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April 26, 2023

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

RE: *Make UC a Good Neighbor v. Regents of the University of California*, No. S279242
Amicus Letter of Governor Gavin Newsom in Support of Review

Dear Chief Justice Guerrero and Associate Justices:

Governor Gavin Newsom respectfully submits this amicus letter in support of the petition for review filed by the Regents of the University of California (the Regents). (See Cal. Rules of Court, rule 8.500(g).)

At the center of this case is a matter of significant statewide concern: California's longstanding and severe shortage of housing has become a true crisis, depriving our residents of affordable housing options, reducing access to educational opportunities, pushing new housing development further out into previously rural and wildland areas, exacerbating climate change through long commutes, and leading some of the most vulnerable among us into homelessness. Solving the housing crisis is one of the Governor's top priorities, and the State is making substantial progress. But the Court of Appeal's application of the California Environmental Quality Act (CEQA) to the asserted noise impacts of residential infill development threatens to disrupt that progress, opening a door for opponents of housing development to delay or block essential new projects in ways that CEQA's drafters could not have intended. This case provides an opportunity for the Court to reaffirm that CEQA is a tool to ensure public participation, informed decision-making, and thoughtful development—but not an instrument to block necessary progress or deny to others safe, healthy, and affordable housing.

Expanded Housing Development Is Essential to Addressing the State's Housing Affordability Crisis, Homelessness, and Climate Change

The State's most persistent, pressing challenges include "addressing homelessness, building more housing and driving down costs for the nearly 40 million people who call California home."¹ Over the past several decades, the State's population grew much faster than

¹ Governor's Message, *2023-24 Proposed Budget Summary* (Jan. 10, 2023) <<https://ebudget.ca.gov/2023-24/pdf/BudgetSummary/GovernorsMessage.pdf>> (as of Apr. 25, 2023).

its housing stock.² By some estimates, the State “should have been building 70,000 to 110,000 more housing units beyond what it actually built in each year from 1980 to 2010,” bringing the State’s total shortfall over that period to approximately 3.5 million homes.³ As a consequence, housing costs have skyrocketed, leading the State to have one of the Nation’s highest rates of poverty.⁴ And as “impoverished Californians run out of options to keep roofs over their heads,” they all too often “tumble into homelessness.”⁵

The State’s housing shortage is also a major contributor to climate change. Due to the limited availability and high prices of urban housing, many people can only afford to live far from their jobs.⁶ Where public transit options are limited, such individuals are often forced to drive to work, thereby “clog[ging] freeways and increas[ing] greenhouse gas emissions.”⁷ Reducing such emissions is a high priority for the State, as it seeks to minimize and address the many hazardous effects of climate change, including “[h]igher average temperatures and periods of extreme heat,” “[m]ore frequent and intense droughts,” “[i]ncreased risk of floods,” “[m]ore severe wildfires,” and “[c]oastal flooding and erosion.”⁸

In recent years, the State has taken historic steps to address the housing crisis. “Recent budget actions have,” for example, “increased the state’s fiscal role in addressing housing affordability and homelessness,” providing over \$20.6 billion in “augmentations to the state

² McGhee et al., *New Housing Fails to Make Up for Decades of Undersupply* (Dec. 3, 2021) Public Policy Institute of California <https://www.ppic.org/blog/new-housing-fails-to-make-up-for-decades-of-undersupply/?utm_source=ppic&utm_medium=email&utm_campaign=blog_subscriber> (as of Apr. 25, 2023).

³ *Id.* (citing Taylor, *California’s High Housing Costs: Causes and Consequences* (Mar. 17, 2015) Legislative Analyst’s Office <<https://lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.pdf>> [as of Apr. 25, 2023]).

⁴ See, e.g., Walters, *California Housing Shortage Triggers Cycle of Despair* (Jan. 23, 2023) Cal Matters <<https://calmatters.org/commentary/2023/01/california-housing-shortage-triggers-cycle-of-despair/>> (as of Apr. 25, 2023).

⁵ *Id.*; see Governor Newsom, *State of the State Address on Homelessness* (Feb. 19, 2020) <<https://www.gov.ca.gov/2020/02/19/governor-newsom-delivers-state-of-the-state-address-on-homelessness/>> (as of Apr. 25, 2023).

