

**DOWNEY BRAND**

Kathryn L. Oehlschlager  
koehlschlager@downeybrand.com  
415.848.4820 Direct  
415.848.4801 Fax

Downey Brand LLP  
455 Market Street, Suite 1500  
San Francisco, CA 94105  
415.848.4800 Main  
downeybrand.com

May 3, 2023

***VIA TRUEFILING***

Chief Justice Patricia Guerrero and  
Associate Justices  
Supreme Court of California  
350 McAllister Street  
San Francisco, CA 94102-4783

Re: Amici Curiae Letter in Support of the Regents' Petition for Review in *Make UC a Good Neighbor v. Regents of the University of California*, Supreme Court Case No. S279242

Dear Chief Justice Patricia Guerrero and Honorable Associate Justices:

Amici Curiae the California State Association of Counties ("CSAC") and the League of California Cities ("Cal Cities") respectfully submit this letter pursuant to California Rules of Court, rule 8.500(g) in support of the Petition for Review filed by the Regents of the University of California ("the Regents") in *Make UC A Good Neighbor et. al. v. Regents of the University of California*, Supreme Court Case No. S279142.

The Regents' Petition seeks review of a published decision by the Court of Appeal, First District, Division Five, which held that the Regents violated the California Environmental Quality Act ("CEQA") by not analyzing potential "social noise" impacts of a student housing development at the University of California, Berkeley ("UC Berkeley"). (See *Make UC A Good Neighbor v. Regents of University of California* (2023) 88 Cal.App.5th 656.) This holding is contrary to CEQA's charge of analyzing and mitigating environmental impacts, not social impacts, and may be weaponized by opponents to delay or block direly needed housing projects in cities and counties across the state. For these reasons, CSAC and Cal Cities urge the Court to grant the Regents' Petition for Review.

**I. STATEMENT OF INTEREST**

The California State Association of Counties is a non-profit corporation with membership consisting of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California, and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this is a matter with the potential to affect all California counties.

Cal Cities is an association of 477 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. Cal Cities is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

## II. DISCUSSION

### A. The Court should grant review to provide guidance on the critical distinction between environmental impacts that must be analyzed under CEQA and social impacts that are beyond CEQA’s reach.

The Court of Appeal opinion merits review to settle an important question of law and secure uniformity of decision. (See Rules of Court, Rule 8.500(b)(1).) CEQA requires analysis and disclosure of physical impacts to the environment. It is well-settled that agencies are not required to analyze economic and social effects that are not related to physical impacts. (CEQA Guidelines, § 15064(f)(6).) The statutory definition of “environment” focuses on the physical conditions that exist within an area affected by a proposed project. (Regents’ Petition, p. 22; Pub. Resources Code, § 21060.5.) Environmental impacts analyzed under CEQA must be “related to a physical change.” (CEQA Guidelines, § 15358(b).)

To the contrary, a long line of cases has held that a proposed project’s changes to the social status quo are not significant effects on the environment. (*Save Our Access-San Gabriel Mountains v. Watershed Conservation Authority* (2021) 68 Cal.App.5th 8, 26 [displacement of park users due to parking reduction is a social impact]; *Goleta Union School Dist. v. Regents of University of California* (1995) 37 Cal.App.4th 1025, 1032 [classroom overcrowding, in itself, is not an environmental impact]; *Saltonstall v City of Sacramento* (2015) 234 Cal.App.4th 549, 585 [allegations that proposed basketball stadium would result in post-event impacts to safety by event crowds raises a social, not environmental, impact]; *Preserve Poway v City of Poway* (2016) 245 Cal.App.4th 560, 581–582 [change in “community character” due to change in use from horse farm to housing development is a social and psychological impact, not impact on physical environment].)

Contrary to this well-established rule, the Court of Appeal opinion finds that the EIR for a housing project should have studied the potential actions of future residents of the project, based on broad-brush generalizations about how those residents might behave. Expanding the reach of CEQA analysis, the Court of Appeal opinion faults the EIR for not analyzing student “social noise” or “party noise” impacts to Berkeley’s neighborhoods, even though the project would not increase the student population. To support this holding, the Court of Appeal found that because there was a record of student parties violating the city’s noise ordinance, there was a reasonable possibility that adding more students to residential neighborhoods would make the problem worse. (*Make UC A Good Neighbor, supra*, 88 Cal.App.5th at 689.)

