JUDICIAL COUNCIL OF CALIFORNIA
GOVERNMENTAL AFFAIRS
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TANI G. CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

MARTIN HOSHINO
Administrative Director

CORY T. JASPERSON
Director, Governmental Affairs

June 28, 2019

Hon. Laura Friedman, Chair
Assembly Natural Resources Committee
State Capitol, Room 2137
Sacramento, California 95814

Subject: SB 25 (Caballero), as revised June 27, 2019—Oppose
Hearing: Assembly Natural Resources Committee—July 8, 2019

Dear Assembly Member Friedman:

The Judicial Council regrets to inform you of its opposition to SB 25. This bill, among other things, requires, to the extent feasible, a 270-day expedited judicial review, including any potential appeals, of the environmental review and approvals granted for an undefined number of projects that could be located in qualified opportunity zones throughout the state.[1]

It is important to note that our concerns regarding SB 25 are limited solely to the court impacts of this legislation, and that the council is not expressing any views on CEQA generally or the underlying merits of the potentially large number of projects[2] that could be covered by the bill, as those issues are outside the council's purview.

[1] The bill defines "qualified opportunity zone" as "a census tract certified by the Secretary of the United States Department of the Treasury as a qualified opportunity zone pursuant to Section 1400Z-1 of Title 26 of the United States Code. The bill also contains various legislative findings and declarations in support of the measure, including the following statement that demonstrates its broad scope: "The Governor has nominated and the United States Department of the Treasury has certified 879 census tracts in California as qualified opportunity zones." (SB 25, Sec. 1(b).)

[2] As amended March 7, 2019, SB 25 significantly expanded its scope to include designated projects that are financed, in whole or in part, by *any* of the following: a qualified opportunity fund; moneys appropriated from the Greenhouse Gas Reduction Fund and allocated by the Strategic Growth Council; an enhanced infrastructure financing district; an affordable housing authority; a community revitalization and investment authority; a transit village development district; a housing sustainability district; a Neighborhood Infill Finance and Transit Improvements Act (NIFTI) district; moneys allocated through the Department of Housing and Community Development; moneys allocated through the Department of Veterans Affairs; moneys allocated through the

SB 25's requirement that any CEQA lawsuit challenging all of the projects that could be covered by the bill, including any appeals therefrom, be resolved within 270 days is problematic for a number of reasons. First, CEQA actions are already entitled under current law to calendar preference pursuant to section 21167.1(a) of the Public Resources Code in both the superior courts and the Courts of Appeal. Imposing a 270-day timeline on top of the existing preference is arbitrary and likely to be unworkable in practice.

Second, the expedited judicial review for all of the projects covered by SB 25 will likely have an adverse impact on other cases. Like other types of calendar preferences, which the Judicial Council has historically opposed, setting an extremely tight timeline for deciding this particular type of case has the practical effect of pushing other cases on the courts' dockets to the back of the line. This means that other cases, including cases that have statutorily mandated calendar preferences, such as juvenile cases, criminal cases, and civil cases in which a party is at risk of dying, as well as wage theft cases and other important cases on the courts' dockets, will take longer to decide.

Finally, providing expedited judicial review for all of the projects covered by SB 25 while other cases proceed under the usual civil procedure rules and timelines undermines equal access to justice. The courts are charged with dispensing equal access to justice for each and every case on their dockets. Singling out this particular type of case for such preferential treatment is fundamentally at odds with how our justice system has historically functioned.

For these reasons, the Judicial Council continues to oppose SB 25.

Sincerely,

Mailed June 28, 2019

Cory T. Jasperson
Director
Judicial Council Governmental Affairs

CTJ/jh
cc: Hon. Steven Glazer, Member of the Senate
Hon. Anna Caballero, Member of the Senate
Hon. Sharon Quirk-Silva, Member of the Assembly
Members, Assembly Natural Resources Committee
Mr. Lawrence Lingbloom, Chief Consultant, Assembly Natural Resources Committee
Ms. Rachel Wagoner, Deputy Legislative Affairs Secretary, Office of the Governor
Ms. Katie Sperla, Consultant, Assembly Republican Office of Policy
Mr. Martin Hoshino, Administrative Director, Judicial Council of California

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California Housing Finance Agency; or, moneys allocated through the California Infrastructure and Economic Development Bank. (Proposed Public Resources Code sec. 21168.6.9(a)(4)(A)-(L).)

