



25071578

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

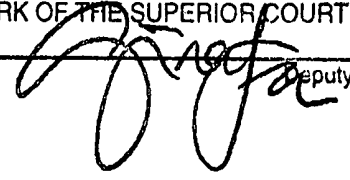
MICHAEL R. LOZEAU (Cal. Bar No. 142893)
REBECCA L. DAVIS (Cal. Bar No. 271662)
BRIAN B. FLYNN (Cal. Bar No. 314005)
LOZEAU | DRURY LLP
1939 Harrison St., Suite 150
Oakland, CA 94612
Tel: (510) 836-4200
Fax: (510) 836-4205
E-mail:rebecca@lozeaudrury.com
 michael@lozeaudrury.com
 brian@lozeaudrury.com

Attorneys for Petitioner and Plaintiff

FILED
ALAMEDA COUNTY

AUG 20 2021

CLERK OF THE SUPERIOR COURT

By  Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA**

AMERICAN FEDERATION OF STATE,
COUNTY, AND MUNICIPAL EMPLOYEES
LOCAL 3299,

Petitioner and Plaintiff,

vs.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA,

Respondent and Defendant.

UNIVERSITY OF CALIFORNIA,
BERKELEY, and DOES 1-10,

Real Parties in Interest and Defendants.

Case No.: **RG21110157**

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

[CEQA, Pub. Res. Code §21000, *et seq.*;
Code of Civil Procedure §§1094.5, 1085]

1 INTRODUCTION

2 1. Petitioner American Federation of State, County, and Municipal Employees Local
3 3299 (“Local 3299” or “Petitioner”) brings this action to challenge the unlawful actions of
4 Respondent The Regents of the University of California in certifying the Environmental Impact
5 Report (“EIR”) for the University of California Berkeley’s (“UC Berkeley”) 2021 Long Range
6 Development Plan Update (“2021 LRDP Update”) and Housing Projects #1 and #2 (collectively,
7 “the Project”), approving the 2021 LRDP Update and Housing Project #1, and making related
8 findings because the EIR fails to satisfy the requirements of the California Environmental Quality
9 Act (“CEQA”), Public Resources Code § 21000 *et seq.*, and the CEQA Guidelines, title 14,
10 California Code of Regulations, § 15000 *et seq.*

11 2. The Project has three components: (1) the 2021 Long Range Development Plan
12 Update for the University of California, Berkeley campus (“2021 LRDP Update”), (2) Housing
13 Project #1, also referred to as Anchor House, and (3) Housing Project #2, also referred to as People’s
14 Park.

15 3. UC Berkeley prepared and certified an Environmental Impact Report that included a
16 programmatic-level analysis for the 2021 LRDP Update and a project-level analysis for Housing
17 Projects #1 and #2. To date, the University has approved the 2021 LRDP Update and Housing Project
18 #1 (“Approvals”) but has not approved Housing Project #2.

19 4. In certifying the EIR, Respondent failed to comply with CEQA. More specifically,
20 Respondent prejudicially abused their discretion and failed to proceed in the manner required by law
21 by certifying an EIR that does not adequately analyze or mitigate the Project’s significant
22 environmental impacts. The EIR also fails to provide a CEQA-compliant alternatives analysis,
23 response to comments, or statement of overriding considerations. As a result of these and other
24 deficiencies, the EIR fails as an informational document.

25 5. Because the EIR violates CEQA, the Approvals that are reliant upon it must be
26 overturned. Therefore, Petitioner respectfully requests that the Court direct Respondents to set aside
27 the certification of the EIR and associated Project Approvals.
28

1 **PARTIES**

2 **Petitioner and Plaintiff**

3 6. Petitioner and Plaintiff American Federation of State, County, and Municipal
4 Employees Local 3299 is a public services employee union representing thousands of members
5 throughout the University of California system. Some of those members live, work, and recreate near
6 the UC Berkeley Campus and in Alameda County, including more than 950 who work at UC
7 Berkeley and the Lawrence Berkeley National Lab. Local 3299's members are predominantly people
8 of color and are among the University of California's lowest-paid workers. Local 3299's purposes
9 include advocating for vital services that keep Local 3299 members and their families safe, make
10 their communities strong, and protect the environment.

11 7. Local 3299 and its members have a direct and beneficial interest in compliance with
12 laws bearing upon approval of the Project. These interests will be directly and adversely affected by
13 the Project, which violate provisions of law as set forth in this Petition and would cause substantial
14 harm to public safety, the natural environment, and the quality of life in the surrounding community.
15 Local 3299 and its members will suffer injury from adverse environmental impacts caused by the
16 construction and operation of the Project if the legal violations alleged in this Petition and Complaint
17 are not remedied. Local 3299 brings this action to represent and advocate for the beneficial interests
18 of its members in obtaining relief from these legal violations and to protect its members' safety,
19 advocate for affordable housing, improve quality of life, protect the environment, and ensure that the
20 University adheres to the requirements of CEQA in evaluating the Project. In addition, increased
21 demand for housing in the area surrounding the proposed Project is likely to harm Local 3299's
22 members who live in the area by raising rents, thereby causing economic injury or displacement or
23 both. Local 3299 actively participated in the Project's administrative approval process. Local 3299
24 expressed its concerns regarding the Project in writing to the University and urged the University to
25 remedy the EIR's deficiencies and to comply with CEQA.

26 8. Local 3299 brings this action on behalf of itself, its members, and in the public
27 interest. Issuance of the relief requested in this Petition will confer a significant benefit on the general
28

1 public by requiring Respondents to carry out its duties under CEQA and other applicable laws before
2 approving the Project. Issuance of the relief requested in this Petition will also result in the
3 enforcement of important rights affecting the public interest by compelling Respondents to engage in
4 a legally adequate analysis of the Project, and to ensure that the public has a meaningful opportunity
5 to review and comment on the impacts and mitigation measures for the Project.

6 9. Local 3299 has no plain, speedy, or adequate remedy in the course of ordinary law
7 unless this Court grants the requested writ of mandate to require Respondent to set aside its
8 certificate of the EIR and the Approvals. In the absence of such remedies, the Regents' decisions
9 will remain in effect in violation of state law and Local 3299 and its members will be irreparably
10 harmed.

11 10. Unless enjoined, Respondent will implement the Project despite its lack of
12 compliance with CEQA. Local 3299 will suffer irreparable harm by Respondent's failure to take the
13 required steps to comply with CEQA's procedures and protect the environment.
14

15 **Respondent and Defendant**

16 11. Respondent The Regents of the University of California ("Regents" or "University") is
17 a public trust corporation and state agency established pursuant to the California Constitution vested
18 with administering the University of California including the management and disposition of facilities
19 at the UC Berkeley Campus. The Regents is the lead agency under CEQA for consideration of
20 certification of the EIR and has principal responsibility for approving the 2021 LRDP Update,
21 Anchor House (also referred herein as "Housing Project #1"), and People's Park (also referred herein
22 as "Housing Project #2").

