precludes relevant information from being presented to the public agency ... may constitute prejudicial abuse of discretion within the meaning of Sections 21168 and 21168.5, regardless of whether a different outcome would have resulted if the public agency had complied with those provisions. (§ 21005, subd. (a).) In other words, when an agency fails to proceed as required by CEQA, harmless error

> analysis is inapplicable. The failure to comply with the law subverts the purposes of CEQA if it omits material necessary to informed decisionmaking and informed public participation.

(*Caretakers, supra*, 213 Cal.App.4th at 286, citations and internal quotations omitted.)

Here, the EIR's informational inadequacy was prejudicial because the EIR fails to provide "decisionmakers with information about how most of the project's objectives could be satisfied without the level of environmental impacts that would flow from the project." (*Watsonville, supra*, 183 Cal.App.4th at 1090.) The Regents did not and could not make an informed policy-based decision weighing environmental benefits against project objectives because the EIR was informationally inadequate. (*Caretakers, supra*, 213 Cal.App.4th at 1304 ["A potentially feasible alternative that might avoid a significant impact must be discussed and analyzed in an EIR so as to provide information to the decision makers about the alternative's potential for reducing environmental impacts"], 1305 [exclusion of potentially feasible alternative denied decisionmakers necessary information]; *Save the Hill, supra*, 76 Cal.App.5th at 1113 ["Lacking adequate information regarding the no-project alternative, the city council could not make an informed, reasoned decision on whether this Project should go forward"].)

UC invites this Court to judge how the missing information might have affected the outcome. (RB 45.) But the Supreme Court holds "courts are generally not in a position to assess the

importance of the omitted information to determine whether it would have altered the agency decision ...." (*Environmental Protection Information Center v. California Dept. of Forestry & Fire Protection* (2008) 44 Cal.4th 459, 487; see also *Ultramar, Inc. v. South Coast Air Quality Management Dist.* (1993) 17 Cal.App.4th 689, 703 [court should not "evaluate the omitted information and independently determine its value"].) This Court should not speculate how an adequate alternatives analysis, informing the Regents of the environmental benefits of reduced enrollment growth, would have affected their decision.

B. The EIR Fails to Analyze Alternative Locations for the Housing Proposed at People's Park.

UC concedes it failed to make any findings regarding "potential feasibility" of any actual alternative locations, but argues that CEQA does not require that it:

> consider alternative locations that, if selected, would upend years of planning and problem-solving that culminated in a specific proposal to develop a specific parcel to serve a specific purpose, simply because an alternate location might reduce significant effects on historic resources.

(RB 40.) This passage betrays UC's fundamental ignorance (or disregard) of CEQA's purpose and requirements.

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 directly contravenes decades of California Supreme Court 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. *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*, the California Supreme 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, supra*, 40 Cal.4th at 412, the Supreme 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, the Supreme 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 in People's Park is directly contrary to these precedents and would turn CEQA on its head.

UC implies that it can exclude analysis of alternatives summarily, without analysis, by deeming them "infeasible." This is a legal error because the test for judging feasibility when the lead agency selects a range of alternatives to analyze in the EIR is not "actual feasibility," it is "potential feasibility." (*Mira Mar*,

supra, 119 Cal.App.4th at 489.) Here, the EIR makes no finding regarding "potential feasibility" of alternative locations for the housing proposed in People's Park.

The authorities cited in Appellants' Opening Brief require that UC make any such finding in the EIR and any such findings must be supported by substantial evidence. (See AOB 22-23; 34; 41-42.) Here, UC failed to make any such findings regarding over a dozen alternative locations that its consultants studied. (See AOB 34-35, 39-40.)

The lead agency's analysis of a range of reasonable alternatives is required to be in the EIR; it cannot be buried in an appendix or elsewhere in the administrative record. (Guidelines, § 15126.6.) "Whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report." (*Laurel Heights I, supra*, 47 Cal.3d at 405.) In language that is directly on point here, the decision in *Laurel Heights I* observes:

> ... alternatives and the reasons they were rejected, however, must be discussed in the EIR in sufficient detail to enable meaningful participation and criticism by the public. ... If the Regents previously considered alternatives in their internal processes as carefully as they now claim to have done, it seems the Regents could have included that information in the EIR.

(*Ibid*.)

Similarly, "[i]nformation scattered here and there in EIR

appendices or a report buried in an appendix, is not a substitute for a good faith reasoned analysis." (*Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 516 (*Cleveland National Forest Foundation*), quoting *Vineyard, supra*, 40 Cal.4th at 443; and citing *Banning Ranch, supra*, 2 Cal.5th at 941.)

Ultimately, since the EIR utterly fails to explain why any and all alternative sites are not "potentially" feasible, UC attempts to provide that explanation—for the first time—in its brief on appeal. (See RB 41-43.) The argument is not only waived, it is irrelevant. (*Vineyard, supra*, 40 Cal.4th at 443.)

UC argues that an analysis of why a project alternative is infeasible may appear elsewhere in the record rather than in the EIR, citing *San Franciscans Upholding the Downtown Plan v. City & County of San Francisco* (2002) 102 Cal.App.4th 656, 689-690 (*San Franciscans Upholding*). (RB 43.) *San Franciscans Upholding* is inapposite for several reasons.