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TANI G. CANTIL-SAKAUYE
Chief Justice of California
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MARTIN HOSHINO
Administrative Director

CORY T. JASPERSON
Director, Governmental Affairs

June 19, 2019

Hon. Cecilia Aguiar-Curry, Chair
Assembly Labor and Employment Committee
State Capitol, Room 5144
Sacramento, California 95814

Subject: SB 25 (Caballero), as amended April 30, 2019—Oppose
Hearing: Assembly Labor and Employment Committee—June 26, 2019

Dear Assembly Member Aguiar-Curry:

The Judicial Council regrets to inform you of its opposition to SB 25. This bill, among other things, requires, to the extent feasible, a 270-day expedited judicial review, including any potential appeals, of the environmental review and approvals granted for an undefined number of projects that could be located in qualified opportunity zones throughout the state.[1]

It is important to note that our concerns regarding SB 25 are limited solely to the court impacts of this legislation, and that the council is not expressing any views on CEQA generally or the underlying merits of the potentially large number of projects[2] that could be covered by the bill, as those issues are outside the council's purview.

[1] The bill defines "qualified opportunity zone" as "a census tract certified by the Secretary of the United States Department of the Treasury as a qualified opportunity zone pursuant to Section 1400Z-1 of Title 26 of the United States Code. The bill also contains various legislative findings and declarations in support of the measure, including the following statement that demonstrates its broad scope: "The Governor has nominated and the United States Department of the Treasury has certified 879 census tracts in California as qualified opportunity zones." (SB 25, Sec. 1(b).)

[2] As amended March 7, 2019, SB 25 significantly expanded its scope to include designated projects that are financed, in whole or in part, by *any* of the following: a qualified opportunity fund; moneys appropriated from the Greenhouse Gas Reduction Fund and allocated by the Strategic Growth Council; an enhanced infrastructure financing district; an affordable housing authority; a community revitalization and investment authority; a transit village development district; a housing sustainability district; a Neighborhood Infill Finance and Transit Improvements Act (NIFTI) district; moneys allocated through the Department of Housing and Community Development; moneys allocated through the Department of Veterans Affairs; moneys allocated through the

SB 25's requirement that any CEQA lawsuit challenging all of the projects that could be covered by the bill, including any appeals therefrom, be resolved within 270 days is problematic for a number of reasons. First, CEQA actions are already entitled under current law to calendar preference pursuant to section 21167.1(a) of the Public Resources Code in both the superior courts and the Courts of Appeal. Imposing a 270-day timeline on top of the existing preference is arbitrary and likely to be unworkable in practice.

Second, the expedited judicial review for all of the projects covered by SB 25 will likely have an adverse impact on other cases. Like other types of calendar preferences, which the Judicial Council has historically opposed, setting an extremely tight timeline for deciding this particular type of case has the practical effect of pushing other cases on the courts' dockets to the back of the line. This means that other cases, including cases that have statutorily mandated calendar preferences, such as juvenile cases, criminal cases, and civil cases in which a party is at risk of dying, as well as wage theft cases and other important cases on the courts' dockets, will take longer to decide.

Finally, providing expedited judicial review for all of the projects covered by SB 25 while other cases proceed under the usual civil procedure rules and timelines undermines equal access to justice. The courts are charged with dispensing equal access to justice for each and every case on their dockets. Singling out this particular type of case for such preferential treatment is fundamentally at odds with how our justice system has historically functioned.

For these reasons, the Judicial Council continues to oppose SB 25.

