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All rise. Honorable Chief Justice in associate justices of the California Supreme Court. Hear ye, this Supreme Court is now in session. Please, be seated.
Good morning. Welcome, everybody, to oral argument before the California Supreme Court in our Los Angeles courtroom. The clerk may call the calendar, please.
Good morning. The Supreme Court of California hearing oral arguments in Los Angeles on Wednesday, April 3rd, 2024 at 9:00 a.m. Case number is 279242, Make UC a Good Neighbor versus The Regents of the University of California et al. defendants and respondents resources for community development et al., for respondent, Ms. Nicole H Gordon. And for appellant, Mr. Thomas N. Lippe. Case number S279242, Truck Insurance Exchange versus Kaiser Cement and Gypsum Corp. et al.. London market insurers defending the appellant. Granite State insurance company et al., defendants for the respondents. For the appellant, Mr. Robert A. Olson. And for appellant, Mr. Brian A. Kelly. And for appellants, Kaiser Cement and Gypsum Corp., Mr. Philip E. Cook. Case number S273887, Himes (Michelle), versus Somatics, LLC, et al.. For the appellants, Bijan Esfandiari. For the respondent, Mr. Jonathan M. Freiman.
Thank you. Calling the first matter, Make UC a Good Neighbor versus The Regents of the University of California. Good morning, Ms. Gordon. You have requested 20 minutes for your opening.
Yes, good morning, your honors. The cold burden on behalf of appellants, the University of Berkeley and the Regents of the California University. We appreciate the opportunity to be heard on the important matters this case represents. As you know, the legislative landscape has shifted since this court accepted review in May of last year. Since that time, the legislature has stepped in with urgency legislation, that directly responds to those issues that the region's petition to this court for review. The project opponents have conceded, unequivocally, that as to the People's Park, student and supportive housing project, the legislation resolves the issues pending with respect to both social noise and alternative locations. I would like to reiterate our request that this court reversed the Court of Appeals' decision at is applies to the People's project, with director -- directions to affirm the trial court's judgment as to both social noise and alternative locations at is -- as it applies to People's Park. If there are no other questions or any questions on the People's Park project itself, I would like to move on to what else is left in this matter for this court to resolve. Thank you. As you know --
I think you will have questions as we go along, it won't be that easy, but -- but, to place this in context, you have said that there are concessions, important concessions in light of the new law. So, I think you would have to be living under a rock to not know what the controversy is, surrounding People's Park. But, the new legislation now has substantially narrowed the issues before this court, correct?
Yes, Your Honor.
And as we stand here now, there is no argument any longer with respect to social noise impacts, as to this particular site, is that correct?
That is correct, Your Honor.
What about more broadly, the argument seems to be that there still seems to be a component that we should consider, and that is the social noise impacts resulting from the increase in population, from more students at the campus, regardless of where they live.

Exactly, Your Honor. Thank you. That is exactly where I was going to go. So, the Court of Appeals' decision does address both the People's Park project and what it refers to as the development plan, the long-range development plan. The legislation, public resources 21085 mentions residential projects, specifically. But, the legislative history of this bill clearly shows that the legislative intent was not just to limit application of this rule, that social noise, that noise from people going about their personal, private lives. That should not be a CEQA impact to only residential project. The legislative history shows that the purpose of the law was --

So, you are talking about legislative histories. Does that mean it is not clear on its face, in terms of the application?

No, Your Honor. I think it is clear on its face, it is meant to apply to residential projects. But, as project opponents have invoked this by mentioning residential projects, the legislature somehow intended to exclude anything that isn't a residential project. I think that opens the door for us to have to look at the legislative history, to make sure that there isn't a contrary intent there, and here there is a contrary intent. Here, the legislative history shows that the purpose of the legislation was to re-establish his existing president that CEQA was never meant to be used as a tool to police nuisances and intermittent noise violations like the kind at issue here.

So, can I ask you, how would you have us interpret the phrase, "residential projects" as it appears in this provision? Does it apply to any project that has any residential component, whatsoever? Are there any limitations on what qualifies as a residential project, in your view?

The legislation does not define the term "residential project." The other piece of legislation, 1307, does. It does not define it, so I think it can be interpreted extremely broadly. I would interpret it to be any project that includes a residential component. And here, the long-range development plan, a long-range component of what that plan does is propose future residential student housing projects. So, in addition to the People's Park project, there are 11,000 plus bids proposed under the plan, and I think the legislation clearly would preclude the regents from considering the noise impacts from any residence in those projects, to be a significant impact under CEQA.

