

Public Universities Must Comply With CEQA When Deciding to Increase Enrollment Beyond Levels Specified in Development Plan EIR

In *Save Berkeley's Neighborhoods v. Regents of the University of California*, 51 Cal.App.5th 226 (2020), the court of appeal rejected the University of California's argument that it need not have prepared a Subsequent or Supplemental EIR to analyze the effects of its discretionary decisions to increase enrollment on the Berkeley campus. The University had prepared a Program EIR for its UC Berkeley Long Range Development Plan in 2005. The petitioners alleged that the LRDP EIR stated enrollment would increase by 1,650 students over the life of the plan. They also claimed that, beginning in 2007, the University made periodic decisions to increase enrollment such that, by 2018, enrollment had increased by 8,300 students.



Petitioners argued that the University's decisions to increase enrollment constituted changes to the previously

approved project and that the University had violated CEQA each time it decided to increase enrollment in the absence of a Supplemental or Subsequent EIR. They also claimed they did not know about the University's decisions to increase enrollment until 2017 and argued that their complaint was therefore timely. The University sought dismissal of the lawsuit on the ground that the claims did not show a legal violation of CEQA, even if the allegations were true. The court of appeal first recognized the general rule that CEQA comes into play whenever a public agency makes a discretionary decision to change a project in a way that could have a physical effect on the environment. Because changes in enrollment have the potential to result in physical environmental effects, this general rule would dictate that decisions by a public university to modify an approved development plan by increasing enrollment beyond the levels specified in the project description is a change that is subject to CEQA. The court then rejected the University's argument that a specific section of CEQA (Section 21080.09) exempts the University from CEQA compliance when it makes enrollment decisions that are not tied to a long-range development plan. Section 21080.09 requires that the EIR for each public university campus's long-range development plan consider environmental effects relating to changes in enrollment. The court held that these provisions did not exclude consideration of such effects when enrollment decisions are made outside the context of a development plan.. Had the University's enrollment decisions been within the range previously evaluated in the LRDP EIR, the University could have relied on its Program EIR as its means of CEQA compliance. However, the court agreed with petitioners that an increase in enrollment above the amount described and analyzed in the LRDP EIR would constitute a project change. Under CEQA Guidelines section 15162, an agency must undertake CEQA review whenever a project change would result in a new or substantially more severe environmental impact. Because petitioners had alleged that new or more severe environmental impacts would result from the enrollment decisions, the court found adequate grounds to proceed to the next stage of litigation. The court of appeal also held that petitioners had adequately pled facts indicating that the suit was timely. When, as in this case, a public agency does not issue a Notice of Exemption or Notice of Determination, the time period for filing a CEQA suit is 180 days from the date that a challenger knew or reasonably should have known about the agency's decision. The court ruled that whether petitioners had the requisite knowledge of the University's decision was a factual question to be decided during the litigation.

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