Sincerely,

Mailed June 19, 2019

Cory T. Jasperson
Director
Judicial Council Governmental Affairs

CTJ/jh
cc: Hon. Steven Glazer, Member of the Senate
Members, Assembly Labor and Employment Committee
Ms. Megan Lane, Principle Consultant, Assembly Labor and Employment Committee
Ms. Rachel Wagoner, Deputy Legislative Affairs Secretary, Office of the Governor
Ms. Lauren Prichard, Consultant, Assembly Republican Office of Policy
Mr. Martin Hoshino, Administrative Director, Judicial Council of California

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California Housing Finance Agency; or, moneys allocated through the California Infrastructure and Economic Development Bank. (Proposed Public Resources Code sec. 21168.6.9(a)(4)(A)-(L).)

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TANI G. CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

MARTIN HOSHINO
Administrative Director

CORY T. JASPERSON
Director, Governmental Affairs

Third Reading

May 16, 2019

Hon. Anna M. Caballero
Member of the Senate
State Capitol, Room 5052
Sacramento, California 95814

Subject: SB 25 (Caballero), as amended April 30, 2019—Oppose

Dear Senator Caballero:

Thank you for the recent technical amendments to SB 25 that addressed the rules of court and fixed the language that would have prohibited a court clerk from accepting any filings that failed to provide the 10-day notice requirement as proposed in Public Resources Code section 21168.6.9, subdivision (g)(1). We appreciate your willingness to address these technical issues.

The Judicial Council regrets to inform you of its continued opposition to SB 25. This bill, among other things, requires, to the extent feasible, a 270-day expedited judicial review, including any potential appeals, of the environmental review and approvals granted for an undefined number of projects that could be located in qualified opportunity zones throughout the state.[1]

It is important to note that our concerns regarding SB 25 are limited solely to the court impacts of this legislation, and that the council is not expressing any views on CEQA generally or the underlying merits of the potentially large number of projects[2] that could be covered by the bill, as those issues are outside the council's purview.

[1] The bill defines "qualified opportunity zone" as "a census tract certified by the Secretary of the United States Department of the Treasury as a qualified opportunity zone pursuant to Section 1400Z-1 of Title 26 of the United States Code. The bill also contains various legislative findings and declarations in support of the measure, including the following statement that demonstrates its broad scope: "The Governor has nominated and the United States Department of the Treasury has certified 879 census tracts in California as qualified opportunity zones." (SB 25, Sec. 1(b).)

[2] As amended March 7, 2019, SB 25 significantly expanded its scope to include designated projects that are financed, in whole or in part, by *any* of the following: a qualified opportunity fund; moneys appropriated from the Greenhouse Gas Reduction Fund and allocated by the Strategic Growth Council; an enhanced infrastructure

SB 25's requirement that any CEQA lawsuit challenging all of the projects that could be covered by the bill, including any appeals therefrom, be resolved within 270 days is problematic for a number of reasons. First, CEQA actions are already entitled under current law to calendar preference in both the superior courts and the Courts of Appeal. Imposing a 270-day timeline on top of the existing preference is arbitrary and likely to be unworkable in practice.

Second, the expedited judicial review for all of the projects covered by SB 25 will likely have an adverse impact on other cases. Like other types of calendar preferences, which the Judicial Council has historically opposed, setting an extremely tight timeline for deciding this particular type of case has the practical effect of pushing other cases on the courts' dockets to the back of the line. This means that other cases, including cases that have statutorily mandated calendar preferences, such as juvenile cases, criminal cases, and civil cases in which a party is at risk of dying, will take longer to decide.

Finally, providing expedited judicial review for all of the projects covered by SB 25 while other cases proceed under the usual civil procedure rules and timelines undermines equal access to justice. The courts are charged with dispensing equal access to justice for each and every case on their dockets. Singling out this particular type of case for such preferential treatment is fundamentally at odds with how our justice system has historically functioned.

For these reasons, the Judicial Council continues to oppose SB 25.

