

Land Use & Natural Resources e-Alert August 2015

CITY OF SAN DIEGO v. BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY, Case No. S199557

In this decision, issued August 3, 2015, the California Supreme Court considered the extent to which the California State University (CSU) is responsible for mitigating off-site traffic impacts caused by CSU's plan to expand its San Diego campus to accommodate more than 10,000 additional students over the next several years (the "Project").

In an earlier case, *City of Marina v. Board of Trustees of California State University* (2006) 39 Cal.4th 341, the Supreme Court stated that "a state agency's power to mitigate its project's effects through voluntary mitigation payments is ultimately subject to legislative control; if the Legislature does not appropriate the money, the power does not exist." Relying on that language, CSU took the position that it could not lawfully pay for off-campus environmental mitigation without a legislative appropriation for that specific purpose. Since it could not guarantee the Legislature would appropriate funds to mitigate traffic impacts, CSU concluded that mitigation was infeasible, and certified an environmental impact report (EIR) for the Project based on a statement of overriding considerations.

In rejecting CSU's action, the Supreme Court stressed that "[m]itigation is the rule," *i.e.*, CEQA requires all public agencies to mitigate or avoid significant environmental impacts, whether on- or off-site, whenever it is feasible to do so. Thus, "while education may be CSU's core function, to avoid or mitigate the environmental effects of its projects is also one of CSU's functions." Accordingly, the power to spend funds on a project "logically embraces the power to ensure that mitigation costs attributable to those projects are included in the projects' budgets."

The Supreme Court further found that the rule proposed by CSU would lead to unreasonable consequences, effectively forcing the Legislature to review state agencies' projects on a case-by-case basis, and unfairly imposing a financial burden on local and regional agencies whenever the Legislature fails to make an earmarked appropriation for mitigating the off-site effects of a particular project.

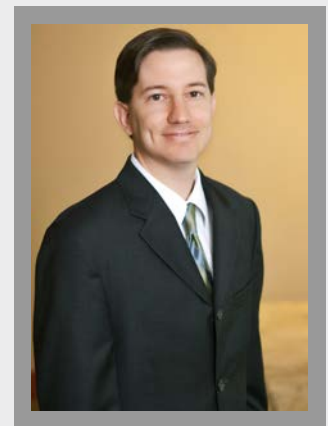
Finally, the Supreme Court rejected CSU's arguments that certain provisions of the Education Code prevented it from using nonappropriated funds for mitigation, as well as its claim that the

Legislature's failure to grant CSU's request for an earmarked appropriation constituted a "formal action" prohibiting CSU from spending any public funds for that purpose. The Court remanded the case for further proceedings, while cautioning CSU to proceed with any new EIR in accordance with CEQA's standards and procedures, and noting that "CEQA does not authorize an agency to proceed with a project that will have significant, unmitigated effects on the environment, based simply on a weighing of those effects against the project's benefits, unless the measures necessary to mitigate those effects are truly infeasible."

This case reinforces the requirement that the agency approving a project be responsible for mitigating or avoiding its environmental impacts, whenever it is feasible to do so, and prevents state agencies from dodging that obligation by asserting that they do not have authority to use project funds for mitigation of off-site impacts. It remains to be seen what impact the Court's ruling in this case will have on a similar case involving a CEQA challenge to the expansion of CSU-East Bay (see *City of Hayward v. Trustees of the California State University*, Case No. S203939). The Supreme Court ordered briefing in the Hayward case deferred pending a decision in the San Diego case.

Clients with questions about this e-Alert or related issues are welcome to contact the article authors, or the Rutan & Tucker attorney with whom you are regularly in contact.

This e-Alert is published periodically by Rutan & Tucker, LLP and should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only.



[Peter Howell](#)