



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

September 11, 2020

Hon. Gavin Newsom
Governor of California
State Capitol, First Floor
Sacramento, California 95814

Subject: Assembly Bill 2731 (Gloria) – Request for Veto

Dear Governor Newsom:

The Judicial Council regrettably must request a veto on AB 2731, a CEQA bill that authorizes expedited judicial review of projects related to the San Diego Old Town Center redevelopment project.

This request for veto is based on the bill's inclusion of the 270-day expedited judicial review provision and is not an expression of any views on CEQA generally or the underlying merits of the potential projects that could be covered by the bill, as those issues are outside the council's purview.

The requirement in AB 2731 that all CEQA lawsuits challenging any of the proposed projects contemplated by the Old Town Center redevelopment, including any appeals therefrom, be resolved within 270 business days if feasible is problematic. CEQA actions are already entitled under current law to calendar preference "over all other civil actions" 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 for the review of the Old Town Center project, on top of existing CEQA calendar preferences, is an arbitrary and unrealistically short timeframe for the trial court in San Diego to address all of the issues each CEQA case is likely to present.

There are several reasons why the 270-day expedited judicial review timeframe is not feasible.

- *CEQA cases are complicated and lengthy even if they are not delayed at the request of the parties.* Under normal circumstances and assuming the most fluid of cases in which no extensions of time are requested or granted, CEQA cases take, on average, an estimated six months to get to hearing. So, even if the court was able to issue its decision within six months, that would leave only three months for proceedings in the court of appeal, which is impracticable.¹ And, of course, it is likely that one or more parties will request, if not stipulate to, continuances, delays, or other procedural extensions. Given these common requests and stipulated delays, a 270-day timeframe is unrealistic.
- *Active CEQA cases often include ancillary administrative and non-CEQA judicial elements.* Providing 270-day expedited judicial review for these potential cases is even more unworkable in light of the common need of the parties to address ancillary motions or cases, specifically non-CEQA causes of action and/or separate lawsuits relating to the project. These actions proceed under administrative (local governmental) and normal civil procedure (non-CEQA) timelines, often requiring a temporary stay or delay in the CEQA case. In other words, even if CEQA-specific procedures could be limited to 270 days, other, non-CEQA procedures and causes of action related to the same projects, that would occur in non-CEQA courtrooms and administrative hearings, cannot be concluded in that same timeframe.
- *The courts anticipate significant pandemic-related litigation in the coming years.* The COVID-19 pandemic is impacting all social and government systems, including the courts. Moving CEQA cases to the front of the line in San Diego over the life of the Old Town Center project will 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 particular CEQA cases has the practical effect of pushing other cases on the courts' dockets to the back of the line. Without additional funding and resources, 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, unlawful detainer and foreclosure cases, and other important cases, will take longer to decide.

The council has studied the workload costs created by expedited CEQA judicial review requirements and determined that trial and appellate courts expend an average of \$340,000 in workload costs on each case eligible for expedited review. New unfunded workload to the courts could result in delays of court services, prioritization of court cases, and may impact access to justice.

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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For these reasons, the Judicial Council requests your veto on AB 2731.

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

Sincerely,

Sent September 11, 2020

Cory T. Jasperson
Director, Governmental Affairs

CTJ/AL/yc-s

cc: Hon. Todd Gloria, Member of the Assembly
Mr. Anthony Williams, Deputy Legislative Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California



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August 4, 2020

Hon. Todd Gloria
Member of the Assembly
State Capitol, Room 2176
Sacramento, California 95814

Subject: Assembly Bill 2731 (Gloria), as amended July 14, 2020 – Oppose unless amended

Dear Assembly Member Gloria:

The Judicial Council regrettably must oppose AB 2731 unless it is amended to extend the rule-making deadline to January 1, 2022, and to remove the 270-day expedited review provision. The bill focuses on the acquisition and redevelopment of a 70.5-acre parcel currently owned by the United States Department of the Navy. We are aware that in 2018, the San Diego Department of Housing and Community Development determined that the San Diego region would need to plan for 171,685 housing units by 2029 and that the Old Town Center is an infill area, located within the Midway-Pacific Highway Community Plan planning area, where some of that housing could be built.

It is important to note that our concerns regarding AB 2731 are limited solely to the court impacts of this legislation, and that the Judicial Council is not expressing any views on CEQA generally or the underlying merits of the potential projects that could be covered by the bill, as those issues are outside the council's purview.

Beginning with the rule-making provision, we request a one-year extension for implementation of any legislation that directs the Judicial Council to amend or draft new rules of court. This

extension ensures that the council may faithfully undertake the months-long internal and external/public review and comment processes required for the adoption of new or modified rules of court. In the case of AB 2731, the proposed June 30, 2021 deadline for enacting rules to implement the proposed projects is not achievable. We respectfully request an implementation date of January 1, 2022.

The requirement in AB 2731 that all CEQA lawsuits challenging any of the proposed projects that could be covered by the bill, including any appeals therefrom, be resolved within 270 days is problematic as 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 for the review of the Old Town Center project, on top of existing CEQA calendar preferences, is an arbitrary and unrealistically short timeframe for the trial court in San Diego to address all of the issues each CEQA case is likely to present.

There are several reasons why the 270-day expedited judicial review time frame is not feasible.

- *CEQA cases are complicated and lengthy even if they are not delayed at the request of the parties.* Under normal circumstances and assuming the most fluid of cases in which no extensions of time are requested or granted, CEQA cases take, on average, an estimated six months to get to hearing. So, even if the court was able to issue its decision within six months, that would leave only three months for proceedings in the court of appeal, which is impracticable.¹ And, of course, it is more than likely that one or more parties will request, if not stipulate to, continuances, delays, or other procedural extensions. Given these common requests and stipulated delays, a 270-day timeframe is unrealistic.
- *Active CEQA cases often include ancillary administrative and non-CEQA judicial elements.* Providing 270-day expedited judicial review for these potential cases is even more unworkable in light of the common need of the parties to address ancillary motions or cases, specifically non-CEQA causes of action and/or separate lawsuits relating to the project. These actions proceed under administrative (local governmental) and normal civil procedure (non-CEQA courtroom) timelines, often requiring a temporary stay or delay in the CEQA case. In other words, even if CEQA-specific procedures could be limited to 270 days, other, non-CEQA procedures and causes of action related to the same projects that would occur in non-CEQA courtrooms and administrative hearings cannot be concluded in that same timeframe.

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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- *The courts anticipate significant pandemic-related litigation in the coming years.* The COVID-19 pandemic is impacting all social and government systems, including the courts. Moving CEQA cases to the front of the line in San Diego over the life of the Old Town Center project will 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 particular CEQA 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, as well as wage theft cases, unlawful detainer and foreclosures cases, and other important cases on the courts' dockets, will take longer to decide.

For these reasons, the council regretfully opposes AB 2731 unless amended.

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

Sincerely,

Sent August 4, 2020

Andi Liebenbaum

Attorney

AL/yc-s

cc: Victoria Stackwick, Director of Government Relations, San Diego Association of Governments

Jessica Devencenzi, Deputy Legislative Secretary, Office of the Governor

Martin Hoshino, Administrative Director, Judicial Council of California