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## **Environmental Lawsuit Challenges the Capitol Annex Project**

**(Sacramento, CA)** – “Save the Capitol, Save the Trees” filed an environmental lawsuit today against the California Department of General Services (DGS), with the Joint Committee on Rules of the California State Senate and Assembly (Joint Rules Committee) and California Department of Finance also named. The public-interest association brought the case to enforce environmental law and protect the legacy of California’s historic Capitol Annex and Park. *See attached.*

In 2016 and 2018, the California Legislature authorized and approved funding for “construction, restoration, rehabilitation, renovation, **or** reconstruction” to improve the facility and function of the State Capitol Complex. At that time, the Legislature required that the Capitol Annex Project undergo California Environmental Quality Act (CEQA) review. “Save the Capitol, Save the Trees” alleges that DGS, in collaboration with the Joint Rules Committee and Department of Finance, generated bureaucratic and financial momentum pre-committing to demolition of the historic Annex, **in direct violation of CEQA.**

“How tragic that after the Joint Rules Committee failed for decades to maintain and upgrade our world-recognized Capitol Annex, Californians are now asked to accept needless demolition to make it safe and useful again,” said Richard Cowan, former chair of the Historic State Capitol Commission and an engineer involved in the prior restoration of the 1870 Capitol. “We cannot allow it to happen when alternatives are feasible. CEQA is a citizen-enforced statute and its protections must be applied to the Capitol Annex Project so that the famed Capitol Complex retains its stature and character.”

CEQA protects California’s historic resources such as the Capitol Annex and treasured natural resources like the monumental and historic trees in Capitol Park. An environmental impact report (EIR) process mandated by CEQA is now pending to study, minimize, and avoid significant environmental impacts.

The lawsuit explains that *before* considering viable choices of “restoration, rehabilitation, renovation, **or** reconstruction” within the public EIR process, DGS, the Joint Rules Committee, and the Department of Finance unlawfully entered into a Memorandum of Understanding (MOU) that solely defines the project as demolition, without allowing other viable choices. Without notice to the public and absent CEQA compliance, the MOU commits the state to a “**new**, ... 500,000 gross square foot State Capitol Building Annex” after “demolition of the current Annex ...” The contents of the confidential MOU only became public two months ago. Requests to set it aside have not been answered.

“Demolition of the Capitol Annex and Capitol Park trees would result in significant environmental and ecological damage,” said Architect Milford Wayne Donaldson, FAIA, emeritus California State Historic Preservation Officer [2004-2012] and emeritus Chairman of the federal Advisory Council on Historic Preservation [Obama[2010-2019]. “The proposed destruction signals the beginning of the end of serious preservation activity in California. There are much better ways to accomplish necessary improvements, particularly for buildings honored with listing in the National Register of Historic Places, as I know well from the recent visitors center renovation of the U.S. Capitol, in which I was involved.”

The lawsuit filed by “Save the Capitol, Save the Trees” seeks a peremptory writ of mandamus that would order the set-aside of the MOU and related DGS actions that currently effect an unlawful pre-commitment to demolition of the historic Capitol Annex and Park without compliance with CEQA.

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10 Attorney for Petitioner

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **FOR THE COUNTY OF SACRAMENTO**

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14 Save the Capitol, Save the Trees,  
15 an unincorporated association;

16 Petitioner;

17 v.

Case No.

**Capitol Building Annex Project**

**Petition for Writ of Mandamus**

18 California Department of General  
19 Services; Joint Committee on Rules  
20 of the California State Senate and  
21 Assembly; and California  
22 Department of Finance;

**CEQA CASE**

23 Respondents;

24 \_\_\_\_\_/

25 Joint Committee on Rules of the  
26 California State Senate and  
27 Assembly; California Department of  
28 Finance; and Does 1 to 10;

Real Parties in Interest.