23 **Real Parties in Interest and Defendants**

24 12. Real Party in Interest University of California, Berkeley, is listed as the applicant on
25 the Notices of Determination for both the 2021 LRDP Update and Anchor House.

26 13. Petitioner and Plaintiff does not know the true names and capacities of Real Parties in
27 Interest and Defendants fictitiously named herein as DOES 1 through 10, inclusive. Petitioner is
28 informed and believes, and thereon alleges, that such fictitiously named Real Parties in Interest and

1 Defendants are responsible in some manner for the acts or omissions complained of or pending
2 herein. Petitioner and Plaintiff will amend this Petition to allege the fictitiously named Real Party in
3 Interest's and Defendants' true names and capacities when ascertained.

4 JURISDICTION AND VENUE

5 14. This Court has jurisdiction over the matters alleged in this Petition pursuant to Code
6 of Civil Procedure §§1085 and 1094.5 and Public Resources Code §§21168 and 21168.5. The Court
7 has jurisdiction to issue declaratory relief pursuant to Code of Civil Procedure § 1060 and injunctive
8 relief pursuant to Code of Civil Procedure § 525 *et seq.*

9 15. Venue is proper pursuant to CCP §§ 393(b) (actions against public officers) and 395
10 (actions generally) because Respondent is an agency of the State of California. Venue is proper in
11 this Court because the causes of action alleged in this Petition and Complaint arose in the County of
12 Alameda, the Project will occur within the County of Alameda, and the environmental impacts of the
13 Project will be acutely felt within the County of Alameda.

14 16. This action was timely filed. Petitioner filed this Petition and Complaint prior to the
15 expiration of any applicable statute of limitations.

16 17. Petitioner performed all conditions precedent to filing this action by complying with
17 the requirements of PRC § 21167.5 by serving prior notice of the complaint in this action. A copy of
18 the written notice and proof of service is attached as Exhibit A to the Petition in this action.

19 18. Pursuant to PRC § 21167.6(b), Petitioner has elected to prepare the record of
20 proceedings in this matter, and is simultaneously filing their notice of intent to prepare said record of
21 proceedings with this Petition and Complaint. A true and correct copy of Petitioner's Notice of
22 Intent to Prepare Record is attached to this complaint as Exhibit B.

23 19. Petitioner will provide notice of this action to the Attorney General of the State of
24 California, by serving a copy of this Petition along with a notice of its filing, as required by PRC §
25 21167.7 and CCP § 388.

26 EXHAUSTION OF ADMINISTRATIVE REMEDIES

27 20. Local 3299 has actively participated in the administrative and environmental review
28 process prior to close of the public hearings on the Project and before the issuance of the Notices of

1 Determination. Local 3299 has fully exhausted administrative remedies to the extent required by law.
2 Pub. Res. Code §21177(a).

3 21. CEQA allows a petitioner who objected to a project to allege in a petition all
4 deficiencies asserted by others. *California Clean Energy Committee v. City of Woodland* (2014) 225
5 Cal.App.4th 173, 191. Local 3299, agencies, interested groups, and individuals commented on
6 the Project and raised each of the legal deficiencies asserted in this Petition and Complaint.

7 22. The Regents has taken final agency actions certifying the EIR and adopting related
8 Project approvals and findings. The Regents had a mandatory duty to comply with all applicable
9 laws, including CEQA, prior to undertaking the discretionary approvals at issue in this Petition and
10 Complaint. Local 3299 possesses no effective remedy to challenge the Project approvals at issue in
11 this action other than by means of this lawsuit.

12 **PROCEDURAL ALLEGATIONS**

13
14 23. The University released a Draft EIR for public review in March 2021. The Draft EIR
15 addressed the 2021 LRDP Update, and the Anchor House and People's Park housing projects.

16 24. Many parties provided written comments on the Draft EIR, including Local 3299,
17 other organizations, public agencies, and individual members of the public.

18 25. In July 2021, the University released the Final EIR for the Project. The Final EIR
19 included responses to comments on the Draft EIR and revisions to the Draft EIR, among other
20 things.

21 26. On July 22, 2021, the University held a hearing on the Project and certified the Final
22 EIR for the 2021 LRDP Update and the Housing Projects, approved the 2021 LRDP Update,
23 approved the Anchor House project, and made related findings.

24 **FACTUAL ALLEGATIONS**

25 **The Project and Project Site**

26 27. The Project includes three components: (1) the 2021 LRDP Update, (2) Housing
27 Project #1 (Anchor House), and (3) Housing Project #2 (People's Park).
28

1 28. The 2021 LRDP Update is an overall land use plan intended to guide future growth
2 and development on the UC Berkley Campus over the next 15 years. It has a buildout horizon of the
3 2036-37 school year and is an update to the University’s existing Long Range Development Plan
4 adopted in 2005, which had a buildout horizon year of 2020. The 2021 LRDP Update contemplates
5 an on-campus population of 67,200 persons (an increase of 12,071 from 2020 levels), an additional
6 8,096,249 square feet of development, and an additional 1,240 parking spaces covering 1,081,080
7 square feet of space for parking lots and parking structures. Draft EIR at 3-25.

8 29. The UC Berkely Campus is predominately located within the cities of Berkley and
9 Oakland. Draft EIR at 3-6. The “study area” used by the University for the EIR is contiguous with the
10 2021 LRDP Update planning area and includes the majority of UC Berkeley-owned properties. Draft
11 EIR at 3-8. However, it does not include UC Berkeley-owned properties outside of EIR study area,
12 including the University Village in Albany, the Richmond Field Station in Richmond, or various
13 properties outside of the city of Berkeley. *Id.*

14 30. Housing Project #1, also known as the Helen Diller Anchor House or Anchor House,
15 is a specific development that is part of the 2021 LRDP and involves the demolition of the existing
16 on-site structures and the construction and operation of a new 16-story, 526,000 square foot mixed-
17 use building with a combination of residential, campus life, academic life, and other uses not operated
18 by UC Berkeley. Draft EIR at 3-34. It is located immediately west of the Campus Park in Downtown
19 Berkeley, on a site bounded by Berkeley Way on the north, Oxford Street on the east, University
20 Avenue on the south, and Walnut Street on the west. Draft EIR at 3-35. Anchor House would provide
21 housing for 770 students and 46 employees. Draft EIR at 3-34.

