



JUDICIAL COUNCIL OF CALIFORNIA

GOVERNMENTAL AFFAIRS

520 Capitol Mall, Suite 600 • Sacramento, California 95814-3368
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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 23, 2018

Hon. Benjamin Allen
Member of Senate
State Capitol, Room 5072
Sacramento, California 95814

Subject: SB 948 (Allen), as amended March 12, 2018 - Oppose

Dear Senator Allen:

The Judicial Council regrets to inform you of its opposition to SB 948. The bill would deem a community plan project (as defined) to be certified by the Governor as an environmental leadership development project pursuant to AB 900 (Stats. 2011, ch. 354), which would subject cases filed under the California Environmental Quality Act (CEQA) challenging specified community plans to its expedited judicial review provisions. It is important to note that the Judicial Council's concerns regarding SB 948 are limited solely to the court impacts of the legislation, which are detailed below. The Judicial Council is not expressing any views on CEQA generally or the underlying merits of the community plans that would be covered by this bill, as those issues are outside the council's purview.

As we have noted with other recent bills that have sought to expand AB 900, requiring that a CEQA lawsuit challenging the additional projects that would be deemed certified for this form of expedited judicial review, including any appeals therefrom, be resolved within 270 days is problematic for a number of reasons. First, the 270-day timeline will likely 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. 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 seems unlikely, that would leave only 95 days for proceedings in the Court of Appeal, which appears to be infeasible.¹

Second, if SB 948 is enacted, the expedited judicial review requirements for any additional projects certified under AB 900 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.

Third, providing expedited judicial review for additional projects that would be covered by the bill's proposed expansion of AB 900 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 special type of case for such preferential treatment appears at odds with how our justice system has historically functioned.

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. Benjamin Allen
March 23, 2018
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For these reasons, the Judicial Council must respectfully oppose SB 948.

Sincerely,

Mailed March 23, 2018

Daniel Pone
Attorney

DP/jh

cc: Members, Senate Environmental Quality Committee
Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California



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Director, Governmental Affairs

March 29, 2018

Hon. Bob Wieckowski, Chair
Senate Environmental Committee
State Capitol, Room 4085
Sacramento, California 95814

Subject: SB 948 (Allen), as amended March 12, 2018 - Oppose
Hearing: Senate Environmental Committee – April 18, 2018

Dear Senator Wieckowski:

The Judicial Council is opposed to SB 948. The bill would deem a community plan project (as defined) to be certified by the Governor as an environmental leadership development project pursuant to AB 900 (Stats. 2011, ch. 354), which would subject cases filed under the California Environmental Quality Act (CEQA) challenging specified community plans to its expedited judicial review provisions. It is important to note that the Judicial Council's concerns regarding SB 948 are limited solely to the court impacts of the legislation, which are detailed below. The Judicial Council is not expressing any views on CEQA generally or the underlying merits of the community plans that would be covered by this bill, as those issues are outside the council's purview.

As we have noted with other recent bills that have sought to expand AB 900, requiring that a CEQA lawsuit challenging the additional projects that would be deemed certified for this form of expedited judicial review, including any appeals therefrom, be resolved within 270 days is problematic for a number of reasons. First, the 270-day timeline will likely 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. 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 seems unlikely, that would leave only 95 days for proceedings in the Court of Appeal, which appears to be infeasible.¹

Second, if SB 948 is enacted, the expedited judicial review requirements for any additional projects certified under AB 900 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.

Third, providing expedited judicial review for additional projects that would be covered by the bill's proposed expansion of AB 900 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 special type of case for such preferential treatment is at odds with how our justice system has historically functioned.

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Hon. Bob Wieckowski

March 29, 2018

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For these reasons, the Judicial Council opposes SB 948.

Should you have any questions or require additional information, please contact Daniel Pone at 916-323-3121.

