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A165451

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT
DIVISION FIVE

MAKE UC A GOOD NEIGHBOR 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 July 29, 2022, Order and August 2, 2022 Order and Judgment of the Alameda Superior Court; Hon. Frank Roesch, Dept. 17, Case No. RG21110142 (Consolidated for Purposes of Trial Only with Case Nos. RG21109910, RG21110157, 21CV000995 and 21CV001919)

RESPONDENTS' THE REGENTS OF THE UNIVERSITY OF CALIFORNIA ET AL. AND REAL PARTY IN INTEREST RESOURCES FOR COMMUNITY DEVELOPMENT'S JOINT OPPOSITION TO APPELLANTS' OPENING BRIEF

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS
for THE REGENTS OF THE UNIVERSITY OF CALIFORNIA et al.

Pursuant to California Rules of Court, rule 8.208(e)(3), I certify that Respondents THE REGENTS OF THE UNIVERSITY OF CALIFORNIA et al. know of no person or entity that must be listed under rule 8.208(e)(1) or (e)(2).

DATED: September 26, 2022 THE SOHAGI LAW GROUP, PLC

By: 

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS
for RESOURCES FOR COMMUNITY DEVELOPMENT

Pursuant to California Rules of Court, rule 8.208(e)(3), I certify that Real Party in Interest RESOURCES FOR COMMUNITY DEVELOPMENT know of no person or entity that must be listed under rule 8.208(e)(1) or (e)(2).

DATED: September 26, 2022

BUCHALTER, A PROFESSIONAL CORPORATION

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I. INTRODUCTION

UC Berkeley's ("UCB") 2021 Long Range Development Plan ("LRDP") establishes an overarching planning framework for the physical campus, comprising principles, goals, and strategies that address land use, landscape and open space, mobility, and infrastructure. (Administrative Record ["AR"] 36.) While UCB advocates for low enrollment growth, the LRDP sensibly plans for projected enrollment growth over the next 17 years given the increasing demand for a UCB education. (*Ibid.*; AR11.) Therefore, although the LRDP does not mandate or commit the campus to specific levels of student enrollment or overall growth, the LRDP Environmental Impact Report ("EIR") conservatively analyzed growth that could be required by the State of California to increase access to high-quality education. (AR11; AR24418.)

UCB acknowledges the severity of the regional housing crisis and its impacts upon the community. The Berkeley campus currently houses the lowest percentage of students in on-campus housing in the UC system, in a region with one of the tightest housing markets in the country. (AR7.) In response, UCB's Chancellor established a Housing Initiative to provide two years of housing for entering freshmen, one year of housing for entering transfer students, one year of housing for entering graduate students, and up to six years of housing for untenured faculty. (*Ibid.*; AR58.) To meet these goals, the LRDP plans for a significant amount of new housing – approximately 11,730 student beds and 549 employee housing units, more than doubling the campus's existing housing capacity. (AR7; AR208.) Safe, secure, accessible, and high-quality campus housing will support a vital and inclusive intellectual community, promote full engagement in campus life,

and enable UCB to continue to recruit and retain high quality students and faculty. (AR208.) The LRDP also furthers California's economic, social and cultural development, which depends upon broad access to an educational system that prepares all inhabitants for responsible citizenship and meaningful careers. (AR209.) These and other benefits prompted the City of Berkeley to laud the LRDP for addressing the campus's current and future challenges and laying "the foundation for a new era of city and campus cooperation and collaboration." (AR24344.)

Appellants Make UC A Good Neighbor and The People's Park Historic District Advocacy Group ("Appellants") would prefer UCB cap enrollment and push student housing away from the main campus, finding students too noisy and blaming UCB for the region's housing and homelessness ills. Not only are their allegations unsupported by fact or law, they invite this Court to improperly encroach on policy-making discretion entrusted to The Regents of the University of California. ("Regents").

Further, in opposing redevelopment of the People's Park site, Appellants thwart the very housing goals they purport to value. As explained below, UCB selected People's Park for immediate redevelopment to address the severely deteriorated conditions and pressing social needs *at that site*, with on-site, permanent supportive housing, as well as much-needed student housing, while also preserving over 60% of the site for public open space, including commemorative elements to honor the site's cultural significance. (See, e.g., AR25089-144.)

While Appellants may not like UCB's policy decisions, those decisions do not violate the California Environmental Quality Act ("CEQA").

II. STATEMENT OF FACTS

A. The 2021 LRDP Update

Each campus in the UC system periodically prepares an LRDP, which provides a high-level planning framework to guide land use and capital investment in line with its mission, priorities, strategic goals, and population projections. (AR9548-49.) Commencing in 2019, UCB engaged in a robust campuswide and community planning process that culminated with the 2021 LRDP which, upon its approval by the Regents in July 2021, superseded the prior LRDP adopted in 2005. (AR9549-50; AR4-25; AR26-123.) The purpose of the LRDP is to provide adequate planning capacity for potential population growth and physical infrastructure that may be needed to support future population levels on a particular UC campus and provide a strategic framework for decisions on development projects. (AR9548-49; AR9571.) Importantly, the LRDP does not determine future enrollment or population, or set a future population limit, nor does it commit UCB to any specific project. (AR9494-95; AR57-94.)

As Appellants point out, student enrollment at UCB has increased over the past two decades. (Appellants' Opening Brief ["AOB"] 14.) Contrary to Appellants' belief that the LRDP "drives" campus population growth (see AOB11, 28), the LRDP is a planning tool that responds to projected population growth. The UCB campus population increase is primarily the result of statewide population growth, and the corresponding increase in high school graduate rates and college-aged Californians. (AR57.) In November 2015, the Regents approved a UC systemwide enrollment plan to increase the number of undergraduate California students by 5,000 students for the 2016-17 academic year, and by 2,500

students in each of the 2017-18 and 2018-19 academic years. (*Ibid.*) The number of additional students admitted by each UC campus is determined by the number of applications received, their overall capacity, and other factors. (*Ibid.*)

Additionally, the California Master Plan for Higher Education guarantees access to UC campuses for the top 12.5 percent of the state's public high school graduates and qualified transfer students from California community colleges. (AR9548; AR14175.) The California Education Code also contains several provisions mandating enrollment access levels. (See AR10096-97.)

For its part, UCB has advocated for low growth, and the 2021 LRDP population projections anticipate lower rates of average annual growth. (AR57.) Specifically, the LRDP projects that on-campus student population could grow from a baseline of approximately 39,710 in the 2018-19 academic year to approximately 48,200 by 2036-2037, and that faculty and staff population could increase from approximately 15,420 to 19,000 in the same time frame. (*Ibid.*; AR9494-95; AR9571-72.) This reflects a one percent annual student enrollment growth rate. (AR14177.)

Though Appellants criticize UCB for its student housing shortcomings, the LRDP addresses head-on the critical need to increase student housing. (E.g., AR28, 37, 58, 70.) UCB, a 150-year-old urban campus, has the lowest percentage of student beds of any campus in the UC system, and the high cost of housing in the San Francisco Bay area limits the availability of non-UCB sponsored housing options near campus. (AR9549; AR38-52.) The Chancellor's Housing Initiative speaks directly to this issue, and the LRDP strives to "[i]mprove the existing housing stock

and construct new student beds and faculty housing units in support of the Chancellor's Housing Initiative" which will more than double existing housing capacity. (AR9558; AR9580; AR58; AR7.) In fact, if the housing projected to be built under the LRDP is successfully constructed by 2036-37, UCB will decrease its unaccommodated undergraduate student population by an estimated 3,940 students. (AR10113.)

B. Immediate Housing Projects

As part of its comprehensive effort to address the housing crisis, UCB proposed immediate redevelopment of two specific properties it currently owns: Anchor House (Housing Project #1) and People's Park (Housing Project #2), which collectively will create approximately 1,900 student beds. (AR9548-50; AR9575; AR10453.)

1. Anchor House (Housing Project #1)[1]

The Anchor House is a gift to the University from the Helen Diller Foundation—a philanthropic non-profit. (AR9581.) It will include a new mixed-use building with residential, campus life, academic life, and non-UCB operated uses and will provide 772 student beds in 244 apartments,

[1] Appellants no longer seek to void approval of the Anchor House. In October 2021, Appellants moved for a preliminary injunction to enjoin its construction. The trial court denied the motion. Neither Appellants nor any other petitioner sought appellate review of that denial. Construction of Anchor House commenced immediately thereafter and has been ongoing ever since. (Real Parties in Interest's Response to Petitioners' Request for an Immediate Stay (August 3, 2022); Declaration of Dan Emerson in Support of Real Parties in Interest's Response to Petitioners' Request for Immediate Stay (August 3, 2022).) On August 4, 2022, this Court granted in part Appellants' request for a temporary stay; the temporary stay excluded Anchor House. (Joint Appendix ["JA"] 337-338.)

focusing on housing transfer students. (AR9581; AR14077; AR14079-80; AR211.)

2. People's Park Project (Housing Project #2)

Appellants' argument that UCB could feasibly build the People's Park Project at any number of alternative locations (AOB34-35) fundamentally misapprehends the project and the factors UCB considered in exercising its discretion to choose People's Park for redevelopment now. The following factual background and the history of this specific site are critical to understanding why People's Park is the only feasible location for this project.

The site, which UCB first identified for development over 60 years ago when it adopted its first LRDP, is well known for protests and community action in the late 1960s and early 1970s. (AR9798-9800.) In the five decades since these events, long-term plans for development at the site were continually met with protests and never materialized. (*Ibid.*) By 2020, the site was predominantly occupied by transient and underhoused people in multiple encampments—from single sleeping bags and small tents to large tents and makeshift tarps/tents. (AR9800; AR9600; AR37590-91 [current photographs of the site].) Concurrently, UCB has experienced the urgent student housing crisis discussed above. The lack of campus housing capacity adversely affects the overall student experience, challenges the campus's ability to recruit faculty, graduate students, and postdoctoral scholars, and impacts the local residential housing market. (AR1206.)