22 31. The Anchor House site is currently occupied by eight apartment units (equivalent to 16
23 beds), surface parking, UC Berkeley office space, UC Berkeley’s shuttle maintenance garage, and
24 vacant commercial buildings. Draft EIR at 3-35. UC Berkeley’s shuttle garage, referred to as Oxford
25 Garage, is on the northeastern corner of the site and was built in 1930. *Id.* The garage is also listed in
26 the California State Historic Resources Inventory and was designated a City of Berkeley historical
27 landmark in 1981. *Id.*

1 32. Housing Project #2, also known as People’s Park, is also a specific development that is
2 part of the 2021 LRDP Update and involves the demolition of the existing on-site structures and park
3 amenities and the construction and operation of two new mixed-use buildings with a combination of
4 residential, campus life, academic life, and other uses not operated by UC Berkeley. Draft EIR at 3-
5 50. Housing Project #2 would include three components: (1) a 17-story, 356,000 square foot student
6 housing building providing beds for 1,187 students and 8 faculty or staff, (2) a 91,970 square foot
7 affordable and supportive housing building that would house 125 residents, and (3) 82,000 square
8 feet of open space. Draft EIR at 3-51.

9 33. Housing Project #2 would be built at the current site of People’s Park at 2556 Haste
10 Street. People’s Park is a 2.8-acre park with current on-site uses including gardens and lawn space, a
11 paved basketball court, picnic tables, a wooden stage, and a public restroom building. Draft EIR at 3-
12 53. People’s Park is currently primarily occupied by people without housing, in multiple
13 encampments. *Id.* Historically, People’s Park has been known for being the site of protests and
14 community action. It is listed in the California State Historic Resources Inventory and is a City of
15 Berkeley historic landmark. *Id.*

16
17 **Wildfire, Public Safety, and Evacuation Impacts**

18 34. More than half of the UC Berkeley campus is designated a Very High Fire Severity
19 Zone, including all of Hill Campus West, Hill Campus East, Clark Kerr Campus, and many of the
20 City Environs properties. Draft EIR at 5.18-1, 3-8. New development in Very High Fire Severity
21 Zones increases the risk of fire ignition, which in turn increases the risk of exposing students,
22 residents, employees, and visitors to wildfire. “[A]s population increases and development further
23 encroaches into wildland vegetation, there is an increased risk that a human-caused ignition will
24 coincide in place and time with hot, dry weather; flammable vegetation; and severe wind conditions,”
25 Syphard, A. K, Keely, J. E. (2020). Why Are So Many Structures Burning In California? Fremontia,
26 47(2), 28. The EIR fails to analyze and mitigate the increased risk of wildfire stemming from the
27 siting of additional development within Wildland Urban Interface Zones and Very High Fire Severity
28 Zones on campus.

1 35. In evaluating the hazards created by a project, CEQA Guidelines Appendix G requires
2 EIRs to analyze whether a Project will “[e]xpose people or structures, either directly or indirectly, to
3 a significant risk of loss, injury or death involving wildland fires.” CEQA Guidelines Appendix G
4 §IX(g). The EIR does not adequately address this impact. The EIR does not include an analysis of
5 how the Project and its associated traffic and population increase will impact the ability of UC
6 students, staff, and faculty, as well as nearby neighborhoods, to evacuate in the event of a wildfire.
7 Nothing in the EIR analyzes whether the existing roadways are sufficient to accommodate the
8 evacuation of the increased UC campus population and surrounding neighborhoods, including the
9 additional cars and traffic resulting from the Project’s increased parking and population. Moreover,
10 the EIR is silent on how the existing campus population plus an additional 12,000 people will be
11 safely evacuated in the event of a fire, including the tens of thousands who will access campus
12 without cars. Without this information, there is no evidence to support the EIR’s conclusion that the
13 Project will not impair implementation or physically interfere with an adopted emergency response
14 plan or emergency evacuation plan.
15

16 36. With its July 17, 2021 comments, Petitioner submitted to Respondent the expert
17 comment of Professor Thomas Cova of the University of Utah who teaches and studies
18 environmental hazards, environmental management, and evacuation hazards. After reviewing the
19 EIR, Professor Cova explained that the it “fails to account for the increased cars accommodated by
20 the 1,240 additional parking spaces added by the LRDP, and the impact those cars will have on
21 evacuation capacity and timing. In addition, the EIR does not analyze how the thousands of additional
22 students and staff who access campus without cars will safely evacuate in the event of a wildfire or
23 other emergency.” Cova at 1. “Without this information, it is impossible to determine if the Project
24 would substantially impair an adopted emergency response plan or emergency evacuation plan.” *Id.*
25

26 37. The Final EIR’s response to comments by Petitioner and others raising concerns about
27 the Project’s impacts on wildfire and safety were inadequate and conclusory. The EIR does not adopt
28 numerous additional mitigation measures suggested by the public, experts, and the City of Berkeley

1 to reduce wildfire and safety risks, and provides no explanation or evidence that such measures are
2 infeasible.

3 38. Mitigation Measure WF-3, meant to address some wildfire concerns, is uncertain,
4 unenforceable, and constitutes deferred mitigation. MM WF-3 provides: “[e]lectrical lines associated
5 with future electric infrastructure shall be undergrounded, where feasible. UC Berkeley shall verify
6 compliance with this measure as part of plan review prior to construction.” Draft EIR at 5.18-26. The
7 EIR provides no definition for what is meant by “feasible” in the context of this measure. As a result,
8 the MM WF-3 does not require the University to underground any wires, as long as at some point
9 after the CEQA process is complete, it finds any reason at all that doing so would be infeasible.
10 Moreover, there is no evidence that it is infeasible to underground all electrical lines associated with
11 future electric infrastructure. Since the EIR concludes the Project’s impact on wildfires is significant
12 and unavoidable, Respondent was required to adopt all feasible mitigation measures.

14 **Transportation**

15 39. The EIR’s discussion of transportation and traffic impacts is deficient. The EIR
16 concludes that the Project will have a less than significant transportation impact because the Project is
17 “generally consistent with the transportation-related goals and policies in the UC Sustainable
18 Practices Policy and the UC Berkeley Sustainability Plan.” Draft EIR at 5.15-47. In reaching this
19 conclusion, the EIR fails to analyze the impacts of the more than 12,000 additional people expected
20 to be on campus by the year 2036, together with the Project’s increased reliance on public
21 transportation. Moreover, the EIR not address how the 2021 LRDP Update’s increased reliance on
22 public transportation will impact public safety evacuation plans.

