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### Third District Invalidates EIR for State Capitol Renovation Project

*Update: On January 18, 2023, the Third District Court of Appeal issued a revised opinion on rehearing, ordering partial decertification of the EIR and allowing certain construction activities to proceed during remand (see "Partial Decertification & Severance" below.)*

In a high-profile CEQA case involving renovation of the State Capitol grounds, the Third District Court of Appeal found the EIR deficient for lack of a stable project description, insufficient analysis of impacts on historic resources and aesthetics, and failure to analyze a reasonable range of alternatives. *Save Our Capitol! v. Department of General Services*, 85 Cal.App.5th 1101 (2022).



In 2016, the legislature authorized major reconstruction of the primary office space for the Governor, state lawmakers, and staff (the "annex") attached to the historic State Capitol. The Department of General Services prepared a draft EIR with plans to demolish the existing 325,000 square-foot annex and construct a new one, along with a new visitor center and underground parking garage. Following public comment on the draft EIR, DGS adjusted the design of the visitor center entry and recirculated the affected portions of the draft. Post-recirculation, DGS continued to refine the design, and the additional changes—including moving the parking garage from the south to the east side of the State Capitol—were addressed in the final EIR. DGS concluded that the changes did not constitute "new or significant information" that would require another round of recirculation.

#### ***Project Description***

The court ruled that the project description was unstable because the new annex design, featuring an all-glass exterior, was not revealed until the final EIR. Previous drafts stated that the annex building materials would be compatible with the historic State Capitol to create a "one-building" feel. However, in the final EIR, the annex design changed so significantly that DGS departed from this vision. Instead, the *interior* spaces would maintain the "one-building" feel and an all-glass exterior would maximize natural light and occupant health. Because this change was first revealed only in the final EIR, the court held that conflicting earlier project descriptions may have misled the public and foreclosed the opportunity to meaningfully comment on the design's impact on the State Capitol. The changing project description "prevented the people from commenting on significant environmental effects on what is truly the people's capitol" and new information this late in the process did not satisfy the demands of CEQA.

### ***Impacts Analysis***

Based on the inadequate project description, the court held that DGS' analysis of the impact of the new annex design on historic resources was deficient. Because the original project description omitted key changes to the annex, the final EIR did not adequately disclose related impacts and the public missed an important opportunity to comment (and DGS to respond) to the project's impact on the State Capitol—a state and nationally listed historic resource.

DGS' impacts analysis was also deficient with respect to aesthetics. First, DGS did not provide sufficient information to analyze the impact of the new visitor's center on the protected scenic vista along Capitol Mall toward the West Lawn. CEQA does not require specific visual schematics, but it does require sufficient information to allow the public to consider the changes at issue. Here, the significance of the State Capitol required depiction of the altered vista. Renderings from different angles, with narrative about the proposed changes, was not enough. Second, DGS' commitment to meet CalGreen standards for the new, all-glass annex was not sufficient to address light and glare impacts. Commitments to use specific materials or comply with best available standards may serve as mitigation measures, but they do not replace the analysis necessary to inform the public about how the project will alter existing aesthetics.

### ***Alternatives Analysis***

Lastly, DGS did not consider a reasonable range of alternatives as required by CEQA. The three alternatives identified in the final EIR overlooked an important option—moving the visitor's center from the scenic West Lawn to the south side of the State Capitol. This alternative became particularly relevant when DGS modified the visitor's center design, increasing impacts on the historic West Lawn. While CEQA does not mandate consideration of every alternative, it requires analysis of reasonable alternatives that would satisfy most of the project's objectives while also reducing environmental impacts. Relocation of the visitor's center was a logical alternative that met this standard and, by excluding it, DGS prejudicially impacted public participation and informed decision-making during the CEQA process.

### ***Partial Decertification & Severance***

On rehearing, DGS asked the court to order only *partial* decertification of the EIR and to allow some near-term construction activities to continue while DGS addresses the EIR's deficiencies. The court agreed in part, holding that certain construction activities are severable from the non-complying parts of the project, and that allowing those construction activities to continue would not prejudice DGS' efforts to comply with CEQA. Specifically, DGS may demolish the existing annex, as the impacts of demolition and renovation were already sufficiently analyzed in the EIR, but all project activities related to the new annex's *exterior* design (including excavation of the new annex and parking garage, and beginning work on the concrete foundation for those structures) must be suspended during remand.

**Authors**