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College District's Approval of Agreement to Buy Land Did Not Trigger CEQA

A community college district's approval of an agreement to buy land for possible use as a new campus did not trigger CEQA review where the agreement required an EIR before the sale could be consummated and the District had not otherwise committed itself to building a new campus on the site. *Bridges v. San Jacinto Community College District*, No. E065213 (4th Dist., Aug. 8, 2017). At a regularly scheduled meeting, the Board of Trustees of the San Jacinto Community College District approved an agreement to acquire 80 acres of property from a regional park district for possible use as a new college campus. There were no public comments on or objections to the agreement at or before the board meeting. Plaintiffs subsequently sued, alleging the District violated CEQA by failing to prepare an EIR before approving the agreement. The appellate court concluded (1) plaintiffs did not exhaust administrative remedies or demonstrate they were excused from doing so by lack of notice; and (2) even if plaintiffs had exhausted, their claim foundered on the merits because the District had not committed itself to the new campus project and had expressly agreed to prepare an EIR before completing the purchase. ***Plaintiffs Failed to Exhaust Administrative Remedies*** A party alleging violation of CEQA must exhaust administrative remedies or demonstrate either that there was no public hearing or other opportunity to raise objections before the project was approved or that the public agency failed to give the notice required by law • (Pub. Res. Code § 21177(e)). Here, the District considered and authorized the purchase agreement at a public meeting of its board of trustees. While this was not a public hearing, it nonetheless triggered CEQA's exhaustion requirement because it constituted an "other opportunity" for members of the public to raise objections prior to the approval of the project. • Plaintiffs contended they were nonetheless exempted from the exhaustion requirement because the District had failed to post the meeting agenda at least 72 hours in advance of the meeting as required by the Brown Act. The record, however, was silent on whether the required notice had been given. Under these circumstances, plaintiffs' exemption claim failed because they bore the burden of proving inadequate notice. Faced with no evidence on the issue, the court concluded that it had to presume that the District's official duty had been regularly performed. ***CEQA Review Was Not Required*** The court further held that execution of the purchase agreement did not trigger the duty to conduct CEQA review. When an agency purchases land for a public project • that may have a significant impact on the environment, the CEQA Guidelines require the agency to prepare an EIR before acquiring the land. However, the Guidelines allow the agency to designate a preferred site and enter into an acquisition agreement if its future use of the site is conditioned on CEQA compliance. (CEQA Guidelines § 15004 (b)(2)(A).) Here, the court found the District satisfied the latter requirement because the agreement expressly conditioned the opening of escrow on CEQA compliance -- specifically, preparation of an EIR. Plaintiffs argued, however, that the totality of the District's actions indicated it had committed itself to acquiring the land for construction of a new campus. The appellate court disagreed, finding that nothing in the purchase agreement or in any of the District's resolutions committed it to building a new campus on the property, no funds had been allocated for that purpose, the board had never formally designated the site for a new campus, and no development or construction plans existed. Thus, the court concluded, the District had in no way committed itself to the project or precluded its consideration of alternatives to the site. Accordingly, approval of the purchase agreement did not trigger the duty to conduct CEQA review.