23 **Public Services**

24 40. The EIR fails to disclose or mitigate impacts to fire and emergency medical services.
25 The City of Berkeley noted in comments on the Draft EIR that “the Berkeley Fire Department
26 (“BFD”) provides the vast majority of fire and emergency medical protection for the campus.” Final
27 EIR at 5-115. The City of Berkeley explains that responding to calls for higher density and taller
28 apartment buildings– like the proposed Housing Project #1 and #2 - takes twice the staff and

1 additional fire engines because of the need to evacuate hundreds of people. Final EIR at 5-116. The
2 EIR acknowledges that “the BFD indicated that projected population growth and development
3 proposed by UC Berkeley over the buildout horizon of the proposed LRDP Update would require
4 significant additional resources and facilities in order for the BFD to adequately respond to calls for
5 service.” Draft EIR at 5.13-17. Additional needed equipment includes an aerial ladder truck, type 1
6 fire engine, ambulance, mobile air supply truck, and battalion chief to accommodate the increased
7 density and height of projects under the proposed LRDP Update. *Id.* The EIR also acknowledges that
8 “[t]he BFD indicated that a new facility would need to be close to the Campus Park to house these
9 additional resources, and the BFD’s Division of Training building would need to be expanded to meet
10 additional training demands of a larger department.” *Id.*

11
12 41. CEQA requires an EIR to evaluate and mitigate any significant environmental impacts
13 caused by the need for new or expanded facilities to provide public services required by proposed
14 projects. CEQA Guidelines, Appendix G § XV. However, the environmental impacts of the new and
15 expanded facilities required by the Project are never analyzed or mitigated in the EIR.

16 42. In response to the City of Berkeley’s comments, the Final EIR quotes the Draft EIR’s
17 statement that “if and when the City of Berkeley would decide to construct a new facility in order to
18 accommodate additional resources, UC Berkeley would negotiate its proportional share of funding for
19 the mitigation of any environmental impacts resulting from the construction of the facility.” Final EIR
20 at 5-115. This is not an adequate response to the City of Berkeley’s comments (*see Cleary v. County*
21 *of Stanislaus* (1981) 118 Cal.App.3d 348, 357), and fails to analyze the Project as a whole, including
22 it reasonably foreseeable indirect physical changes to the environment.

23 **Historic, Cultural, and Tribal Resources**

24 43. The EIR Study Area includes dozens of historic buildings by renowned architects. The
25 Project will result in the demolition of more than 40 buildings that have been or could be designated
26 as landmarks by the City of Berkeley and/or listed in the National Register of Historic Places.

27 44. The Berkeley Architectural Heritage Association (“BAHA”) commented that the EIR
28 does not contain a comprehensive survey detailing existing baseline condition for historic, tribal, or

1 cultural resources. BAHA also points out that the EIR's historic resource technical reports are based
2 on incomplete and incorrect information, impacted resources were omitted or misdescribed.

3 45. The EIR's discussion of impacts on these and other historic and cultural resources is
4 deficient. For instance, the EIR fails to evaluate the impacts of shadows on the First Church of Christ
5 Scientist, a historic landmark located directly across the street from the 17-story housing building
6 proposed for Housing Project #2. The Final EIR responds to comments on shadow impacts by
7 improperly claiming that they do not need to be analyzed under CEQA. *See Bowman v. City of*
8 *Berkeley* (2004) 122 Cal.App.4th 572, 586; *South of Market Community Action Network v. San*
9 *Francisco* (2019) 33 Cal.App.5th 321, 349-350 (EIR was adequate in addressing shadow impacts
10 because it described the impacts in detail before concluding that there would be no significant
11 impact.). The EIR's failure to include information about the Project's shading impacts renders the
12 EIR inadequate as an informational document.

13
14 46. The EIR fails to adequately mitigate the Project's impacts to historic resources. The
15 EIR concludes that the Project's impacts on historical resources will be significant and unavoidable
16 despite the availability of additional feasible mitigation measures and alternatives. Numerous experts,
17 organizations, and members of the public, including the City of Berkeley, the Berkeley Landmark
18 Preservation Committee, and the Berkeley Architectural Heritage Association suggested additional
19 feasible mitigation measures that would reduce the Project's impacts on historical resources. These
20 suggested mitigation measures and alternatives were rejected without an adequate explanation and
21 without evidence of infeasibility.

22 47. The mitigation measures there were adopted to reduce impacts on historic resources
23 violate CEQA. For example, Mitigation Measures CUL-1.4 requires that, prior to approval of final
24 design plans for Housing Project #2, UC Berkeley shall retain an architect meeting the National Park
25 Service Professional Qualifications Standards for historic architecture to review plans for the
26 proposed student housing and affordable and supportive housing buildings. The historic architect is to
27 provide input and refinements to the design team regarding fenestration patterns, entry design, and
28 the palette of exterior materials to improve compatibility with neighboring historical resources and to

1 enhance compliance with the Secretary of the Interior’s Standards and the City of Berkeley Southside
2 Design Guidelines. Final EIR at 6-29. Mitigation Measure CUL-1.4 constitutes improperly deferred
3 mitigation because the EIR provides no reason why MM CUL-1.4 could not be conducted now, so
4 that the design recommendations could be reviewed and commented on by the public during the
5 CEQA review process. In addition, MM CUL-1.4 includes no performance standards and does not
6 provide the types of actions that could feasibly achieve those standards. Moreover, while the measure
7 requires UC to retain a historic architect to provide input on how to reduce the impact of Housing
8 Project 2 on surrounding historical resources, it does not actually require UC to adopt any of the
9 architect’s recommendations.

10
11 48. The EIR’s conclusion that the Project’s impacts on tribal cultural resources (“TCR”) is
12 less-than-significant after mitigation is not supported by the evidence or the law. The EIR claims that
13 Mitigation Measure CUL-2 and CBP CUL-1 would reduce Project impacts on TCRs below
14 significance. Draft EIR, 5.16-8. Mitigation Measure CUL-2 provides a process for consultation
15 between the consulting archeologist and the appropriate tribe to “recommend appropriate and feasible
16 avoidance, testing, preservation, or mitigation measures.” It does not *require* avoidance if feasible.
17 Draft EIR at 5-4-43 and 5-4-44. This approach cannot be relied on as the basis for concluding that the
18 Project’s impact on TCR would be less-than-significant. *See, Save the Agoura Cornell Knoll v. City*
19 *of Agoura Hills* (2020) 46 Cal.App.5th 665, 731-33 [mitigation measure requiring completion of data
20 recovery program if preservation becomes impossible does not mitigate impact to a less-than-
21 significant level].

