

ENDORSED
FILED
ALAMEDA COUNTY

APR 27 2018

CLERK OF THE SUPERIOR COURT
By CURTIYAH GANTER

Deputy

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8 Attorney for Plaintiff: Save Berkeley's Neighborhoods

9
10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF ALAMEDA**

12 SAVE BERKELEY'S NEIGHBORHOODS, a
13 California nonprofit public benefit corporation;

14 Plaintiff,

15 vs.

16 THE REGENTS OF THE UNIVERSITY OF
17 CALIFORNIA; JANET NAPOLITANO, in her
18 capacity as President of the University of
19 California; CAROL T. CHRIST, in her capacity as
20 Chancellor of the University of California,
21 Berkeley; and DOES 1 through 20,

22 Respondents and Defendants.

Case No.

RG18902751

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

**[CALIFORNIA ENVIRONMENTAL
QUALITY ACT]**

1 Plaintiff Save Berkeley's Neighborhoods alleges:

2 1. Education Code section 67504 provides that "The Legislature further finds and declares that the
3 expansion of campus enrollment and facilities may negatively affect the surrounding environment.
4

5 Consistent with the requirements of the California Environmental Quality Act (CEQA), it is the intent of
6 the Legislature that the University of California sufficiently mitigate significant off-campus impacts
7 related to campus growth and development."
8

9 2. Public Resources Code section 21080.9 requires that the University of California, Berkeley
10 (UCB) "consider the environmental impact of academic and enrollment plans" pursuant to CEQA and
11 "that any such plans shall become effective for a campus ... only after the environmental effects of those
12 plans have been analyzed" as required by CEQA.
13

14 3. In 2005, UCB adopted a Long Range Development Plan (2020 LRDP) to achieve a number of
15 objectives through the year 2020, including stabilizing enrollment. In or about 2005, UCB certified a
16 Final Environmental Impact Report for the 2020 LRDP (2005 EIR) pursuant to CEQA. The 2020 LRDP
17 and 2005 EIR projected that by 2020 student enrollment at UCB would increase by 1,650 students above
18 the 2001-02 two-semester average. The 2020 LRDP and 2005 EIR also projected that by 2020 UCB
19 would add 2,500 beds for students.
20

21 4. On October 30, 2017, UCB responded to the City of Berkeley's request for information regarding
22 enrollment increases. This response shows the actual increase in student enrollment above the 2001-02
23 two-semester average for the most recent two-semester period (i.e., Spring 2017 and Fall 2017) is 8,302
24 students. This increase represents a five-fold increase compared to the 1,650 enrollment increase
25 projected in the 2020 LRDP and 2005 EIR. The response also shows UCB has built fewer than 1,000
26 beds.
27

28 5. The increase in student enrollment over and above the 1,650 additional students projected by the
29
30

1 2020 LRDP and included in the 2005 EIR’s environmental impact analysis (hereinafter the “excess
2 increase in student enrollment”) has caused and continues to cause significant adverse environmental
3 impacts that were not analyzed in the 2005 EIR. Plaintiff is informed and believes and on that basis
4 alleges that these impacts include, without limitation, increased use of off-campus housing for and by
5 UCB students, leading to increases in off-campus noise and trash; displacement of tenants resulting in
6 more homeless individuals living on public streets and in local parks; increases in the number of UCB
7 students who are homeless; increases in traffic and transportation related congestion and safety risks; and
8 increased burdens on the City of Berkeley’s public safety services, including police, fire, ambulance, and
9 Emergency Medical Technician services.

