



## JUDICIAL COUNCIL OF CALIFORNIA

### GOVERNMENTAL AFFAIRS

520 Capitol Mall, Suite 600 • Sacramento, California 95814-3368  
Telephone 916-323-3121 • Fax 916-323-4347 • TDD 415-865-4272

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

MARTIN HOSHINO  
*Administrative Director*

CORY T. JASPERSON  
*Director, Governmental Affairs*

June 5, 2018

Hon. Rob Bonta  
Member of the Assembly  
State Capitol, Room 2148  
Sacramento, California 95814

Subject: AB 734 (Bonta), as amended June 4, 2018 – Oppose

Dear Assembly Member Bonta:

The Judicial Council regrets to inform you of its opposition to AB 734. This bill, among other things, requires the Judicial Council, on or before July 1, 2019, to adopt a rule of court to establish procedures applicable to actions or proceedings brought pursuant to the California Environmental Quality Act (CEQA) seeking judicial review of the certification or adoption of an environmental impact report for a designated Oakland Sports and Mixed-Use Project. AB 734 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.

AB 734 also prohibits the court from staying or enjoining the construction or operation of specified portions of the project unless the court finds either of the following: (a) the continued construction or operation of the project presents an imminent threat to public health and safety; or (b) 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 courts stays or enjoins the construction or operation of the project. The bill further provides that if the court makes either of the above findings, 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.

Hon. Rob Bonta

June 5, 2018

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It is important to note that the Judicial Council's concerns regarding AB 734 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 project covered by the bill, as those issues are outside the council's purview.

AB 734's requirement that any CEQA lawsuit challenging the Oakland Sports and Mixed-Use Project, 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 the specific project covered by AB 734 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. 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 project covered by AB 734 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 AB 734 that significantly limits the forms of relief that the court may use in any action challenging the specific project 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 AB 734.

Sincerely,

*Mailed June 5, 2018*

Daniel Pone  
Attorney

DP/jh

cc: Hon. Rob Bonta, Member of the Assembly  
Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor  
Mr. Martin Hoshino, Administrative Director, Judicial Council of California



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CORY T. JASPERSON  
*Director, Governmental Affairs*

June 14, 2018

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

Subject: AB 734 (Bonta), as amended June 4, 2018 – Oppose  
Hearing: Senate Environmental Quality Committee – June 20, 2018

Dear Senator Wieckowski:

The Judicial Council is opposed to AB 734. This bill, among other things, requires the Judicial Council, on or before July 1, 2019, to adopt a rule of court to establish procedures applicable to actions or proceedings brought pursuant to the California Environmental Quality Act (CEQA) seeking judicial review of the certification or adoption of an environmental impact report for a designated Oakland Sports and Mixed-Use Project. AB 734 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.

AB 734 also prohibits the court from staying or enjoining the construction or operation of specified portions of the project unless the court finds either of the following: (a) the continued construction or operation of the project presents an imminent threat to public health and safety; or (b) 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 courts stays or enjoins the construction or operation of the project. The bill further provides that if the

court makes either of the above findings, 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 AB 734 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 project covered by the bill, as those issues are outside the council's purview.

AB 734's requirement that any CEQA lawsuit challenging the Oakland Sports and Mixed-Use Project, 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 the specific project covered by AB 734 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. 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 project covered by AB 734 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 AB 734 that significantly limits the forms of relief that the court may use in any action challenging the specific project covered by this bill interferes with the inherent authority of a judicial officer and raises a serious separation of powers question.

Hon. Bob Wieckowski

June 14, 2018

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For these reasons, the Judicial Council opposes AB 734.

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

Sincerely,

*Mailed June 14, 2018*

Cory T. Jasperson  
Director, Governmental Affairs

CTJ/DP/jh

cc: Members, Senate Environmental Quality Committee  
Hon. Rob Bonta, Member of the Assembly  
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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*Administrative Director*

CORY T. JASPERSON  
*Director, Governmental Affairs*

June 21, 2018

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

Subject: AB 734 (Bonta), as proposed to be amended<sup>1</sup> – Oppose  
Hearing: Senate Judiciary Committee – June 26, 2018

Dear Senator Jackson:

The Judicial Council is opposed to AB 734. This bill, among other things, requires the Judicial Council, on or before July 1, 2019, to adopt a rule of court to establish procedures applicable to actions or proceedings brought pursuant to the California Environmental Quality Act (CEQA) seeking judicial review of the certification or adoption of an environmental impact report for a designated Oakland Sports and Mixed-Use Project. AB 734 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 AB 734 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 specific project covered by the bill, as those issues are outside the council's purview.

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<sup>1</sup> During the June 20, 2018 hearing on this bill in the Senate Environmental Quality Committee, amendments were agreed to that would, among other things, remove the provisions in Section 2 of the June 4, 2018 version of the bill (proposed Public Resources Code sec. 21168.6.7, subd. (g)) that would have imposed limits on the court's ability to issue injunctive relief.

Hon. Hannah-Beth Jackson

June 21, 2018

Page 2

AB 734's requirement that any CEQA lawsuit challenging the Oakland Sports and Mixed-Use Project, 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 the specific project covered by AB 734 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. 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.

Finally, providing expedited judicial review for the specific project covered by AB 734 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 AB 734.

