

CALIFORNIA COURT OF APPEAL, FIRST APPELLATE DISTRICT, DIVISION FIVE

Make UC a Good Neighbor v. The Regents of the University of California

Make UC a Good Neighbor · No. A165451 · Decided March 16, 2023

SUMMARY

The California Court of Appeal reviewed challenges under the California Environmental Quality Act to the University of California, Berkeley’s 2021 long-range development plan and proposed People’s Park student-housing project. The court rejected claims that the environmental impact report needed to analyze an enrollment-cap alternative or broader geographic scope, but held that it inadequately analyzed alternatives to the People’s Park project and potential noise impacts from student parties. The court remanded for correction of those deficiencies, and the March 16, 2023 modification order stated that the modifications did not change the judgment.

CASE DETAILS

COURT	California Court of Appeal, First Appellate District, Division Five
WRITING FOR THE COURT	Burns, J.; Jackson, P.J.; Simons, J.
JURISDICTION	California Court of Appeal, First Appellate District, Division Five
DECIDED	March 16, 2023
DOCKET	A165451
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from judgment denying a petition for writ of mandate challenging the adequacy of an environmental impact report under the California Environmental Quality Act.
STANDARD OF REVIEW	CEQA alternatives claims are reviewed under the rule of reason, with substantial evidence review for predominantly factual issues. Piecemealing claims are reviewed de novo. Whether substantial evidence supports a fair argument of a potentially significant environmental effect is reviewed de novo, although the court gives some deference to credibility determinations.
PRECEDENTIAL VALUE	published

PARTIES

Make UC a Good Neighbor, The People's Park Historic District
Advocacy Group v. The Regents of the University of California,
Michael Drake, Carol Christ

TOPICS

environmental impact review

judicial review of agency action

administrative law

standard of review

appellate procedure

PRACTICE AREAS

environmental law

administrative law

appellate procedure

QUESTIONS PRESENTED

1. Whether the EIR for the long range development plan was required to analyze an alternative limiting student enrollment.
2. Whether the EIR improperly limited the geographic scope of the long range development plan and thereby piecemealed environmental review.
3. Whether the EIR adequately analyzed potentially feasible alternative locations for Housing Project No. 2 that would avoid or reduce impacts to People's Park.
4. Whether the EIR was required to analyze potential noise impacts from loud student parties in nearby residential neighborhoods.
5. Whether the EIR adequately analyzed population growth, direct displacement, and indirect displacement impacts.

HOLDINGS

1. No. The EIR's range of alternatives was not manifestly unreasonable because the development plan was a limited, high-level land-use and infrastructure plan that did not set enrollment levels or commit to enrollment increases. CEQA did not require the Regents to analyze alternatives changing the nature and scope of that project by regulating the separate enrollment-setting process.
2. No. The EIR failed to analyze a reasonable range of potentially feasible alternative locations for Housing Project No. 2 because the Regents gave only unsupported, equivocal, and incomplete reasons for rejecting alternative sites, including university-owned properties identified for student housing.
3. No. The Regents could reasonably limit the plan to the UC Berkeley campus and adjacent properties while preparing separate plans for more remote properties because the properties could serve different planning purposes and could be implemented independently.
4. Yes. The EIR was required to analyze potential noise impacts from loud student parties in residential neighborhoods near campus because substantial evidence supported a fair argument that adding thousands of students could worsen a longstanding noise problem.

5. Yes. The EIR adequately addressed direct displacement and growth-related impacts, and the record did not contain sufficient expert evidence or factual foundation to require analysis of the claimed indirect-displacement environmental effects.

KEY QUOTATIONS

“We do not hold the Regents must necessarily study an alternative site or sites for the People’s Park project. We are mindful that an analysis of alternative sites is not required in all cases.” (17)

“While an EIR need not exhaustively explain its reasons for excluding an alternative from analysis, unsupported conclusory statements do not suffice.” (24)

“In sum, we conclude that, absent a viable explanation for declining to consider alternative locations, the range of alternatives in the EIR was unreasonable.” (27)

“The Regents must analyze the potential noise impacts relating to loud student parties.” (37)

“The judgment is reversed. The matter is remanded to the superior court with directions to vacate its order and judgment denying Good Neighbor’s petition for writ of mandate and enter a modified judgment consistent with our conclusions that the EIR inadequately analyzed potential alternatives to Housing Project No. 2 and impacts from noise.” (44)

FACTUAL BACKGROUND

The University of California Regents adopted a 2021 long range development plan for UC Berkeley through the 2036-2037 academic year and approved Housing Project No. 2 on the site of People's Park. The plan anticipated substantial population growth and additional university housing, while Housing Project No. 2 would demolish People's Park and construct housing, community facilities, and publicly accessible open space. The EIR did not analyze alternative locations for Housing Project No. 2 and did not analyze potential noise from increased student parties in nearby residential neighborhoods, despite evidence that such parties were a longstanding problem. The EIR did analyze population growth and direct displacement but rejected claims that indirect displacement would cause additional environmental effects.

