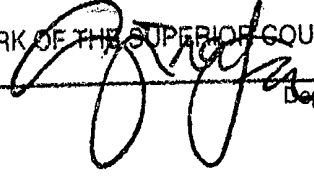




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ALAMEDA COUNTY

AUG 19 2021

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By  Deputy

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BERKELEY CITIZENS FOR
A BETTER PLAN (BC4BP)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

BERKELEY CITIZENS FOR A BETTER
PLAN,

Petitioner and Plaintiff,

vs.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA, an agency of the State of
California; CAROL T. CHRIST, in her official
capacity as Chancellor of the University of
California, Berkeley; Michael V. Drake, in his
official capacity as President of the University
of California; and DOES 1 THROUGH 20,
inclusive,

Respondents and Defendants.

HELEN DILLER FOUNDATION, a domestic
non-profit public benefit corporation;
PROMETHEUS REAL ESTATE GROUP,
INC., a California Corporation; and OSKI 360,
a limited liability California corporation, and
DOES 21 THROUGH 40,

Real Parties in Interest.

No. **RG21109910**

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

[California Environmental Quality Act
(CEQA), Pub. Res. Code § 21000, et seq.);
Code of Civ. Proc. §§1094.5, 1085]

INTRODUCTION

1. This California Environmental Quality Action (CEQA) case challenges a Final Environmental Impact Report (FEIR), prepared by the University of California, Berkeley (UCB) for its 2021 Long Range Development Plan (LRDP), effective until 2036-37, and for two construction projects located in different parts of Berkeley: Helen Diller Anchor House (Anchor), a mixed use 16-story high-rise, and People's Park (Park), a group of buildings including a 17-story mixed use high-rise (collectively the "Project"). Petitioner seeks an order setting aside the certification of the FEIR and all of the University of California Regents' (Regents) approvals for the Project.

2. The FEIR fails to comply with the informational requirements of CEQA, caused in great part by UCB's decision to draft an EIR that is at once underinclusive – insofar as it fails to address the proposed population increase – and over-inclusive – insofar as it shoves two construction projects into the EIR for the LRDP instead of first preparing an EIR for the LRDP and then later "tiering off" that EIR for the Park and Anchor projects. The result is an unintelligible and legally inadequate EIR that fails to include necessary and legally required baseline data and substitutes unsupported summary conclusions for meaningful discussion. It meets neither CEQA's requirements for an LRDP EIR nor those for the Anchor and Park individual housing projects.

3. The FEIR is materially deficient because it fails to examine the proposed population increase set out in the LRDP, which itself constitutes a "project" that must be discussed in the FEIR. The LRDP proposes a significant population increase – more students, faculty, staff and visitors – over the last LRDP enacted in 2005, but the FEIR for the LRDP does not examine alternatives to the population-increase project or mitigations for it. This failure is substantial and renders the FEIR wholly inadequate.

4. The FEIR under-describes the extent of the impacts from its proposed population increase by (among other things) providing inconsistent and unsupported data relating to its

1 baseline and projected populations. For example, the FEIR fails to provide an adequate project
2 description by never specifically describing the makeup of the proposed population increase. Are
3 the students full-time, part-time, extension students, residents of Berkeley, residents of
4 somewhere else, or what? The FEIR does not describe or discuss the large population of
5 unenrolled students (who attend classes through a variety of regular programming) and contract
6 workers who flood the main campus and other UCB sites on a daily basis as part of UCB's well-
7 documented efforts to out-source what had previously been staff jobs to third-party contractors.
8 By classifying large numbers of outsourced workers and students as visitors, the FEIR conceals
9 and understates the baseline and proposed populations that it is required to document and
10 describe as part of its population-increase project and their environmental impacts.

11 5. Nowhere does the FEIR examine alternatives to the proposed population increase or
12 identify the impacts occasioned by that aspect of the project. Instead, the FEIR examines impacts
13 of planned-for demolition and construction activities that are presumed to be required to
14 accommodate this proposed population increase. The bases for the presumptions within the FEIR
15 are unsupported, however, as the population increase is not fully disclosed or discussed.

16 6. In addition to the failure to address the proposed population increase, the alternatives
17 and mitigation to the "Project" (and each subproject) are inappropriately constrained in the FEIR
18 by the limited geographic scope of the LRDP, which fails to satisfy the spirit and letter of the law
19 that mandates the creation of an LRDP for each university within the UC System. Rather than
20 address the entirety of the UC Berkeley campus system – which includes multiple properties
21 within the City of Berkeley and those in adjacent or nearby cities such as Albany, Oakland,
22 Emeryville, and Richmond – the Regents limited the LRDP geographically to such an extent that
23 it resembles an unnatural hodge-podge of cherry-picked properties (some within Berkeley, some
24 not) designed to make the need for development on selected sites seem more acute or justifiable
25 in the FEIR. The result is a legally inadequate LRDP that fails to capture the true parameters of
26 the UCB "campus" and does not present a single, unified development plan for UCB as a whole.