\_\_\_\_\_/

Petitioner alleges:

## Introduction

1. Petitioner “Save the Capitol, Save the Trees” brings this mandamus action in the public interest to enforce environmental laws that protect our State Capitol Complex. The magnificent Capitol is treasured by Californians and is also of national importance, honored with listing in the National Register of Historic Places.

This action subject to California Rules of Court 3.2223 *et seq.* challenges approval of the impactful State Capitol Annex Project, defined in Public Resources Code section 21189.50, *for failure to comply with the California Environmental Quality Act (CEQA).*

In 2016 and 2018, the California Legislature committed substantial funding for the “construction ... restoration, rehabilitation, renovation, **OR** reconstruction of the State Capitol Building Annex.” The Legislature required that the Annex project undergo environmental review, delegating sole lead agency responsibilities for processing and approval of a CEQA-compliant project to the respondent Department of General Services (DGS). Petitioner alleges that DGS, in collaboration with the Department of Finance (Finance) and the Joint Committee on Rules of the California State Senate and Assembly (Joint Rules Committee) has since generated bureaucratic and financial momentum in violation of CEQA, pre-committing to a wholly new Annex project that would demolish the historic Annex and Capitol Park arboretum.

Absent relief from this Court, pre-commitment to demolition will obviate compliance with CEQA’s substantive mandate. As well-settled in case law, agencies must *identify, consider, and approve feasible project mitigation measures and alternatives that*

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4 *can avoid or reduce a project's significant environmental impacts.* By mandating compliance  
5 with CEQA, the Legislature has required no less for the Annex Project.

6 The current project would allow demolition of the historic Annex and an ever-  
7 increasing number of historic trees for expanded offices, hearing rooms, conference  
8 rooms, and a visitor / welcome center and underground parking garage. While the EIR  
9 process is incomplete, there is already no question that demolition of the Annex and  
10 arboretum trees would cause significant environmental and ecological impacts.

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12 Respondents DGS, Joint Rules Committee, and Finance executed a  
13 Memorandum of Understanding (MOU) in 2018 sans public process. The MOU  
14 mandates confidentiality from its signatories, agents, and employees. It documents the  
15 parties' commitment to a "*new, ... 500,000 gross square foot State Capitol Building*  
16 *Annex*" and to "*demolition of the current Annex...*" based on an in-house 2017 Capitol  
17 State Annex Project Planning Study.

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20 Adoption of the MOU without a public CEQA review process addressing the  
21 legislatively-mandated alternatives of "restoration, rehabilitation, renovation, or  
22 reconstruction" of the Capitol Annex violated CEQA as interpreted by the California  
23 Supreme Court in *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116.

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25 Save the Capitol, Save the Trees urgently petitions this Court for a peremptory  
26 writ. Respondents should be ordered to set aside their actions effecting unlawful pre-  
27 commitment to the Annex Project, including the MOU and related actions illuminated  
28 in the to-be-certified record. DGS must revise, recirculate, and certify the EIR before  
considering project approvals that fully comply with CEQA.

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5 **Jurisdiction**  
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7 2. This Court has jurisdiction under Public Resources Code section 21168.5  
8 and Code of Civil Procedure section 1085. The parties and the State Capitol Complex  
9 are located in the City and County of Sacramento.  
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11 **Parties**  
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13 3. Petitioner Save the Capitol, Save the Trees is an unincorporated association  
14 formed in June 2021. Its public-interest purposes are to promote preservation of the  
15 restored California Capitol and its entryway, west steps, and plaza, to retain and  
16 renovate the historic East Annex, and to minimize any damage to the State Capitol  
17 Park and its trees. Association members enjoy and appreciate the State Capitol and  
18 Annex and Park and seek to enforce CEQA to protect them. They bring this petition on  
19 behalf of all others similarly-situated and too numerous to be named and brought  
20 before this Court as petitioners. Members of the Association objected to respondents'  
21 pre-commitment to the current State Capitol Annex demolition project and exhausted  
22 their administrative remedies.  
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25 4. Respondent California Department of General Services (DGS) is the lead  
26 agency authorized by California law to conduct a CEQA process and to approve a  
27 State Capitol Annex project in compliance with state law.  
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5. The Joint Rules Committee and Finance are signatories to the MOU. Via  
the MOU, DGS purported to delegate approval of the State Capitol Annex project to the  
Joint Rules Committee. The Joint Rules Committee and Finance are thus named in this

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4 petition both as respondents and as real parties in interest as their actions,  
5 responsibilities, and interests in the State Capitol Annex project display aspects of both.