Faced with the deteriorating conditions at People's Park and the urgent need for student housing, UCB proposed the People's Park Project to "create safer conditions for all, and improve the quality of life in the

surrounding neighborhood, as well as the health and well-being of visitors and members of the campus and city communities." (AR1206.) The People's Park Project will deliver a total of 148 apartment units and 1,113 beds for students and staff/residential faculty.[2] (AR1207.) It also includes a Supportive Housing Component, which will provide up to 125 beds of affordable and supportive housing. (AR1208.) The non-profit developer of this project component, Real Party in Interest Resources for Community Development, is targeting at least 50 percent of the units for the formerly homeless and possibly as high as 100 percent. (*Ibid*.) The ground floor of the Supportive Housing Component would include office space and meeting rooms for administering supportive services. (*Ibid*.) The project would preserve 67 percent of the site for continued use as public open space. (AR9608.) The project also includes "public open space with commemorative elements to honor the history and legacy of People's Park," which may include a pathway with commemorative plaques or temporary/rotating art exhibits, or other suitable active programs. (AR9601-02; see also AR9811 [MM CUL-1.1d]; AR12045 ["The university shall incorporate an interpretive display featuring historic images of People's Park and a description of its historical significance into a publicly accessible portion of any subsequent development on the site."].)

As UCB's Chancellor said before the Regents approved the People's Park Project, its "program and design are the product of nearly two years of engagement and dialogue with our campus community neighbors, civic

[2] The approved number of beds is slightly fewer than described in the EIR due to design evolution. (AR1268.)

leaders, advocates for the unhoused and neighborhood historians, to name just a few." (AR24601.) "[T]his unique project is not without its challenges .... however, ... the value that the project brings to the campus and our civic neighbors outweigh costs and will ultimately strengthen the Berkeley campus's academic and civic stature by clearly demonstrating our values and advancing this transformative design." (AR24602.) "This site has been a challenge to maintain and program effectively for over 50 years. This project is the first proposal since the 1960s that rises to meet the challenges that face our community today: Lack of housing, homelessness, and commemoration of our shared history." (AR24605.)

Many in the community, including City leaders, recognized and supported UCB's decision to revitalize and redevelop People's Park. As Berkeley's Mayor attested, "[T]he vision for the park over 50 years is no longer reflected in its current condition. But this proposal is an opportunity to make things right. Through years of discussion and outreach, this proposal has been meticulously crafted into a win-win-win situation." (AR1293.) The Vice Mayor affirmed:

> The time has come to fundamentally alter the conditions at People's Park - through a strategy that will increase student housing, revitalize the park, and partner with a non-profit housing developer with experience serving low income and formerly homeless community members. ... In 1969 People's Park was a powerful symbol of collective community action to address urgent issues of the time (free speech and the war in Vietnam). But after fifty years of experimentation, People's Park has not achieved the high aspirations of its founding and our society now faces new challenges. In 2021, solving housing insecurity among our students, rising rates of homelessness, and the dearth of quality housing for low-income households in Berkeley are the urgent priorities that animate the community-and keep campus and City leaders up at

> night. Housing Project #2 is the first proposal for the People's Park site to address the shared housing crisis the City and University face and it offers multiple significant benefits. (AR1281-82.)

In short, 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.

C. Environmental Review

The Draft EIR ("DEIR") UCB prepared for the LRDP and Housing Projects #1 and #2 includes a "programmatic" analysis of the LRDP and a project-specific analysis of the two housing projects. (AR9487-88.)

UCB undertook a robust community and public engagement process, including a combination of in-person and online outreach. The CEQA review process commenced on April 7, 2020, with issuance of a Notice of Preparation for a 39-day review period and public scoping meeting on April 27, 2020. (AR9488; AR10448-62.) On March 8, 2021, UCB published the DEIR for a 45-day public review and comment period ending on April 21, 2021. (AR9488.) UCB held a public hearing on March 29, 2021, to receive input from agencies and the public. (AR159.)

In-person outreach included meetings with stakeholder groups and project governance groups. (AR11.) The campus established an LRDP Community Advisory Group and held public town halls, briefings to City staff and officials, and informal drop-in sessions. (*Ibid.*) UCB also provided an online survey, available to the public from April through October 2019, and an online open house, available from May through August 2020, to share information and solicit feedback about the initiative. (*Ibid.*)

UCB received a total of 146 comment letters, including four from governmental agencies, 12 from private organizations, and 112 from individuals, as well as 18 comments read at the March 29, 2021 public hearing. (AR159.) The Final EIR ("FEIR") was completed and published on July 7, 2021. (*Ibid*.)

The EIR found that the LRDP would have a less than or no significant impacts on the environment in regard to Energy, Hazards and Hazardous Materials, Hydrology and Water Quality, Land Use and Planning, Parks and Recreation, Public Services, and Utilities and Service Systems; a less than significant impact with mitigation measures incorporated in regard to Aesthetics, Biological Resources, Geology and Soils, Greenhouse Gas Emissions, Population and Housing, and Tribal Cultural Resources; and significant and unavoidable impacts with mitigation related to Air Quality, Cultural Resources, Noise, Transportation, and Wildfire. (AR24; AR9499-9500.)

The EIR found that Housing Project #2 would have a less than or no significant impacts on the environment in regard to Energy, Geology and Soils, Greenhouse Gas Emissions, Hazards and Hazardous Materials, Hydrology and Water Quality, Land Use and Planning, Population and Housing, Public Services, Parks and Recreation, Utilities and Service Systems, and Wildfire; a less-than-significant impact with mitigation measures incorporated in regard to Air Quality, Biological Resources, and Tribal Cultural Resources; and significant and unavoidable impacts with mitigation related to Cultural Resources, Noise, and Transportation. (AR1224; AR9499-9500.)

D. Project Approval

On July 22, 2021, the Regents certified the LRDP EIR and approved the LRDP and Anchor House. (AR4-155; AR211-234.) In connection with these approvals, the Regents adopted CEQA Findings and a Statement of Overriding Considerations for both the LRDP (AR156-210) and the Anchor House (AR235-263).

Two months later, on September 29, 2021, the Regents approved the People's Park Project in reliance on the certified EIR. (AR1204-1239.) The Regents adopted additional CEQA Findings and a Statement of Overriding Consideration for the People's Park Project. (AR1240-72.)

E. Procedural History

The Regents incorporate by reference the procedural history set forth in Appellants' Opening Brief. (AOB15-17.) The Regents appreciate and agree with the Court's observation that it is to all parties' benefit for the pending appeal to be resolved expeditiously. (JA338.)

III. STANDARD OF REVIEW

"An appellate court's review of the administrative record for legal error and substantial evidence in a CEQA case … is the same as the trial court's: The appellate court reviews the agency's action, not the trial court's decision; in that sense appellate judicial review under CEQA is de novo. [Citations.] [The Court] therefore resolve[s] the substantive CEQA issues on which [it] granted review by independently determining whether the administrative record demonstrates any legal error by the [agency] and whether it contains substantial evidence to support the [agency's] factual determinations." (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 427.) "'[A]n agency may

abuse its discretion under CEQA either by failing to proceed in the manner CEQA provides or by reaching factual conclusions unsupported by substantial evidence.'" (*Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 935 ("*Banning II*").)

"'Judicial review of these two types of error differs significantly: While [the Court] determine[s] de novo whether the agency has employed the correct procedures, "scrupulously enforc[ing] all legislatively mandated CEQA requirements" [citation], [the Court] accord[s] greater deference to the agency's substantive factual conclusions. In reviewing for substantial evidence, the reviewing court "may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable," for, on factual questions, our task "is not to weigh conflicting evidence and determine who has the better argument."'" (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 512 ("*Friant Ranch*).) Regarding claims that an EIR lacks sufficient detail, "[t]he ultimate inquiry, as case law and the CEQA guidelines make clear, is whether the EIR includes enough detail 'to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.'" (*Id.* at p. 516.) "This inquiry is generally a mixed question of law and fact subject to de novo review, but to the extent factual questions predominate, a substantial evidence review applies." (*Save the Hill Group v. City of Livermore* (2022) 76 Cal.App.5th 1092, 1104 ("*Save the Hill*"), citing *ibid*.).

"[A]n EIR is presumed adequate (Pub. Resources Code, § 21167.3),[3] and the plaintiff in a CEQA action has the burden of proving otherwise." (*South of Market Community Action Network v. City and County of San Francisco* (2019) 33 Cal.App.5th 321, 329 ("*SoMa*"), quoting *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 275.) To do so, a petitioner must "lay out the evidence favorable to the other side and show why it is lacking. Failure to do so is fatal." (*Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1266.)

IV. ARGUMENT

A. The Regents' Consideration of Appellants' Proposed Lower Enrollment Alternative Complied with CEQA

Appellants argue the LRDP EIR failed to analyze what they characterize as a "lower enrollment increase alternative." (AOB23-33.) To do so, they rely on an irrelevant discussion in the FEIR of 2007-2019 population impacts in the now-obsolete 2005 LRDP EIR. (AOB23, citing AR14194-95.) Appellants incorrectly assert that the "purpose of the LRDP Update is to accommodate increased population" and "the LRDP Update's significant impacts are caused directly or indirectly by that population increase." (*Ibid*.) In fact, as the Draft EIR explains, "the LRDP does not determine future enrollment or population or set a future population limit for the UC Berkeley campus, but guides land development and physical infrastructure to support enrollment projections and activities coordinated by the [University of California Office of the President ('UCOP')]."

[3] Further statutory references are to the Public Resources Code unless otherwise indicated.