Sincerely,

Mailed May 16, 2019

Cory T. Jasperson
Director
Judicial Council Governmental Affairs

CTJ/jh
cc: Hon. Steven Glazer, Member of the Senate
Members, Senate Judiciary Committee
Members, Senate Environmental Quality Committee
Ms. Genevieve M. Wong, Consultant, Senate Environmental Quality Committee
Ms. Rachel Wagoner, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Josh Tosney, Consultant, Senate Judiciary Committee
Mr. Morgan Branch, Policy Consultant, Senate Republican Office of Policy
Mr. Martin Hoshino, Administrative Director, Judicial Council of California

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financing district; an affordable housing authority; a community revitalization and investment authority; a transit village development district; a housing sustainability district; a Neighborhood Infill Finance and Transit Improvements Act (NIFTI) district; moneys allocated through the Department of Housing and Community Development; moneys allocated through the Department of Veterans Affairs; moneys allocated through the California Housing Finance Agency; or, moneys allocated through the California Infrastructure and Economic Development Bank. (Proposed Public Resources Code sec. 21168.6.9(a)(4)(A)-(L).)

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Chair of the Judicial Council

MARTIN HOSHINO
Administrative Director

CORY T. JASPERSON
Director, Governmental Affairs

April 12, 2019

Hon. Hannah-Beth Jackson
Chair, Senate Judiciary Committee
State Capitol, Room 2032
Sacramento, California 95814

Subject: SB 25 (Caballero), as amended April 11, 2019—Oppose
Hearing: Senate Judiciary Committee—April 23, 2019

Dear Senator Jackson:

The Judicial Council regrets to inform you of its continued opposition to SB 25. The current version of this bill, among other things, requires the Judicial Council, on or before September 1, 2020, to amend certain rules of court[1] to establish procedures applicable to actions or proceedings brought pursuant to the California Environmental Quality Act (CEQA) seeking judicial review of the environmental review and approvals granted for an undefined number of projects throughout the state that are funded by qualified opportunity zone funds or other

[1] The rules of court that are referenced in proposed Public Resources Code section 21168.6.9, subdivision (b)[Rules 3.2220 to 3.2227]: do not apply to appeals, even though the language in the statute implies that they do; include rules that apply only to the Sacramento arena project; and are based on statutory language in the Sacramento statute that does not exist here. In order to avoid any unnecessary confusion should the bill move forward, the council respectfully requests the following technical amendments to section 21168.6.9, subdivision (c):

> (c) ~~**Rules 3.2220 to 3.2237, inclusive, of the California Rules of Court, as may be amended by**~~ **On or before September 1, 2020,** the Judicial Council, shall **adopt rules of court that** apply to any action or proceeding brought to attack, review, set aside, void, or annul the certification or adoption of an environmental review document for a qualified project that meets the requirements of subdivisions (b) and (d) or the granting of any approval for the qualified project, to require the action or proceeding, including any potential appeals therefrom, to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court. ~~**On or before September 1, 2020, the Judicial Council shall amend the California Rules of Court, as necessary, to implement this subdivision.**~~

specified public funds.[2] SB 25 requires these actions or proceedings, including any potential appeals therefrom, be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court.

In addition, SB 25 would require a party seeking to file a CEQA action or proceeding against a project covered by this bill to provide the lead agency and the real party in interest a notice of intent to sue within 10 days of the posting of a specified notice and would prohibit a court from accepting the filing of an action or proceeding from a party that fails to provide the required notice of intent to sue. (See proposed Public Resources Code section 21168.6.9, subdivision (g)(1).)

It is important to note that the Judicial Council's concerns regarding SB 25 are limited solely to the court impacts of this legislation, and that the council is not expressing any views on CEQA generally or the underlying merits of the potentially large number of projects[3] that could be covered by the bill, as those issues are outside the council's purview.

SB 25's requirement that any CEQA lawsuit challenging the multitude of projects that could be covered by the bill, including any appeals therefrom, be resolved within 270 days is problematic for a number of reasons. First, CEQA actions are already entitled under current law to calendar preference in both the superior courts and the Courts of Appeal. Imposing a 270-day timeline on top of the existing preference is arbitrary and likely to be unworkable in practice.

