

# CLIENT NEWS BRIEF

## Environmental Review Not Necessarily Required Prior to Approval of a Real Property Purchase Agreement

The Fourth District Court of Appeal has ruled that the execution of a purchase and sale agreement for real property that is contingent upon compliance with the California Environmental Quality Act (CEQA) does not trigger a public agency's duty to prepare an environmental impact report (EIR) under CEQA.

### The California Environmental Quality Act

CEQA is a complicated body of law which requires public entities to consider environmental effects of their projects before approving them. This generally involves a three-step process where the agency must first determine whether a given activity is a "project" governed by CEQA. If so, the second step is to determine whether the project is exempt under either a statutory or categorical exemption, and if no exemption applies, the public agency proceeds to a third step of considering whether the project may have a significant effect on the environment. If all impacts are insignificant or can be mitigated to a level of less than significant, the agency may prepare a negative declaration. If the possibility of an unmitigated impact remains, then a more extensive EIR is required.

### Background

In *Bridges v. Mt. San Jacinto Community College District*, the governing board of a community college district approved an agreement to purchase real property, contingent on CEQA compliance. A pair of citizens sued, alleging the district was required to prepare an EIR before executing the agreement. Both the trial court and the Court of Appeal disagreed, confirming that a public agency is not required to complete CEQA review prior to entering into an agreement to acquire real property, as long as the acquisition is contingent on completion of CEQA review. The appellate court held that CEQA requires the preparation of an EIR before the purchase of real property is final, but not before merely executing a purchase and sale agreement contingent upon CEQA compliance.

This exception to CEQA review, however, is narrowly construed. An agency cannot hide behind a contingent purchase and sale agreement to postpone preparation of an EIR. The applicable legal test is whether an agency has committed itself to a *definite* course of action. No definite course of action can be approved before the EIR is prepared, and a real property purchase and sale agreement contingent upon CEQA review alone is not a definite course of action. Once a definite course of action is taken by a public agency, however, CEQA requirements are triggered. For example, California's CEQA guidelines authorize a public agency to enter into a land acquisition agreement if it has conditioned future use of the land on CEQA compliance, so long as it has not already approved the use of the site or specific facilities, which would require CEQA review. As long as an agency does not engage in any such action or agreement that would commit it to a definite course of action regarding a specific site, CEQA review is not required before executing a purchase and sale agreement for real property contingent upon CEQA review.

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## Tips to Avoid a Finding of a Definite Course of Action

- Agencies should not commit any funds to a project, including loans to contractors or developers, until the preparation of an EIR is complete.
- Agencies should avoid engaging developers in contract, or drafting detailed development plans, before an EIR is completed.
- A governing body can pass a resolution selecting a specific site for construction and directing administration to make a purchase offer contingent on completion of the EIR process.
- Governing bodies should not make public comments that may be construed as commitment to a project for which there is no EIR. Comments regarding hopes that a project will come to fruition or a project's possibilities are acceptable.

If you have any questions about the *Bridges* decision or CEQA in general, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

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