

APPELLATE NO. A157551

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT
DIVISION 5

SAVE BERKELEY'S NEIGHBORHOODS
Petitioner and Appellant,

vs.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al.,
Respondents.

ALAMEDA COUNTY SUPERIOR COURT • CASE NO. RG18902751
Hon. Frank Roesch, Dept. 17, Telephone: (510) 267-6933 and
Hon. Noel Wise, Dept. 24, Telephone: (510) 267-6940

APPELLANT'S APPENDIX

VOLUME 1 of 3

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ENDORSED
FILED
ALAMEDA COUNTY

APR 27 2018

CLERK OF THE SUPERIOR COURT
By CURTIYAH GANTER

Deputy

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**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA**

SAVE BERKELEY'S NEIGHBORHOODS, a
California nonprofit public benefit corporation;

Plaintiff,

vs.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA; JANET NAPOLITANO, in her
capacity as President of the University of
California; CAROL T. CHRIST, in her capacity as
Chancellor of the University of California,
Berkeley; and DOES 1 through 20,

Respondents and Defendants.

Case No.

RG18902751

**PETITION FOR WRIT OF MANDATE AND
COMPLAINT FOR DECLARATORY
RELIEF**

**[CALIFORNIA ENVIRONMENTAL
QUALITY ACT]**

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Plaintiff Save Berkeley's Neighborhoods alleges:

1. Education Code section 67504 provides that "The Legislature further finds and declares that the expansion of campus enrollment and facilities may negatively affect the surrounding environment. Consistent with the requirements of the California Environmental Quality Act (CEQA), it is the intent of the Legislature that the University of California sufficiently mitigate significant off-campus impacts related to campus growth and development."

2. Public Resources Code section 21080.9 requires that the University of California, Berkeley (UCB) "consider the environmental impact of academic and enrollment plans" pursuant to CEQA and "that any such plans shall become effective for a campus ... only after the environmental effects of those plans have been analyzed" as required by CEQA.

3. In 2005, UCB adopted a Long Range Development Plan (2020 LRDP) to achieve a number of objectives through the year 2020, including stabilizing enrollment. In or about 2005, UCB certified a Final Environmental Impact Report for the 2020 LRDP (2005 EIR) pursuant to CEQA. The 2020 LRDP and 2005 EIR projected that by 2020 student enrollment at UCB would increase by 1,650 students above the 2001-02 two-semester average. The 2020 LRDP and 2005 EIR also projected that by 2020 UCB would add 2,500 beds for students.

4. On October 30, 2017, UCB responded to the City of Berkeley's request for information regarding enrollment increases. This response shows the actual increase in student enrollment above the 2001-02 two-semester average for the most recent two-semester period (i.e., Spring 2017 and Fall 2017) is 8,302 students. This increase represents a five-fold increase compared to the 1,650 enrollment increase projected in the 2020 LRDP and 2005 EIR. The response also shows UCB has built fewer than 1,000 beds.

5. The increase in student enrollment over and above the 1,650 additional students projected by the

1 2020 LRDP and included in the 2005 EIR's environmental impact analysis (hereinafter the "excess
2 increase in student enrollment") has caused and continues to cause significant adverse environmental
3 impacts that were not analyzed in the 2005 EIR. Plaintiff is informed and believes and on that basis
4 alleges that these impacts include, without limitation, increased use of off-campus housing for and by
5 UCB students, leading to increases in off-campus noise and trash; displacement of tenants resulting in
6 more homeless individuals living on public streets and in local parks; increases in the number of UCB
7 students who are homeless; increases in traffic and transportation related congestion and safety risks; and
8 increased burdens on the City of Berkeley's public safety services, including police, fire, ambulance, and
9 Emergency Medical Technician services.

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13 6. Respondents have had and continue to have a legal obligation to analyze the environmental
14 effects of the excess increase in student enrollment pursuant to CEQA, including, without limitation, by
15 preparing and certifying an Environmental Impact Report to assess the significance of impacts caused
16 by the extraordinary increase in enrollment and to identify and adopt mitigation measures to reduce these
17 significant impacts.

18 19 20 **Parties**

21 7. Plaintiff SAVE BERKELEY'S NEIGHBORHOODS (Plaintiff) is a California nonprofit public
22 benefit corporation formed to provide education and advocacy to improve quality of life, protect the
23 environment and implement best planning practices. Plaintiff's founders, members, and directors live in
24 the area affected by the excess increase in student enrollment, have suffered and will continue to suffer
25 injury from adverse environmental impacts caused by the excess increase in student enrollment if the
26 legal violations alleged in this Petition and Complaint are not remedied. Plaintiff was formed and
27 brings this action to represent and advocate the beneficial interests of its founders, members, and
28 directors in obtaining relief from these legal violations and to improve quality of life, protect the
29
30

1 environment and implement best planning practices in connection UCB's increases in student
2 enrollment.

3
4 8. Respondent and Defendant THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
5 (hereinafter "Regents") is a public trust corporation and state agency established pursuant to the
6 California Constitution vested with administering the University of California including the management
7 and disposition of property of the University and the lead agency for the 2020 LRDP under CEQA, and
8 is thus responsible for analyzing, disclosing, and mitigating the environmental impacts of the 2020
9 LRDP and the excess increase in student enrollment.
10

11
12 9. Respondent and Defendant JANET NAPOLITANO is the President of the University of
13 California and is named herein solely in this capacity. Regents Policy 8103 delegates to the President of
14 the University the Regents' authority for budget or design for capital projects consistent with approved
15 Long Range Development Plans and minor Long Range Development Plan amendments.
16

17 10. Respondent and Defendant CAROL T. CHRIST is the Chancellor of the University of California
18 Berkeley, and named herein solely in this capacity.
19

20 11. Respondents and Defendants Regents, Janet Napolitano, and Carol T. Christ are hereinafter
21 collectively referred to as "Respondents."

22 12. Plaintiff does not know the true names and capacities of Respondents and Defendants fictitiously
23 named herein as DOES 1 through 20, inclusive. Plaintiff is informed and believes, and thereon alleges,
24 that such fictitiously named Respondents and Defendants are responsible in some manner for the acts or
25 omissions complained of or pending herein. Plaintiff will amend this Petition to allege the fictitiously
26 named Respondents' and Defendants' true names and capacities when ascertained.
27
28

29 Notice Requirements

30 13. In accordance with Public Resources Code section 21167.5, Plaintiff served Respondents with

1 written notice of commencement of this action on April 12, 2018. The Notice of Commencement of
2 Action and Proof of Service are attached hereto as Exhibit 1.

3
4 14. In accordance with Public Resources Code section 21167.7 and Code of Civil Procedure section
5 388, Plaintiff has provided a copy of this pleading to the Attorney General's office. (See Exhibit 2.)

6
7 **Jurisdiction and Venue**

8 15. Plaintiff brings this action as a Petition for Writ of Mandate pursuant to Code of Civil Procedure
9 sections 1085, 1088.5, and 1094.5, and Public Resources Code sections 21168 and 21168.5; and as a
10 Complaint for Declaratory relief pursuant to Code of Civil Procedure section 1060. The Court has
11 jurisdiction over these claims.
12

13 16. Venue is proper in Alameda County under Code of Civil Procedure section 394, subdivision (a),
14 because UCB and Respondents are situated therein.
15

16 **Standing**

17 17. Plaintiff and, to the extent applicable, its members are beneficially interested in Respondents'
18 full compliance with CEQA. Respondents owed a mandatory duty to comply with CEQA with respect
19 to the 2020 LRDP and the excess increase in student enrollment. Plaintiff has the right to enforce the
20 mandatory duties that CEQA imposes on Respondents.
21

22 **Exhaustion of Administrative Remedies**

23 18. UCB provides no administrative remedy for the legal claims or grounds of noncompliance with
24 CEQA alleged in this Petition and Complaint and Plaintiff had no opportunity to raise the grounds of
25 noncompliance alleged in this Petition and Complaint in any UCB administrative proceeding.
26
27

28 **Private Attorney General Doctrine**

29 19. Plaintiff brings this action as a private attorney general pursuant to Code of Civil Procedure
30 section 1021.5, and any other applicable legal theory, to enforce important rights affecting the public

1 interest.

2 20. Issuance of the relief requested in this Petition and Complaint will confer a significant benefit on
3 a large class of persons by ensuring that Respondents analyze and disclose the environmental impact of
4 the excess increase in student enrollment.
5

6 21. Issuance of the relief requested in this Petition will result in the enforcement of important rights
7 affecting the public interest. By compelling Respondents to complete adequate environmental review of
8 the excess increase in student enrollment under CEQA, Plaintiff will vindicate the public's important
9 CEQA rights to public disclosure regarding and public participation in government decisions that affect
10 the environment.
11

12 22. The necessity and financial burden of enforcement are such as to make an award of attorney's
13 fees appropriate in this proceeding because the transgressor is the agency whose duty it is to enforce the
14 laws at issue in this proceeding.
15
16

17 **First Cause of Action**
18 **(Violation of CEQA: Pub. Resources Code, § 21000 et seq.)**

19 23. Plaintiff hereby realleges and incorporates the preceding paragraphs of this Petition and
20 Complaint as though set forth herein in full.
21

22 24. Respondents prejudicially abused their discretion in violation of CEQA pursuant to Public
23 Resources Code sections 21168 and 21168.5 and Code of Civil Procedure sections 1085 and 1094.5 by
24 failing to analyze the excess increase in student enrollment pursuant to CEQA, including, without
25 limitation, by failing to prepare and certify an Environmental Impact Report to assess the significance of
26 impacts caused by the excess increase in student enrollment and to identify and adopt mitigation
27 measures to reduce these significant impacts.
28

29 25. Plaintiff has no other plain, speedy, and adequate remedy in the ordinary course of law and will
30

1 suffer irreparable injury unless this Court issues the relief requested in this Petition.

2
3 **Second Cause of Action**
4 **(Declaratory Relief: Code Civ. Proc., § 1060)**

5 26. Plaintiff hereby realleges and incorporates the preceding paragraphs of this Petition and
6 Complaint as though set forth herein in full.

7 27. Plaintiff seeks a judicial determination and declaration that Respondents violated CEQA by
8 failing to analyze the excess increase in student enrollment pursuant to CEQA.

9
10 28. An actual controversy has arisen and now exists between Plaintiff and Respondents. Plaintiff
11 contends that Respondents violated CEQA by failing to analyze the excess increase in student
12 enrollment pursuant to CEQA. Plaintiff is informed and believes, and based thereon alleges, that
13 Respondents dispute these contentions.
14

15 **Prayer for Relief**

16 WHEREFORE, Plaintiff prays for the following relief:

17
18 1. For a writ of mandate compelling Respondents to conduct environmental review of the excess
19 increase in student enrollment pursuant to CEQA including, without limitation, by preparing and
20 certifying an Environmental Impact Report to assess the significance of impacts caused by the excess
21 increase in student enrollment and to identify and adopt mitigation measures to reduce these significant
22 impacts.
23

24 2. For a declaration that Respondents have failed to comply with CEQA because it has failed to
25 conduct environmental review of the excess increase in student enrollment, including, without
26 limitation, by failing to prepare and certify an Environmental Impact Report to assess the significance of
27 impacts caused by the excess increase in student enrollment and to identify and adopt mitigation
28 measures to reduce these significant impacts.
29
30

- 1 3. For an order retaining the Court's jurisdiction over this matter until Respondents comply with the
2 peremptory writ;
3
4 4. For an order compelling Respondents to pay Plaintiff's costs of suit;
5
6 5. For an order compelling Respondents to pay Plaintiff's reasonable attorneys fees related to these
7 proceedings pursuant to Code of Civil Procedure section 1021.5; and
8
9 6. For such other relief as the Court may deem proper.

9 DATED: April 27, 2018

LAW OFFICES OF THOMAS N. LIPPE, APC

11 

12 _____
13 Thomas N. Lippe
14 Attorney for Plaintiff Save Berkeley's Neighborhoods
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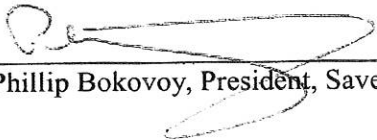
VERIFICATION

Save Berkeley's Neighborhoods v. The Regents of the University of California, Alameda County Superior Court, Case No. (to be determined)

I, Phillip Bokovoy, declare that:

1. I am a founder and member of the Board of Directors of Plaintiff Save Berkeley's Neighborhoods and its President. I am authorized by Save Berkeley's Neighborhoods to execute this verification.
2. I have read the foregoing Verified Petition for Writ of Mandate and know the contents thereof; the factual allegations therein are true of my own knowledge, except as to those matters which are therein stated upon information or belief, and as to those matters I believe them to be true.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed on April 27, 2018 at San Francisco, California.


Phillip Bokovoy, President, Save Berkeley's Neighborhoods

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EXHIBIT 1

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Law Offices of
THOMAS N. LIPPE, APC

201 Mission Street
12th Floor
San Francisco, California 94105

Telephone: 415-777-5604
Facsimile: 415-777-5606
Email: Lippelaw@sonic.net

April 12, 2018

By email: chancellor@berkeley.edu
Chancellor Carol T. Christ
University of California, Berkeley
c/o Jenny Hanson
Executive Assistant to the Chancellor
Office of the Chancellor
200 California Hall, #1500
Berkeley, CA 94720-1500

By email: regentsoffice@ucop.edu
Regents of the University of California
c/o Anne Shaw
Office of the Secretary and Chief of Staff to the Regents
1111 Franklin St., 12th floor
Oakland, CA 94607

**Re: Notice of Intent to Sue Regarding Inadequate CEQA Review of UC
Berkeley's 2020 Long Range Development Plan.**

Dear Chancellor Christ and Regents of the University of California:

This office represents Save Berkeley's Neighborhoods with respect to the University of California at Berkeley's legal obligations to conduct environmental review of the 2020 Long Range Development Plan (2020 LRDP) in compliance with the California Environmental Quality Act (CEQA).

One of the 2020 LRDP's objectives is to stabilize enrollment. (2020 LRDP, Environmental Impact Report (2004 EIR), p. 3.1-10.) The 2004 EIR evaluated an increase in enrollment of 1,650 students above the 2001-02 two-semester average. (2004 EIR, p. 3.1-14.) The University's October 30, 2017, response to the City of Berkeley's request for information regarding enrollment increases shows an actual increase of 8,302 enrolled students above the 2001-02 two-semester average for the most recent two-semester period (i.e., Spring 2017 and Fall 2017). (Exhibit 1.) This represents a five-fold increase compared to the 2004 EIR's projection of a 1,650 student increase in enrollment.

This change in the project renders the 2004 EIR informationally defective because the EIR does not assess the impact of the actual increase in enrollment, which is orders of magnitude higher than the 1,650-student increase projected in the 2004 EIR. As a result, the University must prepare a supplemental or subsequent EIR to assess the significance of impacts caused by this extraordinary increase in enrollment and to identify and adopt mitigation measures to reduce these significant

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Chancellor Carol T. Christ, University of California, Berkeley
Regents of the University of California
Notice of Intent to Sue Regarding Inadequate CEQA Review of 2020 LRDP
April 12, 2018
Page 2

impacts.

This letter provides notice pursuant to Public Resources Code section 21167.5 that on or before April 20, 2018, Save Berkeley's Neighborhoods intends to file a lawsuit challenging the University's adoption of the 2020 LRDP on grounds the adoption does not comply with CEQA.

Save Berkeley's Neighborhoods is willing to discuss settling this dispute without the need for litigation. At a minimum, any such settlement must include: (1) an enforceable agreement by the University to prepare and certify a new EIR to assess the impacts of the 2020 LRDP as its project description has changed to reflect the increases in enrollment shown in the University's October 30, 2017, response to the City's request for information; (2) the new EIR must use the same environmental baseline used in the 2004 EIR; and (3) tolling the statute of limitations so that Save Berkeley's Neighborhoods is not forced to file its lawsuit to protect against the statute of limitations.

Thank you for your attention to this matter.

Very Truly Yours,



Thomas N. Lippe

cc:

David M. Robinson, Interim Chief Campus Counsel

By email: dmrobinson@berkeley.edu

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AA00028

UNIVERSITY OF CALIFORNIA, BERKELEY



BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO

SANTA BARBARA • SANTA CRUZ

BERKELEY, CALIFORNIA 94720-1382

CAPITAL STRATEGIES
PHYSICAL AND ENVIRONMENTAL PLANNING
A&E Bldg. (MC 1382)

30 October 2017

Mayor Jesse Arreguin
City of Berkeley
2180 Milvia Street
Fifth Floor
Berkeley, California 94704

[Transmitted via email]

Mayor Arreguin:

My office has compiled the attached data in response to your request for information sent to former Chancellor Dirks' office on May 25, 2017. We have organized responses using the item numbers indicated in your letter. The data provided in the attachment is the current available information as of October 2017 and based on our understanding of your request.

Please contact Ruben Lizardo (rlizardo@berkeley.edu) if you have questions or would like clarification on the information that has been provided.

Sincerely,

A handwritten signature in cursive script that reads "Emily Marthinsen".

Emily Marthinsen
Assistant Vice Chancellor/Campus Architect
Physical & Environmental Planning | Capital Strategies

CC: R Lizardo, R Parikh, S Viducich, A Machamer, S Wilmot

EXHIBIT 1

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ATTACHMENT 1. UC RESPONSE TO DATA REQUEST

1. Registered Student Headcount - Source: CalAnswers Student Census, UC Berkeley Office of Planning and Analysis, Accessed 10.04.2017

Academic Term	Total Undergraduates	Total Graduate Students	Off-campus Undergraduates	Off-campus Graduate Programs
Fall (F) 05	23,482	10,076	381	668
Spring (S) 06	22,643	9,571	384	674
F06	23,863	10,070	357	713
S07	23,351	9,592	384	732
F07	24,636	10,317	359	752
S08	24,032	9,809	395	766
F08	25,151	10,258	325	743
S09	24,448	9,735	405	758
F09	25,530	10,393	331	757
S10	25,061	9,854	421	773
F10	25,540	10,298	369	777
S11	24,969	9,789	498	762
F11	25,885	10,257	342	782
S12	25,277	9,764	529	788
F12	25,774	10,125	334	789
S13	25,181	9,610	463	800
F13	25,951	10,253	327	881
S14	25,473	9,834	426	954
F14	27,126	10,455	296	1111
S15	25,903	10,065	424	1118
F15	27,496	10,708	335	1243
S16	26,094	10,279	466	1252
F16	29,310	10,863	650	1424
S17	27,784	10,510	425	1480
F17	30,574	11,336	560	1536

Note: Columns indicated total number of students include all registered students, including those enrolled in off-campus programs such as online graduate degree programs, the Education Abroad Program, Global Edge (European Study Abroad), and Freshman in San Francisco. The students enrolled in these off-campus programs are tallied in the "off-campus" columns.

1 Thomas N. Lippe, SBN 104640
2 LAW OFFICES OF THOMAS N. LIPPE, APC
3 201 Mission Street, 12th Floor
4 San Francisco, California 94105
5 Tel: (415) 777-5604
6 Fax: (415) 777-5606
7 E-mail: Lippelaw@sonic.net

8 Attorney for Plaintiff: Save Berkeley's Neighborhoods

9
10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF ALAMEDA**

12 SAVE BERKELEY'S NEIGHBORHOODS, a
13 California nonprofit public benefit corporation;

14 Plaintiff,

15 vs.

16 THE REGENTS OF THE UNIVERSITY OF
17 CALIFORNIA; JANET NAPOLITANO, in her
18 capacity as President of the University of
19 California; CAROL T. CHRIST, in her capacity as
20 Chancellor of the University of California,
21 Berkeley; and DOES 1 through 20,

22 Respondents and Defendants.
23
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25
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29
30

Case No.

PROOF OF SERVICE

**[CALIFORNIA ENVIRONMENTAL
QUALITY ACT]**

1 **PROOF OF SERVICE**

2 I am a citizen of the United States, employed in the City and County of San Francisco, California.
3 My business address is 201 Mission Street, 12th Floor, San Francisco, CA 94105. I am over the age of 18
4 years and not a party to the above entitled action. On April 12, 2018, I served the following document on
5 the parties below, as designated:

- 6 • **Re: Notice of Intent to Sue Regarding Inadequate CEQA Review of UC Berkeley's 2020**
7 **Long Range Development Plan**

8 **MANNER OF SERVICE**
9 **(check all that apply)**

- 10 ☐ By Mail: In the ordinary course of business, I caused each such envelope to be
11 placed in the custody of the United States Postal Service, with
12 postage thereon fully prepaid in a sealed envelope.
- 13 ☐ By Personal Service: I personally delivered each such envelope to the office of the addressee
14 on the date last written below.
- 15 ☐ By Overnight FedEx: I caused such envelope to be placed in a box or other facility regularly
16 maintained by the express service carrier or delivered to an authorized
17 courier or driver authorized by the express service carrier to receive
18 documents, in an envelope or package designated by the express
19 service carrier with delivery fees paid or provided for.
- 20 ☒ By E-mail: I caused such document to be served via electronic mail equipment
21 transmission (E-mail) on the parties as designated on the attached
22 service list by transmitting a true copy to the following E-mail
23 addresses listed under each addressee below.
- 24 ☐ By Personal Delivery by Courier: I caused each such envelope to be delivered to an authorized
25 courier or driver, in an envelope or package addressed to the
26 addressee below.

27 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
28 and correct. Executed on April 12, 2018, in the City and County of San Francisco, California

29 Kelly Marie Perry
30 Kelly Marie Perry

SERVICE LIST

By email: chancellor@berkeley.edu

Chancellor Carol T. Christ

University of California, Berkeley

c/o Jenny Hanson

Executive Assistant to the Chancellor

Office of the Chancellor

200 California Hall, #1500

Berkeley, CA 94720-1500

By email: regentsoffice@ucop.edu

Regents of the University of California

c/o Anne Shaw

Office of the Secretary and Chief of Staff to the Regents

1111 Franklin St., 12th floor

Oakland, CA 94607

By email: dmrobinson@berkeley.edu

David M. Robinson, Interim Chief Campus Counsel

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EXHIBIT 2

Document received by the CA 1st District Court of Appeal.

1 Thomas N. Lippe, SBN 104640
2 LAW OFFICES OF THOMAS N. LIPPE, APC
3 201 Mission Street, 12th Floor
4 San Francisco, California 94105
5 Tel: (415) 777-5604
6 Fax: (415) 777-5606
7 E-mail: Lippelaw@sonic.net

8 Attorney for Plaintiff: Save Berkeley's Neighborhoods

9
10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF ALAMEDA**

12 SAVE BERKELEY'S NEIGHBORHOODS, a
13 California nonprofit public benefit corporation;

14 Plaintiff,

15 vs.

16 THE REGENTS OF THE UNIVERSITY OF
17 CALIFORNIA; JANET NAPOLITANO, in her
18 capacity as President of the University of
19 California; CAROL T. CHRIST, in her capacity as
20 Chancellor of the University of California,
21 Berkeley; and DOES 1 through 20,

22 Respondents and Defendants.
23
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28
29
30

Case No.

PROOF OF SERVICE

**[CALIFORNIA ENVIRONMENTAL
QUALITY ACT]**

1 **PROOF OF SERVICE**


2 I am a citizen of the United States, employed in the City and County of San Francisco, California.
3 My business address is 201 Mission Street, 12th Floor, San Francisco, CA 94105. I am over the age of 18
4 years and not a party to the above entitled action. On April 27, 2018, I served the following document on
5 the parties below, as designated:

- 6 • **PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY**
7 **RELIEF**

8 **MANNER OF SERVICE**
9 **(check all that apply)**

- 10 ☒ By Mail: In the ordinary course of business, I caused each such envelope to be
11 placed in the custody of the United States Postal Service, with
12 postage thereon fully prepaid in a sealed envelope.
- 13 ☐ By Personal Service: I personally delivered each such envelope to the office of the addressee
14 on the date last written below.
- 15 ☐ By Overnight FedEx: I caused such envelope to be placed in a box or other facility regularly
16 maintained by the express service carrier or delivered to an authorized
17 courier or driver authorized by the express service carrier to receive
18 documents, in an envelope or package designated by the express
19 service carrier with delivery fees paid or provided for.
- 20 ☐ By E-mail: I caused such document to be served via electronic mail equipment
21 transmission (E-mail) on the parties as designated on the attached
22 service list by transmitting a true copy to the following E-mail
23 addresses listed under each addressee below.
- 24 ☐ By Personal Delivery by Courier: I caused each such envelope to be delivered to an authorized
25 courier or driver, in an envelope or package addressed to the
26 addressee below.

27 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
28 and correct. Executed on April 27, 2018, in the City and County of San Francisco, California

29 
30 Kelly Marie Perry

SERVICE LIST

Hon. Xavier Becerra
Attorney General
State of California
Office of the Attorney General
1300 I Street
Sacramento, CA 95814

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Document received by the CA 1st District Court of Appeal.

ENDORSED
FILED
ALAMEDA COUNTY

APR 27 2018

CLERK OF THE SUPERIOR COURT
By CURTIYAH GANTER

Deputy

1 Thomas N. Lippe, SBN 104640
2 LAW OFFICES OF THOMAS N. LIPPE, APC
3 201 Mission Street, 12th Floor
4 San Francisco, California 94105
5 Tel: (415) 777-5604
6 Fax: (415) 777-5606
7 E-mail: Lippelaw@sonic.net

8 Attorney for Plaintiff: Save Berkeley's Neighborhoods

9
10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF ALAMEDA**

12 SAVE BERKELEY'S NEIGHBORHOODS, a
13 California nonprofit public benefit corporation;

14 Plaintiff,

15 vs.

16 THE REGENTS OF THE UNIVERSITY OF
17 CALIFORNIA; JANET NAPOLITANO, in her
18 capacity as President of the University of
19 California; CAROL T. CHRIST, in her capacity as
20 Chancellor of the University of California,
21 Berkeley; and DOES 1 through 20,

22 Respondents and Defendants.

Case No. RG18902751

**PLAINTIFF'S REQUEST AND ELECTION
TO PREPARE RECORD OF
PROCEEDINGS [Pub. Resources Code, §
21167.6(b)(2)]**

**[CALIFORNIA ENVIRONMENTAL
QUALITY ACT]**

Document received by the CA 1st District Court of Appeal.

1 Pursuant to Public Resources Code section 21167.6, Plaintiff notifies Respondents and Defendants
2 that Plaintiff elects to prepare the record of proceedings unless the parties agree to an alternative method of
3 preparation in accordance with Public Resources Code § 21167.6.
4

5 Plaintiff elects to prepare the record specifically for the purpose of exercising Plaintiff's statutory
6 right to control all costs associated with preparing the record of proceedings in this matter.¹ Accordingly,
7 Plaintiff expressly disavows and denies all liability pursuant to Government Code section 11523, or any
8 other applicable law, for any purported costs or other charges that may be claimed by Respondents and
9 Defendants or any other person or entity associated with preparing the record of proceedings in this matter,
10 unless such amounts are disclosed to and approved by Plaintiff before such costs are incurred.
11

12
13 Plaintiff also notifies Respondents and Defendants that Plaintiff intends to introduce evidence not
14 contained in any record of proceedings at the trial or hearing on the merits of the Petition and Complaint
15 filed herewith. (See *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 576 ["we will
16 continue to allow admission of extra-record evidence in traditional mandamus actions challenging
17 ministerial or informal administrative actions if the facts are in dispute"].)
18

19
20 DATED: April 27, 2018

LAW OFFICES OF THOMAS N. LIPPE, APC

21
22 

23 Thomas N. Lippe

24 Attorney for Plaintiff Save Berkeley's Neighborhoods

25
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30 ¹ *Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal.App.3rd 433, 447 ("[u]nder section 21167.6, plaintiffs ha[ve] the option of preparing the administrative record themselves to minimize expenses.")

ENDORSED
FILED
ALAMEDA COUNTY

JUN 18 2018

CLERK OF THE SUPERIOR COURT
BY M. Hayes Deputy

1 Thomas N. Lippe, SBN 104640
2 LAW OFFICES OF THOMAS N. LIPPE, APC
3 201 Mission Street, 12th Floor
4 San Francisco, California 94105
5 Tel: (415) 777-5604
6 Fax: (415) 777-5606
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20 Chancellor of the University of California,
21 Berkeley; and DOES 1 through 20,
22 Respondents and Defendants.

Case No. RG18902751

**FIRST AMENDED PETITION FOR WRIT
OF MANDATE AND COMPLAINT FOR
DECLARATORY RELIEF**

**[CALIFORNIA ENVIRONMENTAL
QUALITY ACT]**

Plaintiff Save Berkeley's Neighborhoods alleges:

1. Education Code section 67504 provides that "The Legislature further finds and declares that the expansion of campus enrollment and facilities may negatively affect the surrounding environment. Consistent with the requirements of the California Environmental Quality Act (CEQA), it is the intent of the Legislature that the University of California sufficiently mitigate significant off-campus impacts related to campus growth and development."

2. Public Resources Code section 21080.9 requires that the University of California, Berkeley (UCB) "consider the environmental impact of academic and enrollment plans" pursuant to CEQA and "that any such plans shall become effective for a campus ... only after the environmental effects of those plans have been analyzed" as required by CEQA.

3. In 2005, UCB adopted a Long Range Development Plan (2020 LRDP) to achieve a number of objectives through the year 2020, including stabilizing enrollment. In or about 2005, UCB certified a Final Environmental Impact Report for the 2020 LRDP (2005 EIR) pursuant to CEQA. The 2020 LRDP and 2005 EIR projected that by 2020 student enrollment at UCB would increase by 1,650 students, from the 2001-2002 two-semester average headcount of 31,800 to 33,450 students. The 2020 LRDP and 2005 EIR also projected that by 2020 UCB would add 2,500 beds for students.

4. On October 30, 2017, UCB responded to the City of Berkeley's request for information regarding enrollment increases. This response shows the actual increase in student enrollment above the 2001-02 two-semester average for the most recent two-semester period (i.e., Spring 2017 and Fall 2017) is 8,302 students. This is an increase of 6,652 students more than the increase of 1,650 students projected in the 2020 LRDP and 2005 EIR, representing a five-fold increase compared to the 1,650 enrollment increase projected in the 2020 LRDP and 2005 EIR. The response also shows UCB has built fewer than 1,000 beds.

1 5. The increase in student enrollment over and above the 1,650 additional students projected by the
2 2020 LRDP and included in the 2005 EIR's environmental impact analysis (hereinafter the "excess
3 increase in student enrollment") has caused and continues to cause significant adverse environmental
4 impacts that were not analyzed in the 2005 EIR. Plaintiff is informed and believes and on that basis
5 alleges that these impacts include, without limitation, increased use of off-campus housing for and by
6 UCB students, leading to increases in off-campus noise and trash; displacement of tenants resulting in
7 more homeless individuals living on public streets and in local parks; increases in the number of UCB
8 students who are homeless; increases in traffic and transportation related congestion and safety risks; and
9 increased burdens on the City of Berkeley's public safety services, including police, fire, ambulance, and
10 Emergency Medical Technician services.

11 6. Respondents have had and continue to have a legal obligation to analyze the environmental
12 effects of the excess increase in student enrollment pursuant to CEQA, including, without limitation, by
13 preparing and certifying an Environmental Impact Report to assess the significance of impacts caused
14 by the extraordinary increase in enrollment and to identify and adopt mitigation measures to reduce these
15 significant impacts.

21 Parties

22 7. Plaintiff SAVE BERKELEY'S NEIGHBORHOODS (Plaintiff) is a California nonprofit public
23 benefit corporation formed to provide education and advocacy to improve quality of life, protect the
24 environment and implement best planning practices. Plaintiff's founders, members, and directors live in
25 the area affected by the excess increase in student enrollment, have suffered and will continue to suffer
26 injury from adverse environmental impacts caused by the excess increase in student enrollment if the
27 legal violations alleged herein are not remedied. Plaintiff was formed and brings this action to represent
28 and advocate the beneficial interests of its founders, members, and directors in obtaining relief from
29
30

1 these legal violations and to improve quality of life, protect the environment and implement best
2 planning practices in connection UCB's increases in student enrollment.

3
4 8. Respondent and Defendant THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
5 (hereinafter "Regents") is a public trust corporation and state agency established pursuant to the
6 California Constitution vested with administering the University of California including the management
7 and disposition of property of the University and the lead agency for the 2020 LRDP under CEQA, and
8 is thus responsible for analyzing, disclosing, and mitigating the environmental impacts of the 2020
9 LRDP and the excess increase in student enrollment.
10

11
12 9. Respondent and Defendant JANET NAPOLITANO is the President of the University of
13 California and is named herein solely in this capacity. Regents Policy 8103 delegates to the President of
14 the University the Regents' authority for budget or design for capital projects consistent with approved
15 Long Range Development Plans and minor Long Range Development Plan amendments.
16

17 10. Respondent and Defendant CAROL T. CHRIST is the Chancellor of the University of California
18 Berkeley, and named herein solely in this capacity.
19

20 11. Respondents and Defendants Regents, Janet Napolitano, and Carol T. Christ are hereinafter
21 collectively referred to as "Respondents."

22 12. Plaintiff does not know the true names and capacities of Respondents and Defendants fictitiously
23 named herein as DOES 1 through 20, inclusive. Plaintiff is informed and believes, and thereon alleges,
24 that such fictitiously named Respondents and Defendants are responsible in some manner for the acts or
25 omissions complained of or pending herein. Plaintiff will amend this Petition to allege the fictitiously
26 named Respondents' and Defendants' true names and capacities when ascertained.
27
28

29 Notice Requirements

30 13. In accordance with Public Resources Code section 21167.5, Plaintiff served Respondents with

1 written notice of commencement of this action on April 12, 2018. The Notice of Commencement of
2 Action and Proof of Service are attached hereto as Exhibit 1.

3
4 14. In accordance with Public Resources Code section 21167.7 and Code of Civil Procedure section
5 388, Plaintiff has provided a copy of this pleading to the Attorney General's office. (See Exhibit 2.)

6
7 **Jurisdiction and Venue**

8 15. Plaintiff brings this action in mandamus pursuant to Code of Civil Procedure sections 1085,
9 1088.5, and 1094.5, and Public Resources Code sections 21168 and 21168.5; and as a complaint for
10 declaratory relief pursuant to Code of Civil Procedure section 1060. The Court has jurisdiction over
11 these claims.

12
13 16. Venue is proper in Alameda County under Code of Civil Procedure section 394, subdivision (a),
14 because UCB and Respondents are situated therein.

15
16 **Standing**

17 17. Plaintiff and, to the extent applicable, its members are beneficially interested in Respondents'
18 full compliance with CEQA. Respondents owed a mandatory duty to comply with CEQA with respect
19 to the 2020 LRDP and the excess increase in student enrollment. Plaintiff has the right to enforce the
20 mandatory duties that CEQA imposes on Respondents.

21
22 **Exhaustion of Administrative Remedies**

23 18. UCB provides no administrative remedy for the legal claims or grounds of noncompliance with
24 CEQA alleged herein and Plaintiff had no opportunity to raise the grounds of noncompliance alleged
25 herein in any UCB administrative proceeding.

26
27
28 **Private Attorney General Doctrine**

29 19. Plaintiff brings this action as a private attorney general pursuant to Code of Civil Procedure
30 section 1021.5, and any other applicable legal theory, to enforce important rights affecting the public

1 interest.

2 20. Issuance of the relief requested herein will confer a significant benefit on a large class of persons
3
4 by ensuring that Respondents analyze and disclose the environmental impact of the excess increase in
5 student enrollment.

6 21. Issuance of the relief requested herein will result in the enforcement of important rights affecting
7
8 the public interest. By compelling Respondents to complete adequate environmental review of the
9 excess increase in student enrollment under CEQA, Plaintiff will vindicate the public's important CEQA
10 rights to public disclosure regarding and public participation in government decisions that affect the
11 environment.
12

13 22. The necessity and financial burden of enforcement are such as to make an award of attorney's
14 fees appropriate in this proceeding because the transgressor is the agency whose duty it is to enforce the
15 laws at issue in this proceeding.
16

17 **First Cause of Action**
18 **(Violation of CEQA: Pub. Resources Code, § 21000 et seq.)**

19 23. Plaintiff hereby realleges and incorporates the preceding paragraphs this First Amended Petition
20 and Complaint as though set forth herein in full.

21
22 24. Respondents prejudicially abused their discretion in violation of CEQA pursuant to Public
23 Resources Code sections 21168 and 21168.5 and Code of Civil Procedure sections 1085 and 1094.5 by
24 failing to subject the excess increase in student enrollment to the procedures and requirements of
25 CEQA; by failing to analyze the excess increase in student enrollment pursuant to CEQA, including,
26 without limitation, by failing to prepare and certify an Environmental Impact Report to assess the
27 significance of impacts caused by the excess increase in student enrollment; by failing to identify and
28 adopt mitigation measures to reduce these significant impacts; and by failing to make the findings
29
30

1 required by Public Resources Code section 21081 before carrying out the excess increase in enrollment.

2 25. Plaintiff has no other plain, speedy, and adequate remedy in the ordinary course of law and will
3 suffer irreparable injury unless this Court issues the relief requested herein.
4

5 **Second Cause of Action**
6 **(Declaratory Relief: Code Civ. Proc., § 1060)**

7 26. Plaintiff hereby realleges and incorporates the preceding paragraphs of this First Amended
8 Petition and Complaint as though set forth herein in full.
9

10 27. Plaintiff seeks a judicial determination and declaration that Respondents violated CEQA as
11 described in paragraph 24 above.

12 28. An actual controversy has arisen and now exists between Plaintiff and Respondents. Plaintiff
13 contends that Respondents violated CEQA by failing to analyze the excess increase in student
14 enrollment pursuant to CEQA. Plaintiff is informed and believes, and based thereon alleges, that
15 Respondents dispute these contentions.
16

17 **Prayer for Relief**
18

19 WHEREFORE, Plaintiff prays for the following relief:

20 1. For a writ of mandate compelling Respondents to subject the excess increase in student
21 enrollment to the procedures and requirements of CEQA, to analyze the excess increase in student
22 enrollment pursuant to CEQA, including, without limitation, by preparing and certifying an
23 Environmental Impact Report to assess the significance of impacts caused by the excess increase in
24 student enrollment, and to make the findings required by Public Resources Code section 21081.
25

26 2. For a declaration that Respondents have failed to subject the excess increase in student
27 enrollment to the procedures and requirements of CEQA, to analyze the excess increase in student
28 enrollment pursuant to CEQA, including, without limitation, by preparing and certifying an
29
30

1 Environmental Impact Report to assess the significance of impacts caused by the excess increase in
2 student enrollment, and to make the findings required by Public Resources Code section 21081.

3
4 3. For an order retaining the Court's jurisdiction over this matter until Respondents comply with the
5 peremptory writ;

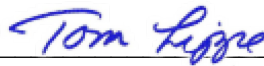
6 4. For an order compelling Respondents to pay Plaintiff's costs of suit;

7
8 5. For an order compelling Respondents to pay Plaintiff's reasonable attorneys fees related to these
9 proceedings pursuant to Code of Civil Procedure section 1021.5; and

10 6. For such other relief as the Court may deem proper.

11
12 DATED: June 18, 2018

LAW OFFICES OF THOMAS N. LIPPE, APC

13
14 

15 Thomas N. Lippe

16 Attorney for Plaintiff Save Berkeley's Neighborhoods

1 VERIFICATION

2 *Save Berkeley's Neighborhoods v. The Regents of the University of California*, Alameda County
3 Superior Court, Case No. RG18902751.

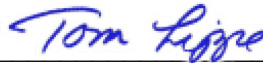
4 I, Thomas N. Lippe, declare that:

5 1. I am an attorney at law duly admitted and licensed to practice before all courts of this State. I am
6 the attorney of record for the Plaintiff in this action.
7

8 2. Plaintiff has their place of business in Alameda County, California, and therefore are absent from
9 the county in which I have my office. For that reason, I make this verification on its behalf.
10

11 3. I have read the foregoing First Amended Verified Petition for Writ of Mandate and Complaint
12 for Declaratory Relief and know the contents thereof; the factual allegations therein are true of my own
13 knowledge, except as to those matters which are therein stated upon my information or belief, and as to
14 those matters I believe them to be true.
15

16 I declare under penalty of perjury, under the laws of the State of California, that the foregoing is
17 true and correct. Executed on June 18, 2018, at San Francisco, California.
18

19
20 

21 Thomas N. Lippe
22 Attorney for Plaintiff Save Berkeley's Neighborhoods
23

24 T:\TL\UC Enroll\Trial\Pleadings\P011c 1st Amend Petition.wpd
25
26
27
28
29
30

EXHIBIT 1

Document received by the CA 1st District Court of Appeal.

Law Offices of
THOMAS N. LIPPE, APC

201 Mission Street
12th Floor
San Francisco, California 94105

Telephone: 415-777-5604
Facsimile: 415-777-5606
Email: Lippelaw@sonic.net

April 12, 2018

By email: chancellor@berkeley.edu
Chancellor Carol T. Christ
University of California, Berkeley
c/o Jenny Hanson
Executive Assistant to the Chancellor
Office of the Chancellor
200 California Hall, #1500
Berkeley, CA 94720-1500

By email: regentsoffice@ucop.edu
Regents of the University of California
c/o Anne Shaw
Office of the Secretary and Chief of Staff to the Regents
1111 Franklin St., 12th floor
Oakland, CA 94607

Re: Notice of Intent to Sue Regarding Inadequate CEQA Review of UC Berkeley's 2020 Long Range Development Plan.

Dear Chancellor Christ and Regents of the University of California:

This office represents Save Berkeley's Neighborhoods with respect to the University of California at Berkeley's legal obligations to conduct environmental review of the 2020 Long Range Development Plan (2020 LRDP) in compliance with the California Environmental Quality Act (CEQA).

One of the 2020 LRDP's objectives is to stabilize enrollment. (2020 LRDP, Environmental Impact Report (2004 EIR), p. 3.1-10.) The 2004 EIR evaluated an increase in enrollment of 1,650 students above the 2001-02 two-semester average. (2004 EIR, p. 3.1-14.) The University's October 30, 2017, response to the City of Berkeley's request for information regarding enrollment increases shows an actual increase of 8,302 enrolled students above the 2001-02 two-semester average for the most recent two-semester period (i.e., Spring 2017 and Fall 2017). (Exhibit 1.) This represents a five-fold increase compared to the 2004 EIR's projection of a 1,650 student increase in enrollment.

This change in the project renders the 2004 EIR informationally defective because the EIR does not assess the impact of the actual increase in enrollment, which is orders of magnitude higher than the 1,650-student increase projected in the 2004 EIR. As a result, the University must prepare a supplemental or subsequent EIR to assess the significance of impacts caused by this extraordinary increase in enrollment and to identify and adopt mitigation measures to reduce these significant

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AA00050

Chancellor Carol T. Christ, University of California, Berkeley
Regents of the University of California
Notice of Intent to Sue Regarding Inadequate CEQA Review of 2020 LRDP
April 12, 2018
Page 2

impacts.

This letter provides notice pursuant to Public Resources Code section 21167.5 that on or before April 20, 2018, Save Berkeley's Neighborhoods intends to file a lawsuit challenging the University's adoption of the 2020 LRDP on grounds the adoption does not comply with CEQA.

Save Berkeley's Neighborhoods is willing to discuss settling this dispute without the need for litigation. At a minimum, any such settlement must include: (1) an enforceable agreement by the University to prepare and certify a new EIR to assess the impacts of the 2020 LRDP as its project description has changed to reflect the increases in enrollment shown in the University's October 30, 2017, response to the City's request for information; (2) the new EIR must use the same environmental baseline used in the 2004 EIR; and (3) tolling the statute of limitations so that Save Berkeley's Neighborhoods is not forced to file its lawsuit to protect against the statute of limitations.

Thank you for your attention to this matter.

Very Truly Yours,



Thomas N. Lippe

cc:

David M. Robinson, Interim Chief Campus Counsel

By email: dmrobinson@berkeley.edu

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UNIVERSITY OF CALIFORNIA, BERKELEY



BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO

SANTA BARBARA • SANTA CRUZ

BERKELEY, CALIFORNIA 94720-1382

CAPITAL STRATEGIES
PHYSICAL AND ENVIRONMENTAL PLANNING
A&E Bldg. (MC 1382)

30 October 2017

Mayor Jesse Arreguin
City of Berkeley
2180 Milvia Street
Fifth Floor
Berkeley, California 94704

[Transmitted via email]

Mayor Arreguin:

My office has compiled the attached data in response to your request for information sent to former Chancellor Dirks' office on May 25, 2017. We have organized responses using the item numbers indicated in your letter. The data provided in the attachment is the current available information as of October 2017 and based on our understanding of your request.

Please contact Ruben Lizardo (rlizardo@berkeley.edu) if you have questions or would like clarification on the information that has been provided.

Sincerely,

A handwritten signature in cursive script that reads "Emily Marthinsen".

Emily Marthinsen
Assistant Vice Chancellor/Campus Architect
Physical & Environmental Planning | Capital Strategies

CC: R Lizardo, R Parikh, S Viducich, A Machamer, S Wilmot

EXHIBIT 1

Document received by the CA 1st District Court of Appeal.

ATTACHMENT 1. UC RESPONSE TO DATA REQUEST

1. Registered Student Headcount - Source: CalAnswers Student Census, UC Berkeley Office of Planning and Analysis, Accessed 10.04.2017

Academic Term	Total Undergraduates	Total Graduate Students	Off-campus Undergraduates	Off-campus Graduate Programs
Fall (F) 05	23,482	10,076	381	668
Spring (S) 06	22,643	9,571	384	674
F06	23,863	10,070	357	713
S07	23,351	9,592	384	732
F07	24,636	10,317	359	752
S08	24,032	9,809	395	766
F08	25,151	10,258	325	743
S09	24,448	9,735	405	758
F09	25,530	10,393	331	757
S10	25,061	9,854	421	773
F10	25,540	10,298	369	777
S11	24,969	9,789	498	762
F11	25,885	10,257	342	782
S12	25,277	9,764	529	788
F12	25,774	10,125	334	789
S13	25,181	9,610	463	800
F13	25,951	10,253	327	881
S14	25,473	9,834	426	954
F14	27,126	10,455	296	1111
S15	25,903	10,065	424	1118
F15	27,496	10,708	335	1243
S16	26,094	10,279	466	1252
F16	29,310	10,863	650	1424
S17	27,784	10,510	425	1480
F17	30,574	11,336	560	1536

Note: Columns indicated total number of students include all registered students, including those enrolled in off-campus programs such as online graduate degree programs, the Education Abroad Program, Global Edge (European Study Abroad), and Freshman in San Francisco. The students enrolled in these off-campus programs are tallied in the "off-campus" columns.

1 Thomas N. Lippe, SBN 104640
2 LAW OFFICES OF THOMAS N. LIPPE, APC
3 201 Mission Street, 12th Floor
4 San Francisco, California 94105
5 Tel: (415) 777-5604
6 Fax: (415) 777-5606
7 E-mail: Lippelaw@sonic.net

8 Attorney for Plaintiff: Save Berkeley's Neighborhoods

9
10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF ALAMEDA**

12 SAVE BERKELEY'S NEIGHBORHOODS, a
13 California nonprofit public benefit corporation;

14 Plaintiff,

15 vs.

16 THE REGENTS OF THE UNIVERSITY OF
17 CALIFORNIA; JANET NAPOLITANO, in her
18 capacity as President of the University of
19 California; CAROL T. CHRIST, in her capacity as
20 Chancellor of the University of California,
21 Berkeley; and DOES 1 through 20,

22 Respondents and Defendants.
23
24
25
26
27
28
29
30

Case No.

PROOF OF SERVICE

**[CALIFORNIA ENVIRONMENTAL
QUALITY ACT]**

1 **PROOF OF SERVICE**


2 I am a citizen of the United States, employed in the City and County of San Francisco, California.
3 My business address is 201 Mission Street, 12th Floor, San Francisco, CA 94105. I am over the age of 18
4 years and not a party to the above entitled action. On April 12, 2018, I served the following document on
5 the parties below, as designated:

- 6 • **Re: Notice of Intent to Sue Regarding Inadequate CEQA Review of UC Berkeley's 2020**
7 **Long Range Development Plan**

8 **MANNER OF SERVICE**
9 **(check all that apply)**

- 10 ☐ By Mail: In the ordinary course of business, I caused each such envelope to be
11 placed in the custody of the United States Postal Service, with
12 postage thereon fully prepaid in a sealed envelope.
- 13 ☐ By Personal Service: I personally delivered each such envelope to the office of the addressee
14 on the date last written below.
- 15 ☐ By Overnight FedEx: I caused such envelope to be placed in a box or other facility regularly
16 maintained by the express service carrier or delivered to an authorized
17 courier or driver authorized by the express service carrier to receive
18 documents, in an envelope or package designated by the express
19 service carrier with delivery fees paid or provided for.
- 20 ☒ By E-mail: I caused such document to be served via electronic mail equipment
21 transmission (E-mail) on the parties as designated on the attached
22 service list by transmitting a true copy to the following E-mail
23 addresses listed under each addressee below.
- 24 ☐ By Personal Delivery by Courier: I caused each such envelope to be delivered to an authorized
25 courier or driver, in an envelope or package addressed to the
26 addressee below.

27 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
28 and correct. Executed on April 12, 2018, in the City and County of San Francisco, California

29 
30 Kelly Marie Perry

SERVICE LIST

By email: chancellor@berkeley.edu

Chancellor Carol T. Christ

University of California, Berkeley

c/o Jenny Hanson

Executive Assistant to the Chancellor

Office of the Chancellor

200 California Hall, #1500

Berkeley, CA 94720-1500

By email: regentsoffice@ucop.edu

Regents of the University of California

c/o Anne Shaw

Office of the Secretary and Chief of Staff to the Regents

1111 Franklin St., 12th floor

Oakland, CA 94607

By email: dmrobinson@berkeley.edu

David M. Robinson, Interim Chief Campus Counsel

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EXHIBIT 2

Document received by the CA 1st District Court of Appeal.

AA00057

1 Thomas N. Lippe, SBN 104640
2 LAW OFFICES OF THOMAS N. LIPPE, APC
3 201 Mission Street, 12th Floor
4 San Francisco, California 94105
5 Tel: (415) 777-5604
6 Fax: (415) 777-5606
7 E-mail: Lippelaw@sonic.net

8 Attorney for Plaintiff: Save Berkeley's Neighborhoods

9
10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF ALAMEDA**

12 SAVE BERKELEY'S NEIGHBORHOODS, a
13 California nonprofit public benefit corporation;

14 Plaintiff,

15 vs.

