



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

April 12, 2019

Hon. Laura Friedman
Chair, Assembly Natural Resources Committee
State Capitol, Room 2137
Sacramento, California 95814

Subject: AB 490 (Salas), as amended April 11, 2019 – Oppose
Hearing: Assembly Natural Resources Committee—April 22, 2019

Dear Assembly Member Friedman:

The Judicial Council regrets to inform you of its continued opposition to AB 490. This bill requires the Judicial Council, on or before September 1, 2020, to amend specified rules of court¹ 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 affordable housing projects. 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.

¹ The rules of court that are referenced in proposed Public Resources Code section 21168.6.12, subdivision (b) [Rules 3.2220 to 3.2227]: do not apply to appeals, even though the language in the statute implies that they do; include rules that apply only to the Sacramento arena project; and are based on statutory language in the Sacramento statute that does not exist here. In order to avoid any unnecessary confusion should the bill move forward, the council respectfully requests the following technical amendments to section 21168.6.12, subdivision (b):

(b) ~~Rules 3.2220 to 3.2237, inclusive, of the California Rules of Court, as may be amended by On or before September 1, 2020,~~ the Judicial Council, shall adopt rules of court that apply to any action or proceeding brought to attack, review, set aside, void, or annul the certification or adoption of an environmental review document for a qualified project or the granting of any approval for the qualified project, to require the action or proceeding, including any potential appeals therefrom, to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court. ~~On or before July 1, 2020, the Judicial Council shall amend the California Rules of Court, as necessary, to implement this subdivision.~~

Hon. Laura Friedman
April 12, 2019
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It is important to note that the Judicial Council's concerns regarding AB 490 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 specific projects covered by the legislation, as those issues are outside the council's purview.

AB 490's requirement that any CEQA lawsuit challenging specified affordable housing 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 AB 490 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 all of the projects covered by AB 490 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 490.

Sincerely,

Mailed April 12, 2019

Cory T. Jaspersen
Director
Judicial Council Governmental Affairs

CJ/DP/jh

cc: Members, Assembly Natural Resources Committee
Hon. Rudy Salas, Member of the Assembly
Ms. Rachel Wagoner, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Lawrence Lingbloom, Chief Consultant, Assembly Natural Resources Committee
Ms. Katie Sperla, Policy Consultant, Assembly 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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Administrative Director

CORY T. JASPERSON
Director, Governmental Affairs

March 26, 2019

Hon. Laura Friedman
Chair, Assembly Natural Resources Committee
State Capitol, Room 2137
Sacramento, California 95814

Subject: AB 490 (Salas), as amended March 14, 2019 – Oppose
Hearing: Assembly Natural Resources Committee—April 8, 2019

Dear Assembly Member Friedman:

The Judicial Council regrets to inform you of its opposition to AB 490. This bill requires the Judicial Council, on or before September 1, 2020, to amend specified rules of court¹ 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 projects located in an infill site that is also a transit priority

¹ The rules of court that are referenced in proposed Public Resources Code section 21168.6.12, subdivision (b) [Rules 3.2220 to 3.2227]: do not apply to appeals, even though the language in the statute implies that they do; include rules that apply only to the Sacramento arena project; and are based on statutory language in the Sacramento statute that does not exist here. In order to avoid any unnecessary confusion should the bill move forward, the council respectfully requests the following technical amendments to section 21168.6.12(b):

(b) ~~Rules 3.2220 to 3.2237, inclusive, of the California Rules of Court, as may be amended by On or before September 1, 2020,~~ the Judicial Council, shall adopt a rule of court that apply applies to any action or proceeding brought to attack, review, set aside, void, or annul the certification or adoption of an environmental review document for a qualified project or the granting of any approval for the qualified project, to require the action or proceeding, including any potential appeals therefrom, to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court. ~~On or before July 1, 2020, the Judicial Council shall amend the California Rules of Court, as necessary, to implement this subdivision.~~

area. 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.

AB 490 also prohibits a court from staying or enjoining the construction or operation of these projects unless the court finds either of the following: (i) the continued construction or operation of the project presents an imminent threat to public health and safety; or (ii) 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 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 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 490 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 specific projects covered by the legislation, as those issues are outside the council's purview.

AB 490's requirement that any CEQA lawsuit challenging specified 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 AB 490 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 all of the projects covered by AB 490 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.

Hon. Laura Friedman

March 26, 2018

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For these reasons, the Judicial Council opposes AB 490.

Sincerely,

Mailed March 26, 2019

Cory T. Jaspersen

Director

Judicial Council Governmental Affairs

DP/jh

cc: Members, Assembly Natural Resources Committee
Hon. Rudy Salas, Member of the Assembly
Ms. Rachel Wagoner, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Lawrence Lingbloom, Chief Consultant, Assembly Natural Resources Committee
Ms. Katie Sperla, Policy Consultant, Assembly Republican Office of Policy
Mr. Martin Hoshino, Administrative Director, Judicial Council of California



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CORY T. JASPERSON
Director, Governmental Affairs

March 18, 2019

Hon. Rudy Salas
Member of the Assembly
State Capitol, Room 4016
Sacramento, California 95814

Subject: AB 490 (Salas), as amended March 14, 2019 - Oppose

Dear Assembly Member Salas:

The Judicial Council regrets to inform you of its opposition to AB 490. This bill requires the Judicial Council, on or before September 1, 2020, to amend specified rules of court¹ 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 projects located in an infill site that is also a transit priority area. It requires these actions or proceedings, including any appeals therefrom, to be resolved, to

¹ The rules of court that are referenced in proposed Public Resources Code section 21168.6.12, subdivision (b) [Rules 3.2220 to 3.2227]: do not apply to appeals, even though the language in the statute implies that they do; include rules that apply only to the Sacramento arena project; and are based on statutory language in the Sacramento statute that does not exist here. In order to avoid any unnecessary confusion should you elect to move forward with the bill, the council respectfully requests the following technical amendments to section 21168.6.12(b):

(b) ~~Rules 3.2220 to 3.2237, inclusive, of the California Rules of Court, as may be amended by On or before September 1, 2020,~~ the Judicial Council, shall adopt a rule of court that apply applies to any action or proceeding brought to attack, review, set aside, void, or annul the certification or adoption of an environmental review document for a qualified project or the granting of any approval for the qualified project, to require the action or proceeding, including any potential appeals therefrom, to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court. ~~On or before July 1, 2020, the Judicial Council shall amend the California Rules of Court, as necessary, to implement this subdivision.~~

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AB 490 also prohibits a court from staying or enjoining the construction or operation of these projects unless the court finds either of the following: (i) the continued construction or operation of the project presents an imminent threat to public health and safety; or (ii) 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 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 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 490 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 specific projects covered by the legislation, as those issues are outside the council's purview.

AB 490's requirement that any CEQA lawsuit challenging specified 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.

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Finally, providing expedited judicial review for all of the projects covered by AB 490 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.

Hon. Rudy Salas
March 18, 2018
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For these reasons, the Judicial Council opposes AB 490.

Sincerely,

Mailed March 19, 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