22 **Greenhouse Gas**

23 49. The EIR’s discussion of greenhouse gas effects is inadequate. For instance, there is no
24 evidence that it is feasible to reduce the Project’s significant greenhouse gas emissions to a less-than-
25 significant level, including through the purchase of offset credits. In addition, the UC Berkeley 2020
26 Sustainability Goals require that the UC Berkely Campus be climate neutral for scope 1 and 2 sources
27 and at least 40 percent of the natural gas combusted onsite must be biogas by 2025. Draft EIR at 5.7-
28 19 to 20, 5.7-26. But the EIR contains no discussion specific to how the Project would advance or

1 hinder meeting those requirements or the many other climate-goals discussed in the EIR. Further, the
2 EIR claims the University will start purchasing offsets to comply with the UC Sustainability Policy in
3 2025 to meet net-zero requirements for Scope 1 and 2 emissions, but the EIR does not explain how it
4 will reduce its GHG impacts to a less than significant level prior to 2025.

5 **Biological Resources**

6 50. The EIR's discussion of the Project's impacts on biological resources is inadequate.
7 Petitioner's April 21, 2021 comment on the Draft EIR includes the comments of expert wildlife
8 ecologist Dr. Shawn Smallwood, Ph.D who reviewed the EIR and found that the it: (1) failed to
9 establish a proper baseline for wildlife; (2) failed to adequately analyze impacts due to habitat loss;
10 (3) improperly analyzed the Project's impact on wildlife movement; (4) failed to disclose, analyze,
11 and mitigate the Project's impacts to wildlife due to window/vehicle collisions and energy use; (5)
12 inadequately analyzed the Project's cumulative impacts; and (6) failed to incorporate all feasible
13 mitigation measures.
14

15 51. The Final EIR does not adequately respond to Dr. Smallwood's comments. For
16 instance, in response to Dr. Smallwood's comments that the Project will have a significant impact on
17 biological resources as a result of habitat loss, the Final EIR states that "preconstruction surveys
18 would be necessary during nesting season to confirm whether proposed development or vegetation
19 management activities would adversely affect nesting birds where suitable habitat is present." Final
20 EIR at 5-423. This response ignores the ongoing impact on species resulting from habitat loss.

21 **Housing and Population**

22 52. The UC Berkeley campus has the lowest percentage of beds for the student body of
23 any campus in the UC system, requiring many to seek housing in the cities surrounding campus, and
24 cities further away. Draft EIR at 3-2.

25 53. The EIR includes an additional 8,492 students, approximately 71% (6,032 students) of
26 whom will live off-campus in the City of Berkley. Draft EIR at 5.12-9. In addition, the EIR includes
27 an additional 3,579 faculty and staff, 29% (1,037) of whom are expected to live in Berkeley. *Id.* In
28 total, this amounts to an additional 7,069 people who will need to find housing in the City of Berkley.

1 The City of Berkeley's entire housing stock in 2020 included only 51,523 units. Draft EIR at 5.12-11.
2 To house an additional 7,069 people will require additional housing to be built in Berkeley, and the
3 EIR failed to analyze the impact of this necessity. As the Alameda County Superior Court recently
4 held, "[i]ncreases in campus population foreseeably lead to direct and indirect impacts on housing,
5 population, and displacement, and the failure to consider those impacts constitutes prejudicial abuse
6 of discretion." *Save Berkeley's Neighborhoods v. Regents of Univ. of Cal.*, Alameda Sup. Ct. at p. 16
7 (Case No. 19022887) ("*SBN v. Regents*") (attached hereto as Exhibit C).

8 54. The EIR defends the growth as minimal in relation to regional growth. Draft EIR at
9 5.12-15. A regional comparison does not account for, mitigate, and analyze alternatives to the
10 specific growth-inducing effects of the Project in the particular area in which it is located, including
11 relating to housing. *See SBN v. Regents* at 14 (Exhibit C).

12 55. In addition to requiring construction of new housing, increased demand for housing in
13 the neighborhoods surrounding campus will also cause displacement of longtime low- and middle-
14 income families because the more than 7,000 new employees and students will flood the surrounding
15 rental market, driving up prices and forcing current renters out.

16 56. The EIR assumes full buildout of the 2021 LRDP Update's development by 2036,
17 along with a significantly increased campus population, but the EIR and 2021 LRDP Update do not
18 link the amount of campus population growth with the development of new campus housing, and no
19 mitigation measure requires the same. As a result, the full campus-population increase could occur
20 without construction of any additional housing. If this does occur, the impacts on housing in
21 Berkeley, Oakland, and other nearby cities would be even greater. The EIR fails to analyze the
22 environmental impact of additional housing that will be needed in the City of Berkeley and
23 elsewhere to make up for such a shortcoming.

24 57. No EIR has been prepared that analyzes UC Berkeley's past campus population
25 increase above what was analyzed in the LRDP adopted in 2005. The University improperly
26 attempts to boot-strap these past population increases into the Final EIR, while also claiming that the
27 EIR does not need to analyze the impacts of anticipated future campus population growth. Both are
28

1 inconsistent with recent Court rulings in *Save Berkeley Neighborhoods v. The Regents et al* (Case
2 No. RG19022887) and *The City of Berkeley v. The Regents et al.* (Case No. RG19023058) (the
3 “Enrollment Cases Decision”), which made it clear that UCB must treat its planned population
4 growth as a “project” for CEQA purposes.

5 **Impacts to Human Health from Toxic Air Contaminants in Indoor Air.**

6 58. The EIR fails to adequately disclose, evaluate, and mitigate the Project’s significant
7 adverse impact with respect to impacts on human health as a result of formaldehyde emissions in
8 indoor air, and its conclusions are not supported by substantial evidence.

9 59. The EIR fails to disclose, evaluate, and mitigate the Project’s significant health risks to
10 future residents and workers at future buildings that are planned as part of the 2021 LRDP Update,
11 including Housing Projects #1 and #2, resulting from the emissions of formaldehyde into the indoor
12 air. Formaldehyde is a toxic air contaminant (“TAC”). TACs are pollutants with the potential to
13 cause significant adverse health effects. Many composite wood products typically used in building
14 construction contain formaldehyde-based glues which off-gas formaldehyde over a very long time
15 period. The primary source of formaldehyde indoors is composite wood products manufactured with
16 urea-formaldehyde resins, such as plywood, medium density fiberboard, and particle board. These
17 materials are commonly used in building construction for flooring, cabinetry, baseboards, window
18 shades, interior doors, and window and door trims. The Bay Area Air Quality Management District
19 (“BAAQMD”) has established a significance threshold of health risks for carcinogenic TACs of 10 in
20 a million.
21

