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CLERK OF THE SUPERIOR COURT  
By *[Signature]* Deputy  
AUG 20 2021  
ALAMEDA COUNTY

17 Attorneys for Petitioners Make UC A Good Neighbor and  
18 The People's Park Historic District Advocacy Group

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

21 MAKE UC A GOOD NEIGHBOR, a California  
22 nonprofit public benefit corporation; and THE  
23 PEOPLE'S PARK HISTORIC DISTRICT  
24 ADVOCACY GROUP, a California nonprofit  
25 public benefit corporation,

26 Petitioners,

27 vs.

28 THE REGENTS OF THE UNIVERSITY OF  
CALIFORNIA; MICHAEL V. DRAKE, in his  
capacity as President of the University of  
California; UNIVERSITY OF CALIFORNIA,  
BERKELEY; CAROL T. CHRIST, in her capacity  
as Chancellor of the University of California,  
Berkeley; and DOES 1 through 20,

Respondents.

Case No. **21110142**  
**PETITION FOR WRIT OF MANDATE**  
**[California Environmental Quality Act]**

1 Petitioners Make UC A Good Neighbor and The People's Park Historic District Advocacy Group  
2 allege:

3 1. On or about July 22, 2021, Respondent Regents of the University of California certified a Final  
4 Environmental Impact Report (FEIR) prepared for the 2021 Long Range Development Plan for the UC  
5 Berkeley campus (LRDP), Housing Project # 1, and Housing Project # 2. The LRDP, Housing Project #  
6 1 and Housing Project # 2 are collectively referred to herein as the "Project."

7 2. On or about July 22, 2021, Respondent Regents of the University of California also approved the  
8 LRDP and Housing Project # 1. Petitioners are informed and believe that Respondents have not  
9 approved Housing Project # 2 as of the date of this writing. To the extent Respondents approved  
10 Housing Project # 2 by the date of this writing, this Petition also challenges that approval.

11 3. This action challenges Respondents' approval of the Project on grounds the approval violates the  
12 California Environmental Quality Act (CEQA).

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

18 5. Public Resources Code section 21080.09, subdivision (b) requires that "Environmental effects  
19 relating to changes in enrollment levels shall be considered for each campus or medical center of public  
20 higher education in the environmental impact report prepared for the long range development plan for  
21 the campus or medical center." Public Resources Code section 21080.09, subdivision (d) requires that  
22 Respondents and the University of California, Berkeley "consider the environmental impact of academic  
23 and enrollment plans" pursuant to CEQA and "that any such plans shall become effective for a campus  
24 ... only after the environmental effects of those plans have been analyzed" as required by CEQA.

#### Parties

25 6. Plaintiff Make UC A Good Neighbor is a California nonprofit public benefit corporation formed  
26 to provide education and advocacy related to the impacts of UC Berkeley on the surrounding  
27 environment. Plaintiff's founders, directors, supporters, patrons, contributors, advisors, and members  
28 live in the area affected by the Project's environmental effects, and will suffer injury from adverse

1 environmental impacts caused by this Project if the legal violations alleged herein are not remedied.  
2 Plaintiff was formed and brings this action to represent and advocate for the beneficial interests of its  
3 founders, directors, supporters, patrons, contributors, advisors, and members in obtaining relief from the  
4 legal violations alleged herein and to improve quality of life, protect the environment and implement  
5 best planning practices in connection with UC Berkeley's increases in student enrollment and expansion  
6 of infrastructure.

7 7. Plaintiff The People's Park Historic District Advocacy Group is a California nonprofit public  
8 benefit corporation formed to establish a People's Park Historic District to protect, preserve, and  
9 enhance public understanding of the significant architectural and cultural landmarks and historic events  
10 unique to the Southside campus area of the University of California, Berkeley, through outreach,  
11 research, and educational and cultural community projects. Plaintiff's founders, directors, supporters,  
12 patrons, contributors, advisors, and members live in the area affected by the Project's environmental  
13 effects, and will suffer injury from adverse environmental impacts caused by this Project if the legal  
14 violations alleged herein are not remedied. Plaintiff was formed and brings this action to represent and  
15 advocate for the beneficial interests of its founders, directors, supporters, patrons, contributors, advisors,  
16 and members in obtaining relief from the legal violations alleged herein and to improve quality of life,  
17 protect the environment and implement best planning practices in connection with UC Berkeley's  
18 increases in student enrollment and expansion of infrastructure.