PROCEDURAL HISTORY

The Regents certified an EIR and approved the UC Berkeley long range development plan and two housing projects in 2021. Make UC a Good Neighbor filed a CEQA petition for writ of mandate, which the Alameda County Superior Court denied in August 2022 and entered judgment for the Regents. The Court of Appeal granted a stay concerning People's Park, reversed the judgment, and remanded with directions to vacate the judgment and enter a modified judgment consistent with its conclusions concerning alternatives to Housing Project No. 2 and noise impacts. The court's March 16, 2023 modification order made no change in the judgment.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The superior court must vacate its order and judgment denying Good Neighbor's petition for writ of mandate and enter a modified judgment consistent with the Court of Appeal's conclusions that the EIR inadequately analyzed potential alternatives to Housing Project No. 2 and impacts from noise. The Regents must perform the required noise analysis and reconsider alternatives to the People's Park project as required by CEQA. Good Neighbor is entitled to costs on appeal.

CASES CITED

- Laurel Heights Improvement Assn. v. Regents of University of California, 47 Cal.3d 376 (1988)
- Save Berkeley's Neighborhoods v. Regents of University of California, 51 Cal.App.5th 226 (2020)
- Friends of College of San Mateo Gardens v. San Mateo County Community College Dist., 1 Cal.5th 937 (2016)
- In re Bay-Delta etc., 43 Cal.4th 1143 (2008)
- Citizens of Goleta Valley v. Board of Supervisors, 52 Cal.3d 553 (1990)
- South of Market Community Action Network v. City and County of San Francisco, 33 Cal.App.5th 321 (2019)
- Marin Municipal Water District v. KG Land California Corp., 235 Cal.App.3d 1652 (1991)
- Rio Vista Farm Bureau Center v. County of Solano, 5 Cal.App.4th 351 (1992)
- Cleveland National Forest Foundation v. San Diego Assn. of Governments, 17 Cal.App.5th 413 (2017)
- California Native Plant Society v. City of Santa Cruz, 177 Cal.App.4th 957 (2009)
- Watsonville Pilots Assn. v. City of Watsonville, 183 Cal.App.4th 1059 (2010)
- Aptos Council v. County of Santa Cruz, 10 Cal.App.5th 266 (2017)
- Banning Ranch Conservancy v. City of Newport Beach, 211 Cal.App.4th 1209 (2012)
- Communities for a Better Environment v. City of Richmond, 184 Cal.App.4th 70 (2010)
- Amador v. Amador Water Agency, 116 Cal.App.4th 1099 (2004)
- Taxpayers for Accountable School Bond Spending v. San Diego Unified School District, 215 Cal.App.4th 1013 (2013)
- Keep Our Mountains Quiet v. County of Santa Clara, 236 Cal.App.4th 714 (2015)
- Mission Bay Alliance v. Office of Community Investment & Infrastructure, 6 Cal.App.5th 160 (2016)
- City of Hayward v. Trustees of California State University, 242 Cal.App.4th 833 (2015)
- Clews Land & Livestock, LLC v. City of San Diego, 19 Cal.App.5th 161 (2017)
- Dunning v. Clews, 64 Cal.App.5th 156 (2021)
- Joshua Tree Downtown Business Alliance v. County of San Bernardino, 1 Cal.App.5th 677 (2016)
- Visalia Retail, LP v. City of Visalia, 20 Cal.App.5th 1 (2018)
- Jensen v. City of Santa Rosa, 23 Cal.App.5th 877 (2018)
- King & Gardiner Farms, LLC v. County of Kern, 45 Cal.App.5th 814 (2020)
- Napa Citizens for Honest Government v. Napa County Board of Supervisors, 91 Cal.App.4th 342 (2001)
- Clover Valley Foundation v. City of Rocklin, 197 Cal.App.4th 200 (2011)

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