

# CLIENT NEWS BRIEF

## Court Allows Eminent Domain Action to Proceed Prior to Completion of CEQA Review

A recent court decision provides authority for public agencies to commence an eminent domain proceeding, in some circumstances, prior to completion of environmental review under the California Environmental Quality Act (CEQA). In *Golden Gate Land Holdings, LLC. v. East Bay Regional Park District* (April 12, 2013) \_\_ Cal.App.4th \_\_ (2013 WL 1491547) ("*Golden Gate Land Holdings*"), the Court of Appeal for the First Appellate District held that a park district had improperly claimed that its project was exempt from CEQA. The park district was ordered to conduct CEQA review, but was allowed to proceed with an eminent domain proceeding to acquire property for the project in the meantime, as long as it did not acquire title to the property before completion of the CEQA process. This case represents a potential shift in the law, since prior authorities have held that an agency must complete CEQA review *before* adopting a resolution of necessity and commencing an eminent domain action to acquire property for public use. Based on these authorities, public agencies typically complete the potentially lengthy environmental review process as a prerequisite to filing their eminent domain actions.

In *Golden Gate Land Holdings*, the park district approved a resolution of necessity to condemn property for a park project along the San Francisco Bay. The resolution of necessity, which is a legal prerequisite to filing an eminent domain action, made the requisite findings that the public interest and necessity required the taking, the project was planned and located in the manner most compatible with the greatest public good and the least private injury, and the property was necessary for the project. The resolution also concluded that the project was categorically exempt from CEQA as an acquisition of land for purposes of protecting open space and securing future public access to the subject park. (Cal. Code Regs., tit. 14, § 15325.)

The property owner contended that the CEQA exemption did not apply, since the project included the initiation of eminent domain proceedings and the proposed improvements to the land. The Court agreed that the proposed land improvements were not exempt, and that the park district was required to conduct CEQA review, instead of relying on a categorical exemption. However, the Court held that under Public Resources Code section 21168.9, an order mandating compliance with CEQA may be limited to specific project activities found to be in noncompliance if the court makes certain findings. First, the project activity or activities must be able to be segregated from the remainder of the project. Second, the court must find that such segregation will not prejudice complete and full compliance with CEQA. Third, the court must not have found the remainder of the project to be in noncompliance with CEQA. The *Golden Gate Land Holdings* Court found that the eminent domain proceeding was severable from the actual purchase of the property and construction of the improvements. Since the only project activities found to be in noncompliance with CEQA were the proposed improvements, the district could pursue the "severed" eminent domain action prior to completion of CEQA review, so long as CEQA review was completed before acquisition of the property. Under the eminent domain law, acquisition of the property would occur on recording a final order of condemnation.

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This case appears to be a positive development for public agencies by allowing simultaneous undertaking of CEQA analysis and condemnation proceedings. However, public agencies should proceed with caution in applying its holding because the case creates a split of authority among the Courts of Appeal in the state of California. It is unknown if any party to the appellate litigation will seek Supreme Court review based on this split of authority. Also, the *Golden Gate Land Holdings* Court specifically noted the unique facts of the case as involving a project for open space preservation and recreational improvements, and pointed out that it was undisputed that a full environmental impact report (EIR) was not required to condemn property for open space or park purposes. The Court distinguished other projects, such as residential development, construction of an airport taxiway, and expansion of a water service system. Given these limitations, we recommend caution before attempting to apply the holding to a different set of facts such as acquiring property for a different use.

If you have any questions regarding this Client News Brief, CEQA, or eminent domain law in general, please feel free to contact one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#), or download our [Client News Brief App](#).