16 THE REGENTS OF THE UNIVERSITY OF
17 CALIFORNIA; JANET NAPOLITANO, in her
18 capacity as President of the University of
19 California; CAROL T. CHRIST, in her capacity as
20 Chancellor of the University of California,
21 Berkeley; and DOES 1 through 20,

22 Respondents and Defendants.

Case No. RG18902751

PROOF OF SERVICE

**[CALIFORNIA ENVIRONMENTAL
QUALITY ACT]**

1 **PROOF OF SERVICE**

2 I am a citizen of the United States, employed in the City and County of San Francisco, California.
3 My business address is 201 Mission Street, 12th Floor, San Francisco, CA 94105. I am over the age of 18
4 years and not a party to the above entitled action. On June 18, 2018, I served the following document on
5 the parties below, as designated:

- 6 • **FIRST AMENDED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR**
7 **DECLARATORY RELIEF**

8 **MANNER OF SERVICE**
9 **(check all that apply)**

- 10 ☒ By Mail: In the ordinary course of business, I caused each such envelope to be
11 placed in the custody of the United States Postal Service, with
12 postage thereon fully prepaid in a sealed envelope.
- 13 ☐ By Personal Service: I personally delivered each such envelope to the office of the address
14 on the date last written below.
- 15 ☐ By Overnight FedEx: I caused such envelope to be placed in a box or other facility regularly
16 maintained by the express service carrier or delivered to an authorized
17 courier or driver authorized by the express service carrier to receive
18 documents, in an envelope or package designated by the express
service carrier with delivery fees paid or provided for.
- 19 ☐ By E-mail: I caused such document to be served via electronic mail equipment
20 transmission (E-mail) on the parties as designated on the attached
21 service list by transmitting a true copy to the following E-mail
addresses listed under each addressee below.
- 22 ☐ By Personal
23 Delivery by
24 Courier: I caused each such envelope to be delivered to an authorized
courier or driver, in an envelope or package addressed to the
addressee below.

25 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
26 and correct. Executed on June 18, 2018, in the City and County of San Francisco, California.

27
28 Kelly Marie Perry
29 Kelly Marie Perry
30

SERVICE LIST

Hon. Xavier Becerra
Attorney General
State of California
Office of the Attorney General
1300 I Street
Sacramento, CA 95814

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Document received by the CA 1st District Court of Appeal.

1. A judgment, decree, or order was entered in this action on (date): June 28, 1018
2. A copy of the judgment, decree, or order is attached to this notice.

Timothy D. Cremin

► Timothy D. Kern
(SIGNATURE)

PLAINTIFF/PETITIONER: Save Berkeley's Neighborhoods	CASE NUMBER: RG18902751
DEFENDANT/RESPONDENT: The Regents of the University of California, et al.	

**PROOF OF SERVICE BY FIRST-CLASS MAIL
NOTICE OF ENTRY OF JUDGMENT OR ORDER**

(NOTE: You cannot serve the Notice of Entry of Judgment or Order if you are a party in the action. The person who served the notice must complete this proof of service.)

1. I am at least 18 years old and **not a party to this action**. I am a resident of or employed in the county where the mailing took place, and my residence or business address is (*specify*):
555 12th Street., Suite 1500,
Oakland, CA 94607
2. I served a copy of the *Notice of Entry of Judgment or Order* by enclosing it in a sealed envelope with postage fully prepaid and (*check one*):
 - a. ☐ deposited the sealed envelope with the United States Postal Service.
 - b. ☒ placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.
3. The *Notice of Entry of Judgment or Order* was mailed:
 - a. on (*date*): July 2, 2018
 - b. from (*city and state*): Oakland, CA
4. The envelope was addressed and mailed as follows:

<ol style="list-style-type: none"> a. Name of person served: Thomas N. Lippe, Esq. The Law Offices of Thomas N. Lippe APC Street address: 201 Mission Street, 12th Floor City: San Francisco State and zip code: CA 94105 b. Name of person served: Street address: City: State and zip code: 	<ol style="list-style-type: none"> c. Name of person served: Street address: City: State and zip code: d. Name of person served: Street address: City: State and zip code:
--	--

☐ Names and addresses of additional persons served are attached. (*You may use form POS-030(P).*)
5. Number of pages attached ____.

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

Date: July 2, 2018

Melissa Bender

(TYPE OR PRINT NAME OF DECLARANT)

► 
(SIGNATURE OF DECLARANT)

Document received by the CA 1st District Court of Appeal.



20913359

FILED
ALAMEDA COUNTY

JUN 28 2018

CLERK OF THE SUPERIOR COURT
By Deputy

EXEMPT FROM FILING FEES
GOV'T CODE § 6103

Charles F. Robinson (SBN 113197)
Kelly L. Drumm (SBN 172767)
Anagha Dandekar Clifford (SBN 233806)
anagha.clifford@ucop.edu
THE UNIVERSITY OF CALIFORNIA
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Facsimile: (510) 444-1108

Attorneys for The Regents of the University of
California; Janet Napolitano, in her capacity as
President of the University of California; Carol T.
Christ, in her capacity as Chancellor of the
University of California, Berkeley

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

SAVE BERKELEY'S NEIGHBORHOODS, a
California nonprofit public benefit
corporation,

Plaintiff,

v.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA; JANET NAPOLITANO, in
her capacity as President of the University of
California; CAROL T. CHRIST, in her
capacity as Chancellor of the University of
California, Berkeley; and DOES 1 through 20,

Respondents and Defendants.

Case No. RG18902751

Assigned For All Pre-Trial Purposes To:
Hon. Frank Roesch, Dept. 24

**STIPULATION AND [PROPOSED]
ORDER TO EXTEND DEADLINES TO
ALLOW PARTIES TO ENGAGE IN
FURTHER SETTLEMENT
NEGOTIATIONS**

Action Filed: April 27, 2018
Trial Date: None Set

Document received by the CA 1st District Court of Appeal.

AA00063

1 IT IS HEREBY STIPULATED by and between all parties that:

2 1. On April 27, 2018, Plaintiff Save Berkeley's Neighborhoods ("Plaintiff") filed its
3 Petition for Writ of Mandate and Complaint for Declaratory Relief ("Complaint") in the above-
4 referenced action. Defendants and Respondents The Regents of the University of California, Janet
5 Napolitano, in her capacity as President of the University of California, and Carol T. Christ, in her
6 capacity as Chancellor of the University of California, Berkeley (collectively "Defendants") were
7 served on May 4, 2018;

8 2. On May 18, 2018, Plaintiff's Request for Production of Documents, Set 1
9 ("Document Requests") was served via e-mail on Defendants;

10 3. On May 29, 2018, the parties previously requested, and the Court granted, an
11 extension of time for Defendants to file their responsive pleading to the Complaint and respond to
12 the Document Requests to June 29, 2018;

13 4. On June 12, 2018, the parties held a settlement conference, and while settlement
14 was not reached on that day, the parties felt discussions were beneficial and would like to further
15 meet and explore settlement options;

16 5. On June 18, 2018, Plaintiff filed a First Amended Petition and Complaint for
17 Declaratory Relief and served the First Amended Petition and Complaint for Declaratory Relief on
18 Defendants on June 18, 2018. As a result, Defendants' deadline to file a responsive pleadings is
19 July 20, 2018;

20 6. The parties believe that conducting further settlement discussions would be useful
21 and may avoid litigation. Therefore, the parties desire to extend near-term litigation deadlines to
22 conserve the resources of the parties and focus on settlement rather than incurring further litigation
23 costs and attorney fees;

24 7. Based on the foregoing, the parties desire to continue the following current
25 deadlines (collectively, "Current Deadlines"):

26 a. June 29, 2018 - Defendants' responses and production of documents in
27 response to Plaintiff's Request for Production of Documents, Set 1;

28 b. July 3, 2018 - Defendants' certification of Administrative Record

Document received by the CA 1st District Court of Appeal.

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1 c. July 13, 2018 – Case Management Conference;

2 d. July 20, 2018 – Defendants' responsive pleading to the First Amended
3 Complaint;

4 e. July 26, 2018 – Plaintiff's request for hearing;

5 8. The parties therefore stipulate to and request that the Court extend the Current
6 Deadlines as follows:

7 a. August 17, 2018 – Case Management Conference.

8 b. August 17, 2018 – Defendants' responses and production of documents in
9 response to Plaintiff's Request for Production of Documents, Set 1.

10 c. August 17, 2018 – Defendants' responsive pleading to the First Amended
11 Complaint.

12 d. August 17, 2018 – Plaintiff's request for hearing.

13 e. September 2, 2018 – Defendants' certification of Administrative Record;

14 NOW THEREFORE, the parties, by and through their respective counsel, do HEREBY
15 STIPULATE acting through their respective counsel, that the Current Deadlines should be
16 extended as set forth above.

17
18 DATED: June 25, 2018

MEYERS, NAVE, RIBACK, SILVER & WILSON

19
20 By: 

Timothy D. Cremin
Attorneys for Defendants The Regents of the
University of California; Janet Napolitano, in her
capacity as President of the University of
California; Carol T. Christ, in her capacity as
Chancellor of the University of California,
Berkeley

21
22
23
24
25 DATED: June 25, 2018

LAW OFFICES OF THOMAS N. LIPPE, APC

26
27 By: 

Thomas N. Lippe
Attorneys for Plaintiff Save Berkeley's
Neighborhoods

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Document received by the CA 1st District Court of Appeal.

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ORDER

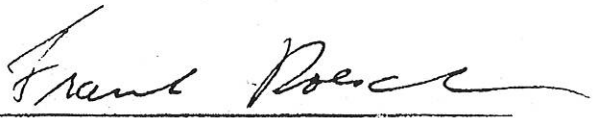
PURSUANT TO THE STIPULATION SET FORTH ABOVE, AND FOR GOOD CAUSE
APPEARING THEREFOR, THE COURT ORDERS AS FOLLOWS:

The following deadlines in case are extended are follows:

- a. August 17, 2018 – Case Management Conference.
- b. August 17, 2018 – Defendants' responses and production of documents in response to Plaintiff's Request for Production of Documents, Set 1.
- c. August 17, 2018 – Defendants' responsive pleading to the First Amended Complaint.
- d. August 17, 2018 – Plaintiff's request for hearing.
- e. September 2, 2018 – Defendants' certification of Administrative Record.

IT IS SO ORDERED.

Dated: June 28, 2018



Judge of the Superior Court

2976503.2

Document received by the CA 1st District Court of Appeal.

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Tab 005**FILED BY FAX****ALAMEDA COUNTY**

July 24, 2018

CLERK OF
THE SUPERIOR COURT
By Alicia Espinoza, DeputyCASE NUMBER:
RG18902751

1 Thomas N. Lippe, SBN 104640
2 LAW OFFICES OF THOMAS N. LIPPE, APC
3 201 Mission Street, 12th Floor
4 San Francisco, California 94105
5 Tel: (415) 777-5604
6 Fax: (415) 777-5606
7 E-mail: Lippelaw@sonic.net

8 Attorney for Plaintiff: Save Berkeley's Neighborhoods

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**IN AND FOR THE COUNTY OF ALAMEDA**

10 SAVE BERKELEY'S NEIGHBORHOODS, a
11 California nonprofit public benefit corporation;

12 Plaintiff,

13 vs.

14 THE REGENTS OF THE UNIVERSITY OF
15 CALIFORNIA; JANET NAPOLITANO, in her
16 capacity as President of the University of
17 California; CAROL T. CHRIST, in her capacity as
18 Chancellor of the University of California,
19 Berkeley; and DOES 1 through 20,

20 Respondents and Defendants.

Case No. RG18902751

**NOTICE OF REQUEST AND REQUEST
FOR HEARING****[CALIFORNIA ENVIRONMENTAL
QUALITY ACT]**

1 TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 Plaintiff submits this request that the Court set a hearing date on the merits of the First Amended
3 Petition for Writ of Mandate and Complaint for Declaratory Relief pursuant to Public Resources Code
4 section 21167.4, subdivisions (a) and (b). Subdivision (a) of section 21167.4 of the Public Resources Code
5 provides in full: "In any action or proceeding alleging noncompliance with this division, the petitioner shall
6 request a hearing within 90 days from the date of filing the petition or shall be subject to dismissal on the
7 court's own motion or on the motion of any party interested in the action or proceeding." Plaintiffs filed
8 their original Petition for Writ of Mandate on April 27, 2018.

9 The Court initially ordered a Case Management Conference to be held on July 13, 2018; the parties
10 stipulated and the court ordered the Case Management Conference previously set for July 13, 2018, to be
11 continued to August 17, 2018; and then, by subsequent order, the Court continued the Case Management
12 Conference from August 17, 2018, to August 31, 2018.

13 Plaintiff submits that the next Case Management Conference is the appropriate time and place from
14 the Court and the parties to discuss setting a hearing date on the merits of the First Amended Petition for
15 Writ of Mandate and Complaint for Declaratory Relief.

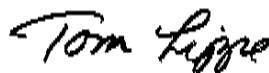
16 Plaintiff's counsel is unavailable on August 31, 2018; therefore, Plaintiff requests a continuance of
17 the Case Management Conference from August 31, 2018, to a mutually available date in September, 2018.

18 Plaintiff's counsel will coordinate finding a mutually agreeable date for the parties and the Court to
19 reset the Case Management Conference.

20 All parties have been served with the Petition and the proofs of service have been filed with this
21 Court.

22 DATED: July 24, 2018

LAW OFFICES OF THOMAS N. LIPPE, APC

23 

24 _____
25 Thomas N. Lippe
26 Attorney for Plaintiffs

PROOF OF SERVICE

I am a citizen of the United States, employed in the City and County of San Francisco, California. My business address is 201 Mission Street, 12th Floor, San Francisco, CA 94105. I am over the age of 18 years and not a party to the above entitled action. On July 24, 2018, I served the following document on the parties below, as designated:

• **NOTICE OF REQUEST AND REQUEST FOR HEARING**

MANNER OF SERVICE**(check all that apply)**

- ☐ By Mail: In the ordinary course of business, I caused each such envelope to be placed in the custody of the United States Postal Service, with postage thereon fully prepaid in a sealed envelope.
- ☐ By Personal Service: I personally delivered each such envelope to the office of the address on the date last written below.
- ☐ By Overnight FedEx: I caused such envelope to be placed in a box or other facility regularly maintained by the express service carrier or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for.
- ☒ By E-mail: I caused such document to be served via electronic mail equipment transmission (E-mail) on the parties as designated on the attached service list by transmitting a true copy to the following E-mail addresses listed under each addressee below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
- ☐ By Personal Delivery by Courier: I caused each such envelope to be delivered to an authorized courier or driver, in an envelope or package addressed to the addressee below.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 24, 2018, in the City and County of San Francisco, California



Kelly Marie Perry

1
2
3 **SERVICE LIST**

4 Office of General Counsel
5 Anagha Dandekar Clifford, Senior Counsel
6 1111 Franklin Street, 8th Floor
7 Oakland, CA 94607
8 Email: Anagha Clifford (Anagha.Clifford@ucop.edu)

9 Meyers Nave Riback Silver & Wilson
10 555 12th Street, Suite 1500
11 Oakland, California 94607
12 Email: Tim Cremin (tcremin@meyersnave.com)
13 Email: Melissa Bender (mbender@meyersnave.com)

14 Meyers Nave Riback Silver & Wilson
15 707 Wilshire Boulevard, 24th Floor
16 Los Angeles, California 90017
17 Email: Amrit Kulkarni (amrit@meyersnave.com)

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<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Timothy D. Cremin (SBN: 156725) Meyers Nave Riback Silver & Wilson 555 12th Street, Suite 1500 Oakland, CA 94607 TELEPHONE NO.: (510) 808-2000 FAX NO. (Optional): (510) 444-1108 E-MAIL ADDRESS (Optional): tcremin@meyersnave.com ATTORNEY FOR (Name): The Regents of the University of California, et al.</p>	<p>FOR COURT USE ONLY</p>
<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA STREET ADDRESS: 1221 Oak Street MAILING ADDRESS: CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME:</p>	
<p>PLAINTIFF/PETITIONER: Save Berkeley's Neighborhoods DEFENDANT/RESPONDENT: The Regents of the University of California, et al.</p>	
<p>NOTICE OF ENTRY OF JUDGMENT OR ORDER</p> <p>(Check one): <input checked="" type="checkbox"/> UNLIMITED CASE <input type="checkbox"/> LIMITED CASE (Amount demanded (Amount demanded was exceeded \$25,000) \$25,000 or less)</p>	<p>CASE NUMBER: RG18902751</p>

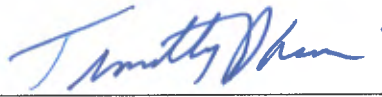
TO ALL PARTIES :

1. A judgment, decree, or order was entered in this action on (date): August 13, 2018
2. A copy of the judgment, decree, or order is attached to this notice.

Date: August 17, 2018

Timothy D. Cremin

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

▶ 

(SIGNATURE)

Document received by the CA 1st District Court of Appeal.

PLAINTIFF/PETITIONER: Save Berkeley's Neighborhoods	CASE NUMBER: RG18902751
DEFENDANT/RESPONDENT: The Regents of the University of California, et al.	

**PROOF OF SERVICE BY FIRST-CLASS MAIL
NOTICE OF ENTRY OF JUDGMENT OR ORDER**

(NOTE: You cannot serve the Notice of Entry of Judgment or Order if you are a party in the action. The person who served the notice must complete this proof of service.)

1. I am at least 18 years old and **not a party to this action**. I am a resident of or employed in the county where the mailing took place, and my residence or business address is (*specify*):
555 12th Street, Suite 1500
Oakland, CA 94607
2. I served a copy of the *Notice of Entry of Judgment or Order* by enclosing it in a sealed envelope with postage fully prepaid and (*check one*):
 - a. ☐ deposited the sealed envelope with the United States Postal Service.
 - b. ☒ placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.
3. The *Notice of Entry of Judgment or Order* was mailed:
 - a. on (*date*): August 17, 2018
 - b. from (*city and state*): Oakland, California
4. The envelope was addressed and mailed as follows:

a. Name of person served: Thomas N. Lippe, Esq. The Law Offices of Thomas N. Lippe APC Street address: 201 Mission Street, 12 th FL City: San Francisco State and zip code: CA 94105	c. Name of person served: Street address: City: State and zip code:
b. Name of person served: Street address: City: State and zip code:	d. Name of person served: Street address: City: State and zip code:

☐ Names and addresses of additional persons served are attached. (*You may use form POS-030(P).*)
5. Number of pages attached ____.

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

Date: August 17, 2018

Melissa Bender

(TYPE OR PRINT NAME OF DECLARANT)

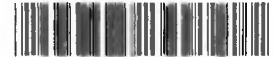


UBender

(SIGNATURE OF DECLARANT)

Document received by the CA 1st District Court of Appeal.





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FILED
ALAMEDA COUNTY

AUG 13 2018

CLERK OF THE SUPERIOR COURT
By [Signature] Deputy

EXEMPT FROM FILING FEES
GOV'T CODE § 6103



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Kelly L. Drumm (SBN 172767)
Kelly.Drumm@ucop.edu
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Office of General Counsel
1111 Franklin St 8th Floor
Oakland, CA 94607
Telephone: (510) 987-9765
Facsimile: (510) 987-9757

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Timothy D. Cremin (SBN 156725)
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egrutzmacher@meyersnave.com
MEYERS, NAVE, RIBACK, SILVER & WILSON
555 12th Street, Suite 1500
Oakland, California 94607
Telephone: (510) 808-2000
Facsimile: (510) 444-1108

Attorneys for The Regents of the University of
California; Janet Napolitano, in her capacity as
President of the University of California; Carol T.
Christ, in her capacity as Chancellor of the
University of California, Berkeley

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

SAVE BERKELEY'S NEIGHBORHOODS, a
California nonprofit public benefit
corporation,

Plaintiff,

v.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA; JANET NAPOLITANO, in
her capacity as President of the University of
California; CAROL T. CHRIST, in her
capacity as Chancellor of the University of
California, Berkeley; and DOES 1 through 20,

Respondents and Defendants.

Case No. RG18902751

Assigned For All Pre-Trial Purposes To:
Hon. Frank Roesch, Dept. 24

**ORDER FOLLOWING
THIRD STIPULATION AND
[PROPOSED] ORDER TO EXTEND
DEADLINES TO ALLOW PARTIES TO
ENGAGE IN FURTHER SETTLEMENT
NEGOTIATIONS**

Action Filed: April 27, 2018
Trial Date: None Set

THIRD STIPULATION AND [PROPOSED] ORDER TO EXTEND DEADLINES TO ALLOW PARTIES TO
ENGAGE IN FURTHER SETTLEMENT NEGOTIATIONS

AA00073

Document received by the CA 1st District Court of Appeal.

1 IT IS HEREBY STIPULATED by and between all parties that:

2 1. On April 27, 2018, Plaintiff Save Berkeley's Neighborhoods ("Plaintiff") filed its
3 Petition for Writ of Mandate and Complaint for Declaratory Relief ("Complaint") in the above-
4 referenced action. Defendants and Respondents The Regents of the University of California, Janet
5 Napolitano, in her capacity as President of the University of California, and Carol T. Christ, in her
6 capacity as Chancellor of the University of California, Berkeley (collectively "Defendants") were
7 served on May 4, 2018;

8 2. On May 18, 2018, Plaintiff's Request for Production of Documents, Set 1
9 ("Document Requests") was served via e-mail on Defendants;

10 3. On May 29, 2018, the parties previously requested, and the Court granted, an
11 extension of time for Defendants to file their responsive pleading to the Complaint and respond to
12 the Document Requests to June 29, 2018;

13 4. On June 12, 2018, the parties held a settlement conference, and while settlement
14 was not reached on that day, the parties felt discussions were beneficial and would like to further
15 meet and explore settlement options;

16 5. On June 18, 2018, Plaintiff filed a First Amended Petition and Complaint for
17 Declaratory Relief and served the First Amended Petition and Complaint for Declaratory Relief on
18 Defendants on June 18, 2018. As a result, Defendants' deadline to file a responsive pleadings was
19 July 20, 2018;

20 6. On June 28, 2018, the Court entered an order extending court deadlines to allow the
21 parties to engage in settlement negotiations;

22 7. The parties believe that continuing to conduct further settlement discussions would
23 be useful and may avoid litigation. Therefore, the parties desire to extend near-term litigation
24 deadlines to conserve the resources of the parties and focus on settlement rather than incurring
25 further litigation costs and attorney fees;

26 8. Based on the foregoing, the parties desire to continue the following current
27 deadlines (collectively, "Current Deadlines"):

28 a. August 31, 2018 – Case Management Conference.

- b. August 17, 2018 – Defendants’ responses and production of documents in response to Plaintiff’s Request for Production of Documents, Set 1.
- c. August 17, 2018 – Defendants’ responsive pleading to the First Amended Complaint.
- d. September 2, 2018 – Defendants’ certification of Administrative Record.

9. The parties therefore stipulate to and request that the Court extend the Current Deadlines as follows:

- a. September 21, 2018 — Case Management Conference.
- b. September 7, 2018 — Defendants’ responses and production of documents in response to Plaintiff’s Request for Production of Documents, Set 1.
- c. September 21, 2018 — Defendants’ responsive pleading to the First Amended Complaint;
- d. October 12, 2018 — Defendants’ certification of Administration Record.

NOW THEREFORE, the parties, by and through their respective counsel, do HEREBY STIPULATE acting through their respective counsel, that the Current Deadlines should be extended as set forth above.

DATED: August 9, 2018

MEYERS, NAVE, RIBACK, SILVER & WILSON

By: Timothy D. Cremin
 Timothy D. Cremin
 Attorneys for Defendants The Regents of the University of California; Janet Napolitano, in her capacity as President of the University of California; Carol T. Christ, in her capacity as Chancellor of the University of California, Berkeley

DATED: August 9, 2018

LAW OFFICES OF THOMAS N. LIPPE, APC

By: Tom Lippe
 Thomas N. Lippe
 Attorneys for Plaintiff Save Berkeley’s Neighborhoods

1 ORDER

2 PURSUANT TO THE STIPULATION SET FORTH ABOVE, AND FOR GOOD CAUSE
3 APPEARING THEREFOR, THE COURT ORDERS AS FOLLOWS:

4 The following deadlines in case are extended are follows:

- 5 a. ~~September 21, 2018~~ — Case Management Conference. **RESET FROM**
6 b. September 7, 2018 — Defendants' responses and production of documents
8/31/18 to 10/19/18 at 9:00AM in D-24


7 in response to Plaintiff's Request for Production of Documents, Set 1.

- 8 c. September 21, 2018 — Defendants' responsive pleading to the First
9 Amended Complaint;

- 10 d. October 12, 2018 — Defendants' certification of Administration Record.

11
12 IT IS SO ORDERED.

13
14 Dated: 8/13/2018

15 
16 Judge of the Superior Court

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Tab 007

OCT/04/2018/THU 09:13 AM

Law O. Thomas Lippe

FAX No. 1-415-777-5606

F. 002

FILED BY FAX CM-110 ALAMEDA COUNTY October 04, 2018 CLERK OF THE SUPERIOR COURT By Dajuana Turner, Deputy CASE NUMBER: RG18902751	
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Thomas N. Lippe, SBN 104640 Law Offices of Thomas N. Lippe, APC 201 Mission Street, 12th Floor, San Francisco, CA 94105 TELEPHONE NO.: 415-777-5604 FAX NO. (Optional): 415-777-5606 E-MAIL ADDRESS (Optional): Lippelaw@sonic.net ATTORNEY FOR (Name): Plaintiffs; Berkeley Hills Watershed Coalition, et al	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: 1225 Fallon Street CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME: René C. Davidson Courthouse	
PLAINTIFF/PETITIONER: Save Berkeley's Neighborhoods DEFENDANT/RESPONDENT: The Regents of the University of CA, et al.	
CASE MANAGEMENT STATEMENT (Check one): <input checked="" type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000) <input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less)	
CASE NUMBER: RG18902751	
A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: October 19, 2018 Time: 9:00a.m. Dept.: 24 Div.: Room: Address of court (if different from the address above): Administration Building, 1221 Oak Street, 3rd Floor, Oakland, CA 94612 <input checked="" type="checkbox"/> Notice of Intent to Appear by Telephone, by (name): Thomas N. Lippe	

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

- Party or parties (answer one):**
 - ☒ This statement is submitted by party (name): Plaintiff; Save Berkeley's Neighborhoods
 - ☐ This statement is submitted jointly by parties (names):
- Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)**
 - The complaint was filed on (date): April 27, 2018
 - ☐ The cross-complaint, if any, was filed on (date):
- Service (to be answered by plaintiffs and cross-complainants only)**
 - ☒ All parties named in the complaint and cross-complaint have been served, have appeared, or have been dismissed.
 - ☐ The following parties named in the complaint or cross-complaint
 - ☐ have not been served (specify names and explain why not):
 - ☐ have been served but have not appeared and have not been dismissed (specify names):
 - ☐ have had a default entered against them (specify names):
 - ☐ The following additional parties may be added (specify names, nature of involvement in case, and date by which they may be served):
- Description of case**
 - Type of case in ☒ complaint ☐ cross-complaint (Describe, including causes of action):
 This action seeks a writ of mandate and declaratory relief ordering the Respondents to comply with CEQA by analyzing the environmental effects of increasing enrollment at UC Berkeley. See Attachment 4b.

PLAINTIFF/PETITIONER: Save Berkeley's Neighborhoods	CASE NUMBER:
DEFENDANT/RESPONDENT: The Regents of the University of CA, et al.	RG18902751

4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*

See Attachment 4b.

☒ *(If more space is needed, check this box and attach a page designated as Attachment 4b.)*

5. **Jury or nonjury trial**

The party or parties request ☐ a jury trial ☒ a nonjury trial. *(If more than one party, provide the name of each party requesting a jury trial):*

6. **Trial date**

a. ☐ The trial has been set for *(date)*:

b. ☒ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain)*:

c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability)*:
December 24, 2018, to January 4, 2019 (vacation); March 14, 2019 (trial in another case); March 25 to April 1, 2019 (vacation); June 14 to June 18, 2019 (vacation).

7. **Estimated length of trial**

The party or parties estimate that the trial will take *(check one)*:

a. ☒ days *(specify number)*: 1

b. ☐ hours (short causes) *(specify)*:

8. **Trial representation** *(to be answered for each party)*

The party or parties will be represented at trial ☒ by the attorney or party listed in the caption ☐ by the following:

a. Attorney:

b. Firm:

c. Address:

d. Telephone number:

f. Fax number:

e. E-mail address:

g. Party represented:

☐ Additional representation is described in Attachment 8.

9. **Preference**

☒ This case is entitled to preference *(specify code section)*: Public Resources Code sec. 21167.7

10. **Alternative dispute resolution (ADR)**

a. **ADR information package.** Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 for information about the processes available through the court and community programs in this case.

(1) For parties represented by counsel: Counsel ☒ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.

(2) For self-represented parties: Party ☐ has ☐ has not reviewed the ADR information package identified in rule 3.221.

b. **Referral to judicial arbitration or civil action mediation** (if available).

(1) ☐ This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141.11 or to civil action mediation under Code of Civil Procedure section 1775.3 because the amount in controversy does not exceed the statutory limit.

(2) ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.

(3) ☒ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. *(specify exemption)*:

Rule 3.811(b)(1)

Document received by the CA 1st District Court of Appeal.

PLAINTIFF/PETITIONER: Save Berkeley's Neighborhoods	CASE NUMBER:
DEFENDANT/RESPONDENT: The Regents of the University of CA, et al.	RG18902751

10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (*check all that apply and provide the specified information*):

	The party or parties completing this form are willing to participate in the following ADR processes (<i>check all that apply</i>):	If the party or parties completing this form in the case have agreed to participate in or have already completed an ADR process or processes, indicate the status of the processes (<i>attach a copy of the parties' ADR stipulation</i>):
(1) Mediation	<input type="checkbox"/>	<input type="checkbox"/> Mediation session not yet scheduled <input type="checkbox"/> Mediation session scheduled for (date): <input type="checkbox"/> Agreed to complete mediation by (date): <input type="checkbox"/> Mediation completed on (date):
(2) Settlement conference	<input checked="" type="checkbox"/>	<input type="checkbox"/> Settlement conference not yet scheduled <input type="checkbox"/> Settlement conference scheduled for (date): <input type="checkbox"/> Agreed to complete settlement conference by (date): <input checked="" type="checkbox"/> Settlement conference completed on (date): June 12, 2018
(3) Neutral evaluation	<input type="checkbox"/>	<input type="checkbox"/> Neutral evaluation not yet scheduled <input type="checkbox"/> Neutral evaluation scheduled for (date): <input type="checkbox"/> Agreed to complete neutral evaluation by (date): <input type="checkbox"/> Neutral evaluation completed on (date):
(4) Nonbinding judicial arbitration	<input type="checkbox"/>	<input type="checkbox"/> Judicial arbitration not yet scheduled <input type="checkbox"/> Judicial arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete judicial arbitration by (date): <input type="checkbox"/> Judicial arbitration completed on (date):
(5) Binding private arbitration	<input type="checkbox"/>	<input type="checkbox"/> Private arbitration not yet scheduled <input type="checkbox"/> Private arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete private arbitration by (date): <input type="checkbox"/> Private arbitration completed on (date):
(6) Other (<i>specify</i>):	<input type="checkbox"/>	<input type="checkbox"/> ADR session not yet scheduled <input type="checkbox"/> ADR session scheduled for (date): <input type="checkbox"/> Agreed to complete ADR session by (date): <input type="checkbox"/> ADR completed on (date):

PLAINTIFF/PETITIONER: Save Berkeley's Neighborhoods	CASE NUMBER: RG18902751
DEFENDANT/RESPONDENT: The Regents of the University of CA, et al.	

11. Insurance

- a. ☐ Insurance carrier, if any, for party filing this statement (*name*):
- b. Reservation of rights: ☐ Yes ☐ No
- c. ☐ Coverage issues will significantly affect resolution of this case (*explain*):

12. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.

☐ Bankruptcy ☐ Other (*specify*):

Status:

13. Related cases, consolidation, and coordination

- a. ☐ There are companion, underlying, or related cases.
- (1) Name of case:
- (2) Name of court:
- (3) Case number:
- (4) Status:
- ☐ Additional cases are described in Attachment 13a.
- b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (*name party*):

14. Bifurcation

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (*specify moving party, type of motion, and reasons*):

15. Other motions

- ☒ The party or parties expect to file the following motions before trial (*specify moving party, type of motion, and issues*):
See Attachment 15.

16. Discovery

- a. ☐ The party or parties have completed all discovery.
- b. ☒ The following discovery will be completed by the date specified (*describe all anticipated discovery*):
- | <u>Party</u> | <u>Description</u> | <u>Date</u> |
|--------------|--------------------|-------------|
|--------------|--------------------|-------------|

See Attachment 16.

- c. ☒ The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated (*specify*):
See Attachment 16.

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PLAINTIFF/PETITIONER: Save Berkeley's Neighborhoods	CASE NUMBER: RG18902751
DEFENDANT/RESPONDENT: The Regents of the University of CA, et al.	

17. **Economic litigation**

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (*if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case*):

18. **Other issues**

- ☐ The party or parties request that the following additional matters be considered or determined at the case management conference (*specify*):

19. **Meet and confer**

- a. ☒ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (*if not, explain*):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (*specify*):
It is too early to set a hearing or merits briefing schedule.

20. Total number of pages attached (*if any*): 5

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: October 4, 2018

Thomas N. Lippe
(TYPE OR PRINT NAME)

▶ 
(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached.

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Attachment 4b: Nature of Case.

This action seeks a writ of mandate and declaratory relief ordering the Respondents to comply with CEQA by analyzing the environmental effects of increasing enrollment at UC Berkeley since 2005 and into the future.

In 2005, Respondents adopted a Long Range Development Plan (2020 LRDP) for UC Berkeley to achieve a number of objectives through the year 2020, including stabilizing enrollment. In or about 2005, UCB certified a Final Environmental Impact Report for the 2020 LRDP (2005 EIR) pursuant to CEQA. The 2020 LRDP and 2005 EIR projected that by 2020 student enrollment at UCB would increase by 1,650 students above the 2001-02 two-semester average. The 2020 LRDP and 2005 EIR also projected that by 2020 UCB would add 2,500 beds for students.

The actual increase in student enrollment above the 2001-02 two-semester average for the most recent two-semester period (i.e., Spring 2017 and Fall 2017) is 8,302 students. This increase represents a five-fold increase compared to the 1,650 enrollment increase projected in the 2020 LRDP and 2005 EIR. The response also shows UCB has built fewer than 1,000 beds.

The increase in student enrollment over and above the 1,650 additional students projected by the 2020 LRDP and included in the 2005 EIR's environmental impact analysis (hereinafter the "excess increase in student enrollment") has caused and continues to cause significant adverse environmental impacts that were not analyzed in the 2005 EIR.

Respondents have had and continue to have a legal obligation to analyze the environmental effects of the excess increase in student enrollment pursuant to CEQA.

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Attachment 15: Motions.

The parties stipulated to entry of an order granting for leave for Plaintiff to file its Second Amended Petition for Writ of Mandate and Complaint for Declaratory Relief.

Respondents intend to demur to the Second Amended Petition for Writ of Mandate and Complaint for Declaratory Relief.

Plaintiff intends to file a motion to compel production of documents responsive to its first set of requests.

Plaintiff intends to file a motion for summary adjudication of issues or summary judgment.

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Attachment 16: Discovery and Preparation of the Record of Proceedings.

Plaintiff requests that the Court order Respondents to comply with former Local Rule 3.320(d)(2) (since repealed as of August 1, 2018) so Plaintiff can proceed to complete preparation of the record.

When Plaintiff filed this action on April 27, 2018, Plaintiff filed its election to prepare the record of proceedings. Since that time, Respondents have engaged in a pattern of obstructive conduct that has made it impossible for Plaintiff to complete preparation of the record of proceedings. A brief history of Respondents' conduct follows.

Respondents violate then-applicable Local Rules of Court governing preparation of the record.

When this case was filed, Local Rules 3.320(a) and (d)(1) (since repealed as of August 1, 2018) required that Respondents provide Plaintiff with costs estimates for preparing the record and the location and custodian of all documents to be included in the record. On May 24, 2018, counsel for Respondents responded to these rules by sending a letter to counsel for Plaintiff declining to provide this information on the ground that "Based on the allegations in the Petition for Writ of Mandate, Respondents cannot identify the documents anticipated to be incorporated into the administrative record. Petitioner has not challenged any Project or any action subject to CEQA or any Project approval by Respondents in the Petition."

On June 4, 2018, Plaintiff's counsel responded that: "CEQA defines the term 'Project' to mean 'an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following: (a) An activity directly undertaken by any public agency.'" (PRC § 21065.) The petition identifies such an 'activity:' namely, increasing the number of students enrolled at UC Berkeley" and requested the Respondents immediately comply with the local rule of court.

On June 13, 2018, pursuant to Local Rule 3.320(d)(2) (since repealed as of August 1, 2018), Plaintiff sent to Respondents a provisional proposed index of the record of proceedings in this matter. The proposed index was "provisional" because Respondents had not complied with the local rules requiring disclosure documents to be included in the record of proceedings. The provisional proposed index listed documents that Plaintiff was able to find on and download from UC Berkeley's "Capital Strategies" website. In this letter, Counsel again asked

Respondents to comply with Local Rule 3.320(d)(1).

On June 20, 2018, pursuant to Local Rule 3.320(d)(2) (since repealed as of August 1, 2018), Respondents responded to Plaintiff's provisional proposed index of the record of proceedings by reiterating its position that it cannot comply with this rule because the Petition and Complaint do not challenge a CEQA project.

Respondents refuse to comply with Plaintiff's first Request for Production of Documents for documents to included in the record.

On May 18, 2018, Plaintiff served on Respondents a Request for Production of Documents asking for the production of documents that may need to be included in the record of proceedings. For example, Request No. 1 seeks: "All writings, including internal staff memoranda and emails, that refer or relate to increases in student enrollment at UC Berkeley that were prepared in connection with the preparation of UC Berkeley's 2020 Long Range Development Plan."

The parties stipulated to extend the deadline for the Regents to respond to Plaintiff's first Request for Production of Documents while the parties discussed settlement of the case. As a result, the Regents' response was finally due on September 7, 2018.

On September 7, 2018, after settlement discussion concluded (without success), Respondents served on Plaintiff their Objections to Petitioners' Request for Production of Documents, in which Respondents refused to produce any documents.

On September 19, 2018, Plaintiff sent a "meet and confer" letter responding to Respondents' Objections to Petitioners' Request for Production of Documents, and setting a deadline of October 5, 2018, for Respondents to provide the requested documents, after which Plaintiff will file a motion to compel production of documents.

The Regents ignore Plaintiff's Public Records Act Request.

On July 24, 2018, Plaintiff submitted a written request to the Regents pursuant to the California Public Records Act requesting all records showing actual and projected Registered Student Headcount at UC Berkeley for the academic terms: Spring 2018, Fall 2018, Spring 2019, Fall 2019, Spring 2020, Fall 2020, Spring 2021, Fall 2021, Spring 2022.

The Regents ignored this request.

On August 15, 2018, the Regents issued a Notice of Preparation of a Draft Supplemental

Environmental Impact Report for the “Upper Hearst Development for the Goldman School of Public Policy and Minor Amendment to the 2020 Long Range Development Plan.” (Upper Hearst NOP.) The NOP states that: “ At this time, UC Berkeley estimates an overall campus population headcount growth of about 1.5 percent annually, on an average, in the near-term.

On September 26, 2018, Plaintiff submitted written notification to the Regents that their failure to respond to Plaintiff’s July 24, 2018, Public Records Act request, within 10 days of the request or to give notice of an extension of this deadline for up to 14 days, violates the Public Records Act. (See Gov. Code§ 6253(c).) This notice again requested the same records (i.e., records showing actual and projected Registered Student Headcount at UC Berkeley for the academic terms: Spring 2018, Fall 2018, Spring 2019, Fall 2019, Spring 2020, Fall 2020, Spring 2021, Fall 2021, Spring 2022.)

Plaintiffs serve a Second Request for Production of Documents.

On September 26, 2018, Plaintiff served a second Request for Production of Documents on the Regents asking for the same records (i.e., records showing actual and projected Registered Student Headcount at UC Berkeley for the academic terms: Spring 2018, Fall 2018, Spring 2019, Fall 2019, Spring 2020, Fall 2020, Spring 2021, Fall 2021, Spring 2022.)

Additional Discovery.

On September 26, 2018, Plaintiff served on Respondents a set of requests for admissions.

I am a citizen of the United States, employed in the City and County of San Francisco, California. My business address is 201 Mission Street, 12th Floor, San Francisco, CA 94105. I am over the age of 18 years and not a party to the above entitled action. On October 4, 2018, I served the following document:

on the parties designated on the attached service list; and

(check all that apply)

☐ By Overnight FedEx I caused such envelope to be placed in a box or other facility regularly maintained by the express service carrier or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for.

[X] By E-mail I caused such document to be served via electronic mail equipment transmission (E-mail) on the parties as designated on the attached service list by transmitting a true copy to the following E-mail addresses listed under each addressee below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☐ By Facsimile I caused such document to be served via facsimile electronic equipment transmission (fax) on the parties in this action by transmitting a true copy to the following fax numbers listed under each addressee below.

☐ By Personal Delivery by Courier I caused each such envelope to be delivered to an authorized courier or driver, in an envelope or package addressed to the addressee below.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 4, 2018, in the City and County of San Francisco, California.

Kelly Marie
Kelly Marie Perry

SERVICE LIST

Office of General Counsel
Anagha Dandekar Clifford, Senior Counsel
1111 Franklin Street, 8th Floor
Oakland, CA 94607
Email: Anagha Clifford (Anagha.Clifford@ucop.edu)

Meyers Nave
555 12th Street, Suite 1500
Oakland, California 94607
Email: Tim Cremin (tcremin@meyersnave.com)
Email: Melissa Bender (mbender@meyersnave.com)

Meyers Nave
707 Wilshire Boulevard, 24th Floor
Los Angeles, California 90017
Email: Amrit Kulkarni (amrit@meyersnave.com)

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1. **Party or parties** *(answer one)*:
 - a. ☒ This statement is submitted by party *(name)*: Defendants/Respondents The Regents of the University of California; Janet Napolitano, in her capacity as President of the University of California; and Carol T. Christ, in her capacity as Chancellor of the University of California
 - b. ☐ This statement is submitted **jointly** by parties *(names)*:
2. **Complaint and cross-complaint** *(to be answered by plaintiffs and cross-complainants only)*
 - a. The complaint was filed on *(date)*:
 - b. ☐ The cross-complaint, if any, was filed on *(date)*:
3. **Service** *(to be answered by plaintiffs and cross-complainants only)*
 - a. ☐ All parties named in the complaint and cross-complaint have been served, have appeared, or have been dismissed.
 - b. ☐ The following parties named in the complaint or cross-complaint
 - (1) ☐ have not been served *(specify names and explain why not)*:
 - (2) ☐ have been served but have not appeared and have not been dismissed *(specify names)*:
 - (3) ☐ have had a default entered against them *(specify names)*:
 - c. ☐ The following additional parties may be added *(specify names, nature of involvement in case, and date by which they may be served)*:
4. **Description of case**
 - a. Type of case in ☒ complaint ☐ cross-complaint *(Describe, including causes of action)*:

This is a Verified Petition for Writ of Mandate and Complaint for Declaratory Relief pursuant to the California Environmental Quality Act ("CEQA").

PLAINTIFF/PETITIONER: Save Berkeley's Neighborhoods	CASE NUMBER: RG18902751
DEFENDANT/RESPONDENT: The Regents of the University of California, et al.	

4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*
 Plaintiff and Petitioner Save Berkeley's Neighborhoods alleges that Defendants and Respondents The Regents of the University of California, et al. violated CEQA due to alleged increases in student enrollment beyond that analyzed in the UC Berkeley 2020 Long Range Development Plan Environmental Impact Report. Petitioner seeks a writ of mandate and declaratory relief. No damages are sought.

☐ *(If more space is needed, check this box and attach a page designated as Attachment 4b.)*

5. **Jury or nonjury trial**

The party or parties request ☐ a jury trial ☒ a nonjury trial. *(If more than one party, provide the name of each party requesting a jury trial):*

6. **Trial date**

- a. ☐ The trial has been set for (date):
 b. ☒ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain):*
 c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability):*
 December 19, 2018 - January 8, 2019 (vacation)

7. **Estimated length of trial**

The party or parties estimate that the trial will take *(check one):*

- a. ☐ days *(specify number):*
 b. ☒ hours (short causes) *(specify):* 3

8. **Trial representation** *(to be answered for each party)*

The party or parties will be represented at trial ☒ by the attorney or party listed in the caption ☐ by the following:

- a. Attorney:
 b. Firm:
 c. Address:
 d. Telephone number:
 e. E-mail address:
 f. Fax number:
 g. Party represented:
☐ Additional representation is described in Attachment 8.

9. **Preference**

☒ This case is entitled to preference *(specify code section):* Public Resources Code section 21167.1

10. **Alternative dispute resolution (ADR)**

- a. **ADR information package.** Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 for information about the processes available through the court and community programs in this case.
 (1) For parties represented by counsel: Counsel ☒ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.
 (2) For self-represented parties: Party ☐ has ☐ has not reviewed the ADR information package identified in rule 3.221.
 b. **Referral to judicial arbitration or civil action mediation** *(if available).*
 (1) ☐ This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141.11 or to civil action mediation under Code of Civil Procedure section 1775.3 because the amount in controversy does not exceed the statutory limit.
 (2) ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.
 (3) ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. *(specify exemption):*



PLAINTIFF/PETITIONER: Save Berkeley's Neighborhoods	CASE NUMBER: RG18902751
DEFENDANT/RESPONDENT: The Regents of the University of California, et al.	

10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (*check all that apply and provide the specified information*):

	The party or parties completing this form are willing to participate in the following ADR processes (<i>check all that apply</i>):	If the party or parties completing this form in the case have agreed to participate in or have already completed an ADR process or processes, indicate the status of the processes (<i>attach a copy of the parties' ADR stipulation</i>):
(1) Mediation	<input type="checkbox"/>	<input type="checkbox"/> Mediation session not yet scheduled <input type="checkbox"/> Mediation session scheduled for (date): <input type="checkbox"/> Agreed to complete mediation by (date): <input type="checkbox"/> Mediation completed on (date):
(2) Settlement conference	<input checked="" type="checkbox"/>	<input type="checkbox"/> Settlement conference not yet scheduled <input type="checkbox"/> Settlement conference scheduled for (date): <input type="checkbox"/> Agreed to complete settlement conference by (date) : <input checked="" type="checkbox"/> Settlement conference completed on (date): June 12, 2018
(3) Neutral evaluation	<input type="checkbox"/>	<input type="checkbox"/> Neutral evaluation not yet scheduled <input type="checkbox"/> Neutral evaluation scheduled for (date): <input type="checkbox"/> Agreed to complete neutral evaluation by (date): <input type="checkbox"/> Neutral evaluation completed on (date):
(4) Nonbinding judicial arbitration	<input type="checkbox"/>	<input type="checkbox"/> Judicial arbitration not yet scheduled <input type="checkbox"/> Judicial arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete judicial arbitration by (date): <input type="checkbox"/> Judicial arbitration completed on (date):
(5) Binding private arbitration	<input type="checkbox"/>	<input type="checkbox"/> Private arbitration not yet scheduled <input type="checkbox"/> Private arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete private arbitration by (date): <input type="checkbox"/> Private arbitration completed on (date):
(6) Other (<i>specify</i>):	<input type="checkbox"/>	<input type="checkbox"/> ADR session not yet scheduled <input type="checkbox"/> ADR session scheduled for (date): <input type="checkbox"/> Agreed to complete ADR session by (date): <input type="checkbox"/> ADR completed on (date):

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PLAINTIFF/PETITIONER: Save Berkeley's Neighborhoods	CASE NUMBER: RG18902751
DEFENDANT/RESPONDENT: The Regents of the University of California, et al.	

11. Insurance

- a. ☐ Insurance carrier, if any, for party filing this statement (*name*):
- b. Reservation of rights: ☐ Yes ☐ No
- c. ☐ Coverage issues will significantly affect resolution of this case (*explain*):

12. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.

☐ Bankruptcy ☐ Other (*specify*):

Status:

13. Related cases, consolidation, and coordination

- a. ☐ There are companion, underlying, or related cases.
- (1) Name of case:
- (2) Name of court:
- (3) Case number:
- (4) Status:
- ☐ Additional cases are described in Attachment 13a.
- b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (*name party*):

14. Bifurcation

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (*specify moving party, type of motion, and reasons*):

15. Other motions

- ☒ The party or parties expect to file the following motions before trial (*specify moving party, type of motion, and issues*):
Respondents/Defendants will file a Demurrer to Petitioner's Second Amended Petition. Hearing date reserved for November 15, 2018.

16. Discovery

- a. ☐ The party or parties have completed all discovery.
- b. ☐ The following discovery will be completed by the date specified (*describe all anticipated discovery*):
- | Party | Description | Date |
|-------|-------------|------|
| | | |

- c. ☒ The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated (*specify*):
Petitioner's discovery requests are not permitted without prior leave of Court in a writ of mandate action under CEQA.

Any Discovery motions are premature until the Court rules on pleading deficiencies raised in demurrer.

Any disputes over the Administrative Record should be brought by noticed motion and addressed after the Court rules on demurrer. Petitioner has elected to prepare the Administrative Record.

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PLAINTIFF/PETITIONER: Save Berkeley's Neighborhoods	CASE NUMBER: 18902751
DEFENDANT/RESPONDENT: The Regents of the University of California, et al.	

17. Economic litigation

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (*if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case*):

18. Other issues

- ☐ The party or parties request that the following additional matters be considered or determined at the case management conference (*specify*):

19. Meet and confer

- a. ☒ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (*if not, explain*):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (*specify*): Parties have stipulated to the filing of Petitioner's Second Amended Petition, notwithstanding Respondents' right to demurrer.

20. Total number of pages attached (*if any*): -1-

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: October 4, 2018

Timothy D. Cremin

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached.

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Attachment re Additional Counsel:

David M. Robinson (SBN 160412)
Chief Campus Counsel, University of California, Berkeley
Alison Krumbein (SBN 229728)
Alison.Krumbein@ucop.edu
THE UNIVERSITY OF CALIFORNIA
Office of General Counsel
1111 Franklin St 8th Floor
Oakland, CA 94607
Telephone: (510) 987-0851
Facsimile: (510) 987-9757

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

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 Alameda, State of California. My business address is 555 12th Street, Suite 1500, Oakland, CA 94607.