(AR9571.) Because the LRDP does not determine future UCB enrollment or population, nor set a future population limit, 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 LRDP's purpose of developing a plan to support enrollment projections, should they materialize. The trial court was right to reject this argument. (JA317-319.) As demonstrated below, it has no merit.

1. The Rule of Reason, and Substantial Evidence, Demonstrate a Reduced Enrollment Alternative is Not Feasible

"There is no ironclad rule governing the nature or scope of the alternatives to be discussed [in an EIR] other than the rule of reason." (CEQA Guidelines, § 15126.6, subd. (a), (f).)[4] "The 'rule of reason' requires an EIR 'to set forth only those alternatives necessary to permit a reasoned choice.'" (*Tiburon Open Space Committee v. County of Marin* (2022) 78 Cal.App.5th 700, 741 ("*Tiburon*"), citing Guidelines, § 15126.6, subd. (f).) "While it is up to the EIR preparer to identify alternatives as potentially feasible, the decisionmaking body 'may or may not reject those alternatives as being infeasible' when it comes to project approval. … Like mitigation measures, potentially feasible alternatives 'are suggestions which may or may not be adopted by the decisionmakers.'" (*California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 999 ("*CNPS*"), citations omitted; see Guidelines, § 15091, subd. (a)(3).) Courts

[4] The CEQA Guidelines are found at Cal. Code Regs., tit. 14, § 15000 et seq. They are cited here as "Guidelines, § _____."

"will uphold an agency's choice of alternatives unless they 'are manifestly unreasonable and … do not contribute to a reasonable range of alternatives.'" (*Tiburon*, *supra*, 78 Cal.App.5th at p. 741, citing *Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1265.)

Appellants suggest "de novo" review applies to their argument that the EIR's alternatives analysis contains "errors of law." (AOB22.) But courts have long held substantial evidence is the proper standard of review for alternatives. (See, e.g., *CNPS, supra,* 177 Cal.App.4th 957 at p. 994 ("*CNPS*") [substantial evidence supported decision to exclude off-site alternatives]; *Jones v. Regents of University of California* (2010) 183 Cal.App.4th 818, 829 ("*Jones*") [substantial evidence supported determination alternative would not meet project objectives].) Here, Appellants' arguments raise factual and policy issues reviewed under the substantial evidence standard and, regardless, 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. (*Save the Hill*, *supra*, 76 Cal.App.5th at p. 1109, citing *SoMa*, *supra*, 33 Cal.App.5th at p. 331.)

"[T]he duty of identifying and evaluating potentially feasible project alternatives lies with the proponent and the lead agency, not the public" or project critics. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568 ("*Goleta I*"); see *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376, 406-07 ("*Laurel Heights I*").) The EIR must "describe a range of reasonable alternatives to the project, or to the location of the project, which would

feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR … . must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation." (Guidelines, § 15126.6, subd. (a).) Critically, an EIR "need not consider every conceivable alternative to a project" and "is not required to consider alternatives which are infeasible." (*Ibid*.)

Relying heavily on *Watsonville Pilots Association v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1090 ("*Watsonville*"), Appellants argue the Regents improperly rejected a lower enrollment alternative solely because it would be inconsistent with one of the LRDP's project objectives. (AOB26-31.) *Watsonville* makes clear an EIR may not omit consideration of a reduced development alternative simply because such an alternative would not fully satisfy each and every one of the project objectives. (*Watsonville, supra,* 183 Cal.App.4th at p. 1090.) But in *Watsonville,* the record provided "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." (*Id.*, at p. 1090.) Here by contrast, as set forth below, the EIR and the Regents explained their justification numerous times.

First, the Regents, as lead agency, properly exercised their discretion to formulate project objectives for the LRDP (AR9551-52) and, based on these objectives, selected a reasonable range of four project alternatives that could feasibly attain most of the basic project objectives while avoiding or

substantially lessening the LRDP's significant effects. (AR9495-96; AR10429-32.) The selected alternatives include the "No Project Alternative," which would continue implementation of the 2020 LRDP and would not implement Anchor House or People's Park; a "Reduced Development Program," where UC would implement an LRDP with a 25% reduction in undergraduate beds and academic life square footage and a reduction of beds at Housing Projects #1 and #2; a "Reduced Vehicles Miles Traveled" alternative, which would incorporate additional project features to reduce vehicle miles travelled; and an "Increased Faculty and Staff Housing" alternative, which would add an additional 1,000 beds for faculty and staff housing in the Hill Campus East and the Clark Kerr Campus. (AR9495-96; AR10358-59.)

The DEIR also considered four other alternatives it determined were infeasible and, therefore, did not carry forward for detailed analysis. (AR10355-57; see Guidelines, § 15126.6, subd. (f) ["EIR need examine in detail only [alternatives] the lead agency determines could feasibly attain most of the basic objectives of the project."], emphasis added.) Among these was a "Reduced Graduate Program and Research Alternative" that would reduce or cap graduate student enrollment, over which UCB has more control than its undergraduate program. (AR10355-56; AR9548.) The DEIR determined this potential alternative would not be feasible, however, because reducing or potentially eliminating UCB's vital graduate and professional schools would conflict sharply with the LRDP's objective of maintaining, supporting, and enhancing UCB's status as an internationally renowned public research-intensive institution and center for scientific and academic advancement. (AR10355-56.) The Regents agreed. (AR196

[Findings]; see Guidelines, §15091, subd. (a)(3); *Sequoyah Hills Homeowners Ass'n v. City of Oakland* (1993) 23 Cal.App.4th 704, 715 fn3 [if decision-maker correctly determines alternative is infeasible, EIR will not be found inadequate for failing to include detailed analysis of that alternative].)

In addition, the EIR considered Appellants' proposed "Reduced or Capped Enrollment Alternative" raised in a comment to the DEIR. (AR14218.) The FEIR explains the numerous reasons this alternative is not feasible within a "Master Response" on alternatives. (AR14209-21.) Chief among these is the fact the LRDP does not determine future UCB enrollment or population, or set a future population limit.[5] (AR14218; see AR14174-78 [Master Response on Population Projections].) Instead, UC enrollment planning is done on a long-range basis, which comprehensively assesses enrollment-related issues such as workforce needs, academic programs, and the ability of UC facilities to meet future needs. (AR10098.) The last Long Range Enrollment Plan was prepared in 2008 and outlined plans for a 13-year period. (*Ibid.*) The UCOP is currently developing a new plan, which will examine the physical, academic, and financial capacity to increase enrollment of undergraduate California residents and graduate population at systemwide and individual university levels. (*Ibid.*) Moreover, as explained above, the DEIR had already determined it was infeasible to reduce graduate student enrollment. (AR10355-56.) The FEIR

[5] Notably, the Reduced Development Program the EIR did analyze, which would reduce the LRDP's physical footprint, would not reduce enrollment, because the LRDP has no bearing on enrollment. (AR10358-59.)

explained "reducing nonresident undergraduates (currently capped at 24.4 percent) would also conflict with UC Berkeley's objective of maintaining, supporting, and enhancing its status as an internationally renowned center for scientific and academic advancement by providing opportunities for highly qualified nonresident students, some of whom may advance into graduate programs and faculty positions." (AR14218.)

These explanations in the EIR provided adequate information to enable the Regents to make an informed decision that a lower enrollment alternative is infeasible. (See *San Franciscans for Livable Neighborhoods v. City and County of San Francisco* (2018) 26 Cal.App.5th 596, 635 [distinguishing *Watsonville* and *Habitat & Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1305, where the EIR "failed to discuss *any* feasible alternative," from a scenario like this one where the EIR contains information and analysis on numerous feasible and infeasible alternatives].) The Regents' Finding that a reduced enrollment alternative "would not meet a core project objective" (AR203) is based on substantial evidence.

2. Evaluating Project Objectives is a Policy Decision Entrusted to the Regents

Appellants argue the Regents erred in rejecting a lower enrollment alternative because, unlike in *In re Bay-Delta etc.* (2008) 43 Cal.4th 1143, they believe the record here does not demonstrate that maintaining, supporting, and enhancing UCB's status as an internationally renowned public research-intensive institution and center for scientific and academic advancement is the "underlying fundamental purpose" of the LRDP. (AOB29-30.) Instead, Appellants suggest construction of housing is the

underlying fundamental purpose. (AOB30.) In doing so, 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. In Appellants' view, unless the Regents make an express finding that a particular objective is the underlying fundamental objective, they may not consider an alternative's inability to meet that objective as a reason to reject it. But that is not the law. Feasibility involves a balancing of various "economic, environmental, legal, social, and technological factors." (Guidelines, § 15364; § 21083.)

Underlying the Regents' decision-making in this case is their recognition of the fact that UCB is a world-renowned public research university that, in the 2018-19 academic year, offered over 350 degree programs for nearly 40,000 students, supported by approximately 15,400 faculty and staff. (AR5.) The Regents also recognized that as an urban campus with limited land resources, the Berkeley campus desires to be a low-growth campus to ensure that it can provide adequate facilities to support its long-term academic excellence. (AR5-6.) With respect to environmental factors, the Regents acknowledged the campus's compliance with the UC's Sustainable Practices Policy, noting that "UC Berkeley has lower total [greenhouse gas] emissions now than in 2005, despite nearly one million [gross square feet] of net new space and nearly 8,000 net new students." (AR10.) Addressing community concerns about population growth, the Regents explained, "LRDP population projections are for planning purposes, to establish the LRDP development program, and do not mandate or commit the campus to specific levels of student enrollment or overall growth. In general, enrollment growth is driven by a directive to

absorb a reasonable proportion of the increasing enrollment in the UC system as a whole, as mandated by the State of California. Demand for a UC Berkeley education continues to increase. While the Berkeley campus has advocated for low growth, as a conservative approach for analyzing potential environmental impacts, the 2021 LRDP proactively plans for growth that could be required by the State of California in order to increase access to high-quality education. Low or moderate growth would allow the campus to balance growth with physical and financial resource constraints." (AR11-12.)