1 As a result, the FEIR then fails set out the actual reasonable alternatives and mitigation measures
2 available. For example, the FEIR does not consider alternatives such as using other parts of UC's
3 properties to reduce the impacts from its population growth, instead of starting from the
4 conclusion that all of the student housing to accommodate the growth must be constructed close
5 to the main campus.

6 7. Throughout, the FEIR fails to include supportable baselines to show the difference
7 between current environmental conditions and those expected from the Project. This failure
8 appears to be, in part, due to the decision between the drafting of the DEIR and FEIR to change
9 the baseline dates for some of the impacts but not others. As a result, the few baselines that are
10 included are inconsistent and the discussion of the impacts, alternatives, and mitigation are
11 unsupported. For example, the manipulation of the dates for measuring population growth kept
12 changing making it impossible for any decision-maker to know what level of impacts that growth
13 would cause.

14 8. Rather than a discussion of Project impacts, the FEIR presents a series of unsupported
15 summary conclusions, which are wholly inadequate under CEQA. As a result, other than vague
16 assurances scattered around the FEIR, there are few analyses regarding the negative
17 environmental impacts from the Project. The "support" for the FEIR's summary conclusions is
18 particularly lacking. While the FEIR includes tables and charts, sometimes unsourced, there is no
19 information as to how they are relevant for measuring negative impacts from the Project. Where
20 there should be expert reports and analyses based on them, there are none. As an example, we
21 learn from the FEIR's discussion about the Anchor and Park projects that they require extensive
22 foundation piers for the high-rises; however, the FEIR does not include any site-specific soils
23 studies indicating the below-ground conditions. Instead, the FEIR includes a general description,
24 based on documents in the UCB geology department, of what one *might* find below ground in
25 different parts of Berkeley. Needless to say, non-specific support of this type is wholly
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1 inadequate under CEQA (and embarrassingly amateurish for such an esteemed and well-funded
2 institution).

3 9. Many of the few expert reports that are included with the FEIR are materially flawed
4 and resemble slapdash rush jobs intended to give a veneer of compliance with CEQA. For
5 example, after BC4BP pointed out that the health risk assessment report issued in connection
6 with the DEIR failed to include key sensitive populations – including a hospital and infant
7 childcare centers operated by UCB itself (a startling omission) – a hasty and incomplete
8 “revised” report was issued for the FEIR that glossed over the previous omissions and ignored or
9 unjustifiably minimized the potentially serious health impacts on these newly identified
10 populations. Other sections of the FEIR, however, were not updated to reflect the corrected
11 population information, rendering the FEIR internally inconsistent and its conclusions
12 unsupported and suspect.

13 10. The FEIR does not discuss the conflicts between the Project and the policies of the
14 Regents and those of Berkeley. For example, the FEIR does not discuss how the Project’s
15 decision to demolish or damage 40 historic structures complies with UCB’s New Century Plan,
16 the Master Landscape Plan, the Historic Landscape Plan, the Design Review and existing best
17 practices documents. Given the enormity of UCB’s plans to clear out so much of Berkeley’s
18 history and destroy or significantly “remodel” so many of its unique landmarks, one would
19 expect much more attention on this topic than just lists of the ones on the “chopping block.”
20 Surely, there should have also been at least an attempt to explain why this much destruction was
21 necessary and that there were absolutely no other alternatives.

22 11. In some places, UCB admits that its Project will cause significant negative impacts on
23 the environment but then either provides no mitigation measures or ones that are ineffective or
24 illogical at reducing the negative impacts to “less than significant.” The FEIR ignores feasible
25 alternatives that could prevent negative impacts in the first place and instead, concludes that a
26 Statement of Overriding Considerations will suffice. This approach is naturally antithetical to
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1 CEQA because the Legislature intended to reduce or eliminate negative impacts to the
2 environment, not skirt over them and just conclude, based on nothing but UCB's preferences,
3 that the public should live with them. Unfortunately, "living with" the negative impacts of the
4 Project will severely and negatively impact Berkeley residents and those who study and work
5 there.

6 12. In its alternatives discussion, UCB never explains why its LRDP must have all of the
7 housing development within a one-mile radius of the campus or why junior, senior, and graduate
8 students cannot be provided housing on one or more of UCB's other owned sites away from the
9 campus. Nor does it explain why some of the future desired population cannot be assigned to one
10 of UC's other eight campuses. Without discussion of these other alternatives, the decision-
11 makers and the public cannot grasp why it is necessary for UCB to create as many environmental
12 impacts resulting from the Project.