10
11
12
13 6. Respondents have had and continue to have a legal obligation to analyze the environmental
14 effects of the excess increase in student enrollment pursuant to CEQA, including, without limitation, by
15 preparing and certifying an Environmental Impact Report to assess the significance of impacts caused
16 by the extraordinary increase in enrollment and to identify and adopt mitigation measures to reduce these
17 significant impacts.
18

19
20 **Parties**

21 7. Plaintiff SAVE BERKELEY’S NEIGHBORHOODS (Plaintiff) is a California nonprofit public
22 benefit corporation formed to provide education and advocacy to improve quality of life, protect the
23 environment and implement best planning practices. Plaintiff’s founders, members, and directors live in
24 the area affected by the excess increase in student enrollment, have suffered and will continue to suffer
25 injury from adverse environmental impacts caused by the excess increase in student enrollment if the
26 legal violations alleged in this Petition and Complaint are not remedied. Plaintiff was formed and
27 brings this action to represent and advocate the beneficial interests of its founders, members, and
28 directors in obtaining relief from these legal violations and to improve quality of life, protect the
29
30

1 environment and implement best planning practices in connection UCB’s increases in student
2 enrollment.

3
4 8. Respondent and Defendant THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
5 (hereinafter “Regents”) is a public trust corporation and state agency established pursuant to the
6 California Constitution vested with administering the University of California including the management
7 and disposition of property of the University and the lead agency for the 2020 LRDP under CEQA, and
8 is thus responsible for analyzing, disclosing, and mitigating the environmental impacts of the 2020
9 LRDP and the excess increase in student enrollment.
10

11
12 9. Respondent and Defendant JANET NAPOLITANO is the President of the University of
13 California and is named herein solely in this capacity. Regents Policy 8103 delegates to the President of
14 the University the Regents’ authority for budget or design for capital projects consistent with approved
15 Long Range Development Plans and minor Long Range Development Plan amendments.
16

17 10. Respondent and Defendant CAROL T. CHRIST is the Chancellor of the University of California,
18 Berkeley, and named herein solely in this capacity.
19

20 11. Respondents and Defendants Regents, Janet Napolitano, and Carol T. Christ are hereinafter
21 collectively referred to as “Respondents.”

22 12. Plaintiff does not know the true names and capacities of Respondents and Defendants fictitiously
23 named herein as DOES 1 through 20, inclusive. Plaintiff is informed and believes, and thereon alleges,
24 that such fictitiously named Respondents and Defendants are responsible in some manner for the acts or
25 omissions complained of or pending herein. Plaintiff will amend this Petition to allege the fictitiously
26 named Respondents’ and Defendants’ true names and capacities when ascertained.
27
28

29 **Notice Requirements**

30 13. In accordance with Public Resources Code section 21167.5, Plaintiff served Respondents with

1 written notice of commencement of this action on April 12, 2018. The Notice of Commencement of
2 Action and Proof of Service are attached hereto as Exhibit 1.

3
4 14. In accordance with Public Resources Code section 21167.7 and Code of Civil Procedure section
5 388, Plaintiff has provided a copy of this pleading to the Attorney General's office. (See Exhibit 2.)

6
7 **Jurisdiction and Venue**

8 15. Plaintiff brings this action as a Petition for Writ of Mandate pursuant to Code of Civil Procedure
9 sections 1085, 1088.5, and 1094.5, and Public Resources Code sections 21168 and 21168.5; and as a
10 Complaint for Declaratory relief pursuant to Code of Civil Procedure section 1060. The Court has
11 jurisdiction over these claims.

12
13 16. Venue is proper in Alameda County under Code of Civil Procedure section 394, subdivision (a),
14 because UCB and Respondents are situated therein.

15
16 **Standing**

17 17. Plaintiff and, to the extent applicable, its members are beneficially interested in Respondents'
18 full compliance with CEQA. Respondents owed a mandatory duty to comply with CEQA with respect
19 to the 2020 LRDP and the excess increase in student enrollment. Plaintiff has the right to enforce the
20 mandatory duties that CEQA imposes on Respondents.

21
22 **Exhaustion of Administrative Remedies**

23
24 18. UCB provides no administrative remedy for the legal claims or grounds of noncompliance with
25 CEQA alleged in this Petition and Complaint and Plaintiff had no opportunity to raise the grounds of
26 noncompliance alleged in this Petition and Complaint in any UCB administrative proceeding.