6 6. Does 1 to 10 are fictitiously-named real parties in interest whose true  
7 names and capacities are unknown to the Association. If and when true names and  
8 capacities are known, the association may amend this petition to assert them.  
9

10 7. A copy of this petition has been mailed to the California Attorney General.  
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## 12 **General Allegations**

13 8. The paragraphs below refer to and rely on information in documents that  
14 will be lodged with this Court as part of the record of proceedings.  
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### 16 ***Environmental Setting***

17 9. Sacramento became a river transportation hub and bustling Gold Rush  
18 boomtown upon its founding in 1849. Just a year later in 1850 it was incorporated as a  
19 city, and it became the state capitol in 1854. The historic State Capitol building was  
20 constructed between 1860 and 1874. It is a monumental Classical Revival design, with  
21 two virtually identical L-shaped four-story wings separated by a richly-decorated  
22 rotunda. The dome of the rotunda rises to 210 feet. The west façade features a temple  
23 front, with seven granite archways topped with a triangular pediment and five  
24 allegorical figures: Minerva, Education, Industry, Justice, and Mining. The West Wing  
25 includes cast-iron ornamentation: elaborate moldings, dentils, corbels, and pilasters.  
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10. The six-story Capitol Annex Building was constructed between 1949 and  
1951, designed in the Mid-Century Moderne style and connected to the Capitol

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4 Building. The Capitol and Annex appear as one building. The east façade of the Annex  
5 features ten cast aluminum spandrel panels depicting California flora and fauna. Seven  
6 panels around the doorways depict California industry including factories, trains, and  
7 airplanes. The center panel features the seal of California. The Annex provides support  
8 for the Governor and staff, the Lieutenant Governor, and the Legislature. DGS  
9 acknowledges that “with its physical connection to the Historic Capitol, the Annex is  
10 an important public asset, as it provides a venue for California’s public to participate in  
11 deliberative, democratic governmental processes ...”  
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27 circa 1890

28 11. The Capitol Building and Annex are surrounded by Capitol Park, with  
monuments, various memorials, walkways, landscaping, and ornamental trees

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4 throughout. The Park is an evolving green arboretum planted with 800 trees and  
5 flowering shrubs, laid out in a typical Victorian-era style, with long lanes for walking.

6 12. The State Capitol Complex — the Capitol Building, Capitol Annex, and  
7 Capitol Park — is a CEQA historic resource and is honored with listing in the National  
8 Register of Historic Places. The National Register bases the historic listing on the status  
9 of the Complex as California’s seat of government and for its monumental architecture  
10 and landscape design. The Capitol building is also a California Historical Landmark.

### 13 ***Administrative and Environmental Review Process***

14 13. DGS identified structural and operational deficiencies of the historic  
15 Annex as to fire safety; non-compliance with the Americans with Disabilities Act and  
16 modern energy efficiency standards; overcrowding; and aging and failing  
17 infrastructure such as plumbing, electrical, heating/cooling. To address the  
18 deficiencies, in 2016 the Legislature approved the State Capitol Building Annex Act  
19 codified in Government Code sections 9105, *et seq.*, allowing the Joint Rules Committee  
20 to pursue construction of a state capitol building annex or the restoration,  
21 rehabilitation, renovation, or reconstruction of the historic Capitol Annex.  
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24 14. Government Code section 9112 provides for the administration and  
25 supervision of the Annex projects to proceed under the authority of DGS, and requires  
26 an implementing agreement to be executed by the Joint Rules Committee, DGS, and  
27 Finance. DGS is named as the “lead agency” and is thus responsible for CEQA  
28 compliance and project approval, which the Joint Rules Committee must implement.