22 60. Certified Industrial Hygienist, Francis “Bud” Offermann, PE, CIH, conducted a review
23 of the Project, the EIR, and relevant documents regarding the Project’s indoor air emissions. Mr.
24 Offermann concluded that future residents of the Project will be exposed to a cancer risk from
25 formaldehyde of approximately 120 per million, assuming all materials are compliant with the
26 California Air Resources Board’s formaldehyde airborne toxics control measure. This is more than 12
27 times the BAAQMD’s CEQA significance thresholds for airborne cancer risk of 10 per million.
28

1 61. The Final EIR also fails to adequately respond to comments on the Draft EIR raising
2 this issue. For instance, in response to comments, the EIR dismisses Mr. Offerman’s comments as
3 speculative, but never provides additional detail on the types of building materials that would be used,
4 or investigates and discloses what the Project’s formaldehyde emissions would actually be, and what
5 health impact that would have. The Final EIR also claims there is no need to analyze this impact
6 because the Project will follow Campus Design Standards, which build off of other applicable
7 regulations such requiring the use of materials meeting the CARB Phase 2 standard. Final EIR at 5-
8 443-44. This does not adequately respond to Mr. Offermann’s comment because Mr. Offermann’s
9 analysis is clear that the increased cancer risk of 120 per million is based on materials that already
10 meet CARB Phase 2 standards.

11 **Alternatives**

12 62. Project Alternative D proposes “Increased Faculty and Staff Housing.” Draft EIR at 6-
13 59. “Under Alternative D, the Increased Faculty and Staff Housing Alternative, the proposed LRDP
14 Update would include an additional 1,000 beds for faculty and staff within the Hill Campus East and
15 the Clark Kerr Campus.” *Id.* The only other detail provided about this alternative is as follows: “The
16 Hill Campus East would absorb an additional 600 beds and 400 additional beds would be included
17 under redevelopment within the Clark Kerr Campus. While no specific sites have been selected for
18 development on the Hill Campus East for this alternative, it is assumed that any new development
19 would be located in close proximity to existing development and infrastructure.” *Id.* Without
20 explanation the EIR arbitrarily sited additional staff and faculty housing at an undisclosed location
21 within the area of campus with the most undeveloped natural habitat, the most risk of fire, and the
22 most difficult soil issues. Hill Campus East includes 760-acres of land, much of which is undeveloped
23 and hilly, and which is considered a Very High Fire Severity Zone. Noting only that an additional 600
24 beds would be located somewhere in the 760-acre Hill Campus East, the EIR’s description of
25 Alternative D is not sufficient to allow the public and decision makers to meaningfully evaluate,
26 analyze, and compare Alternative D with the Project.
27
28

1 63. The EIR's conclusion that the impacts of Alternative D would be greater than the
2 Project's impacts on aesthetics, biological resources, geology and soils, utilities and service systems,
3 and wildfire are not supported by substantial evidence because the analysis is based on unstated and
4 unsupported assumptions about where the additional staff and faculty housing will be located in Hill
5 Campus East.

6 64. The EIR failed to evaluate a reasonable range of alternatives that would feasibly attain
7 most of the basic objectives of the Project but would avoid or substantially lessen any of the
8 significant effects of the Project. A reasonable range of alternatives should have included an analysis
9 of additional student, staff, and faculty housing that did not include development in open space found
10 in Hill Campus East, which is the most undeveloped, hilly, and fire-prone area of the entire campus.
11 Among other options, UC should have looked at locating the additional housing on the dozens of
12 parcels already deemed appropriate for redevelopment, increased the density of Anchor House by
13 building additional floors, or providing housing on UC Berkeley-owned City Environs properties or on
14 other UC Berkeley-owned sites outside of the EIR study area. The EIR also improperly failed to
15 evaluate an alternative that limited campus population to a lower level. Compared to the Project and
16 Alternative D, any of these alternatives would have reduced environmental impacts and should have
17 been considered. Siting additional staff and faculty housing in Hill Campus East acted as a poison
18 pill, meant to defeat the environmental superiority of this alternative.

19
20 65. In addition, the alternatives analysis did not contain a reasonable range of alternatives
21 that would reduce the impacts of the Project, including Housing Projects #1 and #2, on historical
22 resources. The EIR notes that there are 39 sites identified as candidate sites for new buildout within
23 the LRDP area that are not designate as historical resources. Final EIR at 6-63. The EIR provides no
24 evidence that housing and other development could not be sited on these parcels, eliminating or
25 substantially reducing the Project's irreversible destruction of historic resources currently at the sites
26 of Housing Project #1 and 2. Moreover, the EIR did not analyze alternative locations, including off-
27 campus locations such as UC Berkeley City Environs properties, Richmond Bay Campus/Richmond
28 Field Station, the Mills College Campus, Albany Village, satellite UC Berkeley campuses, or other

1 off-campus sites, that would reduce or eliminate the impacts of Housing Project #1 and 2 on historic
2 resources.

3 66. Petitioner and other members of the public raised these issues in written and oral
4 comments on the Draft EIR, but the Final EIR did not adequately respond to such comments and
5 dismissed proposed alternatives as infeasible without supporting evidence or legal justification.

6 **Noise and Vibration**

7 67. The EIR's discussion of noise impacts is deficient. No acoustical report was prepared
8 by an expert in support of the EIR's analysis of potential noise impacts. To fill this informational gap,
9 Petitioner submitted comments of noise expert Deborah A. Jue, INCE-USA, of the firm Wilson Ihrig,
10 who reviewed the EIR and found that it lacked substantial evidence to support baseline noise levels.
11 Ms. Jue also suggested additional feasible mitigation measures to further reduce the Project's
12 significant and unabideable impacts. The Final EIR did not adopt these mitigation measures, despite
13 no evidence of infeasibility.
14

15 68. The EIR's discussion of construction-related vibration impacts is also deficient. The
16 EIR is not supported by a geotechnical report, and no information is provided about the subsurface
17 conditions of the sits of Housing Projects #1 and #2.

18 69. In addition, numerous parties and experts commented on the Project's impact on
19 historic resources near the Project as a result of pile driving during construction. The Final EIR
20 responds by noting an intention to use alternative construction methods that do not include
21 piledriving for Housing Projects #1 and #2, and for future LRDP projects "if feasible." This
22 constitutes improperly deferred and uncertain mitigation in violation of CEQA. Moreover, the Final
23 EIR does not disclose or analyze the vibratory impact of alternative construction methods on nearby
24 historic structures.

25 //

26 //

27 //

28

1 **FIRST CAUSE OF ACTION**

2 **Violation of CEQA-- Inadequate EIR**

3 **(Pub. Resources Code §21000, et seq. and CEQA Guidelines § 15000 et seq.)**

4 70. Petitioners hereby reallege and incorporate all of the above paragraphs as if fully set
5 forth herein.