First, *San Franciscans Upholding* involved a challenge to an agency's decision at the end of the CEQA process to adopt a proposed project rather than project alternatives that the agency found to be economically infeasible. Thus, it is completely inapposite to the instant case, which challenges the instant EIR's failure to analyze an alternative. The difference between an agency's CEQA obligations at these different junctures in the process is explained in detail in Appellants' Opening Brief. (AOB 26-30) and in this brief (Section III.A.2, *ante*.)

Second, the claim in *San Franciscans Upholding* was that an economic feasibility study that supported the agency's project approval infeasibility finding was required to be in the EIR itself. The Court held that CEQA allows such a study to be located elsewhere in the record. In that case, however, the study did analyze the economic feasibility of alternatives and concluded they were not economically feasible. Here, UC points to no study analyzing the feasibility of alternative locations for Housing Project #2. The only analysis of that subject is presented in UC's brief (at RB 41-43), which is too late. (*Vineyard, supra*, at 443.)

Also, as noted in Appellants' Opening Brief, the EIR's description of Housing Project #2's objectives does not include building housing *in People's Park*. (AR9552-53.) Therefore, UC cannot defend the EIR's failure to analyze alternative locations for this housing on grounds it would not achieve the project's objectives. (AOB 36-37.)

UC suggests that Housing Project #2's objectives do include building in People's Park because one objective is to revitalize "a UC Berkeley property" and other documents reveal that this must refer to People's Park. (RB 41, citing AR25089.) Similarly, UC argues that "People's Park is the only location that can achieve UCB's goals of immediately alleviating the student housing crisis and redeveloping and revitalizing this site." (RB 21.)

However, the only place this argument is presented is in UC's brief to this Court. The EIR never explained UC's view that it is infeasible to build Housing Project # 2 anywhere but People's

Park because that would not serve the goal of preventing people from camping in the park. If the EIR had said so, the public could have submitted comments showing that both UC and the City of Berkeley are fully capable of preventing people from camping in their parks and open spaces without building a high rise apartment building in every park.[3]

UC cannot rewrite the EIR's project objectives to satisfy its litigation objectives. Public comment was submitted on the EIR as written, not on the EIR as UC would now revise it. Allowing UC to create a moving target at this stage would deprive the public of the opportunity to submit comments and evidence related to the revision. (See *Cleveland National Forest Foundation, supra,* 3 Cal.5th at 516; *Vineyard, supra*, 40 Cal.4th at 443.)

UC argues that *Jones v. Regents of University of California* (2010) 183 Cal.App.4th 818 (*Jones*) is "on point." (RB 43.) *Jones*, however, involved an EIR rejecting an off-site alternative for analysis because it would "prevent the realization of the project's primary objective of creating a more campus-like setting at the hill site, and would nullify most, if not all, of the other project objectives as well." (*Id*. at 827-28.) Here, in contrast, the EIR's description of Housing Project #2's objectives does not include

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[3]Indeed, this Court's file in the case includes such evidence. (See e.g., Declaration of Harvey Smith in Opposition to Request to Advance Briefing Schedule on Petition for Writ of Supersedeas and in Support Of Petition for Writ of Supersedeas, filed herein on July 5, 2022.)

building housing in People's Park. (AR9552-53.)

UC relies on several cases where agencies found an alternative to be infeasible, including *Saltonstall v. City of Sacramento* (2015) 234 Cal.App.4th 549 (*Saltonstall*); *Save Our Residential Environment v. City of West Hollywood* (1992) 9 Cal.App.4th 1745 (*Save Our Residential Environment*); *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899 (*Rialto Citizens*); *San Diego Citizenry Group v. County of San Diego* (2013) 219 Cal.App.4th 1, 18 (*San Diego Citizenry*).

UC's reliance on *Saltonstall* is misplaced because the decision upholds the rejection of an alternative site from analysis as infeasible because it "failed to satisfy many of the City's objectives for the project." (*Saltonstall*, *supra*, 234 Cal.App.4th at 573-74.) Here, as demonstrated in Appellants Opening Brief, however, UC's finding that all possible, theoretical rather than actual, alternative locations are infeasible, is conclusory and unsupported by facts or by substantial evidence. (AOB 36-41.)

UC's reliance on *Save Our Residential Environment* is also misplaced. That case involved an EIR for a six-story residential care facility for senior citizens in the City of West Hollywood. The Court upheld the EIR despite its omission of alternative sites from its alternatives analysis. The case is distinguishable because the EIR provided facts and analysis to show why there were no feasible alternative sites in the city, stating:

> City staff could not identify a single site where a project of this type and size could be constructed

> without demolishing a significant number of existing housing units. The City's General Plan discourages the demolition of existing housing units in order to maintain its stock of affordable housing. Also, the City's General Plan and zoning ordinance do not provide for the approval of congregate care facilities in either commercial or industrial zones within the City.

(*Save Our Residential Environment, supra*, 9 Cal.App.4th at 1752.) The instant EIR includes no similar facts or analysis. Thus, the fact that an EIR in a different case complied with CEQA does not help UC's argument that the instant EIR complies.

