

## California Appellate Court Holds that Increased Student Enrollment Subject to CEQA

California's First Appellate District has ruled that discretionary decisions by a local agency that increase student enrollment constitute a "project" for purposes of the California Environmental Quality Act ("CEQA"). The case, Save Berkeley Neighborhoods v The Regents of the University of California, sustains the traditionally broad definition of a "project" in the context of CEQA by rejecting the argument that an increase in student enrollment must be analyzed only when it is concomitant with a physical development.

The facts in this case involve the planned expansion of the University of California Berkeley and the related growth of its student body. The California Education Code requires the University of California to periodically "develop a comprehensive, long-range development plan (development plan) to guide development for each campus based on academic goals and projected enrollment for that campus." These long-range development plans require the preparation of an environmental impact report ("EIR") that must include consideration of the "[e]nvironmental effects relating to enrollment levels" for the campus. (California Public Resources Code Section 21080.09(b)). The 2005 long-range development plan and EIR contemplated the physical campus expanding by 2,200,000 square feet and an additional 1,650 students by the year 2020.

After the actual enrollment had increased by 8,300 students, "a five-fold increase over the 2005 project," Save Berkeley's Neighborhoods ("Save Berkeley") filed suit alleging that "the projected increase of 1,650 students was part of the "project description" as that term is used in CEQA" and that the Regents of the University of California (the "University") "then changed the project when they approved enrollment increases beyond this amount." Save Berkeley argued that in the absence further environmental review, the decisions to increase enrollment beyond what was contemplated in the 2005 EIR was a violation of CEQA. Sustaining a demurrer, the trial court ruled that Save Berkeley's petition was barred by the

statute of limitations to the extent it challenged the adequacy of the EIR and that "in informal discretionary decisions' to increase student enrollment beyond that anticipated in the [development plan]" did not constitute "project changes" necessitating CEQA review." The court reasoned that "any discrepancy between the estimated changes in enrollment levels and the actual enrollment levels in subsequent years are not themselves project or program changes that require subsequent [CEQA] review. Both holdings were overturned by the court of appeals.

Save Berkeley pleaded, and the appellate court agreed, that Save Berkeley had stated a cause of action for violation of CEQA when it alleged that the University "changed the original project and that the changes will have significant environmental effects that were not examined in the 2005 EIR." An enrollment increase of 1,650 students was included in the 2005 EIR's project description and analyzed, however, the five-fold increase in enrollment was not. The appellate court noted that the "enrollment increases caused and continue to cause, significant environmental impacts that were not analyzed in the 2005 EIR, including increased use of off-campus housing by U.C. Berkeley students (leading to increases in off-campus noise and trash), displacement of tenants and consequent increase in homelessness, more traffic, and increased burdens on the City of Berkeley's public safety services (police, fire, and ambulance)." As such, the appellate court ruled that "respondents made substantial changes to the

original project that trigger the need for a subsequent or supplemental EIR.”

The appellate court was equally dismissive of the University’s argument that it was exempt from analyzing enrollment increased under Public Resources Code Section 21080.09. The University maintained that Section 21080.08, which requires the preparation of an EIR in connection with the preparation of a university’s long-range development plan, requires “them to consider subsequent enrollment increases only if they are otherwise preparing a tiered or subsequent EIR for development plans or related physical development projects,” placing emphasis on the fact that Section 21080.09(a)’s definition of “long range development plan” referred to a “physical development and land use plan” and did not include any reference to student enrollment. Section 21080.09, the University argued, thus trumped the otherwise broad definition of a “project” otherwise required by Public Resources Code Section 21065.

The appellate court was not swayed. First, the court noted that with regard to the statute itself, “nowhere does it purport to exclude enrollment increases from the broad definition of a “project” under Section 21065.” To the contrary, the court highlighted subsection (c) of Section 21080.08 that provides that “approval of a project on a particular campus or medical center of public education is subject to [CEQA].” Citing judicial precedent, CEQA guidelines and a provision of the Education Code, the court ruled that “when a public university prepares an EIR for a development plan, Section 21080.09 requires universities to expand the analysis to include a related feature of campus growth, future enrollment projects, which is entirely consistent with the traditional, broad definition of a CEQA project” and rather than being a source of an exemption, “Section 21080.09 subdivision (b) requires the university to analyze [e]nvironmental effects relating to changes in enrollment levels” in that EIR.”

Rejecting the University’s position that the appellate court’s decision would in effect place an undue administrative burden on the University by requiring annual CEQA review to address changing enrollment and “interfere with the Regent’s authority over public

higher education,” the court responded that the University “could analyze a range of enrollment levels in a program EIR” like other agencies do, and that contrary to the University’s protestations, the aim of the court was not to obstruct “the Regents’ authority;” they were “merely requiring the Regents to comply with CEQA.”

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