

State University's Duty to Mitigate Transportation Impacts to be Considered by Supreme Court

In *City of San Diego v Board of Trustees of the California State University*, the court of appeal overturned the EIR for the San Diego State University campus expansion plan, ruling that it did not adequately address transportation impacts and mitigation measures for those impacts. In a decision issued on December 13, the court rejected the university's finding that fair share payments for mitigation of significant transportation impacts, ruling that:

- The university erred in finding that fair share mitigation was infeasible because approval of funds by the legislature and the governor could not be assured. Nothing prevented the university from using funds from sources other than a specific legislative appropriation for mitigation.
- The EIR did not adequately evaluate impacts on the public transit system as student trips shift from cars to public transit. The university's findings about on transit system infrastructure and operations were unsupported.

The California Supreme Court granted the university's petition to review the decision on April 18, 2012. According to the court's web site, the primary question for review is whether a state agency that may be obligated to make fair-share payments to mitigate a project's off-site impacts satisfies its duty to mitigate under CEQA "by stating that it has sought funding from the Legislature to pay for such mitigation and that, if the requested funds are not appropriated, it may proceed with the project on the ground that mitigation is infeasible?"

[*City of San Diego v Board of Trustees of the California State University*](#), 201 Cal.App.4th 1134 (4th Dist. 2011), S.Ct. S199557 (review granted 4/18/2012).

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