Second, the expedited judicial review for all of the projects covered by SB 25 will likely have an adverse impact on other cases. Like other types of calendar preferences, which the Judicial Council has historically opposed, setting an extremely tight timeline for deciding this particular type of case has the practical effect of pushing other cases on the courts' dockets to the back of the line. This means that other cases, including cases that have statutorily mandated calendar preferences, such as juvenile cases, criminal cases, and civil cases in which a party is at risk of dying, will take longer to decide.

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[2] The bill defines "qualified opportunity zone" as "a census tract certified by the Secretary of the United States Department of the Treasury as a qualified opportunity zone pursuant to Section 1400Z-1 of Title 26 of the United States Code." The bill also contains various legislative findings and declarations in support of the measure, including the following statement that demonstrates its broad scope: "The Governor has nominated and the United States Department of the Treasury has certified 879 census tracts in California as qualified opportunity zones." (SB 25, Sec. 1(b).)

[3] As amended March 7, 2019, SB 25 significantly expanded its already broad scope to include designated projects that are financed, in whole or in part, by *any* of the following: a qualified opportunity fund; moneys appropriated from the Greenhouse Gas Reduction Fund and allocated by the Strategic Growth Council; an enhanced infrastructure financing district; an affordable housing authority; a community revitalization and investment authority; a transit village development district; a housing sustainability district; a Neighborhood Infill Finance and Transit Improvements Act (NIFTI) district; moneys allocated through the Department of Housing and Community Development; moneys allocated through the Department of Veterans Affairs; moneys allocated through the California Housing Finance Agency; or, moneys allocated through the California Infrastructure and Economic Development Bank. (Proposed Public Resources Code sec. 21168.6.9(a)(4)(A)-(L).)

Third, providing expedited judicial review for all of the specific projects covered by SB 25 while other cases proceed under the usual civil procedure rules and timelines undermines equal access to justice. The courts are charged with dispensing equal access to justice for each and every case on their dockets. Singling out this particular type of case for such preferential treatment is fundamentally at odds with how our justice system has historically functioned.

In addition to the above concerns, the provision in the bill that would prohibit the court from accepting for filing an action or proceeding from a party that fails to provide the lead agency and the real party in interest a 10-day notice of intent to sue is unworkable from a court administration standpoint. Court clerks, exercising their ministerial duties, are not in a position to make *legal* determinations that the requisite notice was not timely given. The statute could provide that this type of action would be subject to dismissal if the notice were not properly given, but that decision would need to be made by a judicial officer. It is the *court*, not the clerk that eventually would need to decide whether the petitioning party gave proper notice and whether the case can proceed.

For these reasons, the Judicial Council opposes SB 25. If you have any questions, please feel free to contact Daniel Pone at (916) 323-3121 or daniel.pone@jud.ca.gov.

Sincerely,

Mailed April 12, 2019

Cory T. Jasperson

Director
Judicial Council Governmental Affairs

DP/jh
cc: Members, Senate Judiciary Committee
Hon. Anna M. Caballero, Member of the Senate
Hon. Steven Glazer, Member of the Senate
Ms. Rachel Wagoner, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Josh Tosney, Consultant, Senate Judiciary Committee
Mr. Morgan Branch, Policy Consultant, Senate Republican Office of Policy
Mr. Martin Hoshino, Administrative Director, Judicial Council of California

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TANI G. CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

MARTIN HOSHINO
Administrative Director

CORY T. JASPERSON
Director, Governmental Affairs

March 12, 2019

Hon. Benjamin Allen
Chair, Senate Environmental Quality Committee
State Capitol, Room 4076
Sacramento, California 95814

Subject: SB 25 (Caballero), as amended March 7, 2019—Oppose
Hearing: Senate Environmental Quality Committee—April 10, 2019

Dear Senator Allen:

The Judicial Council regrets to inform you of its continued opposition to SB 25. The current version of this bill, among other things, requires the Judicial Council, on or before September 1, 2020, to amend certain rules of court[1] to establish procedures applicable to actions or proceedings brought pursuant to the California Environmental Quality Act (CEQA) seeking judicial review of the environmental review and approvals granted for an undefined number of projects throughout the state that are funded by qualified opportunity zone funds or other