⁶ Wiener & Kammen, *Why Housing Policy Is Climate Policy*, N.Y. Times (Mar. 25, 2019) <<https://www.nytimes.com/2019/03/25/opinion/california-home-prices-climate.html>> (as of Apr. 25, 2023).

⁷ *Id.*; see Cal. Dept. of Housing and Community Development, *Housing and Climate Change* (Sept. 2013) <https://www.hcd.ca.gov/policy-research/plans-reports/docs/pb04_housing_climate_change0214.pdf> (as of Apr. 25, 2023).

⁸ Legislative Analyst’s Office, *Climate Change Impacts Across California: Housing* (Apr. 5, 2022) <<https://lao.ca.gov/Publications/Report/4584>> (as of Apr. 25, 2023).

entities principally responsible for administering housing and homelessness programs.”⁹ The Legislature has enacted, and the Governor has signed, multiple bills designed to streamline the regulatory approval process and otherwise accelerate housing development.¹⁰ And the Governor launched a new “Housing Accountability Unit” within the Department of Housing and Community Development “with the goal of increasing stringent enforcement and oversight at the local level to create more housing, faster.”¹¹

A critical component of state housing policy has been increasing housing for university students. The limited availability of such housing, as well as the high costs of housing generally, have made it increasingly difficult for students to attend and afford college.¹² Indeed, some 9,400 students attending schools in the University of California system were denied university housing last fall.¹³ And “1 in 20 students at UC, 1 in 10 students at CSU, and 1 in 5 students at California Community Colleges [have] report[ed] experiencing homelessness at some point during the academic year.”¹⁴ In response, the State recently devoted over \$1.4 billion in one

⁹ Legislative Analyst’s Office, *The 2023-24 Budget: Updates on Recent Housing and Homelessness Augmentations and Overview of Proposed Budget Changes* (Mar. 29, 2023) p. 3 <<https://www.lao.ca.gov/Publications/Detail/4754>> (as of Apr. 25, 2023).

¹⁰ See, e.g., Office of Governor Gavin Newsom, *California to Build More Housing, Faster* (Sept. 28, 2022) <<https://www.gov.ca.gov/2022/09/28/california-to-build-more-housing-faster/>> (as of Apr. 25, 2023).

¹¹ Office of Governor Gavin Newsom, *Governor Newsom’s Newly Created Housing Accountability Unit Marks First Year* (Nov. 4, 2022) <<https://www.gov.ca.gov/2022/11/04/governor-newsoms-newly-created-housing-accountability-unit-marks-first-year/>> (as of Apr. 25, 2023).

¹² See, e.g., Tobias, *How California’s Housing Crisis Hurts College Students* (Nov. 17, 2022) Cal Matters <<https://calmatters.org/multimedia/podcasts/gimme-shelter/2022/11/california-student-housing-crisis/>> (as of Apr. 25, 2023).

¹³ Watanabe, *UC Housing Crisis Forces Students into Multiple Jobs to Pay Rent, Sleeping Bags and Stress*, L.A. Times (Sept. 26, 2022) <<https://www.latimes.com/california/story/2022-09-26/college-housing-shortage-pushes-students-into-crisis-as-most-uc-classes-start-up>> (as of Apr. 25, 2023).

¹⁴ Assem. Budget Com., *California Student Housing: Solutions for Improving Capacity and Affordability* (Nov. 8, 2021) <<https://abgt.assembly.ca.gov/sites/abgt.assembly.ca.gov/files/FINAL%20Sub%202%20Nov%208%20Agenda.pdf>> (as of Apr. 25, 2023); see also Glantsman et al., *Risk of Food and Housing Insecurity Among College Students During the COVID-19 Pandemic* (2022) 50 J. of Community Psychology 2726, 2738-2739 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9088266/pdf/JCOP-50-2726.pdf>> (as of Apr. 25, 2023) (detailing ways in which the COVID-19 pandemic exacerbated food and housing insecurity among college students).

fiscal year alone to the construction, acquisition, and renovation of student housing complexes. (Ed. Code, § 17201, subds. (l)-(m).)

