Yesterday, I introduced the CEQA lawsuits over UC Berkeley's expanding enrollment and its potential impacts on the surrounding neighbor. Today, in my second post, I want to explore the implications of applying environmental review statutes such as CEQA to individual, small-scale decisions like university enrollment.

The legal question at issue in the case was whether a university's enrollment decisions – separate from any decisions about physical plant – are subject to CEQA. CEQA only applies to projects (defined in Pub. Resources Code Section 21065) – a term that has led to much CEQA jurisprudence and much ambiguity. The classic version of a project would be the government constructing a highway or a dam – or granting approval to a private entity to construct a hotel or a housing development.

Decisions about enrollment seem quite different than these kinds of projects. In the context of a large university, in particular, enrollment decisions will be the aggregrate of lots of individual decisions by individual schools and programs to admit students, whether students accept admission, and so forth. And while there is surely large-scale direction by campus administration as to the broad parameters of enrollment, even here there will be annual fluctuations and variations. In other words, unlike the single, large decision to do a project, here we have the accumulation of many, small-scale, and repeated decisions. And that fits awkwardly with the concept of environmental review, which imposes large, upfront analytic burdens on a decisionmaker – as other scholars such as JB Ruhl and Robin Craig have noted, that kind of large, upfront burden can deter flexible, repeated decisionmaking, and create real rigidity in government action. In the environmental context, this creates concerns that agencies cannot react quickly to changing circumstances, or adapt decisions to new information.

Likewise, imposing significant CEQA burdens on regular enrollment decisions seems a poor fit for the statute. Do we expect admissions offices to be doing CEQA review when reviewing individual cases? Or universities to conduct CEQA review before extending a job offer to new staff or faculty? However, the state legislature did provide for a planning process by which universities would make general forecasts about enrollment over time, conduct CEQA review for that planning process, and thereby insulate future enrollment decisions from CEQA review. That is a process that makes a lot more sense, especially if the university is wise enough to provide a range of forecasts, analyzes the impacts of those forecasts, and assesses them. And indeed, that is what UC Berkeley had done in the plan in 2005, it just had failed to update that plan when circumstances intervened – in other words, once the enrollment numbers went beyond the predictions in the 2005 plan.

So to my mind, the first court of appeal decision (where the court held that enrollment

numbers are a project subject to CEQA review) is probably right in its application of CEQA to this particular set of facts, at least with the statutory system that applies a planning process for enrollment decisions. But I am concerned that broad language in the court's opinion (specifically that treating the increase in enrollment as a project is a "routine application of basic CEQA requirements") will lead courts to be more and more aggressive in expanding the scope of what constitutes a project to include routine, small-scale decisions like enrollment. That could produce real problems down the road for the state as it thinks about becoming more and more flexible in addressing issues around climate change (for instance). Of course, small-scale actions can aggregate to produce significant cumulative impacts – that is a key challenge and an important focus for environmental law. But ideally, those kinds of cumulative impacts are addressed in planning documents, just as they (should) have been in this case.