[1] The rules of court that are referenced in proposed Public Resources Code section 21168.6.9, subdivision (b)[Rules 3.2220 to 3.2227]: do not apply to appeals, even though the language in the statute implies that they do; include rules that apply only to the Sacramento arena project; and are based on statutory language in the Sacramento statute that does not exist here. In order to avoid any unnecessary confusion should the bill move forward, the council respectfully requests the following technical amendments to section 21168.6.9(b):

> (b) ~~**Rules 3.2220 to 3.2237, inclusive, of the California Rules of Court, as may be amended by**~~ **On or before September 1, 2020,** the Judicial Council, shall **adopt a rule of court that** ~~**apply**~~ **applies** to any action or proceeding brought to attack, review, set aside, void, or annul the certification or adoption of an environmental review document for a qualified project that meets the requirements of subdivision (c) or the granting of any approval for the qualified project, to require the action or proceeding, including any potential appeals therefrom, to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court. ~~**On or before September 1, 2020, the Judicial Council shall amend the California Rules of Court, as necessary, to implement this subdivision.**~~

specified public funds.[2] SB 25 requires these actions or proceedings, including any potential appeals therefrom, be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court.

In addition, SB 25 would require a party seeking to file a CEQA action or proceeding against a project covered by this bill to provide the lead agency and the real party in interest a notice of intent to sue within 10 days of the posting of a specified notice and would prohibit a court from accepting the filing of an action or proceeding from a party that fails to provide the required notice of intent to sue. (See proposed Public Resources Code section 21168.6.9, subdivision (f)(1).)

SB 25 also prohibits a court from staying or enjoining the construction or operation of these projects unless the court finds either of the following: (i) the continued construction or operation of the project presents an imminent threat to the public health and safety; or (ii) the project site contains unforeseen important Native American artifacts or unforeseen important historical, archaeological, or ecological values that would be materially, permanently, and adversely affected by the continued construction or operation of the project unless the court stays or enjoins the construction or operation of the project. The bill specifies further that if the court finds that either of the above criteria is satisfied, the court shall only enjoin those specific activities associated with the project that present an imminent threat to public health and safety or that materially, permanently, and adversely affect unforeseen important Native American artifacts or unforeseen important historical, archaeological, or ecological values.

It is important to note that the Judicial Council's concerns regarding SB 25 are limited solely to the court impacts of this legislation, and that the council is not expressing any views on CEQA generally or the underlying merits of the potentially large number of projects[3] that could be covered by the bill, as those issues are outside the council's purview.

SB 25's requirement that any CEQA lawsuit challenging the multitude of projects that could be covered by the bill, including any appeals therefrom, be resolved within 270 days is problematic

[2] The bill defines "qualified opportunity zone" as "a census tract certified by the Secretary of the United States Department of the Treasury as a qualified opportunity zone pursuant to Section 1400Z-1 of Title 26 of the United States Code." The bill also contains various legislative findings and declarations in support of the measure, including the following statement that demonstrates its broad scope: "The Governor has nominated and the United States Department of the Treasury has certified 879 census tracts in California as qualified opportunity zones." (SB 25, Sec. 1(b).)

[3] As amended March 7, 2019, SB 25 significantly expanded its already broad scope to include designated projects that are financed, in whole or in part, by *any* of the following: a qualified opportunity fund; moneys appropriated from the Greenhouse Gas Reduction Fund and allocated by the Strategic Growth Council; an enhanced infrastructure financing district; an affordable housing authority; a community revitalization and investment authority; a transit village development district; a housing sustainability district; a Neighborhood Infill Finance and Transit Improvements Act (NIFTI) district; moneys allocated through the Department of Housing and Community Development; moneys allocated through the Department of Veterans Affairs; moneys allocated through the California Housing Finance Agency; or, moneys allocated through the California Infrastructure and Economic Development Bank. (Proposed Public Resources Code sec. 21168.6.9(a)(4).)

for a number of reasons. First, CEQA actions are already entitled under current law to calendar preference in both the superior courts and the Courts of Appeal. Imposing a 270-day timeline on top of the existing preference is arbitrary and likely to be unworkable in practice.