27
28 **Private Attorney General Doctrine**

29 19. Plaintiff brings this action as a private attorney general pursuant to Code of Civil Procedure
30 section 1021.5, and any other applicable legal theory, to enforce important rights affecting the public

1 interest.

2 20. Issuance of the relief requested in this Petition and Complaint will confer a significant benefit on
3
4 a large class of persons by ensuring that Respondents analyze and disclose the environmental impact of
5 the excess increase in student enrollment.

6 21. Issuance of the relief requested in this Petition will result in the enforcement of important rights
7
8 affecting the public interest. By compelling Respondents to complete adequate environmental review of
9 the excess increase in student enrollment under CEQA, Plaintiff will vindicate the public's important
10 CEQA rights to public disclosure regarding and public participation in government decisions that affect
11 the environment.

12
13 22. The necessity and financial burden of enforcement are such as to make an award of attorney's
14 fees appropriate in this proceeding because the transgressor is the agency whose duty it is to enforce the
15 laws at issue in this proceeding.
16

17 **First Cause of Action**
18 **(Violation of CEQA: Pub. Resources Code, § 21000 et seq.)**

19 23. Plaintiff hereby realleges and incorporates the preceding paragraphs of this Petition and
20 Complaint as though set forth herein in full.

21
22 24. Respondents prejudicially abused their discretion in violation of CEQA pursuant to Public
23 Resources Code sections 21168 and 21168.5 and Code of Civil Procedure sections 1085 and 1094.5 by
24 failing to analyze the excess increase in student enrollment pursuant to CEQA, including, without
25 limitation, by failing to prepare and certify an Environmental Impact Report to assess the significance of
26 impacts caused by the excess increase in student enrollment and to identify and adopt mitigation
27 measures to reduce these significant impacts.
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29
30 25. Plaintiff has no other plain, speedy, and adequate remedy in the ordinary course of law and will

1 suffer irreparable injury unless this Court issues the relief requested in this Petition.

2
3 **Second Cause of Action**
4 **(Declaratory Relief: Code Civ. Proc., § 1060)**

5 26. Plaintiff hereby realleges and incorporates the preceding paragraphs of this Petition and
6 Complaint as though set forth herein in full.

7 27. Plaintiff seeks a judicial determination and declaration that Respondents violated CEQA by
8 failing to analyze the excess increase in student enrollment pursuant to CEQA.

9 28. An actual controversy has arisen and now exists between Plaintiff and Respondents. Plaintiff
10 contends that Respondents violated CEQA by failing to analyze the excess increase in student
11 enrollment pursuant to CEQA. Plaintiff is informed and believes, and based thereon alleges, that
12 Respondents dispute these contentions.
13
14

15 **Prayer for Relief**

16 WHEREFORE, Plaintiff prays for the following relief:

17 1. For a writ of mandate compelling Respondents to conduct environmental review of the excess
18 increase in student enrollment pursuant to CEQA including, without limitation, by preparing and
19 certifying an Environmental Impact Report to assess the significance of impacts caused by the excess
20 increase in student enrollment and to identify and adopt mitigation measures to reduce these significant
21 impacts.
22

23 2. For a declaration that Respondents have failed to comply with CEQA because it has failed to
24 conduct environmental review of the excess increase in student enrollment, including, without
25 limitation, by failing to prepare and certify an Environmental Impact Report to assess the significance of
26 impacts caused by the excess increase in student enrollment and to identify and adopt mitigation
27 measures to reduce these significant impacts.
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- 1 3. For an order retaining the Court’s jurisdiction over this matter until Respondents comply with the
2 peremptory writ;
3
4 4. For an order compelling Respondents to pay Plaintiff’s costs of suit;
5
6 5. For an order compelling Respondents to pay Plaintiff’s reasonable attorneys fees related to these
7 proceedings pursuant to Code of Civil Procedure section 1021.5; and
8
9 6. For such other relief as the Court may deem proper.