6 71. CEQA was enacted by the legislature to ensure that the long-term protection of the
7 environment is a guiding criterion in public decisions. Pub. Res. Code, § 21001(d). CEQA requires
8 the lead agency for a project with the potential to cause significant environmental impacts to prepare
9 an EIR for the project that complies with the requirements of the statute, including, but not limited
10 to, the requirement to disclose and analyze the project's potentially significant environmental
11 impacts. Pub. Res. Code, §§21002.1(a), 21100(a), 21151(a); 14 CCR §§15064(a)(1), (f)(1), 15367.
12 The EIR must provide sufficient environmental analysis such that the decisionmakers can
13 intelligently and fully consider environmental consequences when acting on the proposed project.
14 Such analysis must include and rely upon thresholds of significance that are based on substantial
15 evidence in the record.

16 72. CEQA also mandates that the lead agency analyze and adopt feasible and enforceable
17 mitigation measures that would reduce or avoid each of a project's significant environmental impacts.
18 PRC § 21061; *see also* §21002.1. If any of the project's significant impacts cannot be mitigated to a
19 less than significant level, then CEQA bars the lead agency from approving a project if a feasible
20 alternative is available that would meet the project's objectives while avoiding or reducing its
21 significant environmental impacts.

22 73. Each of the lead agency's findings and conclusions, including those in the EIR, must
23 be supported by substantial evidence in the administrative record, and the agency must explain how
24 the evidence in the record supports the conclusions the agency has reached. *Topanga Assn. for a*
25 *Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.

26 74. Respondent committed a prejudicial abuse of discretion and failed to proceed in a
27 manner required by law because the Project relies on an EIR that fails to meet the CEQA's
28 requirements for the disclosure, analysis, mitigation, reduction, and/or avoidance of significant

1 environmental impacts from the Project, including direct, indirect, and cumulative impacts relating to
2 wildfire, public safety, public services, historic, cultural, and tribal resources, transportation,
3 greenhouse gas emissions, biological resources, housing and population, human health, and noise and
4 vibrations. These deficiencies rendered the EIR inadequate as an environmental document and
5 precluded informed decision making and informed public participation.

6 **75. Wildfire, Public Safety, and Evacuation.** The EIR fails to adequately disclose,
7 analyze, and/or mitigate the Project's significant direct, indirect, and cumulative wildfire-related
8 impacts. The EIR's analysis of wildfire-related impacts is inadequate because, *inter alia*, the EIR:

- 9 a. fails to analyze and mitigate all the increased potential for wildfire ignitions resulting
10 from siting additional housing and development in Wildland Urban Interface Zones
11 and Very High Fire Hazard Severity Zones;
- 12 b. fails to analyze and mitigate whether the Project will expose people or structures to a
13 significant risk of loss, injury or death involving wildland fires;
- 14 c. fails to provide sufficient information to determine how the Project's traffic and
15 population increases will impact evacuation times and procedures and whether it will
16 interfere with existing emergency and evacuation plans;
- 17 d. fails to support its findings that the Project will not physically interfere with an
18 adopted emergency response plan or emergency evacuation plan with substantial
19 evidence;
- 20 e. fails to adopt all feasible mitigation measures to reduce the Project's significant and
21 unavoidable wildfire and safety impacts; and
- 22 f. adopts mitigation measures that do not comply with CEQA.

23 **76. Transportation.** The EIR fails to adequately disclose, analyze, and/or mitigate the
24 Project's significant direct, indirect, and cumulative impacts on public transportation.

25 **77. Public Services.** The EIR fails to adequately disclose, analyze, and/or mitigate the
26 Project's significant direct, indirect, and cumulative impacts on the environment from the need for
27 new or expanded public services. The EIR's analysis of public services impacts is inadequate
28 because, *inter alia*, the EIR:

- 1 a. fails to disclose, analyze, and mitigate impacts stemming from additional facilities and
2 equipment needed by fire and police services as a result of the Project;
3 b. fails to analyze the impacts of the project as a whole, including in direct impacts; and
4 c. fails to adequately respond to comments raising concerns about the impacts on the
5 environment caused by the need for new or expanded facilities to provide public
6 services.

7 **78. Cultural and Tribal Resources.** The EIR fails to adequately disclose, analyze, and/or
8 mitigate the Project's significant direct, indirect, and cumulative impacts on cultural and tribal
9 resources. The EIR's analysis of cultural and tribal resources impacts is inadequate because, *inter*
10 *alia*, the EIR:

- 11 a. fails to require all feasible mitigation measures and alternatives;
12 b. fails to adequately respond to comments;
13 c. adopts deferred mitigation that violates CEQA;
14 a. fails to support its finding that the Project's impacts on tribal cultural resources will be
15 less-than-significant with mitigation.
16

17 **79. Greenhouse Gases.** The EIR fails to adequately disclose, analyze, and/or mitigate the
18 Project's direct, indirect, and cumulative greenhouse gas effects. The EIR's analysis of greenhouse
19 gas impacts is inadequate because, *inter alia*, the EIR:

- 20 a. fails to support its selection of thresholds of significance with substantial evidence in
21 the record;
22 b. relies on greenhouse gas mitigation measures that are vague, ineffective, deferred,
23 and/or unenforceable;
24 c. fails to incorporate all feasible mitigation and avoidance measures;
25 d. impermissibly relies on off-site offsets to mitigate Project's greenhouse gas emissions
26 because the EIR fails to provide substantial evidence that such offsets are available,
27 real, permanent, quantifiable, verifiable, and enforceable reductions; and
28

- 1 e. fails to discuss how the Project would affect the ability to meet the Regents'
2 requirements for the UC Berkeley Campus.

3 80. **Biological Resources.** The EIR fails to adequately disclose, analyze, and/or mitigate
4 the Project's significant direct and cumulative impacts to biological resources. The EIR's analysis
5 of impacts on biological resources is inadequate because, *inter alia*, the EIR:

- 6 a. fails to establish a proper baseline for wildlife;
7 b. fails to adequately analyze impacts due to habitat loss;
8 c. analyzes the Project's impact on wildlife movement using an improper standard;
9 d. failing to disclose, analyze, and mitigate the Project's impacts to wildlife due to
10 window/vehicle collisions and energy use;
11 e. inadequately analyzes the Project's cumulative impacts; and
12 f. fails to incorporate all feasible mitigation measures.

