

# Capitol Planning and Development Report

## How Long Can The Swiss Cheese Approach To CEQA Go On?

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[Capitol](#), [CEQA](#), [People's Park](#)

The Legislature and Gov. Gavin Newsom have punched another hole in the California Environmental Quality Act – this time in order to move along construction of a new annex to the State Capitol in Sacramento.

It's the latest example of the state's growing "Swiss cheese" approach to CEQA, coming on the heels of a similar solution to the People's Park court case last year. There's no way to comprehensively reform CEQA. But when a CEQA stall comes along that bothers the legislators, they simply pass a law providing a one-off end run around the law. Meanwhile, other projects languish.

Admittedly, the CEQA holdup in the Capitol annex case was pretty extreme. Two different citizens groups – one known as Save The Capitol! And the other know, confusingly enough, as Save The Capitol, Save The Trees – filed lawsuits challenging the Department of General Service's plans to tear down and replace the existing Capitol Annex. These lawsuits have led, so far, to two appellate court rulings that have held up the project.

The first one, in late 2022, was one of the most in-the-weeds CEQA rulings in recent memory. In that case, the Third District Court of Appeal in Sacramento struck down EIR certification because DGS had made revisions to the project after the last version of the EIR had been circulated.

But the court went much farther. The 63-page ruling, written by Acting Presiding Justice Harry Hull, contained a very detailed analysis of the project's design, potential impacts, and potential alternatives – down to the point of specifically describing a visual depiction that the state should have included in the EIR and an alternative that the state should have considered but did not. It would appear as though Justice Hull gave the EIR close scrutiny in part because it involved the State Capitol building, which he called "a treasured historical resource." (*CP&DR's* previous coverage of that court ruling can be found [here](#).)

So DGS went back to the drawing board, downsizing a proposed parking garage and ditching a proposed visitor center among other things. But the “Save” organizations persisted and in May won a second appellate court ruling. This time, the same appellate panel – but without Hull – ruled that DGS incorrectly re-certified the EIR but should have vetted the recertified EIR with the trial judge.

That was enough for the Legislature, given that a billion-dollar project of great importance to the legislators was being held up. A month after the most recent court ruling, Sen. John Laird and Assemblymember Blanca Pacheco wrote a letter to the Joint Budget Committee calling for a CEQA exemption. According to the [Los Angeles Times](#), Laird and Pacheco estimated the cost of delay at \$5 million a month and said: “We have worked to meet the significant concerns about the project, and this now becomes the best option to protect California taxpayers.” Laird, a Santa Cruz Democrat and former California Natural Resources Secretary, is considered one of the Legislature’s leading environmentalists.

Within a week, SB 174 – a budget trailer bill – had been amended exempt the Capitol annex project from CEQA, passed both houses of the Legislature, and signed by Gov. Gavin Newsom.

The optics, obviously, weren’t great. The Legislature, which won’t reform CEQA even though the process is time-consuming and expensive, exempted its own office building from CEQA because the process is time-consuming and expensive.

But it’s pretty much the same thing the Legislature did last year in the People’s Park case. After lengthy legal delays, the First District Court of Appeal ruled that excessive noise from student residents could be considered a significant environmental impact, thus triggering expansive environmental analysis and possible requirements for mitigation. Incensed, the Legislature quickly passed a bill – which Gov. Newsom quickly signed – saying that noise created by humans in residences is not a significant environmental impact. “People are not pollution,” [Newsom memorably said](#). (Recently the California Supreme Court pretty much killed the court case based on the new legislation. *CP&DR*’s coverage of that ruling can be found [here](#).)

So that’s the Swiss Cheese angle to CEQA. The Legislature gets worked up over something and passes a one-off bill streamlining or eliminating CEQA review for the one narrow thing they’re worked up over.

Meanwhile, other holes have been punched in CEQA as well. The same week that that California Supreme Court ruled in the People’s Park case, Newsom crowed about getting an expedited (and

favorable) CEQA court ruling for the Sites Reservoir project in Colusa County because he had declared it as a priority infrastructure project under state law, requiring court rulings within nine months. “California needs more water storage, and we have no time to waste,” [Newsom said](#).

So the state can’t afford \$5 million a month on the Capitol annex building in order to wait out CEQA. People aren’t pollution, even if they are noisy UC Berkeley students. And California has no time to waste in building more water storage.

Meanwhile, if the state wanted to build an office building across the street from the Capitol, it would still be subject to CEQA.

If UC Berkeley proposes building a lab building that would result in a lot of student noise, some appellate court could still conclude that that’s a significant impact.

And if the state pursues a reservoir that’s not designated as a priority infrastructure project, it could get bogged down in court over CEQA issues for years.

Is the Legislature’s patience wearing thin with CEQA generally – such that comprehensive reform is possible in the foreseeable future? Or will the Legislature continue to be subject to occasional fits that lead to punching more one-off holes in the law? If it’s more Swiss cheese, there’s likely to be more complaints from those who aren’t having holes punched for them. In the end, you just have to wonder how long this can go on.