On October 4, 2018, I served true copies of the following document(s) described as **CASE MANAGEMENT CONFERENCE STATEMENT** on the interested parties in this action as follows:

Thomas N. Lippe, Esq.
Kelly Marie Perry, Esq.
Law Offices of Thomas N. Lippe, APC
201 Mission Street, 12th Fl.
San Francisco, CA 94105

Attorneys for Plaintiff SAVE
BERKELEY'S NEIGHBORHOODS
Tel: (415) 777-5604
Fax: (415) 777-5606
Email: lippelaw@sonic.net
kmhperry@sonic.net

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Meyers, Nave, Riback, Silver & Wilson's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address mbender@meyersnave.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on October 4, 2018, at Oakland, California.



Melissa Bender

Document received by the CA 1st District Court of Appeal.



FILED
ALAMEDA COUNTY

OCT 16 2018

CLERK OF THE SUPERIOR COURT

By [Signature] Deputy

1 Thomas N. Lippe, SBN 104640
2 LAW OFFICES OF THOMAS N. LIPPE, APC
3 201 Mission Street, 12th Floor
4 San Francisco, California 94105
5 Tel: (415) 777-5604
6 Fax: (415) 777-5606
7 E-mail: Lippelaw@sonic.net

8 Attorney for Plaintiff: Save Berkeley's Neighborhoods

9 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF ALAMEDA**

11 SAVE BERKELEY'S NEIGHBORHOODS, a
12 California nonprofit public benefit corporation;
13 Plaintiff,
14 vs.

Case No. RG18902751

**SECOND AMENDED PETITION FOR
WRIT OF MANDATE AND COMPLAINT
FOR DECLARATORY RELIEF**

15 THE REGENTS OF THE UNIVERSITY OF
16 CALIFORNIA; JANET NAPOLITANO, in her
17 capacity as President of the University of
18 California; CAROL T. CHRIST, in her capacity as
19 Chancellor of the University of California,
20 Berkeley; and DOES 1 through 20,
21 Respondents and Defendants.

**[CALIFORNIA ENVIRONMENTAL
QUALITY ACT]**

Document received by the CA 1st District Court of Appeal.

1 Plaintiff Save Berkeley's Neighborhoods alleges:

2 1. Education Code section 67504 provides that "The Legislature further finds and declares that the
3 expansion of campus enrollment and facilities may negatively affect the surrounding environment.
4 Consistent with the requirements of the California Environmental Quality Act (CEQA), it is the intent of
5 the Legislature that the University of California sufficiently mitigate significant off-campus impacts
6 related to campus growth and development."
7

8 2. Public Resources Code section 21080.9 requires that the University of California, Berkeley
9 (UCB) "consider the environmental impact of academic and enrollment plans" pursuant to CEQA and
10 "that any such plans shall become effective for a campus ... only after the environmental effects of those
11 plans have been analyzed" as required by CEQA.
12

13 3. In 2005, UCB adopted a Long Range Development Plan (2020 LRDP) to achieve a number of
14 objectives through the year 2020, including stabilizing enrollment. In or about 2005, UCB certified a
15 Final Environmental Impact Report for the 2020 LRDP (2005 EIR) pursuant to CEQA. The 2020 LRDP
16 and 2005 EIR projected that by 2020 student enrollment at UCB would increase by 1,650 students, from
17 the 2001-2002 two-semester average headcount of 31,800 to 33,450 students. The 2020 LRDP and 2005
18 EIR also projected that by 2020 UCB would add 2,500 beds for students.
19

20 4. On October 30, 2017, UCB responded to the City of Berkeley's request for information regarding
21 enrollment increases. This response shows the actual increase in student enrollment above the 2001-02
22 two-semester average for the most recent two-semester period (i.e., Spring 2017 and Fall 2017) is 8,302
23 students. This is an increase of 6,652 students more than the increase of 1,650 students projected in the
24 2020 LRDP and 2005 EIR, representing a five-fold increase compared to the 1,650 enrollment increase
25 projected in the 2020 LRDP and 2005 EIR. The response also shows UCB has built fewer than 1,000
26 beds.
27
28
29
30

1 5. The increase in student enrollment over and above the 1,650 additional students projected by the
2 2020 LRDP and included in the 2005 EIR's environmental impact analysis (hereinafter the "excess
3 increase in student enrollment") has caused and continues to cause significant adverse environmental
4 impacts that were not analyzed in the 2005 EIR. Plaintiff is informed and believes and on that basis
5 alleges that these impacts include, without limitation, increased use of off-campus housing for and by
6 UCB students, leading to increases in off-campus noise and trash; displacement of tenants resulting in
7 more homeless individuals living on public streets and in local parks; increases in the number of UCB
8 students who are homeless; increases in traffic and transportation related congestion and safety risks; and
9 increased burdens on the City of Berkeley's public safety services, including police, fire, ambulance, and
10 Emergency Medical Technician services.

11 6. Respondents have had and continue to have a legal obligation to analyze the environmental
12 effects of the excess increase in student enrollment pursuant to CEQA, including, without limitation, by
13 preparing and certifying an Environmental Impact Report to assess the significance of impacts caused by
14 the extraordinary increase in enrollment and to identify and adopt mitigation measures to reduce these
15 significant impacts.

16 Parties

17 7. Plaintiff SAVE BERKELEY'S NEIGHBORHOODS (Plaintiff) is a California nonprofit public
18 benefit corporation formed to provide education and advocacy to improve quality of life, protect the
19 environment and implement best planning practices. Plaintiff's founders, members, and directors live in
20 the area affected by the excess increase in student enrollment, have suffered and will continue to suffer
21 injury from adverse environmental impacts caused by the excess increase in student enrollment if the
22 legal violations alleged herein are not remedied. Plaintiff was formed and brings this action to represent
23 and advocate the beneficial interests of its founders, members, and directors in obtaining relief from

1 these legal violations and to improve quality of life, protect the environment and implement best
2 planning practices in connection UCB's increases in student enrollment.

3
4 8. Respondent and Defendant THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
5 (hereinafter "Regents") is a public trust corporation and state agency established pursuant to the
6 California Constitution vested with administering the University of California including the management
7 and disposition of property of the University and the lead agency for the 2020 LRDP under CEQA, and
8 is thus responsible for analyzing, disclosing, and mitigating the environmental impacts of the 2020
9 LRDP and the excess increase in student enrollment.
10

11
12 9. Respondent and Defendant JANET NAPOLITANO is the President of the University of
13 California and is named herein solely in this capacity. Regents Policy 8103 delegates to the President of
14 the University the Regents' authority for budget or design for capital projects consistent with approved
15 Long Range Development Plans and minor Long Range Development Plan amendments.
16

17 10. Respondent and Defendant CAROL T. CHRIST is the Chancellor of the University of California,
18 Berkeley, and named herein solely in this capacity.
19

20 11. Respondents and Defendants Regents, Janet Napolitano, and Carol T. Christ are hereinafter
21 collectively referred to as "Respondents."

22 12. Plaintiff does not know the true names and capacities of Respondents and Defendants fictitiously
23 named herein as DOES 1 through 20, inclusive. Plaintiff is informed and believes, and thereon alleges,
24 that such fictitiously named Respondents and Defendants are responsible in some manner for the acts or
25 omissions complained of or pending herein. Plaintiff will amend this Petition to allege the fictitiously
26 named Respondents' and Defendants' true names and capacities when ascertained.
27
28

29 Notice Requirements

30 13. In accordance with Public Resources Code section 21167.5, Plaintiff served Respondents with

1 written notice of commencement of this action on April 12, 2018. The Notice of Commencement of
2 Action and Proof of Service are attached hereto as Exhibit 1.

3
4 14. In accordance with Public Resources Code section 21167.7 and Code of Civil Procedure section
5 388, Plaintiff has provided a copy of this pleading to the Attorney General's office. (See Exhibit 2
6 attached hereto.)

7 8 **Jurisdiction and Venue**

9 15. Plaintiff brings this action in mandamus pursuant to Code of Civil Procedure sections 1085,
10 1088.5, and 1094.5, and Public Resources Code sections 21168 and 21168.5; and as a complaint for
11 declaratory relief pursuant to Code of Civil Procedure section 1060. The Court has jurisdiction over
12 these claims.

13
14 16. Venue is proper in Alameda County under Code of Civil Procedure section 394, subdivision (a),
15 because UCB and Respondents are situated therein.

16 17 **Standing**

18 17. Plaintiff and, to the extent applicable, its members are beneficially interested in Respondents'
19 full compliance with CEQA. Respondents owed a mandatory duty to comply with CEQA with respect
20 to the 2020 LRDP and the excess increase in student enrollment. Plaintiff has the right to enforce the
21 mandatory duties that CEQA imposes on Respondents.

22 23 **Exhaustion of Administrative Remedies**

24
25 18. UCB provides no administrative remedy for the legal claims or grounds of noncompliance with
26 CEQA alleged herein and Plaintiff had no opportunity to raise the grounds of noncompliance alleged
27 herein in any UCB administrative proceeding.

28 29 **Private Attorney General Doctrine**

30 19. Plaintiff brings this action as a private attorney general pursuant to Code of Civil Procedure

1 section 1021.5, and any other applicable legal theory, to enforce important rights affecting the public
2 interest.

3
4 20. Issuance of the relief requested herein will confer a significant benefit on a large class of persons
5 by ensuring that Respondents analyze and disclose the environmental impact of the excess increase in
6 student enrollment.

7
8 21. Issuance of the relief requested herein will result in the enforcement of important rights affecting
9 the public interest. By compelling Respondents to complete adequate environmental review of the
10 excess increase in student enrollment under CEQA, Plaintiff will vindicate the public's important CEQA
11 rights to public disclosure regarding and public participation in government decisions that affect the
12 environment.

13
14 22. The necessity and financial burden of enforcement are such as to make an award of attorney's
15 fees appropriate in this proceeding because the transgressor is the agency whose duty it is to enforce the
16 laws at issue in this proceeding.

17
18 **First Cause of Action**
19 **(Violation of CEQA: Pub. Resources Code, § 21000 et seq.)**

20 23. Plaintiff hereby realleges and incorporates the preceding paragraphs this First Amended Petition
21 and Complaint as though set forth herein in full.

22
23 24. Respondents prejudicially abused their discretion in violation of CEQA pursuant to Public
24 Resources Code sections 21168 and 21168.5 and Code of Civil Procedure sections 1085 and 1094.5 by
25 failing to subject the excess increase in student enrollment to the procedures and requirements of
26 CEQA; by failing to analyze the excess increase in student enrollment pursuant to CEQA, including,
27 without limitation, by failing to prepare and certify an Environmental Impact Report to assess the
28 significance of impacts caused by the excess increase in student enrollment; by failing to identify and
29
30

1 adopt mitigation measures to reduce these significant impacts; and by failing to make the findings
2 required by Public Resources Code section 21081 before carrying out the excess increase in enrollment.

3
4 25. Plaintiff has no other plain, speedy, and adequate remedy in the ordinary course of law and will
5 suffer irreparable injury unless this Court issues the relief requested herein.

6
7 **Second Cause of Action**
8 **(Declaratory Relief: Code Civ. Proc., § 1060)**

9
10 26. Plaintiff hereby realleges and incorporates the preceding paragraphs of this First Amended
11 Petition and Complaint as though set forth herein in full.

12
13 27. Since the 2007-2008 academic year, the Regents have implemented and continue to implement a
14 policy to increase student enrollment at UCB beyond the 1,650 additional students projected by the
15 2020 LRDP without subjecting the excess increase in student enrollment to the procedures and
16 requirements of CEQA; without analyzing the excess increase in student enrollment pursuant to CEQA,
17 and without preparing and certifying an Environmental Impact Report to assess the significance of
18 impacts caused by the excess increase in student enrollment; by failing to identify and adopt mitigation
19 measures to reduce these significant impacts; and by failing to make the findings required by Public
20 Resources Code section 21081 before carrying out the excess increase in enrollment.

21
22 28. Plaintiff has no other plain, speedy, and adequate remedy in the ordinary course of law and will
23 suffer irreparable injury unless this Court issues the relief requested herein. Plaintiff seeks a judicial
24 determination and declaration that Respondents' policy as described in paragraph 27 is unlawful because
25 it violates CEQA, including Public Resources Code section 210980.9, and Education Code section
26 67504.

27
28 29. An actual controversy has arisen and now exists between Plaintiff and Respondents. Plaintiff
29 contends that Respondents' policy as described in paragraph 27 is unlawful because it violates CEQA,
30

1 including Public Resources Code section 210980.9, and Education Code section 67504. Plaintiff is
2 informed and believes, and based thereon alleges, that Respondents dispute these contentions.

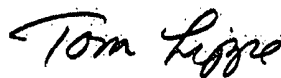
3
4 **Prayer for Relief**

5 WHEREFORE, Plaintiff prays for the following relief:

- 6 1. For a writ of mandate compelling Respondents to subject the excess increase in student
7 enrollment to the procedures and requirements of CEQA, to analyze the excess increase in student
8 enrollment pursuant to CEQA, including, without limitation, by preparing and certifying an
9 Environmental Impact Report to assess the significance of impacts caused by the excess increase in
10 student enrollment, and to make the findings required by Public Resources Code section 21081.
11
12 2. For a judicial declaration that Respondents policy as described in paragraph 27 is unlawful.
13
14 3. For an order retaining the Court's jurisdiction over this matter until Respondents comply with the
15 peremptory writ;
16
17 4. For an order compelling Respondents to pay Plaintiff's costs of suit;
18
19 5. For an order compelling Respondents to pay Plaintiff's reasonable attorneys fees related to these
20 proceedings pursuant to Code of Civil Procedure section 1021.5; and
21
22 6. For such other relief as the Court may deem proper.

23 DATED: September 21, 2018

LAW OFFICES OF THOMAS N. LIPPE, APC

24
25 

26 Thomas N. Lippe
27 Attorney for Plaintiff Save Berkeley's Neighborhoods
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VERIFICATION

Save Berkeley's Neighborhoods v. The Regents of the University of California, Alameda County Superior Court, Case No. RG18902751.

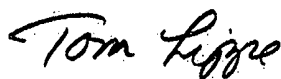
I, Thomas N. Lippe, declare that:

1. I am an attorney at law duly admitted and licensed to practice before all courts of this State. I am the attorney of record for the Plaintiff in this action.

2. Plaintiff has their place of business in Alameda County, California, and therefore are absent from the county in which I have my office. For that reason, I make this verification on its behalf.

3. I have read the foregoing Second Amended Verified Petition for Writ of Mandate and Complaint for Declaratory Relief and know the contents thereof; the factual allegations therein are true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe them to be true.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed on September 21, 2018, at San Francisco, California.



Thomas N. Lippe
Attorney for Plaintiff Save Berkeley's Neighborhoods

TATLAUC Enroll\\Trial\\Pleadings\\P017d Second Amend Petition.wpd

EXHIBIT 1

AA00105

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Law Offices of
THOMAS N. LIPPE, APC

201 Mission Street
12th Floor
San Francisco, California 94105

Telephone: 415-777-5604
Facsimile: 415-777-5606
Email: Lippelaw@sonic.net

April 12, 2018

By email: chancellor@berkeley.edu
Chancellor Carol T. Christ
University of California, Berkeley
c/o Jenny Hanson
Executive Assistant to the Chancellor
Office of the Chancellor
200 California Hall, #1500
Berkeley, CA 94720-1500

By email: regentsoffice@ucop.edu
Regents of the University of California
c/o Anne Shaw
Office of the Secretary and Chief of Staff to the Regents
1111 Franklin St., 12th floor
Oakland, CA 94607

**Re: Notice of Intent to Sue Regarding Inadequate CEQA Review of UC
Berkeley's 2020 Long Range Development Plan.**

Dear Chancellor Christ and Regents of the University of California:

This office represents Save Berkeley's Neighborhoods with respect to the University of California at Berkeley's legal obligations to conduct environmental review of the 2020 Long Range Development Plan (2020 LRDP) in compliance with the California Environmental Quality Act (CEQA).

One of the 2020 LRDP's objectives is to stabilize enrollment. (2020 LRDP, Environmental Impact Report (2004 EIR), p. 3.1-10.) The 2004 EIR evaluated an increase in enrollment of 1,650 students above the 2001-02 two-semester average. (2004 EIR, p. 3.1-14.) The University's October 30, 2017, response to the City of Berkeley's request for information regarding enrollment increases shows an actual increase of 8,302 enrolled students above the 2001-02 two-semester average for the most recent two-semester period (i.e., Spring 2017 and Fall 2017). (Exhibit 1.) This represents a five-fold increase compared to the 2004 EIR's projection of a 1,650 student increase in enrollment.

This change in the project renders the 2004 EIR informationally defective because the EIR does not assess the impact of the actual increase in enrollment, which is orders of magnitude higher than the 1,650-student increase projected in the 2004 EIR. As a result, the University must prepare a supplemental or subsequent EIR to assess the significance of impacts caused by this extraordinary increase in enrollment and to identify and adopt mitigation measures to reduce these significant

Document received by the CA 1st District Court of Appeal.

Chancellor Carol T. Christ, University of California, Berkeley
Regents of the University of California
Notice of Intent to Sue Regarding Inadequate CEQA Review of 2020 LRDP
April 12, 2018
Page 2

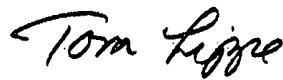
impacts.

This letter provides notice pursuant to Public Resources Code section 21167.5 that on or before April 20, 2018, Save Berkeley's Neighborhoods intends to file a lawsuit challenging the University's adoption of the 2020 LRDP on grounds the adoption does not comply with CEQA.

Save Berkeley's Neighborhoods is willing to discuss settling this dispute without the need for litigation. At a minimum, any such settlement must include: (1) an enforceable agreement by the University to prepare and certify a new EIR to assess the impacts of the 2020 LRDP as its project description has changed to reflect the increases in enrollment shown in the University's October 30, 2017, response to the City's request for information; (2) the new EIR must use the same environmental baseline used in the 2004 EIR; and (3) tolling the statute of limitations so that Save Berkeley's Neighborhoods is not forced to file its lawsuit to protect against the statute of limitations.

Thank you for your attention to this matter.

Very Truly Yours,



Thomas N. Lippe

cc:

David M. Robinson, Interim Chief Campus Counsel

By email: dmrobinson@berkeley.edu

TATLAUC Enroll\\Corr\\Counsel\\C001b Sett Demand.wpd

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AA00107

UNIVERSITY OF CALIFORNIA, BERKELEY



BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO

SANTA BARBARA • SANTA CRUZ

BERKELEY, CALIFORNIA 94720-1382

CAPITAL STRATEGIES
PHYSICAL AND ENVIRONMENTAL PLANNING
A&E Bldg. (MC 1382)

30 October 2017

Mayor Jesse Arreguin
City of Berkeley
2180 Milvia Street
Fifth Floor
Berkeley, California 94704

[Transmitted via email]

Mayor Arreguin:

My office has compiled the attached data in response to your request for information sent to former Chancellor Dirks' office on May 25, 2017. We have organized responses using the item numbers indicated in your letter. The data provided in the attachment is the current available information as of October 2017 and based on our understanding of your request.

Please contact Ruben Lizardo (rlizardo@berkeley.edu) if you have questions or would like clarification on the information that has been provided.

Sincerely,

A handwritten signature in cursive script that reads "Emily Marthinsen".

Emily Marthinsen
Assistant Vice Chancellor/Campus Architect
Physical & Environmental Planning | Capital Strategies

CC: R Lizardo, R Parikh, S Viducich, A Machamer, S Wilmot

EXHIBIT 1

ATTACHMENT 1. UC RESPONSE TO DATA REQUEST

1. Registered Student Headcount - Source: CalAnswers Student Census, UC Berkeley Office of Planning and Analysis, Accessed 10.04.2017

Academic Term	Total Undergraduates	Total Graduate Students	Off-campus Undergraduates	Off-campus Graduate Programs
Fall (F) 05	23,482	10,076	381	668
Spring (S) 06	22,643	9,571	384	674
F06	23,863	10,070	357	713
S07	23,351	9,592	384	732
F07	24,636	10,317	359	752
S08	24,032	9,809	395	766
F08	25,151	10,258	325	743
S09	24,448	9,735	405	758
F09	25,530	10,393	331	757
S10	25,061	9,854	421	773
F10	25,540	10,298	369	777
S11	24,969	9,789	498	762
F11	25,885	10,257	342	782
S12	25,277	9,764	529	788
F12	25,774	10,125	334	789
S13	25,181	9,610	463	800
F13	25,951	10,253	327	881
S14	25,473	9,834	426	954
F14	27,126	10,455	296	1111
S15	25,903	10,065	424	1118
F15	27,496	10,708	335	1243
S16	26,094	10,279	466	1252
F16	29,310	10,863	650	1424
S17	27,784	10,510	425	1480
F17	30,574	11,336	560	1536

Note: Columns indicated total number of students include all registered students, including those enrolled in off-campus programs such as online graduate degree programs, the Education Abroad Program, Global Edge (European Study Abroad), and Freshman in San Francisco. The students enrolled in these off-campus programs are tallied in the "off-campus" columns.

1 Thomas N. Lippe, SBN 104640
2 LAW OFFICES OF THOMAS N. LIPPE, APC
3 201 Mission Street, 12th Floor
4 San Francisco, California 94105
5 Tel: (415) 777-5604
6 Fax: (415) 777-5606
7 E-mail: Lippelaw@sonic.net

8 Attorney for Plaintiff: Save Berkeley's Neighborhoods

9 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF ALAMEDA**

11 SAVE BERKELEY'S NEIGHBORHOODS, a
12 California nonprofit public benefit corporation;

13 Plaintiff,

14 vs.

15 THE REGENTS OF THE UNIVERSITY OF
16 CALIFORNIA; JANET NAPOLITANO, in her
17 capacity as President of the University of
18 California; CAROL T. CHRIST, in her capacity as
19 Chancellor of the University of California,
20 Berkeley; and DOES 1 through 20,

21 Respondents and Defendants.

Case No.

PROOF OF SERVICE

**[CALIFORNIA ENVIRONMENTAL
QUALITY ACT]**

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PROOF OF SERVICE

I am a citizen of the United States, employed in the City and County of San Francisco, California. My business address is 201 Mission Street, 12th Floor, San Francisco, CA 94105. I am over the age of 18 years and not a party to the above entitled action. On April 12, 2018, I served the following document on the parties below, as designated:

- **Re: Notice of Intent to Sue Regarding Inadequate CEQA Review of UC Berkeley's 2020 Long Range Development Plan**

MANNER OF SERVICE
(check all that apply)

- ☐ By Mail: In the ordinary course of business, I caused each such envelope to be placed in the custody of the United States Postal Service, with postage thereon fully prepaid in a sealed envelope.
- ☐ By Personal Service: I personally delivered each such envelope to the office of the address on the date last written below.
- ☐ By Overnight FedEx: I caused such envelope to be placed in a box or other facility regularly maintained by the express service carrier or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for.
- ☒ By E-mail: I caused such document to be served via electronic mail equipment transmission (E-mail) on the parties as designated on the attached service list by transmitting a true copy to the following E-mail addresses listed under each addressee below.
- ☐ By Personal Delivery by Courier: I caused each such envelope to be delivered to an authorized courier or driver, in an envelope or package addressed to the addressee below.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on April 12, 2018, in the City and County of San Francisco, California

Kelly Marie Perry

Kelly Marie Perry

SERVICE LIST

By email: chancellor@berkeley.edu

Chancellor Carol T. Christ

University of California, Berkeley

c/o Jenny Hanson

Executive Assistant to the Chancellor

Office of the Chancellor

200 California Hall, #1500

Berkeley, CA 94720-1500

By email: regentsoffice@ucop.edu

Regents of the University of California

c/o Anne Shaw

Office of the Secretary and Chief of Staff to the Regents

1111 Franklin St., 12th floor

Oakland, CA 94607

By email: dmrobinson@berkeley.edu

David M. Robinson, Interim Chief Campus Counsel

TATLAUC EnrollTrial\Pleadings\P005 POS Notice Commence 041218.wpd

EXHIBIT 2

AA00113

Document received by the CA 1st District Court of Appeal.

Law Offices of
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201 Mission Street
12th Floor
San Francisco, California 94105

Telephone: 415-777-5604
Facsimile: 415-777-5606
Email: Lippelaw@sonic.net

September 21, 2018

By U.S. Mail

Hon. Xavier Becerra
Attorney General
State of California
Office of the Attorney General
1300 I Street
Sacramento, CA 95814

Re: Notice of Filing - *Save Berkeley's Neighborhood's v The Regents of the University of California, et al.*; Alameda Superior Court Case No. RG18902751 regarding Notice of Intent to File CEQA Second Amended Petition and Complaint for Declaratory Relief

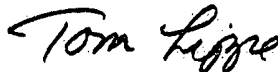
Dear Attorney General Becerra:

Pursuant to section 21167.7 of the Public Resources Code and section 388 of the Code of Civil Procedure, I am furnishing your office with a copy of the Second Amended Petition for Writ of Mandate in the above referenced case. If necessary, any subsequent supplemental or amended pleadings will be forwarded.

Please note that Plaintiffs are bringing this action as private attorneys general pursuant to section 1021.5 of the Code of Civil Procedure and any other applicable laws.

Thank you for your attention to this matter.

Very truly yours,



Thomas N. Lippe

Charles F. Robinson (SBN 113197)
 Alison Krumbein (SBN 229728)
 alison.krumbein@ucop.edu
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 Office of General Counsel
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EXEMPT FROM FILING FEES
 GOV'T CODE § 6103

Attorneys for The Regents of the University of California;
 Janet Napolitano, in her capacity as President of the
 University of California; Carol T. Christ, in her capacity as
 Chancellor of the University of California, Berkeley

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

SAVE BERKELEY'S NEIGHBORHOODS, a
 California nonprofit public benefit
 corporation,

Plaintiff,

v.

THE REGENTS OF THE UNIVERSITY OF
 CALIFORNIA; JANET NAPOLITANO, in
 her capacity as President of the University of
 California; CAROL T. CHRIST, in her
 capacity as Chancellor of the University of
 California, Berkeley; and DOES 1 through 20,

Respondents and Defendants.

Case No. RG18902751

ASSIGNED FOR ALL PURPOSES TO
 JUDGE HON. FRANK ROESCH
 DEPARTMENT 24

**MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT OF
 DEMURRER TO PETITIONER'S
 SECOND AMENDED PETITION FOR
 WRIT OF MANDATE AND COMPLAINT
 FOR DECLARATORY RELIEF**

Reservation No. R-2003938

Judge: Hon. Frank Roesch
 Date: November 15, 2018
 Time: 3:34 PM
 Dept.: 24

Action Filed: April 27, 2018
 Trial Date: None Set

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 Respondents and Defendants The Regents of the University of California, Janet
4 Napolitano, in her capacity as President of the University of California, and Carol T. Christ, in her
5 capacity as Chancellor of the University of California, Berkeley (collectively, "UC") hereby
6 demur to Petitioner and Plaintiff Save Berkeley's Neighborhoods' ("Petitioner") Second Amended
7 Petition for Writ of Mandate and Complaint for Declaratory Relief ("Petition") on the grounds that
8 the Petition has failed to raise any cognizable claim under the California Environmental Quality
9 Act ("CEQA"). In essence, Petitioner challenges the adequacy of the Environmental Impact
10 Report ("EIR") for UC Berkeley's ("UCB") 2005 Long Range Development Plan ("LRDP"). The
11 LRDP establishes the physical plan for campus development and contains an estimated projection
12 of student enrollment. The LRDP EIR was certified in 2005, can no longer be challenged, and is
13 presumed valid. Nonetheless, in an attempt to end run core CEQA principles establishing short
14 statutes of limitation and strict limits on supplemental environmental review, Petitioner asks this
15 Court to order UC to conduct stand-alone analysis of student enrollment levels at UCB in 2017
16 and prior academic years dating back to 2007. Neither Petitioner's claims nor its requested
17 remedy have any precedent under CEQA.

18 CEQA, its implementing guidelines¹ ("CEQA Guidelines"), and the case law make clear
19 that UC is *prohibited* from conducting subsequent or supplemental CEQA analysis to the already
20 certified LRDP EIR unless UC is making a subsequent discretionary approval and one of the
21 narrow standards triggering supplemental analysis are met. The Petition does not, and cannot,
22 allege facts showing UC has made a subsequent discretionary approval or that it has met the
23 required standards for subsequent or supplemental CEQA review. Instead, the Petition alleges
24 facts relating to student enrollment numbers based on a census taken for the 2017 Fall Semester
25 and prior academic years. Thus, the Petition fails to allege any grounds for a CEQA challenge for

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¹ Cal. Code of Regs., tit. 14, § 15000 *et seq.*, hereinafter the "CEQA Guidelines."
28

1 failure to perform subsequent or supplemental environmental review.

2 The Petition also fails to allege any facts in support of the claim that the enrollment data
3 for 2017 or prior academic years are a “project” subject to CEQA. In fact, the Petition fails to
4 allege any facts relating to *any discretionary action* by UC relating to enrollment numbers for any
5 academic year. The year-to-year enrollment numbers alleged in the Petition are simply
6 information provided by UC, and are not, in and of themselves, a “project.”

7 Moreover, since the Petition does not identify any specific UC “project” or decision being
8 challenged, CEQA provides no remedies to address the alleged violation. Rather, all remedies
9 under CEQA must relate to a “project.” With no alleged project and no available remedies, the
10 Petition fails to allege a claim upon which this Court could grant relief.

11 Even assuming, arguendo, that the annual student enrollment numbers are a CEQA project, the
12 Petition is barred by the statute of limitations. CEQA’s longest statute of limitations period is
13 180 days. The Petition was filed on April 28, 2017, 247 days after the beginning of instruction for
14 the 2017-2018 academic year (August 23, 2017) and 198 days after 2017 Fall Semester enrollment
15 information was publicly available (October 9, 2017). To the extent the Petition challenges pre-
16 2017 enrollment numbers, any such claims should likewise be summarily dismissed as well
17 outside of CEQA’s statute of limitations.

18 The Petition also is moot. Any “decision or approval” regarding student enrollment
19 numbers for prior academic years that Petitioner could have challenged under CEQA is no longer
20 relevant because the academic instruction periods have ended. The Court cannot grant remedy or
21 relief because there is no meaningful environmental analysis UC can conduct regarding these
22 historic enrollment numbers, nor can UC take any action to cure any alleged CEQA “violations”
23 regarding these past events.

24 For all of these reasons, the Petition fails to state a claim under CEQA. What Petitioner
25 essentially asking for is annual stand-alone CEQA review of student enrollment. This has no
26 support under CEQA. Furthermore, the remedy sought would require Court review of annual
27 enrollment at UCB which intrudes on UC’s constitutional authority and autonomy over public
28 higher education. Since none of the flaws can be cured through amendment, this demurrer should

1 be sustained without leave to amend.

2 **II. STATEMENT OF FACTS**

3 UCB adopted an LRDP in 2005 to guide campus development. (Petition (“Pet.”), ¶ 3.) At
4 the same time, UCB certified the LRDP EIR. (*Ibid.*) The environmental impacts of the LRDP
5 were analyzed in the LRDP EIR. (*Ibid.*) According to the allegations in the Petition, the LRDP
6 estimated that enrollment at UCB would increase by 1,650 students above the 2001-02 two-
7 semester average. (*Ibid.*)

8 The Petition alleges information about recent student enrollment increases that allegedly
9 exceed the enrollment increases included in the LRDP and LRDP EIR. Based on the “two-
10 semester average for the most recent two-semester period (i.e., Spring 2017 and Fall 2017)”
11 (“2017 Enrollment Numbers”), the Petition alleges a greater increase in students “than the increase
12 of 1,650 students projected in the 2020 LRDP and 2005 EIR.” (Pet., ¶ 4.) The alleged increase in
13 enrollment, the Petition continues, over that “projected by the 2020 LRDP and included in the
14 2005 EIR’s environmental analysis . . . has caused and continues to cause significant adverse
15 environmental impacts that were not analyzed in the 2005 EIR.” (Pet., ¶ 5.) The Petition also
16 alleges that since 2007 “the Regents have implemented and continue to implement a policy to
17 increase student enrollment at UCB beyond the 1,650 additional students projected by the 2020
18 LRDP” (“Enrollment Policy”). (Pet., ¶27.) The Petition further alleges that UC has a duty under
19 CEQA to prepare additional CEQA review to analyze the alleged impacts caused by this new
20 information regarding increases in student enrollment and to adopt appropriate mitigation
21 measures. (Pet., ¶6, 27.) The Prayer for Relief seeks a writ of mandate compelling UC “to subject
22 the excess increase in student enrollment to the procedures and requirements of CEQA.” (Pet.,
23 7.)

24 The Petition contains no allegations regarding any decision or action taken by UC with
25 respect to the alleged “excess increase in enrollment.” Rather, the Petition points to an October
26 30, 2017 letter from UCB to the City of Berkeley. (Pet., ¶4, Ex. 1.) That letter responds to an
27 earlier Public Records Act request by the City and includes a chart showing total numbers of
28 undergraduates, graduate students, off-campus undergraduates, and off-campus graduate programs

1 from the Fall Semester in 2005 to the Fall Semester of 2017. (*Ibid.*)

2 Petitioner filed this lawsuit on April 27, 2018. The First Amended Petition For Writ of
3 Mandate and Complaint for Declaratory Relief was filed on or about June 18, 2018. The Second
4 Amended Petition For Writ of Mandate and Complaint for Declaratory Relief was filed on or
5 about October 16, 2018.

6 **III. ARGUMENT**

7 **A. Standard of Review**

8 A demurrer challenges defects that appear on the face of the complaint or from matters
9 outside the complaint which are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311,
10 318; Code Civ. Proc., § 430.30(a).) Although the court must generally assume as true all facts
11 properly pleaded in the complaint on demurrer, *Blank, supra*, 39 Cal.3d at 318; *Rakestraw v.*
12 *California Physicians' Service* (2000) 81 Cal.App.4th 39, 42-43, the court is under no obligation
13 to accept as true either factual or legal conclusions expressed in a complaint. (*Blank, supra*, at
14 318.) Evidentiary facts contained in exhibits attached to a complaint may be considered by the
15 court in connection with the demurrer. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.)
16 Additionally, the court may reject allegations by a plaintiff that are contrary to facts that the court
17 may judicially notice. (*City of Chula Vista v. County of San Diego* (1994) 23 Cal.App.4th 1713
18 1719.) "Because a demurrer tests the legal sufficiency of a complaint, the plaintiff must show that the
19 complaint alleges facts sufficient to establish every element of each cause of action. If the
20 complaint fails to plead, or if the defendant negates, any essential element of a particular cause of
21 action," the demurrer should be sustained. (*Rakestraw, supra*, 81 Cal.App.4th at 43.) Where there
22 is no "reasonable possibility that the defect can be cured by amendment," a demurrer should be
23 sustained without leave to amend. (*Blank, supra*, 39 Cal.3d at 318.)

24 **B. Petition's Alleged Facts on Student Enrollment Do Not Meet the Narrow** 25 **Prohibitory CEQA Supplemental Review Standards**

26 Petitioner alleges that the "excess increase in student enrollment" based on 2017
27 Enrollment Numbers has caused environmental impacts not previously analyzed in the LRDP EIR
28 and that UC has a duty to examine the impacts of increased student enrollment under CEQA. The

1 Petition alleges that new information about increased enrollment has arisen after the certification
2 of the LRDP EIR and the analysis in the LRDP EIR needs to be updated. Since Petitioner is
3 challenging the adequacy of the certified LRDP EIR based on new information, its claim is one for
4 supplemental or subsequent CEQA review of the LRDP EIR (hereinafter, “supplemental review”).
5 The Petition fails to allege facts showing that UC was required to undertake supplemental review
6 of the 2017 Enrollment Numbers under CEQA standards.

7 Public Resources Code section 21166 governs supplemental environmental review and its
8 language is prohibitory. When an EIR has already been prepared for a project, “*no subsequent or*
9 *supplemental environmental impact report shall be required by the lead agency or by any*
10 *responsible agency, unless* ” there are substantial changes to the project or changed circumstances,
11 which would result in new or substantially more severe significant impacts than disclosed in the
12 certified EIR or new substantially different than would substantially reduce significant
13 environmental impacts. (Emphasis added.) CEQA’s supplemental review provisions *only* apply
14 when an agency makes a subsequent discretionary approval. (CEQA Guidelines section 15162;
15 *Friends of College of San Mateo Gardens v. San Mateo County Community College District*
16 (2016) 1 Cal.5th 937, 949; *Laurel Heights Improvement Assn. v. Regents of Univ. of California*
17 (1993) 6 Cal.4th 1112, 1129-1130; *Cucamongans United for Reasonable Expansion v. City of*
18 *Rancho Cucamonga* (2000) 82 Cal.App.4th 473, 479; *Fort Mojave Indian Tribe v. Department of*
19 *Health Services* (1995) 38 Cal.App.4th 1574, 1597.)

20 “Approval” means the discretionary decision by a public agency which commits the
21 agency to a definite course of action in regard to a project intended to be carried out by any
22 person. (CEQA Guidelines, § 15352, subd. (a).) “Discretionary” is “a project which requires the
23 exercise of judgment or deliberation when the public agency or body decides to approve or
24 disapprove a particular activity.” (CEQA Guidelines, § 15357.) New information appearing after
25 an approval does not require reopening of that approval. “In the case of a certified EIR, which is a
26 prerequisite for application of section 21166, section 21167.2 mandates that the EIR be
27 conclusively presumed valid unless a lawsuit has been timely brought to contest the validity of the
28 EIR. This presumption acts to preclude reopening of the CEQA process even if the initial EIR is

1 discovered to have been fundamentally inaccurate and misleading in the description of a
2 significant effect or the severity of its consequences. After certification, the interests of finality
3 are favored over the policy of encouraging public comment.” (*Laurel Heights, supra*, 6 Cal.4th at
4 1130.) “These limitations are designed to balance CEQA’s central purpose of promoting
5 consideration of the environmental consequences of public decisions with interests in finality and
6 efficiency.” (*Friends of College of San Mateo Gardens, supra*, 1 Cal.5th at 949.) A “ ‘public
7 agency may require a subsequent EIR *only when the agency grants a discretionary approval*; once
8 all discretionary approvals have been obtained, no agency has jurisdiction to require a further
9 EIR.’ ” (*Cucamongans United, supra*, 82 Cal.App.4th at 479; *Fort Mojave Indian Tribe, supra*,
10 38 Cal.App.4th at 1597 (“a supplemental or subsequent EIR must be prepared in connection with
11 the *next discretionary approval*, if any”).)

12 Petitioner’s allegations concern an “excess increase in student enrollment” based on the
13 2017 Enrollment Numbers, but Petitioner fails to allege any facts concerning a subsequent
14 discretionary project or action by UC or UCB relating to the increased enrollment that required
15 UC to conduct supplemental review. Instead, the Petition cites a letter from UCB to the City
16 containing information on student enrollment levels since 2005 from a census taken of student
17 enrollment. (Pet., ¶4, Ex. 1; Declaration of Russ Acker (“Acker Dec.”), ¶¶ 5-6.) Since the
18 Petition does not allege any subsequent discretionary decision by UC that commits UC to a
19 definite course of action in regard to a project, Petitioner has failed to state a claim that UC was
20 required to conduct supplemental CEQA review.

21 If and when UC considers a subsequent discretionary approval, it may need to account for
22 current student enrollment numbers in any CEQA determination that relies on the LRDP EIR. For
23 instance, UC is in the process of preparing a supplemental EIR to the LRDP EIR for the Goldman
24 School of Public Policy’s Upper Hearst Project (“GSPP”). (Request for Judicial Notice (“RJN”),
25 Ex. 1.) The EIR will analyze not only the GSPP, but also the increase in current and foreseeable
26 campus population levels (students and employees) from that analyzed in the LRDP EIR. (*Ibid.*)
27 Therefore, the remedy being sought by Petitioner is already being undertaken by UC in
28 accordance with CEQA’s supplemental review standards.

1 **C. The Petition Fails to Allege Any “Project” Relating to Student Enrollment**
2 **Subject to CEQA, Nor Identifies Any Available CEQA Remedy**

3 **a. The Petition Fails To Allege a “Project” Subject to Challenge**

4 To the extent that the Petition alleges that the 2017 Enrollment Numbers or the
5 “Enrollment Policy” themselves are a “project” subject to CEQA, the Petition must fail. Petitioner
6 does not, and cannot, plead any facts establishing that either is a “project” under CEQA. In the
7 absence of a “project,” no remedy under CEQA is available.

8 CEQA applies to “discretionary projects proposed to be carried out or approved by public
9 agencies.” (Pub. Res. Code, § 21080, subd. (a).) To qualify as a “project,” UC must undertake
10 some activity that would result in a *physical change in the environment*. (Pub. Res. Code, §
11 21065.) CEQA’s focus is on the environment, which is defined as “the physical conditions which
12 exist within the area.” (Pub. Res. Code § 21060.5.) Under these standards, there are three main
13 elements to a CEQA “project”: (1) an action; (2) a discretionary approval; and (3) a physical
14 change in the environment.

15 The Petition alleges no facts showing that the 2017 Enrollment Numbers are a CEQA
16 “project.” There are no allegations of any “action” taken by UC with respect to the 2017
17 Enrollment Numbers and when that “action” occurred. Nor does the Petition allege any facts
18 showing that UC made any “discretionary approval” relating to the 2017 Enrollment Numbers.
19 The 2017 Enrollment Numbers are based on a census of students attending the Fall semester of the
20 2017-18 academic year (Acker Dec., ¶¶5-6), which is simply information, not allegations showing
21 an action or approval.

22 The “Enrollment Policy” alleged in the Petition also is not a “project” under CEQA. The
23 Petition asserts that, since 2007, UC has “implemented and continues to implement a policy to
24 increase student enrollment” beyond the LRDP projections. (Pet., ¶ 27.) This “policy” allegedly
25 started within one academic year of the adoption of the LRDP. The Petition does not allege any
26 “action,” or “discretionary approval” or “physical change in the environment” relating to the
27 “Enrollment Policy.” Thus, the alleged “Enrollment Policy” also does not meet CEQA’s
28 definition of a “project.”

1 With no allegations constituting a “project” subject to CEQA, Petitioner cannot maintain a
2 claim alleging that UC failed to conduct proper environmental review of a project.

3 **b. CEQA provides no remedies for the allegations in the Petition**

4 The Petition’s failure to allege facts regarding a “project” also means that the Court cannot
5 grant Petitioner any remedies under CEQA. Any court remedies under CEQA must relate to an
6 agency’s *determination, finding, or decision* (i.e., a “project”). (Pub. Res. Code, § 21168.9.)
7 Specifically, if a reviewing court finds “that any *determination, finding, or decision* of a public
8 agency” has been made without CEQA compliance, the court order is limited to the following: (1)
9 voiding the agency *determination, finding, or decision*; (2) suspending the specific project
10 undertaken pursuant to the agency *determination, finding, or decision* until the agency has taken a
11 subsequent action to bring the *determination, finding, or decision* into compliance with CEQA;
12 and/or (3) ordering the agency to take specific action to bring the *determination, finding, or*
13 *decision* into compliance with CEQA. (Pub. Res. Code, § 21168.9, subd. (a) (emphasis added).)

14 Petitioner has not alleged, nor can it, that UC has made any “determination, finding, or
15 decision” that the Court may order UC to void (Pub. Res. Code, § 21168.9, subd. (a)(1).), or for
16 which the Court may order UC to take specific action to bring a determination, finding or decision
17 into compliance with CEQA. (*Id.* at subd. (a)(3).) Nor are there any project activities that the
18 Court could suspend while UC brings the non-existent determination, finding, or decision into
19 compliance with CEQA. (*Id.* at subd. (a)(2).)

20 At the end of the day, Petitioner is asking the Court to order UC to conduct a stand-alone
21 analysis of the 2017 Enrollment Numbers facts or “Enrollment Policy,” not tied to any particular
22 decision or action by UC. Such a remedy is not permitted under CEQA and would be without
23 precedent. Without any allegations that UC has carried out or approved a specific discretionary
24 project that occurred at a specific time, Petitioner has failed to allege an essential element of any
25 CEQA claim and the demurrer to the Petition should be sustained.

26 **D. Petition Cannot Be Amended to State A Claim Under CEQA Relating to**
27 **Student Enrollment**

28 The Court should not grant Petitioner leave to amend because it cannot state a cognizable

CEQA claim relating to the 2017 Enrollment Numbers or Enrollment Policy. First, under the UC-specific CEQA statute (Pub. Res. Code, § 21080.09), higher education enrollment numbers are analyzed as part of EIRs for LRDPs, which has been done, and the statute for challenging has long passed. Second, Petitioner's claims need to be made in context of CEQA law on LRDPs or supplemental review standards (as described in Section III.B above). Third, the remedy sought regarding 2017 Enrollment Numbers or Enrollment Policy is not allowed under CEQA, would contravene constitutional autonomy and authority of UC, and cause chaos regarding higher education throughout the State. Finally, Petitioner has failed *three* times to allege adequate facts to support his claim, demonstrating the inability to state a claim on the facts alleged in the Petition and dictating that no further leave should be granted.

a. **CEQA claims on analysis of higher education enrollment are governed by LRDP statute.**

The CEQA statute contains a specific provision governing environmental review of higher education projects, including UC campuses and medical centers. (Pub. Res. Code, § 21080.09.) Public Resources Code section 21080.09², subdivision (a)(2) defines a "Long range development plan ["LRDP"]" as a "physical development and land use plan to meet the academic and institutional objectives for a particular campus or medical center of public higher education" and requires the preparation of an EIR prior to approval of a LRDP. (Pub. Res. Code, § 21080.09, subdivision (b).) Since the LRDP is a land use plan, the focus of the EIR is on the environmental effects of the physical development plan. The statute also requires that the changes in *projected* enrollment levels for each campus be analyzed in the LRDP EIR. (*Ibid.*) Compliance with section 21080.09 "satisfies the obligations of public higher education pursuant to this division to consider the environmental impact of academic and enrollment plans as they affect campuses." (*Id.* at subd. (d).)

² The Petition also cites Education Code section 67504. However, this section does not establish any requirements under CEQA. It simply restates the requirements for UC campuses to prepare LRDPs and EIRs for LRDPs and requires reports to the State Legislative regarding them.

1 The LRDP is a land use plan for academic and other facilities to serve the educational
2 objectives of a particular campus within the UC system. Each campus' LRDP contains an
3 *estimated projection* of future student enrollment. This projection is not a plan for future
4 enrollment, nor does it dictate, control, or cap future enrollment. Consistent with Public
5 Resources Code section 21080.09, UCB adopted an LRDP in 2005 to guide campus development,
6 which contained an estimated projection of student enrollment. (Pet., ¶ 3.) The LRDP EIR
7 analyzed the physical impacts of the development included in the LRDP. (*Ibid.*)

8 Petitioner does not challenge UC's certification of the LRDP EIR in 2005, which would be
9 barred by the statute of limitations. (See Pet. ¶¶ 2-3; see also Section III.E, below.) Instead,
10 Petitioner contends that UC was required to conduct environmental analysis of the 2017
11 Enrollment Numbers. However, as set forth above, CEQA only requires environmental analysis
12 of enrollment numbers as part of a LRDP or, if supplemental review of the LRDP is required, in
13 connection with a project relying on the LRDP EIR (See Section III.B above). Enrollment
14 numbers, standing alone, do not constitute a physical plan or project.

15 b. **Remedies affecting enrollment decisions cannot be granted under**
16 **CEQA and State law granting UC power over higher education**
decisions.

17 If the Petition is allowed to proceed and the requested remedy granted, UC would be in the
18 position of having to analyze the environmental impacts of its student enrollment, which fluctuates
19 each academic year. Courts would have to resolve annual challenges to the environmental
20 analysis of enrollment levels, and could block enrollment until the analysis was done. This
21 scenario is contrary to CEQA's requirements for analysis of enrollment levels in LRDPs or for
22 projects relying on the LRDP EIR under supplemental review standards.

23 Such a court-ordered analysis would also impermissibly intrude into the UC's power over
24 higher education under the State Constitution. UC has plenary authority over higher education in
25 the State. The University of California became a "public trust" in 1879 as part of a larger revision
26 of California's Constitution approved by California voters. (Cal Constitution, Art. IX, Sec. 9.)
27 The 1879 Constitution granted UC the exclusive power to operate, control, and administer public
28 higher education, becoming virtually a fourth branch of state government, a "constitutional

1 corporation . . . equal and coordinate with the legislature, the judiciary and the executive.” (30
2 Ops.Cal.Atty.Gen. 162 (1957).) Court orders and oversight controlling annual student enrollment
3 levels would contravene these constitutional powers.

4 Furthermore, the requested remedy would throw UC’s higher education mission into
5 complete disarray. It would be impossible for UC to conduct annual CEQA analysis of its
6 enrollment numbers before commencing student instruction each academic year. It also would be
7 impossible for CEQA claims regarding such numbers to be resolved by trial and appellate courts
8 before the academic year has concluded. Petitioner has not, and cannot demonstrate any legal
9 basis for this Court to stay the beginning of student instruction on a UC campus pending CEQA
10 review. Such a stay would contravene UC’s control over public higher education under the State
11 Constitution

12 **c. Further Leave to Amend Second Amended Petition should not be**
13 **granted.**

14 The Petition cannot be amended to allege that the 2017 Enrollment Numbers or Enrollment at
15 Policy constitute a “project” subject to CEQA. Petitioner has already filed two amendments to its
16 Petition. UC has repeatedly informed Petitioner that the Petition fails to allege facts regarding a
17 “project” subject to CEQA. (Declaration of Timothy Cremin, ¶¶ 2, 4.) However, Petitioner has
18 not added any facts in either the First or Second Amended Petition to cure this defect. Since
19 Petitioner has already twice failed to add allegations to cure this fundamental defect, the Court
20 should assume there are no further facts available. (*Blank, supra*, 39 Cal.3d at 318 (where defect
21 cannot be cured by amendment, demurrer without leave to amend should be granted).) Since the
22 Petition cannot be amended to allege a project subject to CEQA, the Court should sustain the
23 demurrer without leave to amend.

24 **E. The Petition Is Untimely**

25 The Petition is time-barred by CEQA’s statute of limitations. The only allegation the
26 Petition makes concerning any “decision” made by UC is the assertion that UC began
27 implementing some undated and unnamed “policy” in or about 2007, well outside the statute of
28 limitations. (Pet., ¶27.) Moreover, as set forth above, the 2017 Enrollment Numbers do not

1 constitute a “project” under CEQA. Even if Petitioner had a cognizable CEQA claim based on the
2 2017 Enrollment Numbers, any such claim would be barred by the statute of limitations.

