



May 8, 2020

The Honorable Tani Cantil-Sakauye and Councilmembers
 Judicial Council of California
 455 Golden Gate Avenue
 San Francisco, CA 94102-3688

Re: Support for Amending Emergency Rule No. 9 as Provided in SP20-01wa

Dear Honorable Chief Justice Cantil-Sakauye and Members of the Judicial Council:

This letter is submitted on behalf of a broad coalition of trade groups, planning associations, affordable housing providers, business associations, charitable organizations, infill developers, advocacy groups, and non-profit organizations who write to voice our collective support for the Judicial Council’s proposed amendments to Emergency Rule No. 9 identified in SP20-01.

We appreciate the Judicial Council’s leadership and rapid response to the unprecedented events impacting our state and our courts and wholeheartedly endorse its proposed amendments to the emergency rule. Specifically, we agree with and support the Judicial Council’s six internal committees’ recommendation to amend immediately Emergency Rule No. 9 to:

- Eliminate reliance on the Governor declaring the state of emergency is lifted;
- Toll from April 6, 2020, until October 1, 2020, the statute of limitations and repose for civil causes of action that exceed 180 days; and
- Toll from April 6, 2020, until June 15, 2020, the statutes of limitations and repose for civil causes of action that are 180 days or less.

We appreciate the Judicial Council’s recognition that a declaration of a state of emergency is not an appropriate reference point for tolling purposes. States of emergency remain in effect long after initial dangers have ended. Federal relief directly correlated with the ongoing state of emergency can be necessary to aid in a state’s economic recovery even after the immediate dangers of the emergency have subsided. A state of emergency remaining in effect also has other purposes, such as ensuring that anti-price gouging laws can be enforced and providing streamlined unemployment insurance application procedures to help people get relief sooner.¹

States of emergency regularly last for significant periods of time, long past the time of a pressing emergency. For example, the emergencies declared on November 8, 2018 and October 27, 2019 due to wildfires and extreme weather conditions in Ventura County and other counties remain in effect today, long after the fire season ended. On December 23, 2019, Governor Newsom terminated more than 70 ongoing states of emergency that had been declared at various times over the last decade, from January 27, 2011 to November 30, 2018.

In light of the Governor’s announcements to begin lifting the statewide shelter-in-place orders and the fact that many superior courts are already proceeding, or may soon be proceeding, to allow plaintiffs and petitioners to file any valid challenges they have via e-filing, fax-filing, or “drop box” physical filing, setting a date certain for the end to tolling statutes of limitation is reasonable and appropriate.

These amendments are especially important to avoid any unintended impact on housing and other construction projects. As many of us indicated in our prior correspondence, the State of California is suffering from an unprecedented housing crisis that calls for the production of 3.5 million homes to house our state’s population.² Over the course of the past several years, the California State Legislature has enacted dozens of housing laws to streamline the entitlement approvals process, including more than 30 new bills in 2019 alone. The new housing requires

¹ See, e.g., Governor’s Executive Order N-22-19 (2019) (relying on Gov. Code, § 8571’s emergency authority); Governor’s Proclamation of State of Emergency (Oct. 27, 2019), <https://www.gov.ca.gov/wp-content/uploads/2019/10/2019-17-Fire-weather-conditions-State-of-Emergency-Signed-10.27.19.pdf>.

² See 2019 Inaugural address by Gov. Newsom, “A California for All,” <https://www.gov.ca.gov/2019/01/07/newsom-inaugural-address/>; see also McKinsey Global Institute. October 2016. “A Toolkit to Close California’s Housing Gap: 3.5 Million Homes by 2025,” <https://www.mckinsey.com/featured-insights/urbanization/closing-californias-housing-gap>.

expanded and modernized infrastructure and public service facilities such as fire stations and schools.

In addition, federal, state and local health officers have deemed construction activity, (inclusive of housing, commercial, and mixed-use construction) as an essential activity.³

Further, construction of housing and infrastructure has and will again be a critical component of the economic recovery, employing hundreds of thousands of workers statewide.⁴

Recognizing the importance of quickly identifying litigation challenges to agency approvals of construction projects (and agency plans and programs guiding such projects), the Legislature enacted short statutes of limitations (30-180 days) under laws like the California Environmental Quality Act (“CEQA”), Public Resources Code sections, 21000 *et seq.*, for litigation challenges to agency approvals of projects.