Nor does *Rialto Citizens* help UC. *Rialto Citizens* involved an EIR that included analysis of a "reduced density alternative," but the agency decided, at the project approval stage of the CEQA process, to adopt the proposed project rather than this alternative. (*Rialto Citizens, supra*, 208 Cal.App.4th at 947.) Thus *Rialto Citizens*, similar to *San Franciscans Upholding*, *supra*, is inapposite to the instant case, which challenges the EIR's failure to analyze an alternative at the first juncture in the CEQA process where the agency must make findings regarding the potential feasibility of project alternatives. (See AOB 26-30, Section III.A.2, *ante*.)

San Diego Citizenry is inapposite for the same reason as *Rialto*, as it also involved an EIR that analyzed project alternatives but the agency decided not to adopt any of them. The decision explains the difference between these two junctures in

the CEQA process:

> CEQA provides two "junctures" for findings regarding the feasibility of project alternatives. First, alternatives are determined to be potentially feasible in the EIR. [Citation.] Second, in deciding whether to approve the project, the decision maker determines whether an alternative is actually feasible. [Citation.] "At that juncture, the decision makers may reject as infeasible alternatives that were identified in the EIR as potentially feasible." [Citation.]

(*San Diego Citizenry, supra*, 219 Cal.App.4th at 18.)

UC also suggests that requiring an analysis of alternative locations would require "abandoning People's Park as a potential area of redevelopment." (RB 41.) Not so. UC conflates the two different junctures in the CEQA process where the agency makes findings regarding the feasibility of project alternatives.

UC also discusses its reasons for excluding other putative "alternatives" from analysis in the EIR, neither of which consists of a specific alternative location or locations. Regarding "Housing Projects #1 and #2 Alternate Locations," UC repeats what the EIR said about this alternative. (RB 39.) But UC fails to directly rebut Appellants' argument as to why what the EIR said represents legal error, is unsupported by facts, and is contradicted by evidence in the record that alternative sites could support more housing than is needed. (See AOB 36-38.)

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C. The EIR's Analysis of Social Noise Impacts is Legally Inadequate.

1. Appellants did not waive their challenge to the noise analysis.

UC argues that Appellants waived their noise claim because Appellants submitted the Lippe, Watry, and Bokovoy letters after approval of the LRDP EIR but before approval of Housing Project #2. (RB 45-46, citing AR1587-1743.) UC's argument fails for two reasons.

First, numerous comments submitted before approval of the LRDP objected to the inadequacy of the noise analysis. (AOB 45.) For example, DEIR comments by the Southside Neighborhood Coalition ("SNC"), of which Bokovoy is a member (AR1150), made the same arguments Watry and Bokovoy made in later letters, i.e., no baseline information, no analysis of noise increases, no mitigation, and no evidence noise control efforts were effective:

> There is no analysis of the baseline noise generated by these activities, and no analysis of the increase in noise from adding several thousand students at Clark Kerr. Clearly this is a significant impact that requires mitigation measures that have not been identified. Stationary noise from the addition of thousands of undergrads would be significant based on the current situation. There are no mitigation measures identified to reduce this impact to less than significant.
>
> There is also significant noise, usually late at night, of large groups of students coming and going from parties and other social events. These have severe negative impacts, both in and out of student housing.

> PartySafe@Cal has collected this information via survey over many years and has found that a high percentage of students have been disturbed by high noise levels. In addition, Happy Neighbors did several surveys and found that noise levels around the Clark Kerr Campus were significant. Students are much louder than 60db, they are often measured at 70db and above, and when inebriated the outside noise levels are even higher.
>
> The DEIR provides no data to back its noise analysis. Data that do exist indicate that noise impacts are significant and can be mitigated.

(AR1142.) In addition to citing survey and noise level data, SNC also objected that the Advisory Council on Student-Neighbor Relations, the purported source of UC's noise-control initiatives (AR10046-47, 10067), stopped functioning in 2018. (AR1142.)

SNC also cited the negative noise effects of late-night pedestrian movements and objected to the EIR's failure to study late-night noise from undergraduates. (AR1139, 1135, 1149.) Other neighbors objected to students playing "beer pong in their backyard, yelling the whole time" (AR15060) and to an increase in off-campus noise from enrollment increases (AR14762-63). Comments objected to the failure to undertake adequate cumulative noise analysis. (AR15002.)

Before UC approved the LRDP Update on July 22, 2021, Bokovoy again objected, arguing that the EIR has the same flaws identified by the trial court in litigation challenging the Supplemental EIR for the Goldman School. (AR1127.) Bokovoy submitted the Order Granting Petition for Writ of Mandate

(AR1151-1183). This order identifies public comments objecting to noise from increased enrollment, including party-noise from mini-dorms, and pointing to the lack of evidence that programs like Happy Neighbors are effective. (AR1168-1170.) Bokovoy provided a separate report on the Happy Neighbors Project, which indicates the program is not succeeding due to inconsistent UC commitment to its initiatives and a lack of senior level leadership, documenting these failures. (AR1184-1187.) Finally, Bokovoy submitted survey results documenting continuing noise disturbances and public intoxication. (AR1188-1191.)

Having timely objected to approval of the LRDP Update, Appellants are entitled to judicial review of their social noise challenge with respect to the LRDP because the issue was timely raised by others. (CEQA, § 21177(a), (b).)

