



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

April 1, 2019

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

Subject: SB 384 (Morrell), as amended March 25, 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 384. This bill, among other things, requires the Judicial Council, on or before September 1, 2020, to adopt a rule of court that applies to actions or proceedings brought pursuant to the California Environmental Quality Act (CEQA) seeking judicial review of environmental review documents and approvals granted for housing development projects with 50 or more residential units. It requires these actions or proceedings, including any appeals therefrom, to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court.

SB 384 also prohibits a court from staying or enjoining the siting, construction or operation of these housing projects unless the court finds either of the following: (i) the continued construction or operation of the housing development project presents an imminent threat to public health and safety; or (ii) the housing development 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 housing development 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.

Hon. Ben Allen

April 1, 2019

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It is important to note that the Judicial Council's concerns regarding SB 384 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 development projects covered by this legislation, as those issues are outside the council's purview. SB 384's requirement that any CEQA lawsuit challenging specified housing development projects, 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 384 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 projects covered by SB 384 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.

Finally, the provision in SB 384 that significantly limits the forms of 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 384.

Sincerely,

Mailed April 2, 2019

Cory T. Jaspersen

Director

Judicial Council Governmental Affairs

DP/jh

cc: Members, Senate Environmental Quality Committee

Hon. Mike Morrell, 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
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MARTIN HOSHINO
Administrative Director

CORY T. JASPERSON
Director, Governmental Affairs

March 5, 2019

Hon. Mike Morrell
Member of the Senate
State Capitol, Room 3056
Sacramento, California 95814

Subject: SB 384 (Morrell), as introduced February 20, 2019 - Oppose

Dear Senator Morrell:

The Judicial Council regrets to inform you of its opposition to SB 384. This bill, among other things, requires the Judicial Council, on or before September 1, 2020, to amend specified rules of court to establish procedures applicable to actions or proceedings brought pursuant to the California Environmental Quality Act (CEQA) seeking judicial review of environmental review documents and approvals granted for certain housing development projects with 50 or more residential units. It requires these actions or proceedings, including any appeals therefrom, to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court.

SB 384 also prohibits a court from staying or enjoining the siting, construction or operation of these housing projects unless the court finds either of the following: (i) the continued construction or operation of the housing development project presents an imminent threat to public health and safety; or (ii) the housing development 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

Hon. Mike Morrell

March 5, 2019

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housing development 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 384 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 development projects covered by the legislation, as those issues are outside the council's purview. SB 384's requirement that any CEQA lawsuit challenging specified housing development projects, 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 384 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 projects covered by SB 384 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. Finally, the provision in SB 384 that significantly limits the forms of 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 384.

Sincerely,

Mailed March 7, 2019

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