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California Supreme Court Upholds EIR for UC Berkeley Housing Development



The California Supreme Court held that under newly enacted Assembly Bill 1307, the environmental impact report prepared for UC Berkeley housing and longer-term development was not inadequate for failing to consider social noise and alternative sites. *Make UC a Good Neighbor v. The Regents of the University of California*, 16 Cal.5th 43 (2024).

In 2021 the Regents of the University of California certified an EIR for and approved a Long-Range Development Plan (LRDP) to guide the physical development including building locations, land use designations, and necessary infrastructure. The 2021 LRDP contained plans for UC Berkeley's student housing, including a housing development at People's Park called the Housing Project No. 2.

Good Neighbor filed a petition for writ of mandate against the Regents alleging that the EIR failed to assess or mitigate the project's effects on noise pollution and failed to analyze a range of reasonable alternatives. Good Neighbor argued that the noise analysis was inadequate because it did not adequately look at noise disturbances from house parties and late-night pedestrians. The Court of Appeal found the EIR was inadequate for failing to study social noise impacts and to consider potential alternatives to Housing Project No. 2.

While review in the California Supreme Court was pending, the Legislature passed Assembly Bill 1307, which provided that (1) for purposes of CEQA "for residential projects, the effects of noise generated by project occupants and their guests on human beings is not a significant effect on the environment;" and (2) institutions of public higher education were not be required to consider alternatives to the location of a residential or mixed-use housing project if (a) the project was on a site not exceeding five acres substantially surrounded by qualified urban uses; and (b) the project was evaluated in an EIR for the most recent long-range development plan for the applicable campus.

In light of AB 1307, Good Neighbor conceded that analysis of the effects of social noise associated with Housing Project No. 2 was not required and that the project met the exemption requiring the consideration of

project alternatives. However, it argued that the social noise claim was still viable as it applied to other housing under the 2021 LRDP. It also contended that although AB 1307 mooted its alternative sites claim, the Court should nonetheless decide the claim because it raised issues of broad public interest that were likely to recur.

The Court determined that the term "residential projects" in Section 21085 was ambiguous after considering the text and statutory context. The Court reviewed the legislative history of AB 1307, highlighting references to the current case and evidence of legislative intent to change the outcome of the case. The legislative history also showed that the Legislature was aware of other residential development planned in the 2021 LRDP. The Court concluded that there was no indication AB 1307 was intended to apply solely to Housing Project No. 2, and accordingly found that the EIR was not inadequate for failing to consider social noise impacts of other housing.

Finally, the Court rejected Good Neighbor's framing of the alternatives issue as one involving mootness. An issue is moot when events occur that make it impossible for a court to grant effective relief to the plaintiff if the court decides in his favor. The passage of AB 1307 did not make it impossible for Good Neighbor to be granted relief; rather, it made it clear that Good Neighbor was not entitled to relief. The Court also refused Good Neighbor's invitation to consider the potential application of AB 1307 to future projects. The question of how AB 1307 might apply to future housing projects was not before the Court and it declined to render an advisory opinion on that issue.

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