Blogs
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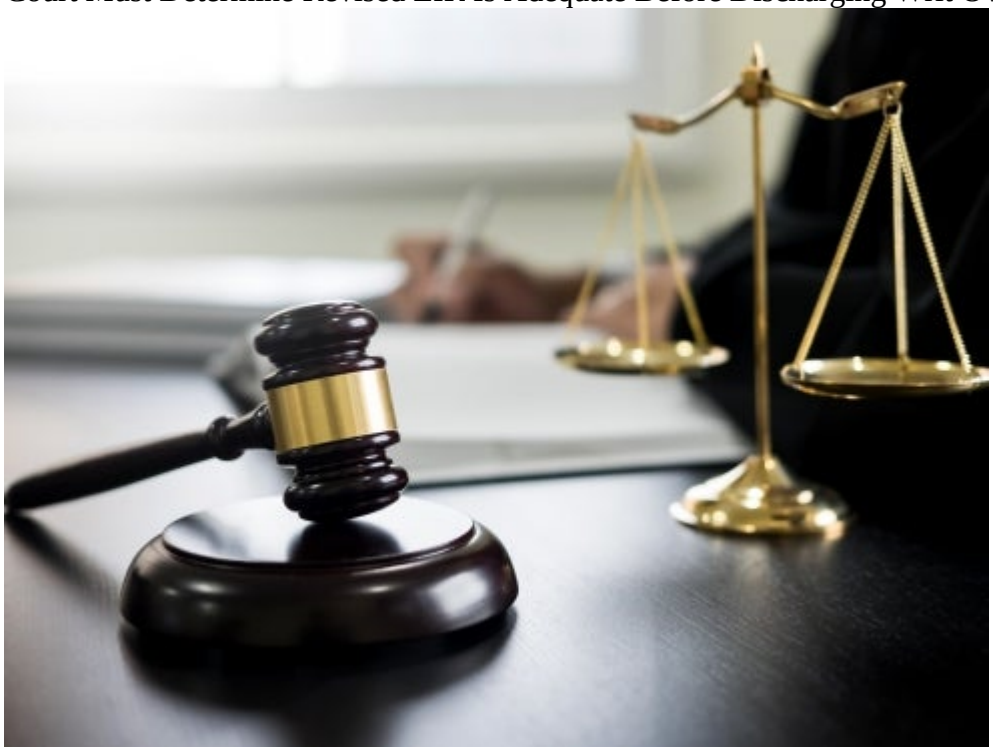
Court Must Determine Revised EIR Is Adequate Before Discharging Writ Overturning Prior EIR



An appellate court interpreted a writ that ordered an agency to vacate certification of an EIR in part and file a final return to the writ "upon certification of a revised EIR" to require an assessment of the adequacy of the revised EIR before the writ could be discharged.

Save the Capitol, Save the Trees v. Dept. of General Services, No. C100160 (3rd Dist., April 4, 2024).

The California Department of General Services and the Joint Committee on Rules of the California State Senate and Assembly (collectively "DGS") proposed to redevelop portions of the California State Capitol complex and prepared an EIR. On a prior appeal in the case, the appellate court found the EIR defective due to some issues related to the visitor center component of the project. On remand, the trial court issued a writ directing DGS, among other things, to file a final return to the writ "upon certification of a revised EIR."

DGS decided to eliminate the visitor center from the project. DGS prepared, circulated and certified a revised EIR, approved the revised project, then filed a final return to the writ. Plaintiff objected because the question whether the revised EIR remedied the deficiencies identified in the first appeal had not been evaluated. DGS argued that this question was beyond the scope of the writ and could be raised only in the context of a new proceeding. The trial court discharged the writ and a second appeal followed.

The appellate court held that the writ should not have been discharged. While "clearer writ language would have been preferable," the court presumed, absent contrary evidence, that the trial court followed applicable law. It interpreted the writ to implement Public Resources Code section 21168.9(a)(3), which provides for a writ that mandates that the public agency take specific action as may be necessary to bring the proceedings into compliance with CEQA, and caselaw holding that a plaintiff may challenge an agency's compliance with a writ either by a new or supplemental action, or by objecting to the return.

DSG's concerns about potentially inconsistent results when one plaintiff challenges a revised EIR by bring a new proceeding and another does so by objecting to the return could be avoided through consolidation. Nor would deciding the adequacy of the revised EIR in the context of an objection to the return reopen issues already decided in the first appeal. "Here, the trial court must determine that the revised EIR is consistent with [the first appellate decision] before the writ may be discharged, but no new issues may be raised by objection to DGS's writ return."

Authors

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