

## COURT CLARIFIES CEQA RULES REGARDING INFEASIBILITY AND DEFERRAL OF MITIGATION

*City of San Diego v. Board of Trustees of the California State University*, No. D057446 (Cal. Ct. App. 4th Dist., December 13, 2011.)

January 6, 2012 by **Michael Hansen**

In 2005, the Board of Trustees of the California State University ("CSU") certified an environmental impact report ("EIR") and approved a project for the expansion of San Diego State University ("SDSU") to increase student enrollment from 25,000 students to 35,000 students by 2024. The 2005 EIR certification was challenged and in light of a California Supreme Court opinion that was issued during the pendency of the litigation affecting issues involved in the case, the trial court entered judgment against CSU. In 2007, CSU revised its master plan for expansion of SDSU and certified a new EIR and approved the revised project. CSU found that there were no feasible mitigation measures to reduce the project's off-site traffic impacts to below a level of significance because it might not obtain its "fair-share" mitigation funding from the Legislature and Governor. CSU also adopted a statement of overriding considerations concluding that the project's benefits outweighed its unavoidable significant environmental effects. The court determined, following the California Supreme Court decision in *City of Marina v. Board of Trustees of California State University* (2006) 39 Cal.4th 341 ("*Marina*"), that the CSU finding of infeasibility of off-site mitigation measures and its statement of overriding consolidations were both invalid. Mitigation of Significant Off-site Environmental Impacts

The court held that it was an erroneous legal assumption to conclude that CSU could pay its "fair-share" of off-site mitigation only if the Legislature specifically appropriated such funding. The court held that the EIR should have addressed the availability of potential alternative sources of funding and compelling reasons why those sources could not, as a matter of law, be used to pay for mitigation. CSU did not cite any provision that barred it from using other funding sources for to help pay its "fair-share" of the costs.

### **Deferral of Mitigation of Traffic Impacts**

SANDAG and MTS argued that CSU improperly deferred adoption of mitigation measures to reduce traffic impacts. Specifically, they asserted that a mitigation measure requiring CSU to consult with SANDAG and MTS in developing a transportation demand management (TDM) program with the goal of reducing SDSU's vehicle trips constituted improper deferral of mitigation. They argued that this identified no performance standard, but merely stated a generalized goal and did not commit CSU to take any actual action. The court agreed with the assertions of SANDAG and MTS because the TDM "appears to be, at best, an amorphous measure that does not commit CSU to take any specific mitigation measures to reduce vehicle trips and does not provide for any objective performance standards by which the success of CSU's mitigation actions can be measured."