



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

April 17, 2017

Hon. David Chiu
Member of the Assembly
State Capitol, Room 4112
Sacramento, California 95814

Subject: AB 73 (Chiu), as amended March 28, 2017 – Oppose

Dear Assembly Member Chiu:

The Judicial Council regrets to inform you of its opposition to AB 73. This bill, among other things, requires the Judicial Council, on or before July 1, 2018, to adopt a rule of court to establish procedures applicable to actions or proceedings brought pursuant to the California Environmental Quality Act (CEQA) to attack, review, set aside, void, or annul a public agency's certification of the environmental impact report for the designation or the approval of the designation of a housing sustainability district. It requires the actions or proceedings, including any potential appeals therefrom, be resolved, to the extent feasible, within 270 days of certification of the record of the proceeding.

It is important to note that the Judicial Council's concerns regarding AB 73 are limited solely to the court impacts of the legislation, and that the council is not expressing any views on CEQA generally or the underlying merits of the housing projects covered by the legislation, as those issues are outside the council's purview.

AB 73's requirement that any CEQA lawsuit challenging a housing sustainability district, including any appeals therefrom, be resolved within 270 days is problematic for a number of reasons. First, the timeline is triggered by *the certification of the record*, which is an action that takes place *before* the

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court has any jurisdiction or control over the proceedings. This means that the extremely tight 270-day period in which the trial court and Court of Appeal must issue their respective decisions on an action could—and likely would—begin weeks before the lawsuit is even filed. It makes no sense to have something that occurs before the matter even comes to the courts start the courts' already limited time period to complete their work.

Second, the Judicial Council believes that the 270-day timeline will be unworkable in practice. During the council's development process for the rules to implement AB 900, it became clear that 175 days (which was the timeline under the enacted version of that bill) is an unrealistically short timeframe for the Court of Appeal to decide a large CEQA matter. This bill follows the approach taken in SB 743 ([Steinberg] Stats. 2013, ch. 386), which places the initial judicial review in the superior court. However, as was the case for initial review in the Court of Appeal, even assuming that no extensions of time are granted for any aspect of the proceeding, it appears that it will take about 175 days just to get to hearing in the superior court, much less to issue a decision, in the majority of these cases. Even if the superior court were able to issue its decision within 175 days, which is highly unlikely, that would leave only 95 days for proceedings in the Court of Appeal, which the council believes to be infeasible.¹

Third, AB 73's expedited judicial review for all of the potential projects covered by the bill 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 these cases 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. Moreover, delays in the administration of justice that would likely result from any expansion of this expedited judicial review approach would be even more pronounced in light of the ongoing fiscal limitations faced by the judicial branch.

For these reasons, the Judicial Council opposes AB 73.

Sincerely,

Mailed on April 18, 2017

Daniel Pone
Attorney, Governmental Affairs

¹ In a typical civil appeal, it takes more than 95 days from when a trial court decision becomes final just for the record on appeal to be prepared and filed in the Court of Appeal. This does not include any time for briefing, oral argument, analysis of the issues, or preparation of a decision by the court.

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DP/jh

cc: Ms. Graciela Castillo-Krings, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Lawrence Lingbloom, Principal Consultant, Assembly Natural Resources Committee
Mr. John Kennedy, Consultant, Assembly Republican Caucus
Mr. Martin Hoshino, Administrative Director, Judicial Council of California



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April 17, 2017

Hon. Cristina Garcia, Chair
Assembly Natural Resources Committee
State Capitol, Room 2013
Sacramento, California 95814

Subject: AB 73 (Chiu), as amended March 28, 2017 – Oppose
Hearing: Assembly Natural Resources Committee – April 24, 2017

Dear Assembly Member Garcia:

The Judicial Council regrets to inform you of its opposition to AB 73. This bill, among other things, requires the Judicial Council, on or before July 1, 2018, to adopt a rule of court to establish procedures applicable to actions or proceedings brought pursuant to the California Environmental Quality Act (CEQA) to attack, review, set aside, void, or annul a public agency's certification of the environmental impact report for the designation or the approval of the designation of a housing sustainability district. It requires the actions or proceedings, including any potential appeals therefrom, be resolved, to the extent feasible, within 270 days of certification of the record of the proceeding.

