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New EIR and Senate Bill Mooted CEQA Challenge to Berkeley Enrollment Decisions



The Court of Appeal held that CEQA challenges to proposed student enrollment increases and development projects were moot due to an updated EIR that addressed the flaws in an earlier EIR, and in light of Senate Bill 118, which clarified that "enrollment or changes in enrollment, by themselves, do not constitute a project" for purposes of CEQA. *Save Berkeley's Neighborhoods v. Regents of Univ. of California*, 91 Cal. App. 5th 872 (2023), *reh'g denied* (May 19, 2023).

In 2005, the Regents adopted a long-range development plan and certified an EIR, which projected that the campus population would level out by 2020. In 2018, the Regents approved new academic space and campus housing and certified a Supplemental EIR, establishing an updated population baseline to reflect the existing campus headcount, which exceeded the predictions in the 2005 plan.



Plaintiffs challenged the Supplemental EIR on the ground that increased student enrollment was not properly analyzed. While the case was pending, the Regents certified an EIR in 2021 for a new long-range development plan, which replaced the prior plan and established a maximum amount of new net growth through the 2036-37 academic year. The State legislature also passed Senate Bill 118, which clarified that changes in enrollment by themselves do not constitute a project for purposes of CEQA.

The Court of Appeal held that Plaintiffs' CEQA claim concerning the Supplemental EIR was moot due to the 2021 EIR, which expressly replaced the Supplemental EIR. The court rejected Plaintiffs' claim that the 2021 EIR only analyzed the increase in campus population between 2018 and 2037, finding that the EIR directly analyzed student enrollment increases since 2007 and thus corrected alleged deficiencies in the 2005 EIR.

As to the effect of SB 118, the court rejected Plaintiffs' contention that the bill violated the separation of powers doctrine by unconstitutionally interfering with the court's exercise of judicial powers. The doctrine, the court noted, did not preclude the Legislature from amending a statute and applying the change to both pending and future cases. Here, the case was still pending in the court of appeal when SB 118 was passed. Accordingly, SB 118 it was a proper exercise of legislative power that rendered the case moot.

Topics

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