The opinion creates a new requirement that public agencies analyze and mitigate potential social impacts that may occur, based on perceived traits and behaviors of future, theoretical project occupants or users. The shift in use of the project site from its current use as a park to a student housing development will indeed affect the community and neighborhood. But just as the Court found in *Preserve Poway v. City of Poway* in evaluating the impacts on “community character” allegedly associated with conversion of a horse farm to housing, “such impacts are psychological, social, and economic—not environmental.” (*Preserve Poway v. City of Poway* (2016) 245 Cal.App.4th 560, 580.)

Furthermore, this new requirement is untenable because there are no current methodologies to analyze social impacts of project users; it is not clear how the Court of Appeal would suggest that agencies predict potential, theoretical noise from students—or other groups of residents—simply engaging in normal behavior associated with occupation of housing developments. Indeed, to construct this analysis, public agencies would be required to prejudge the behavioral characteristics of future project users based on assumed social identities. (*See Regents’ Petition*, pp. 27–28.) In addition to being speculative and of little informational value, this type of exercise inherently risks perpetuating harmful stereotypes.

This opinion blurs the line between environmental and social impacts in a manner that is contrary to established principles of law, creating an entire new category of analysis that public agencies are not equipped to undertake. The Court has the opportunity to provide integral guidance on the distinction between environmental impacts, which fall within CEQA’s purview, and social impacts, which do not. This is particularly critical here, where the alleged social impacts are associated with generalizations about a particular class of future project residents.

**B. Review is necessary to ensure that project opponents cannot use allegations about speculative social impacts to obstruct the provision of housing.**

The Court’s review is imperative to ensure that CEQA cannot be used to further obstruct or delay efforts to address the State’s severe housing crisis. The Court of Appeal opinion opens up a new avenue for project opponents to delay housing projects, and it leaves projects designed to house disenfranchised classes of people—including multi-family housing, affordable housing, and supportive housing—especially vulnerable to challenges.

One of CEQA’s fundamental guiding principles is ensuring “long-term protection of the environment, consistent with the provision of a decent home and suitable living environment for every Californian.” (Pub. Resources Code, § 21001(d).) CEQA promotes development in urban infill areas to avoid impacts to the natural environment and ensure smart growth. But courts have recognized that while “CEQA was meant to serve noble purposes . . . it can be manipulated to be a formidable tool of obstruction, particularly against proposed projects that will increase housing density.” (*Tiburon Open Space Committee v. County of Marin* (2022) 78 Cal.App.5th 700, 782.)

The Court of Appeal opinion adds an arrow to the quiver of those who oppose development of affordable housing. As the Petition explains, a project opponent can trigger

preparation of a costly, time-consuming EIR, by simply submitting evidence to suggest that the “class” of people who may inhabit a proposed project may be noisy or unruly. (Regents’ Petition, p. 14.) It requires no stretch of the imagination to see how this tactic can be applied to social identities other than undergraduate students, including multi-generational households, individuals suffering and/or recovering from addiction, families with children, and the housing insecure. Project opponents will be empowered by the Court of Appeal’s holding to challenge critical housing projects for vulnerable populations by inserting unnecessary expense and delay.

The Court’s review is required to ensure that CEQA is not exploited to impede the provision of housing in the midst of the State’s ongoing housing crisis. Opponents should not be permitted to stand in the way of housing for students and vulnerable populations simply by asserting that the residents who will occupy those developments will be “too loud.”

### III. CONCLUSION

For the foregoing reasons, CSAC and Cal Cities respectfully request that the Regents’ Petition for Review be granted.

Sincerely,

DOWNEY BRAND LLP

A handwritten signature in blue ink, appearing to read 'KLO', with a long horizontal flourish extending to the right.

Kathryn L. Oehlschlager

1860429v2