Despite such historic investments, challenges remain. Production of new housing has not yet increased to a sufficient rate to bring housing prices to affordable levels.¹⁵ And the State’s efforts to streamline and accelerate approvals for new housing projects have encountered resistance at the local level from both municipal governments and current homeowners.¹⁶

The Court of Appeal’s Opinion Provides an Opportunity for Housing Opponents to Misuse CEQA to Delay or Block Urgently Needed Housing

CEQA “protect[s], rehabilitate[s], and enhance[s] the environmental quality of the State.” (Pub. Resources Code, § 21001, subd. (a).) While the statute’s scope is broad (see, e.g., *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 563-564), its text has long made clear that existing residents do not have a superior or exclusive entitlement to the benefits of residing in a particular community. To the contrary, CEQA provides that the “guiding criterion in public decisions” shall be “protection of the environment, consistent with the provision of *a decent home . . . for every Californian*”—including both existing residents and newcomers. (Pub. Resources Code, § 21001, subd. (d), italics added.)

Notwithstanding that statutory promise, CEQA is sometimes used as a “tool of choice for resisting change that would accommodate more people in existing communities.” (*Tiburon Open Space Committee v. County of Marin* (2022) 78 Cal.App.5th 700, 782, internal quotation marks omitted.) As courts have noted, “CEQA was meant to serve noble purposes, but it can be manipulated to be a formidable tool of obstruction, particularly against proposed projects that will increase housing density.” (*Ibid.*) Indeed, CEQA litigation can sometimes take months or years, and, in some instances, may even lead to funding problems that can kill a project.¹⁷

¹⁵ Metcalf, *Housing Production: Recent Legislative Actions and Outcomes* (Feb. 28, 2023) UC Berkeley Turner Center for Housing Innovation <<https://shou.senate.ca.gov/sites/shou.senate.ca.gov/files/2.28.23%20Metcalf%20-%20Housing%20Informational%20Hearing%20Slides.pdf>> (as of Apr. 25, 2023).

¹⁶ See, e.g., Office of the Attorney General, *Attorney General Bonta, Newsom Administration Sue Huntington Beach for Violating State Housing Element Law* (Apr. 10, 2023) <<https://oag.ca.gov/news/press-releases/attorney-general-bonta-newsom-administration-sue-huntington-beach-violating>> (as of Apr. 25, 2023).

¹⁷ Elmendorf & Duncheon, *When Super-Statutes Collide: CEQA, the Housing Accountability Act, and Tectonic Change in Land Use Law* (2022) UC Davis Legal Studies Research Paper Series, pp. 12-13 and fn. 79 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3980396> (as of Apr. 25, 2023) (“simple act of filing a CEQA claim” can be “enough to put a project on ice” because “lenders generally won’t finance a project until any legal claims against it have been resolved”).

The courts have an important role in ensuring that CEQA is not warped to serve purposes that the Legislature never intended. (See, e.g., *Citizens of Goleta Valley*, *supra*, 52 Cal.3d at p. 576.) In this case, however, the Court of Appeal’s opinion invites misuse by project opponents to delay or obstruct housing development across the State. The court held that additional analysis and study is required before the Regents can approve a new housing project at People’s Park—an infill project that will provide much-needed housing to some 1,100 students at the university’s Berkeley campus. (Opn. 19, 30.) In the court’s view, the Regents’ environmental impact report (EIR) did not provide a sufficient response to concerns from residents of “surrounding neighborhoods” about “potential noise impacts”—not from construction of the housing, but from the everyday activities of the students who would eventually reside at the new People’s Park development. (Opn. 33.)

For reasons detailed in the Regents’ petition (see, e.g., Petn. 22-33), several aspects of the opinion warrant this Court’s review. The Governor focuses here on two reasons why the Court’s intervention is appropriate:

First, while the opinion recognizes “that the Legislature did not intend CEQA to be used as a redlining weapon by neighbors who oppose projects based on prejudice rather than environmental concerns” (Opn. 34), the opinion could be enlisted to do just that. In the Governor’s experience, existing residents often invoke noise concerns to oppose infill housing projects—not just in the student-housing context, but more generally. It is not difficult to imagine, for example, existing residents citing this case in opposing low- and moderate-income housing, or developments likely to attract young-adult residents or families with children, or designed to support the integration of individuals with disabilities into the community.¹⁸ Nor is it difficult to imagine housing opponents invoking the same kinds of evidence that plaintiffs furnished in opposing the People’s Park project here, such as “personal observations” about noise concerns from area residents. (Opn. 35.) The Court’s review is necessary to ensure that there are guardrails on such noise-based CEQA challenges, which are ripe for abuse.