Second, SBN submitted the September 2021 letters from Lippe, Watry, and Bokovoy to UC before the close of the final hearing when UC approved Housing Project #2. Therefore, these letters timely objected to UC's approval of Housing Project #2, including Housing Project #2's direct social noise impacts from housing an additional 1,179 students in a residential neighborhood; and including Housing Project #2's cumulative social noise impacts considered in combination with the closely related social noise impacts from past projects such as the previously approved LRDP Update. (CEQA, § 21177(a).)

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2. The fair argument standard applies because the EIR fails to assess the project's social noise impact.

UC argues that because it prepared an EIR, the fair argument standard does not apply. (RB 46.) That is not the law.

Where an agency receives information supported by substantial evidence that an impact not assessed in the EIR is significant, it must "consider and resolve the conflict in the evidence." (Kostka & Zischke, Practice Under California Environmental Quality Act (Cont. Ed. Bar 2d Ed.), § 13.19, citing *Visalia Retail, LP v. City of Visalia* (2018) 20 Cal.App.5th 1, 13 (*Visalia Retail*) and *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109 (*Amador Waterways*).) In both *Visalia Retail* and *Amador Waterways*, despite agency preparation of an EIR, the Courts held that Appellants' burden was only to present a fair argument based on substantial evidence that the effect not assessed would be significant.

Contrary to UC, *Ocean Street Extension Neighborhood Association v. City of Santa Cruz* (2022) 73 Cal.App.5th 985, 1005 (*Ocean Street*) does not hold that the substantial evidence standard applies whenever an agency decides to prepare an EIR. The cited *Ocean Street* discussion concerns only whether an agency can rely on substantial evidence in an initial study instead of its later EIR. Here, UC does not rely on an initial study but on the EIR's five-sentences dismissing social noise, which fails as an informationally adequate CEQA analysis.

(AR10067; see AOB 48-52.)

Finally, as discussed in Section III.C.4, *post*, Appellants' separate challenge to the noise analysis as informationally inadequate does not depend on a fair argument of a significant effect.

3. Appellants have identified substantial evidence to support a fair argument that the unanalyzed social noise impact is significant.

UC claims that Appellants' evidence of significant social noise impacts is not substantial, arguing that it is speculative and not based on facts. (RB 47-49.) But UC cannot and does not challenge factual evidence that noise complaints have continued and escalated due to proliferating off-campus mini-dorms created to address the housing shortage caused by increasing enrollment. (AR1616-19, 1149.) And UC does not challenge Watry's or SNC's conclusions that existing social noise exceeds the EIR's threshold of significance. (AR1600-02, 1142.)

UC apparently challenges the conclusions that history demonstrates that the number and size of parties increases as the student population increases. (AR1596-98, 1601-03). But that conclusion is based on the extensively documented factual record set out in Appellants' brief (AOB 44-48), including City Council findings correlating social noise impacts with off-campus parties and underage alcohol use; observations and complaints from neighbors; police reports; City Council staff reports that document repeated noise complaints and ineffective enforcement action; and Bokovoy's direct participation in UC's ineffective

student noise mitigation program. The Watry, Bokovoy, and SNC letters are neither speculation nor unreliable. UC ignores this evidence.

Furthermore, *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 733-34 (*Keep Our Mountains Quiet*) finds that testimony by project neighbors as to past social noise from party events informs future impacts and "constitutes substantial evidence supporting a fair argument that the Project may have unmitigated noise impacts." In *Keep Our Mountains Quiet*, the only testimony the Court found speculative were claims related to potential impacts on "hypothetical users of nonexistent future trails," where there was no past history as a guide, which is not analogous to the claims at issue here. (*Id.* at 735.) Here, the conclusions about future noise conditions affecting neighbors are based on past occurrences of party noise events, just like the conclusions in *Keep Our Mountains Quiet*.

Expert opinion supported by facts is substantial evidence. (*Save the Agoura Cornell Knoll v City of Agoura Hills* (2020) 46 Cal.App.5th 665, 689.) Where expert comments are detailed, based on facts, and are specifically directed at the project at issue, they are not speculative. (*Sierra Club vs. California Dept. of Forestry and Fire Protection* (2007) 150 Cal.App.4th 370, 382.) Watry's opinion on human behavior generating noise, including the likelihood that population growth will exacerbate the existing trend in increased noise disturbances, is credible in light of the documentation of prior noise conditions and causes, his

consideration of similar projects elsewhere, and his training and 30 years of experience as a noise consultant. (*Stanislaus Audubon Society v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 155.)

Even without Watry's expertise, fact-based personal observations about neighborhood conditions by non-experts constitutes substantial evidence. (*Keep Our Mountains Quiet, supra*, 236 Cal.App.4th at 733-34, *Protect Niles v. City of Fremont* (2018) 25 Cal.App.5th 1129, 1147, 1149, 1151-1153; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 932.) The comments and testimony by SNC, Bokovoy, and other project neighbors, before and after approval of the LRDP, together with the noise surveys, police reports, Council findings and Council staff reports, are credible substantial evidence of a significant social noise impact that will increase with enrollment growth, with or without Watry's expert opinion.