13 13. In many cases, the FEIR fails to answer questions or respond to criticisms submitted
14 by commentators. Instead, it refers the reader to either a "master response" that is irrelevant to
15 the question or to an answer that then incorporates some other answer.

16 14. These evasive responses are unfortunately consistent with the Leading Agency's
17 complete stonewalling of reasonable requests for information prior to the issuance of the FEIR,
18 and evidence the Lead Agency's attempts to hamper the attempts of the public to ascertain the
19 true scope and impacts of their planned Project.

20 PARTIES

21 15. Petitioner BERKELEY CITIZENS FOR A BETTER PLAN ("BC4BP") is an
22 unincorporated association that was formed in 2020 to advocate for a better Project – one that
23 protects the environment and does not diminish the health of and the quality of life for Berkeley
24 residents and others impacted by the Project. It is an association of interested persons and
25 organizations who bring this citizen suit under CEQA because they are concerned about UCB's
26 failure to comply with its legal duties under CEQA, specifically its failure to prepare and
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1 circulate to the public a legally adequate EIR "informational document" for the Project.
2 BC4BP's membership includes Berkeley residents, UCB alumni, employees and students -- who
3 live in or near to the geographic area identified in the FEIR as the development area and will be
4 severely impacted by the Project. The membership also includes individuals, including UCB
5 alumni, employees and students who live in other areas of Alameda County that will be
6 impacted by UCB's Project. These non-Berkeley citizens are concerned that they too will be
7 negatively impacted by the Project as they work, study, and travel to and from the geographic
8 areas identified in the FEIR as the Project site and by the proposed population increase, which
9 will necessarily have environmental impacts beyond the narrow geographic area examined by the
10 FEIR. BC4BP and its members are seeking a court order setting aside all of the approvals
11 granted by the Regents, the certification of the FEIR, and requiring that UCB draft and circulate
12 to the public a legally adequate EIR as required under CEQA.

13 16. Respondent and Defendant THE REGENTS OF THE UNIVERSITY OF
14 CALIFORNIA (Regents) is a public trust corporation and state agency established pursuant to
15 the California Constitution vested with administering the University of California, including all
16 of its nine "campuses," of which the University of California at Berkeley (UCB) is one.

17 17. Respondent and Defendant CAROL T. CHRIST is the Chancellor of the University
18 of California, Berkeley, and named here solely in this capacity. Chancellor Christ has
19 management authority over UCB and its real estate holdings, development plans, and the Project.

20 18. Respondent and Defendant MICHAEL V. DRAKE is President of the University of
21 California and named here only in his official capacity.

22 19. Petitioner is unaware of the true names and capacities of respondents fictitiously
23 named herein as DOES 1 through 20 and sues such respondents by fictitious names. When the
24 true identities and capacities of these respondents have been determined, Petitioner will amend
25 this petition, with leave of the Court, if necessary, to insert such identities and capacities. Each of
26 the respondents is the agent and/or employee of another respondent, and each performed acts on
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1 which this action is based within the course and scope of such respondent's agency and/or
2 employment.

3 20. Real Party in Interest HELEN DILLER FOUNDATION is a domestic
4 non-profit public benefit corporation and is an interested party because it is undertaking the
5 Archer project according to a contract entered into between the foundation and the Regents.
6 Although it is not named in the Notice of Determination dated July 22, 2021, UCB has publicly
7 described it as undertaking that portion of the Project known as the Helen Diller Anchor House).

8 21. Real Party in Interest PROMETHEUS REAL ESTATE GROUP, INC., is a California
9 Corporation and, according to information provided by UCB and in a contract, it is an interested
10 party because it will be the Oversight Manager of the Anchor development. Although it is not
11 named in the Notice of Determination dated July 22, 2021, UCB has publicly described it as
12 undertaking the Anchor project, which is part of the Project.

13 22. Real Party in Interest OSKI 360 is a limited liability California corporation that will
14 be handling the operation of Anchor according to its management and operating agreement with
15 the Helen Diller Foundation. OSKI 360 is a subsidiary of the Helen Diller Foundation and is
16 described as managing Anchor in the contract between the Regents and the foundation. Although
17 it is not named in the Notice of Determination dated July 22, 2021, UCB has publicly described
18 it as undertaking the Anchor project, which is part of the Project.

19 22.5 Petitioner is unaware of the true names and capacities of real parties in interest
20 fictitiously named herein as DOES 21 through 40 and sues such respondents by fictitious names.
21 When the true identities and capacities of these real parties have been determined, Petitioner will
22 amend this petition, with leave of the Court, if necessary, to insert such identities and capacities.
23 Each of the respondents is the agent and/or employee of another respondent, and each performed
24 acts on which this action is based within the course and scope of such respondent's agency
25 and/or employment.

