

Do Effects on the Adequacy of Public Services Have to be Mitigated Under CEQA?

No, at least according to a recent court of appeal decision in a case brought by the City of Hayward to challenge the EIR for the California State University East Bay campus master development plan.

The City of Hayward and two community groups claimed, among other things, that the university had violated CEQA because it did not agree to fund "mitigation" for the effect of campus expansion on fire and emergency medical services.

With the plan's increase in campus population, the city would need eleven fire fighters, a new fire station, and additional equipment to maintain response times and service levels. The trial court found the EIR deficient because it did not treat the plan's effect on adequacy of fire protection services as an environmental impact, and instead focused only on the possible impacts of building a new fire station.

The court of appeal set the trial court's ruling aside. It rejected the city's claim that the risk of injury from "dangerously long" response times is an environmental impact subject to CEQA. Providing fire and emergency medical services is the city's legal responsibility. While campus expansion will increase the demand for those services, this is an economic effect, the court said, not an environmental effect that must be mitigated. As the court put it "there is no authority supporting the city's view that CEQA shifts financial responsibility for providing fire and emergency response services to the sponsor of a development project."

Because the appellate court's opinion is not certified for publication in the official reports it cannot be cited as precedent. However, given the importance of the issues involved, the applicability of the principles discussed in other contexts, and the absence of published opinions directly addressing those issues, it is likely that requests for publication of the opinion will be filed with the court.

[*City of Hayward v Board of Trustees of the California State University*](#), A131412, A13424 (First District Court of Appeal, May 30, 2012).

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