That doesn't mean that we don't consider going forward in social noise impacts resulting from the nonresidential aspects of long-range development plan, or any other projects that might include both residential and nonresidential components in the future.

I think it means that for residential projects, definitely. I think for any nonresidential project, commercial activities, general plans, anything that does not have a residential component to it, that the legislative history, plus the long body of case law we have cited in the opening brief and reply brief on the merits before this new legislation came out, demonstrate that CEQA was never intended to be used to police the individual people that a project will serve, when they are going about their private, daily lives, and not doing anything that is associated with the use of the project itself.

Counsel, did you just briefly summarize what is covered by the long-range plan?

Yes, thank you, Your Honor. Took me by surprise up there. [Laughter] The long-range development plan is a framework for the University's academic and residential growth. So, it looks at the anticipated population growth over the next 15 or so years. It plans for what infrastructure, what buildings, what facilities will be needed to accommodate that growth, should it come to the campus. As the court of appeals found, the long-range development plan does not pause the growth, it simply accounts for it.

And counsel, does that accounting include both residential growth and nonresidential related growth?

It does. The population growth that is included and analyzed in the environmental impact report includes both nonresidential and all of the other that would occur both physical and from the campus population. So, in areas like transportation and water supply, they look at all of the impacts from the growing campus population, as it is required to do under Public resources code 21080.89 so even though it is not causing the growth, it does look at it. And even in the case of noise, the People's Park project analysis for noise looked at people who might be gathering in the open space that will be built as part of the project, and whether that noise would result in a significant impact, because that is a use that is associated with the project. It didn't look, though, at how students are going to conduct themselves when they leave campus and go to apparently unplanned, private parties in the city of Berkeley that aren't sponsored in any way by the University.

I guess I am kind of wondering whether it is easily disentangled, what is residential versus nonresidential, in the context of what sounds like a fairly integrated plan. I mean, the thought would be the growth ambitions of the campus -- I mean, a linchpin of that, one would think, is the ability to house people, because he can't do that, then many of the other things can't be done, either. So, this goes back to Justice Kruger's question about, what is a residential project? Can you help us, in terms of how we might separate what is nonresidential, versus residential in an integrated plan like this?

I will endeavor to do that. The 11,000 beds that the housing program provides, I certainly, those 11,000, approximately, students would be considered project occupants. And then, the legislation talks about their guests. So, these are project occupants and their guests of residential projects. I think that is hard to define because we don't know who these people are and whether they are going to be a part of the campus population, or not. So, I think to the extent that the long-range development plan has these residential projects within it, it could read the whole plan to become a residential project under that definition because it has some component of residential. But, I think the better way to look at this would be to consider limiting principles of CEQA that have always been in place, and that would apply to the campus population growth in general, whether or not people are going to be living in "residential projects." I don't know, I am looking at you, but you are not there. [Laughter] Whether or not they will be living in residential projects, because never before has CEQA been used, until this court of appeals decision, to try to account for how people are going to behave. Not just when they are living in a residential project that is a part of a project here, either the long-range development plan or a specific, future residential project, but when they go out into the neighborhood and make personal choices, and the court of appeals decision, if it is not reversed is, I believe, confusing as to that point. It does talk about the development plan, in addition to the People's Park residential project. So, I think it is necessary to make it clear, that that is not the intention and I think the legislative history provides the rationale for that, that it is never okay under CEQA to police people and their noise with anything other than the local noise ordinance. That is the appropriate way to deal with these issues.

Would it be sufficient for purposes of this case to conclude -- based on the legislative history that you pointed to -- that whatever residential project in this new legislation means, it does mean the residential components of the plan that we are talking about here, since this was sort of the focal point of the legislative debate. And we can leave for another day, questions about how to sort of draw the line between residential and nonresidential components of other types of objects, including other aspects of the long-range development plan that really are sort of at issue in this case as it is presented in this court. But, for present purposes, it really seems a waste, to me,

