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### University Campus Was Not an Illusory Element of Project Under CEQA

The court of appeal found the EIR for a master planned community sufficient because it adequately described and analyzed impacts of the proposed project, which included a university, and was not required to consider the speculative possibility that the university would never be built. [\*Environmental Council of Sacramento v. County of Sacramento\*](#), 45 Cal.App.5th 1020 (2020). The proposed project consisted of a master planned community, including residential, office, retail, and a 224-acre university campus. At the time the EIR was prepared, no specific university had been identified for the site. The EIR explained that, due to the long-term nature of the project, the timing of buildout of the university could not be predicted. Plaintiffs challenged the project on numerous grounds under CEQA.



**Adequacy of Project Description and Impacts Analysis** Plaintiffs claimed the project description was inadequate because it did not address the possibility that the proposed university would never be built, and hence that the EIR's environmental analysis was "based upon a falsehood and speculation." The appellate court found that the difficulties in attracting a major educational institution had been taken into account by the Board of Supervisors, which imposed obligations on both the developer and the County designed to advance that goal. These included requiring the developer to report annually on its progress, and to deposit payments (capped at \$6 million) in an escrow account if the university land had not been transferred to a university by the time specific numbers of residential units had been built. The project also included numerous incentives designed to attract a university, including approximately \$87 million in financial commitments. The court determined that plaintiffs had failed to identify credible and substantial evidence in the record that the proposed university was an illusory element of the project. As a result, the EIR was not required to address the speculative possibility that a university would not be built. For the same reason the court also rejected plaintiffs claim that the EIR misrepresented the significance of the project's environmental impacts to air quality, climate change, and traffic based on the assumption that the university would be built. **Failure to Adopt Feasible Mitigation Measures** The plaintiffs also asserted that the County was required to consider, as a feasible mitigation measure, tying the

phasing of project construction to development of the university in order to reduce environmental impacts. The Board, in its findings and statement of overriding considerations, had determined that these and other suggested mitigation measures were infeasible, in part because such measures would inhibit attainment of economic, social, and other project benefits. The court concluded that plaintiffs had failed to provide any evidence in the record to demonstrate that such tied phasing was feasible, noting that it was not the court's duty to independently review the administrative record to find facts that might support the plaintiffs' claim.