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JURISDICTION AND VENUE

23. Petitioner hereby realleges and incorporates by reference the preceding paragraphs.

24. This court has jurisdiction under Public Resources Code sections 21168 and 21168.5 and under Code of Civil Procedure sections 1085 and 1094.5. Venue is proper in Alameda County because the parties are located there. Venue for this action also properly lies in this Court because the cause of action alleged in this Petition arose in Alameda County. The Project is proposed for development in Alameda County, and the impacts of the Project will occur in Alameda County.

25. Petitioner has performed any and all conditions precedent to filing the instant action and has exhausted any and all available administrative remedies to the extent possible and required by law. Petitioner submitted numerous objections to approval of the Project and the Respondents' inadequate analysis and mitigation of the Project's impacts in the FEIR prepared for the Project.

26. Respondents have taken final agency actions with respect to adopting the FEIR and approving the Project. Respondents have a duty to comply with applicable state laws, including but not limited to CEQA, prior to undertaking the discretionary approvals at issue in this lawsuit. Petitioner possesses no effective remedy to challenge the approvals at issue in this action other than by means of this lawsuit.

27. On August 12, 2021, Petitioner complied with Public Resources Code section 21167.5 by mailing to Respondents a letter stating that Petitioner planned to file a lawsuit seeking to invalidate Respondents' approval of the Project and certification of the LRDP FEIR. Attached hereto as Exhibit A is the true and correct copy of that letter.

28. On August 19, 2021, Petitioner complied with Public Resources Code section 21167.7 and Code of Civil Procedure section 388 by furnishing the Attorney General of the State of California with a copy of the Petition. Attached as Exhibit B is the true and correct copy of the letter transmitting the Petition to the Attorney General.

29. Pursuant to Public Resources Code section 21167.6(b)(2), Petitioner elects to prepare the record of proceedings in this action. Concurrently with this Petition, Petitioner will file a notice of election to prepare the administrative record.

30. Petitioner has no plain, speedy or adequate remedy in the course of ordinary law unless this Court grants the requested writ of mandate to require Respondents to set aside their certification of the FEIR and all approvals of the Project. In the absence of such remedies, Respondents' approval and certification of the FEIR will remain in effect in violation of State law, and Petitioner and its residents will be irreparably harmed. No money damages or legal remedy could adequately compensate Petitioner and its members for that harm.

STATEMENT OF FACTS

31. Petitioner realleges and incorporates by reference the preceding facts.

BACKGROUND

32. UCB has represented in its FEIR and elsewhere that each constituent institution within the University of California system is required to develop periodically a LRDP “that guides [its] physical development, including land use designations, the location of buildings, and infrastructure systems, for an established time horizon.” The purpose of this requirement is obvious: to present a single, comprehensive plan for that institution, not its constituent parts (i.e., individual departments or partial geographic areas).

33. The approval of an LRDP is subject to CEQA and requires the preparation of an EIR. Among other things, the EIR for an LRDP must consider the “[e]nvironmental effects relating to changes in enrollment levels” and relating to the overall projected demolition and construction necessary to improve and (if needed) expand university facilities to accommodate the proposed population growth (if any) set forth in the proposed LRDP. Once the LRDP is enacted and the EIR for that LRDP approved, consequent construction projects are also subject to CEQA, and may be addressed in a tiered environmental analysis based on an LRDP EIR. Because the final

1 EIR for the LRDP may be relied on in subsequent CEQA evaluations of future projects, it is
2 important that the EIR issued for the LRDP be comprehensive and satisfactory under CEQA.

3 THE PROJECT

4 34. From the Project's Draft Environmental Impact Report (DEIR), released on February
5 23, 2021, the public learned that the Project assumed a steep increase in UCB's population, from
6 the previously approved 33,450 students in the 2020 LRDP (published in 2005) to 48,200
7 students by the 2036-2037 academic year – a 14,750 student (or almost 50%) increase in student
8 enrollment – bringing the overall campus population to at least 70,000 (over 50% of the City's
9 entire current population). Neither the DEIR nor the subsequent FEIR substantively discussed
10 this projected population increase or provided sufficient information about that increase – such
11 as supported baseline population data – from which the public could ascertain the exact scope of
12 the proposed population increase and where these additional people were expected to live, work
13 or study, and commute.

14 35. UCB's DEIR and FEIR, as noted above, purported to discuss the environmental
15 impacts of the 2021 LRDP and the Anchor and Park developments; they did not discuss, except
16 incidentally, the proposed population increase.