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

Sincerely,

*Mailed June 21, 2018*

Cory T. Jaspersen  
Director, Governmental Affairs

CTJ/DP/jh

cc: Members, Senate Judiciary Committee  
Hon. Rob Bonta, Member of the Assembly  
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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*Chief Justice of California*  
*Chair of the Judicial Council*

MARTIN HOSHINO  
*Administrative Director*

CORY T. JASPERSON  
*Director, Governmental Affairs*

August 22, 2018

Hon. Rob Bonta  
Member of the Assembly  
State Capitol, Room 2148  
Sacramento, California 95814

Subject: AB 734 (Bonta), as amended August 21, 2018 – Oppose

Dear Assembly Member Bonta:

The Judicial Council regrets to inform you of its continued opposition to AB 734. This bill, among other things, requires the Judicial Council, on or before September 1, 2019, to adopt a rule of court to establish procedures applicable to actions or proceedings brought pursuant to the California Environmental Quality Act (CEQA) seeking judicial review of the certification or adoption of an environmental impact report for a designated Oakland Sports and Mixed-Use Project. AB 734 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.<sup>1</sup>

It is important to note that the Judicial Council's concerns regarding AB 734 are limited solely to the court impacts of this legislation, and that the council is not expressing any views on CEQA generally

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<sup>1</sup> The Judicial Council acknowledges the recent amendments to the bill that extend from July 1, 2019 to September 1, 2019 the deadline for the council to adopt implementing rules of court, and require the project applicant to pay for any additional costs incurred by the courts in hearing and deciding any case brought pursuant to this measure. However, as explained above, the Judicial Council's principal objections to AB 734's expedited judicial review requirements remain in place.

Hon. Rob Bonta  
August 22, 2018  
Page 2

or the underlying merits of the specific project covered by the bill, as those issues are outside the council's purview.

AB 734's requirement that any CEQA lawsuit challenging the Oakland Sports and Mixed-Use Project, 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 the specific project covered by AB 734 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 the specific project covered by AB 734 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 AB 734.

Sincerely,

*Mailed August 22, 2018*

Daniel Pone  
Attorney

DP/jh

cc: Hon. Rob Bonta, Member of the Assembly  
Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor  
Mr. Martin Hoshino, Administrative Director, Judicial Council of California



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*Chief Justice of California*  
*Chair of the Judicial Council*

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*Administrative Director*

CORY T. JASPERSON  
*Director, Governmental Affairs*

August 30, 2018

Hon. Rob Bonta  
Member of the Assembly  
State Capitol, Room 2148  
Sacramento, California 95814

Subject: AB 734 (Bonta), as amended August 28, 2018 – Oppose

Dear Assembly Member Bonta:

The Judicial Council regrets to inform you of its continued opposition to AB 734. This bill, among other things, requires the Judicial Council, on or before September 1, 2019, to adopt a rule of court to establish procedures applicable to actions or proceedings brought pursuant to the California Environmental Quality Act (CEQA) seeking judicial review of the certification or adoption of an environmental impact report for a designated Oakland Sports and Mixed-Use Project. AB 734 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.<sup>1</sup>

It is important to note that the Judicial Council's concerns regarding AB 734 are limited solely to the court impacts of this legislation, and that the council is not expressing any views on CEQA generally

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<sup>1</sup> The Judicial Council acknowledges the recent amendments to the bill that extend from July 1, 2019 to September 1, 2019 the deadline for the council to adopt implementing rules of court, and require the project applicant to pay for any additional costs incurred by the courts in hearing and deciding any case brought pursuant to this measure. However, as explained above, the Judicial Council's principal objections to AB 734's expedited judicial review requirements remain in place.

Hon. Rob Bonta  
August 30, 2018  
Page 2

or the underlying merits of the specific project covered by the bill, as those issues are outside the council's purview.

AB 734's requirement that any CEQA lawsuit challenging the Oakland Sports and Mixed-Use Project, 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 the specific project covered by AB 734 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 the specific project covered by AB 734 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 AB 734.

Sincerely,

*Mailed August 30, 2018*

Daniel Pone  
Attorney

DP/jh

cc: Hon. Rob Bonta, Member of the Assembly  
Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor  
Mr. Martin Hoshino, Administrative Director, Judicial Council of California



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*Administrative Director*

CORY T. JASPERSON  
*Director, Governmental Affairs*

September 4, 2018

Hon. Edmund G. Brown, Jr.  
Governor of California  
State Capitol, First Floor  
Sacramento, California 95814

Subject: AB 734 (Bonta) – Request for Veto

Dear Governor Brown:

The Judicial Council respectfully requests a veto on Assembly Bill 734. This bill, among other things, requires the Judicial Council, on or before September 1, 2019, to adopt a rule of court to establish procedures applicable to actions or proceedings brought pursuant to the California Environmental Quality Act (CEQA) seeking judicial review of the certification or adoption of an environmental impact report for a designated Oakland Sports and Mixed-Use Project. AB 734 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 AB 734 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 specific project covered by the bill, as those issues are outside the council's purview.

AB 734's requirement that any CEQA lawsuit challenging the Oakland Sports and Mixed-Use Project, including any appeals therefrom, be resolved within 270 days is problematic for a number of reasons. CEQA actions are already entitled under current law to calendar preference

Hon. Edmund G. Brown, Jr.

September 4, 2018

Page 2

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.

More importantly, this bill directly conflicts with the courts' fundamental charge to serve litigants in a manner that is supposed to ensure equal access to justice, a charge we take very seriously. 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.

In sum, the essential problem with this bill, and all of the other measures modeled after the expedited judicial review scheme that began in 2011 with the enactment of AB 900 and SB 292, is allowing a special category of CEQA cases to cut to the front of the line, ahead of all other litigants. This preferential approach undermines the public's trust and confidence in our court system and conflicts with our paramount responsibility to dispense fair and impartial justice in each and every case.

For these reasons, the Judicial Council requests a veto on AB 734.

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

Sincerely,

*Mailed September 4, 2018*

Cory T. Jasperson  
Director, Governmental Affairs

CTJ/DP/jh

cc: Hon. Rob Bonta, Member of the Assembly  
Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor  
Mr. Martin Hoshino, Administrative Director, Judicial Council of California