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4 15. In 2017, a California State Capitol Annex Project Planning Study, which  
5 was not subjected to any CEQA review or other public process, recommended  
6 demolition of the historic Annex and construction of a new Annex; construction of an  
7 adjacent parking structure; and construction of a Capitol Visitor Center. DGS and the  
8 Joint Rules Committee reviewed the recommendations.  
9

10 16. DGS, the Joint Rules Committee, and Finance entered into an agreement in  
11 November 2018, as mandated by Government Code section 9112, styled as a  
12 Memorandum of Understanding. Although reciting legislated authority to pursue,  
13 alternatively, *“the construction of a new, restored, rehabilitated, renovated or reconstructed*  
14 *capitol building annex and associated projects”* the MOU *commits to “a new, approximately*  
15 *500,000 gross square foot State Capitol Building Annex”* to be built following  
16 demolition of the historic Annex. The MOU mandates confidentiality by its signatories,  
17 agents, and employees. It was not released to the public until DGS did so in April 2021  
18 following a public records request.  
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21 17. DGS published and posted on its website a Draft EIR for the Annex  
22 demolition project in September 2019, addressing three main components: demolition  
23 of the Annex, construction of a new underground visitor/welcome center, and  
24 construction of a new underground parking garage. DGS held an informational  
25 meeting and a public hearing during a 45-day public comment period ending in  
26 October 2019. Shortly thereafter, DGS altered the design of the proposed new  
27 visitor/welcome center analyzed in the Draft EIR. It published a Recirculated Draft EIR  
28 in January 2020 to address the modified project and opened a new public comment  
period. While DGS then prepared responses to comments on the recirculated Draft EIR,

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4 to date its project website has not posted the comments or responses. The website states  
5 that the comments on the recirculated EIR are available on request.

6         18. In the 18 months since DGS published the Recirculated Draft EIR, it  
7 continues to make substantial modifications to the project description affecting the  
8 Capitol complex, with potentially significant environmental impacts not foreseen in the  
9 authorizing legislation. On March 22, 2021, the Joint Rules Committee held an  
10 informational hearing and disclosed numerous material project changes from the  
11 project described in the recirculated EIR, with previously-unforeseen environmental  
12 impacts, including, *inter alia*:  
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14         a) Revised parking location and revised entrances and exits. The changes  
15 trigger needed analysis of whether the new parking garage and its wings along the  
16 north and side would be adequately secure to protect building occupants, especially  
17 the plaza and lower level from blast and toxic agent spread. The changes, including  
18 newly-proposed relocation of many city palm trees, also require study and comment by  
19 the City of Sacramento. Traffic calculations on L Street now need analysis as the street  
20 is a feeder to the I-5 freeway on ramps.  
21

22         b) The count of trees to be affected has gone up tremendously. It was initially  
23 foreseen by the project EIR “that approximately 20-30 trees would need to be removed  
24 to implement the project.” The latest disclosed estimate is 133, including 62 unspecified  
25 trees to be removed and 71 displaced and attempted for transplant.  
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27         c) The newly-altered proposed height and width of the replacement Annex  
28 exceeds the EIR project description as “no taller than the parapet of the Historic Capitol

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4 and/or the base of the existing Capitol dome.” The changes would cause unforeseen  
5 permanent effects on historical and architectural and visual resources.

6 d) The proposed 100% glass exterior is a skin incompatible with the Capitol’s  
7 exterior materials. It would permanently impact trees and would attract and kill birds.  
8

9 Save the Capitol, Save the Trees was among those who urged DGS to further  
10 revise and recirculate the EIR to address the significant project changes.