19 8. Respondent THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (hereinafter "Regents")  
20 is a public trust corporation and state agency established pursuant to the California Constitution vested  
21 with administering the University of California including the management and disposition of property of  
22 the University and the lead agency for the 2021 LRDP under CEQA, and is thus responsible for  
23 analyzing, disclosing, and mitigating the environmental impacts of the 2021 LRDP, including its  
24 increase in student enrollment and local populations at the UC Campus and facilities.

25 9. Respondent MICHAEL V. DRAKE is the President of the University of California and is named  
26 herein solely in this capacity. Regents' Policy 8103 delegates to the President of the University the  
27 Regents' authority for budget or design for capital projects consistent with approved Long Range  
28 Development Plans and minor Long Range Development Plan amendments.

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

1 11. Respondents Regents, Michael V. Drake, and Carol T. Christ are hereinafter collectively referred  
2 to as "Respondents."

3 12. Petitioners do not know the true names and capacities of Respondents fictitiously named herein  
4 as DOES 1 through 20, inclusive. Petitioners are informed and believe, and thereon allege, that such  
5 fictitiously named Respondents are responsible in some manner for the acts or omissions complained of  
6 or pending herein. Petitioners will amend this Petition to allege the fictitiously named Respondents' true  
7 names and capacities when ascertained.

8 13. Respondents filed a Notice of Determination for the Project with the Governor's Office of  
9 Planning and Research on July 22, 2021, and that Notice was posted on July 23, 2021. Petitioners filed  
10 this Petition within the thirty (30) day limitations period provided in subdivision (c) of Public Resources  
11 Code section 21167(c).

#### 11 **Notice Requirements**

12 14. In accordance with Public Resources Code section 21167.5, Petitioners served Respondents with  
13 written notice of commencement of this action on August 20, 2021. The Notice of Commencement of  
14 Action and Proof of Service are attached hereto as Exhibit 1.

15 15. In accordance with Public Resources Code section 21167.7 and Code of Civil Procedure section  
16 388, Petitioners have provided a copy of this pleading to the Attorney General's office. (See Exhibit 2  
17 attached hereto.)

#### 18 **Jurisdiction and Venue**

19 16. Petitioners brings this action in mandamus pursuant to Code of Civil Procedure sections 1085,  
20 1088.5, and 1094.5, and Public Resources Code sections 21168 and 21168.5. The Court has jurisdiction  
21 over these claims.

22 17. Venue is proper in Alameda County pursuant to Code of Civil Procedure section 393(b) because  
23 the Project's environmental impacts will occur in Alameda County and Code of Civil Procedure section  
24 394, subdivision (a), because the University of California, Berkeley, and Respondents are situated  
25 therein.

#### 26 **Standing**

27 18. Petitioners and, to the extent applicable, their founders, directors, supporters, patrons,  
28 contributors, advisors, and members are beneficially interested in Respondents' full compliance with  
CEQA. Respondents owed a mandatory duty to comply with CEQA with respect to the 2021 LRDP and

1 the excess increase in student enrollment. Petitioners have the right to enforce the mandatory duties that  
2 CEQA imposes on Respondents.

### 3 **Exhaustion of Administrative Remedies**

4 19. Respondents' approval of the Project is final and not subject to further administrative appeal  
5 procedures.

6 20. In accord with Public Resources Code section 21177, subdivision (b), Petitioners objected to  
7 Respondents' approval of the Project orally or in writing during the public comment period or prior to  
8 the close of the public hearing on the Project before the filing of any Project-related Notice of  
9 Determination.

10 21. In accordance with Public Resources Code section 21177, subdivision (a), all alleged grounds for  
11 non-compliance with CEQA that are alleged herein were presented to Respondents during the public  
12 comment period for, or prior to the close of the public hearing on, the Project.

13 22. In the alternative, pursuant to Public Resources Code section 21177, subdivision (e), there was  
14 no opportunity for members of the public to raise the grounds of noncompliance alleged in this Petition  
15 prior to Respondents' approval of the Project.