3 Expedited review of CEQA claims is evidenced throughout the statutory scheme,
4 especially in its normal 30-day statute of limitations and calendar preference in judicial
5 proceedings. (Pub. Res. Code, §§ 21167, subd. (b), 21167.1.) Public Resources Code section
6 21167, subdivision (a) contains the longest statute of limitations applicable to any CEQA action,
7 providing that any such action “shall be commenced within 180 days from the date of the public
8 agency’s decision to carry out or approve the project, *or, if a project is undertaken without a*
9 *formal decision by the public agency, within 180 days from the date of commencement of the*
10 *project.*” (Emphasis added.)

11 “Among the purposes of statutes of limitations are to prevent stale claims, give stability to
12 transactions, protect settled expectations, promote diligence, encourage the prompt enforcement of
13 substantive law, and reduce the volume of litigation.” (*Stockton Citizens for Sensible Planning v.*
14 *City of Stockton* (2010) 48 Cal.4th 481, 499.) “To ensure finality and predictability in public land
15 use planning decisions, statutes of limitations governing challenges to such decisions are typically
16 short.” (*Id.*) “Courts have often noted the Legislature’s clear determination that ‘the public
17 interest is not served unless CEQA challenges are promptly filed and diligently prosecuted.’ ”
18 (*Id.* at 500.)

19 Any challenge to UC’s “adoption of the LRDP on the grounds the adoption does not
20 comply with CEQA,” as set forth in its notice of intent to sue, would be clearly barred by the
21 statute of limitations. (Pet., Ex. 1, p. 2.) The Petition itself alleges that the LRDP EIR was
22 certified in 2005, more than 12 years before the Petition was filed, and well over the longest 180
23 day statute of limitations period established by CEQA.

24 To the extent the Petition challenges UC’s alleged adoption or implementation of a circa
25 2007 “policy” to increase student enrollment beyond that analyzed in the LRDP, such an action
26 would be 10 years late and also be barred.

27 With regards to the 2017 Enrollment Numbers, Petitioner has not alleged that UC has
28 made any decision to carry out or approve a “project” as defined by CEQA, nor has Petitioner

1 alleged when that decision was made. Even assuming that the 2017 Enrollment Numbers are a
2 “project,” Petitioner has failed to bring this action within the statute of limitations. At the very
3 latest, any “project” related to student enrollment would have commenced when instruction began
4 for the 2017-2018 academic school year on August 23, 2017. (RJN, Ex. 2. (2017-18 UC
5 Berkeley Academic Calendar).) At this time, all enrolled students would have been in attendance
6 at UCB. Thus, the last day to file the Petition challenging the student enrollment would have been
7 February 19, 2018, 180 days after the beginning of student instruction for the 2017 Fall Semester.
8 The Petition was filed on April 27, 2018, more than two months after the statute expired.

9 Even if the Petitioner argues that the statute of limitations should run from when they
10 “knew or should have known” about the 2017 Enrollment Numbers, the Petition was untimely
11 filed. (*Concerned Citizens of Costa Mesa, Inc. v. 32nd District Agricultural Association* (1986)
12 42 Cal.3d 929, 939.) Under *Concerned Citizens*, when the project constructed differs substantially
13 from the project reviewed in the EIR, the statute of limitations begins to run when petitioner
14 “knew or reasonably should have known that the project under way differs substantially from the
15 one described in the EIR”. (*Id.*)

16 The 2017 Fall Semester enrollment numbers were publicly available on October 9, 2017
17 (Acker Dec., ¶¶ 5-7.) Because the enrollment numbers were known, published, and publically
18 available at this time, Petitioner should have known the 2017 Enrollment Numbers no later than
19 this date. Thus, the last day to file the Petition challenging the student enrollment would have
20 been April 8, 2018, 180 days after the information became publicly available. The Petition was
21 filed on April 27, 2018.

22 Though the Petition contains no allegations concerning when Petitioner knew, or should
23 have known about the 2017-2018 enrollment numbers, Petitioner cannot rely upon the date of a
24 letter sent by UCB to the City of Berkeley on October 30, 2017 for either commencement of the
25 “project,” or when it “knew or should have known” about the 2017 Enrollment Numbers. (See
26 Pet., Ex. 1.) The October 30, 2017 letter contains facts about enrollment levels from Fall Semester
27 2005 through Fall Semester 2017. The letter is not “commencement of a project” under CEQA.
28 The letter itself states that it is in response to a request for information submitted by the City to

1 UCB and includes Fall Semester 2017 undergraduate and graduate student enrollment numbers.
2 Nor can Petitioner rely on the October 30, 2017 letter as notice of the 2017 Enrollment Numbers.
3 By the time the letter was issued, 2017 Enrollment Numbers had already been publicly available
4 on the UCB website for 21 days. (Acker Dec., ¶¶ 5-7.) Furthermore, classes for the 2017 Fall
5 Semester had already been in session for more than two months. (RJN, Ex. 2. (2017-18 UC
6 Berkeley Academic Calendar).) Therefore, Petitioner cannot rely on the October 30, 2017 letter to
7 extend the statute of limitations and revive its untimely Petition. As such, the Court should sustain
8 UC's demurrer because Petitioner failed to file the Petition within the statute of limitations. Since
9 the failure to timely file the Petition cannot be cured, the demurrer should be sustained without
10 leave to amend.

11 **F. The Petition Is Moot**

12 The Petition seeks a court order for UC to analyze the "excess increase in enrollment"
13 under CEQA. However, even assuming that the 2017 Enrollment Numbers are a "project" subject
14 to CEQA, which they are not, any challenge to these numbers is moot because the 2017 Spring
15 and Fall Semesters have concluded. No effective relief can be granted by this Court relating to
16 student enrollment during a time period that has already passed.

17 A CEQA case "should be dismissed as moot when the occurrence of events renders it
18 impossible" for the court to grant "any effective relief." (*Cucamongans United, supra*, 82
19 Cal.App.4th at 479.) In *Santa Monica Baykeeper v. City of Malibu* (2011) 193 Cal.App.4th 1533
20 1550, the court held that petitioner's claims regarding construction phase impacts of a project were
21 moot since the construction phase had ended, and the entire project was complete and open to the
22 public. Under these circumstances, the court found that there was no way the court could provide
23 "effective relief regarding construction impacts." (*Ibid.*) Similarly in *North Coast Rivers Alliance*
24 *v. Westlands Water District* (2014) 227 Cal.App.4th 832, 849, and *County Sanitation District No.*
25 *2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1628, the courts there refused to consider
26 CEQA challenges to contracts that had already expired, finding that the claims were moot.

27 There is no effective relief that can be granted here. Like the contracts in *North Coast*
28 *Rivers Alliance* and *County Sanitation District No. 2*, the 2017 Enrollment Numbers apply to past

1 academic semesters that have already been completed. Even if these numbers met CEQA's
2 definition of a project, UC cannot reach into the past to mitigate alleged environmental impacts,
3 and this Court cannot grant Petitioner effective relief by commanding UC to do so. The Petition is
4 moot and should be dismissed.

5 **IV. CONCLUSION**

6 For all of the above reasons, the Court should sustain the UC's demurrer to the Second
7 Amended Petition without leave to amend.

8 Respectfully submitted,

9 DATED: October 18, 2018

MEYERS, NAVE, RIBACK, SILVER & WILSON

11 By:



12 Timothy D. Cremin
13 Attorneys for Respondents and Defendants
14 The Regents of the University of California; Janet
15 Napolitano, in her capacity as President of the
16 University of California; Carol T. Christ, in her
17 capacity as Chancellor of the University of
18 California, Berkeley

16 3070863.4

Document received by the CA 1st District Court of Appeal.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

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 Alameda, State of California. My business address is 555 12th Street, Suite 1500, Oakland, CA 94607.

On October 19, 2018, I served true copies of the following document(s) described as **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER TO PETITIONER'S SECOND AMENDED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF** on the interested parties in this action as follows:

Thomas N. Lippe, Esq.
Kelly Marie Perry, Esq.
Law Offices of Thomas N. Lippe, APC
201 Mission Street, 12th Fl.
San Francisco, CA 94105

Attorneys for Plaintiff SAVE
BERKELEY'S NEIGHBORHOODS

Tel: (415) 777-5604
Fax: (415) 777-5606
Email: lippelaw@sonic.net
kmhperry@sonic.net

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Meyers, Nave, Riback, Silver & Wilson's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address CSauceda@meyersnave.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on October 19, 2018, at Oakland, California.


Cynthia Saucedo

Document received by the CA 1st District Court of Appeal.

Charles F. Robinson (SBN 113197)
Alison Krumbein (SBN 229728)
alison.krumbein@ucop.edu
THE UNIVERSITY OF CALIFORNIA
Office of General Counsel
1111 Franklin St., 8th Floor
Oakland, California 94607
Telephone: (510) 987-0851
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Amrit S. Kulkarni (SBN 202786)
akulkarni@meyersnave.com
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EXEMPT FROM FILING FEES
GOV'T CODE § 6103

Attorneys for The Regents of the University of
California; Janet Napolitano, in her capacity as
President of the University of California; Carol T.
Christ, in her capacity as Chancellor of the
University of California, Berkeley

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

SAVE BERKELEY'S NEIGHBORHOODS, a
California nonprofit public benefit
corporation,

Petitioner and Plaintiff,

v.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA; JANET NAPOLITANO, in
her capacity as President of the University of
California; CAROL T. CHRIST, in her
capacity as Chancellor of the University of
California, Berkeley; and DOES 1 through 20,

Respondents and Defendants.

Case No. RG18902751

ASSIGNED FOR ALL PRE-TRIAL
PURPOSES TO JUDGE FRANK ROESCH
DEPARTMENT 24

**NOTICE OF DEMURRER AND
DEMURRER TO THE SECOND
AMENDED VERIFIED PETITION FOR
WRIT OF MANDATE AND COMPLAINT
FOR DECLARATORY RELIEF**

Reservation # R-2003938

Judge: Hon. Frank Roesch
Date: November 15, 2018
Time: 3:45 PM
Dept.: 24

Action Filed: April 27, 2018
Trial Date: None Set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on November 15, 2018, at 3:45 p.m., or as soon thereafter
3 as the matter may be heard, in Department 24 of the Alameda County Superior Court, located at
4 1221 Oak Street, Oakland, CA 94612, Respondents The Regents of the University of California,
5 Janet Napolitano, in her capacity as President of the University of California, and Carol T. Christ,
6 in her capacity as Chancellor of the University of California, Berkeley (collectively, "UC") will,
7 and hereby do, demur to the Second Amended Verified Petition for Writ of Mandate and
8 Complaint for Declaratory Relief ("Petition") brought by Petitioner Save Berkeley's
9 Neighborhoods ("Petitioner"). This Demurrer is made pursuant to section 430.10 of the Code of
10 Civil Procedure, and is based on the grounds described below. This Demurrer is based upon this
11 Notice and the Demurrer, the accompanying Memorandum of Points and Authorities, the Request
12 for Judicial Notice, the records and documents on file for this matter, and any other matter
13 properly before the Court at the time of the hearing.

14 **DEMURRER**

15 UC demurs to the Petition on the following grounds:

16 **DEMURRER TO FIRST CAUSE OF ACTION**

17 **(California Environmental Quality Act)**

18 UC demurs to the Petition's First Cause of Action on the grounds that the Petition has not
19 alleged facts sufficient to state any claim under the California Environmental Quality Act. (See
20 Code Civ. Proc., § 430.10, subds. (a), (e).)

21 **DEMURRER TO SECOND CAUSE OF ACTION**

22 **(Declaratory Relief)**

23 UC demurs to the Petition's Second Cause of Action on the grounds that the Petition has
24 not alleged facts sufficient to state any claim entitling Petitioner to relief requested. (See Code
25 Civ. Proc., § 430.10 subds. (a), (e).)

26 UC respectfully requests that the Court sustain this Demurrer in its entirety, dismiss the
27 Petition with prejudice, and grant any further relief as this Court may deem just and proper.
28

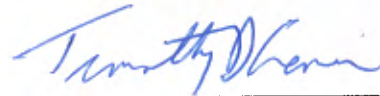
NOTICE PER CCP SECTION 430.41

Pursuant to California Code of Civil Procedure section 430.41, and as set forth in more detail in the accompanying Declaration of Timothy D. Cremin, UC informed Petitioner of UC's intent to file this Demurrer on the grounds described below. The parties did not reach an agreement resolving the objections raised in this Demurrer.

DATED: October 18, 2018

MEYERS, NAVE, RIBACK, SILVER & WILSON

By:



Timothy D. Cremin
Attorneys for The Regents of the University of
California; Janet Napolitano, in her capacity as
President of the University of California; Carol
Christ, in her capacity as Chancellor of the
University of California, Berkeley

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Document received by the CA 1st District Court of Appeal.

1 PROOF OF SERVICE

2 **STATE OF CALIFORNIA, COUNTY OF ALAMEDA**

3 At the time of service, I was over 18 years of age and **not a party to this action**. I am
4 employed in the County of Alameda, State of California. My business address is 555 12th Street,
Suite 1500, Oakland, CA 94607.

5 On October 19, 2018, I served true copies of the following document(s) described as
6 **NOTICE OF DEMURRER AND DEMURRER TO THE SECOND AMENDED VERIFIED**
7 **PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY**
8 **RELIEF** on the interested parties in this action as follows:

9 Thomas N. Lippe, Esq.
10 Kelly Marie Perry, Esq.
11 Law Offices of Thomas N. Lippe, APC
201 Mission Street, 12th Fl.
San Francisco, CA 94105

Attorneys for Plaintiff SAVE
BERKELEY'S NEIGHBORHOODS

Tel: (415) 777-5604
Fax: (415) 777-5606
Email: lippelaw@sonic.net
kmhperry@sonic.net

12 **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the
13 persons at the addresses listed in the Service List and placed the envelope for collection and
14 mailing, following our ordinary business practices. I am readily familiar with Meyers, Nave,
15 Riback, Silver & Wilson's practice for collecting and processing correspondence for mailing. On
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18 mail addresses listed in the Service List. I did not receive, within a reasonable time after the
transmission, any electronic message or other indication that the transmission was unsuccessful.

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

20 Executed on October 19, 2018, at Oakland, California.

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22 
23 Cynthia Saucedo
24
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26
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28

Document received by the CA 1st District Court of Appeal.

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 Christ, in her capacity as Chancellor of the
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
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 California, Berkeley; and DOES 1 through 20,

Respondents and Defendants.

Case No. RG18902751

ASSIGNED FOR ALL PRE-TRIAL
 PURPOSES TO JUDGE FRANK ROESCH
 DEPARTMENT 24

**REQUEST FOR JUDICIAL NOTICE IN
 SUPPORT OF DEMURRER TO SECOND
 AMENDED PETITION AND
 COMPLAINT FOR DECLARATORY
 RELIEF**

Reservation # R-2003938

Judge: Hon. Frank Roesch
 Date: November 15, 2018
 Time: 3:45 PM
 Dept.: 24

Action Filed: April 27, 2018
 Trial Date: None Set

1 NOTICE AND REQUEST FOR JUDICIAL NOTICE

2 **TO THE COURT AND COUNSEL FOR ALL PARTIES:**

3 PLEASE TAKE NOTICE that pursuant to Rules of Court, Rules 3.1113(l), 3.1103(a)(2),
4 and 3.1306(c) and Evidence Code sections 452 and 453, Respondents The Regents of the
5 University of California, Janet Napolitano, in her capacity as President of the University of
6 California, and Carol T. Christ, in her capacity as Chancellor of the University of California,
7 Berkeley (collectively, "UC") hereby move the Court for an order taking judicial notice of the
8 following documents:

9 1. Attached hereto as Exhibit 1 is a true and correct copy of the following document
10 from the administrative files of UC: the Notice of Preparation of a Draft Supplemental
11 Environmental Impact Report Upper Hearst Development for the Goldman School of Public
12 Policy project, prepared on August 15, 2018.

13 2. Attached hereto as Exhibit 2 is a true and correct copy of the following document
14 from the administrative files of UC: 2017-18 UC Berkeley Academic Calendar, last updated on
15 April 17, 2017.

16 This Request is based on this notice of request and legal argument in support thereof, all
17 pleadings and papers on file in this action, and upon such other matters as may be presented to the
18 Court at the time of the hearing on this motion.

19 **I. LEGAL ARGUMENT**

20 **A. The Documents Are Properly Subject to Judicial Notice.**

21 The Court may take notice of the official acts of the "legislative enactments issued by or
22 under ... any public entity of the United States" as well as of the "[o]fficial acts of the legislative
23 executive, and judicial departments ... of any state of the United States." (Evidence Code, § 452
24 subd. (b) and (c); see also *Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6.) "Evidence Code
25 section 452(b) permits judicial notice of legislative enactments of 'any public entity in the United
26 States.'" (*Jordan v. Los Angeles County* (1968) 267 Cal.App.2d 794, 798.) UC is one such public
27 entity and its official acts are subject to judicial notice. (Gov. Code, § 811.2; see *California*
28 *Medical Assn. v. Regents of University of California* (2000) 79 Cal.App.4th 542).

1 The Court may also take notice of the contents of the administrative files of a public entity.
2 (See *Assoc. Builders & Contractors, Inc. v. San Francisco Airports Comm'n* (1999) 21 Cal.4th
3 352, 374, fn. 4 [taking judicial notice of administrative agency records]. “The records and files of
4 an administrative board are properly the subject of judicial notice.” (*Hogen v. Valley Hosp.* (1983)
5 147 Cal.App.3d 119, 125.) Based on this authority, UC requests that notice be taken of the
6 documents from UC Berkeley identified above. The documents are the proper subject for judicial
7 notice under Evidence Code sections 452(b), (c) and 453, which provide that courts may take
8 judicial notice of a public agency’s regulations, legislative enactments, and official documents.
9 (*Clark v. Patterson* (1977) 68 Cal.App.3d 329, 334, fn.5.) The documents are in the files of and
10 constitute an official act of UC, and are also posted on UC Berkeley’s website. Thus, they are not
11 reasonably subject to dispute and are capable of immediate and accurate determination by resort to
12 sources of reasonably indisputable accuracy. (Evid. Code, § 452(h).) Accordingly, UC
13 respectfully requests the Court to take judicial notice of the documents of the University of
14 California, Berkeley, as specified above.

15 **B. The Documents Are Relevant to the Case.**

16 The documents are also relevant to the present matter and would be helpful to the Court.
17 deciding UC’s demurrer to the Petition for Writ of Mandate. The document pertaining to the
18 Upper Hearst Development for the Goldman School of Public Policy project is relevant to this
19 case because it evidences UC’s actions regarding consideration of approval of UC projects. The
20 2017-18 UC Berkeley Academic Calendar is relevant to establish that Petitioner’s action is barred
21 by the statute of limitations. Judicial notice of items is proper where such items are “necessary,
22 helpful, or relevant” to the present matter. (*Jordach Enter., Inc. v. Brobeck, Phleger & Harrison*
23 (1998) 18 Cal.4th 739, 748, fn.6). Accordingly, the documents are relevant to the present
24 litigation and are properly subject to judicial notice.

25 **II. CONCLUSION**

26 For the reasons stated above, the City respectfully requests that this Court take judicial
27 notice of the UC Berkeley documents.
28

1 DATED: October 18, 2018

MEYERS, NAVE, RIBACK, SILVER & WILSON

2
3
4 By:



Timothy D. Cremin
Attorneys for The Regents of the University of
California; Janet Napolitano, in her capacity as
President of the University of California; Carol T.
Christ, in her capacity as Chancellor of the
University of California, Berkeley

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Executed on October 19, 2018, at Oakland, California.


Cynthia Saucedo

Document received by the CA 1st District Court of Appeal.

EXHIBIT 1

Document received by the CA 1st District Court of Appeal.



PHYSICAL & ENVIRONMENTAL PLANNING
A & E BUILDING, # 1382

BERKELEY, CALIFORNIA 94720-1382

August 15, 2018

State of California
Office of Planning and Research
1400 Tenth Street
Sacramento, CA 95814

**NOTICE OF PREPARATION OF A
DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT**

Project Title: Upper Hearst Development for the Goldman School of Public Policy and Minor Amendment to the 2020 Long Range Development Plan

Lead Agency: The Regents of the University of California

Project Location: University of California, Berkeley: Hearst Avenue and La Loma Avenue, Berkeley, California 94720; Assessor's Parcel Number 58-2201-9-1

County: Alameda County, California

Program EIR: UC Berkeley 2020 Long Range Development Plan EIR, certified by The Regents January 2005, SCH #2003082131; as updated by Amendment #1 to the 2020 LRDP to address Climate Change and accompanying Addendum #5 to the 2020 LRDP EIR.

Project Overview:

The Goldman School of Public Policy (GSPP) at the University of California, Berkeley (UC Berkeley) needs additional teaching, research, meeting, lecture, and office space for faculty, students, visitors, and staff. Additionally, GSPP would like to accommodate its growing Master of Public Policy, its relatively new Master of Public Affairs, and its Executive Education programs. The latter two programs are self-funded and revenue generating. The proposed Upper Hearst Development for the Goldman School of Public Policy Project ("project") will allow GSPP to add needed program space, while also improving the availability of near-campus housing.

Pursuant to the California Environmental Quality Act (CEQA), UC Berkeley will prepare a Draft Supplemental Environmental Impact Report (Supplemental EIR) tiered from its 2020 Long Range Development Plan Environmental Impact Report (2020 LRDP EIR) to evaluate the potential environmental effects of the project. The need for a Supplemental EIR is primarily triggered by two issues: (1) changes to the

Document received by the CA 1st District Court of Appeal.

2020 Long Range Development Plan (2020 LRDP) land use plan to accommodate the proposed project; and (2) an increase in current and foreseeable campus population levels above those analyzed in the 2020 LRDP EIR, based on a general increase in student enrollment and employee levels and growing the GSPP program(s). The Draft Supplemental EIR will analyze whether these issues would result in new or substantially more severe significant impacts than identified in the 2020 LRDP EIR. Under CEQA, the Draft Supplemental EIR will analyze the environmental effects associated with the GSPP program development on a project level and the increased campus population on a programmatic level.

According to the campus central data set (Cal Answers), average student enrollment at UC Berkeley for the two semesters of the 2017-2018 school year was 40,955 students, or 7,505 more students than analyzed in the 2020 LRDP EIR. This data set does not distinguish between campus and off campus enrollment. Given factors including legislative commitments, UC Berkeley may continue to expand enrollment (see, for example: <https://accountability.universityofcalifornia.edu/2016/chapters/chapter-1.html>). For the same school year, 2017-2018, the number of faculty and staff was 15,830, or 20 more than analyzed in the 2020 LRDP EIR. The rate at which campus headcount grows depends on various factors including, but not limited to, legislative mandates, University and State of California policies, available resources, and demographic trends. At this time, UC Berkeley estimates an overall campus population headcount growth of about 1.5 percent annually, on an average, in the near-term.

Project Location and Description:

The project site is an approximately 44,900-square-foot (just over one acre) portion of a University owned property on the northwest corner of La Loma Avenue and Hearst Avenue, across Hearst Avenue from the northeastern region of the UC Berkeley Campus Park. The site is bordered on the north by Ridge Road and the Cloyne Court Student Cooperative; on the east by La Loma Avenue; on the south by Hearst Avenue; and on the west by the Goldman School of Public Policy and the Cloyne Court Student Cooperative. The project site includes an existing parking structure, referred to on campus maps as Parking Structure H or Upper Hearst Parking Structure. The southern portion of the roughly L-shaped site is the 52-foot-tall, four-story Upper Hearst Parking Structure. The northern portion of the site is the at-grade paved Ridge Lot with concrete entrance ramps to the west and southeast that lead to the subterranean portions of the Upper Hearst Parking Structure. The project site is located within the area of campus designated in the 2020 LRDP as the "City Environs," and within the City Environs' Adjacent Blocks North subarea.

The project is a public-private partnership that would provide additional academic space for GSPP's undergraduate, graduate and Global Executive Education programs, and housing geared towards campus affiliates, principally faculty, graduate and post-doctoral students. The project comprises two separate buildings – an academic building and a residential building on top of the reconditioned Upper Hearst Parking Structure – that would be built concurrently by the project developer.

Overall construction of the project would take approximately 23 months, with construction anticipated to begin July 2019.

Academic Building

The new academic building would be the third building in an existing complex now occupied by GSPP that includes the historic Beta Theta Pi house, located at 2607 Hearst Avenue, and a building located at 1893 Le Roy Avenue that was completed in 2002 by Architectural Resources Group. The proposed academic space

would be in a new building located immediately east of the existing GSPP building at 2607 Hearst Avenue. The academic component of the project includes constructing an approximately 37,000 gross (or total) square foot building, redeveloping a portion of the footprint of the existing Upper Hearst Parking Structure at Hearst and La Loma Avenues. The new academic building would be four stories in height over one subterranean level and would include office, classroom and event space. An exterior stair and ramp from Hearst Avenue would be developed, with a landscaped courtyard connected to the main lobby. A double-height lobby with an operable glass façade would connect the new academic building with the courtyard and existing GSPP campus. Pedestrian and bicycle access to the proposed academic space would be provided from Hearst Avenue at the main entrance. The new academic building would accommodate 495 people for teaching (student, faculty and visitors), with capacity for an additional 100 people for special events, consolidating students, staff and faculty from currently leased spaces.

Residential and Parking Component

The eastern portion of the existing Upper Hearst Parking Structure would be retained, and the residential component of the project would be constructed in a new building on top of the parking structure, as well as on the adjacent surface Ridge Lot at the corner of Ridge Road and La Loma Avenue. The residential component would consist of up to 150 units in a mixture of one- and two-bedroom apartments in a five- to six-story building on top of the parking structure. The top level of the existing parking structure would be removed and replaced with a new concrete podium deck that would cover the site from Hearst Avenue to Ridge Road along La Loma Avenue. The ground floor of the residential building would include a double-height lobby with leasing office and mail and fitness rooms. Vehicle access to the parking garage below the residential building would be from La Loma Avenue and Hearst Avenue. Pedestrian and bicycle access to the housing portion of the site would be provided from Ridge Road and La Loma Avenue.

The project site now has a combined 345 parking spaces: the Upper Hearst Parking Structure contains 325 parking stalls and the surface Ridge Lot contains 20 spaces. To accommodate the new academic building, the western portion of the Upper Hearst Parking Structure would be demolished, leaving up to 217 parking spaces remaining on-site. Existing parking in the Ridge Lot would be removed entirely for the new residential building.

LRDP Amendments

The project would involve minor text amendments to the 2020 LRDP. The proposed amendment(s) will address the fact that while the uses proposed by the project and the changes themselves are consistent with the 2020 LRDP and 2020 LRDP EIR, the proposed project conflicts with the existing applicable land use plan, and is not consistent with the 2020 LRDP housing element. It will also address current and foreseeable campus population levels at UC Berkeley, which are greater than enrollment levels analyzed in the 2020 LRDP EIR. Despite this greater than anticipated growth in campus population, UC Berkeley has additional capacity for growth under its existing 2020 LRDP parameters, in both academic space and housing. UC Berkeley is examining ways it can better meet teaching demand through resource allocation (see, for example the draft report of the Incentives Working Group, May 2017: <https://evcp.berkeley.edu/task-forces-working-groups> pp. 24-25). The enrollment increase has trended steadily over time, allowing adjustments to accommodate the increases. Moreover, UC Berkeley has taken steps to better utilize facilities, as explained in its 2013 Accreditation study: https://vcuc.berkeley.edu/sites/default/files/ucberkeley_institutional-narrative.pdf pg. 82.

The State legislative analyst's office further maintains that UC Berkeley has capacity to better utilize its existing facilities, according to a recent report: <http://www.lao.ca.gov/reports/2017/3532/uc-csu-enrollment-capacity-011917.pdf>.

Therefore, the amendment(s) proposed here for analysis in the Draft Supplemental EIR would not alter the core principles of the 2020 LRDP.

Environmental Review and Comment:

UC Berkeley will prepare a Draft Supplemental Environmental Impact Report, tiered from its 2020 LRDP EIR (SCH #2003082131) to evaluate the environmental effects of the proposed project.

Based upon preliminary analysis, UC Berkeley believes that the project is largely consistent with the 2020 LRDP and LRDP EIR, which was certified by The Regents in January 2005. However, UC Berkeley has determined that additional study is required to update and augment the 2020 LRDP EIR to reflect the project as proposed and to support minor amendments to the 2020 LRDP to allow for the proposed uses at the project site, as well as allow for increased campus headcount and assess the environmental effects on the unanticipated increase in campus population.

The Draft Supplemental EIR will provide 1) a project-level analysis of the Upper Hearst Development for the Goldman School of Public Policy, and 2) a program-level environmental analysis of the existing and proposed UC Berkeley campus population increase in the near-term.

The Draft Supplemental EIR will examine the environmental impacts associated with implementation of the proposed project and LRDP amendments against the analysis contained in the 2020 LRDP EIR in the following resource areas, in order to determine impacts of the proposed changes:

- Aesthetics;
- Air Quality;
- Biological Resources;
- Cultural and Tribal Cultural Resources;
- Geology, Seismicity and Soils;
- Greenhouse Gas Emissions;
- Hazardous Materials;
- Hydrology and Water Quality;
- Land Use;
- Noise;
- Population;
- Public Services;
- Recreation;
- Traffic and Transportation; and
- Utilities and Service Systems—Stormwater, Wastewater, Water, Solid Waste, Steam and Energy.

In addition, the Draft Supplemental EIR will also examine the environmental impacts associated with the unanticipated increase in campus population against the analysis contained in the 2020 LRDP EIR.

The University of California will serve as the Lead Agency pursuant to CEQA and has prepared this Notice of Preparation (NOP) to provide responsible and trustee agencies, property owners and other interested parties with a description of the proposed project and to identify potential environmental effects of the proposed project pursuant to State guidelines under CEQA. Written comments should focus on the scope and content of the environmental information to be included in the Draft Supplemental EIR to the 2020 LRDP EIR germane to the public and agencies having statutory responsibilities associated with the proposed project.

UC Berkeley invites comments on the scope and content of the Draft Supplemental EIR and appreciates your prompt acknowledgement and review of this NOP. Due to the time limits mandated by State law, this NOP will be circulated for a 30-day review period, which will extend from August 16, 2018, to September 14, 2018. **Responses to this NOP must be received by 5:00 PM on Friday, September 14, 2018.** They may be e-mailed or mailed to:

Raphael Breines
Senior Planner
Physical & Environmental Planning
University of California, Berkeley
300 A&E Building, Berkeley, CA 94720-1382

Email: rbreines@berkeley.edu

Please include a subject line indicating Scoping Comments: Upper Hearst Project CEQA Review.

A community open house was held for the project on March 20, 2018, and the project was reviewed with the City of Berkeley Design Review Committee at its June 21, 2018 meeting and with the City of Berkeley Landmarks Preservation Commission at its July 5, 2018 meeting.

If you have any questions about the environmental review for the project, please contact Raphael Breines, Senior Planner, Physical & Environmental Planning, at (510) 642-6796 or rbreines@berkeley.edu.

Sincerely,



Vini Bhargava, PMP, LEED AP
Director, Physical & Environmental Planning
University of California, Berkeley

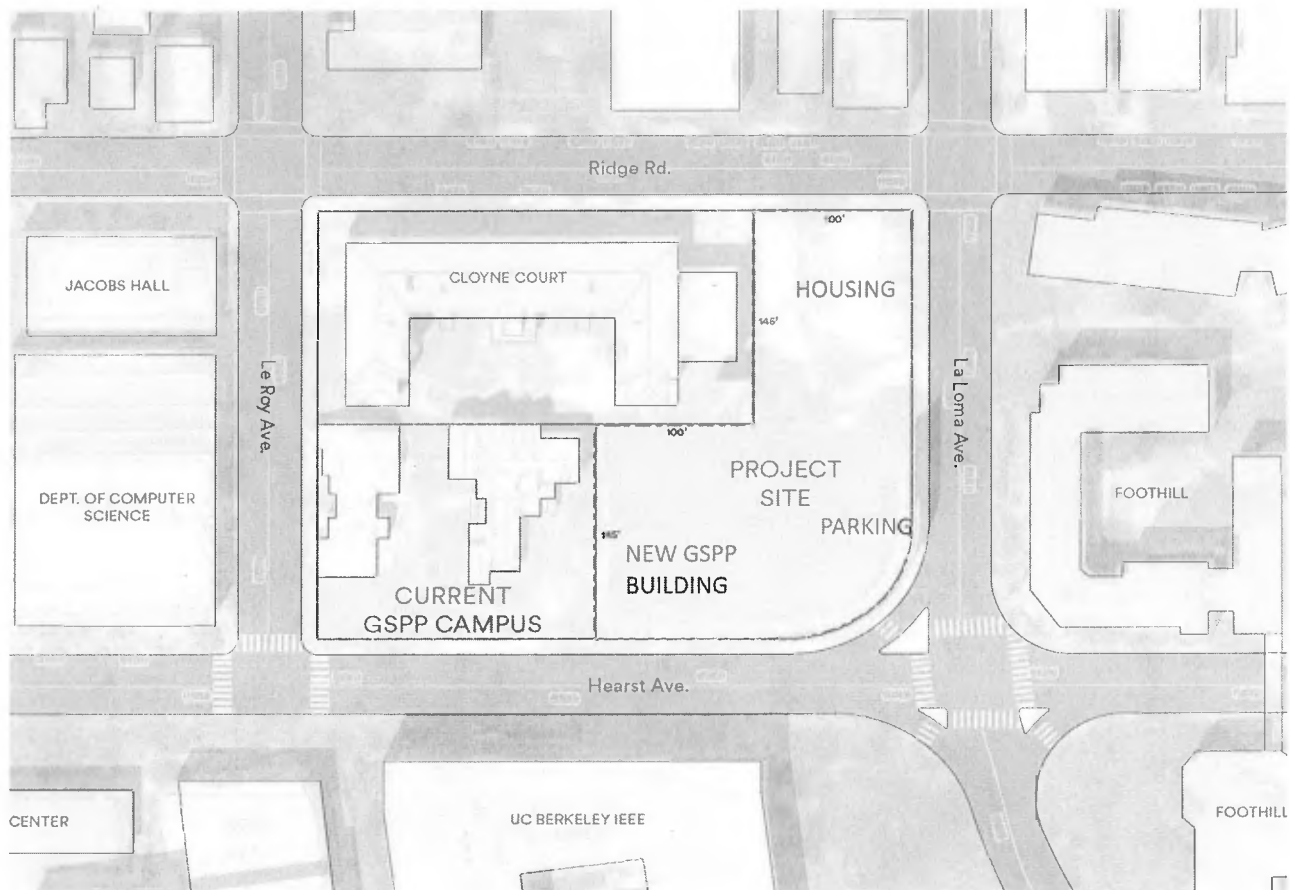
Exhibits: *Location Map*
 Vicinity Map
 Project Site Plan

Document received by the CA 1st District Court of Appeal.

Vicinity Map



Document received by the CA 1st District Court of Appeal.

Project Site Plan

Document received by the CA 1st District Court of Appeal.

EXHIBIT 2

Document received by the CA 1st District Court of Appeal.

2017-18 BERKELEY ACADEMIC CALENDAR

2017 Fall Semester

Convocation	Tuesday, August 15, 2017
Fall Semester Begins	Wednesday, August 16, 2017
Instruction Begins	Wednesday, August 23, 2017
Academic and Administrative Holiday	Monday, September 4, 2017
Academic and Administrative Holiday	Friday, November 10, 2017
Non-Instructional Day	Wednesday, November 22, 2017
Academic and Administrative Holiday	Thursday, November 23 & Friday, November 24, 2017
Formal Classes End	Friday, December 1, 2017
Reading/Review/Recitation Week	Monday, December 4–Friday, December 8, 2017
Last Day of Instruction	Friday, December 8, 2017
Final Examinations	Monday, December 11–Friday, December 15, 2017
Fall Semester Ends	Friday, December 15, 2017
Winter Commencement	To Be Determined, https://commencement.berkeley.edu/
Academic and Administrative Holiday	Monday, December 25 & Tuesday, December 26, 2017
Academic and Administrative Holiday	Friday, December 29, 2017 & Monday, January 1, 2018

2018 Spring Semester

Spring Semester Begins	Tuesday, January 9, 2018
Academic and Administrative Holiday	Monday, January 15, 2018
Instruction Begins	Tuesday, January 16, 2018
Academic and Administrative Holiday	Monday, February 19, 2018
Spring Recess	Monday, March 26–Friday, March 30, 2018
Academic and Administrative Holiday	Friday, March 30, 2018
Cal Day	To Be Determined, http://calday.berkeley.edu/
Formal Classes End	Friday, April 27, 2018
Reading/Review/Recitation Week	Monday, April 30–Friday, May 4, 2018
Last Day of Instruction	Friday, May 4, 2018
Final Examinations	Monday, May 7–Friday, May 11, 2018
Spring Semester Ends	Friday, May 11, 2018
Commencement	Saturday, May 12, 2018
Academic and Administrative Holiday	Monday, May 28, 2018

2018 Summer Sessions

First Six-Week Session Begins	Monday, May 21, 2018
Academic and Administrative Holiday	Monday, May 28, 2018
Ten-Week Session Begins	Monday, June 4, 2018
Eight-Week Session Begins	Monday, June 18, 2018
First Six-Week Session Ends	Friday, June 29, 2018
Second Six-Week Session Begins	Monday, July 2, 2018
Academic and Administrative Holiday	Wednesday, July 4, 2018
Three-Week Session Begins	Monday, July 23, 2018
Eight-Week Session Ends	Friday, August 10, 2018
Three-Week Session Ends	Friday, August 10, 2018
Second Six-Week Session Ends	Friday, August 10, 2018
Ten-Week Session Ends	Friday, August 10, 2018

Produced by the Office of the Registrar, Updated April 17, 2017

Document received by the CA 1st District Court of Appeal.

Charles F. Robinson (SBN 113197)
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 Facsimile: (510) 444-1108

EXEMPT FROM FILING FEES
 GOV'T CODE § 6103

Attorneys for The Regents of the University of
 California; Janet Napolitano, in her capacity as
 President of the University of California; Carol T.
 Christ, in her capacity as Chancellor of the
 University of California, Berkeley

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

SAVE BERKELEY'S NEIGHBORHOODS, a
 California nonprofit public benefit
 corporation,

Petitioner and Plaintiff,

v.

THE REGENTS OF THE UNIVERSITY OF
 CALIFORNIA; JANET NAPOLITANO, in
 her capacity as President of the University of
 California; CAROL T. CHRIST, in her
 capacity as Chancellor of the University of
 California, Berkeley; and DOES 1 through 20,

Respondents and Defendants.

Case No. RG18902751

ASSIGNED FOR ALL PRE-TRIAL
 PURPOSES TO JUDGE FRANK ROESCH
 DEPARTMENT 24

**DECLARATION OF RUSS ACKER IN
 SUPPORT OF DEMURRER TO SECOND
 AMENDED PETITION AND
 COMPLAINT FOR DECLARATORY
 RELIEF**

Reservation #R-2003938

Judge: Hon. Frank Roesch
 Date: November 15, 2018
 Time: 3:45 PM
 Dept.: 24

Action Filed: April 27, 2018
 Trial Date: None Set

DECLARATION OF RUSS ACKER

I, Russ Acker, declare as follows:

1. I am an Institutional Research Analyst at University of California, Berkeley. I have personal knowledge of the facts set forth herein, except as to those stated on information and belief and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

2. I am responsible for managing and updating the publicly-accessible website of UC Berkeley's Office of Planning and Analysis ("OPA website"). The OPA website includes "Quick Facts" webpage, which includes statistics on student enrollment, degree recipients, retention rate, graduation rates, and undergraduate admission.

3. I am also responsible for managing and updating OPA website's "UC Berkeley Fall Enrollment Data" webpage, which includes statistics on freshman, transfer, and total student enrollments which is updated over time to reflect the most recent three-year Fall semester enrollment data.

4. The 2017 Fall semester student enrollment numbers were finalized during the first week of October, 2017. The information on the 2017 Fall student enrollment in the letter dated October 30, 2017 from Emily Marthinsen, Assistant Vice Chancellor/Campus Architect, University of California, Berkeley to Mayor Jesse Arrequin, City of Berkeley was based on student enrollment data from the first week of October 2017. A true and correct copy of the letter is attached as Exhibit 1 to this Declaration.

5. On October 9, 2017, the number of students enrolled for the 2017 Fall semester was published and made available to the public on the "Quick Facts" webpage of the OPA website at <https://opa.berkeley.edu/campus-data/uc-berkeley-quick-facts>. The information is based on a census of enrolled students.

6. On October 16, 2017, the detailed statistics of the 2017 Fall student census were published to the public on the "UC Berkeley Fall Enrollment Data" webpage of the OPA website at <https://opa.berkeley.edu/uc-berkeley-fall-enrollment-data>.


Document received by the CA 1st District Court of Appeal.

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7. Therefore, on October 9, 2017, the number of students enrolled for the 2017 Fall semester was available to the public via the OPA website.

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

Executed September 20, 2018, at Berkeley, California.



Russ Acker

3062247.3

Document received by the CA 1st District Court of Appeal.

1 PROOF OF SERVICE

2 **STATE OF CALIFORNIA, COUNTY OF ALAMEDA**

3 At the time of service, I was over 18 years of age and **not a party to this action**. I am
4 employed in the County of Alameda, State of California. My business address is 555 12th Street,
Suite 1500, Oakland, CA 94607.

5 On October 19, 2018, I served true copies of the following document(s) described as
6 **DECLARATION OF RUSS ACKER IN SUPPORT OF DEMURRER TO SECOND**
7 **AMENDED PETITION AND COMPLAINT FOR DECLARATORY RELIEF** on the
interested parties in this action as follows:

8 Thomas N. Lippe, Esq.
9 Kelly Marie Perry, Esq.
10 Law Offices of Thomas N. Lippe, APC
201 Mission Street, 12th Fl.
San Francisco, CA 94105

Attorneys for Plaintiff SAVE
BERKELEY'S NEIGHBORHOODS
Tel: (415) 777-5604
Fax: (415) 777-5606
Email: lippelaw@sonic.net
kmhperry@sonic.net

11
12 **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the
13 persons at the addresses listed in the Service List and placed the envelope for collection and
14 mailing, following our ordinary business practices. I am readily familiar with Meyers, Nave,
Riback, Silver & Wilson's practice for collecting and processing correspondence for mailing. On
15 the same day that the correspondence is placed for collection and mailing, it is deposited in the
ordinary course of business with the United States Postal Service, in a sealed envelope with
postage fully prepaid.

16 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the
17 document(s) to be sent from e-mail address CSauceda@meyersnave.com to the persons at the e
18 mail addresses listed in the Service List. I did not receive, within a reasonable time after the
transmission, any electronic message or other indication that the transmission was unsuccessful.

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

20 Executed on October 19, 2018, at Oakland, California.

21
22 
23 Cynthia Saucedo
24
25
26
27
28

Document received by the CA 1st District Court of Appeal.

Charles F. Robinson (SBN 113197)
Alison Krumbein (SBN 229728)
alison.krumbein@ucop.edu
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Facsimile: (510) 987-9757

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akulkarni@meyersnave.com
Timothy D. Cremin (SBN 156725)
tcremin@meyersnave.com
Edward Grutzmacher (SBN 228649)
egrutzmacher@meyersnave.com
MEYERS, NAVE, RIBACK, SILVER & WILSON
555 12th Street, Suite 1500
Oakland, California 94607
Telephone: (510) 808-2000
Facsimile: (510) 444-1108

EXEMPT FROM FILING FEES
GOV'T CODE § 6103

Attorneys for The Regents of the University of
California; Janet Napolitano, in her capacity as
President of the University of California; Carol T.
Christ, in her capacity as Chancellor of the
University of California, Berkeley

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

SAVE BERKELEY'S NEIGHBORHOODS, a
California nonprofit public benefit
corporation,

Petitioner and Plaintiff,

v.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA; JANET NAPOLITANO, in
her capacity as President of the University of
California; CAROL T. CHRIST, in her
capacity as Chancellor of the University of
California, Berkeley; and DOES 1 through 20,

Respondents and Defendants.

Case No. RG18902751

ASSIGNED FOR ALL PRE-TRIAL
PURPOSES TO JUDGE FRANK ROESCH
DEPARTMENT 24

**DECLARATION OF TIMOTHY D.
CREMIN IN SUPPORT OF DEMURRER
TO SECOND AMENDED PETITION AND
COMPLAINT FOR DECLARATORY
RELIEF**

Reservation #R-2003938

Judge: Hon. Frank Roesch
Date: November 15, 2018
Time: 3:45 PM
Dept.: 24

Action Filed: April 27, 2018
Trial Date: None Set

DECLARATION OF TIMOTHY D. CREMIN

I, Timothy D. Cremin, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am a principal of Meyers, Nave, Riback, Silver & Wilson, attorneys of record for Respondents and Defendants The Regents of the University of California; Janet Napolitano, in her capacity as President of the University of California; Carol T. Christ, in her capacity as Chancellor of the University of California, Berkeley (collectively, "Respondents"). I have personal knowledge of the facts set forth herein, except as to those stated on information and belief and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

2. On September 14, 2018, I had a telephone conference call with Thomas Lippe, counsel for Petitioner Save Berkeley's Neighborhoods ("Petitioner"), to meet and confer on Respondents' intention to file a demurrer to the First Amended Petition ("FAP") on September 2018. I informed Mr. Lippe of the grounds for the demurrer which included the following: (1) the FAP does not allege facts to establish any Project, Project approval, or any action by Respondent subject to the California Environmental Quality Act ("CEQA") challenged in the FAP; (2) the FAP does not allege facts to establish the required elements for a claim of failure by Respondent to conduct supplemental environmental review under CEQA; (3) the Petition is untimely for failure to be filed within the statute of limitations under CEQA; and (4) the dispute under the FAP was moot because the 2017 Spring and Fall semester at the University of California, Berkeley have been completed and the court could not grant the relief sought in the Petition. Mr. Lippe stated grounds objecting to the demurrer based on arguments which had been communicated to me in previous correspondence. I asked if Mr. Lippe was planning to amend the FAP in response to the demurrer meet and confer. He stated that he did not intend to amend based on the first two grounds that I identified for the demurrer, but needed to think about the third and fourth identified grounds.

3. On September 19, 2018, I received a letter from Mr. Lippe containing further responses to the meet and confer on the demurrer. The letter contained arguments disputing the

1 grounds for demurrer. The letter asked if Respondents would stipulate to entry of an order
2 granting Petitioner leave to file a Second Amended Petition for Writ of Mandate and Complaint
3 for Declaratory Relief ("SAP"). Attached to the letter was the SAP.

4 4. On September 19, 2018, after reviewing the SAP and conferring with
5 representatives of the Respondents, I sent Mr. Lippe an email stating that we will stipulate to the
6 filing of a Second Amended Petition for Writ of Mandate and Complaint for Declaratory Relief
7 subject to the following conditions: (1) that our stipulation is not an agreement that the proposed
8 amendment cures the grounds for demurrer we discussed in our meet and confer; (2) we are not
9 waiving any grounds for demurrer; and (3) the stipulation for leave to file the SAP is filed no later
10 than Friday September 21, 2018, the date the demurrer was due.

11 5. On September 21, 2018, the parties reached agreement on a proposed stipulation
12 for filing the SAP. The stipulation contained the conditions specified in paragraph 4, above.

13 6. On October 16, 2018, the Court entered an order granting the stipulation and filing
14 the SAP.

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

17 Executed October 18, 2018, at Oakland, California.

18 

19 Timothy D. Cremin

20 3070616.2

Document received by the CA 1st District Court of Appeal.

1 PROOF OF SERVICE

2 **STATE OF CALIFORNIA, COUNTY OF ALAMEDA**

3 At the time of service, I was over 18 years of age and **not a party to this action**. I am
4 employed in the County of Alameda, State of California. My business address is 555 12th Street,
Suite 1500, Oakland, CA 94607.

5 On October 19 2018, I served true copies of the following document(s) described as
6 **DECLARATION OF TIMOTHY D. CREMIN IN SUPPORT OF DEMURRER TO**
7 **SECOND AMENDED PETITION AND COMPLAINT FOR DECLARATORY RELIEF** on
the interested parties in this action as follows:

8 Thomas N. Lippe, Esq.
9 Kelly Marie Perry, Esq.
10 Law Offices of Thomas N. Lippe, APC
201 Mission Street, 12th Fl.
San Francisco, CA 94105

Attorneys for Plaintiff SAVE
BERKELEY'S NEIGHBORHOODS

Tel: (415) 777-5604
Fax: (415) 777-5606
Email: lippelaw@sonic.net
kmhperry@sonic.net

11
12 **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the
13 persons at the addresses listed in the Service List and placed the envelope for collection and
14 mailing, following our ordinary business practices. I am readily familiar with Meyers, Nave,
Riback, Silver & Wilson's practice for collecting and processing correspondence for mailing. On
15 the same day that the correspondence is placed for collection and mailing, it is deposited in the
ordinary course of business with the United States Postal Service, in a sealed envelope with
postage fully prepaid.

16 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the
17 document(s) to be sent from e-mail address CSauceda@meyersnave.com to the persons at the e
mail addresses listed in the Service List. I did not receive, within a reasonable time after the
18 transmission, any electronic message or other indication that the transmission was unsuccessful.

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

20 Executed on October 19, 2018, at Oakland, California.

21
22 
23 Cynthia Saucedo
24
25
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27
28

Document received by the CA 1st District Court of Appeal.

Tab 015

OCT/24/2018/WED 10:04 AM Law O. Thomas Lippe

FAX No. 1-415-777-5606

F. 002

FILED BY FAX CIV-130	
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) Thomas N. Lippe, SBN 104640 Law Offices of Thomas N. Lippe, APC 201 Mission Street, 12th Floor San Francisco, Ca 94105 TELEPHONE NO.: (415) 777-5604 FAX NO. (Optional) (415) 777-5606 E-MAIL ADDRESS (Optional): Lippelaw@sonic.net ATTORNEY FOR (Name): Plaintiff: Save Berkeley's Neighborhoods	ALAMEDA COUNTY October 24, 2018 CLERK OF THE SUPERIOR COURT By Alicia Espinoza, Deputy CASE NUMBER: RG18902751
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: 1225 Fallon Street CITY AND ZIP CODE: Oakland, CA 94612-4280 BRANCH NAME: Rene C. Davidson Courthouse	
PLAINTIFF/PETITIONER: Save Berkeley's Neighborhoods DEFENDANT/RESPONDENT: The Regents of the University of CA, et al.	
NOTICE OF ENTRY OF JUDGMENT OR ORDER (Check one): <input checked="" type="checkbox"/> UNLIMITED CASE (Amount demanded exceeded \$25,000) <input type="checkbox"/> LIMITED CASE (Amount demanded was \$25,000 or less)	CASE NUMBER: RG18902751

TO ALL PARTIES :

1. A judgment, decree, or order was entered in this action on (date): October 16, 2018
2. A copy of the judgment, decree, or order is attached to this notice.