Second, the Court of Appeal’s opinion fails to grapple with several important legal considerations—considerations highly relevant to the question whether the addition of new residents to a densely populated area can cause significant noise impacts under CEQA. (Pub. Resources Code, § 21068.) It is well-established, for example, that the “significance of an environmental impact is measured in light of the context where it occurs.” (*San Francisco Beautiful v. City and County of San Francisco* (2014) 226 Cal.App.4th 1012, 1026, ellipsis omitted.) As relevant here, “an activity which may not be significant in an urban area may be significant in a rural area.” (CEQA Guidelines, § 15064, subd. (b)(1).) Indeed, there are certain “natural consequences of urban life” (7A McQuillin, *The Law of Municipal Corporations* (3d ed.

¹⁸ See, e.g., Griffith, *The Summer of NIMBY in Silicon Valley’s Poshest Town*, N.Y. Times (Aug. 12, 2022) <<https://www.nytimes.com/2022/08/12/technology/nimby-housing-silicon-valley-atherton.html>> (as of Apr. 25, 2023) (describing objection to construction of “multifamily townhouses” “in one of Silicon Valley’s most exclusive and wealthiest towns” on the ground that such homes would “immensely increase . . . noise pollution” in the area).

2022) § 24:597), such as the sounds of pedestrian conversation, yard and custodial work, dogs barking, children playing, and social gatherings and celebrations, that residents reasonably come to expect when living in more densely populated environments. In light of such expectations, courts should not readily conclude that infill housing projects threaten to “substantial[ly]” and “adverse[ly]” increase noise levels, merely because they will add residents to an already-dense, urban environment. (Pub. Resources Code, § 21068.)¹⁹

Nor should courts lightly conclude that existing controls are inadequate to “avoid . . . or mitigate” any noise-related effects of adding new residents to densely populated areas. (Pub. Resources Code, § 21064.5.) Here, for example, the City of Berkeley and the university have already taken a number of “steps to mitigate noisy parties” in neighborhoods surrounding the proposed People’s Park development. (Opn. 32; see, e.g., AR 14545-14546.) The court, the Regents, and plaintiffs all agreed that student-related noise will *not* rise to a “significant” level for CEQA purposes if students comply with “the city’s [existing] noise ordinances.” (Opn. 36; see, e.g., AR 1600-1601, 14545-14546.) And while plaintiffs asserted that “enforcement efforts” by the City of Berkeley are insufficient (Opn. 32), the Court of Appeal pointed to nothing in the record substantiating that assertion. The opinion could thus be read to suggest that CEQA requires preparation of an EIR for the sole purpose of studying purported noise impacts that are already adequately addressed by existing municipal control measures, thereby blocking or delaying essential new housing developments for no valid public purpose. In the Governor’s view, the Court’s review is necessary to avoid such a result, which would substantially delay the development of much-needed housing for little corresponding benefit.

¹⁹ Of course, certain types of noise impacts—in urban environments and elsewhere—can qualify as “significant” under CEQA. (See, e.g., Cal. Dept. of J., Environmental J. Bur., *Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act (2022)* <<https://oag.ca.gov/system/files/media/warehouse-best-practices.pdf>> (as of Apr. 25, 2023).)

The Honorable Chief Justice and Associate Justices

April 26, 2023

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Conclusion

The Regents' petition for review should be granted.

Respectfully submitted,

/s Samuel Harbourt

SAMUEL HARBOURT
Deputy Solicitor General

For ROB BONTA
Attorney General

DECLARATION OF ELECTRONIC SERVICE

Case Name: ***Make UC a Good Neighbor v. Regents of the
University of California (No. S279242)***

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar. I am 18 years of age or older and not a party to this matter. I am familiar with the business practices at the Office of the Attorney General for collecting and processing electronic and physical correspondence. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically.

On April 26, 2023, I electronically served all parties in the case with the attached **AMICUS CURIAE LETTER** by transmitting a true copy via this Court's TrueFiling system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on April 26, 2023, at San Francisco, California.

Samuel T. Harbourt

Declarant

/s/ Samuel T. Harbourt

Signature