### 16 **Private Attorney General Doctrine**

17 23. Petitioners bring this action as private attorneys general pursuant to Code of Civil Procedure  
18 section 1021.5, and any other applicable legal theory, to enforce important rights affecting the public  
19 interest.

20 24. Issuance of the relief requested herein will confer a significant benefit on a large class of persons  
21 by ensuring that Respondents complete adequate environmental review of the Project's environmental  
22 effects.

23 25. Issuance of the relief requested herein will result in the enforcement of important rights affecting  
24 the public interest. By compelling Respondents to complete adequate environmental review or  
25 mitigation of the Project's environmental effects, Petitioners will vindicate the public's important CEQA  
26 rights to public disclosure regarding and public participation in government decisions that affect the  
27 environment.

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

1 **First Cause of Action**

2 (Violation of CEQA: Pub. Resources Code, § 21000 et seq.)

3 27. Petitioners hereby reallege and incorporate the preceding paragraphs of this Petition and  
4 Complaint as though set forth herein in full.

5 28. The paragraphs below refer to and rely on information in documents relating to this action, all of  
6 which will be filed with this Court as part of the record of proceedings and which are incorporated by  
7 reference.

8 29. Respondents prejudicially abused their discretion in violation of CEQA pursuant to Public  
9 Resources Code sections 21168 and 21168.5 and Code of Civil Procedure sections 1085 and 1094.5.

10 30. Respondents violated CEQA because, without limitation, Respondents:

11 a. Certified a EIR that,

- 12 (1) Fails to present stable, accurate, certain project description and to evaluate the  
13 whole of the project;
- 14 (2) Fails to accurately and sufficiently describe the affected environmental setting of  
15 the project;
- 16 (3) Fails to include information necessary for informed decision making and informed  
17 public participation, including information necessary to reach informed  
18 conclusions regarding the significance of the Project's environmental impacts, the  
19 identification and effectiveness of mitigation measures to avoid the Project's  
20 significant environmental impacts, or the feasibility of mitigation measures to  
21 reduce the Project's significant environmental impacts;
- 22 (4) Fails to analyze a range of reasonable alternatives;
- 23 (5) Fails to lawfully assess the Project's cumulative effects;
- 24 (6) Fails to present the best available information;
- 25 (7) Fails to provide good faith responses to comments on the draft EIR;

26 b. Failed and refused to recirculate a revised draft EIR including said necessary information;

27 c. With respect to the findings required by CEQA at Public Resource Code section 21081,  
28 Respondents failed to make required findings, failed to make required findings in accordance  
with law, failed to support the findings made with substantial evidence, and failed to disclose the  
analytic route showing how the evidence supports said findings.

1 31. These violations of CEQA include, without limitation, the legal errors described in comment  
2 letters submitted during the administrative process which are incorporated herein by reference,  
3 including, without limitation, the following:

- 4 a. April 21, 2021, comment letter to Respondents on the DEIR from the City of Berkeley  
5 Planning and Development Department (Letter A3);
- 6 b. April 21, 2021, comment letter to Respondents on the DEIR from Make UC A Good  
7 Neighbor (Letter B7);
- 8 c. April 21, 2021, comment letter to Respondents on the DEIR from People's Park Historic  
9 District Advocacy Group (Letter B3);
- 10 d. April 21, 2021, comment letter to Respondents on the DEIR from the American  
11 Federation of State, County, and Municipal Employees Local 3299 (Letter B5);
- 12 e. April 20, 2021, comment letter to Respondents on the DEIR from Berkeley Architectural  
13 Heritage Association (Letter B10);
- 14 f. April 21, 2021, comment letter to Respondents on the DEIR from Berkeley Architectural  
15 Heritage Association (Letter B11);
- 16 g. April 21, 2021, comment letter to Respondents on the DEIR from City of Berkeley  
17 Landmarks Preservation Commission (Letter A4);
- 18 h. April 21, 2021, comment letter to Respondents on the DEIR from Sierra Club (Letter  
19 B12);
- 20 i. April 21, 2021, comment letter to Respondents on the DEIR from the Southside  
21 Neighborhood Consortium (Letter B4);
- 22 j. April 21, 2021, comment letter to Respondents on the DEIR from Panoramic Hill  
23 Association (Letter B9);
- 24 k. April 21, 2021, comment letter to Respondents on the DEIR from Lesley Emmington and  
25 Gale Garcia (Letter C88);
- 26 l. April 21, 2021, comment letters to Respondents on the DEIR from Janice Thomas  
27 (Letters C81-C84).