Watry's comments cannot be dismissed as expert disagreement because UC simply did not respond to Watry, and it takes two to disagree. And FEIR's terse dismissal of earlier comments detailing and objecting to social noise as "speculative" lacks any analysis. (AR14540, 14545-56; 14553, 14545-46, 14566, 15060.) "To facilitate CEQA's informational role, the EIR must contain facts and analysis, not just the agency's bare conclusions or opinions." (*Laurel Heights I, supra*, 47 Cal.3d at 404; accord *County of Fresno, supra*, 6 Cal.5th at 522.) Here, the record cannot inform this Court why UC rejected comments demonstrating noise impacts. (*Georgetown Preservation Soc'y v*

County of El Dorado (2018) 30 CA5th 358, 378 [agency must have identified the disputed "evidence with sufficient particularity to allow the reviewing court to determine whether there were legitimate, disputed issues of credibility"].) Indeed, the "[d]eficiencies in the record" here "actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences." (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.)

4. Appellants have separately shown the noise analysis is prejudicially inadequate.

Appellants separately argue that the EIR's five-sentence discussion of social noise is informationally inadequate because it lacks the informational elements CEQA requires. (AOB 49-52.) UC asks this Court to defer to the EIR's dismissal of social noise as if it were an informationally adequate analysis. (RB 49-51.) However, where, as here, the EIR presents no facts and analysis regarding baseline conditions, potential new impacts, potential significance, efficacy of abatement efforts, or cumulative conditions, the issue is not expert disagreement but the informational deficiency of the EIR, which is reviewed de novo without deference. (*County of Fresno, supra*, 6 Cal.5th at 522.) Because UC failed to meet its "burden of environmental investigation," it should not be allowed to "hide behind its own failure to gather relevant data." (*Sundstrom, supra*, 202 Cal.App.3d at 311.) Thus, even if the proffered comments and expert opinion were not a fair argument of significant impact, they exhausted the issue of noncompliance with CEQA's

informational mandates and provided evidence that this was prejudicial. (*Id*.)

5. Social noise is a cognizable CEQA impact.

The FEIR's contention that social noise is not "germane" as an environmental effect is legally erroneous as evidenced by *Keep Our Mountains Quiet*, where the EIR was set aside for its inadequate assessment of party noise. (236 Cal.App.4th at 733-34.) *Saltonstall v. City of Sacramento* (2015) 234 Cal.App.4th 549, 584 is inapposite since that case concerned "potential impacts to safety by event crowds," not social noise. (Emphasis in original.)

D. The EIR Unlawfully Piecemeals CEQA Review of UCB Projects.[4]

Appellants' opening brief explains that UC piecemealed its CEQA review by excluding physical development addressing UC Berkeley's projected enrollment and academic goals because such development is located outside an arbitrary "campus park" area. (AOB 52-57.)

In its opposition, UC first cites to the EIR's project "goals" to support its argument that the EIR has not piecemealed environmental review. (RB 53.) This is circular logic since it is the EIR's truncated project description and its focus on the "campus park" area that is unlawful and leads to the impermissibly piecemealed environmental review. The purpose and scope of a

[4]These issues were exhausted in public comments. (AR14251, 14538, 14739-40, 14789, 14799-813.)

LRDP is not limited to development in an arbitrarily-designated "campus park" area, but rather to "guide land use and capital investment decisions for UC Berkeley to meet its future academic goals and objectives." (AR9486 ["Proposed Action" section of EIR.) This is consistent with the LRDP's statutory mandate: "[B]ased on academic goals and projected enrollment levels, each University of California campus and medical center periodically develops a Long Range Development Plan." (Ed. Code, § 67504; see also CEQA, § 21080.09(a)(2) ["'Long-range development plan' means a physical development and land use plan to meet the academic and institutional objectives for a particular campus or medical center of public higher education"].)

UC argues that the excluded developments admittedly serving UC Berkeley's academic and institutional objectives are independent from the LRDP because "[t]he proposed LRDP Update does not determine future UC Berkeley enrollment or population ..." (RB 54, quoting the EIR at AR9487.) UC conspicuously omits from its quote the next part of that same sentence, which contradicts UC's argument by noting "... but [the LRDP] guides land development and physical infrastructure to support enrollment projections and activities coordinated by the University of California Office of the President." (AR9487) Further evidencing the interdependence between the LRDP and these development projects, that same paragraph later explains, "The [LRDP's] development program does, however, establish the maximum amount of net new growth in UC Berkeley's space inventory during this time frame, which the UC campus may not

substantially exceed without amending the LRDP." (*Ibid.*) A LRDP cannot perform this planning function, and a LRDP's EIR cannot perform its environmental function by excluding physical development necessary to achieve UC Berkeley's academic and institutional objectives and accommodate campus enrollment projections and activities.

UC manufactures a new argument that construction projects outside of "campus park" were excluded "specifically, because they are only 'satellite UC Berkeley campuses'" (RB 54.) UC mischaracterizes the record. (AR14173) The cited page from the FEIR provides:

> Some commenters expressed concerns that the environmental setting for the program-level analysis of the LRDP Update in the EIR did not include all of the properties where UC Berkeley has operations. Specifically, these include Moffett Field, Richmond Bay Campus/Richmond Field Station, the Mills College Campus, Albany Village, satellite UC Berkeley campuses, and other off-campus sites.... [T]he scope of the LRDP Update excludes University Village in the city of Albany and Richmond Field Station in the city of Richmond, as well as other UC Berkeley-owned sites entirely outside of the city of Berkeley. These sites are sufficiently distant and different from the Campus Park and its environs to merit separate planning and environmental review.

(AR14173.)

