

LEGAL ADVISORY

Office of the General Counsel

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SUMMARY

The need for familiarity with state laws that regulate environmental review of projects is no longer limited to the campuses' capital projects and planning staff. The requirements of the California Environmental Quality Act (CEQA) apply any time the University approves a project that could have an adverse effect on the environment, regardless of whether the project requires design review or approval by The Regents.

If you have questions regarding how the requirements of the California Environmental Quality Act may affect the University's approval of a project, please contact:

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This legal advisory is issued by the Office of the General Counsel to provide updates regarding important legal and regulatory developments that affect the University. For additional information or assistance with a specific legal matter, please contact the Office of the General Counsel.

Requirements of the California Environmental Quality Act

As the University increases its reliance on alternatives to traditional capital projects to deliver new facilities, the need for familiarity with state laws that regulate environmental review of projects is no longer limited to the campuses' capital projects and planning staff. Project managers in purchasing, real estate and other administrative divisions need to be aware of the environmental review laws. The requirements of the California Environmental Quality Act (CEQA) apply any time the University approves a project that could have an adverse effect on the environment, regardless of whether the project requires design review or approval by The Regents. As a result, even real estate transactions where the campus commits to occupy an existing building but proposes a change in use, or purchase contracts where a vendor agrees to install a facility on campus property, must comply with CEQA.

A recent example is a proposed solar energy installation. That project is being implemented at the campus level through the purchasing department, which entered into an agreement with a "turn-key" solar vendor to install the facility on campus property pursuant to a purchase contract and license agreement. Because CEQA review was not anticipated from the outset, coordination of the purchase contract and license with the CEQA process presented an obstacle to timely delivery.

The University does have the latitude to engage in project planning and enter into non-binding agreements (such as option and exclusive negotiating agreements) before conducting environmental review. However, under the recent California Supreme Court decision in *Save Tara v. City of West Hollywood*, certain types of pre-approval agreements and activities that, taken individually, would not ordinarily constitute project approval may nevertheless trigger the need for CEQA review. This principle recently was reinforced in a 2009 case, *Riverwatch v. Olivenhain Municipal Water District*, in which the Court of Appeals held that an agreement must not "effectively commit the public agency to a definite course of action." The clear message of these recent decisions is that a public agency like the University may be found to have committed itself to a project, even absent a fully binding agreement.

In all instances, the University must comply with CEQA before making a commitment to a project. This includes CEQA's requirement that an environmental document (such as an environmental impact report or negative declaration) and "findings" for non-exempt projects be prepared. The University must comply with CEQA before executing a lease or signing a purchase contract, or otherwise irrevocably committing itself to a project. Any project commitments made in advance must be conditioned on CEQA review, and the University must retain total discretion to walk away from the project until the environmental review is complete and the decision-maker (often a campus-level administrator) has made the required CEQA findings before approving the project.