28 32. The EIR fails to lawfully assess the Project's environmental effects caused by increases in  
enrollment and local populations at the UC Berkeley campus.

- a. The EIR fails to include accommodating enrollment and local population increases in its

1 statement of objectives.

2 b. The EIR fails to include enrollment and campus population increases in its project  
3 description, and it fails to acknowledge Respondents' discretion with regard to enrollment and  
4 local population.

5 c. The EIR fails to consider mitigation and alternatives that would reduce significant  
6 impacts by reducing, delaying, or capping enrollment and local population increases.

7 d. The EIR fails to adequately or accurately account for enrollment and local population  
8 increases.

9 e. The EIR fails to adequately acknowledge and evaluate impacts due to enrollment and  
10 local population increases, including, e.g., impacts related to population and housing, impacts  
11 related to population and housing, public services, public services infrastructure, noise,  
12 aesthetics, solid waste, street trash, air quality, vehicle miles traveled, transportation, greenhouse  
gases, historic and cultural resources, and wildfire.

13 f. The EIR fails to adequately acknowledge and evaluate impacts due to enrollment and  
14 local population increases that may exceed the projections in the EIR, despite Respondents'  
15 historical underestimation of such increases.

16 g. The EIR fails to adequately assess the cumulative impacts of past enrollment and local  
17 population increases.

18 h. The EIR fails to lawfully describe the Project. For example, the EIR fails to describe the  
19 whole of the project; fails to include increases in enrollment and local population in the project  
20 description; and fails to include accommodation of those increases in its statement of project  
21 objectives. The EIR's "Project Study Area," identified as the project site, improperly truncates  
22 the geographic scope of the project area and analysis. The EIR fails to provide adequate  
23 information about the project to support analysis of its impacts. The EIR improperly includes  
24 mitigation measures in the project description.

25 33. The EIR fails to lawfully describe the environmental setting. For example, the EIR fails to  
26 provide or justify omission of a setting description based on existing conditions, and it fails to  
27 adequately describe the affected environmental setting outside the "EIR Study Area."

28 34. The EIR fails to lawfully analyze environmental effects. For example, the EIR unlawfully relies  
on the programmatic nature of the EIR to excuse its lack of necessary information and its failure to



1 propose mitigation at a time in which Respondents still have flexibility to devise program-level  
2 mitigation and consider broad policy alternatives. The EIR fails to adequately evaluate impacts deemed  
3 to be significant and unavoidable. The EIR fails to adequately evaluate effects outside of the “EIR Study  
4 Area.”

5 35. The EIR’s analysis of project alternatives omits essential information, including an analysis of a  
6 range of reasonable alternatives. For example, the EIR fails to consider alternatives that would reduce,  
7 cap, or delay enrollment and local population increases; alternative sites, including sites outside the  
8 truncated “EIR Study Area;” alternatives that would build more and denser housing on the proposed  
9 sites; alternatives that would preserve or partially preserve historic and cultural resources; and  
10 alternatives that would avoid or reduce multiple significant impacts. The EIR fails to provide adequate  
11 information about and comparison of alternatives.

12 36. The EIR fails to propose and evaluate adequate mitigation for significant impacts, including, e.g.,  
13 impacts related to population and housing, public services, public services infrastructure, public utilities,  
14 transportation, air quality, greenhouse gases, energy, noise, vehicle miles traveled, and wildfire. For  
15 example, the EIR fails to propose mitigation that would reduce, cap, or delay enrollment and local  
16 population increases. The EIR improperly defers the formulation of mitigation, relies on vague or  
17 unenforceable “Continuing Best Practices,” and fails to identify performance standards. The EIR fails to  
18 propose adequate mitigation for impacts it finds significant and unavoidable. The EIR fails to evaluate  
19 the significance of impacts with and without the mitigation included in the project description, and it  
20 fails to consider alternatives to that mitigation.