Second, the expedited judicial review for all of the projects covered by SB 25 will likely have an adverse impact on other cases. Like other types of calendar preferences, which the Judicial Council has historically opposed, setting an extremely tight timeline for deciding this particular type of case has the practical effect of pushing other cases on the courts' dockets to the back of the line. This means that other cases, including cases that have statutorily mandated calendar preferences, such as juvenile cases, criminal cases, and civil cases in which a party is at risk of dying, will take longer to decide.

Third, providing expedited judicial review for all of the specific projects covered by SB 25 while other cases proceed under the usual civil procedure rules and timelines undermines equal access to justice. The courts are charged with dispensing equal access to justice for each and every case on their dockets. Singling out this particular type of case for such preferential treatment is fundamentally at odds with how our justice system has historically functioned.

In addition to the above concerns, the recent addition to the bill that would prohibit the court from accepting for filing an action or proceeding from a party that fails to provide the lead agency and the real party in interest a 10-day notice of intent to sue is unworkable from a court administration standpoint. Court clerks, exercising their ministerial duties, are not in a position to make *legal* determinations that the requisite notice was not timely given. The statute could provide that this type of action would be subject to dismissal if the notice were not properly given, but that decision would need to be made by a judicial officer. It is the *court*, not the clerk that eventually would need to decide whether the petitioning party gave proper notice and whether the case can proceed.

Finally, the provision in SB 25 that significantly limits the forms of injunctive relief that the court may use in any action challenging the housing projects covered by this bill interferes with the inherent authority of a judicial officer and raises a serious separation of powers question. For these reasons, the Judicial Council opposes SB 25. If you have any questions, please feel free to contact Daniel Pone at (916) 323-3121 or daniel.pone@jud.ca.gov.

Sincerely,

Mailed March 12, 2019

Cory T. Jasperson

Director
Judicial Council Governmental Affairs

DP/jh
cc: Members, Senate Environmental Quality Committee
Hon. Anna M. Caballero, Member of the Senate
Hon. Steven Glazer, Member of the Senate
Ms. Rachel Wagoner, Deputy Legislative Affairs Secretary, Office of the Governor
Ms. Genevieve Wong, Consultant, Senate Environmental Quality Committee
Mr. Morgan Branch, Policy Consultant, Senate Republican Office of Policy
Mr. Martin Hoshino, Administrative Director, Judicial Council of California

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TANI G. CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

MARTIN HOSHINO
Administrative Director

CORY T. JASPERSON
Director, Governmental Affairs

February 12, 2019

Hon. Benjamin Allen
Chair, Senate Environmental Quality Committee
State Capitol, Room 4076
Sacramento, California 95814

Subject: SB 25 (Caballero), as introduced—Oppose
Hearing: Senate Environmental Quality Committee—March 20, 2019

Dear Senator Allen:

The Judicial Council regrets to inform you of its opposition to SB 25. This bill, among other things, requires the Judicial Council, on or before September 1, 2020, to amend certain rules of court to establish procedures applicable to actions or proceedings brought pursuant to the California Environmental Quality Act (CEQA) seeking judicial review of the environmental review and approvals granted for an undefined number of projects that could be located in qualified opportunity zones throughout the state.[1] SB 25 requires the actions or proceedings, including any potential appeals therefrom, be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court. It is important to note that the Judicial Council's concerns regarding SB 25 are limited solely to the court impacts of this legislation, and that the council is not expressing any views on CEQA generally or the underlying merits of the potentially large number of projects that could be covered by the bill, as those issues are outside the council's purview.

[1] The bill defines "qualified opportunity zone" as "a census tract certified by the Secretary of the United States Department of the Treasury as a qualified opportunity zone pursuant to Section 1400Z-1 of Title 26 of the United States Code. The bill also contains various legislative findings and declarations in support of the measure, including the following statement that demonstrates its broad scope: "The Governor has nominated and the United States Department of the Treasury has certified 879 census tracts in California as qualified opportunity zones." (SB 25, Sec. 1(b).)