because I would be interested to know whether you say the same, to say that this legislation at least applies to the residential components of the plan.
I think it certainly applies to the residential components and I think the request we would have is that the entire portion of the court of appeals decision be reversed because it doesn't just say, residential components of the long-range development plan. It says the development plan as a whole and the project opponents here have argued that that means the campus population growth, regardless of where they will live. So, we would request a ruling that makes it clear that the long-range development plan and the environmental impact report that supports that plan does not continue to live in limbo where it is now, and is invalidated.
But, the Court of Appeals concluded that the population growth really was not part of the plan. I think you have already expressed that the court, correct?
Correct, yes.
And the other side petition for review of that issue. Does that affect the analysis here, because we did not ground that petition?
I think that does affect the analysis. That issue was about the petition review of the alternative discussion, whether there should be an alternative that limits growth, and the court found, no, there should not, because the project is not promote, encourage, or cause growth. I would just want to make sure that any growth -- because there is an obligation and the University takes it seriously under code 210.89 to look at the impacts of its campus population growth as a whole, and it does that. So, we would want to make sure that the analysis is valid, and that there is no issues with that. But, to that point, because I am anticipating some things that my opposing counsel might say when he has an opportunity here, as to how you would mitigate for social noise, if you were to apply it to the campus population, I think there is a corollary there to the rejected argument, or the rejected petition as to the enrollment growth alternative, because if you were to find that to be a significant impact, there would be no mitigation for that because the project doesn't cause the growth that really is the target further attack. So, I do think the rejection of the petition on that precludes the court from including it again here.
I guess I will just move on to say that we have faith that this court will look at the legislative history of the long-range development plan, and especially the legislative history explaining that it would never be appropriate to introduce identity based judgments into the CEQA process, and that this Court of Appeals opinion does that, and we would request reversal of that on those grounds, as well. If there are no other questions, I will reserve the rest of my time for rebuttal.
Thank you very much.
Thank you.
Good morning, Justice Guerrero and associate justices. My name is Tom Lippe, for the appellants in this case. I think the court really outlines the question well, the question is, what does a residential project mean? This goes into section 1.2085. You have to start with the terms that are defined. "Term project" is defined in 21605 of CEQA and it means the activity that the public agency is considering approving or disapproving. An activity that could affect the physical environment. So, here, the housing project number two proposed at People's Park is clearly a project that is an activity that could change the physical environment, but the legislature decided to exempt from social noise analysis. But, the LRDP, the long-range plan, is not a plan in that sense, it doesn't authorize the construction of a single residence. What it does -- and I think one of the courts questions outlined this -- it provides a framework to guide future decisions to authorize that activity. The activity being, construction of housing. And so, the LRDP is not a residential project, for that simple reason that it doesn't authorize the activity that

would cause the impact. That future decision is left for another day. Here, it was left for another day with respect to the housing project number two decision, which was a specific project that authorizes the physical impact causing activity. If you take it one step further and look at the question of residential project as opposed to just project, there are two definitions of residential project in CEQA at this time. One is in section 21159.28, subdivision D. That is in the context of encouraging infield development and transit friendly or transit priority areas. It defines it whereas at least 75% of the total building square footage consists of a residential use or a transit priority project, as defined in section 21.55. The importance of this definition is that it is in the context of providing a limited exemption from some of CEQA's procedures. The purpose is, is to remove barriers to development for housing, and there is a housing crisis. There is no question about the legislature's attempts to address that by making a limited exemption by CEQA. And again, in that context, is the specific project approval that authorizes the activity that changes the environment. Legislature says, you are going to get a pass from some of CEQA's procedures.

Mr. Lippe, just to put that into context, the legislature seems pretty clear in terms of their view of the Court of Appeals' decision and analysis with respect to social noise impacts. They called the Court of Appeals' decision on that issue "alarming," and indicated -- alarming, with respect to this analysis of describing people as pollution. Could you speak to that issue, at the scope of the actual statute here?

Well, I think that you have to get to the legislative history to get to those statements, and I don't think you do, because I don't think the word "project" is ambiguous. As I have already argued, it is a very specific definition, and the LRDP does not have authorization for activity that changes that, that is up for approval. That is just for a framework. So, I don't think you get to those statements. If you do get to those statements in the legislative history, they are not something that the entire legislature voted on. And so, the author of the bill makes some pretty strong statements of that nature. But, the case law we have cited is that the bill's author --

It is part of committee materials, isn't it?

I'm sorry?

It is part of committee materials.

Yes, that is true.

And that can clearly indicate that that can be relevant to the determination of the actual language of the statute.