11 19. Association members and others also urged DGS to comply with Public  
12 Resources Code section 5024.5 before publishing a further revised Draft EIR or  
13 considering project approval. Section 5024.5 requires that a California state agency —  
14 here, the lead agency DGS who is charged with CEQA review and project approval —  
15 not alter “original or significant historical features or fabric, or transfer, relocate, or  
16 demolish historical resources ... without, early in the planning processes, first giving  
17 notice and a summary of the proposed action to the [State Historic Preservation  
18 Officer] who shall have 30 days after receipt of the notice and summary for review and  
19 comment.” The agency and the SHPO “shall adopt prudent and feasible measures that  
20 will eliminate or mitigate adverse effects.” The Association alleges that DGS, required  
21 by the Legislature to administer and supervise all work on the Annex Project, has not  
22 initiated consultation with the SHPO to eliminate or mitigate adverse project effects to  
23 the historic Annex, despite conducting the EIR process now pending since 2019.  
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27 20. Approximately a month ago, on June 10, 2021, counsel for the Association  
28 notified DGS through a letter to its Deputy Director Jason Kenney, copied to the Joint  
Rules Committee and Finance, that, *inter alia*, approval of the newly-disclosed MOU  
in conjunction with related actions by DGS effected approval of the Annex project

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4 without compliance with CEQA, contrary to the Supreme Court’s mandate in *Save Tara*.  
5 The Association requested that “the MOU and all attachments be revoked forthwith.”  
6 The Association to date has received no response to its request.

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8 21. Respondents have not certified an Annex Project EIR nor filed a Notice of  
9 Determination. Their pre-commitment approval via the MOU was disclosed in April  
10 2021, and other actions followed to implement that approval. A 180-day CEQA statute  
11 of limitations commenced in April 2021. This petition is timely.

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13 22. The Association has no plain, speedy, and adequate remedy in the  
14 ordinary course of law. Issuance of a peremptory writ is imperative to avoid  
15 irreparable harm to California and Sacramento residents and their historic environment  
16 via physical harm to the historic State Capitol Complex. Respondents have the capacity  
17 to correct their violations of law but have failed and refused to do so.

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19 **Violations of the California Environmental Quality Act**

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21 23. The Association incorporates all previous paragraphs as if fully set forth.

22 24. The new Capitol Annex Project would dramatically reshape the historic  
23 State Capitol. Pursuant to the MOU, the Capitol Annex and much of the Capitol Park  
24 arboretum and Native American tribal resources would be demolished and destroyed  
25 for an incompatible glass-sheathed structure. The entryway, West Plaza, and Capitol  
26 Steps — site of innumerable marches, speeches, and celebrations — would be replaced  
27 by a Visitor Center with a theme-park-style entrance. It increasingly appears,  
28 unforeseen at the time of the 2016 or 2018 authorizing legislation in the Government

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4 Code and Public Resources Code, that removal of more than sixty massive historic  
5 trees as now contemplated would result in great ecological loss.

6         25. CEQA requires public agencies to conduct a prescribed, public EIR process  
7 before taking discretionary actions that may have any significant adverse  
8 environmental impact. The point of the process is to inform the public and to provide  
9 necessary information to allow lead agencies to comply with CEQA's substantive  
10 mandate: to adopt feasible project mitigations and alternatives that can reduce a  
11 project's significant environmental impacts. A lead agency that predetermines approval  
12 of a project with potentially significant environmental impact via actions creating  
13 bureaucratic and financial momentum before preparing an EIR violates CEQA.  
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16         26. Respondents abused their discretion and failed to act as required by law in  
17 pre-committing to approve a *new* Capitol Annex without first preparing and certifying  
18 a project EIR and meeting all mandates of CEQA. The Legislature authorized  
19 respondents to pursue "*the construction of a new, restored, rehabilitated, renovated or*  
20 *reconstructed capitol building annex and associated projects*" with DGS acting as the lead  
21 agency under CEQA. The Legislature further provided an expedited judicial review  
22 process while retaining each and every procedural and substantive mandate of CEQA.  
23 Respondents unlawfully pre-committed to the project by entering into the MOU and  
24 taking other actions to effect an intent to demolish, according to proof. Their actions  
25 created bureaucratic and financial momentum that prevent consideration of feasible  
26 alternatives, reducing the EIR process to *post-hoc* rationalization.  
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29         27. As respondents have made and continue to make significant material  
30 changes to the project, the current Draft EIR does not contain a finite project description