Date: October 24, 2018

Thomas N. Lippe

(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)
(SIGNATURE)



14103749

FILED
ALAMEDA COUNTY

OCT 16 2018

CLERK OF THE SUPERIOR COURT

By [Signature] Deputy

1 Thomas N. Lippe, SBN 104640
2 LAW OFFICES OF THOMAS N. LIPPE, APC
3 201 Mission Street, 12th Floor
4 San Francisco, California 94105
5 Tel: (415) 777-5604
6 Fax: (415) 777-5606
7 E-mail: Lippelaw@sonic.net

8 Attorney for Plaintiff: Save Berkeley's Neighborhoods

9
10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF ALAMEDA**

12 SAVE BERKELEY'S NEIGHBORHOODS, a
13 California nonprofit public benefit corporation;

14 Plaintiff,
15 vs.

16 THE REGENTS OF THE UNIVERSITY OF
17 CALIFORNIA; JANET NAPOLITANO, in her
18 capacity as President of the University of
19 California; CAROL T. CHRIST, in her capacity as
20 Chancellor of the University of California,
21 Berkeley; and DOES 1 through 20,

22 Respondents and Defendants.

Case No. RG18902751

ORDER FOLLOWING
STIPULATION AND (PROPOSED) ORDER
GRANTING PLAINTIFF LEAVE TO FILE
SECOND AMENDED PETITION FOR
WRIT OF MANDATE AND COMPLAINT
FOR DECLARATORY RELIEF

[CALIFORNIA ENVIRONMENTAL
QUALITY ACT]

Action Filed: April 27, 2018

ASSIGNED FOR ALL PURPOSES TO:
Hon. Frank Roesch, Dept. 24

IT IS HEREBY STIPULATED by and between all parties that:

1. The current deadline for Respondents to file a responsive pleading to the First Amended Petition for Writ of Mandate and Complaint for Declaratory Relief is September 21, 2018.

2. Pursuant to Code of Civil Procedure section 430.41, the parties to this action met and conferred regarding Respondents' intention to file a demurrer to the First Amended Petition for Writ of Mandate and Complaint for Declaratory Relief.

3. Plaintiff expressed their intention to file a motion for leave to file its Second Amended Petition for Writ of Mandate and Complaint for Declaratory Relief.

4. Conditioned on Plaintiff filing this Stipulation and (Proposed) Order Granting Plaintiff Leave to File Second Amended Petition for Writ of Mandate and Complaint for Declaratory Relief no later than September 21, 2018, the parties now stipulate to entry of an Order granting Plaintiff leave to file its Second Amended Petition for Writ of Mandate and Complaint for Declaratory Relief in the form attached hereto as Exhibit 1.

5. The parties also stipulate that the Second Amended Petition for Writ of Mandate and Complaint for Declaratory Relief shall be deemed "filed" upon entry of the Order set forth below and that Defendants/Respondents must file any responsive pleading within ten (10) days after service of notice of entry of the Order set forth below.

6. By entering this Stipulation and (Proposed) Order, Defendants/Respondents do not agree that the Second Amended Petition for Writ of Mandate and Complaint for Declaratory Relief cures any grounds for demurrer discussed by the parties in section 430.41 meet and confer and do not waive any grounds for demurrer.

7. If the Court denies the proposed Order, the parties stipulate to extend Defendants/Respondents time to file a responsive pleading to the First Amended Petition for Writ of Mandate and Complaint for Declaratory Relief to ten (10) days after the service of a Notice of Entry of the Court denial of the Order.

//

//

1 Respectfully submitted.

2
3 DATED: September 21, 2018

MEYERS, NAVE, RIBACK, SILVER & WILSON

4
5 By: Timothy D. Cremin

6 Timothy D. Cremin
7 Attorneys for Defendants/Respondents: The Regents of the
8 University of California; Janet Napolitano, in her capacity as
9 President of the University of California; Carol T. Christ, in
her capacity as Chancellor of the University of California,
Berkeley

10 DATED: September __, 2018

LAW OFFICES OF THOMAS N. LIPPE, APC

11
12 By: Thomas N. Lippe

13 Thomas N. Lippe
14 Attorneys for Plaintiff Save Berkeley's Neighborhoods

15 ORDER

16 PURSUANT TO THE STIPULATION SET FORTH ABOVE, AND FOR GOOD CAUSE
17 APPEARING THEREFOR, THE COURT ORDERS AS FOLLOWS:

- 18 1. The Court grants leave for Plaintiff to file its Second Amended Petition for Writ of Mandate and
19 Complaint for Declaratory Relief in the form attached hereto as Exhibit 1.
20 2. The Second Amended Petition for Writ of Mandate and Complaint for Declaratory Relief shall be
21 deemed "filed" upon entry of this Order.
22 3. Defendants/Respondents must file any responsive pleading within ten (10) days after service of
23 notice of entry of this Order.

24 IT IS SO ORDERED.

25
26 Dated: _____

27 Judge of the Superior Court

28 E:\TALUIC FamilyTree\Stipulations\S011a Stip Order Leave Amend.wpd

1 Respectfully submitted,

2
3 DATED: September ___, 2018

MEYERS, NAVE, RIBACK, SILVER & WILSON

4
5 By: _____

6 Timothy D. Cremin
7 Attorneys for Defendants/Respondents The Regents of the
8 University of California; Janet Napolitano, in her capacity as
9 President of the University of California; Carol T. Christ, in
her capacity as Chancellor of the University of California,
Berkeley

10 DATED: September 21, 2018

LAW OFFICES OF THOMAS N. LIPPE, APC

11
12 By: Tom Lippe

13 Thomas N. Lippe
14 Attorneys for Plaintiff Save Berkeley's Neighborhoods

15 ORDER

16 PURSUANT TO THE STIPULATION SET FORTH ABOVE, AND FOR GOOD CAUSE
17 APPEARING THEREFOR, THE COURT ORDERS AS FOLLOWS:

18 1. The Court grants leave for Plaintiff to file its Second Amended Petition for Writ of Mandate and
19 Complaint for Declaratory Relief in the form attached hereto as Exhibit 1.

20 2. The Second Amended Petition for Writ of Mandate and Complaint for Declaratory Relief shall be
21 deemed "filed" upon entry of this Order.

22 3. Defendants/Respondents must file any responsive pleading within ten (10) days after service of
23 notice of entry of this Order.

24 IT IS SO ORDERED.

25
26 Dated: 10/16/2018

27 Frank Ponder
28 Judge of the Superior Court

TATLAUC Enroll\\Trial\\Stipulations\\S01 1a Stip Order Leave Amend.wpd

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse


Case Number: RG18902751
Order of 10/16/2018

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 10/16/2018.

Chad Finke Executive Officer / Clerk of the Superior Court

By  digital
Deputy Clerk

Document received by the CA 1st District Court of Appeal.

AA00168

1 **PROOF OF SERVICE**

2 I am a citizen of the United States, employed in the City and County of San Francisco, California.
3 My business address is 201 Mission Street, 12th Floor, San Francisco, CA 94105. I am over the age of 18
4 years and not a party to the above entitled action. On October 24, 2018, I served the following document
5 on the parties below, as designated:

6 • **Notice of Entry of Order**

7
8 **MANNER OF SERVICE**
9 **(check all that apply)**

- 10 ☐ By Mail: In the ordinary course of business, I caused each such envelope to be
11 placed in the custody of the United States Postal Service, with
12 postage thereon fully prepaid in a sealed envelope.
- 13 ☐ By Personal Service: I personally delivered each such envelope to the office of the address
14 on the date last written below.
- 15 ☐ By Overnight FedEx: I caused such envelope to be placed in a box or other facility regularly
16 maintained by the express service carrier or delivered to an authorized
17 courier or driver authorized by the express service carrier to receive
18 documents, in an envelope or package designated by the express
19 service carrier with delivery fees paid or provided for.
- 20 ☒ By E-mail: I caused such document to be served via electronic mail equipment
21 transmission (E-mail) on the parties as designated on the attached
22 service list by transmitting a true copy to the following E-mail
23 addresses listed under each addressee below. I did not receive, within
24 a reasonable time after the transmission, any electronic message or
25 other indication that the transmission was unsuccessful.
- 26 ☐ By Personal
27 Delivery by
28 Courier: I caused each such envelope to be delivered to an authorized
29 courier or driver, in an envelope or package addressed to the
30 addressee below.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true
and correct. Executed on October 24, 2018, in the City and County of San Francisco, California


Kelly Marie Perry

SERVICE LIST

Office of General Counsel
Anagha Dandekar Clifford, Senior Counsel
1111 Franklin Street, 8th Floor
Oakland, CA 94607
Email: Anagha Clifford (Anagha.Clifford@ucop.edu)

Meyers Nave Riback Silver & Wilson
555 12th Street, Suite 1500
Oakland, California 94607
Email: Tim Cremin (tcremin@meyersnave.com)
Email: Melissa Bender (mbender@meyersnave.com)

Meyers Nave Riback Silver & Wilson
707 Wilshire Boulevard, 24th Floor
Los Angeles, California 90017
Email: Amrit Kulkarni (amrit@meyersnave.com)
Email: Alison Krumbein (alison.krumbein@ucop.edu)

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Document received by the CA 1st District Court of Appeal.

FILED BY FAX
ALAMEDA COUNTY
November 01, 2018
CLERK OF
THE SUPERIOR COURT
By Erica Baker, Deputy
CASE NUMBER:
RG18902751

1 Thomas N. Lippe, SBN 104640
2 LAW OFFICES OF THOMAS N. LIPPE, APC
3 201 Mission Street, 12th Floor
4 San Francisco, California 94105
5 Tel: (415) 777-5604
6 Fax: (415) 777-5606
7 E-mail: Lippelaw@sonic.net

8 Attorney for Plaintiff: Save Berkeley's Neighborhoods

9
10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF ALAMEDA**
12

13 SAVE BERKELEY'S NEIGHBORHOODS, a
14 California nonprofit public benefit corporation;

15 Plaintiff,
16 vs.

17 THE REGENTS OF THE UNIVERSITY OF
18 CALIFORNIA; JANET NAPOLITANO, in her
19 capacity as President of the University of
20 California; CAROL T. CHRIST, in her capacity as
21 Chancellor of the University of California,
22 Berkeley; and DOES 1 through 20,

23 Respondents and Defendants.
24
25
26
27
28

Case No. RG18902751

**MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
DEMURRER TO SECOND AMENDED
PETITION FOR WRIT OF MANDATE AND
COMPLAINT FOR DECLARATORY
RELIEF**

**[CALIFORNIA ENVIRONMENTAL
QUALITY ACT]**

Reservation No.: R-2003938

Date: November 15, 2018

Time: 3:45 P.M.

Dept.: 24

Judge: Hon. Frank Roesch

Action Filed: April 27, 2018

Trial Date: Not Set

Assigned for All Purposes to:

Hon. Frank Roesch, Dept. 24

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I. INTRODUCTION

The Regents' demurrer should be overruled.

In 2005, UCB adopted a Long Range Development Plan (2020 LRDP) to achieve a number of objectives through the year 2020, including stabilizing enrollment. In or about 2005, UCB certified a Final Environmental Impact Report for the 2020 LRDP (2005 EIR) pursuant to CEQA. The 2020 LRDP and 2005 EIR projected that by 2020, student enrollment at UCB would increase by 1,650 students, from the 2001-2002 two-semester average headcount of 31,800 to 33,450 students. The 2020 LRDP and 2005 EIR also projected that by 2020, UCB would add 2,500 beds for students. (Second Amended Petition (Petition) ¶ 3.)

On October 30, 2017, UCB responded to the City of Berkeley's request for information regarding enrollment increases. This response shows the actual increase in student enrollment above the 2001-02 two-semester average for the most recent two-semester period (i.e., Spring 2017 and Fall 2017) is 8,302 students. This is an increase of 6,652 students more than the increase of 1,650 students projected in the 2020 LRDP and 2005 EIR, representing a five-fold increase compared to the 1,650 enrollment increase projected in the 2020 LRDP and 2005 EIR. The response also shows UCB has built fewer than 1,000 beds. (Petition, ¶ 4.)

The increase in student enrollment over and above the 1,650 additional students projected by the 2020 LRDP and included in the 2005 EIR's environmental impact analysis (hereinafter the "excess increase in student enrollment") has caused and continues to cause significant adverse environmental impacts that were not analyzed in the 2005 EIR. Plaintiff is informed and believes and on that basis alleges that these impacts include, without limitation, increased use of off-campus housing for and by UCB students, leading to increases in off-campus noise and trash; displacement of tenants resulting in more homeless individuals living on public streets and in local parks; increases in the number of UCB students who are homeless; increases in traffic and transportation related congestion and safety risks; and increased burdens on the City of Berkeley's public safety services, including police, fire, ambulance, and Emergency Medical Technician services. (Petition, ¶ 5.)

The Regents' contention that the action does not challenge a "CEQA project" appears to be a hyper-technical demand that the Petition use the active voice to describe the Regent's role in increasing student enrollment. The Regent's demurrer reads as if UC's increases in enrollment since 2005 occurred

1 by an Act of God, without any human agency. But the Regents admit that enrollment has increased and
2 will continue to increase. (Request for Judicial Notice in Support of Demurrer to Second Amended
3 Petition and Complaint for Declaratory Relief (“Regents RJN”), Ex. A, p. 2 [“According to the campus
4 central data set (Cal Answers), average student enrollment at UC Berkeley for the two semesters of the
5 2017-2018 school year was 40,955 students, or 7,505 more students than analyzed in the 2020 LRDP
6 EIR.... At this time, UC Berkeley estimates an overall campus population headcount growth of about 1.5
7 percent annually, on an average, in the near-term”]; Declaration of Phillip Bokovoy in Opposition to
8 Demurrer (Bokovoy Decl) ¶ 7, Ex 2.) Also, by adopting Education Code section 67504 and Public
9 Resources Code section 21080.09 (see Petition ¶¶ 1-2), the Legislature conclusively determined that
10 increases in student enrollment at all University of California campuses are “CEQA projects” requiring
11 environmental review under CEQA.

12 The Regents’ contention that the action does not meet CEQA’s standards for subsequent
13 environmental review is premature because resolving this question requires that the Court determine
14 whether the 2005 EIR for the 2020 LRDP “retains some informational value” relating to the
15 environmental impacts of the subsequent changes in student enrollment. (*Friends of College of San*
16 *Mateo Gardens v. San Mateo County Community College District* (2016) 1 Cal.5th 937, 952 (*Friends of*
17 *College D.*) The Court cannot resolve this issue now because the 2005 EIR for the 2020 LRDP is not
18 before the Court.

19 The Regents’ contention that the action is barred by CEQA’s statutes of limitations is without
20 merit. The applicable limitations period is 180 days after Plaintiff knew or reasonably should have
21 known of substantial increases in student enrollment above the 1,650 student increase disclosed in the
22 2005 EIR. (*Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d
23 932-933.) This action was filed on April 27, 2018, which is less than 180 days after October 30, 2017,
24 which is when Plaintiff knew or, in the exercise of reasonable diligence, should have known of
25 substantial increases in student enrollment above the 1,650 student increase disclosed in the 2005 EIR.
26 As discussed in section III.D below, Plaintiff requests leave to amend its Petition to add this allegation.

27 As noted above, the Petition alleges that “On October 30, 2017, UCB responded to the City of
28 Berkeley’s request for information regarding enrollment increases.” (Petition, ¶ 4.) The Regents refer to
this document as the “Enrollment Numbers.” The Regents apparently intended to attach this document

1 to the Declaration of Russ Acker in Support of Demurrer to Second Amended Petition and Complaint
2 for Declaratory Relief (Acker Decl) but did not do so. (See Acker Decl ¶ 4.) Plaintiff has attached it to
3 the Bokovoy Declaration as Exhibit 2. In any case, one of the Regents' demurrer themes is that the
4 "Enrollment Numbers" is not a "decision" or "approval." (See e.g., Demurrer Memorandum (DMPA)
5 10:13, 11:5; 11:15.) This is a straw man. The simple point is that the Regents' October 30, 2017, letter
6 is not itself a "decision," but it reveals conclusive evidence that the Regents made previous decisions to
7 increase enrollment. Also, for statute of limitations purposes, the October 30, 2017, letter commenced
8 the applicable 180-day limitations period.

9 The demurrer purports to challenge both the first cause of action for mandamus relief and the
10 second cause of action for declaratory relief. But the Regents' memorandum does not actually discuss
11 any of the case law governing the declaratory relief claim. Under Code of Civil Procedure section 1060,
12 a declaratory relief action is an appropriate method for challenging an agency policy of ignoring or
13 violating applicable laws. (*Venice Town Council, Inc. v. City of Los Angeles* (1996) 47 Cal. App. 4th
14 1547, 1565-1566; *Californians for Native Salmon and Steelhead Association v. Department of Forestry*
15 (1991) 221 Cal. App.3d 1419, 1428-29 (*Californians for Native Salmon*)). Declaratory relief is
16 particularly appropriate when a plaintiff challenges a policy that will likely be repeatedly applied in an
17 unlawful manner. (*Californians for Native Salmon, supra*, 221 Cal. App. 3d at 1430-1431 ("[p]iecemeal
18 litigation of the issues in scores of individual proceedings would be an immense waste of time and
19 resources.")). Also, the existence of a policy can be proved by showing the agency's "pattern and
20 practice" of engaging in specific conduct. (*Californians for Native Salmon, supra*, 221 Cal. App. 3d at
21 1424.) Here, the Regents disclosure, on October 30, 2017, of all increases in student enrollment that
22 have occurred since 2007 disclosed its pattern and practice of increasing student enrollment.

23 II. STANDARD OF REVIEW

24 The function of a demurrer is to test the sufficiency of a plaintiff's pleading by raising questions
25 of law. (*Buford v. State of California* (1980) 104 Cal.App.3d 811.) The demurrer admits the truth of all
26 material facts pleaded (*Aubry v. Tri-City Hosp. Dist.* (1992) 2 Cal.4th 962, 966-967). Importantly for
27 this demurrer, the allegations in a complaint must be liberally construed. (Code Civ. Proc. § 452;
28 *Stevens v. Sup. Ct.* (1999) 75 Cal.App.4th 594, 601.) It is an abuse of discretion for the court to deny
leave to amend where there is any reasonable possibility that plaintiff can state a good cause of action.

1 (*Okun v. Sup.Ct. (Maple Properties)* (1981) 29 Cal.3d 442, 460; *Goodman v. Kennedy* (1976) 18 Cal.3d
2 335, 349.)

3 III. ARGUMENT

4 A. The Regent's Program of Increasing Student Enrollment is a "CEQA Project" Requiring 5 Environmental Review.

6 1. Standard of Review for Determining a CEQA Project.

7 Courts review agency actions for non-compliance with CEQA under the "prejudicial abuse of
8 discretion" standard. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*
9 (2007) 40 Cal.4th 412, 426 (*Vineyard*).) "Such an abuse is established 'if the agency has not proceeded
10 in a manner required by law or if the determination or decision is not supported by substantial
11 evidence.'" (*Id.*) "Judicial review of these two types of error differs significantly: While [courts]
12 determine *de novo* whether the agency has employed the correct procedures, 'scrupulously enforc[ing]
13 all legislatively mandated CEQA requirements' [citation], [courts] accord greater deference to the
14 agency's substantive factual conclusions. (*Vineyard, supra*, 40 Cal.4th at 435.)

15 The courts independently review questions of law. (*City of Marina v. Board of Trustees of the*
16 *California State University* (2006) 39 Cal.4th 341, 355 (*City of Marina*).) It is well-settled that whether
17 an activity is a "project" is a question of law reviewed *de novo*. (*Friends of Sierra R.R. v. Tuolumne*
18 *Park and Recreation Dist.* (2007) 147 Cal.App.4th 643, 652.) It is also well-settled that whether a
19 CEQA project is discretionary or ministerial is a question of law subject to *de novo* review. (*Friends of*
20 *Juana Briones House v. City of Palo Alto* (2010) 190 Cal.App.4th 286, 303.)

21 2. The Regents Program of Increasing Student Enrollment is a "CEQA Project."

22 The Regents argue that their "2017 Enrollment Numbers" are not a "CEQA project" (DMPA
23 11:4) and "There are no allegations of any 'action' taken by UC with respect to the 2017 Enrollment
24 Numbers and when that 'action' occurred" (DMPA 11:4.) The Petition alleges the Regents's have
25 increased enrollment beyond the amount projected in the 2005 EIR, that these increases began in 2007,
26 that they are causing environmental impacts, and that UC has failed to conduct an analysis of the
27 significance of these impacts pursuant to CEQA. Nothing more is required.

28 Under CEQA, a "program" may be a "CEQA Project." (*Stanislaus Natural Heritage Project v.*
County of Stanislaus (1996) 48 Cal.App.4th 182, 195; CEQA Guidelines, section 15168.) Here, the
Regents have carried out and continue to carry out a program of increasing student enrollment above the

1 1,650 student increase disclosed in the 2005 EIR. (Petition, ¶¶ 3-5, 24, 27; Regents RJN, Ex A, p. 2 [“At
2 this time, UC Berkeley estimates an overall campus population headcount growth of about 1.5 percent
3 annually, on an average, in the near-term”].) CEQA section 21080.09 contemplates that the Regents will
4 make long-term programmatic decisions regarding enrollment and analyze these decisions using
5 programmatic EIRs or analyses “tiered” to a programmatic EIR. (See *Vineyard Area Citizens, supra*, 40
6 Cal.4th at 429-30, 440 [discussion of “tiering” under CEQA].)

7 CEQA applies to “discretionary projects” as defined in CEQA Guidelines, section 15357.
8 “Project” includes “an activity directly undertaken by any public agency” that “has a potential for
9 resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect
10 physical change in the environment.” (Guidelines, § 15378.) Here, the Regents pattern and practice of
11 increasing student enrollment is “an activity directly undertaken by any public agency.” It also “has a
12 potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable
indirect physical change in the environment.”

13 The Regents’ decision to increase enrollment at UCB is also “discretionary” because a decision is
14 discretionary “where a governmental agency can use its judgment in deciding whether and how to carry
15 out or approve a project. A project subject to such judgmental controls is called a ‘discretionary
16 project.’” (Guidelines, § 15002(i).) The CEQA Guidelines define “Discretionary project” to mean “a
17 project which requires the exercise of judgment or deliberation when the public agency or body decides
18 to approve or disapprove a particular activity, as distinguished from situations where the public agency
19 or body merely has to determine whether there has been conformity with applicable statutes, ordinances,
20 or regulations.” (Cal. Code Regs. tit. 14, § 15357.) For a project to be considered “discretionary,” “[i]t is
21 enough the [agency] possesses discretion to require changes which would mitigate in whole or in part
22 one or more of the environmental consequences an EIR might conceivably uncover.” (*Friends of*
23 *Westwood, Inc. v. City of Los Angeles* (1987) 191 Cal.App.3d 259, 273 (*Friends of Westwood*)
(emphasis added).)

24 “[T]he term ‘ministerial’ is limited to those *approvals which can be legally compelled* without
25 substantial modification or change.” (*Friends of Westwood, supra*, 191 Cal.App.3d at p. 269 (emphasis
26 added).) Since UCB is not legally required to increase enrollment, the Regents policy and practice of
27 increasing student enrollment is discretionary.
28

1 The Regents argue that “The Petition does not allege any ‘action,’ or ‘discretionary approval’ or
2 ‘physical change in the environment’ relating to the ‘Enrollment Policy.’” (Demurrer MPA 11:25.) This
3 is incorrect. Paragraphs 3-5 of the Petition allege that enrollment increased. A natural reading of these
4 paragraphs is that the Regents caused the increase by deciding to do so. Consistent with this, paragraph
5 27 of the Petition, in the Second Cause of Action for Declaratory Relief, states: “Since the 2007-2008
6 academic year, the Regents have implemented and continue to implement a policy to increase student
7 enrollment at UCB beyond the 1,650 additional students projected by the 2020 LRDP.”

8 Perhaps the Regents’ demurrer based on lack of a “CEQA project” is nothing more than an
9 argument that the First Cause of Action for Mandamus Relief must use the *active* voice. If so, Plaintiff
10 requests leave to amend the Petition to add this language to paragraph 24: “Since the 2007-2008
11 academic year, the Regents have taken discretionary action to increase student enrollment at UCB
12 beyond the 1,650 additional students projected by the 2020 LRDP.”

13 Why the Regents find fault with the Petition’s allegation of environmental harm is unclear.
14 Paragraph 5 states: “The increase in student enrollment over and above the 1,650 additional students
15 projected by the 2020 LRDP and included in the 2005 EIR’s environmental impact analysis (hereinafter
16 the “excess increase in student enrollment”) has caused and continues to cause significant adverse
17 environmental impacts that were not analyzed in the 2005 EIR.” The next sentence of paragraph 5 uses
18 the term “information and belief” regarding specific examples of environmental harm. If necessary,
19 Plaintiff can amend the Petition to eliminate the “information and belief” qualifier with respect to
20 “increased use of off-campus housing for and by UCB students, leading to increases in off-campus noise
21 and trash” and “increased burdens on the City of Berkeley’s public safety services, including police, fire
22 ambulance, and Emergency Medical Technician services.”

23 In *Concerned Citizens*, the public agency prepared an EIR for its formal approval of a concert
24 arena. The agency subsequently made changes to the project—without a new formal approval and
25 without giving notice to the project’s neighbors—that Plaintiffs alleged would cause new and more
26 severe significant effects. The plaintiffs in *Concerned Citizens* alleged the agency violated CEQA by
27 failing to prepare a subsequent EIR to evaluate the environmental impacts of the changes to the project.
28 The plaintiffs learned of the changes after project construction when the first concert revealed the
changes for all to see and hear. In overruling the agency’s demurrer, the Court in *Concerned Citizens*

1 did not require an allegation as to when the agency made its decision to change the project. No such
2 allegation is required. This is especially true here, because the Regents have refused to provide any
3 discovery regarding their decision-making history as it relates to increasing student enrollment.

4 (Declaration of Thomas N. Lippe in Opposition to Demurrer (Lippe Decl.) ¶¶ 3-18.)

5 **3. UC's increases in student enrollment are a CEQA "project" as a matter of law.**

6 By adopting Education Code section 67504 and Public Resources Code section 21080.09 (quoted
7 above), the Legislature conclusively determined that increases in student enrollment at all University of
8 California campuses are "CEQA projects" requiring environmental review under CEQA.

9 **4. The Court may order several forms of relief to remedy the Regent's violation of CEQA.**

10 The Regents argue that "The Petition's failure to allege facts regarding a "project" also means
11 that the Court cannot grant Petitioner any remedies under CEQA." (DMPA 12:4.) Since Plaintiff's have
12 alleged facts regarding a CEQA project, the Regents' argument fails.

13 Moreover, because the Petition alleges that the Regents have carried out this project for several
14 years without conducting any environmental review under CEQA (Petition ¶¶ 3-5, 24, 27), the Court
15 may order a range of remedies, including a writ of mandate requiring, most broadly, that the Regents
16 apply CEQA's review procedures to UC's increases in student enrollment, or more specifically, that the
17 Regents prepare an initial study followed by a negative declaration or an EIR pursuant to CEQA, section
18 21151, or a subsequent EIR pursuant to CEQA, section 21161. (See section IV.B below.)

19 Also, the Petition's second cause of action for declaratory relief alleges that the Regents
20 "continue to implement a policy to increase student enrollment at UCB beyond the 1,650 additional
21 students projected by the 2020 LRDP without subjecting the excess increase in student enrollment to the
22 procedures and requirements of CEQA; without analyzing the excess increase in student enrollment
23 pursuant to CEQA, and without preparing and certifying an Environmental Impact Report to assess the
24 significance of impacts caused by the excess increase in student enrollment." (Petition ¶ 27.) Therefore,
25 the Court may issue a declaratory judgment finding the Regents policy and practice unlawful.
(*Californians for Native Salmon, supra.*)

26 Indeed, the Regents *have already admitted* that the increases in student enrollment at UCB
27 beyond the 1,650 additional students projected by the 2020 LRDP may have significant impacts and
28 therefore require preparation of an environmental impact report. The Regents have admitted this fact by

1 including past and projected future increases in enrollment in the Notice of Preparation for the Upper
2 Hearst Project and LRDP Amendments. (Regents RJN, Ex. A.) Therefore, the Regents have not only
3 failed to conduct any environmental review of the increases in student enrollment at UCB beyond the
4 1,650 additional students projected by the 2020 LRDP, they have failed to prepare and certify an
5 environmental impact report for this purpose.

6 **B. The Regents' Contention that UC's Increases in Student Enrollment Do Not Meet CEQA's**
7 **Standards for Subsequent Review Should be Overruled.**

8 **1. The Court cannot determine whether CEQA's subsequent review provisions apply**
9 **to this case yet.**

10 The Regents contend that "Since Petitioner is challenging the adequacy of the certified LRDP
11 EIR based on new information, its claim is one for supplemental or subsequent CEQA review of the
12 LRDP EIR" and "The Petition fails to allege facts showing that UC was required to undertake
13 supplemental review of the 2017 Enrollment Numbers under CEQA standards." (DMPA 9:2.) This
14 contention is premature and cannot be tested at this time.

15 CEQA's subsequent review provisions at CEQA, section 21166, may—but do not always—
16 apply when a "project" that was previously subject to CEQA review by either a Negative Declaration or
17 Environmental Impact Report changes in some way that requires a new analysis of environmental
18 impacts. (*Friends of College I, supra*, 1 Cal.5th at 949.) The lead agency may only apply CEQA's
19 subsequent review provisions "if the original environmental document retains some informational value
20 despite the proposed changes." (*Id.*, at 952.) In that event, "the agency proceeds to decide under
21 CEQA's subsequent review provisions whether project changes will require major revisions to the
22 original environmental document because of the involvement of new, previously unconsidered
23 significant environmental effects." (*Id.*) But if the original environmental document does not "retain
24 some informational value," the project changes are treated as a "new" project requiring an initial study
25 followed by preparation of either a negative declaration or, if the changes "may have a significant effect
26 on the environment," an EIR. (*Id.*, at 945.)

27 In the instant case, it is too early for the parties to brief or for the Court to determine if CEQA's
28 subsequent review provisions apply to Plaintiff's claims because the 2005 EIR for the 2020 LRDP is not

1 before the Court.¹ Therefore, the Court cannot determine if the EIR retains some informational value.
2 As a result, the Court cannot test the legal sufficiency of the Petition's allegations against the standards
3 governing subsequent review in CEQA, section 21166 and CEQA Guidelines, section 15162.

4 **2. The Petition Sufficiently Alleges That the Regents Must Conduct Environmental**
5 **Review of UC's Increases in Student Enrollment.**

6 As noted above, the Court must eventually determine if Plaintiff's claim that the Regents must
7 conduct environmental review of UC's increases in student enrollment will be governed by CEQA's
8 subsequent review provisions at CEQA, section 21166 and CEQA Guidelines, section 15162 or by
9 CEQA's initial review provisions at CEQA, section 21151 and CEQA Guidelines, section 15063.
10 Regardless of which CEQA provisions govern, the Petition sufficiently alleges that the Regents must
11 conduct environmental review of UC's increases in student enrollment because paragraph 24 is
12 sufficiently inclusive to include review under either section 21151 (i.e., initial study followed by a
13 negative declaration or EIR) or 21161 (i.e., subsequent EIR).

14 The Regents argue that CEQA Guidelines, section 15162, requires a new discretionary approval
15 before CEQA's subsequent review provisions apply. (DMPA 10:12.) This is also true of CEQA's initial
16 review provisions. As shown in section IV.A above, the Petition sufficiently alleges that the Regents
17 have engaged in a discretionary approval by carrying out a program of increasing student enrollment.

18 The Regents also argue that "the remedy being sought by Petitioner is already being undertaken
19 by UC in accordance with CEQA's supplemental review standards." (DMPA 10:27.) This is startling.
20 After vigorously contending that Plaintiff's have not and cannot allege facts that trigger CEQA's
21 subsequent review standards, the Regents admit that they have already decided to engage CEQA's
22 subsequent review standards. This admission conclusively refutes any contention that Plaintiff cannot
23 allege facts that trigger CEQA's subsequent review standards.

24 **C. The Regents' argument that CEQA section 21089.09 provide immunity from this suit is**
25 **without merit.**

26 Somehow the Regents divine a defense to this lawsuit in subdivision (d) of CEQA section
27 21080.09, but fail to explain the defense. (DMPA 13-14.) This statute indicates that enrollment plans
28 should be part of a "long range development plan" and must be analyzed in an EIR "as required by *this*

¹The record in this case has not been prepared, certified, or lodged because the Regents refuse to cooperate
with Plaintiff to allow Plaintiff to prepare it. (Lippe Decl. ¶¶ 3-18.)

1 *division*” (italics added). The reference to “this division” means CEQA. As the allegations of the
2 Petition show, the Regents are in violation of both aspects of CEQA, section 21080.09(d).

3 The Regents also argue that “If the Petition is allowed to proceed and the requested remedy
4 granted, UC would be in the position of having to analyze the environmental impacts of its student
5 enrollment, which fluctuates each academic year.” But no one contends that UCB is required to prepare
6 a new EIR every year. The Legislature has specifically required that UC “analyze the environmental
7 impacts of its student enrollment.” The fact that enrollment fluctuates every year is no defense to this
8 obligation. Presumably the Regents made this point to the legislature before the Legislature adopted
9 CEQA, section 21080.09, and the Regents can return to the Legislature at any time to make this point
10 and ask for an exemption from CEQA. In short, the Regents’ concern is directed to the wrong forum.

11 The Regents also argue that if the Petition is allowed to proceed and the requested remedy
12 granted, “Courts would have to resolve annual challenges to the environmental analysis of enrollment
13 levels.” This is hyper-ventilated. No one is asking for annual EIRs or bringing annual challenges. More
14 important, the purpose of section 21080.09 is to require that the Regents make long term programmatic
15 decisions regarding enrollment and to analyze these decisions using programmatic EIRs or tiered
16 analyses. The Regents utter failure to comply with this Legislative command is not a good reason for the
17 Court to dismiss this action.

18 The Regents argue the courts should not, based on CEQA, intervene in its decision-making. The
19 Supreme Court has repeatedly rejected this argument. (*City of San Diego v. Board of Trustees of*
20 *California State University* (2015) 61 Cal.4th 945, 966 [As we explained in *Marina, supra*, 39 Cal.4th
21 341, ‘while education may be CSU’s core function, to avoid or mitigate the environmental effects of its
22 projects is also one of CSU’s functions. This is the plain import of CEQA....’].)

23 **D. This Action Is Not Barred by CEQA’s Statutes of Limitations.**

24 The Regents argue that any challenge to the 2020 LRDP based on a challenge to the 2005 EIR is
25 barred by CEQA’s statute of limitations. (DMPA 16:19.) This point is irrelevant because the Petition
26 does not challenge the 2020 LRDP based on a challenge to the 2005 EIR. (*Ventura Foothill Neighbors v.*
27 *County of Ventura* (2014) 232 Cal.App.4th 429, 435 (*Ventura Foothill*) [“Respondent ... correctly
28 contends that it did ‘not challenge the [1993] EIR as County claims.’ Instead, it challenged ‘the County’s
failure to prepare a supplemental EIR for a 90–foot Clinic building.’”].)

1 Here, Plaintiff challenges the Regents' failure to conduct environmental review of changes in
2 enrollment that have occurred after the 2020 LRDP was adopted in 2005. The statute of limitations for
3 this claim is provided by subdivision (a) of CEQA, section 21167. (*Concerned Citizens, supra*, 42
4 Cal.3d at 939.) Section 21167(a) provides that an action "alleging that a public agency is carrying out or
5 has approved a project that may have a significant effect on the environment without having determined
6 whether the project may have a significant effect on the environment shall be commenced within 180
7 days from the date of the public agency's decision to carry out or approve the project, or, if a project is
8 undertaken without a formal decision by the public agency, within 180 days from the date of
9 commencement of the project."

10 Here, the Regents never "formally approved" the increases in enrollment above the 1,650 student
11 increase disclosed in the 2005 EIR, and the Regents do not contend otherwise. (See Petition ¶¶ 23-58.)
12 Formal action requires formal notice and action by a legislative body. (*Citizens for a Green San Mateo*
13 *San Mateo County Community College Dist.* (2014) 116 Cal.App.4th 1572, 1596 [formal approval
14 occurred upon Board's public action, noticed under Brown Act, approving contract or improvements
15 described in agenda packet linked to contract documents]; *Cumming v. City of San Bernardino*
16 *Redevelopment Agency* (2002) 101 Cal.App.4th 1229, 1231-1232 [notice was sufficient to trigger the
17 statute of limitations because there was a noticed public hearing].)

18 Plaintiff requests leave to amend the Petition to allege that the Regents "informally, not formally
19 approved" the increases in enrollment above the 1,650 student increase disclosed in the 2005 EIR.

20 In *Concerned Citizens*, the Court held that where an agency materially changes a project after
21 formal approval but without notice of the change to the public, the applicable limitations period is 180
22 days after the plaintiff knew or reasonably should have known that the project under way differs
23 substantially from the one described in the initial EIR." (*Id.*, at 933; accord, *Ventura Foothill, supra*, at
24 436 ["[T]he filing of an NOD triggers a 30-day statute of limitations for all CEQA challenges to the
25 decision announced in the notice." [citation] . . . Neither the NOD nor the EIR addendum mentioned
26 anything about a change in the building's height. Because both the NOD and addendum were silent on
27 this issue, a 180-day statute of limitations began to run from May 22, 2008, when respondent's member
28 were informed that the Clinic was going to be 90 feet high"].) This is true even where the project
commenced more than 180 days before the lawsuit is filed.

1 In *Concerned Citizens*, the Court held that when a CEQA plaintiff knew or should have known
2 of project changes requiring additional environmental review is a question of fact that cannot be resolved
3 on demurrer. (*Id.*, at 939–40 [“Because we review an order sustaining a demurrer without leave to
4 amend in this case, we have to accept the complaint’s material factual allegations as true. Plaintiffs
5 alleged that they neither knew nor could with reasonable diligence have discovered that a cause of action
6 had accrued to them until 180 days before the date they filed their complaint. While a trier of fact may
7 resolve the issue of plaintiffs’ actual or constructive knowledge to the contrary, that is not our task as a
8 reviewing court”].)

9 Here, the Petition, at paragraph 4, alleges that:

10 “On October 30, 2017, UCB responded to the City of Berkeley’s request for information
11 regarding enrollment increases. This response shows the actual increase in student
12 enrollment above the 2001-02 two-semester average for the most recent two-semester
13 period (i.e., Spring 2017 and Fall 2017) is 8,302 students. This is an increase of 6,652
14 students more than the increase of 1,650 students projected in the 2020 LRDP and 2005
15 EIR, representing a five-fold increase compared to the 1,650 enrollment increase
16 projected in the 2020 LRDP and 2005 EIR.”

17 Consistent with *Concerned Citizens*, Plaintiff requests leave to amend the Petition to add the following
18 allegation:

19 “Plaintiff did not know and could not, in the exercise of reasonable diligence, have
20 known of the increases in student enrollment at UC Berkeley above the increase of 1,650
21 students projected in the 2020 LRDP and 2005 EIR until October 30, 2017, when UCB
22 responded to the City of Berkeley’s request for information regarding enrollment
23 increases by providing to the City the document attached hereto as Exhibit 3.”

24 Plaintiff also proposes to amend the Petition by attaching as “Exhibit 3,” the document attached as
25 Exhibit 2 to the Declaration of Phillip Bokovoy in Opposition to Demurrer filed herewith.

26 This action was filed on April 27, 2018, which is less than 180 days after October 30, 2017.
27 Therefore, this amendment will clarify for purposes of this demurrer that the Petition was filed within
28 the limitations period specified by the Supreme Court in *Concerned Citizens*.

The Regents argue that “The October 30, 2017, letter ... is not ‘commencement of a project.’”
(Demurrer MPA 17:27.) Plaintiff agrees. The October 30, 2017, letter represents the date Plaintiff knew
or should have known of substantial increases in student enrollment. (See Bokovoy Decl.)

1 The Regents also argue that Plaintiff knew or reasonably should have known of the increases in
2 student enrollment above the 1,650 student increase disclosed in the 2005 EIR more than 180 days
3 before this action was filed because UC published its 2017 fall semester enrollment numbers on its
4 website on October 9 and 16, 2017 (i.e., more than 180 days before this action was filed.) (Demurrer
5 17:16.) This is wrong for several reasons.

6 First, UC's October 9, 2017, publication of its 2017 fall semester enrollment numbers on its
7 website is an evidentiary fact that UC has not requested judicial notice of and is not judicially noticeable.
8 Therefore, it is not admissible on a demurrer. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318 [A demurrer
9 challenges defects that appear on the face of the complaint or from matters outside the complaint which
10 are judicially noticeable]; Code Civ. Proc., § 430.30(a).) Second, whether Plaintiff should have
11 discovered this publication in the exercise of reasonable diligence are questions of fact, for the trier of
12 fact, and cannot be resolved on demurrer. (*Concerned Citizens*, at 939–40; see Bokovoy Decl.) Third,
13 UC did not publish the 2017-2018 Spring Semester enrollment before October 30, 2017, which is
14 necessary to determine the two-semester average to compare with the two-semester enrollment average
15 disclosed in the 2005 EIR. Fourth, no limitations period can have expired with respect to the 2017-2018
16 Spring Semester enrollment or the 2018-2019 Fall Semester enrollments being above the enrollment
17 projected in the 2005 EIR.

18 The Regents also suggest that the 180-day limitations period may have commenced in 2007
19 because the Petition alleges the “policy” of increasing enrollment above the levels disclosed in the 2005
20 EIR began in 2007. The Petition alleges this because the Regents’ October 30, 2017, letter shows
21 enrollments exceeding “baseline plus 1,650” in 2007. Therefore, it appears from the evidence that the
22 policy began in 2007. But absent “formal approval” of that policy, the limitations period did not
23 commence until Plaintiff knew or should have known of it.

24 **E. Neither Cause of Action is Moot.**

25 “[A] trial court must proceed with caution when presented with a mootness claim. Granting the
26 motion results in dismissal and deprivation of the plaintiff’s day in court. Judicial consideration of the
27 merits is precluded.” (*Davis v. Superior Court* (1985) 169 Cal.App.3d 1054, 1057.) There are three
28 discretionary exceptions to the rules regarding mootness: (1) when the case presents an issue of broad
public interest that is likely to recur; (2) when there may be a recurrence of the controversy between the

1 parties; and (3) when a material question remains for the court's determination. (*Cucamongans United*
2 *for Reasonable Expansion v. City of Rancho Cucamonga* (2000) 82 Cal.App.4th 473, 479-480.) All of
3 these exceptions apply here.

4 Material questions remain for the court's determination. The unstated premise of the Regents
5 mootness defense is that all environmental impacts of increased enrollment in any given year disappear
6 at the end of each school year. But the Regents cannot offer evidence to support the premise, because
7 this is a demurrer, not a motion for summary judgment, and because the Regents have conducted no
8 CEQA review of these impacts. This premise also ignores the cumulative impacts of multiple
9 consecutive years of increased enrollment, from 2007 to the present. (See Bokovoy Decl. ¶ 7, Ex 2.)
10 This premise also ignores the fact that the 2018-2019 school year is underway now, with vastly increased
11 enrollment above the 1,650 enrollment increase disclosed in 2005.

12 Moreover, actions seeking mandamus relief that may ultimately result in additional
13 environmental review under CEQA are not mooted by completion of the project "on the ground"
14 because any mandated CEQA review may result in additional mitigation measures being implemented to
15 reduce any significant impacts that may be revealed as a result of the agency conducting required CEQA
16 review. (*County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1626;
17 *Association for a Cleaner Environment v. Yosemite Community College Dist.*, (2004) 116 Cal.App.4th
18 629, 640; *Woodward Park Homeowners Assn. v. Garreks, Inc.* (2000) 77 Cal.App.4th 880, 888.)

19 This case also presents an issue of broad public interest that is likely to recur. The decision in
20 *Californians for Alternatives to Toxics v. California Department of Pesticide Regulation* (2006) 136
21 Cal.App.4th 1049, 1069-1070 (*Californians for Alternatives to Toxics*) is directly applicable. In that
22 case, petitioners challenged the Department of Pesticide Regulation's annual decision to renew several
23 pesticide registrations for 2002. The trial court found that the petition was moot because the
24 Department's 2003 renewal of the pesticides effectively replaced, and thus mooted, any legal challenge
25 to the previous year's renewal decision. The Court of Appeal reversed, finding that "the timing of
26 renewals creates an impossible burden for those seeking to challenge the Department's decisions. The
27 annual nature of the pesticide renewal program virtually ensures that litigation seeking mandamus relief
28 against a registration renewal will not be resolved before the next annual renewal occurs." (*Id.* at 1069;
accord, *Conservatorship of Wendland* (2001) 26 Cal.4th 519, 524, fn. 1 ["We have discretion to decide

1 otherwise moot cases presenting important issues that are capable of repetition yet tend to evade
2 review”].)

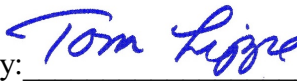
3 The same is true here. Indeed, UCB has admitted that it intends to continue increasing
4 enrollment. (Regents RJN, Ex. A, p. 2 [“At this time, UC Berkeley estimates an overall campus
5 population headcount growth of about 1.5 percent annually, on an average, in the near-term”].)

6 IV. CONCLUSION

7 For the reasons described above, the demurrer should be overruled.

8 DATED: November 1, 2018

LAW OFFICES OF THOMAS N. LIPPE, APC

9 By: 

10 Thomas N. Lippe

11 Attorney for Plaintiff

12 T:\TL\UC Enroll\Trial\Motions\M015f TOA Demurrer Opp.wpd

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FILED BY FAX
ALAMEDA COUNTY
November 01, 2018
CLERK OF
THE SUPERIOR COURT
By Erica Baker, Deputy
CASE NUMBER:
RG18902751

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8 Attorney for Plaintiff: Save Berkeley's Neighborhoods

9
10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF ALAMEDA**

12 SAVE BERKELEY'S NEIGHBORHOODS, a
13 California nonprofit public benefit corporation;

14 Plaintiff,

15 vs.

16 THE REGENTS OF THE UNIVERSITY OF
17 CALIFORNIA; JANET NAPOLITANO, in her
18 capacity as President of the University of
19 California; CAROL T. CHRIST, in her capacity as
20 Chancellor of the University of California,
21 Berkeley; and DOES 1 through 20,

22 Respondents and Defendants.
23
24
25
26
27
28

Case No. RG18902751

**DECLARATION OF PHILLIP BOKOVOY
IN OPPOSITION TO DEMURRER TO
SECOND AMENDED PETITION FOR
WRIT OF MANDATE AND COMPLAINT
FOR DECLARATORY RELIEF**

**[CALIFORNIA ENVIRONMENTAL
QUALITY ACT]**

Reservation No.: R-2003938

Date: November 15, 2018

Time: 3:45 P.M.

Dept.: 24

Judge: Hon. Frank Roesch

Action Filed: April 27, 2018

Trial Date: Not Set

Assigned for All Purposes to:
Hon. Frank Roesch, Dept. 24

Document received by the CA 1st District Court of Appeal.

1 I, Phillip Bokovoy, declare:

2 1. I am the founder and President of Save Berkeley's Neighborhoods, the plaintiff in this case. The
3 facts set forth in this declaration reflect the results of my research into the history of enrollment at the
4 University of California, Berkeley and my extensive community organizing efforts on this issue. The
5 factual allegations set forth herein are true of my own knowledge, except as to those matters alleged on
6 information and belief, and as to those matters, I am informed and believe them to be true.

7 2. In 2005, UCB adopted a Long Range Development Plan (2020 LRDP). In or about 2005, UCB
8 certified a Final Environmental Impact Report for the 2020 LRDP (2005 EIR) pursuant to CEQA. The
9 2005 EIR and 2020 LRDP indicate that UCB counts campus population in two ways "by actual
10 headcounts and by full time equivalents, or FTE." According to the 2020 LRDP, "while budgets are
11 calculated in terms of FTE, for the purpose of environmental analysis actual headcount is the better
12 measure, since FTE tends to under-represent peak impacts. For example, two students taking six units
13 each are likely to have a greater impact than one student taking 12 units. The 2020 LRDP therefore uses
14 two-semester average headcount as the measure of campus population." (2020 LRDP, p. 14, Table 1.)

15 3. In March and April 2017, I participated in several discussions with Berkeley City Attorney Zach
16 Cowan, and then Berkeley City Council Member Jesse Arreguin regarding the best way to determine the
17 current level of UCB enrollment in terms of "two-semester average headcount" because at that time
18 there was no publicly available enrollment information expressed in terms of "two-semester average
19 headcount" that could be used to compare current enrollment with the enrollment disclosed in the 2005
20 EIR.

21 4. Based on my discussions with Mr. Cowan and Mr. Arreguin, I understood that the City
22 conducted a review of its documents received from UCB to determine if they were in possession of the
23 information and concluded they were not.

24 5. City Attorney Cowan informed me that he intended to send a California Public Records Act
25 request to UCB to get the information. Shortly thereafter, Mr. Cowan, on behalf of the City, sent a
26 written Public Records Act request dated April 14, 2017, to UCB requesting the information. The
27 Mayor's office provided me with a copy of this letter on April 14, 2017. A true and correct copy of this
28 letter is attached hereto as Exhibit 1.

6. In May of 2017, I was informed by Berkeley Mayor Jesse Arreguin and by Ruben Lizardo, head

1 of UCB's Local Government and Community Relations, that the incoming UCB Chancellor, Carol
2 Christ, had requested that the City withdraw the formal Public Records Act request and send a "request
3 for information" instead so UCB could take more time than the Public Records Act provides to compile
4 the information, and that this was done on May 25, 2017.

5 7. Thereafter, I remained in regular contact with Mayor Arreguin regarding UCB's response to the
6 request. On October 30, 2017, UCB sent to Mayor Arreguin its response to the City's request for
7 information. Mayor Arreguin's office provided me with a copy of this response on or about October 31,
8 2017. A true and correct copy of this letter and its attachments is attached hereto as Exhibit 2.