It can. I am not denying that. But, I do not think it is dispositive. You have a couple other rules of construction that go the other way. For instance, the legislature presumes to be aware of case law, holding that crowd noise is a CEQA impact.

They were aware with case law, with respect to this legislature.

They certainly were. But, they did not come in the actual words of the statute, say that noise made by the occupants of any kind of project is exempt from CEQA review. They simply didn't do that.

Are you saying that the legislature ended up enacting legislation that at least some of the legislators, including the author, did not intend? That seems to be the upshot of your argument.

No. I think the entire legislature did not intend to exempt social noise analysis from CEQA, in a broad sense. They did it for a very specific purpose. It is urgency legislation to address a housing crisis. And so, the point here is to remove a barrier to the production of housing. And so, it is not to remove any kind of burden that CEQA might apply to a long-range plan. A long-range plan for UC is similar to a general plan for the county.

Right. Well, let's step back a little bit as the Chief Justice was asking you, we get a court of appeals, the legislature jumps into action with urgency legislation, essentially emergency legislation. We have references in the legislative history to the court of appeal in it being "alarming," they reject the court of appeal and some of the committee courts saying, CEQA did not need to be expanded to include noise from residence. It seems to be a little bit -- correct me if I am wrong -- you are saying that sort of, at least either the legislature as a whole or some of these legislatures were acting in vain, that they were acting to address what they perceived as an error in the Court of Appeal opinion. And now, you are saying, no, we can still block the project, we are not complaining about the project itself, but because issues related to the project get raised as part of a larger development plan, we can still block the project. It just doesn't seem consistent with the entire nature of the urgency legislation, as a reaction to a specific Court of Appeal opinion that they seem to be rejecting.

Well, once we start to parse the legislative history as if it is statutory language, if you look at pages 31 and 32 of UC's second motion for judicial notice, in the authors statement there, indicating that it doesn't leave -- or, to re-establish existing precedent that social noise is not an impact under CEQA. Those two pages show that what the legislature actually was reacting to was the part of the Court of Appeal opinion that was putting an additional burden on housing project number two. If you look at that exact paragraph, it starts with a description of the holding as it applies to the housing project number two. It doesn't mention the holding as it applies to the long-range development plan. So, if we are going to read the legislative history as authoritative, then we have to read it carefully, and see that the reaction was really about this barrier to an actual housing project.

Why, then, take it up as urgency legislation? I mean, your view is that the legislature was wide-eyed about the fact that this issue could continue to be litigated for presumably years to come. Then, why even do it as urgent legislation?

Well, because the legislature wasn't trying to address the long-range development plan. It was addressing the actual housing project, because the purpose of this limited exemption is to encourage the actual construction of housing, and they weren't addressing --

Mr. Lippe, they talk about the language in the statute they used is the effects of noise generated by project occupants and their guests. The entire controversy -- it seems clear, related to students making excessive noise. They broadened it to be project occupants, which would be the students, and broader than that because there is also a component of the housing that is supportive housing, so it is not just students. It seems incongruous that they would then allow the analysis of these impacts, again, for increased population, which is students. And then, to turn around and allow a broader analysis of social noise impacts from these individual project occupants, students, whatever the term is you use for them -- people. They then go off-site, not at the actual housing, but go off-site, and are too loud, and are of concern to the residents. Isn't that the entire theme? Wasn't that the concern to begin with? Because the concern that the legislature was attempting to address, and the same arguments you are making now, you are just making them more broad.

I think the difference is, and the key, too, the response to the question is that many of the students who go to UC Berkeley aren't going to live in new housing projects. And as I was saying, the legislature's purpose was to remove barriers to the actual construction of housing. There is 39,000, 40,000 students now, and only 9000 of them are housed in UC's housing. Of the increase, once we have the increase according to the LRDP, there will still be 8000 students who aren't housed by UC. So, there is a whole lot of noise being caused in the community by

people who are not going to be occupants of new residential projects, for which the legislature is attempting to remove a barrier to the construction of those. So, it makes perfect sense for the legislature to leave a broad requirement in CEQA to look at it, and investigate the social noise impacts of increasing population because that doesn't interfere with a residential project construction.

With a, then -- how would they, then, separate noise from students who live there, versus noise from students who don't?

I don't think they would, at the programmatic level. In other words, for the program, you simply would come up with a method -- which, the expert hired by my clients did -- to analyze the effect of the noise of having that many more students in the city. I mean, let's face it, some colleges have a party culture. My daughter went to UC Santa Barbara, and she said that was noisy pandemonium. UC Berkeley also has a party culture. So, that would be the focus of the analysis at the LRDP.