Moreover, the Regents, and the EIR, recognized "[t]he overall UC Berkeley population growth (which includes graduate students, faculty, and staff in addition to students) supports UC Berkeley's educational mission and the management and maintenance of UC Berkeley resources and infrastructure." (AR10103) And the LRDP sets the planning framework "for a level of enrollment necessary to achieve the UC's educational mission." (AR10118.) Thus, the enrollment projections identified in the LRDP, which reflect a reasonable proportion of the increasing enrollment in the UC system as a whole and the demand for a Berkeley education in particular, are essential to achieving UCB's educational mission.

These policy considerations and others (see AR4-25) directly informed the Regents ultimate finding that a reduced enrollment alternative is not feasible. (AR196; AR14218.) They also informed the Regents' conclusion that the benefits of the LRDP, including advancement of "California's economic, social and cultural development, which depends upon broad access to an educational system that prepares all of the State of

California's inhabitants for responsible citizenship and meaningful careers," outweigh its environmental impacts. (AR209.)

In advocating for a reduced or capped enrollment alternative, Appellants invite this Court to find fault with the Regents' policy determination that it would be neither feasible nor desirable, considering all relevant factors, to stifle UCB's educational mission as a world class public university and prohibit it from enrolling a reasonable proportion of the increasing student population of the UC system as a whole. (AR10103.) This Court should decline the invitation. No legitimate purpose would be served under CEQA (and Appellants have suggested none) for further consideration of a reduced enrollment alternative even more at odds with the LRDP's objectives. "The purpose of CEQA is not to generate paper," and the reviewing court should not "substitute [its] judgment" for the decision-making body. (*Citizens for a Green San Mateo v. San Mateo County Community College Dist.* (2014) 226 Cal.App.4th 1572, 1586-87.) Feasibility "under CEQA encompasses 'desirability' to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, and technological factors." (*City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 401, 417.) And project opponents' disagreement with a lead agency's policy determinations does not demonstrate a lack of evidentiary support for the agency's conclusions. (*CNPS, supra,* 177 Cal.App.4th at p. 1003.) Further, the "rules regulating the protection of the environment must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development and advancement." (*Goleta I*, *supra*, 52 Cal.3d at p. 576; see also *Tiburon*, *supra*, 78 Cal.App.5th at p. 781-782.)

Put simply, CEQA does not require UC Berkeley to evaluate an alternative of ceasing to be UC Berkeley.

3. Appellants Misrepresent the Regents' Ability to Limit Resident Undergraduate Enrollment

Appellants' argument that UC has authority to limit resident undergraduate enrollment (AOB31-33) is of no moment, because, even if it were true, the Regents had no obligation under CEQA to limit enrollment in connection with approval of the LRDP Update, as explained directly above.

Moreover, Appellants overstate and mischaracterize the Regents' authority to limit resident undergraduate enrollment. The EIR does not "admit" or "concede" any of the discretion over enrollment Appellants imagine. In fact, the EIR explains "the UC conducts long-range enrollment planning to comprehensively assess enrollment-related issues such as workforce needs, academic programs, and the ability of UC facilities to meet future needs. As discussed above, the last Long Range Enrollment Plan was prepared in 2008 and outlined plans for a 13-year period. UCOP is currently developing a new plan, which will examine the physical, academic, and financial capacity to increase enrollment of undergraduate California residents and graduate population at systemwide and individual university levels." (AR10098.)

The settlement agreements at other UC campuses also do not demonstrate the Regents could have, or should have, capped enrollment at UCB. The agreement with UC Davis does not limit enrollment; rather, it requires the campus to provide on-campus housing for 100 percent of new students over the baseline population identified in its 2018 LRDP EIR.

(AR1383-84.) Similarly, the agreements involving UC Santa Cruz and UC Santa Barbara, in 2005 and 2010, respectively, tied enrollment growth to providing on-campus housing. (AR1306-11; AR1348-51.) To the extent any of these agreements limit student enrollment growth, the limit would be commensurate with the growth projections analyzed in each campus's LRDP EIR. Of note, these agreements significantly predate the substantial enrollment growth experienced system-wide in 2016, which resulted from an agreement with the state Legislature that tied UC's budget to increased undergraduate enrollment. (AR14176.) Such agreements would simply not work at UCB, a flagship UC campus, in an urban setting, that receives a very high number of freshmen and transfer applications and does not have space for on-campus housing. (AR14533-34.)

The circumstances here are thus distinguishable from Appellants' cited cases. In *City of Marina*, the Fort Ord Reuse Authority ("FORA") challenged an EIR prepared by the Board of Trustees of the California State University ("Trustees"). (*City of Marina v. Board of Trustees of California State University* (2006) 39 Cal.4th 341.) The Trustees disclaimed any obligation to mitigate and share costs of infrastructure improvements proposed by FORA on the grounds that the California Constitution prohibited it from making voluntary mitigation payments. (*Id.* at p. 356.) After examining the plain language of the California Constitution, legal precedent, and legislative enactments, the Court concluded it "may easily reject the Trustees' argument that they may not lawfully contribute to FORA as a way of discharging their obligation under CEQA to mitigate the environmental effects of their project." (*Id.* at p. 359.) Likewise, in *City of San Diego*, the Supreme Court rejected the Trustees' argument that a state

agency may contribute funds for off-site environmental mitigation only through earmarked appropriations, to the exclusion of other possible sources of funding. (*City of San Diego v. Board of Trustees of California State University* (2015) 61 Cal.4th 945, 950.) By contrast, capping undergraduate enrollment here would substantially conflict with state directives and the fundamental mission of the University. (AR9548; AR14173-74; AR14178; AR30885-86.)

Additionally, reducing the already low projected annual undergraduate growth anticipated at the UCB campus under the LRDP (AR14177 [one percent annual enrollment growth]) would have ripple effects across the entire UC system, disturbing the Legislative directive for each UC campus to absorb a reasonable proportion of increasing undergraduate enrollment. (AR10096-97; AR14174-77.) This is because UC must offer a seat at one of its nine undergraduate campuses to every California resident undergraduate applicant in the top 12.5 percent of the state's public high school graduates and qualified transfer students from California community colleges. (AR9548-49; AR30885; AR53783.) This growth is spread across all campuses in the system, including UCB. (AR14176.) Thus, pushing enrollment down at one campus may push it up at others, with unintended consequences.

In sum, Appellants' desire for UCB to house its entire population before growing is not a CEQA issue. The Regents have made a policy decision to allow modest growth in campus population over the next 15 years while housing a much more substantial portion of the campus population. That decision is entitled to deference.

B. The Regents' Consideration of Alternatives for the People's Park Project Complied with CEQA

Appellants contend the EIR's alternative analysis is deficient because it did not study off-site alternatives for the People's Park Project. (AOB33-42.) Like the trial court, this Court should reject this contention. (See JA319-320.)

Appellants erroneously suggest CEQA requires evaluation of alternative locations in all instances where "the proponent can reasonably acquire, control or otherwise have access to the alternative site (or the site is already owned by the proponent)," calling this the "correct standard." (AOB37.) This selective citation of the Guidelines omits the key limitations discussed in Section IV.A.1, *supra*, that an EIR is required "to set forth only those alternatives necessary to permit a reasoned choice" and "need examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the project." (Guidelines, § 15126.6, subd. (f), emphasis added.)

Moreover, whether an EIR must consider alternative sites *at all* depends upon the particular facts of the case. (*Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167, 1179.) Importantly, "there is no rule requiring an EIR to explore offsite project alternatives in every case.... 'an agency may evaluate on-site alternatives, off-site alternatives, or both.'" (*CNPS*, *supra*, 177 Cal.App.4th at p. 993, citing *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 491 ("*Mira Mar*").) "The Guidelines thus do not require analysis of off-site alternatives in every case. Nor does any statutory provision in CEQA 'expressly require a discussion of alternative project locations.'" (*Id.*

citing *Mira Mar*, *supra*, 119 Cal.App.4th at p. 491 citing §§ 21001, subd. (g), 21002.1, subd. (a), 21061.) All that is required if the lead agency concludes no feasible alternative locations exist, is a disclosure of the reasons for this conclusion in the EIR. (Guidelines, § 15126.6, subd. (f)(2)(B).)

Here, the EIR did explore "Housing Projects #1 and #2 Alternate Locations" to potentially avoid significant and unavoidable cultural resource impacts, and found them infeasible. (AR10356-57.) The EIR explained, "Development of Housing Projects #1 and #2 at one or more alternative sites would be constrained by site access and parcel size, as many of the eligible sites are smaller than the proposed development sites. Therefore, the development programs would need to either be reduced, or the housing projects would require multiple sites, further diminishing the total number of beds described in the proposed LRDP development program." (AR10357.) It also explained that "[w]hile a potential alternate site alternative would reduce the significant historic resource impacts at both sites, they would also have the potential to introduce new historic resource impacts at many of the sites in the City Environs Properties and the Clark Kerr Campus, as both contain historic resources or are adjacent to such resources." (*Ibid.*; see also AR77-78.) For these, and other related factors, alternative locations for Housing Projects #1 and #2 were not analyzed further in the EIR.

In response to comments proposing alternate locations for Housing Projects #1 and #2, the FEIR repeated the sound reasoning of the DEIR and added that "accommodating the same number of beds on multiple sites would cause greater potential for ground disturbance and thus

consequently, greater construction impacts." (AR14215; AR15180.) The Regents adopted the EIR's conclusions. (AR1265.)