9 DATED: April 27, 2018

LAW OFFICES OF THOMAS N. LIPPE, APC

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11 

12 _____
13 Thomas N. Lippe
14 Attorney for Plaintiff Save Berkeley’s Neighborhoods
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VERIFICATION

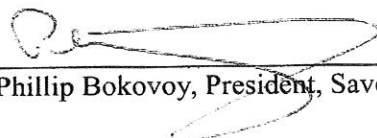
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Save Berkeley's Neighborhoods v. The Regents of the University of California, Alameda County Superior Court, Case No. (to be determined)

I, Phillip Bokovoy, declare that:

1. I am a founder and member of the Board of Directors of Plaintiff Save Berkeley's Neighborhoods and its President. I am authorized by Save Berkeley's Neighborhoods to execute this verification.
2. I have read the foregoing Verified Petition for Writ of Mandate and know the contents thereof; the factual allegations therein are true of my own knowledge, except as to those matters which are therein stated upon information or belief, and as to those matters I believe them to be true.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed on April 27, 2018 at San Francisco, California.



Phillip Bokovoy, President, Save Berkeley's Neighborhoods

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EXHIBIT 1

Law Offices of
THOMAS N. LIPPE, APC

201 Mission Street
12th Floor
San Francisco, California 94105

Telephone: 415-777-5604
Facsimile: 415-777-5606
Email: Lippelaw@sonic.net

April 12, 2018

By email: chancellor@berkeley.edu
Chancellor Carol T. Christ
University of California, Berkeley
c/o Jenny Hanson
Executive Assistant to the Chancellor
Office of the Chancellor
200 California Hall, #1500
Berkeley, CA 94720-1500

By email: regentsoffice@ucop.edu
Regents of the University of California
c/o Anne Shaw
Office of the Secretary and Chief of Staff to the Regents
1111 Franklin St., 12th floor
Oakland, CA 94607

Re: Notice of Intent to Sue Regarding Inadequate CEQA Review of UC Berkeley's 2020 Long Range Development Plan.

Dear Chancellor Christ and Regents of the University of California:

This office represents Save Berkeley's Neighborhoods with respect to the University of California at Berkeley's legal obligations to conduct environmental review of the 2020 Long Range Development Plan (2020 LRDP) in compliance with the California Environmental Quality Act (CEQA).

One of the 2020 LRDP's objectives is to stabilize enrollment. (2020 LRDP, Environmental Impact Report (2004 EIR), p. 3.1-10.) The 2004 EIR evaluated an increase in enrollment of 1,650 students above the 2001-02 two-semester average. (2004 EIR, p. 3.1-14.) The University's October 30, 2017, response to the City of Berkeley's request for information regarding enrollment increases shows an actual increase of 8,302 enrolled students above the 2001-02 two-semester average for the most recent two-semester period (i.e., Spring 2017 and Fall 2017). (Exhibit 1.) This represents a five-fold increase compared to the 2004 EIR's projection of a 1,650 student increase in enrollment.

This change in the project renders the 2004 EIR informationally defective because the EIR does not assess the impact of the actual increase in enrollment, which is orders of magnitude higher than the 1,650-student increase projected in the 2004 EIR. As a result, the University must prepare a supplemental or subsequent EIR to assess the significance of impacts caused by this extraordinary increase in enrollment and to identify and adopt mitigation measures to reduce these significant

Chancellor Carol T. Christ, University of California, Berkeley
Regents of the University of California
Notice of Intent to Sue Regarding Inadequate CEQA Review of 2020 LRDP
April 12, 2018
Page 2

impacts.

This letter provides notice pursuant to Public Resources Code section 21167.5 that on or before April 20, 2018, Save Berkeley's Neighborhoods intends to file a lawsuit challenging the University's adoption of the 2020 LRDP on grounds the adoption does not comply with CEQA.