I don't know if that is on the record, but -- [Laughter]

Fair argument there. So, I do think that it is important to continue to look at the definition. I mean, I talked about the definition of residential project in 2159.58. The same is true of residential project in the part of 1307 that addresses the alternative site analysis. Again, it is a definition of whose purpose it is, is to provide a way to remove barriers to the construction of housing. And so, having CEQA require social noise analysis of the long-range plan simply doesn't interfere with the actual decisions to construct housing.

Counsel, can you tell us where you part ways with your opposing counsel, in terms of how to parse residential versus nonresidential, in terms of the long-range development plan?

Well, the long-range development plan authorizes dozens of nonresidential projects, campus life projects, academic buildings, redevelopment of many sites for nonresidential purposes. That is on pages 9574 and 9575 of the administrative record, that is part of the EIR, very long list of projects. They are not being authorized at this time. By authorizing the LRDP or approving it, there is no authorization for any of those projects to be built. There is also a couple dozen residential projects there, and they are distinguishable by looking at the number of beds, the nonresidential doesn't provide beds, the residential does. But, I think the course question is really about the impact analysis. And I am not sure if it is different than Justice Guerrero's question about, how do you distinguish? And I don't think you do at the programmatic level. At the project level, where you were actually going to decide to build houses, or residences, then you have a distinction that is very clear, the legislature says you don't have to do it. I'm not sure if I answered your question, but if I understood it correctly, that would be my answer. But, I wanted to go back to the definition of a residential project in 1307 in the context of the alternative site analysis exemption. It refers to a project consisting of residential uses or a mix of residential and nonresidential uses, at least two thirds of the square footage of the settlement designated for residential uses. Again, what you see here is a legislature saying, if it is primarily residential, then you are going to get a limited pass from some CEQA procedures and analytic requirements but you will not be able to slip a few residences into essentially a nonresidential project and get that kind of path. And again, it is about removing a barrier to production of actual construction of houses. So, again, I don't think the LRDP having to do this kind of analysis is such a barrier because every single residential project that is projected to be potentially approved in the future will have the site-specific analysis and the site-specific exemption when it gets there from that requirement of analyzing social noise.

Even under your analysis, Mr. Lippe, you concede that the People's Park project is going to be built. Is that correct?

This case provides no platform to stop that. I would concede that, within the actual build it or not, that is up to UC at this point and any other efforts that might be made by the community. But, certainly, this case is no longer a threat to stop People's Park. Housing project number two that is proposed at People's Park. So, you know, the other body of law that the legislature has presumed to be aware of, other than the keep our Vermont mountains quiet case law and that kind of case law, is the requirement of 210.809 and the education code, section 60.54. In those statutes, especially the CEQA statute, requires that UC must analyze the environment impacts of its campus populations -- sorry -- campus population plans in an EIR for the long-range development plan. So the legislature, by choosing the word "residential project" exclusively did not reach out to encompass the long-range development plan. It could have easily done so. But, again, it was urgency legislation to address a crisis at Berkeley. It is not just Berkeley that has a housing crisis, but in Berkeley, it is very acute, especially for students. About 10% of the students in the graduate and undergraduate levels have experienced homelessness. So, this very precise focus of the legislature is clear again because it would have been the easiest thing in the world to amend section 21080.19 to make it clear that the LRDP's EIR doesn't need to do this and they didn't do that. So, I think that type of statutory construction principle should outweigh what I considered to be almost a Trojan horse statements in the legislative history. Courts authorized to do with it as it sees fit, but the legislature, as a whole, did not vote to change section 21080.19 and it easily could have. The other statutory construction principle that applies here is using the words where they appear in the same way that they are used elsewhere in the statute. The word "project" is used, where "program" is not used, "long-range development plan" is not used. "Project" is a specific authorization to undertake an activity that changes the environment. I just want to spend a moment on -- actually, I probably should move on to the alternative locations, but one last comment. Just that if we establish that 1307 doesn't affect the LRDP, then the only remaining question is whether there is a fair argument. UC has not really made much of an argument, that there is not substantial evidence supporting a fair argument of significant noise impacts. What they say is that it is speculative, and the reason, actually, the underlying reason they say it is speculative is because it is attributing behavior to an identifiable -- or, I think the phrase used was "identity-based judgments." This goes to this notion as people as pollution. To me, that is a public relations strategy that has become a legal argument but it is not actually a legal argument, for the simple reason that students are people, and all people cause pollution. There is water pollution, air pollution, noise pollution. Students are not some special class of people who don't cause pollution. They do. So, it is no different than saying that people are not pollution. Well, that is fine, but they do cause pollution and every single environmental law that we have on the books at every level is there to regulate people's behavior that causes pollution. So, to me, it is a meme, it is a bumper sticker, it has no legal force and no substance to it. So, moving on to the alternative locations issue. So, my clients view here is that the courts should decide this issue, even though it is technically moot because the alternative location analysis no longer apprised to this project because it meets the criteria of 108 -- I'm sorry, 2108.52. The reason the courts should decide this issue is because as this case has progressed, it is kind of like peeling back the layers of an onion. What do you see as real reasons for not doing alternative site analysis? Well, they had some reasons that they stated in the EIR. The Court of Appeals rejected those reasons because they weren't supported by the record or they were contradicted by the record. For instance, the notion that there would be a diminished number of