17 36. **The LRDP Project:** The 2021 LRDP released at the same time as the DEIR was not
18 comprehensive. Instead of presenting a single plan for all sites inside and outside Berkeley that
19 comprise the modern UCB, the LRDP addressed only select sites in Berkeley, Oakland and
20 Contra Costa County. Those select sites included the original main campus (referred to as the
21 "core campus"), the Clark Kerr Campus, areas to the East of the "core campus" (the so-called
22 Hill areas) and select properties to the South and West of that core campus, but not additional
23 properties owned and/or leased by UCB and used in the normal course of its present operations.
24 It also did not include all construction that UCB has announced it intends to perform on its
25 properties in the time-period covered by the new 2021 LRDP, effective until 2036-37. These
26 omissions – both as to location and development plans – caused the information presented in the
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1 DEIR and FEIR to be incomplete and confusing; essentially providing only a piece of a much
2 larger puzzle.

3 37. The 2021 LRDP proposes construction of approximately 8 million square feet of new
4 space, primarily in Downtown Berkeley concentrated along the Oxford Corridor, Berkeley's
5 Southside, and the Clark Kerr Campus. Instead of adding square footage for educational,
6 research, or much needed student housing, the LRDP proposes construction of hundreds of
7 thousands of square feet of new income-producing commercial, retail, event, and office space in
8 these locations with incidental amounts of academic and student housing elements.

9 It intends that that by 2036-37, it will have demolished over 40 landmarked and/or historic
10 structures and landscapes on the UCB campus and around Berkeley's predominantly Southside
11 to make room for its planned addition of greatly increased population, student housing,
12 educational, retail, conference, and commercial space.

13 38. For example, along the Oxford Corridor, the LRDP contains plans to build multiple
14 new, large structures on Oxford Street between Virginia and Bancroft, including a new 16-story
15 tower taking up the entire city block at Oxford and University, a new multi-story complex with
16 two floors of parking on what is left of the Oxford Tract (north of Oxford and Hearst), a large
17 underground parking structure to the East of the University/Oxford intersection, and a huge
18 (200,000 sq. ft.) commercial/residential structure on what is now Edwards Stadium (corner of
19 Oxford and Bancroft). Once the planned construction is completed, virtually every parcel along
20 both sides of Oxford between Hearst and Bancroft will have a UCB structure or be leased by
21 UCB, thereby extending the "core" campus Westward into Berkeley's already dense downtown.

22 39. **Anchor Project:**¹ The only specific details UCB provides for its massive Oxford
23 corridor development plans are for the Anchor project, where the high-rise will take up an entire
24 city block at the corner of Oxford and University. Anchor is being developed as part of a Public-
25 Private Partnership (P3) with a private partner that will hold a long-term lease and development

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27 ¹ This project is referenced as "Project 1" in the FEIR and LRDP which then becomes confused with the Park
project that UCB decided to call "Project 2" in the same documents.

rights to the block-sized property. The structure will be massive: 16-stories complete with paid, under-ground public parking and floors of large income-producing commercial, retail, event spaces, and offices with exclusive student residential units above. The residences, which will be exclusively available to about 700 transfer students (for a housing fee), all feature single bedrooms with small suites each of which have kitchens, in-suite laundry, and lavish living areas, as well as separate student-only fitness and yoga facilities and recreational spaces. The project will require eviction of long-term, nonstudent tenants and demolition of their rent-controlled apartment building (1921 Walnut Street) and of the Walter Ratcliff designed landmark UC Garage. The height of the structure is well-above that previously agreed to by UCB or contemplated in the Downtown design plan for that it collaborated in creating. [check].

40. **The Park Project:** will consist of two buildings to be built on People's Park: one large L-shaped building formed by the intersection of a 17-story mixed-use tower on the Northside and a somewhat lower tower along the Westside of the parcel; and one stand-alone lower-rise building with office space on the Southside. The low-rise building may include some supported public housing to be run by an unknown community organization. The larger tower will contain a large retail area; little is disclosed about the remaining spaces although some descriptions state they include residential, academic, and leisure areas.

41. The project will obliterate the landmarked Park and will require 22 days of pile driving 70-100 feet subsurface that UCB admits may severely damage nearby national landmarks, including the Anna Head School and architect Bernard Maybeck's masterpiece First Church of Christ Scientist. UCB's mitigation strategy for dealing with vibration damage is to pay timely claims for damage and recommend that the (as yet unnamed) contractor or P3 developer utilize a less destructive form of construction "if feasible." No feasibility study was provided. Likewise, no shade study was undertaken despite the fact that the L-shaped Tower will permanently shade nearby properties, notably the famous wisteria arbor and windows of the landmarked First Church of Christ Scientist. The FEIR also fails to explain how paying for

1 damage to the church, which UCB does not own, can replace decorative windows and other art
2 objects in the church when there are not artisans or materials today to carry out the restoration of
3 them.