It is important to note that the Judicial Council's concerns regarding AB 73 are limited solely to the court impacts of the legislation, and that the council is not expressing any views on CEQA generally or the underlying merits of the housing projects covered by the legislation, as those issues are outside the council's purview.

AB 73's requirement that any CEQA lawsuit challenging a housing sustainability district, including any appeals therefrom, be resolved within 270 days is problematic for a number of reasons. First, the

timeline is triggered by *the certification of the record*, which is an action that takes place *before* the court has any jurisdiction or control over the proceedings. This means that the extremely tight 270-day period in which the trial court and Court of Appeal must issue their respective decisions on an action could—and likely would—begin weeks before the lawsuit is even filed. It makes no sense to have something that occurs before the matter even comes to the courts start the courts' already limited time period to complete their work.

Second, the Judicial Council believes that the 270-day timeline will be unworkable in practice. During the council's development process for the rules to implement AB 900, it became clear that 175 days (which was the timeline under the enacted version of that bill) is an unrealistically short timeframe for the Court of Appeal to decide a large CEQA matter. This bill follows the approach taken in SB 743 ([Steinberg] Stats. 2013, ch. 386), which places the initial judicial review in the superior court. However, as was the case for initial review in the Court of Appeal, even assuming that no extensions of time are granted for any aspect of the proceeding, it appears that it will take about 175 days just to get to hearing in the superior court, much less to issue a decision, in the majority of these cases. Even if the superior court were able to issue its decision within 175 days, which is highly unlikely, that would leave only 95 days for proceedings in the Court of Appeal, which the council believes to be infeasible.¹

Third, AB 73's expedited judicial review for all of the potential projects covered by the bill 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 these cases 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. Moreover, delays in the administration of justice that would likely result from any expansion of this expedited judicial review approach would be even more pronounced in light of the ongoing fiscal limitations faced by the judicial branch.

¹ In a typical civil appeal, it takes more than 95 days from when a trial court decision becomes final just for the record on appeal to be prepared and filed in the Court of Appeal. This does not include any time for briefing, oral argument, analysis of the issues, or preparation of a decision by the court.

Hon. Cristina Garcia

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For these reasons, the Judicial Council opposes AB 73.

Sincerely,

Mailed April 18, 2017

Cory Jaspersen

Director, Governmental Affairs

DP/jh

cc: Members, Assembly Natural Resources Committee

Hon. David Chiu, Member of the Assembly

Ms. Graciela Castillo-Krings, Deputy Legislative Affairs Secretary, Office of the Governor

Mr. Lawrence Lingbloom, Principal Consultant, Assembly Natural Resources Committee

Mr. John Kennedy, Consultant, Assembly Republican Caucus

Mr. Martin Hoshino, Administrative Director, Judicial Council of California



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TANI G. CANTIL-SAKAUYE
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CORY T. JASPERSON
Director, Governmental Affairs

May 3, 2017

Hon. David Chiu
Member of the Assembly
State Capitol, Room 4112
Sacramento, California 95814

Subject: AB 73 (Chiu), as amended May 2, 2017 – Withdrawal of opposition

Dear Assembly Member Chiu:

The Judicial Council is pleased to inform you of its removal of opposition to AB 73, as amended May 2, 2017. The Judicial Council appreciates your agreement to amend the bill to remove the expedited judicial review provision that was the basis for the council's prior opposition. The Judicial Council takes no position on the current version of AB 73 as the remaining provisions in the bill do not impact the courts and address issues that are outside the council's purview.

Sincerely,

Mailed May 3, 2017

Daniel Pone
Attorney, Governmental Affairs

DP/jh

cc: Ms. Graciela Castillo-Krings, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Lawrence Lingbloom, Principal Consultant, Assembly Natural Resources Committee
Mr. John Kennedy, Consultant, Assembly Republican Caucus
Mr. Martin Hoshino, Administrative Director, Judicial Council of California