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4 from which to analyze and mitigate significant environmental impacts. The Draft EIR  
5 addresses impacts *assumed to occur* due to the already-approved demolition prior to  
6 CEQA review and comment or consultation with OHP.

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8 28. While this action does not challenge the sufficiency of the uncertified EIR,  
9 the EIR's lack of a finite project description is relevant to this action because when the  
10 Legislature provided for development of a State Capitol Annex project in 2016 and  
11 2018, it limited future injunctive relief under CEQA to, *inter alia*, project features that  
12 would impact "unforeseen important Native American artifacts or unforeseen  
13 important historical, archaeological, or ecological values that would be materially,  
14 permanently, and adversely affected..." (Pub. Resources Code, § 21189.53.) As will be  
15 documented and illuminated in the record of proceedings, if the project proceeds in its  
16 current form it would have significant impacts not foreseen in 2016 and 2018 and that  
17 therefore warrant injunctive relief.  
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20 29. Before completing the Capitol Annex Project EIR, respondents must set  
21 aside the MOU and correct other actions that pre-commit to demolition. DGS must  
22 complete its mandated actions as the designated lead agency. As ruled by the Supreme  
23 Court in *Save Tara v. City of West Hollywood, supra*, 45 Cal.4th 116, 139:  
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25 ... [C]ourts should look ... to the surrounding circumstances to determine  
26 whether, as a practical matter, the agency has committed itself to the project as a  
27 whole or to any particular features, so as to effectively preclude any alternatives  
28 or mitigation measures that CEQA would otherwise require to be considered,  
including the alternative of not going forward ....

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4       **WHEREFORE**, petitioner prays:

5           1.       That the Court issue judgment and a peremptory writ ordering the state  
6 respondents to set aside the MOU and all approval actions relating to the State Capitol  
7 Annex Project, requiring that before further consideration of approval DGS complete  
8 its mandated duties as lead agency to revise and recirculate the project EIR to remove  
9 all statements of pre-commitment and to approve an Annex Project only after  
10 identifying and adopting feasible mitigations and alternatives and making all findings  
11 required by CEQA, supported by substantial evidence in the record;  
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14           2.       That the Court enjoin respondents and real parties in interest and their  
15 employees and agents from physical actions furthering the project while the petition is  
16 pending, consistent with restrictions in Public Resources Code section 21189.53;  
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18           3.       For petitioner’s reasonable costs, expenses, and attorney’s fees pursuant  
19 to Code of Civil Procedure section 1021.5; and

20           4.       For other and further relief as the Court finds proper.

21 July 8, 2021

Respectfully submitted,

22 BRANDT-HAWLEY LAW GROUP

23  
24 by \_\_\_\_\_

  
Susan Brandt-Hawley  
Attorney for Petitioner

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6 **Verification**  
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8 I, Susan Brandt-Hawley, am an attorney for the petitioner, whose members are  
9 located outside of Sonoma County and San Francisco County where I have my law  
10 offices, and so I verify this petition on its behalf. I have read this petition and know its  
11 contents. The matters stated in it are true based on my knowledge, except matters that  
12 are stated on information and belief, and as to those matters I believe them to be true.  
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14 I declare under penalty of perjury that the above is true to the best  
15 of my knowledge and that this verification is executed on July 8, 2021,  
16 at San Francisco, California.

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18 Susan Brandt-Hawley  
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