SB 25's requirement that any CEQA lawsuit challenging all of the projects that could be covered by the bill, including any appeals therefrom, be resolved within 270 days is problematic for a number of reasons. First, CEQA actions are already entitled under current law to calendar preference in both the superior courts and the Courts of Appeal. Imposing a 270-day timeline on top of the existing preference is arbitrary and likely to be unworkable in practice.

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For these reasons, the Judicial Council opposes SB 25. If you have any questions, please feel free to contact Daniel Pone at (916) 323-3121 or daniel.pone@jud.ca.gov.

Sincerely,

Mailed February 12, 2019

Cory T. Jasperson
Director
Judicial Council Governmental Affairs

DP/lmb
cc: Members, Senate Environmental Quality Committee
Hon. Anna M. Caballero, Member of the Senate
Ms. Rachel Wagoner, Deputy Legislative Affairs Secretary, Office of the Governor
Ms. Genevieve Wong, Consultant, Senate Environmental Quality Committee
Ms. Morgan Branch, Policy Consultant, Senate Republican Office of Policy
Mr. Martin Hoshino, Administrative Director, Judicial Council of California

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January 15, 2019

Hon. Anna Caballero
Member of the Senate
State Capitol, Room 5052
Sacramento, California 95814

Subject: SB 25 (Caballero) – as introduced December 3, 2018 – Oppose

Dear Senator Caballero:

The Judicial Council regrets to inform you of its opposition to SB 25. This bill, among other things, requires the Judicial Council, on or before September 1, 2020, to amend certain rules of court to establish procedures applicable to actions or proceedings brought pursuant to the California Environmental Quality Act (CEQA) seeking judicial review of the environmental review and approvals granted for an undefined number of projects that could be located in qualified opportunity zones throughout the state.[1] SB 25 requires the actions or proceedings, including any potential appeals therefrom, be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court. It is important to note that the Judicial Council's concerns regarding SB 25 are limited solely to the court impacts of this legislation, and that the council is not expressing any views on CEQA generally or the underlying merits of the potentially large number of projects that could be covered by the bill, as those issues are outside the council's purview.

[1] The bill defines "qualified opportunity zone" as "a census tract certified by the Secretary of the United States Department of the Treasury as a qualified opportunity zone pursuant to Section 1400Z-1 of Title 26 of the United States Code. The bill also contains various legislative findings and declarations in support of the measure, including the following statement that demonstrates its broad scope: "The Governor has nominated and the United States Department of the Treasury has certified 879 census tracts in California as qualified opportunity zones." (SB 25, Sec. 1(b).)

SB 25's requirement that any CEQA lawsuit challenging all of the projects that could be covered by the bill, including any appeals therefrom, be resolved within 270 days is problematic for a number of reasons. First, CEQA actions are already entitled under current law to calendar preference in both the superior courts and the Courts of Appeal. Imposing a 270-day timeline on top of the existing preference is arbitrary and likely to be unworkable in practice.

Second, the expedited judicial review for all of the projects covered by SB 25 will likely have an adverse impact on other cases. Like other types of calendar preferences, which the Judicial Council has historically opposed, setting an extremely tight timeline for deciding this particular type of case has the practical effect of pushing other cases on the courts' dockets to the back of the line. This means that other cases, including cases that have statutorily mandated calendar preferences, such as juvenile cases, criminal cases, and civil cases in which a party is at risk of dying, will take longer to decide.

Finally, providing expedited judicial review for all of the projects covered by SB 25 while other cases proceed under the usual civil procedure rules and timelines undermines equal access to justice. The courts are charged with dispensing equal access to justice for each and every case on their dockets. Singling out this particular type of case for such preferential treatment is fundamentally at odds with how our justice system has historically functioned.

For these reasons, the Judicial Council opposes SB 25.

Sincerely,

Mailed January 15, 2018

Daniel Pone
Attorney

DP/jh
cc: Ms. Rachel Wagoner, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California