Save Berkeley's Neighborhoods is willing to discuss settling this dispute without the need for litigation. At a minimum, any such settlement must include: (1) an enforceable agreement by the University to prepare and certify a new EIR to assess the impacts of the 2020 LRDP as its project description has changed to reflect the increases in enrollment shown in the University's October 30, 2017, response to the City's request for information; (2) the new EIR must use the same environmental baseline used in the 2004 EIR; and (3) tolling the statute of limitations so that Save Berkeley's Neighborhoods is not forced to file its lawsuit to protect against the statute of limitations.

Thank you for your attention to this matter.

Very Truly Yours,



Thomas N. Lippe

cc:

David M. Robinson, Interim Chief Campus Counsel

By email: dmrobinson@berkeley.edu

UNIVERSITY OF CALIFORNIA, BERKELEY



BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO

SANTA BARBARA • SANTA CRUZ

BERKELEY, CALIFORNIA 94720-1382

CAPITAL STRATEGIES
PHYSICAL AND ENVIRONMENTAL PLANNING
A&E Bldg. (MC 1382)

30 October 2017

Mayor Jesse Arreguin
City of Berkeley
2180 Milvia Street
Fifth Floor
Berkeley, California 94704

[Transmitted via email]

Mayor Arreguin:

My office has compiled the attached data in response to your request for information sent to former Chancellor Dirks' office on May 25, 2017. We have organized responses using the item numbers indicated in your letter. The data provided in the attachment is the current available information as of October 2017 and based on our understanding of your request.

Please contact Ruben Lizardo (rlizardo@berkeley.edu) if you have questions or would like clarification on the information that has been provided.

Sincerely,

A handwritten signature in cursive script that reads 'Emily Marthinsen'.

Emily Marthinsen
Assistant Vice Chancellor/Campus Architect
Physical & Environmental Planning | Capital Strategies

CC: R Lizardo, R Parikh, S Viducich, A Machamer, S Wilmot

EXHIBIT 1

ATTACHMENT 1. UC RESPONSE TO DATA REQUEST**1. Registered Student Headcount - Source: CalAnswers Student Census, UC Berkeley Office of Planning and Analysis, Accessed 10.04.2017**

Academic Term	Total Undergraduates	Total Graduate Students	Off-campus Undergraduates	Off-campus Graduate Programs
Fall (F) 05	23,482	10,076	381	668
Spring (S) 06	22,643	9,571	384	674
F06	23,863	10,070	357	713
S07	23,351	9,592	384	732
F07	24,636	10,317	359	752
S08	24,032	9,809	395	766
F08	25,151	10,258	325	743
S09	24,448	9,735	405	758
F09	25,530	10,393	331	757
S10	25,061	9,854	421	773
F10	25,540	10,298	369	777
S11	24,969	9,789	498	762
F11	25,885	10,257	342	782
S12	25,277	9,764	529	788
F12	25,774	10,125	334	789
S13	25,181	9,610	463	800
F13	25,951	10,253	327	881
S14	25,473	9,834	426	954
F14	27,126	10,455	296	1111
S15	25,903	10,065	424	1118
F15	27,496	10,708	335	1243
S16	26,094	10,279	466	1252
F16	29,310	10,863	650	1424
S17	27,784	10,510	425	1480
F17	30,574	11,336	560	1536

Note: Columns indicated total number of students include all registered students, including those enrolled in off-campus programs such as online graduate degree programs, the Education Abroad Program, Global Edge (European Study Abroad), and Freshman in San Francisco. The students enrolled in these off-campus programs are tallied in the "off-campus" columns.

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8 Attorney for Plaintiff: Save Berkeley's Neighborhoods

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22 Respondents and Defendants.

Case No.