Critically, however, despite Appellants' contention, CEQA does not compel the Regents to analyze a specific alternative location for Housing Project #2 and, based on the facts of this case, the Regents appropriately elected not to do so. Appellants misinterpret CEQA as imposing a duty on UCB to 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. But as explained in Section II.B.2, *supra*, UCB proposed People's Park as the site for Housing Project #2 because it is the only location that can achieve UCB's specific goals of immediately alleviating the student housing crisis and redeveloping and revitalizing this particular site. (E.g., AR25089-25113.) Nor was the Regents' decision, as Appellants argue, simply "based on the preferences of a project proponent" or due to the fact that an alternative location "might not accomplish all project objectives." (See AOB34, 36.) As UCB's Chancellor explained, this "unique project" is "the first proposal since the 1960s that rises to meet the challenges that face our community today: Lack of housing, homelessness, and commemoration of our shared history." (AR24602; AR24605.) Local leaders agreed. (AR1279-80; AR1281-82; AR1286; AR1293.)

"[I]nfeasible alternatives that do not meet project objectives need not be studied even when such alternatives might be imagined to be environmentally superior." (*Saltonstall v. City of Sacramento* (2015) 234 Cal.App.4th 549, 576 [agency need not study fruit stand as an alternative to

a shopping center]; see also *Save Our Residential Environment v. City of West Hollywood* (1992) 9 Cal.App.4th 1745, 1751-54 [upholding determination that no feasible alternative sites were available in light of project objective to provide senior housing within specific, urbanized area].) The test is substantial evidence. Moreover, alternatives that do not fully satisfy project objectives may be found infeasible, so long as that finding is supported by substantial evidence. (*Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 947-949 [upholding infeasibility findings for alternative that would achieve project objectives to a lesser degree than the proposed project]; *San Diego Citizenry Group v. County of San Diego* (2013) 219 Cal.App.4th 1, 18.)

Abandoning People's Park as a potential area of redevelopment would not meet UCB's objective to "[r]edevelop and revitalize a UC Berkeley property to provide safe, secure, high quality, and high density student housing to help meet the student housing needs of UC Berkeley in support of the Chancellor's Housing Initiative."[6] (AR9552.) Appellants also misconstrue the record in suggesting UCB ignored specific "alternative" sites like Channing Ellsworth and others listed at AOB34-35. Table 3-2 of the DEIR identifies these sites as "potential areas of new development and redevelopment." (AR9575.) This does not mean, however, these sites are interchangeable or could be developed in place of the People's Park site. In fact, UCB prepared a detailed housing study to

[6] Though the objective refers to "a" UCB property, the record clearly demonstrates People's Park is the intended property for redevelopment and revitalization. (See Sec. II.B.2, *supra*; see also AR25089-144.)

consider ways to implement the LRDP's ambitious housing goals. Appellants selectively cite to only an early presentation from this study that simply identifies potential sites. (AR28137-185 [04/07/2020].) Subsequent meetings and presentations reveal thoughtful consideration of how these and other sites, including People's Park, could be implemented in phases to achieve the LRDP's objectives. (AR28294-304 [07/14/2020]; AR28306-336 [9/15/2020].) This analysis required answering strategic questions such as: "How can flexibility be incorporated into the housing strategy to accommodate unknown future conditions? What are the anticipated project delivery methods, and how will funding constraints impact implementation of housing over the next ten years? What is the vision for the residential experience, beyond the provision of more beds? How can it be linked to other proposed building, landscape, and mobility projects?" (AR28305.) Because "People's Park Housing" could be constructed without relocating other uses, the study recommended implementing it in the initial phase.[7] (AR28325-26.) The Channing-Ellsworth site is also recommended in the near-term. (AR28327.) However, before construction could occur at this site, numerous facilities would have to be relocated, including research units, existing childcare facilities, and tennis courts. (*Ibid*.) Only then, could that project and others come to fruition. (AR28328-29.) This illustrates why the sites listed in Table 3-2 of the DEIR are described as "potential areas of new development and redevelopment" and not alternatives to People's Park or any other site. (AR9575.) To construct the

[7] These presentations also demonstrate the fallacy of Appellants' claim that People's Park was not part of the consultant's scope of analysis. (AOB41.)

facilities necessary to achieve its critical housing goals, UCB must optimize all sites at its disposal, and it must do so in a thoughtful, phased way that allows for flexibility and adaptation to changing conditions. (See AR9551; AR9575; AR71-72.) Indeed, utilization of all sites located close to Campus Park, including both Channing-Ellsworth *and* People's Park, is required to achieve the LRDP's goal to "[m]aintain the Campus Park as the central location for academic life, research, and student life uses . . . ." (AR9551.)

Jones, *supra*, 183 Cal.App.4th at pp. 828-829, is on point. Similar to Appellants here, petitioners in *Jones* claimed the range of alternatives in an LRDP EIR was inadequate because the EIR did not consider a "true off-site" alternative with all new development away from the Lab's hill site. The court of appeal rejected this claim and noted the project objectives called for expanding collaboration among scientists and accommodating multiple disciplines in research facilities. The court stated that an alternative with no development at the hill site would prevent realization of the project's primary objective, and would frustrate most of the other objectives as well. As the court noted, "if a partial off-site alternative would not meet the project objectives of creating a more campus-like setting and fostering a collaborative work environment, we fail to see how the EIR was deficient in failing to consider a complete off-site alternative. The range of alternatives was sufficient to fulfill CEQA's requirements." (*Id.* at 828.)

The EIR, and the record as a whole, adequately demonstrate that revitalization of People's Park is one of the primary objectives of Housing Project #2, and why alternate locations for the People's Park Project would be infeasible. (See *San Franciscans Upholding the Downtown Plan v. City & County of San Francisco* (2002) 102 Cal.App.4th 656, 689-690

["[N]owhere does [CEQA] mandate that the EIR *itself* also contain an analysis of the feasibility of the various project alternatives or mitigation measures that it identifies."].) People's Park is the only feasible location for Housing Project #2. (See AR9552-53; AR1206.)

C. No Prejudice

Claiming prejudice, Appellants argue UC's "premature rejection of potentially feasible alternatives from analysis denied the public the opportunity to see how the Board of Regents, not its consultants, would make infeasibility findings." (AOB44.) But as Appellants concede, the "feasibility of alternatives arises at two junctures in the EIR process" (AOB26-27), and an "EIR is not required to consider alternatives which are infeasible." (Guidelines, § 15126.6, subd. (a).) As one commentator has noted, "there is no point in studying alternatives that cannot be implemented or that will not succeed." (Kostka & Zischke, Practice Under the California Environmental Quality Act (CEB, 2d Ed. 2017 Update), § 15.9C, p. 15-15.)

Here, the EIR adequately explains the reasons a lower enrollment alternative and an alternate location for the People's Park Project are not potentially feasible, and the record demonstrates the Regents well-understood the relevant complex policy rationale for this conclusion. (See, e.g., AR4-25, AR1204-25.) Moreover, the Regents' Findings expressly incorporate by reference the EIR's conclusions on all alternatives. (AR160 ["In making these findings, the University ratifies, adopts, and incorporates by reference the Final EIR's analysis, determinations, and conclusions."]; AR1270.) Further, in consideration of the environmental impacts of the LRDP and the People's Park Project, the Regents exercised their discretion

to determine that numerous specific benefits outweighed such impacts. (AR208-201; AR1270-72.)

Under CEQA, "there is no presumption that error is prejudicial." (§ 21005, subd. (b).) In *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 460-465, despite the EIR's complete omission of analysis of air quality and traffic impacts on the existing environment, and despite the adverse effect of such omission on informed decision-making, the Supreme Court held the CEQA errors were insufficiently prejudicial to warrant setting aside that EIR. Here, too, Appellants have not met their burden to show prejudice.

D. The EIR's Analysis of Social Noise Impacts was Proper

Appellants argue the EIR refused to conduct a qualitative or quantitative assessment of baseline conditions or "possible party and noise-related violations," and that their comments and expert opinion present substantial evidence supporting a fair argument that student-generated noise may cause significant noise impacts because it will result in repeated, increased numbers of exceedances of noise standards adopted by the EIR as thresholds of significance. (AOB44-52.) As the trial court found (JA321), Appellants are incorrect.

1. Appellants Waived Any Attack on the LRDP Noise Impact Analysis

In support of their argument, Appellants present a letter their attorney submitted on September 25, 2021, in advance of the Regents' approval of the People's Park Project more than two months *after* the Regents certified the LRDP EIR, approved the LRDP, and filed an NOD for the LRDP ("Lippe Letter"). (AR1587-1743.) Attached to the Lippe

Letter are (1) a letter dated September 24, 2021, from Derek Watry ["Watry Letter"], and (2) a letter dated September 22, 2021, from Phillip Bokovoy, President of Save Berkeley's Neighborhoods ["Bokovoy Letter"]. (AR1592.) These letters pertain exclusively to Housing Project #2. (See AR1589 and AR1594.)

Thus, as a preliminary and critical matter, nothing in the Lippe, Watry, or Bokovoy letters can be relied upon to challenge the EIR's analysis of the LRDP. (See § 21177, subd. (a), (b) [alleged grounds for noncompliance with CEQA must have been presented either during the public comment period or before the close of the public hearing on the project].) Appellants' attack on the EIR's analysis of noise related to the LRDP must, therefore, be rejected. (See *Central Delta State Water Agency v. State Water Resources Control Bd.* (2004) 124 Cal.App.4th 245, 273 [arguments not presented during public comment period or prior to project approval are waived].)