9 8. As described in the Petition on file in this case, UCB's response shows the actual increase in
10 student enrollment above the 2001-02 two-semester average for the most recent two-semester period
11 (i.e., Spring 2017 and Fall 2017) is 8,302 students. This is an increase of 6,652 students more than the
12 increase of 1,650 students projected in the 2020 LRDP and 2005 EIR, representing a five-fold increase
13 compared to the 1,650 enrollment increase projected in the 2020 LRDP and 2005 EIR. The response
14 also shows UCB has built fewer than 1,000 beds. (Petition, ¶ 4.)

15 9. Before I received UCB's October 30, 2017, letter to Mayor Arreguin, I did not know the
16 enrollment numbers set forth in the letter and its attachments.

17 10. I have read the Declaration of Russ Acker in Support of Demurrer to Second Amended Petition
18 and Complaint for Declaratory Relief (Acker Decl). I did not see the enrollment number for the Fall of
19 2017 that Mr. Acker says were published on UCB's website on October, 9, 2017, and October 16, 2017.
20 At that time, I was working with the City of Berkeley to obtain comprehensive enrollment data from
21 UCB covering the period after 2005 and I relied on that process to conclude my investigation of
22 increasing enrollment at UCB.

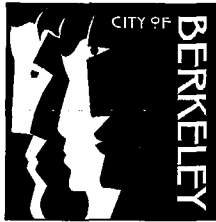
23 I declare under penalty of perjury, under the laws of the State of California, that the foregoing is
24 true and correct of my personal knowledge. Executed on November 1, 2018, at Troy, Michigan.

25 
26 Phillip Bokovoy

27 T:\TL\UC Enroll\Trial\Motions\M017b Bokovoy Decl Demurrer Opp.wpd
28

EXHIBIT 1

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Office of the City Attorney

April 14, 2017

By e-mail to pra@berkeley.edu

Liane Ko
Public Records Coordinator
University of California, Berkeley
Office of Legal Affairs
200 California Hall, MC #1500
Berkeley, CA 94720-1500

Dear Ms. Ko,

Pursuant to the California Public Records Act (Gov. Code §§ 6250 et seq.) I request the following public records.

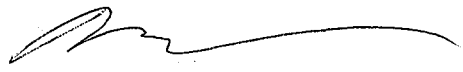
1. Records indicating the total number of undergraduate and graduate students at the University of California, Berkeley Campus on a *per capita* basis – i.e., not full time equivalents – for each academic year starting with the 2005-2006 year, to date.
2. Records indicating the total number of beds offered and provided by the University of California, Berkeley Campus to students (undergraduate and graduate), for each academic year starting with the 2005-2006 year, to date.
3. Records indicating the total number of faculty and staff, full time, part time and adjunct on a *per capita basis* at the University of California, Berkeley Campus to students (undergraduate and graduate), for each academic year starting with the 2005-2006 year, to date.
4. Records indicating the total square footage of academic and support space operated or used by the University of California, Berkeley Campus in Berkeley.
5. Records indicating the total square footage of space for education or research purposes operated by or used by the University of California, Berkeley Campus in Berkeley that is leased or subleased to other users.

April 14, 2017

Page 2

6. Records indicating the total number and location of parking spaces constructed by the University of California, Berkeley Campus in Berkeley between May 2005 and January 1, 2015.
7. Records indicating the total number and location of parking spaces constructed by the University of California, Berkeley Campus in Berkeley since January 1, 2015.
8. Records indicating the total number and location of parking spaces owned by the University of California, Berkeley Campus in Berkeley.
9. Records indicating the total number and location of parking spaces constructed by the University of California, Berkeley Campus at the Underhill site.
10. Records indicating the total number and location of parking spaces that are not owned, but are operated by the University of California, Berkeley Campus in Berkeley.
11. Records indicating the total number and location of parking spaces that are not owned or operated, but are leased, rented or regularly used by the University of California, Berkeley Campus in Berkeley.
12. Records indicating the total number and location of parking spaces that are owned, operated or leased by the University of California, Berkeley Campus in Berkeley and are leased, rented to or regularly used by an entity other than the University of California, Berkeley Campus in Berkeley.
13. Records indicating the development and implementation of a local-purchasing program for prioritizing the purchase of goods and services in Berkeley, or any determination that such a program was not feasible.
14. Records indicating the establishment of an Employee Volunteer Release Time program enabling employees to work with at risk young people in Berkeley.

Very truly yours,



Zach Cowan
City Attorney

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AA00196

EXHIBIT 2

Document received by the CA 1st District Court of Appeal.

UNIVERSITY OF CALIFORNIA, BERKELEY



BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO

SANTA BARBARA • SANTA CRUZ

BERKELEY, CALIFORNIA 94720-1382

CAPITAL STRATEGIES
PHYSICAL AND ENVIRONMENTAL PLANNING
A&E Bldg. (MC 1382)

30 October 2017

Mayor Jesse Arreguin
City of Berkeley
2180 Milvia Street
Fifth Floor
Berkeley, California 94704

[Transmitted via email]

Mayor Arreguin:

My office has compiled the attached data in response to your request for information sent to former Chancellor Dirks' office on May 25, 2017. We have organized responses using the item numbers indicated in your letter. The data provided in the attachment is the current available information as of October 2017 and based on our understanding of your request.

Please contact Ruben Lizardo (rlizardo@berkeley.edu) if you have questions or would like clarification on the information that has been provided.

Sincerely,

A handwritten signature in cursive script that reads "Emily Marthinsen".

Emily Marthinsen
Assistant Vice Chancellor/Campus Architect
Physical & Environmental Planning | Capital Strategies

CC: R Lizardo, R Parikh, S Viducich, A Machamer, S Wilmot

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ATTACHMENT 1. UC RESPONSE TO DATA REQUEST**1. Registered Student Headcount - Source: CalAnswers Student Census, UC Berkeley Office of Planning and Analysis, Accessed 10.04.2017**

Academic Term	Total Undergraduates	Total Graduate Students	Off-campus Undergraduates	Off-campus Graduate Programs
Fall (F) 05	23,482	10,076	381	668
Spring (S) 06	22,643	9,571	384	674
F06	23,863	10,070	357	713
S07	23,351	9,592	384	732
F07	24,636	10,317	359	752
S08	24,032	9,809	395	766
F08	25,151	10,258	325	743
S09	24,448	9,735	405	758
F09	25,530	10,393	331	757
S10	25,061	9,854	421	773
F10	25,540	10,298	369	777
S11	24,969	9,789	498	762
F11	25,885	10,257	342	782
S12	25,277	9,764	529	788
F12	25,774	10,125	334	789
S13	25,181	9,610	463	800
F13	25,951	10,253	327	881
S14	25,473	9,834	426	954
F14	27,126	10,455	296	1111
S15	25,903	10,065	424	1118
F15	27,496	10,708	335	1243
S16	26,094	10,279	466	1252
F16	29,310	10,863	650	1424
S17	27,784	10,510	425	1480
F17	30,574	11,336	560	1536

Note: Columns indicated total number of students include all registered students, including those enrolled in off-campus programs such as online graduate degree programs, the Education Abroad Program, Global Edge (European Study Abroad), and Freshman in San Francisco. The students enrolled in these off-campus programs are tallied in the "off-campus" columns.

2. Total # of Beds Offered to Students by UC Berkeley Housing (RSSP) in Apartments and Residence Hall- Source: RSSP, October 2017.

Academic Term	Residence Hall beds	Apartment beds	Total beds
2005-06	6545	656	7201
2006-07	6541	648	7189
2007-08	6538	650	7188
2008-09	6426	646	7072
2009-10	6442	646	7088
2010-11	6779	646	7425
2011-12	6799	646	7445
2012-13	6978	859	7837
2013-14	7153	859	8012
2014-15	7269	859	8128
2015-16	7252	859	8111
2016-17	7364	1188	8369

Note: The bed numbers are in facilities managed by RSSP, also including Bowles, International House, and buildings where campus has a master lease starting in the 2016-17 year. These bed numbers do not include Co-ops or Fraternity/Sorority Housing - these are managed by other housing entities.

Document received by the CA 1st District Court of Appeal.

3. Total Faculty and Staff Headcount - Source: CalAnswers Dashboard HR Census Level 1, UC Berkeley Office of Planning and Analysis, Accessed 10.04.2017

Academic Term	Regular Faculty	Faculty Emeriti	Other Faculty Types	Other Academic	Staff
S08	1568	796	1121	3427	9034
F08	1600	811	1050	3398	9131
S09	1599	806	1108	3446	9028
F09	1588	827	1002	3624	8471
S10	1582	822	1058	3648	8214
F10	1549	842	1049	3690	8155
S11	1530	852	1145	3498	8098
F11	1515	877	1131	3526	8092
S12	1526	873	1199	3603	8172
F12	1529	892	1140	3658	8443
S13	1532	892	1245	3655	8467
F13	1544	910	1197	3482	8722
S14	1549	900	1236	3495	8873
F14	1540	918	1231	3561	8959
S15	1534	917	1283	3512	8908
F15	1541	943	1257	3543	9021
S16	1547	943	1345	3482	8821
F16	1558	963	1308	3464	8623
S17	1546	957	1338	3448	8541

Note: Headcount data does not take into account work schedule status (e.g., telecommuting, part-time, flexible work days, etc) nor does it account for alternative work locations (e.g., off-campus natural reserves, UC Berkeley Washington DC program, etc). These counts are therefore considerably higher than actual faculty/staff population on the Berkeley campus at any one time during a typical weekday.

4. Total square footage - academic, administrative, support space (used/operated by UC Berkeley), Source: 2020 LRDP Entitlement Tracking Log, Physical & Environmental Planning, October 2017 (note: excludes parking and housing)

PROJECT/AREA	SF	SOURCE
LRDP Projected Add'l Academic & Support Space	2,200,000	2020 LRDP Table 3. Higher total distributed across zones for flexibility
Constructed/Under Construction	861,160	
Balance Remaining	1,338,840	
Campus Park	Sq Ft	Source
LRDP Envelope	1,000,000	2020 LRDP Table 3
Starr East Asian Library	67,500	2020 LRDP Draft Environmental Impact Report, January 2005
Li Ka Shing	200,000	Center for Biomedical and Health Sciences, 2020 LRDP EIR Addendum #1, February 2007
(Warren Hall Demolition)	-79,000	
Campbell Hall Replacement	81,600	Campbell Hall Replacement, 2020 LRDP Addendum #2, February 2008
(Campbell Hall Demolition)	-63,700	
Law Infill Addition	52,072	Law School Infill, 2020 LRDP EIR Addendum, June 2008
Blum Hall	13,010	Naval Architecture Restoration and Addition, 2020 LRDP EIR Addendum #4, December 2008
Lower Sproul	41,147	Lower Sproul Student Community Center Subsequent EIR, August 2011
(Girton Hall move)	-1,650	Haas North Addition and Girton Hall Move, 2020 LRDP EIR Addendum #10, July 2013
(Tolman Hall Demolition - approved)	-247,000	Berkeley Way West 2020 LRDP EIR Addendum, April 2015
Haas School North Addition (Chou Hall)	73,185	Haas North Addition and Girton Hall Move, 2020 LRDP EIR Addendum #10, July 2013
(2223 Fulton Demolition - approved)	-51,814	Building was vacated in 2015; Seismic Replacement Building 1 EIR (SCH #99122065) Sept 2000
<i>Added to date</i>	85,350	
<i>Balance remaining available</i>	914,650	
West Adjacent Blocks		
LRDP Envelope	800,000	2020 LRDP Table 3
Energy Biosciences Building	113,200	Helios Energy Research Facility & Related Improvements, 2020 LRDP EIR Addendum #7, Dec 2009
Berkeley Way West	325,000	Berkeley Way West 2020 LRDP EIR Addendum, April 2015
BAM/PFA	37,500	BAM/PFA, 2020 LRDP EIR Addendum #9, November 2011
<i>Added to date</i>	475,700	
<i>Balance remaining available</i>	324,300	
South Adjacent Blocks		

Document received by the CA 1st District Court of Appeal.

LRDP Envelope	400,000	2020 LRDP Table 3
SAHPC and CMS	260,000	Southeast Campus Integrated Projects EIR, December 2006
<i>Added to date</i>	<i>260,000</i>	
<i>Balance remaining available Fall 2013</i>	<i>140,000</i>	
North Adjacent Blocks		
LRDP Envelope	50,000	2020 LRDP Table 3
Jacobs Hall (Soda North)	23,110	Jacobs Hall 2020 LRDP EIR Addendum, March 2014
<i>Added to date</i>	<i>23,110</i>	
<i>Balance remaining available Fall 2013</i>	<i>26,890</i>	
Hill Campus - No projects as of 2017		
LRDP Envelope	100,000	2020 LRDP Table 3
<i>Balance remaining available Fall 2013</i>	<i>100,000</i>	
Southside		
LRDP Envelope	50,000	2020 LRDP Table 3
Early Childhood Edu Center, Haste St	11,000	ECEC Negative Declaration, 2005
Dwight Childcare	6,000	
<i>Added to date</i>	<i>17,000</i>	
<i>Balance remaining available</i>	<i>33,000</i>	
Other Sites - No Projects as of 2017		
LRDP Envelope	50,000	2020 LRDP Table 3
<i>Balance remaining available</i>	<i>50,000</i>	

5. Total square footage - administrative, education or research (used/operated by UC Berkeley, leased to others), Source: H. Levay, UC Berkeley Real Estate Development & Portfolio, October 2017

The campus leases approximately 185,776 square feet to others for administrative, educational and research activities; such uses are typically affiliated with campus academic programs. The campus also leases space to other uses in support of the campus's programs, such as cafes and commercial spaces -- these leases are not included in this lease space summary.

6. Parking Changes 2005-2015 - Parking & Transportation September 2017

7. Parking Changes 2015-2017 - Parking & Transportation September 2017

8.

Site/Location	Net Change	Source
2005-2015		
DHS Site surface parking (Berkeley Way West)	135	Constructed as temporary parking
Early Childhood Education Center	-53	ECEC Negative Declaration, Spring 2005 (Haste Street)
Lower Hearst Expansion	100	Conversion of top level from tennis courts to parking
Martinez Commons ("Anna Head West")	-216	UCB Parking Supply & Demand Assessment May 2010, p. 17
Prospect Court	-7	SCIP EIR p. 4.8-13 and 2013 P&T inventory
International House	-24	SCIP EIR p. 4.8-13 and 2013 P&T inventory
Dwight Childcare Facility	-17	Based on project drawings
Kleeberger Lot	-161	SCIP EIR p. 4.8-13 and 2013 P&T inventory
CMS Lots	-121	SCIP EIR p. 4.8-13 and 2013 P&T inventory
BAM/PFA (Oxford/Addison Garage)	-221	BAM/PFA, 2020 LRDP EIR Addendum #9, November 2011, p. 14
Boalt lot reconfiguration	-10	Calvin Lab; 2013 P&T inventory
Foothill restriping	10	2013 P&T Inventory
Maxwell (Stadium) Parking	447	Parking is operated by private vendor (campus permits are not valid)
Prospect Court / South Parking Lot	-56	PHA Settlement Agreement, 11.26.2013
2015-2017		
MLK Garage re-configuration	-11	Lower Sproul EIR
Aquatics at Tang Lot	-153	Aquatics Center included 49 space lot to partially replace lost spaces
Bancroft Residence Hall (Dana-Durant Lot)	-87	Stiles Site Student Housing 2020 LRDP EIR Addendum, April 2016
Chou Hall Site (New Business School Bldg)	-5	Reconfiguration of College Way; 2 ADA spaces returned to campus
Berkeley Way West	-135	Berkeley Way West Addendum April 2015
Bowles Lot changes (Bowles Res College)	-6	Bowles Hall Residential College Addendum 3.19.15
Hearst/Oxford Temp Parking Lot Lease	49	temporary short-term lease for interim parking use
1995 University (Golden Bear)	250	P&T took over lot after Berkeley Way West construction began
SCIP/Maxwell Agreement (Planned)	-79	estimate to be removed Jan 2018, PHA Settlement Agreement, 11.26.2013

Notes: (1) Changes exclude changes to attended parking operations between 2005 and 2017. Although the campus has operated some amount of attended parking since 2005, the operations change substantially year to year depending funding, space availability and demand. Due to the loss of campus parking facilities, use of attended parking has decreased.

8. Parking Inventory - Parking & Transportation September 2017

9. Total Parking at Underhill Garage - Parking & Transportation September 2017

Parking & Transportation maintains a map of campus parking facilities, noting number of spaces, permit classifications and use restrictions, on their website and available at this link:

<https://www.google.com/maps/d/u/0/viewer?hl=en&msa=0&z=15&ie=UTF8&mid=17LS4z07DDCTjJelEH-ggQqX7y3Y&ll=37.87124321571974%2C-122.2705315>

10. Parking leased to and operated by UC Berkeley - Parking & Transportation September 2017

- 1899 Oxford at Hearst - 49 spaces
- 1608 4th Street - 181 spaces

11. Parking leased to UC Berkeley and operated by others - Parking & Transportation September 2017

- 2016 Dwight Way - 15 spaces

12. Parking leased by UC Berkeley to others - Parking & Transportation September 2017

- 1995 University Avenue - approximately 20 spaces

13. Local Purchasing Program (Source: UC Berkeley Supplier Diversity Program - Supply Chain Management Office)

UC Berkeley strives to provide fair, open, and efficient opportunities for all suppliers interested in doing business with the campus. UC Berkeley's Supply Change Management office provides an overview of its practices here (<https://supplychain.berkeley.edu/suppliers/doing-business-uc-berkeley>). Over the years, the campus has made significant efforts to promote and support bidding by local business enterprises, especially Small Businesses, Women-owned Business Enterprises, Disadvantaged Business Enterprises, and Disabled Veteran Business Enterprises. Notably, the Supply Change Management office has conducted workshops for local businesses in partnership with local chambers of commerce and local business development organizations (<https://supplychain.berkeley.edu/campus/supplier-diversity>). These workshops provide an overview of the goods and services UC Berkeley procure each year; information needed to secure certifications (e.g., small, women, disadvantaged, veteran) that would make the business more competitive in our procurement system; and those of other public institutions (including UCSF) that report annual spend with these types of businesses.

UC Berkeley employs practices that support the procurement of goods and services from Berkeley local businesses and those with local headquarters in the city. Other reports and data can be provided on request that include differing levels of detail including number of businesses, spend and diversity information.

14. Employee Volunteer Release Time program for at-risk young people.

UC Berkeley does not have a specific program for employees interested in volunteering with at-risk youth. Nonetheless, campus employees and students are involved in a wide variety of activities in the community and with underserved communities. The UC Berkeley Public Service Center outlines some of these opportunities and how affiliates can be involved on their website (<http://publicservice.berkeley.edu/faculty-and-staff>). The Public Service Center provides information to departments for one-time events, as well as offering VolunteerMatch for individuals looking for volunteer opportunities. Community groups (<http://publicservice.berkeley.edu/community>) can also engage directly with the campus, including submitting information to publicservice@berkeley.edu, posting opportunities on VolunteerMatch, recruiting student volunteers/researchers, and participating in the [Chancellor's Community Partnership Fund](#).

FILED BY FAX
ALAMEDA COUNTY
November 01, 2018
CLERK OF
THE SUPERIOR COURT
By Erica Baker, Deputy
CASE NUMBER:
RG18902751

1 Thomas N. Lippe, SBN 104640
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5 Tel: (415) 777-5604
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8 Attorney for Plaintiff: Save Berkeley's Neighborhoods

9
10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF ALAMEDA**
12

13 SAVE BERKELEY'S NEIGHBORHOODS, a
14 California nonprofit public benefit corporation;

15 Plaintiff,

16 vs.

17 THE REGENTS OF THE UNIVERSITY OF
18 CALIFORNIA; JANET NAPOLITANO, in her
19 capacity as President of the University of
20 California; CAROL T. CHRIST, in her capacity as
21 Chancellor of the University of California,
22 Berkeley; and DOES 1 through 20,

23 Respondents and Defendants.
24
25
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28

Case No. RG18902751

**DECLARATION OF THOMAS N. LIPPE IN
OPPOSITION TO DEMURRER TO
SECOND AMENDED PETITION FOR
WRIT OF MANDATE AND COMPLAINT
FOR DECLARATORY RELIEF**

**[CALIFORNIA ENVIRONMENTAL
QUALITY ACT]**

Reservation No.: R-2003938

Date: November 15, 2018

Time: 3:45 P.M.

Dept.: 24

Judge: Hon. Frank Roesch

Action Filed: April 27, 2018

Trial Date: Not Set

Assigned for All Purposes to:

Hon. Frank Roesch, Dept. 24

1 I, Thomas N. Lippe, declare:

2 1. I am an attorney at law duly admitted and licensed to practice before all courts of this State. I am
3 attorney of record for the Plaintiff in this case.

4 2. When Defendants Counsel Timothy Cremin and I “met and conferred” regarding this proposed
5 demurrer, he did not inform me as to why he thought the action was barred by the statute of limitations
6 or when he thought the limitations period began to run and he did not provide me with an advance copy
7 of his proposed demurrer. Therefore, I did not make any effort before he filed this demurrer to amend
8 the Petition/Complaint to address any issues pertaining to the statute of limitations.

9 3. The following paragraphs of this declaration detail my efforts to obtain the University of
10 California, Berkeley’s records regarding its history of decision-making regarding increasing enrollment
11 and Defendants’ stone-walling of these efforts.

12 4. When Plaintiff filed this action on April 27, 2018, Plaintiff filed its election to prepare the record
13 of proceedings. Since that time, Respondents have engaged in a pattern of obstructive conduct that has
14 made it impossible for Plaintiff to complete preparation of the record of proceedings. A brief history of
15 Respondents’ conduct follows.

16 5. When this case was filed, Local Rules 3.320(a) and (d)(1) (since repealed as of August 1, 2018)
17 required that Respondents provide Plaintiff with costs estimates for preparing the record and the location
18 and custodian of all documents to be included in the record. On May 24, 2018, counsel for Respondents
19 responded to these rules by sending a letter to counsel for Plaintiff declining to provide this information
20 on the ground that “Based on the allegations in the Petition for Writ of Mandate, Respondents cannot
21 identify the documents anticipated to be incorporated into the administrative record. Petitioner has not
22 challenged any Project or any action subject to CEQA or any Project approval by Respondents in the
23 Petition.”

24 6. On June 4, 2018, Plaintiff’s counsel responded that: “CEQA defines the term ‘Project’ to mean
25 ‘an activity which may cause either a direct physical change in the environment, or a reasonably
26 foreseeable indirect physical change in the environment, and which is any of the following: (a) An
27 activity directly undertaken by any public agency.” (PRC § 21065.) The petition identifies such an
28 ‘activity:’ namely, increasing the number of students enrolled at UC Berkeley” and requested the
Respondents immediately comply with the local rule of court.

Document received by the CA 1st District Court of Appeal.

1 7. On June 13, 2018, pursuant to Local Rule 3.320(d)(2) (since repealed as of August 1, 2018),
2 Plaintiff sent to Respondents a provisional proposed index of the record of proceedings in this matter.
3 The proposed index was “provisional” because Respondents had not complied with the local rules
4 requiring disclosure documents to be included in the record of proceedings. The provisional proposed
5 index listed documents that Plaintiff was able to find on and download from UC Berkeley’s “Capital
6 Strategies” website. In this letter, Counsel again asked Respondents to comply with Local Rule
7 3.320(d)(1).

8 8. On June 20, 2018, pursuant to Local Rule 3.320(d)(2) (since repealed as of August 1, 2018),
9 Respondents responded to Plaintiff’s provisional proposed index of the record of proceedings by
10 reiterating its position that it cannot comply with this rule because the Petition and Complaint do not
11 challenge a CEQA project.

12 9. On May 18, 2018, Plaintiff served on Respondents a Request for Production of Documents
13 asking for the production of documents that may need to be included in the record of proceedings. For
14 example, Request No. 1 seeks: “All writings, including internal staff memoranda and emails, that refer
15 or relate to increases in student enrollment at UC Berkeley that were prepared in connection with the
16 preparation of UC Berkeley’s 2020 Long Range Development Plan.”

17 10. The parties stipulated to extend the deadline for the Regents to respond to Plaintiff’s first
18 Request for Production of Documents while the parties discussed settlement of the case. As a result, the
19 Regents’ response was finally due on September 7, 2018.

20 11. On September 7, 2018, after settlement discussion concluded (without success), Respondents
21 served on Plaintiff their Objections to Petitioners’ Request for Production of Documents, in which
22 Respondents refused to produce any documents.

23 12. On September 19, 2018, Plaintiff sent a “meet and confer” letter responding to Respondents’
24 Objections to Petitioners’ Request for Production of Documents, and setting a deadline of October 5,
25 2018, for Respondents to provide the requested documents, after which Plaintiff will file a motion to
26 compel production of documents.

27 13. On July 24, 2018, Plaintiff submitted a written request to the Regents pursuant to the California
28 Public Records Act requesting all records showing actual and projected Registered Student Headcount at
UC Berkeley for the academic terms: Spring 2018, Fall 2018, Spring 2019, Fall 2019, Spring 2020, Fall

1 2020, Spring 2021, Fall 2021, Spring 2022.

2 14. The Regents ignored this request.

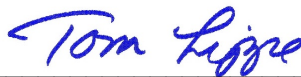
3 15. On August 15, 2018, the Regents issued a Notice of Preparation of a Draft Supplemental
4 Environmental Impact Report for the "Upper Hearst Development for the Goldman School of Public
5 Policy and Minor Amendment to the 2020 Long Range Development Plan." (Upper Hearst NOP.) The
6 NOP states that: "At this time, UC Berkeley estimates an overall campus population headcount growth
7 of about 1.5 percent annually, on an average, in the near-term.

8 16. On September 26, 2018, Plaintiff submitted written notification to the Regents that their failure
9 to respond to Plaintiff's July 24, 2018, Public Records Act request, within 10 days of the request or to
10 give notice of an extension of this deadline for up to 14 days, violates the Public Records Act. (See Gov.
11 Code§ 6253(c).) This notice again requested the same records (i.e., records showing actual and
12 projected Registered Student Headcount at UC Berkeley for the academic terms: Spring 2018, Fall 2018,
13 Spring 2019, Fall 2019, Spring 2020, Fall 2020, Spring 2021, Fall 2021, Spring 2022.)

14 17. On September 26, 2018, Plaintiff served a second request for production of documents on the
15 Regents asking for the same records (i.e., records showing actual and projected Registered Student
16 Headcount at UC Berkeley for the academic terms: Spring 2018, Fall 2018, Spring 2019, Fall 2019,
17 Spring 2020, Fall 2020, Spring 2021, Fall 2021, Spring 2022.)

18 18. On September 26, 2018, Plaintiff served on Respondents a set of requests for admissions.

19 I declare under penalty of perjury, under the laws of the State of California, that the foregoing is
20 true and correct of my personal knowledge. Executed on November 1, 2018, at San Francisco,
21 California.

22 

23 Thomas N. Lippe

24 T:\TL\UC Enroll\Trial\Motions\M018 TNL Decl Demurrer Opp.wpd

Tab 019

NOV/05/2018/MON 01:10 PM Law O. Thomas Lippe

FAX No. 1-415-777-5603

F. 032

FILED BY FAX
ALAMEDA COUNTY
 November 05, 2018
 CLERK OF
 THE SUPERIOR COURT
 By Cheryl Clark, Deputy
 CASE NUMBER:
RG18902751

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 8 Attorney for Plaintiff: Save Berkeley's Neighborhoods

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

10 SAVE BERKELEY'S NEIGHBORHOODS, a
 11 California nonprofit public benefit corporation;
 12 Plaintiff,
 13 vs.
 14 THE REGENTS OF THE UNIVERSITY OF
 15 CALIFORNIA; JANET NAPOLITANO, in her
 16 capacity as President of the University of
 17 California; CAROL T. CHRIST, in her capacity as
 18 Chancellor of the University of California,
 19 Berkeley; and DOES 1 through 20,
 20 Respondents and Defendants.

Case No. RG18902751

**MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT OF MOTION
 TO COMPEL FURTHER RESPONSES TO
 PLAINTIFF'S REQUESTS FOR
 PRODUCTION OF DOCUMENTS, SET
 ONE**

**[CALIFORNIA ENVIRONMENTAL
 QUALITY ACT]**

Reservation No. R-2018755

Date: December 6, 2018

Time: 3:45 P.M.

Dept.: 24

Judge: Hon. Frank Roesch

Action Filed: April 27, 2018

Trial Date: Not Set

Assigned for All Purposes to:
 Hon. Frank Roesch, Dept. 24

Document received by the CA 1st District Court of Appeal.

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I. INTRODUCTION

Plaintiff has tried every legal method available to obtain documents from Respondents and Defendants (The Regents) that Plaintiff needs to prepare the record, including the Civil Discovery Act, the Public Records Act, and Local Rules of Court. (See Declaration of Thomas N. Lippe in Support of Motion to Compel Further Responses to Plaintiff's Requests for Production of Documents, Set One (Lippe Decl.). In a raw display of its own perceived impunity, The Regents have stonewalled all of these efforts.

This motion concerns one of these efforts: Petitioners' Request for Production of Documents to The Regents of the University of California, et al., Set One. All six of the included requests seek documents that must be included in the administrative record for this case. They clearly meet the standard for discovery because they are reasonably calculated to lead to the discovery of relevant evidence, i.e., documents that may need to be included in the administrative record.

The Regents' response consists solely of objections. But the response fails to "Identify with particularity any document ... or electronically stored information falling within any category of item in the demand to which an objection is being made" as required by Cal. Code Civ. Proc., section 2031.240(b)(1).

The response also asserts objections based on attorney client privilege but fails to include a privilege log as required by Cal. Code Civ. Proc., section 2031.240(c)(1), (2).

The Regents' primary objection is that Plaintiff's cannot use the Civil Discovery Act to obtain documents that may need to be included in the administrative record. As discussed below, this objection is without merit. Moreover, Plaintiffs declaratory relief cause of action will not necessarily be "tried" on an administrative record, therefore, the objection does not apply to this claim.

The remainder of The Regents boilerplate objections are also without merit

II. STATEMENT OF FACTS

In 2005, UCB adopted a Long Range Development Plan (2020 LRDP) to achieve a number of objectives through the year 2020, including stabilizing enrollment. In or about 2005, UCB certified a Final Environmental Impact Report for the 2020 LRDP (2005 EIR) pursuant to CEQA. The 2020 LRDP and 2005 EIR projected that by 2020, student enrollment at UCB would increase by 1,650 students, from the 2001-2002 two-semester average headcount of 31,800 to 33,450 students. The 2020 LRDP and 2005 EIR also projected that by 2020, UCB would add 2,500 beds for students. (Second Amended Petition (Petition ¶ 3.)

1 On October 30, 2017, UCB responded to the City of Berkeley's request for information regarding
2 enrollment increases. This response shows the actual increase in student enrollment above the 2001-02 two-
3 semester average for the most recent two-semester period (i.e., Spring 2017 and Fall 2017) is 8,302 students.
4 This is an increase of 6,652 students more than the increase of 1,650 students projected in the 2020 LRDP
5 and 2005 EIR, representing a five-fold increase compared to the 1,650 enrollment increase projected in the
6 2020 LRDP and 2005 EIR. The response also shows UCB has built fewer than 1,000 beds. (Petition, ¶ 4.)

7 The increase in student enrollment over and above the 1,650 additional students projected by the
8 2020 LRDP and included in the 2005 EIR's environmental impact analysis (hereinafter the "excess increase
9 in student enrollment") has caused and continues to cause significant adverse environmental impacts that
10 were not analyzed in the 2005 EIR. Plaintiff is informed and believes and on that basis alleges that these
11 impacts include, without limitation, increased use of off-campus housing for and by UCB students, leading
12 to increases in off-campus noise and trash; displacement of tenants resulting in more homeless individuals
13 living on public streets and in local parks; increases in the number of UCB students who are homeless;
14 increases in traffic and transportation related congestion and safety risks; and increased burdens on the City
15 of Berkeley's public safety services, including police, fire, ambulance, and Emergency Medical Technician
16 services. (Petition, ¶ 5.)

17 This mandamus action seeks to enforce CEQA. When Plaintiff filed the case, it elected to prepare
18 the record of proceedings under Public Resources Code section 21167.6(b). (Declaration of Thomas N.
19 Lippe (Lippe Decl.) ¶ 2, Ex 1.) To effectuate this election, Plaintiffs served on The Regents a request for
20 all documents that included six requests for documents that relate to "increases in student enrollment at UCB
21 Berkeley" that were prepared in connection with the preparation and adoption of UCB's 2020 LRDP and
22 subsequent to adoption of the 2020 LRDP. (Lippe Decl. ¶ 3, Ex 2.)

23 The Regents objected and refused to produce a single document. The Regents' primary objection
24 is that the Civil Discovery Act does not authorize discovery for this purpose in a CEQA mandate case, and
25 even if it does, Plaintiff must seek a prior court order before engaging in such discovery. The Regents also
26 refused to provide a privilege log of documents it intended to withhold from production based on claims of
27 privilege. (Lippe Decl. ¶ 5, Exs 3, 4.)

28 Plaintiff's counsel opened its meet and confer effort with a letter explaining why The Regents' objections are without merit. (Lippe Decl. ¶ 6, Ex 5.) The Regents rebuffed this effort. (Lippe Decl. ¶ 7, Ex 6.)

1 6.)

2 As noted above, Plaintiff used every legal method available to obtain documents from The Regents
3 that Plaintiff needs to prepare the record. (See Lippe Decl. ¶¶ 8-18.)

4 **III. ARGUMENT**

5 **A. The Regents' General Objection 1 Should be Overruled Because the Civil Discovery Act is Fully Available to CEQA Litigants.**

6 The Regents' General Objection 1 and September 7, 2018, letter contend (1) the Civil Discovery Act
7 does not authorize a CEQA plaintiff who has elected to prepare the record of proceeding to utilize a
8 document request under Code of Civil Procedure section 2031.010 *et seq.* to obtain documents in the
9 possession of the public agency for the purpose of preparing the the record; and (2) to the extent the Civil
10 Discovery Act may be available to a CEQA plaintiff who has elected to prepare the record, CEQA plaintiffs
11 must obtain prior leave of court before propounding discovery requests. Both contentions are wrong.

12 The Civil Discovery Act provides:

13 Unless otherwise limited by order of the court in accordance with this title, any party may
14 obtain discovery regarding any matter, not privileged, that is relevant to the subject matter
15 involved in the pending action or to the determination of any motion made in that action, if
16 the matter either is itself admissible in evidence or appears reasonably calculated to lead to
the discovery of admissible evidence.

17 (Code of Civil Procedure § 2017.040.) The term "'Action' includes a civil action and a special proceeding
18 of a civil nature." (Code of Civil Procedure § 2017.020(a).) A petition for writ of mandate is a special
19 proceeding of a civil nature. (Code of Civil Procedure §§ 23, 1063 *et seq.*) Moreover, the decision in
20 *Consolidated Irr. Dist. v. Superior Court* (2012) 205 Cal.App.4th 697 squarely rejects The Regents'
21 contention, holding that: "City's contention that discovery is not allowed in a CEQA case is wrong." (Id.
22 at 713.)

23 The applicable standard is whether the discovery is reasonably calculated to lead to the discovery
24 of admissible evidence. In CEQA mandate cases, "admissible" evidence includes documents described in
25 Public Resources Code section 21167.6, subdivision (e). This statute "contemplates that the administrative
26 record will include pretty much everything that ever came near a proposed development or to the agency's
27 compliance with CEQA in responding to that development." (*County of Orange v. Superior Court* (2003)
28 113 Cal.App.4th 1, 8.) Therefore, Plaintiff's requests for documents are likely to lead to the discovery of
evidence that must be included in the record of proceedings.

1 The Regents rely on several cases to support their contention that discovery is not available in this
2 case, or if it is, Plaintiff needs prior leave of court before propounding discovery requests, including *Western*
3 *States Petroleum Association v. Superior Court* (1995) 9 Cal.4th 559, 576 and *Pomona Valley Hospital*
4 *Medical Center v. Superior Court* (1997) 55 Cal.App.4th 93, 102. These cases are inapposite because they
5 address efforts by parties in mandate cases to introduce into evidence (*Western States*) or to discover
6 evidence (*Pomona Valley*) that is *outside* the record of proceedings.

7 Both cases recognize the general rule that the evidence in administrative mandate cases is usually
8 limited to the administrative record, subject to the exceptions listed in Code of Civil Procedure section
9 1094.5(e). *Pomona Valley* further recognizes that discovery of *extra-record* evidence must be justified by
10 showing it is reasonably calculated to lead to the discovery of evidence that meets one of the exceptions
11 listed in Code Civ Proc. section 1094.5(e). Therefore, neither case provides authority relating to discovery
12 efforts undertaken—as here—for the purpose of discovering evidence for purposes of preparing the record
of proceedings.

13 Also, no case holds that a mandate or CEQA Plaintiff must obtain prior leave of court to propound
14 discovery. The Regents reliance on *City of Fairfield v. Superior Court* (1975) 14 Cal.3d 768 is misplaced.
15 This case recognizes that discovery in administrative mandamus cases is available as long as it meets the
16 test that all discovery must meet, i.e., that “such discovery is reasonably calculated to lead to admissible
17 evidence.” (Id. at 774–775.) Like *Pomona Valley*, the plaintiff in *City of Fairfield* also sought to obtain
18 discovery of information that was *outside* the administrative record, the admissibility of which is governed
19 by Code of Civil Procedure section 1094.5(e). In this context, the Court held that “This section limits the
20 admission of evidence *additional to the administrative record* to ‘relevant evidence which, in the exercise
21 of reasonable diligence, could not have been produced or which was improperly excluded at the hearing....’
(Id. (italics added).)

22 Thus, *City of Fairfield* is directed only to evidence *additional to the administrative record*, not to
23 evidence that must be *included in the administrative record*.

24 There are cases where a party has elected to file a request for leave of court to propound discovery
25 (See e.g., *Consolidated Irr. Dist. v. Superior Court*; *Consolidated Irr. Dist. v. City of Selma* (2012) 20
26 Cal.App.4th 187, 195; *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 1, 4.) But the fact that parties
27 in these cases voluntarily elected to file such a motion does not mean such a motion is required.
28

1 Indeed, discovery is common in mandamus cases, including CEQA cases. For example, in *Citizens*
2 *for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, the agency prepared a privilege log to
3 support its exclusion from the administrative record of allegedly privileged documents. (Id. at 304.) In that
4 case, the court overruled the agency's deliberative process objections based on the contents of the privilege
5 log. (Id. at 307; see also, *State of California v. Superior Court* (1974) 12 Cal.3d 237, 257 ["to the extent that
6 Veta can justify the interrogatories under that provision [section 1094.5 (e)], the Commission must file
7 answers to them"].)

8 Another instructive case is *Citizens for Ceres v. Superior Court* (2013) 217 Cal.App.4th 889
9 (*Citizens for Ceres*). In that case, the Court of Appeal held that a City agency could not exclude documents
10 from the administrative record in a CEQA case just by claiming the documents are privileged. The Court
11 held that the agency must make a specific "showing of preliminary facts supporting the privilege," stating:

12 It will still be necessary for the trial court to reexamine those privilege claims because the
13 court applied an incorrect standard in upholding them. In upholding all the challenged
14 privilege claims without exception, the court expressed the view that the party asserting a
15 claim of privilege need only assert it to obtain protection. In reality, the party asserting the
16 privilege is required to make a showing of preliminary facts supporting the privilege. The
17 court made no findings of these preliminary facts, and there is no substantial evidence in the
18 record that would have supported those findings for any document. The city will be permitted
19 to amend its submissions to make the necessary showings.

20 (Id. at 898.) The Court in *Citizens for Ceres* also held that an agency waives the attorney-client privilege
21 when it shares otherwise privileged communications with third parties who do not share a "common
22 interest." (Id. at 919.)

23 In order to apply this rule to any given document, the responding party must identify all recipients
24 of allegedly privileged documents, which is information provided by a privilege log. (*Catalina Island Yacht*
25 *Club v. Superior Court* (2015) 242 Cal.App.4th 1116, 1130 (*Catalina Island*) ["The precise information
26 required for an adequate privilege log will vary from case to case based on the privileges asserted and the
27 underlying circumstances. In general, however, a privilege log typically should provide the identity and
28 capacity of all individuals who authored, sent, or received each allegedly privileged document, the
document's date, a brief description of the document and its contents or subject matter sufficient to
determine whether the privilege applies, and the precise privilege or protection asserted"].) The Court in
Catalina Island also held that where a responding party asserts boilerplate objections based on privilege the
remedy is a court order requiring a privilege log. (Id at 1129–1130.)

1 In short, mandamus cases and CEQA cases are no different than other cases when it comes to the
2 procedures by which the right to discovery is exercised and enforced.

3 Moreover, The Regents' objections based on the general restriction of evidence to the administrative
4 record regarding the merits of a mandamus action do not apply to Plaintiff's second cause of action for
5 declaratory relief. (*East Bay Mun. Utility Dist. v. Department of Forestry & Fire Protection* (1996) 43
6 Cal.App.4th 1113, 1122 ["Even if, however, the point to be made by the introduction of multiple past agency
7 decisions is not that they individually or collectively should be reversed, presenting them in the aggregate
8 as evidence of an improper policy or practice and labeling the action one for declaratory relief does not
9 import into the declaratory relief action the rule applied in administrative mandamus which limits judicial
10 review to the record before the administrative agency"].)

11 **B. The Regents' General Objections 2-10 Should be Overruled Because They are Boilerplate and**
12 **The Regents Have Not Complied with the Civil Discovery Act.**

13 The Regents' General Objections 2 though 10 are boilerplate because the response does not explain
14 how they apply to the actual document requests.

15 The response fails to "Identify with particularity any document ... or electronically stored information
16 falling within any category of item in the demand to which an objection is being made" as required by Cal.
17 Code Civ. Proc., section 2031.240(b)(1).

18 General Objection 4, based on assertion of privilege, fails to include a privilege log as required by
19 Cal. Code Civ. Proc., section 2031.240(c)(1), (2).

20 General Objection 7, based on lack of "particularity" is not valid. The response does not explain why
21 any request lacks "particularity."

22 General Objection 8, that Plaintiff already possesses or has access to requested documents is not
23 valid. Plaintiff informed The Regents, by letter dated June 13, 2018, enclosing a provisional proposed index
24 of the record of proceedings, which documents Plaintiff downloaded from UCB's web site that should be
25 in the record. (Lippe Decl ¶ 11, Ex 7.) Yet, The Regents have not produced responsive documents that
26 Plaintiff does not possess or does not have access to.

27 General Objection 10, based on needing more time, is not valid because The Regents never asked
28 for an extension of time to produce the requested documents and they still have not produced the
29 requested documents.

1 **C. The Regents' Specific Objection to Requests 1-6 Based on Privilege Should be Overruled**
2 **Because The Objection is Boilerplate and The Regents Have Not Complied with the Civil**
3 **Discovery Act.**

4 For all six documents requests, The Regents object on grounds of privilege. This is insufficient.
5 Code of Civil Procedure, section 2031.240, subdivision (c), requires that "If an objection is based on a claim
6 of privilege or a claim that the information sought is protected work product, the response shall provide
7 sufficient factual information for other parties to evaluate the merits of that claim [of privilege], including,
8 if necessary, a privilege log." The Regents' response fail to comply with this requirement.

9 **D. The Regents' Specific Objection to Requests 1-6 Based on Plaintiff Already Possessing Some**
10 **Documents Should be Overruled Because The Objection is Not Valid.**


11 For all six requests for production, The Regents object on grounds that Plaintiff may already have
12 responsive documents. This is not a valid objection. Plaintiff informed The Regents, by letter dated June
13 13, 2018 enclosing a provisional proposed index of the record of proceedings, which documents Plaintiff
14 possesses that should be in the record. (Lippe Decl ¶ 11, Ex 7.) Yet, The Regents have not produced
15 responsive documents that Plaintiff does not possess.

16 **IV. CONCLUSION**

17 For the reasons described above, The Regents' objections to the requested discovery should be
18 overruled and this motion to compel granted.

19 DATED: November 1, 2018

LAW OFFICES OF THOMAS N. LIPPE, APC

20 By: 
21 Thomas N. Lippe
22 Attorney for Plaintiff

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Tab 020

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FAX No. 1-415-777-5606

P. 010

FILED BY FAX
ALAMEDA COUNTY

November 05, 2018

CLERK OF
THE SUPERIOR COURT
By Cheryl Clark, Deputy

CASE NUMBER:
RG18902751

1 Thomas N. Lippe, SBN 104640
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4 San Francisco, California 94105
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9 Attorney for Plaintiff: Save Berkeley's Neighborhoods

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

10 SAVE BERKELEY'S NEIGHBORHOODS, a
11 California nonprofit public benefit corporation;

12 Plaintiff,

13 vs.

14 THE REGENTS OF THE UNIVERSITY OF
15 CALIFORNIA; JANET NAPOLITANO, in her
16 capacity as President of the University of
17 California; CAROL T. CHRIST, in her capacity as
18 Chancellor of the University of California,
19 Berkeley; and DOES 1 through 20,

21 Respondents and Defendants.

Case No. RG18902751

**NOTICE OF MOTION AND MOTION TO
COMPEL FURTHER RESPONSES TO
PLAINTIFF'S REQUESTS FOR
PRODUCTION OF DOCUMENTS, SET
ONE**

**[CALIFORNIA ENVIRONMENTAL
QUALITY ACT]**

Reservation No. R-2018755

Date: December 6, 2018

Time: 3:45 P.M.

Dept.: 24

Judge: Hon. Frank Roesch

Action Filed: April 27, 2018

Trial Date: Not Set

Assigned for All Purposes to:
Hon. Frank Roesch, Dept. 24

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on December 6, 2018, at 3:45 p.m., or as soon thereafter as the matter
3 may be heard in Department 24 of the above-captioned Court, located at 1221 Oak Street, Oakland,
4 California, Plaintiff Save Berkeley's Neighborhoods will move to compel further responses to Plaintiff's
5 Requests for Production of Documents to The Regents of the University of California, et al., Set One and
6 for production of a privilege log, as required under C.C.P. § 2031.230.

7 Plaintiff made good faith efforts to resolve this dispute informally, but these efforts were
8 unsuccessful. (Declaration of Thomas N. Lippe (Lippe Decl.) ¶¶ 5-7.)

9 This motion is based on this Notice of Motion and Motion and the supporting Memorandum of
10 Points and Authorities; Separate Statement (CRC Rule 3.1345), and Declaration of Thomas N. Lippe filed
11 herewith, all papers and pleadings filed in this action, and upon such other and further oral and documentary
12 evidence as may be presented at the time of the hearing.

13 DATED: November 5, 2018

LAW OFFICES OF THOMAS N. LIPPE, APC

14 By: 

15 Thomas N. Lippe
16 Attorney for Plaintiff

17
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FAX No. 1-415-777-5606

F. 012

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ALAMEDA COUNTY
November 05, 2018
CLERK OF
THE SUPERIOR COURT
By Cheryl Clark, Deputy
CASE NUMBER:
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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

10 SAVE BERKELEY'S NEIGHBORHOODS, a
11 California nonprofit public benefit corporation;
12 Plaintiff,
13 vs.
14 THE REGENTS OF THE UNIVERSITY OF
15 CALIFORNIA; JANET NAPOLITANO, in her
16 capacity as President of the University of
17 California; CAROL T. CHRIST, in her capacity as
18 Chancellor of the University of California,
19 Berkeley; and DOES 1 through 20,
20
21 Respondents and Defendants.
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Case No. RG18902751

**SEPARATE STATEMENT IN SUPPORT OF
PLAINTIFF'S MOTION TO COMPEL
FURTHER RESPONSES TO PLAINTIFF'S
REQUESTS FOR PRODUCTION OF
DOCUMENTS, SET ONE**
[C.R.C. Rule 3.1345]

**[CALIFORNIA ENVIRONMENTAL
QUALITY ACT]**

Reservation No. R-2018755

Date: December 6, 2018

Time: 3:45 P.M.

Dept.: 24

Judge: Hon. Frank Roesch

Action Filed: April 27, 2018

Trial Date: Not Set

Assigned for All Purposes to:
Hon. Frank Roesch, Dept. 24

1 In support of its Motion to Compel Further Responses to Plaintiff's Requests for Production of
2 Documents, Set One, Plaintiff submits this Separate Statement pursuant to C.R.C. 3.1345.

3 **PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS TO THE REGENTS OF THE**
4 **UNIVERSITY OF CALIFORNIA, et al., SET ONE**

5 **DEFINITIONS**

- 6 1. The term "**WRITING**" means a "writing" as defined by Evidence Code section 250.
7 2. The term "**YOU**" or "**YOUR**" refers to Respondent The Regents of the University of California.

8 **INSTRUCTIONS FOR PRIVILEGED DOCUMENTS**

9 If any documents are withheld from production on the ground of privilege, YOU must provide the
10 following information as to each document in YOUR response to this Demand: (a) Date of document; (b)
11 Type of document; (c) Name of the document's author(s); (d) Name of the recipient(s), including the names
12 of those receiving copies; and (e) Nature and basis of the privilege claimed.

13 **DOCUMENT REQUESTS, RESPONSES/OBJECTIONS AND PLAINTIFF'S REPLIES**

14 **Request No. 1.**

15 All writings, including internal staff memoranda and emails, that refer or relate to increases in
16 student enrollment at UC Berkeley that were prepared in connection with the preparation of UC Berkeley's
2020 Long Range Development Plan.

17 **Respondents Response and Objections**

18 **General Objection 1.** UC objects to the Request for Production seeking production of documents
19 pertaining to Petitioners' Petition for Writ of Mandate and Complaint for Declaratory Relief
20 ("Petition") filed with the Court on April 27, 2018 (and subsequent First Amended Petition for
21 Writ of Mandate and Complaint for Declaratory Relief ("First Amended Petition") filed with the
22 Court on June 18, 2018), because Petitioners have not made the required showing to conduct
23 discovery in this writ proceeding. Petitioners filed their petition for administrative mandate
24 challenging UC's actions under Code of Civil Procedure section 1094.5. The Court's review of
25 UC's actions under section 1094.5 is limited to the administrative record. (*Western States*
26 *Petroleum Assn. v. Superior' Court* (1995) 9 Cal.4th 559, 578.) The Court may admit evidence
27 outside of the record only if it finds that the evidence could not with reasonable diligence have
28 been presented at the administrative hearing, or was improperly excluded at that hearing. (Code Civ. Proc.