beds if they chose an alternative location to People's Park for this housing project. In fact, that is not the case, the record contradicts that. There are plenty of beds in the housing program. There are 2000 more beds in the locations that are projected in the housing program then they even attended to build in the future. 13,800 versus about 11,100. Almost 3000 more. And then, there is lots more evidence that specific sites would have the ability to provide more bids than the people Park location. And then, you had kind of the second layer of the onion, which is UC's arguments to the court of appeal that were not included in the EIR. For instance, that it would be consistent with the project objective. The project objective they had pointed out was one of our objectives is to revitalize a property that UC owns. Well, it doesn't refer to People's Park. People's Park is just in the project description, so the hall -- whole body of project objective law, that deals with project objectives, has what kind of alternatives need to be considered doesn't apply because it is not in the project objectives. And then, you get to the final layer of the onion, the deepest layer, which is what they have argued to this court, which is that we, in this long-range planning process have spent years wanting to build in People's Park, and therefore we do not need to involve the public in the EIR's analysis of alternatives. The phrase used in the briefing would be that it would be performing to do that. That is so fundamentally inconsistent with CEQA. As this court's many decisions have held involving the public, public disclosure, public participation, key purposes of CEQA. This court has described the EIR is the heart of CEQA and the alternatives and mitigation parts the core of CEQA. And when you talk about CEQA, you are talking about public participation. UC doesn't want to do that. It took all this time to get to the Supreme Court before they just came clean, what their true reason is for not wanting to do the alternatives analysis. My clients have litigated this case, community groups have litigated many cases against UC trying to ensure compliance with CEQA. This court should decide the merits of that issue and the merits of that position, that is the petition for review that they submitted. The actual issue that they asked this court to decide is under CEQA, when a lead agency has identified potential sites for future development and redevelopment in programmatic planning document, is the agency required to visit alternative locations for a proposed, site-specific project within the program? Or, would such a requirement infringe on the lead agency's discretion to prioritize and proposed sites in a manner that best serves site agency goals? That wasn't in the EIR, but that is what they have asked this court to decide and we agree, the court should have to decide that. Because we don't want to go back and have another onion -- we, being the community groups I have represented -- the public does not need to go back.

The Council, on 210892B, doesn't it resolve the issue? Or, are you saying that the substantive requirements, either be one, or two, or both, were not here?

It resolve the issue as to the housing project that is proposed at People's Park, but we are asking the court to decide the claim anyway because it is likely to recur, because UC has dug into this position. This is what they believe, because they have this long-range planning process if in the privacy of their own deliberations if they have considered alternative sites, they don't need to involve the public in that decision-making, by putting that analysis in an EIR. So, it is likely to recur. It is likely to evade review. It is in the public interest for this court to decide that that is not how CEQA works. That the public has the right to be involved in that decision-making and have the reasons for alternative sites not being chosen made clear in the EIR. Right?

Even if it is likely to recur, is it actually likely to evade review? Couldn't someone who is opposed to whatever future action is taken challenge that action?