2. There is No Substantial Evidence of Significant Social Noise Impacts

Appellants try to invoke the "fair argument" standard for the Court's review of the EIR's noise analysis. (AOB48.) That standard, however, applies to the question of whether an EIR is required, not to the adequacy of an EIR's content. (*Sierra Club v. California Dept. of Forestry & Fire Protection* (2007) 150 Cal.App.4th 370, 381 [distinguishing fair argument standard from usual substantial evidence standard].) Once an agency has decided to prepare an EIR, the substantial evidence standard applies. (See *Ocean Street Extension Neighborhood Association v. City of Santa Cruz* (2022) 73 Cal.App.5th 985, 1005.)

Moreover, even under the fair argument standard, Appellants bear the burden of identifying substantial evidence in the record that affirmatively shows the project may have a significant effect. (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1379 ("*Gentry*"); *Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1348-1349.) "Substantial evidence" means "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (Guidelines, § 15384, subd. (a).) "Substantial evidence" includes "*facts*, reasonable assumptions *predicated upon facts*, and expert opinion *supported by facts*." (Guidelines, § 15384, subd. (b), emphasis added.) "Substantial evidence" does *not* include "[a]rgument, speculation, unsubstantiated opinion or narrative [or] evidence which is clearly erroneous or inaccurate." (§ 21082.2, subd. (c); Guidelines, § 15384, subd. (a); *Porterville Citizens for Responsible Hillside Development v. City of Porterville* (2008) 157 Cal.App.4th 885, 900-901.) A lead agency may consider the credibility of testimony and "has discretion to determine whether evidence offered by the citizens claiming a fair argument exists meets CEQA's definition of 'substantial evidence.'" (*Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928.) Mere speculation or "unsubstantiated opinions, concerns, and suspicions" are not substantial evidence and cannot establish even a "fair argument" that a significant impact may occur. (*Citizen Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 756 ("*Thornley*"); *Leonoff, supra*, 222 Cal.App.3d at p. 1352.)

Under the foregoing standards, the lead agency (and the Court) must determine that proffered "evidence" is not only relevant, "but also that it is sufficiently reliable to have solid evidentiary value." (Kostka & Zischke, Practice Under the California Environmental Quality Act (CEB, 2d Ed. 2022 Update), § 6.42, pp. 6-47.) Testimony from persons who are not competent to render an opinion on a subject is not substantial evidence. (*Ibid.*; *Joshua Tree Downtown Business Alliance v. County of San Bernardino* (2016) 1 Cal.App.5th 677, 690-691 ("*Joshua Tree*").) Even purported expert opinion does not qualify as substantial evidence unless based on relevant facts, nor do opinions of alleged experts testifying outside their area of expertise. (*Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572, 583; *Lucas Valley Homeowners Assn. v. County of Marin* (1991) 233 Cal.App.3d 130, 156-157.)

Here, Appellants rely on Watry's opinion that vocal noise from parties and pedestrians will exceed residential exterior noise limits. (AOB46, citing AR1600-03.) This opinion, however, is based on a speculative assumption that "[a]lthough undergraduate women are capable of drinking alcohol to excess and yelling, I think it is reasonable to assert that the vast majority of loud and unruly drunk college students are male." (AR1601.) Watry may be an acoustical expert, but there is no evidence he is an expert on the drinking habits of male/female undergraduate students or qualified to opine on what percentage of new students "will party or make noise" compared to the existing student body." (AR1602.) Watry's opinion is also pure speculation. Newer students could just as well spend more time studying or socializing quietly on the internet compared to prior students. (See *Joshua Tree*, *supra*, 1 Cal.App.5th at p. 691 [purported

"common sense" conclusions without any factual basis are not substantial evidence].) Watry's unfounded assumptions about future students simply do not amount to substantial evidence. The same is true of the letters attached to Watry's letter and the Bokovoy Letter, which all address existing conditions. (See AR1606-19.) (See *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 734 [claimed noise impacts on trails that might be established in future held to be speculative]; *Thornley, supra,* 222 Cal.App.3d at p. 756 [speculation and generalizations about traffic, parking, economic effects, and earthquake safety did not constitute substantial evidence].)

Appellants' reference to a trial court's order on social noise impacts in an EIR prepared for an unrelated project in an unrelated lawsuit also is not substantial evidence of a significant student noise impact from incoming students. (AOB45.) Trial court decisions are not legal precedent, and in the case of this particular trial court decision, UCB has filed a pending appeal. (See Case No. A163810.) Nothing about this unrelated, unresolved case could present substantial evidence of noise impacts from Housing Project #2 (or the LRDP).

3. The EIR's Noise Analysis Complies with CEQA

The only noise impact at issue here is one that neither CEQA nor the CEQA Guidelines expressly contemplates: noise from people talking and socializing. Notably, there is no precedent in CEQA for finding noise from human socializing to be a "significant effect on the environment." (See Guidelines, § 15382.)

As already discussed, the post-EIR-certification comments Appellants submitted on the eve of approval the People's Park Project do

not constitute substantial evidence. (§ 21082.2, subd. (c); Guidelines, § 15384, subd. (a).) Nor is there any other evidence students living in the People's Park Project, or any other new students, will exceed any daytime or nighttime noise standard. Indeed, the EIR found that "[n]oise generated by residential ... uses is generally short and intermittent." (AR10067.)

The EIR consultant also considered comments on the DEIR requesting further study of noise impacts and explained it "would be speculative to assume that an addition of students would generate substantial late night noise impacts simply because they are students." (AR14545-46.) A lead agency may accept environmental conclusions reached by the experts who prepared the EIR even though others may disagree with the underlying data, analysis, or conclusions. (See *Laurel Heights I*, *supra*, 47 Cal.3d at p. 409.) Moreover, even Watry acknowledges UCB's residential code of conduct, which will apply to the People's Park Project, will keep noise levels low.[8] (AR1599.)

The FEIR also explained "the Advisory Council on Student-Neighbor Relations (SNAC) is dedicated to improving the quality of life in the neighborhoods adjacent to UC Berkeley properties. Initiatives such as Happy Neighbors and the CalGreeks Alcohol Taskforce ... engage and serve students and neighbors. Noise reduction initiatives focus on but are not limited to parties, sports, and rental spaces. ... Individuals are subject to the provisions of the Municipal Code and intermittent community complaints are handled on a case by case basis by enforcement officers."

[8] Watry's suggestion that such policies will push loud noise elsewhere is conjecture. (AR1599-1600.)

(AR14545-46.) Because the EIR did not identify a significant student noise impact, it was not required to identify these or any other measures as "mitigation," as Appellants imply. (AOB50; (Guidelines, § 15126.4, subd. (a)(3) ["Mitigation measures are not required for effects which are not found to be significant."].) Nor was the EIR required to analyze how an entirely speculative increase in "social noise" levels would contribute to any cumulative condition. "An EIR should not discuss impacts which do not result in part from the project evaluated in the EIR." (Guidelines, § 15130, subd. (a)(1).) "The lack of study is hardly evidence that there will be a significant impact." (*Gentry*, *supra*, 36 Cal.App.4th at p. 1379.)

In sum, CEQA does not compel analysis – at the project or cumulative level – of unsupported and speculative predictions about future student behavior that is not tied to any environmental impact. (See, e.g., *Saltonstall*, *supra*, 234 Cal.App.4th at p. 584 [unruly crowds at sports arena not an environmental effect].)

E. The EIR Does Not Piecemeal Analysis of the LRDP

Appellants argue the EIR's analysis of the LRDP improperly "piecemeals" CEQA review because it does not analyze impacts from potential development outside the LRDP "planning area" as part of the project. (AOB52–57.) Appellants fault the EIR for not analyzing potential future development outside the "Campus Park" area, at University Village in Albany ("UVA") and property in Emeryville, as part of the LRDP. As the trial court found, "no improper 'piecemealing' analysis occurred." (JA322.)

Piecemealing claims are generally legal, subject to de novo review based on the facts in the record. (*Banning Ranch Conservancy v. City of*

Newport Beach (2012) 211 Cal.App.4th 1209, 1224 ("*Banning I*").) A "project" includes "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (Guidelines, § 15378, subd. (a); *Banning I, supra,* 211 Cal.App.4th at p. 1220.) The failure to consider "the whole of the action" is a CEQA violation referred to as "piecemealing." (*Id*. at p. 1222; see also Guidelines, § 15378, subd. (a), (c).)

Improper "piecemealing" may occur "when the reviewed project legally compels or practically presumes completion of another." (*Banning I, supra,* 211 Cal.App.4th at p. 1223.) "[A]n EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects." (*Laurel Heights I, supra,* 47 Cal.3d at p. 396.) "Absent these two circumstances, the future expansion need not be considered in the EIR for the proposed project." (*Ibid*.)

A proposal that is related to a project, but has independent utility and is not necessary for the project to proceed, may be reviewed separately and not included as part of the project. (*Communities for a Better Env't v. City of Richmond* (2010) 184 Cal.App.4th 70, 99–100.) An EIR need not examine the impacts of facilities that are planned independently of the project and would not change the scope or nature of the project. (*Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1189–90.)

Projects may be found to be impermissibly piecemealed when one component necessitates the other. (See, e.g., *Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 272 [EIR for reclamation plan should have included mining operations that necessitated it]; *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1231 [home improvement center "cannot be completed and opened legally without the completion of [a] road realignment"].) In comparison, no piecemealing occurs when the two projects can be implemented independently. (*Sierra Club v. West Side Irrigation Dist.* (2005) 128 Cal.App.4th 690, 699 [two water rights assignments to city "could be implemented independently of each other"]; *Plan for Arcadia, Inc. v. City Council of Arcadia* (1974) 42 Cal.App.3d 712, 724 [shopping center EIR could exclude road work the city had "long before" decided would be needed due to new freeway].)

Appellants argue "the City [of Berkeley's] boundaries are irrelevant" in determining the study area. (AOB55.) But the EIR study area was determined by the location of the campus, not the City's boundaries:

> The EIR Study Area or "project site" is contiguous with the proposed LRDP Update Planning Area and includes the majority of UC Berkeley–owned properties. UC Berkeley–owned properties outside of the EIR Study Area . . . are outside of the scope of the proposed LRDP Update because they are sufficiently distant from the Campus Park and its environs and, therefore, they are not evaluated in this EIR. (AR9555.)