13
14 81. **Population, Housing, and Growth Inducement.** The EIR fails to adequately
15 disclose, analyze, and/or mitigate the Project's significant direct and cumulative impacts on
16 population, housing, and grown inducement. The EIR's analysis of impacts on impacts on
17 population, housing, and grown inducement is inadequate because, *inter alia*, the EIR:

- 18 a. fails to consider the direct and indirect impacts of the Projects' increased campus
19 population on housing, population, and displacement;
20 b. fails to adequately discuss the need for construction of additional housing;
21 c. fails to adequately analyze the Project's cumulative impact on housing and population
22 growth;
23 d. fails to analyze the impacts of an increased student and staff population without
24 additional housing beyond Housing Projects #1 and 2; and
25 e. fails to analyze impacts of past and projected campus population growth.

26 82. **Health Hazards from TAC Emissions.** The EIR fails to adequately disclose, analyze,
27 and/or mitigate the Project's significant direct and cumulative impacts on human health from the
28

1 emissions of TACs in indoor air. The EIR's analysis of impacts on human health from TAC
2 emissions is inadequate because, *inter alia*, the EIR:

- 3 a. fails to disclose and mitigate the impact despite substantial evidence that it will be
4 significant;
- 5 b. fails to adopt feasible mitigation measure to reduce the significant impact; and
- 6 c. fails to adequately respond to comments on the Draft EIR providing substantial
7 evidence of a significant impact not analyzed and mitigated by the EIR.

8 83. **Baseline.** The EIR fails to adequately describe the existing physical environmental
9 conditions in the vicinity of the Project, including but not limited to environmental conditions relating
10 to the Project's impacts to biological resources, wildfire, noise, vibrations, historic resources, and
11 population.

12 84. **Alternatives.** The EIR fails to provide an adequate selection and discussion of
13 alternatives for consideration that foster informed decision-making and informed public
14 participation. The alternatives analysis in the EIR does not meet CEQA's requirement that an EIR
15 consider a reasonable range of alternatives that lessen the Project's significant environmental
16 impacts, does not focus on alternatives that either eliminate adverse impacts or reduce them to
17 insignificance even if they would to some degree impede the Project's objectives, failed to consider
18 a feasible alternative that would lessen significant impacts, unlawfully rejects alternatives without
19 adequately analyzing whether their impacts would be less significant than the Project's, and fails to
20 support with substantial evidence its conclusions regarding alternatives.

21 85. **Response to Comments.** The responses to comments in the Final EIR fail to meet
22 CEQA's requirements in that they neither adequately dispose of all the issues raised, nor provide
23 specific rationale for rejecting suggested Project changes, including the consideration or adoption of
24 feasible mitigation measures or alternatives. CEQA requires that a lead agency evaluate and respond
25 to all environmental comments on the Draft EIR that it receives during the public review period. The
26 responses must describe the disposition of the issues raised and must specifically explain reasons for
27 rejecting suggestions and for proceeding without incorporating the suggestions. The Final EIR's
28 responses to comments fail to satisfy the requirements of law. Failing to adequately respond to

1 comments rendered the Final EIR inadequate as an informational document.

2 86. Based upon each of the foregoing reasons, the EIR is legally defective under CEQA.
3 Respondents prejudicially abused their discretion in violation of CEQA in approving the Project. As
4 such, the Court should issue a writ of mandate directing Respondents to set aside the certification of
5 the EIR and approval of the Project.

6 **SECOND CAUSE OF ACTION**

7 **Violation of CEQA – Inadequate Findings and Statement of Overriding Considerations**
8 **(Pub. Res. Code § 21000, et seq. and CEQA Guidelines § 15000 et seq.)**

9 87. Petitioner hereby reallege and incorporates all of the above paragraphs as if fully set
10 forth herein.

11 88. Respondents' Findings of Fact and Statement of Overriding Considerations violate the
12 requirements of CEQA and the CEQA Guidelines. Respondents' findings fail to identify the changes
13 or alterations that are required to avoid or substantially lessen the project's significant environmental
14 effects, and do not provide adequate reasoning or disclose the analytic route from facts to
15 conclusions, as required by law. The purported benefits of the Project cited in the Statement of
16 Overriding Considerations do not outweigh the Project's substantial costs to public health and the
17 environment. Respondents' Findings and Statement of Overriding Considerations are not supported
18 by substantial evidence in the record.

19 89. When an EIR concludes that a project would result in significant environmental
20 effects, but where mitigation measures and alternatives identified in the EIR are deemed infeasible,
21 the CEQA findings must identify the specific economic, legal, social and technological and other
22 considerations that make infeasible the adoption of mitigation measures or alternatives. All CEQA
23 findings must be supported by substantial evidence in the record and must disclose the analytical
24 route by which approval of a project is justified. Here, the findings regarding the impacts, mitigation
25 measures, and alternatives relied upon by Respondent's approval of the Project are not supported by
26 substantial evidence in the record, and do not disclose the links between evidence and conclusions.

27 90. As a result of the foregoing defects, Respondent failed to proceed in a manner required
28 by law, and its decision to approve the Project and adopt Findings of Fact and a Statement of

1 Overriding Considerations was not supported by substantial evidence.

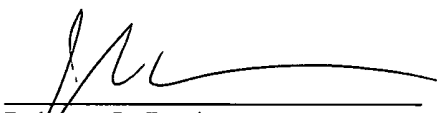
2 **PRAYER FOR RELIEF**

3 WHEREFORE, Petitioner respectfully requests the following relief and entry of judgment as
4 follows:

- 5 1. For a stay of Respondent's decisions approving the Project pending trial;
- 6 2. For a peremptory writ of mandate directing:
- 7 a. Respondent to vacate and set aside its certification of the Final EIR for the
- 8 Project and decisions approving the Project;
- 9 b. Respondent and Real Party in Interest to suspend all activity under the
- 10 certification of the EIR and approval of the Project that could result in any
- 11 change or alteration to the physical environment until Respondent has taken
- 12 all actions necessary to bring the certification and Project approvals into
- 13 compliance with CEQA; and
- 14 c. Respondent to prepare, circulate, and consider an EIR in compliance with
- 15 CEQA prior to any subsequent action to approve the Project.
- 16
- 17 3. For a declaration that Respondents' actions certifying the EIR and approving the
- 18 Project violated CEQA and the CEQA Guidelines, and declaring that the certification of the EIR and
- 19 approval of the Project is invalid.
- 20 4. For the costs of suit.
- 21 5. For an award of attorneys' fees pursuant to Code of Civil Procedure §1021.5 and any
- 22 other applicable provisions of law.
- 23 6. For any other legal and equitable relief as this Court deems just and proper.
- 24

25 Dated: August 20, 2021

LOZEAU|DRURY LLP

26 
27 _____
28 Rebecca L. Davis
Attorneys for Petitioner