1 § 1094.5, subd. (e).) “This limitation on the admission of post-administrative evidence works a
2 corresponding limitation on post-administrative discovery, restricting inquiries to those reasonably
3 calculated to lead to the discovery of additional evidence admissible under the terms of section 1094.5.”
4 (*City of Fairfield v. Superior Court* (1975) 14 Cal.3d 768, 772.) This requires Petitioners to demonstrate that
5 the discovery sought is reasonably calculated to lead to admissible evidence under section 1094.5(e).
6 (*Pomona Valley Hospital Medical Center v. Superior Court* (1997) 55 Cal.App.4th 93, 103; 2 Abbot et al.,
7 Cal. Administrative Mandamus (Cont.Ed.Bar 2016) §§ 13.8, 13.21.) Petitioners have not made such a
8 showing here and, thus, no discovery should be permitted in this action.

9 **General Objection 2.** UC objects to the Request for Production to the extent it improperly seeks
10 discovery outside the scope of the claims at issue in this action. In responding to the Request for Production,
11 UC does not concede the relevancy or materiality of any individual request or of the subject matter to which
12 the Request for Production refers. UC’s response to each request is made subject to, and without in any way
13 waiving or intending to waive, any questions or objections as to the competency, relevancy, materiality,
14 privilege, or admissibility as evidence for any purpose, of any of the information subsequently provided or
15 referred to, or of the subject matter thereof, in any proceeding.

16 **General Objection 3.** UC reserves all rights to object on any ground to the use of any of these
17 responses provided or documents produced in any subsequent proceeding, including the trial of this or any
18 other action.

19 **General Objection 4.** UC objects to the Request for Production to the extent it seeks documents
20 or information protected or privileged under the law, by the attorney-client privilege, the work product
21 doctrine, legislative/deliberative process privilege, as trial preparation materials, or any other privileges
22 recognized by the Code of Civil Procedure and by any other applicable law. Such documents and/
23 information will not be produced. Any inadvertent production of documents or information subject to
24 privileges and protections is not intended to be, nor shall be construed as, a waiver of such privileges and
25 protections.

26 **General Objection 5.** UC objects to the Request for Production to the extent it seeks documents
27 or information that is not within the possession, custody, or control of UC.

28 **General Objection 6.** UC objects to the Request for Production to the extent it purports to impose
obligations beyond those set forth in the Code of Civil Procedure and the Evidence Code.

General Objection 7. UC objects to the Request for Production on the grounds that it is not reasonably particularized such that UC may identify the information or documents requested.

General Objection 8. UC objects to the Request for Production to the extent it seeks information that is available through others unrelated to UC, and/or is a matter of public record, and/or is otherwise equally available to Petitioners.

General Objection 9. UC objects to the Request for Production to the extent it seeks information which is not relevant to the subject matter involved in the pending action and is not reasonably calculated to lead to the discovery of admissible evidence.

General Objection 10. UC further objects to the time and place of the requested production of documents. The overbroad scope of the requests may result in a substantial volume of documents that must be reviewed as potentially responsive to the Request for Production. The deadline set for responding provides too short of a time period for adequate review.

Specific Objections to Request No. 1. UC objects to this request on the ground that it is vague, unduly burdensome, overbroad, and oppressive; on the ground that it is not reasonably limited as to time and on the ground that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. UC further objects to the extent this request seeks documents or information protected by the attorney-client privilege, the attorney work product doctrine, the legislative/deliberative process privilege, the common interest doctrine, or other applicable privileges or protections. UC further objects to this request as repetitive to the extent it seeks documents that are already in Petitioners' possession, custody, or control. UC also objects to this request on the grounds that the request is not reasonably particularized such that UC may identify the particular documents requested.

Plaintiff's Replies to Objections

Plaintiff's Reply to General Objection 1. The Regents' General Objection 1 and September 2018, letter contend (1) the Civil Discovery Act does not authorize a CEQA plaintiff who has elected to prepare the record of proceeding to utilize a document request under Code of Civil Procedure section 2031.010 *et seq.* to obtain documents in the possession of the public agency for the purpose of preparing the record; and (2) to the extent the Civil Discovery Act may be available to a CEQA plaintiff who has elected to prepare the record, CEQA plaintiffs must obtain prior leave of court before propounding discovery requests. Both contentions are wrong.

1 The Regents contend that because the merits of a CEQA mandamus case will be tried on the
2 “administrative record,” that normal civil discovery statutes do not apply. This is wrong. The Civil
3 Discovery Act provides:

4 Unless otherwise limited by order of the court in accordance with this title, any party may
5 obtain discovery regarding any matter, not privileged, that is relevant to the subject matter
6 involved in the pending action or to the determination of any motion made in that action, if
7 the matter either is itself admissible in evidence or appears reasonably calculated to lead to
the discovery of admissible evidence.

8 (Code of Civil Procedure § 2017.040.) The term “‘Action’ includes a civil action and a special proceeding
9 of a civil nature.” (Code of Civil Procedure § 2017.020(a).) A petition for writ of mandate is a special
10 proceeding of a civil nature. (Code of Civil Procedure §§ 23, 1063 et seq.) Moreover, the decision in
11 *Consolidated Irr. Dist. v. Superior Court* (2012) 205 Cal.App.4th 697 squarely rejects the Regents’
12 contention, holding that: “City’s contention that discovery is not allowed in a CEQA case is wrong.” (Id.
at 713.)

13 The applicable standard is whether the discovery is reasonably calculated to lead to the discovery
14 of admissible evidence. In CEQA mandate cases, “admissible” evidence includes documents described in
15 Public Resources Code section 21167.6, subdivision (e). This statute “contemplates that the administrative
16 record will include pretty much everything that ever came near a proposed development or to the agency’s
17 compliance with CEQA in responding to that development.” (*County of Orange v. Superior Court* (2003)
18 113 Cal.App.4th 1, 8.) Therefore, Plaintiff’s requests for documents are likely to lead to the discovery of
19 evidence that must be included in the record of proceedings.

20 The Regents rely on several cases to support their contention that discovery is not available in this
21 case, or if it is, Plaintiff’s need prior leave of court before propounding discovery requests, including
22 *Western States Petroleum Association v. Superior Court* (1995) 9 Cal.4th 559, 576 and *Pomona Valley
23 Hospital Medical Center v. Superior Court* (1997) 55 Cal.App.4th 93, 102. These cases are inapposite
24 because they address efforts by parties in mandate cases to introduce into evidence (*Western States*) or to
25 discover evidence (*Pomona Valley*) that is *outside* the record of proceedings.

26 Both cases recognize the general rule that the evidence in administrative mandate cases is usually
27 limited to the administrative record, subject to the exceptions listed in Code of Civil Procedure section
28 1094.5(e). *Pomona Valley* further recognizes that discovery of *extra-record* evidence must be justified by

1 showing it is reasonably calculated to lead to the discovery of evidence that meets one of the exceptions
2 listed in Code Civ Proc. section 1094.5(e). Therefore, neither case provides authority relating to discovery
3 efforts undertaken—as here—for the purpose of discovering evidence for purposes of preparing the record
4 of proceedings.

5 Also, no case holds that a mandate or CEQA Plaintiff must obtain prior leave of court to propound
6 discovery. The Regents reliance on *City of Fairfield v. Superior Court* (1975) 14 Cal.3d 768 is misplaced.
7 This case recognizes that discovery in administrative mandamus cases is available as long as it meets the
8 test that all discovery must meet, i.e., that “such discovery is reasonably calculated to lead to admissible
9 evidence.” (Id. at 774–775.) Like *Pomona Valley*, the plaintiff in *City of Fairfield* also sought to obtain
10 discovery of information that was *outside* the administrative record, the admissibility of which is governed
11 by Code of Civil Procedure section 1094.5(e). In this context, the Court held that “This section limits the
12 admission of evidence *additional to the administrative record* to ‘relevant evidence which, in the exercise
13 of reasonable diligence, could not have been produced or which was improperly excluded at the hearing....’
(*Id.* (italics added).)

14 Thus, *City of Fairfield* is directed only to evidence *additional to the administrative record*, not to
15 evidence that must be *included in the administrative record*.

16 There are cases where a party has elected to file a request for leave of court to propound discovery
17 (See e.g., *Consolidated Irr. Dist. v. Superior Court*; *Consolidated Irr. Dist. v. City of Selma* (2012) 20
18 Cal.App.4th 187, 195; *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 1, 4.) But the fact that parties
19 in these cases voluntarily elected to file such a motion does not mean such a motion is required.

20 Indeed, discovery is common in mandamus cases, including CEQA cases. For example, in *Citizens
21 for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, the agency prepared a privilege log to
22 support its exclusion from the administrative record of allegedly privileged documents. (Id. at 304.) In that
23 case, the court overruled the agency’s deliberative process objections based on the contents of the privilege
24 log. (Id. at 307; see also, *State of California v. Superior Court* (1974) 12 Cal.3d 237, 257 [“to the extent that
25 Veta can justify the interrogatories under that provision [section 1094.5 (e)], the Commission must file
26 answers to them”].)

27 Another instructive case is *Citizens for Ceres v. Superior Court* (2013) 217 Cal.App.4th 88
28 (*Citizens for Ceres*). In that case, the Court of Appeal held that a City agency could not exclude documents

1 from the administrative record in a CEQA case just by claiming the documents are privileged. The Court
2 held that the agency must make a specific “showing of preliminary facts supporting the privilege,” stating:

3 It will still be necessary for the trial court to reexamine those privilege claims because the
4 court applied an incorrect standard in upholding them. In upholding all the challenged
5 privilege claims without exception, the court expressed the view that the party asserting a
6 claim of privilege need only assert it to obtain protection. In reality, the party asserting the
7 privilege is required to make a showing of preliminary facts supporting the privilege. The
8 court made no findings of these preliminary facts, and there is no substantial evidence in the
9 record that would have supported those findings for any document. The city will be permitted
10 to amend its submissions to make the necessary showings.

11 (Id. at 898.) The Court in *Citizens for Ceres* also held that an agency waives the attorney-client privilege
12 when it shares otherwise privileged communications with third parties who do not share a “common
13 interest.” (Id. at 919.)

14 In order to apply this rule to any given document, the responding party must identify all recipients
15 of allegedly privileged documents, which is information provided by a privilege log. (*Catalina Island Yacht*
16 *Club v. Superior Court* (2015) 242 Cal.App.4th 1116, 1130 (*Catalina Island*) [“The precise information
17 required for an adequate privilege log will vary from case to case based on the privileges asserted and the
18 underlying circumstances. In general, however, a privilege log typically should provide the identity and
19 capacity of all individuals who authored, sent, or received each allegedly privileged document, the
20 document’s date, a brief description of the document and its contents or subject matter sufficient to
21 determine whether the privilege applies, and the precise privilege or protection asserted”].) The Court in
22 *Catalina Island* also held that where a responding party asserts boilerplate objections based on privilege the
23 remedy is a court order requiring a privilege log. (Id at 1129–1130.)

24 In short, mandamus cases and CEQA cases are no different than other cases when it comes to the
25 procedures by which the right to discovery is exercised and enforced.

26 Moreover, the Regents’ objections based on the general restriction of evidence to the administrative
27 record regarding the merits of a mandamus action do not apply to Plaintiff’s second cause of action for
28 declaratory relief. (*East Bay Mun. Utility Dist. v. Department of Forestry & Fire Protection* (1996) 43
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decisions is not that they individually or collectively should be reversed, presenting them in the aggregate
as evidence of an improper policy or practice and labeling the action one for declaratory relief does not
import into the declaratory relief action the rule applied in administrative mandamus which limits judicial

1 review to the record before the administrative agency”].)

2 **Plaintiff’s Reply to General Objections 2-10.** The Regents General Objections 2 though 10 are
3 boilerplate because the response does not explain how they apply to the actual document requests.

4 The response fails to “Identify with particularity any document ... or electronically stored information
5 falling within any category of item in the demand to which an objection is being made” as required by Cal.
6 Code Civ. Proc., section 2031.240(b)(1).

7 General Objection 4, based on assertion of privilege, fails to include a privilege log as required by
8 Cal. Code Civ. Proc., section 2031.240(c)(1), (2).

9 General Objection 7, based on lack of “particularity” is not valid. The response does not explain why
10 any request lacks “particularity.”

11 General Objection 8, based on Plaintiff’s already possessing or having access to requested documents
12 is not valid. Plaintiff informed the Regents, by letter dated June 13, 2018, enclosing a provisional proposed
13 index of the record of proceedings, which documents Plaintiff downloaded from UCB’s web site that should
14 be in the record. (Lippe Decl ¶ 11, Ex 7.) Yet, the Regents have not produced responsive documents that
15 Plaintiff does not possess or does not have access to.

16 General Objection 10, based on needing more time, is not valid because the Regents never asked for
17 an extension of time to produce the requested documents and they still have not produced the the requested
18 documents.

19 **Plaintiff’s Reply to Specific Objections to Request No. 1.** This specific objection repeats General
20 Objections 4 (privilege), 7 (lack of particularity) and 8 (Plaintiff has the documents). Plaintiff’s replies to
21 these General Objections are set forth above.

22 This specific objection adds a “vague and ambiguous” objection. This objection should be overruled
23 because the response does not explain why the request is “vague and ambiguous” and because the request
24 is not “vague and ambiguous.”

25 **Request No. 2.**

26 All writings, including internal staff memoranda and emails, that refer or relate to increases in
27 student enrollment at UC Berkeley or the impact on the physical environment of increasing student
28 enrollment at UC Berkeley that were prepared in connection with preparing any environmental documents
for the 2020 Long Range Development Plan pursuant to the California Environmental Quality Act.

1 **General Objections 1-10.** Same as for Request No. 1 above.

2 **Specific Objections.** Same as for Request No. 1 above.

3 **Plaintiff's Reply to All Objections.** Same as for Request No. 1 above.

4 **Request No. 3.**

5 All writings, including internal staff memoranda and emails, that refer or relate to increases in
6 student enrollment at UC Berkeley that were prepared in connection with the adoption of UC Berkeley's
7 2020 Long Range Development Plan by the Regents of the University of California.

8 **General Objections 1-10.** Same as for Request No. 1 above.

9 **Specific Objections.** Same as for Request No. 1 above.

10 **Plaintiff's Reply to All Objections.** Same as for Request No. 1 above.

11 **Request No. 4.**

12 All writings, including internal staff memoranda and emails, that refer or relate to increases in
13 student enrollment at UC Berkeley or the impact on the physical environment of increasing student
14 enrollment at UC Berkeley that were prepared in connection with the adoption of any environmental
15 document prepared for the 2020 Long Range Development Plan pursuant to the California Environmental
Quality Act.

16 **General Objections 1-10.** Same as for Request No. 1 above.

17 **Specific Objections.** Same as for Request No. 1 above.

18 **Plaintiff's Reply to All Objections.** Same as for Request No. 1 above.

19 **Request No. 5.**

20 All writings, including internal staff memoranda and emails, that refer or relate to increases in
21 student enrollment at UC Berkeley that were prepared since the adoption of UC Berkeley's 2020 Long
22 Range Development Plan by the Regents of the University of California.

23 **General Objections 1-10.** Same as for Request No. 1 above.

24 **Specific Objections.** Same as for Request No. 1 above.

25 **Plaintiff's Reply to All Objections.** Same as for Request No. 1 above.

26 **Request No. 6.**

27 All writings, including internal staff memoranda and emails, that refer or relate to increases in
28 student enrollment at UC Berkeley or the impact on the physical environment of increasing student

1 enrollment at UC Berkeley that were prepared after certification of the Final Environmental Impact Report
2 for the 2020 Long Range Development Plan pursuant to the California Environmental Quality Act.


3 **General Objections 1-10.** Same as for Request No. 1 above.

4 **Specific Objections.** Same as for Request No. 1 above.

5 **Plaintiff's Reply to All Objections.** Same as for Request No. 1 above.

6 DATED: November 5, 2018

LAW OFFICES OF THOMAS N. LIPPE, APC

7
8 By: 
9 Thomas N. Lippe
10 Attorney for Plaintiff

11 T:\TL\UC Enroll\Trial\Mtn Compel\M022 Compel Sep St.wpd
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Tab 022

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F. 022

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

10 SAVE BERKELEY'S NEIGHBORHOODS, a
 11 California nonprofit public benefit corporation;
 12 Plaintiff,
 13 vs.
 14 THE REGENTS OF THE UNIVERSITY OF
 15 CALIFORNIA; JANET NAPOLITANO, in her
 16 capacity as President of the University of
 17 California; CAROL T. CHRIST, in her capacity as
 18 Chancellor of the University of California,
 19 Berkeley; and DOES 1 through 20,
 20 Respondents and Defendants.

Case No. RG18902751

**DECLARATION OF THOMAS N. LIPPE IN
 SUPPORT OF MOTION TO COMPEL
 FURTHER RESPONSES TO PLAINTIFF'S
 REQUESTS FOR PRODUCTION OF
 DOCUMENTS, SET ONE**

**[CALIFORNIA ENVIRONMENTAL
 QUALITY ACT]**

Reservation No. R-2018755

Date: December 6, 2018

Time: 3:45 P.M.

Dept.: 24

Judge: Hon. Frank Roesch

Action Filed: April 27, 2018

Trial Date: Not Set

Assigned for All Purposes to:
 Hon. Frank Roesch, Dept. 24

Document received by the CA 1st District Court of Appeal.

1 I, Thomas N. Lippe, declare:

2 1. I am an attorney licensed to practice before all courts of this State. I am attorney of record for
3 Plaintiff in this action.

4 2. When Plaintiff filed the case, it elected to prepare the record of proceedings under Public Resources
5 Code section 21167.6(b). A true and correct copy of this election is attached hereto as Exhibit 1.

6 3. To effectuate this election, on May 18, 2018, Plaintiff served on Respondents a Request for
7 Production of Documents that included six requests for documents that relate to “increases in student
8 enrollment at UC Berkeley” that were prepared in connection with the preparation and adoption of UC
9 Berkeley’s 2020 Long Range Development Plan and subsequent to adoption of the 2020 LRDP.

10 4. The parties stipulated to extend the deadline for the Regents to respond to Plaintiff’s first Request
11 for Production of Documents while the parties discussed settlement of the case. As a result, the Regents’
12 response was finally due on September 7, 2018.

13 5. On September 7, 2018, after settlement discussion concluded (without success), Respondents served
14 on Plaintiff their Objections to Petitioners’ Request for Production of Documents, in which Respondents
15 refused to produce any documents. A true and correct copy of this discovery response is attached hereto as
16 Exhibit 3. Respondents also sent Plaintiff a letter dated September 7, 2018, explaining their position
17 rejecting discovery. A true and correct copy of this letter is attached hereto as Exhibit 4.

18 6. On September 19, 2018, Plaintiff sent a “meet and confer” letter responding to Respondents
19 Objections to Petitioners’ Request for Production of Documents. A true and correct copy of this letter is
20 attached hereto as Exhibit 5.

21 7. On October 5, 2018, Respondents counsel sent a letter responding to this “meet and confer” letter.
22 A true and correct copy of this letter is attached hereto as Exhibit 6.

23 8. The following paragraphs of this declaration detail the remainder of Plaintiff’s efforts to obtain
24 Respondent’s records regarding its history of decision-making regarding increasing enrollment and
25 Defendants’ stone-walling of these efforts.

26 9. When this case was filed, Local Rules 3.320(a) and (d)(1) (since repealed as of August 1, 2018)
27 required that Respondents provide Plaintiff with costs estimates for preparing the record and the location
28 and custodian of all documents to be included in the record. On May 24, 2018, counsel for Respondents
responded to these rules by sending a letter to counsel for Plaintiff declining to provide this information on

1 the ground that “Based on the allegations in the Petition for Writ of Mandate, Respondents cannot identify
2 the documents anticipated to be incorporated into the administrative record. Petitioner has not challenged
3 any Project or any action subject to CEQA or any Project approval by Respondents in the Petition.”

4 10. On June 4, 2018, Plaintiff’s counsel responded that: “CEQA defines the term ‘Project’ to mean ‘an
5 activity which may cause either a direct physical change in the environment, or a reasonably foreseeable
6 indirect physical change in the environment, and which is any of the following: (a) An activity directly
7 undertaken by any public agency.” (PRC § 21065.) The petition identifies such an ‘activity:’ namely,
8 increasing the number of students enrolled at UC Berkeley” and requested the Respondents immediately
9 comply with the local rule of court.

10 11. On June 13, 2018, pursuant to Local Rule 3.320(d)(2) (since repealed as of August 1, 2018), Plaintiff
11 sent to Respondents a provisional proposed index of the record of proceedings in this matter. The proposed
12 index was “provisional” because Respondents had not complied with the local rules requiring disclosure of
13 documents to be included in the record of proceedings. The provisional proposed index listed documents
14 that Plaintiff was able to find on and download from UC Berkeley’s “Capital Strategies” website. In this
15 letter, Counsel again asked Respondents to comply with Local Rule 3.320(d)(1). A true and correct copy
16 of this letter is attached hereto as Exhibit 7.

17 12. On June 20, 2018, pursuant to Local Rule 3.320(d)(2) (since repealed as of August 1, 2018),
18 Respondents responded to Plaintiff’s provisional proposed index of the record of proceedings by reiterating
19 its position that it cannot comply with this rule because the Petition and Complaint do not challenge a CEQA
20 project.

21 13. On July 24, 2018, Plaintiff submitted a written request to the Regents pursuant to the California
22 Public Records Act requesting all records showing actual and projected Registered Student Headcount at
23 UC Berkeley for the academic terms: Spring 2018, Fall 2018, Spring 2019, Fall 2019, Spring 2020, Fall
24 2020, Spring 2021, Fall 2021, Spring 2022.

25 14. The Regents ignored this request.

26 15. On August 15, 2018, the Regents issued a Notice of Preparation of a Draft Supplemental
27 Environmental Impact Report for the “Upper Hearst Development for the Goldman School of Public Policy
28 and Minor Amendment to the 2020 Long Range Development Plan.” (Upper Hearst NOP.) The NOP stated
that: “At this time, UC Berkeley estimates an overall campus population headcount growth of about 1

1 percent annually, on an average, in the near-term.

2 16. On September 26, 2018, Plaintiff submitted written notification to the Regents that their failure to
3 respond to Plaintiff's July 24, 2018, Public Records Act request, within 10 days of the request or to give
4 notice of an extension of this deadline for up to 14 days, violates the Public Records Act. (See Gov. Code §
5 6253(c).) This notice again requested the same records (i.e., records showing actual and projected
6 Registered Student Headcount at UC Berkeley for the academic terms: Spring 2018, Fall 2018, Spring 2019,
7 Fall 2019, Spring 2020, Fall 2020, Spring 2021, Fall 2021, Spring 2022.)

8 17. On September 26, 2018, Plaintiff served a second request for production of documents on the
9 Regents asking for the same records (i.e., records showing actual and projected Registered Student
10 Headcount at UC Berkeley for the academic terms: Spring 2018, Fall 2018, Spring 2019, Fall 2019, Spring
11 2020, Fall 2020, Spring 2021, Fall 2021, Spring 2022.)

12 18. On September 26, 2018, Plaintiff served on Respondents a set of requests for admissions.

13 I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true
14 and correct of my personal knowledge. Executed on November 5, 2018, in San Francisco, California.

15 

16 Thomas N. Lippe

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EXHIBIT 1

Document received by the CA 1st District Court of Appeal.

AA00234

ENDORSED
FILED
ALAMEDA COUNTY

APR 27 2018

CLERK OF THE SUPERIOR COURT
By CURTIYAH GANTER

Deputy

1 Thomas N. Lippe, SBN 104640
2 LAW OFFICES OF THOMAS N. LIPPE, APC
3 201 Mission Street, 12th Floor
4 San Francisco, California 94105
5 Tel: (415) 777-5604
6 Fax: (415) 777-5606
7 E-mail: Lippelaw@sonic.net
8 Attorney for Plaintiff: Save Berkeley's Neighborhoods

9
10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF ALAMEDA**

12 SAVE BERKELEY'S NEIGHBORHOODS, a
13 California nonprofit public benefit corporation;

14 Plaintiff,

15 vs.

16 THE REGENTS OF THE UNIVERSITY OF
17 CALIFORNIA; JANET NAPOLITANO, in her
18 capacity as President of the University of
19 California; CAROL T. CHRIST, in her capacity as
20 Chancellor of the University of California,
21 Berkeley; and DOES 1 through 20,

22 Respondents and Defendants.
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Case No. RG18902751

**PLAINTIFF'S REQUEST AND ELECTION
TO PREPARE RECORD OF
PROCEEDINGS [Pub. Resources Code, §
21167.6(b)(2)]**

**[CALIFORNIA ENVIRONMENTAL
QUALITY ACT]**

Document received by the CA 1st District Court of Appeal.

1 Pursuant to Public Resources Code section 21167.6, Plaintiff notifies Respondents and Defendants
2 that Plaintiff elects to prepare the record of proceedings unless the parties agree to an alternative method of
3 preparation in accordance with Public Resources Code § 21167.6.
4

5 Plaintiff elects to prepare the record specifically for the purpose of exercising Plaintiff's statutory
6 right to control all costs associated with preparing the record of proceedings in this matter.¹ Accordingly,
7 Plaintiff expressly disavows and denies all liability pursuant to Government Code section 11523, or any
8 other applicable law, for any purported costs or other charges that may be claimed by Respondents and
9 Defendants or any other person or entity associated with preparing the record of proceedings in this matter,
10 unless such amounts are disclosed to and approved by Plaintiff before such costs are incurred.
11

12
13 Plaintiff also notifies Respondents and Defendants that Plaintiff intends to introduce evidence not
14 contained in any record of proceedings at the trial or hearing on the merits of the Petition and Complaint
15 filed herewith. (See *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 576 ["we will
16 continue to allow admission of extra-record evidence in traditional mandamus actions challenging
17 ministerial or informal administrative actions if the facts are in dispute"].)
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19 DATED: April 27, 2018

LAW OFFICES OF THOMAS N. LIPPE, APC

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22 

23 Thomas N. Lippe

24 Attorney for Plaintiff Save Berkeley's Neighborhoods

25 T:\TL\UC Enroll\Trial\Pleadings\P002 Request for Record.wpd
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30 ¹ *Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal.App.3rd 433, 447 ("[u]nder section 21167.6, plaintiffs ha[ve] the option of preparing the administrative record themselves to minimize expenses.")

EXHIBIT 2

Document received by the CA 1st District Court of Appeal.

1 Thomas N. Lippe, SBN 104640
2 LAW OFFICES OF THOMAS N. LIPPE, APC
3 201 Mission Street, 12th Floor
4 San Francisco, California 94105
5 Tel: (415) 777-5604
6 Fax: (415) 777-5606
7 E-mail: Lippelaw@sonic.net

8 Attorney for Plaintiff: Save Berkeley's Neighborhoods

9
10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF ALAMEDA**

12 SAVE BERKELEY'S NEIGHBORHOODS, a
13 California nonprofit public benefit corporation;

14 Plaintiff,
15 vs.

16 THE REGENTS OF THE UNIVERSITY OF
17 CALIFORNIA; JANET NAPOLITANO, in her
18 capacity as President of the University of
19 California; CAROL T. CHRIST, in her capacity as
20 Chancellor of the University of California,
21 Berkeley; and DOES 1 through 20,

22 Respondents and Defendants.

Case No. RG18902751

**PLAINTIFF'S REQUEST FOR
PRODUCTION OF DOCUMENTS TO THE
REGENTS OF THE UNIVERSITY OF
CALIFORNIA, et al., SET ONE**

**[CALIFORNIA ENVIRONMENTAL
QUALITY ACT]**

23 Propounding Parties: Save Berkeley's Neighborhoods

24 Responding Party: The Regents of the University of California

25 Set: ONE
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Pursuant to Code of Civil Procedure section 2031.010 *et seq.* and all applicable law, Plaintiff Save Berkeley's Neighborhoods demands that Respondents The Regents of the University of California, et al., serve written responses hereto and permit Plaintiff and the attorneys for Plaintiff to inspect and copy the writings designated below. Said written responses shall be served by Respondent the Regents of the University of California, et al., within thirty (30) days after service of this request. The writings shall be produced for inspection and copying at the offices of Law Offices of Thomas N. Lippe, APC, 201 Mission Street, 12th Floor, San Francisco, California 94105, on June 22, 2018, at 10:00 a.m.

The documents shall either be: (1) produced as they are kept in the usual course of business; or (2) organized and labeled with exhibit numbers which correspond to Plaintiffs' requests so that the response will demonstrate the specific categories of documents produced by responding party or the absence thereof.

DEFINITIONS

1. The term "**WRITING**" means a "writing" as defined by Evidence Code section 250.
2. The term "**YOU**" or "**YOUR**" refers to Respondent The Regents of the University of California.

INSTRUCTIONS FOR PRIVILEGED DOCUMENTS

If any documents are withheld from production on the ground of privilege, YOU must provide the following information as to each document in YOUR response to this Demand: (a) Date of document; (b) Type of document; (c) Name of the document's author(s); (d) Name of the recipient(s), including the name of those receiving copies; and (e) Nature and basis of the privilege claimed.

DOCUMENT REQUESTS

1. All writings, including internal staff memoranda and emails, that refer or relate to increases in student enrollment at UC Berkeley that were prepared in connection with the preparation of UC Berkeley 2020 Long Range Development Plan.
2. All writings, including internal staff memoranda and emails, that refer or relate to increases in student enrollment at UC Berkeley or the impact on the physical environment of increasing student enrollment at UC Berkeley that were prepared in connection with preparing any environmental document for the 2020 Long Range Development Plan pursuant to the California Environmental Quality Act.
3. All writings, including internal staff memoranda and emails, that refer or relate to increases in student enrollment at UC Berkeley that were prepared in connection with the adoption of UC Berkeley 2020 Long Range Development Plan by the Regents of the University of California.

1 4. All writings, including internal staff memoranda and emails, that refer or relate to increases in
2 student enrollment at UC Berkeley or the impact on the physical environment of increasing student
3 enrollment at UC Berkeley that were prepared in connection with the adoption of any environmental
4 document prepared for the 2020 Long Range Development Plan pursuant to the California Environmental
5 Quality Act.

6 5. All writings, including internal staff memoranda and emails, that refer or relate to increases in
7 student enrollment at UC Berkeley that were prepared since the adoption of UC Berkeley's 2020 Long
8 Range Development Plan by the Regents of the University of California.

9 6. All writings, including internal staff memoranda and emails, that refer or relate to increases in
10 student enrollment at UC Berkeley or the impact on the physical environment of increasing student
11 enrollment at UC Berkeley that were prepared after certification of the Final Environmental Impact Report
12 for the 2020 Long Range Development Plan pursuant to the California Environmental Quality Act.

13 DATED: May 18, 2018

LAW OFFICES OF THOMAS N. LIPPE, APC

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15 

16 Thomas N. Lippe

17 Attorney for Plaintiff Save Berkeley's Neighborhoods
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PROOF OF SERVICE

I am a citizen of the United States, employed in the City and County of San Francisco, California. My business address is 201 Mission Street, 12th Floor, San Francisco, CA 94105. I am over the age of 18 years and not a party to the above entitled action. On May 18, 2018, I served the following document on the parties below, as designated:

- **PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS TO THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al., SET ONE**

MANNER OF SERVICE
(check all that apply)

- ☐ By Mail: In the ordinary course of business, I caused each such envelope to be placed in the custody of the United States Postal Service, with postage thereon fully prepaid in a sealed envelope.
- ☐ By Personal Service: I personally delivered each such envelope to the office of the address on the date last written below.
- ☐ By Overnight FedEx: I caused such envelope to be placed in a box or other facility regularly maintained by the express service carrier or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for.
- ☒ By E-mail: I caused such document to be served via electronic mail equipment transmission (E-mail) on the parties as designated on the attached service list by transmitting a true copy to the following E-mail addresses listed under each addressee below.
- ☐ By Personal Delivery by Courier: I caused each such envelope to be delivered to an authorized courier or driver, in an envelope or package addressed to the addressee below.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 18, 2018, in the City and County of San Francisco, California

Kelly Marie Perry
Kelly Marie Perry

SERVICE LIST

Office of General Counsel
Anagha Dandekar Clifford, Senior Counsel
1111 Franklin Street, 8th Floor
Oakland, CA 94607
Email: Anagha Clifford (Anagha.Clifford@ucop.edu)

Meyers Nave
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T:\TL\UC Enroll\Trial\Disco\D001a Plaintiff RFP to UC Set One.wpd

EXHIBIT 3

Document received by the CA 1st District Court of Appeal.

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EXEMPT FROM FILING FEES
GOV'T CODE § 6103

Attorneys for The Regents of the University of
California; Janet Napolitano, in her capacity as
President of the University of California; Carol T.
Christ, in her capacity as Chancellor of the
University of California, Berkeley

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

SAVE BERKELEY'S NEIGHBORHOODS, a
California nonprofit public benefit
corporation,

Plaintiff,

v.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA; JANET NAPOLITANO, in
her capacity as President of the University of
California; CAROL T. CHRIST, in her
capacity as Chancellor of the University of
California, Berkeley; and DOES 1 through 20,

Respondents and Defendants.

Case No. RG18902751

ASSIGNED FOR ALL PRE-TRIAL
PURPOSES TO
JUDGE HON. FRANK ROESCH
DEPARTMENT 24

**OBJECTIONS TO PETITIONERS'
REQUEST FOR PRODUCTION OF
DOCUMENTS TO THE REGENTS OF
THE UNIVERSITY OF CALIFORNIA, ET
AL., SET ONE**

Action Filed: April 27, 2018
Trial Date: None Set

1 TO PETITIONERS AND THEIR ATTORNEY OF RECORD:

2 Pursuant to Code of Civil Procedure section 2031.210, Respondents and Defendants The
3 Regents of University of California, Janet Napolitano, in her capacity as President of the
4 University of California, and Carol T. Christ, in her capacity as Chancellor of the University of
5 California, Berkeley (collectively, "UC") hereby object to Petitioners and Plaintiffs Save
6 Berkeley's Neighborhoods' ("Petitioners") Request for Production of Documents to The Regents
7 of the University of California, et al., Set One ("Request for Production"), served on May 18,
8 2018, as follows:

9
10 **GENERAL OBJECTIONS**

11 Service of these written objections is not intended as an affirmative representation
12 acknowledgement that the Request for Production is proper, or that Petitioners are allowed to
13 conduct any discovery at this time, which may be raised as a ground for refusal to produce the
14 requested documents, or that the documents will be produced pursuant to the Request for
15 Production. Nor does UC waive any rights, privileges or immunities, procedural or substantive,
16 which may be raised as a ground for refusal to produce the requested documents. Each response is
17 given subject to all appropriate objections, including the following General Objections:

18 1. UC objects to the Request for Production seeking production of documents
19 pertaining to Petitioners' Petition for Writ of Mandate and Complaint for Declaratory Relief
20 ("Petition") filed with the Court on April 27, 2018 (and subsequent First Amended Petition for
21 Writ of Mandate and Complaint for Declaratory Relief ("First Amended Petition") filed with the
22 Court on June 18, 2018), because Petitioners have not made the required showing to conduct
23 discovery in this writ proceeding. Petitioners filed their petition for administrative mandate
24 challenging UC's actions under Code of Civil Procedure section 1094.5. The Court's review of
25 UC's actions under section 1094.5 is limited to the administrative record. (*Western States*
26 *Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 578.) The Court may admit evidence
27 outside of the record only if it finds that the evidence could not with reasonable diligence have
28 been presented at the administrative hearing, or was improperly excluded at that hearing. (Code

1 Civ. Proc., § 1094.5, subd. (e).) “This limitation on the admission of post-administrative evidence
2 works a corresponding limitation on post-administrative discovery, restricting inquiries to those
3 reasonably calculated to lead to the discovery of additional evidence admissible under the terms of
4 section 1094.5.” (*City of Fairfield v. Superior Court* (1975) 14 Cal.3d 768, 772.) This requires
5 Petitioners to demonstrate that the discovery sought is reasonably calculated to lead to admissible
6 evidence under section 1094.5(e). (*Pomona Valley Hospital Medical Center v. Superior Court*
7 (1997) 55 Cal.App.4th 93, 103; 2 Abbot et al., Cal. Administrative Mandamus (Cont.Ed.Bar 2016)
8 §§ 13.8, 13.21.) Petitioners have not made such a showing here and, thus, no discovery should be
9 permitted in this action.

10 2. UC objects to the Request for Production to the extent it improperly seeks
11 discovery outside the scope of the claims at issue in this action. In responding to the Request for
12 Production, UC does not concede the relevancy or materiality of any individual request or of the
13 subject matter to which the Request for Production refers. UC’s response to each request is made
14 subject to, and without in any way waiving or intending to waive, any questions or objections as to
15 the competency, relevancy, materiality, privilege, or admissibility as evidence for any purpose, of
16 any of the information subsequently provided or referred to, or of the subject matter thereof, in any
17 proceeding.

18 3. UC reserves all rights to object on any ground to the use of any of these responses
19 provided or documents produced in any subsequent proceeding, including the trial of this or any
20 other action.

21 4. UC objects to the Request for Production to the extent it seeks documents or
22 information protected or privileged under the law, by the attorney-client privilege, the work
23 product doctrine, legislative/deliberative process privilege, as trial preparation materials, or any
24 other privilege recognized by the Code of Civil Procedure and by any other applicable law. Such
25 documents and/or information will not be produced. Any inadvertent production of documents or
26 information subject to privileges and protections is not intended to be, nor shall be construed as, a
27 waiver of such privileges and protections.

28 5. UC objects to the Request for Production to the extent it seeks documents or

1 information that is not within the possession, custody, or control of UC.

2 6. UC objects to the Request for Production to the extent it purports to impose
3 obligations beyond those set forth in the Code of Civil Procedure and the Evidence Code.

4 7. UC objects to the Request for Production on the grounds that it is not reasonably
5 particularized such that UC may identify the information or documents requested.

6 8. UC objects to the Request for Production to the extent it seeks information that is
7 available through others unrelated to UC, and/or is a matter of public record, and/or is otherwise
8 equally available to Petitioners.

9 9. UC objects to the Request for Production to the extent it seeks information which is
10 not relevant to the subject matter involved in the pending action and is not reasonably calculated to
11 lead to the discovery of admissible evidence.

12 10. UC further objects to the time and place of the requested production of documents.
13 The overbroad scope of the requests may result in a substantial volume of documents that must be
14 reviewed as potentially responsive to the Request for Production. The deadline set for responding
15 provides too short of a time period for adequate review.

16 These general objections are specifically incorporated in each of the responses provided,
17 whether or not separately set forth therein. Furthermore, when UC specifically repeats one or
18 more of these general objections to a specific requests, such a specific response shall not be
19 deemed a waiver of these general objections.

20
21 **OBJECTIONS TO REQUESTS FOR PRODUCTION OF DOCUMENTS**

22 **REQUEST TO PRODUCE NO. 1:**

23 All writings, including internal staff memoranda and emails, that refer or relate to increases
24 in student enrollment at UC Berkeley that were prepared in connection with the preparation of UC
25 Berkeley's 2020 Long Range Development Plan.

26 **RESPONSE TO REQUEST TO PRODUCE NO. 1:**

27 UC objects to this request on the ground that it is vague, unduly burdensome, overbroad,
28 and oppressive; on the ground that it is not reasonably limited as to time; and on the ground that it

1 seeks information that is neither relevant nor reasonable calculated to lead to the discovery of
2 admissible evidence in this proceeding. UC further objects to the extent this request seeks
3 documents or information protected by the attorney-client privilege, the attorney work product
4 doctrine, the legislative/deliberative process privilege, the common interest doctrine, or other
5 applicable privileges or protections. UC further objects to this request as repetitive to the extent it
6 seeks documents that are already in Petitioners' possession, custody, or control. UC also objects
7 to this request on the grounds that the request is not reasonably particularized such that UC may
8 identify the particular documents requested.

9 **REQUEST TO PRODUCE NO. 2:**

10 All writings, including internal staff memoranda and emails, that refer or relate to increases
11 in student enrollment at UC Berkeley or the impact on the physical environment of increasing
12 student enrollment at UC Berkeley that were prepared in connection with preparing any
13 environmental document for the 2020 Long Range Development Plan pursuant to the California
14 Environmental Quality Act.

15 **RESPONSE TO REQUEST TO PRODUCE NO. 2:**

16 UC objects to this request on the ground that it is vague, unduly burdensome, overbroad,
17 and oppressive; on the ground that it is not reasonably limited as to time; and on the ground that it
18 seeks information that is neither relevant nor reasonable calculated to lead to the discovery of
19 admissible evidence in this proceeding. UC further objects to the extent this request seeks
20 documents or information protected by the attorney-client privilege, the attorney work product
21 doctrine, the legislative/deliberative process privilege, the common interest doctrine, or other
22 applicable privileges or protections.. UC further objects to this request as repetitive to the extent it
23 seeks documents that are already in Petitioners' possession, custody, or control. UC also objects
24 to this request on the grounds that the request is not reasonably particularized such that UC may
25 identify the particular documents requested.

26 **REQUEST TO PRODUCE NO. 3:**

27 All writings, including internal staff memoranda and emails, that refer or relate to increases
28 in student enrollment at UC Berkeley that were prepared in connection with the adoption of UC

Berkeley's 2020 Long Range Development Plan by the Regents of the University of California.

RESPONSE TO REQUEST TO PRODUCE NO. 3:

UC objects to this request on the ground that it is vague, unduly burdensome, overbroad, and oppressive; on the ground that it is not reasonably limited as to time; and on the ground that it seeks information that is neither relevant nor reasonable calculated to lead to the discovery of admissible evidence in this proceeding. UC further objects to the extent this request seeks documents or information protected by the attorney-client privilege, the attorney work product doctrine, the legislative/deliberative process privilege, the common interest doctrine, or other applicable privileges or protections.. UC further objects to this request as repetitive to the extent it seeks documents that are already in Petitioners' possession, custody, or control. UC also objects to this request on the grounds that the request is not reasonably particularized such that UC may identify the particular documents requested.

REQUEST TO PRODUCE NO. 4:

All writings, including internal staff memoranda and emails, that refer or relate to increases in student enrollment at UC Berkeley or the impact on the physical environment of increasing student enrollment at UC Berkeley that were prepared in connection with the adoption of any environmental document prepared for the 2020 Long Range Development Plan pursuant to the California Environmental Quality Act.

RESPONSE TO REQUEST TO PRODUCE NO. 4:

UC objects to this request on the ground that it is vague, unduly burdensome, overbroad, and oppressive; on the ground that it is not reasonably limited as to time; and on the ground that it seeks information that is neither relevant nor reasonable calculated to lead to the discovery of admissible evidence in this proceeding. UC further objects to the extent this request seeks documents or information protected by the attorney-client privilege, the attorney work product doctrine, the legislative/deliberative process privilege, the common interest doctrine, or other applicable privileges or protections.. UC further objects to this request as repetitive to the extent it seeks documents that are already in Petitioners' possession, custody, or control. UC also objects to this request on the grounds that the request is not reasonably particularized such that UC may

1 identify the particular documents requested.

2 **REQUEST TO PRODUCE NO. 5:**

3 All writings, including internal staff memoranda and emails, that refer or relate to increases
4 in student enrollment at UC Berkeley that were prepared since the adoption of UC Berkeley's
5 2020 Long Range Development Plan by the Regents of the University of California.

6 **RESPONSE TO REQUEST TO PRODUCE NO. 5:**

7 UC objects to this request on the ground that it is vague, unduly burdensome, overbroad,
8 and oppressive; on the ground that it is not reasonably limited as to time; and on the ground that it
9 seeks information that is neither relevant nor reasonable calculated to lead to the discovery of
10 admissible evidence in this proceeding. UC further objects to the extent this request seeks
11 documents or information protected by the attorney-client privilege, the attorney work product
12 doctrine, the legislative/deliberative process privilege, the common interest doctrine, or other
13 applicable privileges or protections.. UC further objects to this request as repetitive to the extent it
14 seeks documents that are already in Petitioners' possession, custody, or control. UC also objects
15 to this request on the grounds that the request is not reasonably particularized such that UC may
16 identify the particular documents requested.

17 **REQUEST TO PRODUCE NO. 6:**

18 All writings, including internal staff memoranda and emails, that refer or relate to increases
19 in student enrollment at UC Berkeley or the impact on the physical environment of increasing
20 student enrollment at UC Berkeley that were prepared after certification of the Final
21 Environmental Impact Report for the 2020 Long Range Development Plan pursuant to the
22 California Environmental Quality Act.

23 **RESPONSE TO REQUEST TO PRODUCE NO. 6:**

24 UC objects to this request on the ground that it is vague, unduly burdensome, overbroad,
25 and oppressive; on the ground that it is not reasonably limited as to time; and on the ground that it
26 seeks information that is neither relevant nor reasonable calculated to lead to the discovery of
27 admissible evidence in this proceeding. UC further objects to the extent this request seeks
28 documents or information protected by the attorney-client privilege, the attorney work product

1 doctrine, the legislative/deliberative process privilege, the common interest doctrine, or other
2 applicable privileges or protections.. UC further objects to this request as repetitive to the extent it
3 seeks documents that are already in Petitioners' possession, custody, or control. UC also objects
4 to this request on the grounds that the request is not reasonably particularized such that UC may
5 identify the particular documents requested.

6
7 DATED: September 7, 2018

MEYERS, NAVE, RIBACK, SILVER & WILSON

8
9 By:



10 Timothy D. Cremin
11 Attorneys for The Regents of the University of
12 California; Janet Napolitano, in her capacity as
13 President of the University of California; Carol T
Christ, in her capacity as Chancellor of the
University of California, Berkeley

14 3057549.4

Document received by the CA 1st District Court of Appeal.

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF ALAMEDA**

3 At the time of service, I was over 18 years of age and **not a party to this action**. I am
4 employed in the County of Alameda, State of California. My business address is 555 12th Street,
Suite 1500, Oakland, CA 94607.

5 On September 7, 2018, I served true copies of the following document(s) described as
6 **OBJECTIONS TO PETITIONERS' REQUEST FOR PRODUCTION OF DOCUMENTS**
7 **TO THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, ET AL., SET ONE** on the
interested parties in this action as follows:

8 Thomas N. Lippe, Esq.
9 Kelly Marie Perry, Esq.
10 Law Offices of Thomas N. Lippe, APC
201 Mission Street, 12th Fl.
11 San Francisco, CA 94105

Attorneys for Plaintiff SAVE
BERKELEY'S NEIGHBORHOODS

Tel: (415) 777-5604
Fax: (415) 777-5606
Email: lippelaw@sonic.net
kmhperry@sonic.net

12 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused the document(s) to be
13 sent from e-mail address CSauceda@meyersnave.com to the persons at the e-mail addresses listed
in the Service List. I did not receive, within a reasonable time after the transmission, any
14 electronic message or other indication that the transmission was unsuccessful.

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

16 Executed on September 7, 2018, at Oakland, California.

17
18 
19 Cynthia Saucedo
20
21
22
23
24
25
26
27
28

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EXHIBIT 4

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fax (510) 444-1108
www.meyersnave.com

Timothy D. Cremin
Attorney at Law
tcremin@meyersnave.com

September 7, 2018

Via E-mail Only

Thomas N. Lippe
Law Offices of Thomas N. Lippe, APC
201 Mission Street, 12th Floor
San Francisco, CA 94105

**Re: *Save Berkeley's Neighborhoods v. The Regents of the University of California, et al.*
Alameda County Superior Court Case No. RG18902751**

Dear Mr. Lippe:

This letter is in response to Petitioners' Request for Production of Documents to the Regents of the University of California, et al., Set One ("Request for Production"), dated May 18, 2018.

The University of California ("UC") objects to the Request for Production as improper and without the required leave of Court. (*Pomona Valley Hospital Medical Center v. Superior Court* (1997) 55 Cal.App.4th 93; *City of Fairfield v. Superior Court* (1975) 14 Cal.3d 768.) Accordingly, Petitioners must withdraw the Request for Production immediately, or the UC will seek appropriate relief, including the possibility of sanctions, from the Court.

Petitioners filed their petition for administrative mandate pursuant to Code of Civil Procedure section 1094.5, purporting to argue that UC is obligated to conduct an environmental review under CEQA for the impacts of any additional enrollment growth. As we have discussed, UC disagrees with Petitioners' views that enrollment growth itself is a project under CEQA; that an additional analysis must be completed forthwith; and, that any change in environmental conditions from those disclosed in the LRDP EIR will be significant.

Regardless, because this is a writ case, Petitioners are required to seek leave of court to conduct discovery, including serving the Request for Production. The Court's review of UC's actions is limited to the administrative record. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 578.) The Court may admit evidence outside of the record *only if* it finds that the evidence could not, with reasonable diligence, have been presented, or was improperly excluded. (Code Civ. Proc., § 1094.5, subd. (e).) "This limitation on the admission of post-administrative evidence works a corresponding limitation on post-administrative discovery, restricting inquiries to those reasonably calculated to lead

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to the discovery of additional evidence admissible under the terms of section 1094.5.” (*City of Fairfield, supra*, 14 Cal.3d at 772.) This requires Petitioners to seek the Court’s permission before propounding discovery by demonstrating that the discovery sought is reasonably calculated to lead to admissible evidence under section 1094.5(e). (*Pomona Valley Hospital Medical Center, supra* 55 Cal.App.4th at 103; 2 Abbot et al., Cal. Administrative Mandamus (Cont.Ed.Bar 2016) §§ 13.8, 13.21.)

Petitioners have not sought leave from the Court to conduct discovery in this case and Petitioners are not permitted to unilaterally decide they meet the statutory threshold thus bypassing seeking leave of Court. Thus, the Request for Production is improper and must be withdrawn.

Please confirm that Petitioners will withdraw the Request for Production as required by law.

Sincerely,



Timothy D. Cremin

TDC:EOG

cc: David M. Robinson, Chief Campus Counsel, UC Berkeley

3057514.2

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EXHIBIT 5

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San Francisco, California 94105

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Facsimile: 415-777-5606
Email: Lippelaw@sonic.net

September 19, 2018

Timothy Cremin
Meyers Nave
555 12th Street, Suite 1500
Oakland, CA 94607

**Re: *Save Berkeley's Neighborhoods v. The Regents of the University of California, et al.*, Case No. RG18902751.
Meet and Confer re Discovery Dispute**

Dear Mr. Cremin:

Thank you for your September 7, 2018, letter regarding Petitioners' Request for Production of Documents to the Regents of the University of California, et al., Set One ("Request for Production"), dated May 18, 2018. This letter responds to both your September 7, 2018, letter and to your Objections to Petitioners' Request for Production of Documents to the Regents of the University of California, Set One. (Objections).

I write to meet and confer before filing a motion to compel further responses to the document request and the production of the requested documents.