The EIR does not exclude the named sites such as Albany Village and Richmond Bay Campus/Richmond Field Station

"because they are 'satellite UC Berkeley campuses.'" Rather, the FEIR lists "satellite UC Berkely campuses" as sites that are additional to the named sites. Thus, the EIR uses the term "satellite" as a way to identify a site, not as a rationale for excluding it from the LRDP and EIR. The EIR's only rationale for excluding these sites from the EIR is because they are "sufficiently distant and different from the Campus Park." (*Ibid.*) Moreover, UC's newly-minted "satellite campus" argument is refuted by the fact that all of UC Berkeley is a single UC campus. (Ed. Code, § 67504 [requiring a LRDP "for each University of California campus and medical center"]; AR1423 [State Auditor report identifying ten UC campuses], 30840 [Legislative Analyst's Office report identifying ten UC campuses].)

UC makes the confused statement that "Appellants do not, and cannot, cite to any evidence that the EIR relied on development outside the LRDP Study Area to accommodate the projected campus population figures." (RB 55.) This statement does not help UC since it describes the EIR's piecemealing deficiency. In their Opening Brief, Appellants show that developments on the other UCB properties do not have independent utility from development of the campus core because they are part of UCB's plan to accomplish its educational mission and to address projected enrollment and other activities. (AOB 54-55.) For the EIR to ignore the environmental impacts of construction and operation of these developments is the essence of piecemealed CEQA review.

UC argues that "no case law" supports Appellants argument that so-called "off-site developments can never have independent utility." (RB 55.) UC mischaracterizes Appellants' claim. Appellants do not argue that off-site developments can never have independent utility. Appellants argue that the facts in the record of this case show that developments at Albany Village and the Richmond Field Station do not have independent utility. Moreover, the absence of case law directly addressing the scope of an EIR for a UC campus LRDP does not make the argument unsound or "illogical" as UC claims. Rather, it is contrary to case law to suggest, as UC does, that development projects plainly serving UC Berkeley's planned enrollment and activities have independent utility from planning that is statutorily-mandated to "establish a maximum amount of net new growth in UC Berkeley's space inventory during this time frame." (AR9487; CEQA, § 21080.09(a)(2), Ed. Code, § 67504.)

Finally, UC argues that the piecemealed projects did not "escape CEQA review." (RB 55.) This argument is addressed in Appellants' Opening Brief (AOB 53, 56-57), which UC's brief ignores.

E. THE EIR FAILS TO LAWFULLY ASSESS OR MITIGATE HOUSING DISPLACEMENT IMPACTS.

The EIR's analysis of displacement-caused environmental impacts under Impact POP-2 is legally and informationally inadequate because

- it fails to assess displacement from adding 8,173 unhoused persons to communities facing what the EIR admits is a "housing crisis" (AR10105, 10116);
- it fails to assess environmental impacts of that displacement, including health effects of crowding and homelessness and the need for construction of replacement housing (AR10120-21); and
- it bases its finding that displacement-related impacts are less-than significant on mitigation that does not apply to indirect displacement or its impacts (AR10121).

(See AOB 57-67.)

1. Displacement's indirect adverse effects on the environment and human health are cognizable under CEQA and must be assessed.

UC's argument (RB 61, 56), that displacement, homelessness, and overcrowding are not per se environmental impacts is a red herring. Appellants challenge UC's claim that the health and other environmental impacts caused by these effects are "not cognizable under CEQA." (RB 63.)

Indirectly caused environmental and health effects are cognizable 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).) An agency "shall consider the secondary or indirect environmental consequences of economic and social changes." (*Citizen's Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 170-71 (*Citizens*

Assn. for Sensible Development of Bishop Area); see also Guidelines, § 15131(a) ["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"].) A significance finding is required where the "environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly." (Guidelines, § 15065(a)(4).)

UC argues that requiring analysis of social and economic effects would "obliterate the clear line" that economic and social changes "shall not be treated as significant effects on the environment." (RB 62, quoting Guidelines, § 15064(e).) But UC omits the rest of that subsection, which makes it clear that an agency must analyze social and economic effects if they may cause adverse effects on the environment or people:

> Economic or social changes may be used, however, to determine that a physical change shall be regarded as a significant effect on the environment. Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project. Alternatively, economic and social effects of a physical change may be used to determine that the physical change is a significant effect on the environment. 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.

(Guidelines, § 15064(e).) *Citizens Assn. for Sensible Development of the Bishop Area* holds that the Section 15064(e) analysis is not optional: "the lead agency *shall* consider the secondary or indirect environmental consequences of economic and social changes." (172 Cal.App.3d at 170, emphasis in original.)

UC's observation that *Visalia Retail* and *Amador Waterways* do not address displacement is irrelevant. (RB 61.) These cases hold that an EIR must analyze any impact for which substantial evidence supports a fair argument of significance.

2. The EIR fails to analyze displacement, or its environmental effects, caused by UC's 8,173 unhoused persons.

UC argues that the POP-2 discussion is based on substantial evidence regarding direct displacement of tenants at UC construction sites. (RB 59-60.) But because that analysis is limited to direct displacement, it does not assess the fact or magnitude of indirect displacement, or its environmental effects, caused by increasing the unhoused UC population in Berkeley and nearby jurisdictions by 8,173 persons. (AOB 58-61.) UC does not contest this; instead it argues assessment of indirect displacement and its environmental effects is not required. (RB 63.) As argued above, that is error.