21 37. The EIR fails to lawfully assess the Project’s effects on historic and cultural resources. For  
22 example, the EIR fails to adequately describe existing conditions at the project site, including the  
23 historically significant character of the area surrounding the project site; the EIR provides an incomplete  
24 analysis of impacts to identified historic resources; the EIR improperly defers mitigation of significant  
25 impacts to identified historic resources; the EIR fails to adequately analyze or mitigate impacts relating  
26 to archaeological resources; the EIR fails to analyze alternative building designs and locations that avoid  
27 significant impacts on historic and cultural resources; the EIR fails to consider feasible mitigation to  
28 avoid or reduce impacts to historic and cultural resources; and the EIR proposes ineffective mitigation  
for impacts to historic and cultural resources.

38. The EIR fails to lawfully assess or mitigate the Project’s effects on air quality.

- 1 39. The EIR fails to lawfully assess or mitigate the Project's effects on traffic, transportation, and  
2 vehicle miles travelled.
- 3 40. The EIR fails to lawfully assess or mitigate the Project's effects on wildfires and wildfire risks.
- 4 41. The EIR fails to lawfully assess or mitigate the Project's effects on greenhouse gas emissions and  
5 climate change.
- 6 42. The EIR fails to lawfully assess or mitigate the Project's effects on noise pollution.
- 7 43. The EIR fails to lawfully assess or mitigate the Project's land use effects and inconsistencies with  
8 the City's General Plan and zoning laws and with other applicable regional plans.
- 9 44. The EIR fails to lawfully assess or mitigate the Project's effects on population and housing,  
10 including effects related to induced growth and housing displacement.
- 11 45. The EIR fails to lawfully assess or mitigate the Project's cumulative effects.
- 12 46. The EIR fails to lawfully assess or mitigate the Project's effects on public services, utilities,  
13 public service and utilities infrastructure, schools, and public safety.
- 14 47. The EIR fails to lawfully assess or mitigate the Project's effects on energy.
- 15 48. The EIR fails to lawfully assess or mitigate the Project's effects on aesthetics.
- 16 49. The EIR fails to lawfully assess or mitigate the Project's effects on biological resources.
- 17 50. The EIR fails to lawfully assess or mitigate the Project's effects on parks and recreation.
- 18 51. The EIR fails to lawfully assess or mitigate the Project's effects related to radiation.
- 19 52. The EIR fails to lawfully assess or mitigate the Project's effects related to trash and solid waste.
- 20 53. The final EIR fails to lawfully provide response to comments on the draft EIR.
- 21 54. Petitioners have no other plain, speedy, and adequate remedy in the ordinary course of law and  
22 will suffer irreparable injury unless this Court issues the relief requested herein.

### Prayer for Relief

23 WHEREFORE, Petitioners pray for the following relief:

- 24 55. For a peremptory writ of mandate pursuant to Public Resources Code section 21168.9 and Code  
25 of Civil Procedure sections 1085 or 1094.5:
- 26 a. Ordering Respondents to void their approval of the Project;
  - 27 b. Ordering Respondents to void their certification of the Project EIR;
  - 28 c. Ordering Respondents to suspend Project activities pending compliance with CEQA;
  - d. Ordering Respondents to take any other actions the Court finds necessary to bring its

1 determinations, findings, or decisions on the Project into compliance with CEQA and applicable  
2 planning laws;

3 e. Retaining the Court's jurisdiction over this matter until Respondents comply with the  
4 peremptory writ of mandate.

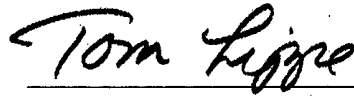
5 56. For an order compelling Respondents to pay Petitioners' costs of suit.

6 57. For an order compelling Respondents to pay Petitioners' reasonable attorneys' fees pursuant to  
7 Code of Civil Procedure section 1021.5.

8 58. For such other relief as the Court may deem proper.

9 DATED: August 20, 2021

LAW OFFICES OF THOMAS N. LIPPE, APC

10 

11 Thomas N. Lippe

12 Attorney for Petitioners Make UC A Good Neighbor and  
13 The People's Park Historic District Advocacy Group  
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