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April 4, 2018

Hon. Bill Dodd, Chair
Senate Governmental Organization Committee
State Capitol, Room 5064
Sacramento, California 95814

Subject: SB 922 (Nguyen), as amended April 2, 2018 – Oppose
Hearing: Senate Governmental Organization Committee – April 10, 2018

Dear Senator Dodd:

The Judicial Council is opposed to SB 922. 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 an environmental impact report for specified affordable student housing projects. SB 922 requires the actions or proceedings, including any potential appeals therefrom, be resolved, to the extent feasible, within 365 days of the lodging with the court of the certified record of proceedings.

SB 922 also prohibits a court from staying or enjoining the siting, construction, or operation of the affordable student housing 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 SB 922 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 projects covered by the legislation, as those issues are outside the council's purview.

SB 922's requirement that any CEQA lawsuit challenging an affordable student housing project, including any appeals therefrom, be resolved within 365 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 365-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 housing projects covered by SB 922 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 housing projects covered by SB 922 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 922 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 922.

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

Sincerely,

Mailed April 4, 2018

Cory T. Jasperson
Director, Governmental Affairs

CTJ/DP/jh

cc: Hon. Janet Nguyen, Member of the Senate
Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California
Mr. Felipe Lopez, Chief Consultant, Senate Governmental Organization Committee
Mr. Richard Paul, Consultant, Senate Republican Caucus
Mr. Ken Alex, Executive Director, Governor's Office of Planning and Research