Your September 7, 2018, letter elaborates on General Objection 1 in your Objections. General Objection 1 is without merit because the Civil Discovery Act is fully available to CEQA litigants.

Your letter characterizes the Request "as improper and without the required leave of Court." You contend that:

(1) the Civil Discovery Act does not authorize a CEQA plaintiff who has elected to prepare the record of proceeding to utilize a document request under Code of Civil Procedure section 2031.010 *et seq.* to obtain documents in the possession of the public agency for the purpose of preparing the the record; and

(2) to the extent the Civil Discovery Act may be available to a CEQA plaintiff who has elected to prepare the record, CEQA plaintiffs must obtain prior leave of court before propounding discovery requests.

Both contentions are wrong.

The case law limiting discovery of "extra-record" evidence does not address Plaintiff's discovery requests in this case. The applicable standard is whether the discovery is reasonably

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Timothy Cremin

Save Berkeley's Neighborhoods v. The Regents of the University of California, et al., Case No. RG18902751; **Meet and Confer re Discovery Dispute**

September 19, 2018

Page 2

calculated to lead to the discovery of admissible evidence. In CEQA mandate cases, “admissible” evidence includes documents described in Public Resources Code section 21167.6, subdivision (e). This statute “contemplates that the administrative record will include pretty much everything that ever came near a proposed development or to the agency’s compliance with CEQA in responding to that development.” (*County of Orange v. Superior Court* (2003) 113 Cal.App.4th 1, 8.)

The Civil Discovery Act is fully available to CEQA litigants. You argue that because the merits of a CEQA mandamus case will be tried on the “administrative record,” that normal civil discovery statutes do not apply. This contention is without merit because the Civil Discovery Act provides:

Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence.

(Code of Civil Procedure § 2017.040.) The term “‘Action’ includes a civil action and a special proceeding of a civil nature.” (Code of Civil Procedure § 2017.020(a).) A petition for writ of mandate is a special proceeding of a civil nature. (Code of Civil Procedure §§ 23, 1063 et seq.) Moreover, the decision in *Consolidated Irr. Dist. v. Superior Court* (2012) 205 Cal.App.4th 697 squarely rejects your position, holding that: “City’s contention that discovery is not allowed in a CEQA case is wrong.” (Id. at 713.)

Plaintiff does not need prior leave of court to propound discovery. You also contend that a Plaintiff must seek prior leave of court to utilize the Civil Discovery Act. Yet you fail to cite any authority for this unprecedented idea. Your citations to *Western States Petroleum Association v. Superior Court* (1995) 9 Cal.4th 559, 576 and *Pomona Valley Hospital Medical Center v. Superior Court* (1997) 55 Cal.App.4th 93, 102 are unavailing. These cases are inapposite because they address efforts by parties in mandate cases to introduce into evidence (*Western States*) or to discover (*Pomona Valley*) evidence that is *outside* the administrative record.

Both cases recognize the general rule that the evidence in administrative mandate cases is usually limited to the administrative record, subject to the exceptions listed in Code of Civil Procedure section 1094.5(e). *Pomona Valley* further recognizes that discovery of *extra-record* evidence must be justified by showing it is reasonably calculated to lead to the discovery of evidence that meets one of the exceptions listed in section 1094.5(e). Therefore, neither case provides authority relating to discovery efforts undertaken—as here—for the purpose of discovering evidence to *included in the record*.

Your citation to *City of Fairfield v. Superior Court* (1975) 14 Cal.3d 768 is even more misplaced. This case recognizes that discovery in administrative mandamus cases is available as

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Timothy Cremin

Save Berkeley's Neighborhoods v. The Regents of the University of California, et al., Case No. RG18902751; **Meet and Confer re Discovery Dispute**

September 19, 2018

Page 3

long as it meets the test that all discovery must meet, i.e., that “such discovery is reasonably calculated to lead to admissible evidence.” (Id. at 774–775.) Like *Pomona Valley*, the plaintiff in *City of Fairfield* also sought to obtain discovery of information that was *outside* the administrative record, the admissibility of which is governed by Code of Civil Procedure section 1094.5(e). In this context, the Court held that “This section limits the admission of *evidence additional to the administrative record* to ‘relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing....’” (Id. (italics added).)

In short, *City of Fairfield* is directed only to *evidence additional to the administrative record*, not to evidence that must be *included in the administrative record*.

None of the cases you cite impose a rule requiring prior leave of Court before conducting discovery, whether for evidence to be included in the administrative record or evidence that is additional to the administrative record. There are cases where a party has elected to file a request for leave of court to propound discovery. (See e.g., *Consolidated Irr. Dist. v. Superior Court*; *Consolidated Irr. Dist. v. City of Selma* (2012) 204 Cal.App.4th 187, 195; *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 1, 4.) But the fact that parties in these cases voluntarily elected to file such a motion does not mean such a motion is required.

Indeed, discovery is common in mandamus cases, both CEQA and otherwise. . For example, in *Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, the agency prepared a privilege log to support its exclusion from the administrative record of allegedly privileged documents. (Id. at 304.) In that case, the court overruled the agency’s deliberative process objections based on the contents of the privilege log. (Id. at 307; see also, *State of California v. Superior Court* (1974) 12 Cal.3d 237, 257 [“to the extent that Veta can justify the interrogatories under that provision [section 1094.5 (e)], the Commission must file answers to them”].)

Another instructive case is *Citizens for Ceres v. Superior Court* (2013) 217 Cal.App.4th 889 (*Citizens for Ceres*). In that case, the Court of Appeal held that a City agency could not exclude documents from the administrative record in a CEQA case just by claiming the documents are privileged. The Court held that the agency must make a specific “showing of preliminary facts supporting the privilege,” stating:

It will still be necessary for the trial court to reexamine those privilege claims because the court applied an incorrect standard in upholding them. In upholding all the challenged privilege claims without exception, the court expressed the view that the party asserting a claim of privilege need only assert it to obtain protection. In reality, the party asserting the privilege is required to make a showing of preliminary facts supporting the privilege. The court made no findings of these preliminary facts, and there is no substantial evidence in the record that would have supported those findings for any document. The city will be permitted to amend its submissions to make the necessary showings.

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Timothy Cremin

Save Berkeley's Neighborhoods v. The Regents of the University of California, et al., Case No. RG18902751; **Meet and Confer re Discovery Dispute**

September 19, 2018

Page 4

(Id. at 898.) The Court in *Citizens for Ceres* also held that an agency waives the attorney-client privilege when it shares otherwise privileged communications with third parties who do not share a “common interest.” (Id. at 919.)

In order to apply this rule to any given document, the responding party must identify all recipients of allegedly privileged documents, which is information provided by a privilege log. (*Catalina Island Yacht Club v. Superior Court* (2015) 242 Cal.App.4th 1116, 1130 (*Catalina Island*) [“The precise information required for an adequate privilege log will vary from case to case based on the privileges asserted and the underlying circumstances. In general, however, a privilege log typically should provide the identity and capacity of all individuals who authored, sent, or received each allegedly privileged document, the document’s date, a brief description of the document and its contents or subject matter sufficient to determine whether the privilege applies, and the precise privilege or protection asserted”].) The Court in *Catalina Island* also held that where a responding party asserts boilerplate objections based on privilege the remedy is a court order requiring a privilege log. (Id at 1129–1130.)

In short, mandamus cases and CEQA cases are no different than other cases when it comes to the procedures by which the right to discovery is exercised and enforced.

Finally, your objections based on the general restriction of evidence to the administrative record regarding the merits of a mandamus action do not apply to Plaintiff’s second cause of action for declaratory relief. (*East Bay Mun. Utility Dist. v. Department of Forestry & Fire Protection* (1996) 43 Cal.App.4th 1113, 1122 [“Even if, however, the point to be made by the introduction of multiple past agency decisions is not that they individually or collectively should be reversed, presenting them in the aggregate as evidence of an improper policy or practice and labeling the action one for declaratory relief does not import into the declaratory relief action the rule applied in administrative mandamus which limits judicial review to the record before the administrative agency”].)

Your General Objections 2 through 10 are boilerplate because you have not explained how they apply to the actual document requests.

For all six requests for production, you object on grounds of privilege. This is insufficient. Code of Civil Procedure, section 2031.240, subdivision (c), requires that “If an objection is based on a claim of privilege or a claim that the information sought is protected work product, the response shall provide sufficient factual information for other parties to evaluate the merits of that claim [of privilege], including, if necessary, a privilege log.” Your responses do not provide the required information.

For all six requests for production, you object on grounds that Plaintiff may already have responsive documents. This is not a valid objection. Even if it were valid, I informed you, by letter dated June 13, 2018 enclosing a provisional proposed index of the record of proceedings, which

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Timothy Cremin

Save Berkeley's Neighborhoods v. The Regents of the University of California, et al., Case No.

RG18902751; **Meet and Confer re Discovery Dispute**

September 19, 2018

Page 5

documents Plaintiff possesses that should be in the record. Yet, you have not produced responsive documents that Plaintiff does not possess.

All six requests for production are simple requests for documents that must be included in the administrative record for this case. They clearly meet the standard for discovery, namely, they are reasonably calculated to lead to the discovery of relevant evidence, in this case writings that may need to be included in the administrative record.

Please respond by October 5, 2018. After that date, I will file a motion to compel.

Thank you for your attention to this matter.

Very Truly Yours,



Thomas N. Lippe

T:\TL\UC Enroll\Corr\Counsel\C015d TC disco d091918.wpd

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AA00261

EXHIBIT 6

Document received by the CA 1st District Court of Appeal.



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Timothy D. Cremin
Attorney at Law
tcremin@meyersnave.com

October 5, 2018

Via E-mail Only

Thomas N. Lippe
Law Offices of Thomas N. Lippe, APC
201 Mission Street, 12th Floor
San Francisco, CA 94105

**Re: *Save Berkeley's Neighborhoods v. The Regents of the University of California, et al.*
Alameda County Superior Court Case No. RG18902751
Discovery Dispute Meet and Confer**

Dear Mr. Lippe:

This letter is in response to your September 19, 2018 Meet and Confer correspondence ("the Meet and Confer Letter") pertaining to Petitioner's Request for Production of Documents, Set 1, to the Regents of the University of California, et al. ("Request for Production"), dated May 18, 2018. University of California's ("UC") Responses to the Request for Production and accompanying letter detailing the grounds for UC's Objections was served on your office on September 7, 2018 ("UC Responses").

In the Meet and Confer Letter, Petitioner states its intention to file a motion to compel further responses to the Request for Production and production of documents on the following grounds:

1. The Civil Discovery Act permits propounding of discovery in a CEQA action; and
2. Leave of court is not required to propound discovery.

We have carefully reviewed your Meet and Confer Letter and the legal authorities cited therein. UC's position remains that Petitioner is required to seek leave of Court to conduct discovery in a CEQA action. Your Meet and Confer Letter does not provide a legal basis to allow discovery in this litigation without leave of Court. (*Pomona Valley Hospital Medical Center v. Superior Court* (1997) 55 Cal.App.4th 93, 103; 2 Abbot et al., Cal. Administrative Mandamus (Cont.Ed.Bar 2016) §§ 13.8, 13.21.) In addition, any Motion to Compel discovery should wait until after the Court addresses the pleading deficiencies in the demurrer hearing scheduled for November 15, 2018. We have informed you of those deficiencies in our meet and confer on the demurrer. A discovery motion in advance of a ruling on the demurrer is procedurally improper.

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In the Meet and Confer Letter, you reference *Consolidated Irrigation District v. Superior Court* (2012) 205 Cal.App.4th 697, 713 for the proposition that discovery is permitted in a CEQA suit. The court there stated that “discovery is possible in a CEQA proceeding” where **a motion for leave to conduct discovery** is made. (*Ibid.*) Thus, *Consolidated Irrigation District* clearly demonstrates that leave of court to conduct discovery is necessary. We do not think the Meet and Confer Letter distinguishes the cases we relied on in the UC Responses. In addition, the cases cited in your Meet and Confer Letter do not support your argument for discovery without leave from the Court. Neither *Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296 nor *Citizens for Ceres v. Superior Court* (2013) 217 Cal.App.4th 889 are applicable. The issue in those cases was the parties’ disagreements over whether or not certain documents should be included in the applicable administrative records. The cases did not address whether propounding discovery is permissible in a CEQA case. Petitioner’s citation to *Catalina Island Yacht Club v. Superior Court* (2015) 242 Cal.App.4th 1116 is even more inapposite since the civil suit there was for libel, slander, invasion of privacy, and intentional infliction of emotion distress. *Catalina Island* was not an action for administrative mandate pursuant to Code of Civil Procedure section 1094.5, as is the action here.

Respondents’ Responses are proper and should Petitioner proceed to file a motion to compel responses, Respondents will object to such a motion on grounds similar, but not limited to, those discussed above and in the UC Responses. In addition, as stated above, a discovery motion in advance of a demurrer is procedurally improper.

Sincerely,



Timothy D. Cremin

TDC:EOG

cc: David M. Robinson, Chief Campus Counsel, UC Berkeley

3065829.3

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EXHIBIT 7

Document received by the CA 1st District Court of Appeal.

Law Offices of
THOMAS N. LIPPE, APC

201 Mission Street
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San Francisco, California 94105

Telephone: 415-777-5604
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June 13, 2018

Mr. Timothy Cremin
Meyers Nave
555 12th Street, Suite 1500
Oakland, CA 94607

Re: *Save Berkeley's Neighborhoods v. The Regents of the University of California, et al.*, Case No. RG18902751; Provisional Proposed AR Index

Dear Mr. Cremin:

I write pursuant to Local Rule 3.320(d)(2) to provide you with a provisional proposed index of the record of proceedings in this matter, enclosed herewith.

This proposed index is "provisional" because you have not served a "preliminary notification designating, to the extent then known, the location(s) of the documents anticipated to be incorporated into the administrative record, the contact person(s) responsible for identifying the agency personnel or other person(s) having custody of those documents, and the dates and times when those documents will be made available to petitioners or any party for their inspection and copying" as required by Local Rule 3.320(d)(1); and because you have not produced documents requested in Plaintiff's Request for Production of Documents, Set One, served on May 18, 2018.

The enclosed provisional proposed index of the record of proceedings contains documents that I was able to find and download on UC Berkeley's capital strategies website. I have no doubt there are many additional documents in UCB's possession that were generated in connection with proceedings conducted by UCB regarding increases in enrollment. I look forward to your client's compliance with Local Rule 3.320(d)(1) so I may obtain these additional documents.

The enclosed index does not include any documents that are not within a record of proceedings conducted by UCB regarding increases in enrollment, i.e., so-called extra-record evidence, as such documents are not within the scope of Local Rule 3.320(d)(2) and are subject to ongoing investigation by Plaintiff.

Thank you for your attention to this matter.

Very Truly Yours,



Thomas N. Lippe

Save Berkeley's Neighborhoods v The Regents of the University of California, et al.			
Alameda County Superior Court, Case No. RG-18902751			
(Proposed) INDEX TO ADMINISTRATIVE RECORD		Page 1	
<u>Date</u>	<u>Document Title/Description</u>	<u>Tab</u>	<u>Bates #</u>
1. Long Range Development Plan (LRDP)			
January 2005	University of California, Berkeley 2020 Long Range Development Plan	<u>.1003</u>	
2. Draft Environmental Impact Report (DEIR)			
04/15/04	University of California, Berkeley 2020 Long Range Development Plan & Chan-Lien Tien Center for East Asian Studies; Volume 1, Draft Environmental Impact Report	<u>.1001</u>	
3. Final Environmental Impact Report (FEIR)			
January 2005	Final Environmental Impact Report, Volumes 3A and 3B	<u>.1002</u>	
4. Subsequent CEQA Documents			
February 2008	California Environmental Quality Act Findings in Connection with the Approval of the Design of the Campbell Hall Replacement Building Project, Berkeley Campus; Consideration of 2020 LRDP FEIR (1/05) and Addendum #2	<u>.1004</u>	
June 2008	PowerPoint: School of Law Berkeley, Infill Project	<u>.1005</u>	
06/03/09	Notice of Availability UC Berkeley 2020 Long Range Development Plan Amendment and 2020 LRDP Environmental Impact Report Addendum to Address Climate Change	<u>.1006</u>	
November 2009	California Environmental Quality Act Findings in Connection with the Approval of the Design of the Campbell Hall Replacement Building Project, Berkeley Campus; Consideration of 2020 LRDP FEIR (1/05) and Addendum #6	<u>.1007</u>	
undated	California Environmental Quality Act Findings in Connection with the Approval of the Design of the Campbell Hall Replacement Building Project, Berkeley Campus; Consideration of 2020 LRDP FEIR (1/05) and Addendum #8	<u>.1008</u>	
undated	California Environmental Quality Act Findings in Connection with the Approval of the Design of the Campbell Hall Replacement Building Project, Berkeley Campus; Consideration of 2020 LRDP FEIR (1/05) and Addendum #9	<u>.1009</u>	
December 2009	Environmental Assessment and Addendum #7 to the 2020 Long Range Development Plan Environmental Impact Report	<u>.1010</u>	
August 2011	Subsequent EIR To The 2020 Long Range Development Plan Environmental Impact Report; Project Title: Lower Sproul Student Community Center	<u>.1011</u>	
08/13/13	Addendum #10 to the UC Berkeley 2020 Long Range Development Plan Environmental Impact Report for the Haas North Addition and Girton Hall Move	<u>.1012</u>	

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Save Berkeley's Neighborhoods v The Regents of the University of California, et al.			
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			Page 2
4. Subsequent CEQA Documents (con't)			
03/05/14	Addendum to the Northeast Quadrant Science and Safety Projects Environmental Impact Report UC Berkeley 2020 Long Range Development Plan Environmental Impact Report for Jacobs Hall	.1013	
05/20/15	Amendment of the Budget and Scope, Approval of External Financing, and Approval of the Design Following Action Pursuant to the California Environmental Quality Act, Berkeley Way West Project (Tolman Hall Seismic Replacement), Berkeley Campus	.1014	
April 2016	Addendum to the UC Berkeley 2020 Long Range Development Plan Environmental Impact Report for Stiles Site Student Housing Project	.1015	
05/10/16	Approval of Design Pursuant to California Environmental Quality Act for the Stiles Student Residence Hall Project, Berkeley Campus	.1016	
UC Enroll\Trial\AR\000 AR Proposed Index UC Enroll chron 061318.qpw			

Document received by the CA 1st District Court of Appeal

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EXEMPT FROM FILING FEES
 GOV'T CODE § 6103

Attorneys for The Regents of the University of California;
 Janet Napolitano, in her capacity as President of the
 University of California; Carol T. Christ, in her capacity as
 Chancellor of the University of California, Berkeley

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

SAVE BERKELEY'S NEIGHBORHOODS, a
 California nonprofit public benefit
 corporation,

Petitioner and Plaintiff,

v.

THE REGENTS OF THE UNIVERSITY OF
 CALIFORNIA; JANET NAPOLITANO, in
 her capacity as President of the University of
 California; CAROL T. CHRIST, in her
 capacity as Chancellor of the University of
 California, Berkeley; and DOES 1 through 20,

Respondents and Defendants.

Case No. RG18902751

ASSIGNED FOR ALL PRE-TRIAL
 PURPOSES TO JUDGE HON. FRANK
 ROESCH DEPARTMENT 24

**REPLY TO OPPOSITION TO
 DEMURRER**

Reservation No. R-2003938

Judge: Hon. Frank Roesch
 Date: November 15, 2018
 Time: 3:34 PM
 Dept.: 24

Action Filed: April 27, 2018
 Trial Date: None Set

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Document received by the CA 1st District Court of Appeal.

1 **I. INTRODUCTION**

2 Petitioner's Opposition to the Demurrer ("POB") fails to address two fundamental defects
3 in the Second Amended Petition ("SAP"). First, the strict and short statute of limitations under the
4 California Environmental Quality Act ("CEQA") bars all claims. Second, any increase in student
5 enrollment from the level analyzed in the University's LRDP EIR is not a stand-alone "Project"
6 under CEQA as a matter of law.

7 The maximum 180-day statute under CEQA bars all challenges to enrollment levels post-
8 adoption of the LRDP EIR. The date that the statute of limitations runs is an objective standard
9 based on when the alleged event occurred or when Petitioner reasonably should have known based
10 on available facts that the event occurred. Petitioner does not dispute the facts that the alleged
11 enrollment increases occurred, and that UC made information about the enrolment levels publicly
12 available, more than 180 days prior to the filing of the Petition. Petitioner's attempt to avoid this
13 clear bar through a declaration stating when an organization member allegedly actually knew of
14 the enrollment increases improperly applies subjective facts to an objective legal standard.

15 Even if Petitioner can survive this jurisdictional bar, it cannot make the claim asserted as
16 matter of law. Petitioner's argument that enrollment increases are a CEQA "project" is contrary to
17 the plain language of Public Resources Code ("PRC") section 21080.09. Under this University of
18 California ("UC")-specific CEQA statute, UC is required to analyze the impacts of student
19 enrollment as part of the environmental impact report ("EIR") for a campus long range
20 development plan ("LRDP"). Therefore, by statute, the LRDP is the CEQA project and changes
21 in enrollment levels are only a factor to be "considered" in the LRDP EIR. Here, UC certified the
22 LRDP EIR in 2005 and the EIR is presumed valid and no longer subject to challenge. CEQA only
23 allows the reopening of the analysis of enrollment under CEQA's narrow standards for
24 supplemental environmental review, which, as a threshold matter, require a future discretionary
25 project approval that tiers from the LRDP EIR. As discussed above, however, under the LRDP
26 statutory scheme, a change in enrollment levels, in and of itself, cannot be a discretionary project.
27 It is simply one factor to be considered in the LRDP EIR. Therefore, Petitioner cannot plead
28 allegations to establish a CEQA cause of action based on enrollment changes alone. Petitioner's

1 attempts to state a “pattern and practice” claim for declaratory relief relating to enrollment also
2 must fail. Such a claim is barred because UC has complied with the applicable statute (PRC sec.
3 21080.09) and none of the case law standards for alleging such an action are met.

4 The bottom line is that Petitioner is trying to create a new CEQA claim for UC enrollment.
5 It is critical that the Court reject this attempt and keep this type of challenge within the CEQA
6 statutory scheme relating to the LRDP EIR. Allowing Petitioner’s claim for judicial review of
7 enrollment levels would disrupt the statutory scheme by allowing for annual lawsuits regarding
8 enrollment levels, overburden the courts with needless lawsuits and interfere with UC’s mission to
9 provide public higher education. This is exactly the type of lawsuit PRC sec. 21080.09 was meant
10 to prevent.

11 **II. ARGUMENT**

12 **A. The SAP is Barred By The Statute of Limitations**

13 Petitioner’s CEQA challenge falls outside of the statute of limitations.¹ Public Resources
14 Code section 21167, subdivision (a) contains the longest statute of limitations applicable to any
15 CEQA action, providing that any such action “shall be commenced within 180 days from the date
16 of the public agency’s decision to carry out or approve the project, or, if a project is undertaken
17 without a formal decision by the public agency, within 180 days from the date of commencement
18 of the project.” In certain circumstances, where the project constructed differs substantially from
19 the project analyzed in the CEQA document, courts have held that the project does not
20 “commence” until a petitioner knew or should have known that the modified project had begun.
21 (*Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929,
22 933 (“*Concerned Citizens*”).) However, there is no “discovery rule” under CEQA that would toll
23 the statute of limitations based on a petitioner’s subjective knowledge of project commencement
24 (*Communities for a Better Environment vs. Bay Area Air Quality Management District* (2016) 1

25
26 ¹ Petitioner now acknowledges that it is not challenging the 2005 EIR, despite the fact that its
27 Notice of Intent to Sue states exactly that. (POB, p. 10; see Pet., Ex. 1, p. 2. (“Save Berkeley’s
28 Neighborhoods intends to file a lawsuit challenging the University’s adoption of the 2020 LRDP
on grounds the adoption does not comply with CEQA.”))

1 Cal.App.5th 715, 724 (“*CBE*”) (holding that *Concerned Citizens* did not establish a “discovery
2 rule” under CEQA and that none can exist under the statutory scheme).)

3 Petitioner concedes that any challenge to the adoption of a “policy” to increase student
4 enrollment is well outside of CEQA’s statute of limitations. (POB, p. 7 (“Petition alleges that the
5 Regents have carried out this project for several years without conducting any environmental
6 review under CEQA”); POB, p. 13 (“it appears from the evidence that the policy began in 2007”).)
7 Relying on *Concerned Citizens*, however, Petitioner claims that the 180-day statute of limitations
8 should not apply to it because Mr. Bokovoy did not subjectively know about the alleged policy to
9 allow “substantial increases in student enrollment above the 1,650 student increase disclosed in
10 the 2005 EIR,” as detailed in Mr. Bokovoy’s extensive, and improper, declaration. (POB, p. 2; see
11 UC’s Objections and Request to Strike, filed concurrently.) Petitioner fundamentally misreads the
12 holding of *Concerned Citizens*. *Concerned Citizens* does not, and cannot, stand for the
13 proposition that CEQA’s 180-day statute of limitations can be ignored for a full decade simply
14 because a petitioner has not undertaken the effort to either observe the alleged environmental
15 impacts of a project or to inform itself that a project has “commenced.”

16 In *Concerned Citizens*, the agency conducted CEQA review for an amphitheater. (42
17 Cal.3d at 933.) However, after approval, the agency permitted changes to the project, increasing
18 its size, adding seats, and reorienting it towards a residential area. (*Id.* at 934.) The plaintiffs filed
19 suit more than 180 days after construction began. (*Id.* at 937.) Plaintiffs argued that their petition
20 was timely because it was within 180 days of the first concert and that they lacked actual or
21 constructive notice of the changes before that time. (*Id.* at 939.) The California Supreme Court
22 specifically rejected this subjective notice theory, holding that the argument was “contrary to the
23 Legislature’s intent.” (*Id.*) Rather, “the Legislature determined that the initiation of the project
24 provides constructive notice of a possible failure to comply with CEQA.” (*Ibid.*) As the First
25 District held, “*Concerned Citizens* did not apply the discovery rule to postpone the triggering of
26 the limitations period Instead, the court determined that an action accrues on the date a
27 plaintiff knew or reasonably should have known of the project *only if no statutory triggering date*
28 *has occurred.*” (*CBE, supra*, 1 Cal.App.5th at 724 (emphasis added).)

1 Here, Petitioner alleges that UC informally adopted a policy to increase student enrollment
2 sometime in 2007. The statutory triggering date for such a challenge is found under PRC section
3 21167(a), which sets the statute of limitations for challenges where “a project is undertaken
4 without formal decision by the public agency” as “180 days from the date of commencement of
5 the project.” Therefore, *Concerned Citizens* does not support Petitioner’s assertion that it may toll
6 the applicable statute of limitations because of Mr. Bokovoy’s alleged subjective ignorance of
7 UC’s adoption of a “policy.” Rather, because the “policy” commenced, by Petitioner’s own
8 admission, in 2007, the 180-day statute of limitations to challenge any such policy under CEQA
9 has long since expired and Petitioner’s CEQA claims against this “policy” are untimely.

10 Petitioner’s challenge to any increases in enrollment above those projected in the LRDP
11 EIR are also time-barred. As set forth in the MPA, any such “project” would have commenced no
12 later than the beginning of the academic year, which was more than 180 days before Petitioner
13 filed suit. (MPA, pp. 16-18.) Again, Petitioner hopes to escape the application of the statute of
14 limitation by alleging that Mr. Bokovoy had no subjective knowledge of the enrollment increases
15 until he read the letter from UC to the City of Berkeley. Under *Concerned Citizens* and *CBE*,
16 however, Mr. Bokovoy’s “discovery” of the enrollment increases is irrelevant, as are the alleged
17 questions of fact regarding whether he could have discovered the date of commencement earlier
18 the exercise of reasonable diligence. The statute of limitations began when the “project”
19 commenced, on the date the academic year began with the full enrollment numbers in effect, and
20 expired 180 days thereafter, before Petitioner filed the Petition. As such, Petitioner’s CEQA
21 challenge is untimely.

22 To the extent Petitioner attempts to revive its time-barred claim by now claiming that it is
23 challenging the Spring Semester 2018 enrollment, the SAP contains no allegations that it is either
24 (a) challenging those specific enrollment numbers, or (b) that Spring Semester 2018 enrollment
25 constitutes a separate discretionary decision made by UC that would be subject to CEQA. As
26 such, these arguments cannot serve to defeat the demurrer. Likewise, the SAP contains no
27 allegations whatsoever regarding 2018-2019 enrollment numbers and these arguments cannot cure
28 the defects in the SAP. For all of these reasons, Petitioner’s CEQA challenges are time-barred.

1 **B. Enrollment Changes from Projections in LRDP EIR are Not A Stand-Alone**
2 **CEQA Project**

3 The Legislature created a UC-specific statute—PRC sec. 21080.09—to address how the
4 environmental impacts of student enrollment are to be analyzed under CEQA—they are to be
5 analyzed as part of the LRDP EIR. Therefore, under PRC sec. 21080.09, enrollment changes are
6 not a CEQA “Project” as a matter of law.

7 PRC sec. 21080.09(b) states

8 “Environmental effects relating to changes in enrollment levels shall be considered
9 for each campus or medical center of public higher education in the environmental
10 impact report prepared for the long range development plan for the campus or
11 medical center.” (emphasis added)

12 PRC sec. 21080.09(d) states:

13 “Compliance with this section satisfies the obligations of public higher education
14 pursuant to this division to consider the environmental impact of academic and
15 enrollment plans as they affect campuses or medical centers, provided that any such
16 plans shall become effective for a campus or medical center only after the
17 environmental effects of those plans have been analyzed as required by this
18 division in a long range development plan environmental impact report or tiered
19 analysis based upon that environmental impact report for that campus or medical
20 center, and addressed as required by this division.” (emphasis added)

21 Under the plain language of the statute, the LRDP (i.e. the physical development plan for
22 the campus), and not student enrollment, is the project under CEQA. The statute states that
23 environmental impacts of changes in enrollment levels must be considered in the LRDP EIR. In
24 compliance with this statute, UC included estimates of future enrollment and analyzed
25 environmental effects associated with such enrollment in the LRDP EIR. Under PRC sec.
26 21080.09(d) this constitutes compliance with the obligation to study the impacts of future
27 enrollment. Therefore, Petitioner’s argument that enrollment changes from LRDP projections are
28 a stand-alone project, separate from an LRDP, must fail.

 Petitioner cannot overcome the plain language of the CEQA statute by pleading that a
change in enrollment from estimates included in the LRDP EIR constitute stand-alone “projects”
under CEQA. It is a cardinal rule of statutory interpretation that specific statutes control over the
general statutes. (*Steilberg v. Lackner* (1977) 69 Cal.App.3d 780, 788, citations omitted.) Thus,

1 the specific requirements of PRC sec. 21080.09 control over CEQA's general definition of
2 "project" and requires UC to examine impacts of enrollment changes in the LRDP EIR. Here, UC
3 has done exactly that by either analyzing enrollment changes as part of LRDP EIRs or in project-
4 specific documents tiering off the LRDP EIR if required under CEQA supplemental review
5 standards, which, of note, *prohibit* further CEQA review unless one of the specific triggers in PRC
6 sec. 21166 and CEQA Guidelines sec. 15162 is met. (PRC sec. 21080.09(d).) Petitioner cannot
7 plead their way around PRC sec. 21080.09 in an attempt to establish that enrollment level changes
8 are stand-alone "projects" that UC must analyze separate and apart from the analysis in the LRDP
9 EIR. Petitioner's argument directly contradicts the plain language of PRC sec. 21080.09.

10 Petitioner's attempt to avoid this specific statutory bar by arguing that the change in
11 enrollment levels meets CEQA's general definition of "project" does not cure the defect. Simply
12 stated, Petitioner fails to allege any facts relating to the change in enrollment numbers which meet
13 the definition of a "project". (MPA, pp. 11-12.) The allegations regarding enrollment are limited
14 to the bare facts of student enrollment numbers. The SAP contains no allegations that UC took
15 any action relating to the enrollment numbers or when such action might have occurred. Nor can
16 Petitioner allege the requisite facts because enrollment activities do not constitute a "project"
17 under CEQA. Rather they fall into the category of administrative activities which are specifically
18 excluded from CEQA's definition of "project." (CEQA Guidelines, § 15378(b)(2).)

19 **C. Dismissal of Lawsuit does not deny Petitioner Remedy**

20 Petitioner's arguments that it will have no CEQA remedy unless the court allows it to
21 challenge each increase in enrollment levels above LRDP projections are unavailing. The
22 remedies under PRC section 21080.09(d) are limited to either (1) challenging the enrollment
23 projections and related environmental analysis in the LRDP EIR (the time for which has long
24 expired) or (2) raising the challenge as part of any project approval tiering off the LRDP EIR
25 under supplemental review standards. (MPA, pp. 8-10.) The court should limit Petitioner to the
26 statutory remedies. In fact, UCB is in the process of conducting such supplemental analysis now.
27 (MPA, p. 10.) Furthermore, Petitioner's argument that the court's determination of the availability
28 of supplemental environmental review standards is "premature" is simply wrong. UC is not

1 asking the court to determine whether supplemental environmental review is required under a
2 particular set of facts. Rather, UC is asking the court to confirm that CEQA's supplemental
3 review standards are the proper mechanism for Petitioner to bring its claims.

4 If Petitioner prevails in creating a new CEQA cause of action against UC, the result would
5 create chaos in the UC system. (See MPA, p. 14-15.) It would involve the courts in a regular
6 review of enrollment levels on UC campuses throughout the state. Since campus enrollment
7 levels fluctuate year to year, petitioners could bring annual challenges. This would immerse the
8 court system in a continuous review of UC enrollment levels. The Legislature adopted PRC sec.
9 21080.09 to avoid this result. Contrary to Petitioner's assertions, UC is not arguing that "CEQA
10 does not apply to UC." Rather, UC simply asks this Court to require Petitioner to follow the
11 established CEQA mechanism for bringing its claim.

12 **D. The SAP Does Not Allege Facts Sufficient to State a Claim for Declaratory**
13 **Relief**

14 Even if the Court were to sustain UC's demurrer to Petitioner's CEQA claim, Petitioner
15 argues that the Court should still entertain its declaratory relief claim based on UC's alleged
16 "policy" or "pattern and practice" of ignoring or violating CEQA. In support, Petitioner relies on
17 *Venice Town Council, Inc. v. City of Los Angeles* (1996) 47 Cal.App.4th 1547 ("*Venice*"), and
18 *Californians for Native Salmon and Steelhead Association v. Department of Forestry* (1990) 221
19 Cal.App.3d 1419 ("*Native Salmon*"). Neither case supports Petitioner's claim for declaratory
20 relief and, moreover, the SAP fails to allege facts sufficient to state such a claim.

21 The primary flaw with Petitioner's reliance on *Venice* and *Native Salmon* is that the facts
22 alleged in the SAP do not show a pattern and practice of UC's violation of CEQA. Instead, the
23 SAP shows UC's adherence to the statutory mandate in section 21080.9 to review the
24 environmental impacts of enrollment in the LRDP EIR. (See part II.B, above.) Because the SAP
25 fails to allege facts showing UC has a pattern and practice of violating section 21080.9, there is no
26 actual case or controversy alleged in the SAP and, therefore no viable claim for declaratory relief.

27 In addition, both *Native Salmon* and *Venice* are distinguishable. In *Native Salmon*, the
28 plaintiffs alleged that the Department of Forestry engaged in a pattern and practice of violating

1 CEQA's mandates in responding to comments on Timber Harvesting Plans ("THPs") after THP
2 approval and by failing to assess the cumulative impacts of THPs. (221 Cal.App.3d at 1427.) The
3 court acknowledged that "an action for declaratory relief does not lie to review an administrative
4 decision" and that "a specific decision or order of an administrative agency can only be reviewed
5 by a petition for administrative mandamus. [Citations.]" (*Id.* at 1428-1429.) The plaintiffs there,
6 however, did not challenge "a specific order or decision, or even a series thereof, but an
7 overarching, quasi-legislative policy set by an administrative agency." (*Id.* at 1429.) Thus, the
8 "policy" at issue in *Native Salmon* was not limited to a single project or even a series of projects in
9 the same location, but applied to "scores" of individual THPs. (*Id.* at 1430-1431.) Similarly, the
10 plaintiffs in *Venice* did not "challenge any particular decision or order," but instead sought to
11 resolve whether the City's interpretation of its duties under Government Code section 65590 was
12 erroneous and whether the City had an informal policy of nonenforcement of the statute. (47
13 Cal.App.4th at 1560, 1565-1566.)

14 Thus, both *Native Salmon* and *Venice* dealt with an alleged policy or pattern and practice
15 of an administrative agency that was applied across the board to any project that came before the
16 agency. Conversely, here, the SAP contains no allegations that UC is routinely violating or
17 ignoring CEQA requirements whenever it conducts CEQA review of any project. Instead,
18 Petitioner manages only to parrot the language of *Native Salmon* and *Venice* without grasping the
19 substance of the claims in those cases. The allegations in the SAP do not point to a pattern and
20 practice of UC. They concern only one project, the LRDP, and only one issue, whether UC is
21 required to update the LRDP any time actual enrollment exceeds the projected enrollment. Under
22 *Native Salmon*, such an action can only be brought through a petition for administrative
23 mandamus. (221 Cal.App.3d at 1428-1429.) Therefore, Petitioner has failed to show that it has an
24 independent, viable claim for declaratory relief and the demurrer should be sustained.

25 **E. The SAP is Moot, and No Exceptions to the Mootness Doctrine Apply**

26 Petitioner does not even attempt to argue that its claims are not moot, but rather directly
27 asserts that one or more of the exceptions to the mootness doctrine apply. (POB, pp. 13-14.) As
28 set forth in the MPA, Petitioner's claims are moot. (MPA, pp 18-19.) Moreover, none of the

1 exceptions to the mootness doctrine apply.

2 Petitioner first argues that material questions remain for the Court's determination, but
3 does not state what those questions are. (POB, p. 14.) Rather, Petitioner claims that UC cannot
4 provide facts on demurrer that the environmental impacts of increased enrollment disappear at
5 the end of a school year and that UC ignores the cumulative impacts of multiple years of alleged
6 increased student enrollment. (*Id.*) Neither assertion explains what material questions the Court
7 would still need to answer, but, more importantly, neither shows how either the Court, or UC, can
8 address such alleged impacts for an academic year that no longer exists. Finally, Petitioner again
9 raises the 2018-2019 enrollment numbers as a "material question." However, the SAP contains no
10 allegations regarding the 2018-2019 enrollment numbers, and such unfounded arguments in the
11 POB cannot serve to defeat this demurrer.

12 Next, Petitioner attempts to analogize its claims to cases where courts have found that a
13 CEQA claim is not moot. The first case cited, *County Sanitation Dist. No. 2 v. County of Kern*
14 (2005) 127 Cal.App.4th 1544, 1628, examined the mootness of challenges to six contracts and
15 found that some of the challenges were moot because the contracts had expired while others were
16 not moot because the contracts were still in effect and mitigation measures could still be applied.
17 Like the expired contracts, Petitioner's challenge to the 2017 Enrollment Numbers is moot
18 because the 2017-2018 academic year has expired and there is no CEQA review UC can conduct
19 or mitigation measures that UC could apply to the 2017 Enrollment Numbers.

20 The other two cases Petitioner relies on are distinguishable because they concern existing
21 physical projects. In *Association for a Cleaner Environment v. Yosemite Community College*
22 *District* (2004) 116 Cal.App.4th 629, the court found that the lead agency had impermissibly
23 excluded demolition of a firearms range from its project description and its environmental review.
24 The court, with little discussion, found that the case was not moot because CEQA review could
25 still result in mitigation measures for the properly defined project. (*Id.* at 640.) *Woodward Park*
26 *Homeowners Assn. v. Garreks, Inc.* (2000) 77 Cal.App.4th 880 involved a newly constructed car
27 wash. There the court held that "the preparation of an EIR could result in modification of the
28 project to mitigate adverse impacts or even removal of the project altogether." (*Id.* at 888.)

1 Neither of these cases are applicable here because increases in enrollment above that projected in
2 the LRDP do not involve a physical project that can be mitigated or removed.

3 Finally, Petitioner relies on *Californians for Alternatives to Toxics v. California*
4 *Department of Pesticide Regulation* (2006) 136 Cal.App.4th 1049 (“*Alternatives*”) for the
5 proposition that the Court should decide this case despite its mootness because it allegedly
6 provides an issue of broad public interest that is likely to recur. (POB, pp. 14-15.) *Alternatives*,
7 however, is inapposite. That case involved a certified CEQA-equivalent program which mandated
8 the Department review and approve renewal applications on an annual basis. (136 Cal.App.4th at
9 1057-1058.) Under that statutory scheme, it was indeed impossible for plaintiffs to complete a
10 challenge to an annual renewal before that renewal would be replaced by the next year’s renewal
11 and become moot. Here, however, the Legislature has established a different statutory scheme
12 under section 21080.9 which provides that enrollment numbers shall be analyzed as a part of the
13 LRDP. This scheme avoids the very issue raised in *Alternatives* by not requiring UC to conduct
14 annual CEQA review of its enrollment numbers and not allowing Petitioner to file yearly
15 challenges to those enrollment numbers. Moreover, as noted in the MPA and herein, this is not a
16 situation where the increased student enrollment will forever escape CEQA review. Rather, UC
17 will conduct, and currently is conducting, environmental review of increased student enrollment
18 prior to the next discretionary action subject to CEQA.

19 Thus, the SAP is moot and Petitioner has not established that any of the exceptions to the
20 mootness doctrine apply.


21 III. CONCLUSION

22 For all of these reasons, the Court should sustain the demurrer.

23 DATED: November 7, 2018

MEYERS, NAVE, RIBACK, SILVER & WILSON

24 By:



25 Timothy D. Cremin
26 Attorneys for The Regents of the University of
27 California, Janet Napolitano, in her capacity as
28 President of the University of California; Carol T.
Christ, in her capacity as Chancellor of the University
of California, Berkeley

1
2 **PROOF OF SERVICE**

3 **STATE OF CALIFORNIA, COUNTY OF ALAMEDA**

4 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 Alameda, State of California. My business address is 555 12th Street, Suite 1500, Oakland, CA 94607.

5 On November 7, 2018, I served true copies of the following document(s) described as
6 **REPLY TO OPPOSITION TO DEMURRER** on the interested parties in this action as follows:

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8 Kelly Marie Perry, Esq.
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10
11 **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the
12 persons at the addresses listed in the Service List and placed the envelope for collection and
13 mailing, following our ordinary business practices. I am readily familiar with Meyers, Nave,
14 Riback, Silver & Wilson's practice for collecting and processing correspondence for mailing. On
the same day that the correspondence is placed for collection and mailing, it is deposited in the
ordinary course of business with the United States Postal Service, in a sealed envelope with
postage fully prepaid.

15 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the
16 document(s) to be sent from e-mail address mbender@meyersnave.com to the persons at the e-
mail addresses listed in the Service List. I did not receive, within a reasonable time after the
transmission, any electronic message or other indication that the transmission was unsuccessful.

17
18 I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

19 Executed on November 7, 2018, at Oakland, California.

20
21 
22 Melissa Bender

Document received by the CA 1st District Court of Appeal.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

SAVE BERKELEY'S NEIGHBORHOODS, a
California nonprofit public benefit
corporation,

Petitioner and Plaintiff,

v.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA; JANET NAPOLITANO, in
her capacity as President of the University of
California; CAROL T. CHRIST, in her
capacity as Chancellor of the University of
California, Berkeley; and DOES 1 through 20,

Respondents and Defendants.

Case No. RG18902751

ASSIGNED FOR ALL PRE-TRIAL
PURPOSES TO HON. FRANK ROESCH
DEPARTMENT 24

**OBJECTIONS TO AND REQUEST TO
STRIKE DECLARATION OF PHILLIP
BOKOVOY IN SUPPORT OF
OPPOSITION TO RESPONDENTS'
DEMURRER TO SECOND AMENDED
PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR DECLARATORY
RELIEF**

Reservation No. R-2003938

Judge: Hon. Frank Roesch
Date: November 15, 2018
Time: 3:45 PM
Dept.: 24

Action Filed: April 27, 2018
Trial Date: None Set

Document received by the CA 1st District Court of Appeal.

1 **I. INTRODUCTION**

2 The Court should use its inherent authority to strike the Declaration of Phillip Bokovoy
3 ("Bokovoy Declaration"), filed in support of Petitioner Save Berkeley's Neighborhoods'
4 ("Petitioner") Opposition to University of California's ("UC") Demurrer to the Second Amended
5 Petition ("Demurrer"). (Code Civ. Proc., § 436.)

6 Petitioner attempts to improperly rely on the Bokovoy Declaration to establish that
7 Petitioner is not barred by the strict and short statute of limitation applicable to California
8 Environmental Quality Act ("CEQA") suits. Mr. Bokovoy states that he is "founder and President
9 of Save Berkeley's Neighborhoods" and that he did not discover the Fall 2017 student enrollment
10 data until approximately a month after it was publicly available. (Bokovoy Declaration., ¶¶ 1, 7-
11 10.) None of these allegations are present in Petitioner's Second Amended Petitioner ("SAP"),
12 however. Instead, this is the first time that these allegations are raised in this litigation, despite the
13 fact that Petitioner has had three opportunities since the initiation of this action to sufficiently state
14 its claims. Mr. Bokovoy's declaration, therefore, is nothing more than an improper and irrelevant
15 attempt to run-around the well-established demurrer standards and pleading requirements. UC
16 objects to the Bokovoy Declaration and its effort to introduce new allegations, essentially once
17 again amending the Petition (since these allegations are not currently pled in the SAP). Because
18 of this and because the new allegations are irrelevant to the issue on Demurrer (i.e., whether the
19 SAP, as currently pled, sufficiently alleges a viable cause of action), the Court should exercise its
20 inherent discretion pursuant to Code of Civil Procedure section 436 and strike the Bokovoy
21 Declaration.

22 **II. ARGUMENT**

23 Through the Bokovoy Declaration, Petitioner is seeking to introduce new allegations
24 regarding the purported discovery of the enrollment numbers that are currently entirely omitted
25 from Petitioner's *third* attempt at stating its case. A demurrer, however, "tests the pleadings alone
26 and not the evidence or other extrinsic matters." (*SKF Farms v. Superior Court* (1984) 153
27 Cal.App.3d 902, 905.) "The only issue involved in a demurrer hearing is whether the complaint,
28 as it stands, unconnected with extraneous matters, states a cause of action." (*Ibid.* [citing *Griffith*

1 v. *Department of Public Works* (1956) 141 Cal.App.2d 376, 381].) Petitioner's self-serving
2 declaration, proffered at the eleventh hour, thus improperly puts forth extraneous allegations for
3 the Court's consideration. But these improper "new facts" in no way cure the deficiencies in the
4 SAP—to the contrary, Petitioner impliedly concedes that the SAP as it stands is insufficient to
5 support its claims.

6 The Court may, in its discretion, strike out "any irrelevant, false, or improper matter" or
7 "any pleading not drawn or filed in conformity" with the court rules. (Code Civ. Proc., § 436.)
8 The Bokovoy Declaration falls squarely within these categories. It attempts to amend the SAP by
9 inserting additional allegations regarding Mr. Bokovoy's purported discovery of the enrollment
10 numbers at a date later than when the enrollment numbers were made publicly available by the
11 UC, as discussed in UC's Demurrer. This attempt is wholly improper. Petitioner should not be
12 permitted to repeatedly amend its pleading and then come up with new allegations in its
13 opposition and declarations, previously unmentioned, in hopes of keeping its case afloat without
14 limit.

15 Moreover, that Petitioner has now put forth new allegations does not salvage the
16 insufficient allegations in the SAP. The purportedly new allegations are irrelevant to the issue of
17 Demurrer—that is, whether the Petition as currently pled presents sufficient factual allegations to
18 state a cause of action. As detailed in UC's Demurrer and Reply, it does not. Any new extraneous
19 allegations Petitioner suddenly wishes to present to the Court are irrelevant in this inquiry.

20 Petitioner's allegations in the SAP fail to overcome the deficiencies discussed in UC's
21 Demurrer. The Court should reject Petitioner's *post hoc* attempts to supplement its insufficient
22 allegations, having already had three opportunities to state a case.


23 **III. CONCLUSION**

24 For the reasons stated above, UC respectfully requests that the Court strike as improper
25 and irrelevant the Declaration of Phillip Bokovoy filed in support of Petitioner's Opposition to
26 UC's Demurrer.

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DATED: November 7, 2018

MEYERS, NAVE, RIBACK, SILVER & WILSON

By: 
Timothy D. Cremin
Attorneys for The Regents of the University of
California; Janet Napolitano, in her capacity as
President of the University of California; Carol T.
Christ, in her capacity as Chancellor of the
University of California, Berkeley

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1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF ALAMEDA**

3 At the time of service, I was over 18 years of age and **not a party to this action**. I am
4 employed in the County of Alameda, State of California. My business address is 555 12th Street,
Suite 1500, Oakland, CA 94607.

5 On November 7, 2018, I served true copies of the following document(s) described as
6 **OBJECTIONS TO AND REQUEST TO STRIKE DECLARATION OF PHILLIP**
7 **BOKOVOY IN SUPPORT OF OPPOSITION TO RESPONDENTS' DEMURRER TO**
8 **SECOND AMENDED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR**
9 **DECLARATORY RELIEF** on the interested parties in this action as follows:

8 Thomas N. Lippe, Esq.
9 Kelly Marie Perry, Esq.
10 Law Offices of Thomas N. Lippe, APC
201 Mission Street, 12th Fl.
San Francisco, CA 94105

Attorneys for Plaintiff SAVE
BERKELEY'S NEIGHBORHOODS

Tel: (415) 777-5604
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Email: lippelaw@sonic.net
kmhperry@sonic.net

12 **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the
13 persons at the addresses listed in the Service List and placed the envelope for collection and
14 mailing, following our ordinary business practices. I am readily familiar with Meyers, Nave,
15 Riback, Silver & Wilson's practice for collecting and processing correspondence for mailing. On
the same day that the correspondence is placed for collection and mailing, it is deposited in the
ordinary course of business with the United States Postal Service, in a sealed envelope with
postage fully prepaid.

16 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the
17 document(s) to be sent from e-mail address mbender@meyersnave.com to the persons at the e-
18 mail addresses listed in the Service List. I did not receive, within a reasonable time after the
transmission, any electronic message or other indication that the transmission was unsuccessful.

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

21 Executed on November 7, 2018, at Oakland, California.

22 
23 _____
Melissa Bender

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