4 PROCEDURAL HISTORY

5 42. UCB published a Notice of Preparation (NOP) on April 7, 2020 that stated in
6 pertinent part, "Notice is hereby given that the University of California, Berkeley will prepare an
7 Environmental Impact Report (EIR) for the University of California, Berkeley (UC Berkeley)
8 Long Range Development Plan (LRDP) Update ("LRDP Update" or "proposed project"). Despite
9 releasing the notice of the preparation of an EIR for the LRDP Update, the LRDP Update was not
10 released publicly until almost a year later (in February 2021).

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12 43. After defining the proposed project as limited to the LRDP Update, the notice went
13 on to state:

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15 The LRDP Update EIR will function as a Program EIR (pursuant to CEQA
16 Guidelines section 15168) that can be used in the environmental review of
17 subsequent campus development projects during implementation of the LRDP
18 Update. In addition to analyzing the environmental effects of campus growth
19 under the LRDP Update at a programmatic level, the EIR will also provide a
20 project-specific analysis of the environmental effects associated with the
development of two off-campus housing projects (i.e., Housing Projects #1 and
#2) with up to 2,050 beds for UC Berkeley students. These two projects would
likely be some of the first projects developed under the LRDP Update.

21 44. According to the notice, the land use planning area "for the LRDP Update and
22 associated EIR . . . includes properties owned by the UC Regents located within the City of
23 Berkeley, as well as areas of the Hill Campus located within the City of Oakland and a portion of
24 land located in unincorporated Contra Costa County."

25 45. Although the notice contains several references to "growth," the notice did not
26 announce a population increase at UCB or announce that the planned EIR would discuss the

1 environmental impacts of a planned population increase for UCB, including any student
2 enrollment increase. It also noted that “The LRDP Update does not set a future population
3 capacity for the campus.” The notice explained, “Population assumptions included in the LRDP
4 Update provide a foundation for understanding the campus’s long-term space needs.”

5 46. These population assumptions were described as follows: “The LRDP Update
6 planning assumption for the campus population is 48,200 students and 19,000 faculty and
7 staff in the 2036-37 academic year compared to 39,300 students and 15,400 faculty and
8 staff in the 2018-19 academic year.” The notice also stated, “The LRDP Update EIR will
9 use the 2018-19 academic year as a key baseline year to reflect existing environmental
10 conditions and will use the 2036-37 academic year to forecast the potential environmental
11 impacts of the LRDP Update.”

12 47. After the NOP was published, members of the public, including undersigned
13 counsel, and various community groups submitted written requests for documents and
14 information about the draft LRDP Update, the Project, baseline conditions, and related
15 information from UCB and the Regents. While UCB acknowledged receipt of these
16 requests, it largely ignored them and failed to produce responsive information and
17 documents, including materials that were explicitly referenced in the later-released DEIR
18 and FEIR.

19 48. The public’s ability to counter UCB’s stonewalling regarding existing
20 conditions and potential impacts of the Project and planned population and enrollment
21 increases was substantially hampered by the COVID 19 pandemic. Among other things,
22 the City of Berkeley implemented several emergency health orders, and UCB closed its
23 libraries and archives.

24 49. After issuance of the NOP, UCB proceeded with the EIR process. During this
25 process it disclosed some information about the Project and its impacts during public
26 meetings but concealed the full scope and impacts of the Project. For example, during the
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1 scoping session, UCB presented slides that did not identify which historic resources it
2 intended to demolish. The attorney for BC4BP insisted in a comment letter that UCB was
3 required to share that information in its EIR and provide specifics.

4 50. The DEIR and 2021 LRDP were released on the same day – February 23,
5 2021 – which started the clock on the public’s comment period for the Project. The DEIR
6 and accompanying exhibits comprised thousands of pages. In conjunction with issuance
7 of the DEIR, and with no prior announcement, UCB released a revised best construction
8 practices document that was substantially different than the existing best practices
9 document. Rather than evaluating the proposed Project and mitigation measures pursuant
10 to UCB’s existing best practices document, the DEIR referenced and relied on the
11 proposed, but not yet adopted, best practices document, which was significantly more
12 lenient.

13 51. Due to the pandemic and related closures, many members of the public
14 requested short extensions of time within which to provide comments; all such requests
15 were denied.

16 52. BC4BP’s attorney² (and others) took exception in comment letters to the use of the
17 2018-19 academic year for setting the baseline when evaluating the impacts of increased
18 enrollment. By 2018-19, UCB had already increased its enrollment beyond the LRDP, published
19 in 2005. This issue continued through the FEIR with uses of charts relying on the 2018-19 time
20 period as setting the baseline for population increases.

