

## **CEQA and EIR Adequacy: The Latest Words on Public Services Impacts and Adaptive Mitigation Programs**

Two important, recurring CEQA questions are answered by a recent court of appeal decision in a case involving the EIR for a California State University campus master plan: whether CEQA requires funding of mitigation for a project's effects on public services; and whether an adaptive mitigation program for traffic and parking impacts improperly defers decisions about mitigation. The court answered no to both questions.

The first question involved a claim that the University was required to mitigate the impacts of expansion of its Hayward campus on fire and emergency medical services provided by the city. The court of appeal rejected the city's argument that an increased demand for emergency services, and the increase in response times that would result, is an environmental impact. It is instead an economic effect that need not be mitigated under CEQA. In ruling for the University, the court noted there is no legal support for the claim "that CEQA shifts financial responsibility for providing fire and emergency response services to the sponsor of a development project."

The second question involved the legal adequacy of a transportation demand management plan for mitigating traffic and parking impacts, which included a menu of measures to be put in place in stages, evaluated and then adjusted as conditions evolved. Ruling that the plan did not improperly defer decisions about mitigation, the court highlighted the components of the plan that together made it sufficiently concrete to pass legal muster:

- performance goals
- identification of the types of TDM policies to be evaluated
- an implementation plan, including timelines
- monitoring of effectiveness of measures as they are deployed
- an enforceable commitment to mitigation

As noted in our [earlier post](#) on this case, when first issued on May 30, the opinion was not certified for publication in the official reports. In response to requests from several interested organizations (including two organizations represented by Perkins Coie), on June 28, the court issued an order that the opinion be published, and as a result, it now is effective as legal precedent.

*[City of Hayward v Board of Trustees of the California State University](#)*, A131412 (First District Court of Appeal, June 28, 2012).

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