Sincerely,

Mailed March 29, 2018

Cory T. Jaspersen

Director, Governmental Affairs

CTJ/DP/jh

cc: Members, Senate Environmental Quality Committee
Hon. Ben Allen, Member of the Senate
Ms. Rachel Machi Wagoner, Chief Consultant, Senate Environmental Quality Committee
Mr. Morgan Branch, Consultant, Senate Republican Office of Policy
Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California



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April 23, 2018

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

Subject: SB 948 (Allen) as amended March 12, 2018 - Oppose
Hearing: Senate Judiciary Committee – May 8, 2018

Dear Senator Jackson:

The Judicial Council is opposed to SB 948. The bill would deem a community plan project (as defined) to be certified by the Governor as an environmental leadership development project pursuant to AB 900 (Stats. 2011, ch. 354), which would subject cases filed under the California Environmental Quality Act (CEQA) challenging specified community plans to its expedited judicial review provisions. It is important to note that the Judicial Council's concerns regarding SB 948 are limited solely to the court impacts of the legislation, which are detailed below. The Judicial Council is not expressing any views on CEQA generally or the underlying merits of the community plans that would be covered by this bill, as those issues are outside the council's purview.

As we have noted with other recent bills that have sought to expand AB 900, requiring that a CEQA lawsuit challenging the additional projects that would be deemed certified for this form of expedited judicial review, including any appeals therefrom, be resolved within 270 days is problematic for a number of reasons. First, the 270-day timeline will likely 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. 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 seems unlikely, that would leave only 95 days for proceedings in the Court of Appeal, which appears to be infeasible.¹

Second, if SB 948 is enacted, the expedited judicial review requirements for any additional projects certified under AB 900 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.

Third, providing expedited judicial review for additional projects that would be covered by the bill's proposed expansion of AB 900 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 special type of case for such preferential treatment is at odds with how our justice system has historically functioned.

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Hon. Hannah-Beth Jackson

April 23, 2018

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For these reasons, the Judicial Council opposes SB 948.

Should you have any questions or require additional information, please contact Daniel Pone at 916-323-3121.

Sincerely,

Mailed April 23, 2018

Cory T. Jaspersen
Director, Governmental Affairs

CTJ/DP/jh

cc: Members, Senate Judiciary Committee
Hon. Ben Allen, Member of the Senate
Mr. Christian Kurpiewski, Consultant, Senate Judiciary Committee
Mr. Mike Petersen, Consultant, Senate Republican Office of Policy
Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California



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MARTIN HOSHINO
Administrative Director

CORY T. JASPERSON
Director, Governmental Affairs

May 1, 2018

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

Subject: SB 948 (Allen) as amended April 30, 2018 - Oppose
Hearing: Senate Judiciary Committee – May 8, 2018

Dear Senator Jackson:

The Judicial Council is opposed to SB 948. Among other things, SB 948 would authorize the Governor to certify qualified community plan updates (as defined) as being eligible for the streamlining benefits provided by the Jobs and Economic Improvement Through Environmental Leadership Act of 2011 ([AB 900] Stats. 2011, ch. 354). This would have the effect of subjecting cases filed under the California Environmental Quality Act (CEQA) challenging these community plan updates and the accompanying ordinances to its expedited judicial review provisions.

It is important to note that the Judicial Council's concerns regarding SB 948 are limited solely to the court impacts of the legislation, which are set out below. The Judicial Council is not expressing any views on CEQA generally or the underlying merits of the specific community plans covered by this bill, as those issues are outside the council's purview.

As we have noted with other recent bills that have sought to expand AB 900, requiring that a CEQA lawsuit challenging the community plans and accompanying ordinances that would be subject to this form of expedited judicial review, including any appeals therefrom, be resolved to

the extent feasible within 270 days is problematic for a number of reasons. First, the 270-day timeline will likely 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. 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 seems unlikely, that would leave only 95 days for proceedings in the Court of Appeal, which appears to be infeasible.¹

Second, if SB 948 is enacted, its expedited judicial review requirements 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.

Third, providing expedited judicial review for the specific cases covered by this bill 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 special type of case for such preferential treatment is at odds with how our justice system has historically functioned.

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Hon. Hannah-Beth Jackson

May 1, 2018

Page 3

For these reasons, the Judicial Council opposes SB 948.

Should you have any questions or require additional information, please contact Daniel Pone at 916-323-3121.

Sincerely,

Mailed May 1, 2018

Cory T. Jaspersen
Director, Governmental Affairs

CTJ/DP/jh

cc: Members, Senate Judiciary Committee
Hon. Ben Allen, Member of the Senate
Mr. Christian Kurpiewski, Consultant, Senate Judiciary Committee
Mr. Mike Petersen, Consultant, Senate Republican Office of Policy
Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California