21 53. During the comment period on the DEIR, many commentators, including experts
22 retained by law firms, responded with criticisms about the negative impacts from the proposed
23 LRDP. They also pointed out the deficiencies in the DEIR as described in the Introduction,
24 above. Members of the public asked questions in their comment letters about various aspects of
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26 ² BC4BP’s attorney initially represented the Berkeley Architectural Heritage Association when it submitted some of
27 its comments. Subsequently, she became the attorney for BC4BP and submitted comments on its behalf to the FEIR.

1 the Project and its environmental impacts. For example, the Berkeley Architectural Heritage
2 Association (BAHA) wrote a lengthy comment letter that posed numerous specific questions.

3 54. On July 7, 2021, UCB released their FEIR. The FEIR did not cure the DEIR's
4 significant deficiencies. Among other things, it revised the baseline dates for some categories of
5 impacts but not others (which created material inconsistencies and sowed confusion), ignored
6 comments, proposed alternate mitigation measures without any determination of feasibility or
7 proposed mechanism for enforcement, and dismissed specific questions about the existing and
8 future campus population as "irrelevant." Again, the public submitted many comment letters.
9 BC4BP submitted a comment letter and an expert report prior to the hearing on the Project.³ On
10 July 22, 2021, the Regents approved the Project. Attached as Exhibit X is a copy of the Notice of
11 Determination UCB filed with the State Clearinghouse on the same day.

12 55. **Negative Impacts:** As explained above, in the Introduction, the FEIR inadequately
13 discusses numerous impacts from the project. The FEIR particularly avoids providing an
14 adequate description of the Project's impacts, and providing baselines, mitigations, and feasible
15 alternatives in these areas: population increase (with substantial displacement of nonstudent
16 residents), noise (sound due to expansions of population and housing, and damage from
17 construction vibrations), air quality (including health risks to vulnerable populations), bird kill
18 from high-rise windows and loss of habitat, damage to and demolition of historic resources
19 (landmarked structures) and cultural resources, greenhouse gases, traffic (VMT), and decrease in
20 available public services (fire, police, sewer, etc.).

21 56. On July 22, 2021, the Regents approved the Project. Attached as Exhibit C is a copy
22 of the Notice of Determination UCB filed with the State Clearinghouse on the same day.

23 **FIRST CAUSE OF ACTION**

24 **Violation of CEOA**

25 **(Public Resources Code § 21000 et seq.; State CEOA Guidelines)**

26 ³ At this point, in her comment letter, the attorney for BC4BP incorporated all of the prior comments from the
27 Berkeley Architectural Heritage Association's comments into those of BC4BP.

1
2 57. Petitioner realleges and incorporates by reference the preceding paragraphs.

3 58. CEQA requires the lead agency for a project with the potential to cause significant
4 environmental impacts to prepare an EIR that complies with the requirements of the statute,
5 including, but not limited to, the requirement to analyze the project's potentially significant
6 environmental impacts. The EIR must provide sufficient environmental analysis such that the
7 decision makers can intelligently consider environmental consequences when acting on the
8 proposed project.

9 59. CEQA further mandates that a lead agency may approve a project that would have
10 significant, unavoidable environmental impacts only if the agency finds that the project's
11 benefits would outweigh its unavoidable impacts.

12 60. Under CEQA, all the findings required for an agency's approval of a project must
13 be legally adequate and supported by substantial evidence in the administrative record, and
14 CEQA further requires that an agency provide an explanation of how the evidence in the record
15 supports the conclusions the agency has reached.

16 61. Respondents failed to proceed in the manner required by law and violated CEQA
17 by certifying an EIR that is inadequate and fails to comply with the requirements of CEQA and
18 the CEQA Guidelines in numerous respects, discussed in the Introduction, above. The failings of
19 the FEIR rendered it legally inadequate because:

20 a. The NOP failed to announce and the FEIR failed to discuss the contemplated
21 population increase at UCB – including a large student enrollment increase – as an aspect
22 of the Project, discuss the environmental impacts of that population increase, or consider
23 realistic alternatives to or mitigation measures for or relating to that proposed,
24 contemplated or assumed population increase, which circumstance rendered the project
25 description inadequate and the notice-and-comment period legally insufficient.