Unless amended as proposed, Emergency Rule No. 9 will conflict with the Legislature’s intent by indefinitely extending the statute of limitations for filing lawsuits challenging agency approvals of housing and other construction projects until the Governor entirely lifts the COVID-19 state of emergency, creating substantial litigation risk. Until this risk period has expired, the construction funding needed to build these approved projects – funding from agencies, lenders and foundations – is withheld, and construction cannot start or be completed.

Moreover, as the Judicial Council recognizes, the claims raised in these lawsuits are adjudicated based on the content of the administrative record of the agency, and do not require fact-gathering, evidentiary proceedings, or pre-trial motion practice. The first several months after such lawsuits are filed do not require court time and include, for example, assembling the administrative record and conducting a settlement conference. Before the hearing on the merits, court supervision is typically limited to resolving record disputes and holding short case management conferences to set briefing schedules and page limits. The hearing on the merits is set at the court’s discretion. Requiring the filing of such claims is both appropriate and consistent with the Judicial Council’s goals of promoting judicial economy and equitable access to justice.

To the extent a petitioner is located in a county where no suits can be filed, any dates the courts do not accept filings are already considered holidays. It would be fundamentally inequitable to allow very short land use limitations periods to be extended indefinitely, even where there is no barrier to plaintiffs or petitioners filing any valid challenges they may have.

³ See, e.g., California State Public Health Officer. April 28, 2020. “Essential Critical Infrastructure Workers” (including construction workers in multiple economic sectors ranging from utilities to transportation, residential to commercial, and energy to manufacturing) <https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>

⁴See, e.g., Greater Sacramento Economic Council, “Construction Industry to lead economic Recovery in Greater Sacramento,” <https://www.selectsacramento.com/de/construction-industry-to-lead-economic-recovery-in-greater-sacramento/>.

The narrow revisions recommended by the Judicial Council also eliminate any prejudice to potential petitioners and plaintiffs by providing more than a month of notice to allow sufficient time to prepare and file claims.

We appreciate the Judicial Council's time and attention to this important matter and respectfully request that the Judicial Council revise Emergency Rule No. 9 in the manner proposed in SP20-01 for the protection and benefit of all Californians.

Signed,



Adam J. Regele, Policy Advocate
California Chamber of Commerce

Adobe Communities
Bay Area Housing Advocacy Coalition
BIA Bay Area
BILD
Bridge Housing
Building Industry Association of San Diego
Building Industry Association of Southern California
Building Industry Legal Defense Foundation
Building Owners and Managers Association, CA
Burbank Housing
California Apartment Association
California Association of Realtors
California Association of Winegrape Growers
California Building Industry Association
California Business Properties Association
California Construction and Industrial Materials Association (CalCIMA)
California Housing Consortium
California Renters Legal Association and Education Fund (CARLA)
California Retailers Association
California YIMBY
Carlsbad Chamber of Commerce
Coalition for Responsible Community Development
Community Corporation of Santa Monica
EAH Housing
Eden Housing
Excelerate Housing Group
Greater Coachella Valley Chamber of Commerce
Greater Conejo Valley Chamber of Commerce
Habitat for Humanity
Hollywood Community Housing Corporation
International Council of Shopping Centers
LINC Housing
Little Tokyo Service Center
Many Mansions
Menorah Housing Project

Mercy Housing
NAIOP of California
Nonprofit Housing Association of Northern California (NPH)
PATH Ventures
People for Housing Orange County
San Diego Regional Chamber of Commerce
San Francisco Bay Area Planning and Urban Research Association (SPUR)
Santa Ana Chamber of Commerce
Santa Maria Valley Chamber of Commerce
Silicon Valley at Home
Simi Valley Chamber of Commerce
Southern California Affordable Nonprofit Housing Association (SCANPH)
Southwest California Legislative Council
The Silicon Valley Organization
TMG Partners
Valley Industry & Commerce Association
West Coast Lumber & Building Material Association
West Hollywood Community Housing Corporation
Western Community Housing
YIMBY Law