Despite UC's claim that it need not assess displacement, UC attempts to minimize displacement and its impacts with

misleading arguments. UC argues that the percentage of unhoused UC population will decline (RB 58), even though the relevant fact is that the number will increase—by 8,173 persons. (AR10116.) UC argues that Housing Project #1 and Housing Project #2 will add more beds than they displace (RB 58), even though Appellants' challenge is to the LRDP Update in addition to the two housing projects. UC argues that Mitigation Measure POP-2 is somehow relevant, even though that measure applies only to direct displacement by UC construction, not to indirect displacement by UC's growing unhoused population. (AR10121.)

UC argues in briefing, but not in the record, that this displacement might not occur because there are some vacant housing units in the Bay Area. (RB 60.) UC's litigation argument is irrelevant to the EIR's adequacy. (*Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3d 818, 831 ["presentation of evidence to the trial court" is not a substitute for explanation of the basis of agency action in the record]; *Vineyard, supra*, 40 Cal.4th at 442.) Furthermore, UC's litigation argument cynically cherry-picks vacancy data from Table 5.12-4, which the EIR uses to illustrate the opposite conclusion. i.e., that the "San Francisco Bay Area is experiencing a housing crisis" in which lower- and middle-income households cannot "compete for market rate housing." (AR10105-06.) UC's litigation argument ignores the normal vacancy rate and assumes unreasonably and without evidence that vacant units are affordable to displaced households. (See, e.g., AR2045, 2047-2048, 15878; SAR11254-55.)

Contrary to UC, the analyses of population growth under Impact POP-1 and growth inducement in EIR Section 7.3 do not assess the displacement caused by the growing unhoused population and its adverse effects on health and the environment. (RB 59-61.) The EIR recognizes in principle its obligations separately to assess three distinct impacts: substantial unplanned population growth (Impact POP-1, AR10110-10120), displacement impacts (Impact POP-2, AR10120-10122), and growth inducement (Section 7.3, AR10441-10442). UC's attempts to excuse the EIR's failure to assess the environmental impacts of displacement by pointing to its separate analyses of unplanned population growth and growth inducement must fail.

First, UC mischaracterizes the POP-1 conclusions about the significance of unplanned growth as conclusions about displacement and indirect growth impacts. (RB 59.) However, the POP-1 analysis does not even mention displacement. Furthermore, UC's litigation argument that the EIR somehow assesses displacement in POP-1 is inconsistent with UC's claim that analysis of displacement is "speculative" and not required. (RB 63.) The growth projections in POP-1 are necessary but not sufficient for a displacement analysis because they do not determine the existence and magnitude of displacement that growth will cause, much less discuss its health and environmental effects. This requires additional data (e.g., demographics, housing supply, vacancy, etc.) and analysis (e.g., net changes in market rate and affordable units, etc.). (AR16647 [SFDPH Model Housing Impacts Analysis].)

Second, UC argues that the EIR's separate, abbreviated discussion of growth inducement somehow suffices. (RB 59-60.) But that analysis does not mention displacement either. (AR10441-42.) Its discussion of "indirect impacts" considers only whether extension of infrastructure would induce growth outside the urbanized area, an issue unrelated to housing displacement and its environmental effects.

UC misuses authority that growth inducement analysis requires only a "general analysis of projected growth" as if this authority also minimizes the separate obligation to assess displacement and its environmental effects. (RB 57-58, citing Guidelines, § 15126.2(e) [growth inducement analysis] and *Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 227, quoting *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 369 (*Napa Citizens*).) This authority is not applicable because it concerns only growth inducement.

UC also misleadingly argues that *Napa Citizens* holding that an EIR need not mitigate growth impacts in "other areas" somehow excuses UC from analysis and mitigation of displacement-caused impacts. (RB 57-58.) To the contrary, *Napa Citizens* states "[w]e also do not believe that EIR review can be avoided simply because the project's effect on growth and housing will be felt outside of the project area." (*Napa Citizens, supra*, 91 Cal.App.4th at 369; see also *American Canyon Community United for Responsible Growth v. City of American Canyon* (2006) 145

Cal.App.4th 1066-1067, 1081-1082 [legal error not "to consider the extraterritorial effects" of indirect effects "in neighboring cities"].) And again, *Napa Citizens* concerns only growth inducement, not displacement.

3. The EIR fails to assess physical effects of displacement, including health effects of crowding and homelessness and the need for construction of replacement housing, despite a fair argument based on substantial evidence that these effects are significant.

Appellants argue that substantial evidence in the record, including comments by the Berkeley Planning Director and evidence from the San Francisco Department of Public Housing (SFDPH), supports a fair argument that displacement here will result in significant adverse effects to human health. Appellants separately argue that the analysis is informationally inadequate and that this evidence demonstrate prejudice. (AOB 58-66.) UC does not address this evidence, summarized in Appellants' Opening Brief. (AOB 61-63.) Instead, UC simply argues that the EIR displacement and the health effects are too speculative to assess. (RB 62-63.) UC's argument is unavailing.