1 b. The misleading, vague, and understated baseline information in the project description
2 about the true extent of UCB's plan to extensively increase its population violated CEQA
3 as did the partial revision of the baseline dates and data after the issuance of the DEIR
4 and without recirculating that DEIR to provide the public an opportunity to comment
5 before issuance of the FEIR. UCB was required to provide "an accurate, stable and finite
6 project description" to meet its legal obligations under CEQA. (*County of Inyo v. City of*
7 *Los Angeles* (1977) 71 Cal.App.3d 185, 193.)
8
9 c. The missing baselines prevented the decision-makers from making an informed
10 decision about the project and prevented the public from appreciating the true
11 extent of the Project's negative impacts. As such, the FEIR failed its
12 informational purpose under CEQA. (*County of Amador v. El Dorado County*
13 *Water Agency* (1999) 76 Cal.App.4th 931, 952.)
14
15 d. The lack of substantial evidence to support many of the FEIR's conclusions
16 that the Project will not cause a significant impact was not supported by evidence.
17 For example, the FEIR's handling of the public services topic lacks substantial
18 evidence to support its conclusion that the Project will not cause a negative
19 impact on the environment. "[A]n agency may abuse its discretion under CEQA
20 either by failing to proceed in the manner CEQA provides or by reaching factual
21 conclusions unsupported by substantial evidence. (PRC, § 21168.5; *Sierra Club v.*
22 *County of Fresno* (2018) 6 Cal.5th 502, 512.)
23
24 e. The FEIR failed to discuss the inconsistency between its decision to demolish or
25 damage 40 architecturally significant and landmarked structures and its existing policy
26 and procedure documents, namely the New Century Plan, the Master Landscape Plan, the
27 Historic Landscape Plan, the Design Review and existing best practices documents.
28 (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 191
Cal.App.4th 342, 379-380.)

1 f. The FEIR's failure to analyze and implement mitigations as to many of the impacts,
2 especially noise, cultural resources, public services, and population violated CEQA. UCB
3 was required to "adopt feasible mitigation measures or project alternatives to reduce the
4 effect to insignificance." (*Center for Biological Diversity v. Department of Fish &*
5 *Wildlife* (2015) 62 Cal.4th 204, 231.)

6 g. The FEIR's failure to respond to comments and answer questions violated a key
7 provision of CEQA – it was required to evaluate and respond to significant
8 environmental issues. (Pub. Res. Code, § 21092.5, subd. (a) and Guidelines §§ 15088,
9 15132, subds. (b-d); *Laurel Heights Improvement Assn. v. Regents of University of*
10 *California* (1993) 6 Cal.4th 1112, 1124.)

11 h. The FEIR could not legally skip analyzing feasible alternatives and go directly to a
12 Statement of Overriding Considerations. It was required to adopt "feasible mitigation
13 measures or project alternatives to reduce the effect to insignificance." (*Center for*
14 *Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204, 231.) This
15 it did not do.

16 i. Because the Regents chose to improperly resort to a Statement of Overriding
17 Considerations when the FEIR should have considered feasible alternatives and did not,
18 and because that decision violated CEQA, it "tainted the certification of the FEIR as a
19 whole. . . [and] severance findings under section 21168.9, subdivision (b)" are not
20 allowable for this case. (*Sierra Club v. County of Fresno* (2020) 57 Cal.App.5th 979,
21 982.) As a result, the court should order an entire new EIR rather than a focused EIR.

22 62. Attached as Exhibit D is the Election to Prepare Administrative Record, filed with
23 this Petition.

24 PRAYER FOR RELIEF

25 Wherefore, Petitioner prays for judgment as follows:
26
27

1 1. Alternative and peremptory writs of mandate directing Respondents to vacate and set
2 aside their certification of the FEIR and all Project approvals, specifically those listed in the
3 attached NOD;

4 2. Alternative and peremptory writs of mandate directing Respondents to comply
5 with the requirements of CEQA, including requiring an entirely complete and full EIR, and to
6 take any other action as required by Public Resources Code Section 21168.9;

7 3. For a temporary stay, temporary restraining order, and preliminary and permanent
8 injunctions restraining Respondents, Real Parties in Interest, and their agents, servants, and
9 employees, and all others from acting in concert with Respondents on their behalf, from taking
10 any action to implement the Project, pending full compliance with the requirements of CEQA
11 and the CEQA Guidelines;

12 4. For a judicial determination and declaration from this Court that Respondents' actions
13 in approving the Project violated CEQA, the CEQA Guidelines;

14 5. For costs of the suit; and

15 6. For an order awarding Petitioner its attorneys' fees under Code of Civil Procedure
16 section 1021.5, and other applicable authority; and

17 7. For such other and further relief as the Court deems just and proper.
18

19 DATED: August 19, 2021

Veneruso & Moncharsh

Leila H. Moncharsh

21
22 By: Leila H. Moncharsh
23 Attorneys for Berkeley Citizens
24 for a Better Plan (BC4BP)
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