Well, the reality is, is that citizen groups do what they can. Here, you have a very practical problem. Some of the cases I cited against UC and the request for judicial notice whereby other

citizen groups that I happen to represent against UC regarding CEQA compliant that citizen group, Berkeley's neighborhoods, wasn't able to continue. So, two new citizen groups in this case became plaintiffs and carried the torch further on both enrollment impacts and alternatives analysis and all the issues in the case. But, there is a limited amount of resources available for that kind of litigation. So, it is likely to evade review because it is just very difficult to mount this kind of case from a community-based organization, looking for fundraising. To pay its lawyers, and to do all the things that need to be done. So, we have been litigating this case for years, and UC has asked the court to decide the issue, and we think the courts showed, so that we don't have to do it again in a new case.

You have about three minutes left.

Thank you very much. Yeah, I just wanted to talk about the citizens of Goleta Valley versus Board of Supervisors decision, that is really the only authority of the UC sites for its position that it can do this analysis, under the consideration of alternatives in private. It is a very specific set of facts in that case. The EIR had been sent back twice to look at alternatives and looked at more alternatives. And in the third round, there was yet another set of alternatives that were brought forward by the plaintiffs and said, oh, you have to do those, too. I think the court expressed clear frustration with that kind of iteration or back and forth, and it looked to the fact that there was a local coastal program that had been reviewed by a CEQA equivalent process. And a public process. It wasn't just in the privacy of the agencies. They hadn't looked at alternatives and that was part of the rationale for the court to say, you don't have to do anymore court analysis. It is a very specific amount of facts, very distinguishable from this case and the key fact is that there was a public review process for that alternative selection process. And I will close with the fact that the alternative analysis that needs to be done is to compare the project proposal with alternatives, in this case, sites that might have less environmental impact. This project has a significant environmental impact on a historic resource. A city of Berkeley landmark and the California register of resources. It is on the National Register of Historic Places. And so, for UC to override that without going through CEQA's process is very inconsistent with CEQA. If they do it in a CEQA process as opposed to the private deliberations, they have to determine if some other place is feasible, and if it is not, the overriding consideration of social benefits or economic benefits warrant accepting that amount of environmental heart. And they avoided that entire aspect of CEQA here. And again, it is important for this court to instruct UC and it wouldn't just be for UC, it would be for all agencies. UC's principal, if adopted by more agencies, the issue would have to be litigated in all sorts of contexts. So, thank you very much.

Thank you.

Thank you. I would like to just start were Mr. Lippe ended on alternatives and encourage this court not to issue an advisory opinion, which is all it would be at this point, due to the concessions and the new legislation. It addresses the need or lack thereof to look at alternative sites for the People's Park project. There is no way of knowing what UC is going to do in the future when it looks at the projects that are going to come forward under the long-range development plan. As to the questions that your honors have asked about noise, I think that Madam Chief Justice, your questions are right on port about the legislative history and a reasoning that the legislators have given us here. I think we can look at it in context as a trajectory from going to the trial court's opinion, which correctly decided that social noise, this type of noise from people wondering about neighborhoods in their private lives, was not an environmental impact under CEQA. Then, the Court of Appeals opinion came in and sort of took this left turn with a precedent-setting step, and the legislature stepped in with the urgency

legislation. To the extent that the legislation isn't as explicit as those in counsel would ask it to be or require it to be, the legislative history definitely shows that the intent was to cover people. That is what they mean when they say, the people occupants and their guests. They mean people, that CEQA is not meant to regulate people. Yes, people cause pollution, but never before has a court said that the people themselves are the pollution and that is the distinction between even the keep our mountains quiet case where yes, there was crowd noise but it was from the project location itself. Nobody looked at what people were doing when they wandered off past after the wedding that they might have been attending in that case. So, I think the key here is people. And not true introduce the stereotypes we are hearing about UC Berkeley having a party culture, clearly that is not appropriate and it is not on the record, it is not appropriate in CEQA. And I think the true target of the project opponents' challenge is really clear, that it is about undergraduate students. It has been the history of this case and the cases that Mr. Lippe referenced, the safe Berkeley neighborhood cases, have tried to limit student enrollment at UC Berkeley and the legislature has stepped in twice now to try to avoid that result. So, I would just encourage this court to uphold that legislation and the history of CEQA because I do think interpreting it in this way is the most protective of the environment. It is one way that does not discourage urban development. So, we asked the court to undo the erroneous decisions with regard to social noise and alternatives, and direct the Court of Appeal with directions for the trial court to judgment to be affirmed. If there are no other questions, I will conclude.

Thank you very much to both counsel. We appreciate your arguments. The matter is submitted.