The Study Area is consistent with a goal of the LRDP Update to "[m]aintain the Campus Park as the central location for academic life, research, and student life uses . . . ." (AR9551.) The Planning/Study Area

accounts for approximately 85 percent of all UCB facilities and "[n]early all members of the campus population use the facilities located within the LRDP Planning Area for their primary university-related activities." (AR14174.) The LRDP's Study Area excluded off-campus properties as "sufficiently distant and different from the Campus Park and its environs to merit separate planning and environmental review," specifically, because they are only "satellite UC Berkeley campuses . . . ." (AR14173.)

Appellants argue the off-campus projects have no "independent utility" because the LRDP will increase graduate student enrollment, and housing at Emeryville and UVA is required to accommodate roughly 25 percent of UC Berkeley's guaranteed housing for these new graduate students. (AOB54–55.) According to Appellants, the off-campus projects are therefore "reasonably foreseeable" consequences of the LRDP. (AOB56.)

One problem with this argument is that "[t]he proposed LRDP Update does not determine future UC Berkeley enrollment or population, or set a future population limit for UC Berkeley . . . ." (AR9487.) As discussed in Section II.A, *supra*, the UCB campus population increase is primarily the result of statewide population growth, and the corresponding increase in high school graduate rates and college-aged Californians. (AR57.) Off-campus housing for graduate students, therefore, cannot be a *consequence* of the LRDP, because the LRDP does not establish graduate student enrollment levels.

Further, that the LRDP and the off-campus projects both house graduate students does not mean either project necessitates or compels the other. Indeed, projects may be related but properly considered in separate

EIRs so long as one project is not the result of another. (See *Paulek v. Department of Water Resources* (2014) 231 Cal.App.4th 35, 46 [separate EIRs for two projects both designed to address flooding risks was proper where neither project was required or compelled by the other].)

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. Appellants' citation to AR9633 is merely to the list of "Pending UC Berkeley Projects." (AOB53-56.) Their citation to a "Finance and Capital Strategies Committee" meeting (AR24394) is also unpersuasive, as it relates to an "Addendum to the 1998 University Village and Albany/Northwest Berkeley Properties Draft Master Plan [EIR]," a separate EIR for a Master Plan of off-campus projects. (AOB53.)

Appellants argue off-site developments can *never* have independent utility because "all of the development[s] are part of UCB's program to accomplish its educational missions." (AOB54.) There is no case law supporting this claim, which essentially contends that all projects on every college campus fail the independent utility test simply because they would all strive to accomplish the campus's "educational mission." That is an illogical result.

Additionally, neither of the two off-campus developments Appellants cite would escape CEQA review. While Appellants are correct that separate CEQA analyses are not, by themselves, conclusive for purposes of a piecemealing argument, both projects were nevertheless subject to separate CEQA analyses, review, and approval (AR9633 [Emeryville project already underway]; AR24394–97), and both were

analyzed as cumulative projects in the LRDP EIR (AR9633). The cumulative impact of the LRDP and these projects was analyzed in each of the individual resource sections of the EIR. (AR9635–36.) There is no piecemealing violation.

F. The EIR Adequately Analyzes Population and Housing Impacts on the Environment

The crux of Appellants' population and housing argument is that the analysis of impact POP-2 is insufficient because it "ignores" indirect displacement by means of increasing average rent costs, fails to assess "physical" and "health" impacts of such displacement by means of overcrowding or homelessness, and relies on a mitigation measure that "does not reduce these unanalyzed effects." (AOB58–67.) In other words, Appellants ask the Court to require analysis of the impacts of gentrification, which is defined as "an associated increase in housing prices, and displacement of existing residents who can no longer afford to live in the neighborhood." (AR14188.) CEQA does not require analysis of these economic and social impacts. (Guidelines, § 15131, subd. (a).) As discussed below, the EIR sufficiently analyzes the potential physical impacts on the *environment* from the LRDP, including displacement of existing tenants, and also studied its growth-inducing effects. As the trial court concluded, CEQA does not require any further analysis of the social or economic impacts Appellants claim. (JA323-325.)

1. The EIR Analyzed Direct and Indirect Housing Displacement as Well As Growth-Inducing Impacts

CEQA requires an EIR to discuss "the significant effects of the proposed project on the environment," including "changes induced in

population distribution, population concentration, the human use of land (including commercial and residential development), health and safety problems caused by the physical changes, and other aspects of the resource base....” (Guidelines, § 15126.2, subd. (a).) It also requires that an EIR “[d]iscuss the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment.” (Guidelines, § 15126.2, subd. (e).)

In conducting this analysis, the courts have explained, “[a]n EIR is not ‘required to make a detailed analysis of the impacts of a project on housing and growth. Nothing in the Guidelines, or in the cases, requires more than a general analysis of projected growth. The detail required in any particular case necessarily depends on a multitude of factors, including, but not limited to, the nature of the project, the directness or indirectness of the contemplated impact and the ability to forecast the actual effects the project will have on the physical environment.’“ (*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*”).)

“CEQA is not intended as a population control measure.” (*Center for Biological Diversity v. Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204, 220.) Moreover, the CEQA Guidelines instruct: “[i]t must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment.” (Guidelines, § 15126.2, subd. (e).) “Neither CEQA itself, nor the cases that have interpreted it, require an EIR to anticipate and mitigate the effects of a particular project on growth on

other areas." (*Napa Citizens*, *supra*, 91 Cal.App.4th at 371.) Even where a project may indirectly result in a need for additional housing outside the project area, for example, by creating employment opportunities, an EIR is sufficient if it "warns interested persons and governing bodies of the probability that additional housing will be needed so that the [sic] they can take steps to prepare for or address that probability." (*Ibid*.)

The LRDP and the two Housing Projects will create far more housing units than they will displace, contrary to Appellants' implication. (AOB59.) Anchor House required relocation of 16 people but creates 772 beds for student housing. (AR9495; AR9581–82.) Redevelopment of People's Park would require relocation of a group of unlawful campers at the site, but creates 1,113 student housing beds and 125 affordable and permanent supportive housing beds, at least 50 and possibly as high as 100 percent of which will be for the formerly homeless. (AR1208; AR9495; AR9597–98.) Any direct displacement effects by future projects under the LRDP would be addressed on a project level, and these projects would be required to incorporate Mitigation Measure POP-2, discussed below. (AR10121.)

Appellants assert the LRDP will "add another 8,173 residents to Berkeley and nearby jurisdictions where UC will not provide housing . . . ." (AOB57.) As explained previously, the LRDP does not determine enrollment or population numbers. (AR9487.) The total population projections conservatively include both under-graduate students, graduate students *and their families*, and faculty/staff members *and their families*. (AR10116.) The total number of unhoused undergraduate students actually *decreases* under the LRDP, from 21,210 to 17,270, while in the City of

Berkeley, the number of unhoused undergraduates *decreases* from 15,059 to 12,261. (*Ibid*.)

Many of the "indirect" impacts Appellants raise (AOB58) were actually analyzed under "Impact POP-1." (AR10110-10118.) That analysis disclosed that "the proposed LRDP Update could generate indirect population growth associated with the students and faculty/staff anticipated by 2036–37 who would not be accommodated in UC Berkeley–provided housing." (AR10113.) However, "future development under the proposed LRDP Update would result in a decrease in indirect population growth associated with undergraduate students and would not create a significant impact." (AR10114 [Table 5.12-19].) This analysis also found "[t]he anticipated indirect population growth in the cities of Oakland, Albany, El Cerrito, Richmond, and San Francisco would be negligible when compared to the overall population growth anticipated in those jurisdictions by the 2036–37 school year," and because all the growth would occur in heavily urbanized areas, "there would be no indirect growth impacts from the increased population that could reside in these jurisdictions." (AR10117.)

Substantial evidence also supports the EIR's analysis of Impact POP-2. (AR10120-21.) Analysis of Impact POP-2 examined whether the LRDP would "[d]isplace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere." (*Ibid*.) The EIR disclosed that the LRDP would "result in the demolition of existing student and faculty/staff housing and the existing eight-unit apartment building at 1921 Walnut Street." (AR10120.) 1921 Walnut Street is the only non-student housing currently projected to be demolished, although the EIR acknowledges that "individual future housing projects

may involve the displacement of existing people or housing." (*Ibid*.) The EIR therefore adopted Mitigation Measure POP-2, committing to implementation of UCB's existing Relocation Assistance Act Policy. (*Ibid*; AR10121.) Under this Policy, UCB helps existing residents find replacement housing, thereby reducing Impact POP-2 to a less-than-significant level. (*Ibid*.)

There is also substantial evidence the LRDP will *not* cause or exacerbate any economic or social impacts. While UCB currently provides housing for only 16 percent of its campus population, the LRDP development framework will provide housing for 31 percent of the projected population by 2036-37. (AR14188.) Between 2010 and 2020, the vacancy rate in the City of Berkley's rental market actually *increased* from 6.9 percent to 7.4 percent, totaling more than 3,800 vacant units. (AR10105-06 [Table 5.12-4].) The rental vacancy rate in the City of Oakland is also quite high, with 6.4 percent of current housing stock sitting vacant (i.e., 11,161 units) as of 2020. (AR10106 [Table 5.12-4].) For Alameda County in total, there were more than 32,500 vacant units in 2020, with more than 22,000 vacant units in Contra Costa County. (*Ibid*.)