PROOF OF SERVICE

**[CALIFORNIA ENVIRONMENTAL
QUALITY ACT]**

1 **PROOF OF SERVICE**

2 I am a citizen of the United States, employed in the City and County of San Francisco, California.
3 My business address is 201 Mission Street, 12th Floor, San Francisco, CA 94105. I am over the age of 18
4 years and not a party to the above entitled action. On April 12, 2018, I served the following document on
5 the parties below, as designated:

- 6 ● **Re: Notice of Intent to Sue Regarding Inadequate CEQA Review of UC Berkeley’s 2020**
7 **Long Range Development Plan**

8 **MANNER OF SERVICE**
9 **(check all that apply)**

- 10 By Mail: In the ordinary course of business, I caused each such envelope to be
11 placed in the custody of the United States Postal Service, with
12 postage thereon fully prepaid in a sealed envelope.
- 13 By Personal Service: I personally delivered each such envelope to the office of the address
14 on the date last written below.
- 15 By Overnight FedEx: I caused such envelope to be placed in a box or other facility regularly
16 maintained by the express service carrier or delivered to an authorized
17 courier or driver authorized by the express service carrier to receive
18 documents, in an envelope or package designated by the express
19 service carrier with delivery fees paid or provided for.
- 20 By E-mail: I caused such document to be served via electronic mail equipment
21 transmission (E-mail) on the parties as designated on the attached
22 service list by transmitting a true copy to the following E-mail
23 addresses listed under each addressee below.
- 24 By Personal Delivery by Courier: I caused each such envelope to be delivered to an authorized
25 courier or driver, in an envelope or package addressed to the
26 addressee below.

27 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
28 and correct. Executed on April 12, 2018, in the City and County of San Francisco, California

29 *Kelly Marie Perry*
30 _____
Kelly Marie Perry

SERVICE LIST

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By email: chancellor@berkeley.edu
Chancellor Carol T. Christ
University of California, Berkeley
c/o Jenny Hanson
Executive Assistant to the Chancellor
Office of the Chancellor
200 California Hall, #1500
Berkeley, CA 94720-1500

By email: regentsoffice@ucop.edu
Regents of the University of California
c/o Anne Shaw
Office of the Secretary and Chief of Staff to the Regents
1111 Franklin St., 12th floor
Oakland, CA 94607

By email: dmrobinson@berkeley.edu
David M. Robinson, Interim Chief Campus Counsel

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EXHIBIT 2

1 Thomas N. Lippe, SBN 104640
2 LAW OFFICES OF THOMAS N. LIPPE, APC
3 201 Mission Street, 12th Floor
4 San Francisco, California 94105
5 Tel: (415) 777-5604
6 Fax: (415) 777-5606
7 E-mail: Lippelaw@sonic.net

8 Attorney for Plaintiff: Save Berkeley's Neighborhoods

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4 years and not a party to the above entitled action. On April 27, 2018, I served the following document on
5 the parties below, as designated:

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7 RELIEF**

8 **MANNER OF SERVICE**
9 **(check all that apply)**

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11 placed in the custody of the United States Postal Service, with
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16 maintained by the express service carrier or delivered to an authorized
17 courier or driver authorized by the express service carrier to receive
18 documents, in an envelope or package designated by the express
19 service carrier with delivery fees paid or provided for.
- 20 By E-mail: I caused such document to be served via electronic mail equipment
21 transmission (E-mail) on the parties as designated on the attached
22 service list by transmitting a true copy to the following E-mail
23 addresses listed under each addressee below.
- 24 By Personal Delivery by Courier: I caused each such envelope to be delivered to an authorized
25 courier or driver, in an envelope or package addressed to the
26 addressee below.

27 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
28 and correct. Executed on April 27, 2018, in the City and County of San Francisco, California

29 
30 _____
Kelly Marie Perry

SERVICE LIST

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Hon. Xavier Becerra
Attorney General
State of California
Office of the Attorney General
1300 I Street
Sacramento, CA 95814

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