UC argues that "[b]ecause the LRDP does not control UCB enrollment levels or employment decisions, it would be speculative to determine the demographics of future university students and employees and their housing needs." (RB 62-63.) This argument fails for two reasons. First, as argued in Sections A5 and A6, the Regents do have authority over enrollment and employment; and, regardless whether enrollment and population

are part of the LRDP project description, they are "related features of campus growth that must be mitigated under CEQA." (*SBN I, supra*, 51 Cal.App.5th at 239.)

Second, contrary to UC, the EIR does in fact "determine the demographics of future university students and employees and their housing needs." (RB 63.) The EIR projects that there will be 8,173 undergraduates, graduate students, faculty, and families for whom UC will not provide housing, and it then projects how many of each demographic will locate in Berkeley and each nearby jurisdiction. (AR10116; see AR10104 [data sources].) This, together with non-UC population and housing forecasts and vacancy data for these jurisdictions, which the EIR also provides (AR10102, 10106), is precisely the data that the SFDPH Model Housing Impacts Analysis calls for to estimate displacement and its environmental and health effects. (AR16647.)

Further, UC contradicts its argument that displacement analysis is speculative by using the EIR's vacancy data to support a litigation argument that there will be no displacement. (RB 60, 62.)

UC's characterizations of displacement as a "secondary" effect and health effects as "third-order" effects (RB 63) are irrelevant because CEQA requires analysis of indirect effects. (CEQA, § 21083(b)(3); *Citizens Assn. for Sensible Development of the Bishop Area*, *supra*, 172 Cal.App.3d at 170.)

Also, UC does not demonstrate that there are no methods available to analyze these impacts. UC is required to "use its best efforts to find out and disclose all that it reasonably can."

(Guidelines, § 15144.) The SFDPH guidance provides and references analytic methods to assess displacement and its environmental impacts. (AR16642-16648.) SBN also submitted comments that UCB's own Urban Displacement Project provides tools to assess displacement effects. (AR14557 [citing UC's web page at https://www.urbandisplacement.org/], 14559.) An agency may not dismiss an impact as speculative simply because there is no universal analytic method. (*Berkeley Keep Jets Over the Bay v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1370.)

Section 15064(e) allows an agency to focus its analysis on the intensity of the social and economic effects themselves (e.g., displacement, homelessness, or overcrowding projections) as a proxy for their environmental effects. (Guidelines, § 15064(e) ["Alternatively, economic and social effects of a physical change may be used to determine that the physical change is a significant effect on the environment"].) The SFDPG guidance provides substantial evidence that displacement, homelessness, and overcrowding do cause adverse health effects based on numerous studies. (AR16628-16635.) UC need not reinvent the wheel.

4. Mitigation Measure POP-2 is inadequate to address displacement-related impacts.

UC's finding that Mitigation Measure ("MM") POP-2 will reduce Impact POP-2 below significance is not supported by substantial evidence. Because MM POP-2's relocation assistance is available only to tenants directly displaced at UC construction sites (AOB 66-67; see AR10120-10122), MM POP-2 will not

address the health effects of homelessness and overcrowding for indirectly displaced persons. UC's response - that there is no duty to mitigate "'indirect' impacts [that] are not cognizable under CEQA" (RB 64) - fails because indirect impacts to human health and the environment are in fact cognizable.

Based on the EIR's unsupported assertion in the POP-2 heading that the "proposed project ... would not necessitate the construction of replacement housing elsewhere," UC argues that MM POP-2 need not address replacement housing impacts either. Again, the POP-2 discussion ignores indirect displacement, which will either cause homelessness and overcrowding or require replacement housing. (AOB 66-67.)

When the effectiveness of a mitigation measure is not apparent, the EIR must include facts and analysis supporting the claim that the measure "will have a quantifiable 'substantial' impact on reducing the adverse effects." (*County of Fresno, supra*, 6 Cal.5th at 511; see AOB 67 [cases].) UC failed to do so here.

5. Mitigation Measure POP-1 is inadequate.

UC's discussion of MM POP-1 fails to address the point of Appellants' argument: it cannot ensure reduction of the significant impact, which is "substantial unplanned growth in the area." (AOB 67-69.) MM POP-1 is not enforceable because merely providing data cannot compel the agencies responsible for planning - the City and ABAG - to plan for UC's growth, thereby transforming "unplanned growth" into planned growth. Providing data may enable these agencies to plan, but UC does not have the

authority to enforce that planning, which has not in fact kept pace in the past. (AR10101 [Berkeley General Plan 20 years old].)

IV. CONCLUSION

For the reasons stated above, the Court should reverse the trial court's Order and Judgment and remand the case to the Superior Court with directions to issue a peremptory writ of mandate requiring that UC void its approval of the LRDP Update and Housing Project #2 pursuant to CEQA section 21168.9(a)(1), and suspend further demolition, construction, or landscape alteration at People's Park in furtherance of Housing Project #2 until UC complies with CEQA pursuant to CEQA section 21168.9(a)(2).

DATED: October 6, 2022

LAW OFFICES OF THOMAS N. LIPPE, APC

By: Tom Lippe

Thomas N. Lippe, Attorney for Appellants

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 Appellants' Reply Brief is 13,175 words according to the word processing program (i.e., Corel Wordperfect) used to prepare the brief.

Dated: October 6, 2022

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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 October 6, 2022, I served the following as designated:

- Appellants' Reply Brief

MANNER OF SERVICE

[ ] 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.

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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. Executed on October 6, 2022, in the County of Contra Costa, California.

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