The EIR also included a separate analysis of the growth-inducing effects of the LRDP, acknowledging the LRDP "would induce growth by encouraging and increasing the development potential in the EIR Study Area," but that "development would occur in an already urbanized setting, and would not extend growth to previously undeveloped areas." (AR10441–42.) Regarding "indirect" impacts, the EIR discloses that the LRDP "is considered growth inducing because it encourages new growth within the EIR Study Area," but again, "development in this area would

primarily consist of infill development and densification of underutilized sites," and "[a]dditional population and employment growth would occur incrementally over a period of approximately 15 years." (AR10442.)

2. Alleged Indirect Housing Displacement Effects are Not Environmental Impacts

Appellants argue the EIR fails to analyze and mitigate the LRDP's impact on the regional housing market, specifically, impacts to "persons unable to find housing due to competition from UC's 8,173 new unhoused persons," i.e., gentrification. (AOB59.) Notably, Appellants do not cite *any* case law requiring analysis of these social and economic impacts, and there is none.

Neither *Visalia Retail, LP v. City of Visalia* (2018) 20 Cal.App.5th 1 ("*Visalia Retail*") nor *Protect the Historic Amador Waterways v. Amador Water* (2004) 116 Cal.App.4th 1099 ("*Amador Waterways*") require analysis of "indirect displacement" or gentrification. (AOB57–58, 61.) *Visalia Retail* held that while an EIR must analyze any physical impacts caused by "urban decay," it need not analyze "economic and social" impacts such as smaller retailers being forced out of business. (*Visalia Retail*, *supra*, 20 Cal.App.5th at p. 13.) *Amador Waterways* has no applicability to the facts at hand, holding only that the EIR should have analyzed "seasonal reduction of surface flow in local streams." (*Amador Waterways*, *supra*, 116 Cal.App.4th at p. 1111.)

Appellants cite to evidence discussing the negative effects of homelessness. (AOB61–63.) But homelessness is not an impact on the physical environment and is properly addressed as an economic and social issue. Regarding any alleged impacts to public services from homelessness,

the analysis under Impact POP-1 found that "[o]ther indirect effects of population growth, such as . . . demand for public services, are discussed elsewhere" in the EIR. (AR10117.) Appellants do not challenge these analyses. A holding that the Regents are required to analyze the social and economic impacts from the LRDP in an EIR would obliterate the clear line in CEQA, its Guidelines, and case law, which make clear that "[e]conomic and social changes resulting from a project shall not be treated as significant effects on the environment." (Guidelines, § 15064, subd. (e); § 15131, subd. (a).) These impacts are policy concerns, not CEQA impacts.

Nevertheless, the FEIR includes a Master Response to "gentrification" concerns from commenters, including concerns of "displacement due to limited housing supply and commensurate housing costs." (AR14187-89.) As noted, rising housing prices are not a recent phenomenon, nor are they caused by UCB; rather, "[s]ince the mid-1970s, housing construction in the region has not kept pace with employment growth. This dynamic, coupled with a widening gap in income between high-income and low-income households, has resulted in a housing market in which it is difficult for low-income and middle-income households to compete for market-rate housing." (AR14187-88.) The EIR properly did not address the effects of the LRDP on potential future gentrification because "[e]conomic or social effects of a project shall not be treated as significant effects on the environment." (AR14188, citing Guidelines, § 15131, subd. (a).)

Appellants' alleged gentrification impacts are also too speculative to analyze. (AOB60–62.) Because 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. (AR14189.) While the EIR describes and evaluates the potential place of residence of future students and employees, it would be impossible to guess where students and employees who are not accommodated in University-provided housing would choose to live, never mind the speculative nature of any tertiary, down-stream effects on housing costs for residents who are unaffiliated with the University. (*Ibid*.) There is also no way to quantify the number or percentage of existing residents who could be displaced solely because of any increasing housing costs caused by an increase in the UCB population. (AR14189; Guidelines, § 15145 ["If, after a thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact."].)

3. No Requirement To Analyze Health Effects From Speculative Indirect Displacement

Going even further past CEQA's requirements, Appellants argue the EIR fails to analyze not only the social impacts of "indirect displacement," but also any *health* impacts caused by displacement. (AOB61–62.) Such health impacts would be secondary impacts to the same social impacts not cognizable under CEQA in the first place. Therefore, the EIR was not required to analyze any purported third-order health impacts from "indirect displacement" from the LRDP. Any such impacts would also be far too speculative to analyze.

Appellants' citation to *Friant Ranch, supra,* 6 Cal.5th 502 at p. 521, is unavailing. There, the Supreme Court found an EIR was required to include an assessment of the health impacts from air pollution, a direct

physical impact. (*Ibid*.) Nothing in *Friant Ranch* addresses indirect displacement, homelessness, gentrification, or any other *social* impact or requires a health impact assessment of such impacts.

4. Mitigation Measure POP-2 Complies with CEQA

Appellants argue the EIR cannot rely on Mitigation Measure POP-2 to mitigate the impacts from "indirect" displacement because it focuses only on individuals *directly* displaced by development under the LRDP. (AOB66–67.)

The substantial evidence standard of review applies to an agency's conclusions on mitigation measure's effectiveness. (*Sacramento Old City Ass'n v. City Council* (1991) 229 Cal.App.3d 1011, 1027 [courts defer to agency's conclusions on mitigation measures].)

Appellants' argument fails for the same reasons discussed above; such "indirect" impacts are not cognizable under CEQA. (Guidelines § 15131, subd. (a).) The EIR properly relies on Mitigation Measure POP-2 to mitigate the *direct* displacement impacts of the LRDP as recognized in CEQA Guidelines Appendix G. (AR10121.) Logically, an EIR cannot violate CEQA by not mitigating what is not a CEQA impact.

Similarly, Appellants argue POP-2's analysis does not address impacts from any necessary construction of replacement housing elsewhere. (AOB66.) However, the EIR is clear: "The proposed project . . . would not necessitate the construction of replacement housing elsewhere." (AR10120.) If there is no substantial impact, there is no requirement to mitigate. (Guidelines, § 15126.4, subd. (a)(3) ["Mitigation measures are not required for effects which are not found to be significant."].)

5. Analysis of Impact POP-1 is Sufficient

Finally, Appellants are incorrect that the EIR erred in finding that Mitigation Measure POP-1 would reduce impacts to less than significant because it does not require the City of Berkeley or the Association of Bay Area governments ("ABAG") to "actually engage in planning or otherwise reduce the significant population growth." (AOB67–69.)

The impact threshold for POP-1 asks whether the LRDP "would induce substantial unplanned population growth in an area, either directly . . . or indirectly . . . ." (AR10110.)

The EIR ultimately found that "because the local direct and increase[d] population growth projected under the LRDP Update would exceed ABAG projections for Berkeley, this is considered a significant impact." (AR10118.) Accordingly, MM POP-1 requires UCB to, annually, "provide a summary of LRDP enrollment and housing production data, including its LRDP enrollment projections and housing production projections, to the City of Berkeley and the Association of Bay Area Governments, for the purpose of ensuring that local and regional planning projections account for UC Berkeley-related population changes." (AR10118.)

Nothing about this is "ineffective" or "unenforceable." It is *effective* because it ensures ABAG and the City receive necessary data and information to plan for future growth associated with the LRDP. (AR10118.) Doing so annually minimizes unplanned population growth. (*Ibid*.) It is *enforceable* because UCB is responsible for implementation of the mitigation measure and has committed to providing this data to ABAG and the City. (*Ibid*.)

Appellants argue the mitigation measure is ineffective because it does not actually compel any agency to provide housing. (AOB68.) This mitigation measure has nothing to do with compelling or relying on ABAG or the City "to actually engage in planning," "reduce" population growth, or "address the housing shortage." (*Ibid.*) POP-1 addresses "*unplanned* population growth." (AR10110.) The EIR identified a significant impact only because "population growth projected under the LRDP Update would exceed ABAG projections for Berkeley . . . ." (AR10118.) Therefore, Mitigation Measure POP-1 requires UCB to provide the necessary information so that projections are accurate. This ensures projected growth under the LRDP will not exceed ABAG's projections going forward. CEQA requires nothing more.

V. CONCLUSION

For all the foregoing reasons, the Regents request this Court uphold the trial court's Order and Judgment.

DATED: September 26, 2022 THE SOHAGI LAW GROUP, PLC

By: 

NICOLE H. GORDON
Attorneys for THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

DATED: September 26, 2022

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CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, rule 8.204(c), I certify that the total word count of this JOINT OPPOSITION TO APPELLANTS' OPENING BRIEF, excluding covers, table of contents, table of authorities, and certificate of compliance, is 13,846.

DATED: September 26, 2022 THE SOHAGI LAW GROUP, PLC

By: 

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PROOF OF SERVICE

Make UC a Good Neighbor, et al. v. The Regents of the University of California
Court of Appeal, First District, Division 5, Case No. A165451
Alameda County Superior Court, Case No. RG21110142 (Consolidated for Purposes of Trial Only with Case Nos. RG21109910, RG21110157 and 21CV000995)

Court of Appeal, First District, Division 5, Case No. A165451

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 11999 San Vicente Boulevard, Suite 150, Los Angeles, CA 90049-5136.

On September 26, 2022, I served true copies of the following document(s) described as **RESPONDENTS' THE REGENTS OF THE UNIVERSITY OF CALIFORNIA ET AL. AND REAL PARTY IN INTEREST RESOURCES FOR COMMUNITY DEVELOPMENT'S JOINT OPPOSITION TO APPELLANTS' OPENING BRIEF** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY ELECTRONIC SERVICE: I electronically filed the document(s) with the Clerk of the Court by using the TrueFiling system. Participants in the case who are registered users will be served by the TrueFiling system. Participants in the case who are not registered users will be served by mail or by other means permitted by the court rules.

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

Executed on September 26, 2022, at Los Angeles, California.

Cheron J. McAleece

SERVICE LIST

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