



## JUDICIAL COUNCIL OF CALIFORNIA

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April 22, 2021

Hon. Luz M. Rivas, Chair  
Assembly Natural Resources Committee  
State Capitol, Room 2160  
Sacramento, California 95814

Subject: Senate Bill 7 (Atkins), as amended February 18, 2021 – Oppose  
Hearing: Assembly Natural Resources Committee – April 28, 2021

Dear Assembly Member Rivas:

The Judicial Council regrets to inform you of its opposition to SB 7. This bill revives the authority of the Governor, through January 1, 2026, to certify a project pursuant to the Jobs and Economic Improvement Through Environmental Leadership Act of 2021 (Leadership Act). In addition to expressly stating that the Leadership Act shall require judicial review, including any appellate review, to be completed, to the extent feasible, within 270 days, the bill seeks to broaden the reach of the Leadership Act to include housing projects meeting certain conditions as projects eligible for certification.

It is important to note that our concerns regarding SB 7 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 any potential projects that could be covered by the bill, as those issues are outside the council's purview.

The requirement in SB 7 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 "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 potentially hundreds of housing projects, on top of existing CEQA calendar preferences, even

with language that references “to the extent feasible,” is an arbitrary and unrealistically short timeframe for California’s trial courts to address all 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 complex and time-consuming.* Under normal circumstances and assuming the unrealistic context in which no extensions of time are requested or granted for any aspect of a case, CEQA cases take, on average, an estimated six months to get to hearing, much less to a decision. So, even if the court was able to issue its decision within six months (approximately 180 days), that would leave only three months (the remaining 90 days) for proceedings in the court of appeal, which is impracticable.<sup>1</sup> 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 not feasible.
- *Active CEQA cases often include ancillary administrative and non-CEQA judicial causes of action.* Providing expedited judicial review for the projects that may fall under SB 7 is even more unworkable in light of the common occurrence that CEQA cases involve ancillary motions, administrative review, other causes of action, and other civil actions and appeals in the middle of the CEQA action. These actions proceed under administrative (local governmental) and civil procedure (non-CEQA courtroom) timelines, often resulting in temporary stays or delays in the principal CEQA action. In other words, even if CEQA-specific procedures could be limited to 270 days for one or more of the projects, other, non-CEQA procedures related to the same cases that would occur in non-CEQA courtrooms and administrative hearings cannot be concluded in that same timeframe. These ancillary hearings and procedures make the 270-day goal not feasible.
- *The courts are already experiencing significant civil backlogs as a result of the COVID-19 pandemic.* Given the impacts the COVID-19 pandemic has had on the courts, as discussed comprehensively at the February 23, 2021 joint hearing of the Assembly and Senate Judiciary Committees, placing CEQA cases at the front of the line 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 Judicial Council opposes SB 7.

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<sup>1</sup> 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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Should you have any questions or require additional information, please contact Kate Nitta at 916-323-3121.

Sincerely,



Cory T. Jaspersen

Director, Governmental Affairs

CTJ/KN/jh

cc: Members, Assembly Natural Resources Committee  
Hon. Toni Atkins, President pro Tempore, Member of the Senate  
Mr. Lawrence Lingbloom, Chief Consultant, Assembly Natural Resources Committee  
Ms. Jessica Devencenzi, Legislative Affairs Secretary, Office of the Governor  
Mr. Martin Hoshino, Administrative Director, Judicial Council of California