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April 13, 2020

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

Re: Request to Amend Emergency Rule No. 9 Announced April 6, 2020

Dear Honorable Chief Justice Cantil-Sakauye:

I am writing on behalf of the League of California Cities (League), the California State Association of Counties (CSAC), and the Rural County Representatives of California (RCRC) to respectfully urge the California Judicial Council to make modifications to the recently-adopted Emergency Rule No. 9, which imposes an across-the-board extension of the statutes of limitations for all civil actions until 90 days after the Governor lifts the existing COVID-19 Emergency Order. These three entities of course recognize the importance of all of the emergency rules adopted in recent days, which were necessary to avoid overwhelming our State's judicial system during a time of crisis. And they also understand the Judicial Council's belief in the need for haste in adopting Emergency Rule 9 and other such rules. Even so, agency representatives who participated by phone in the Judicial Council's recent meeting on April 6, 2020, understood the Judicial Council to be willing to entertain reasonable changes to the quickly-approved rules. The League, CSAC, and RCRC are therefore writing to propose changes to Emergency Rule 9 that they believe are important to the State's future economic health and to local governments' ability to pursue compelling social policy objectives such as the creation of more affordable housing, homeless shelters, and transitional housing. These three entities are aware of the proposed language already submitted by the California Business Industry Association and support that language.

The League of California Cities is an association of 479 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League monitors legal, legislative, and administrative proceedings and developments of concern to municipalities, and identifies those proceedings or developments that have statewide significance to the League's

mission. The League has reviewed the Emergency Rule referenced herein and has identified the Rule as having such significance.

The California State Association of Counties (CSAC) is a non-profit corporation, whose members are the 58 California counties. CSAC's mission is to serve California counties by, among other things, effectively advocating and partnering with state and federal governments for appropriate policies, laws and funding. CSAC has reviewed the Emergency Rules, and make the request herein to support the policy goals of counties and the state.

The Rural County Representatives of California (RCRC) is a thirty-seven member county service organization that champions policies on behalf of California's rural counties. Founded in 1972, RCRC works with its membership to advocate on behalf of rural issues at the state and federal levels. The core of RCRC's mission is to improve the ability of small, rural California county government to provide services by reducing the burden of state and federal mandates, and promoting a greater understanding among policy makers about the unique challenges that face California's small population counties. The RCRC Board of Directors is comprised of one member of the Board of Supervisors from each of its thirty-seven member counties.

The League, CSAC, and RCRC propose an amendment to Emergency Rule 9, because the existing Emergency Rule 9 extends the statutes of limitations for land use claims more than is needed under the circumstances. These entities are especially focused on the claims brought pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) and the California Coastal Act (Pub. Resources Code, § 30000 et seq.). The typical CEQA limitations period is 30 days after the lead agency posts a notice of determination. (See Pub. Resources Code, § 21167, subds. (b), (c), & (e).). The new emergency rule *triples* the limitations period after the emergency order is lifted. Likewise, the limitations period for Coastal Act claims and validating actions and for is 60 days. (Pub. Resources Code, § 30802; Code Civ. Proc., § 860), so the new rule extends these periods by half as well. The League, CSAC, and RCRC understand the need to toll these particular statutes of limitations, along with other, much longer statutes of limitations, such as, for example, the three-year statute of limitations for claims arising from injuries to personal property under Code of Civil Procedure section 338, subdivisions (b) and (c). But we think that special policy considerations arise in connection with land use statutes of limitations.

An extra 90 days on top of a three-year statute of limitations is a comparatively modest addition of time compared with a doubling or tripling of an applicable limitations period. Two primary bases for our proposal are the ongoing housing and homelessness crises facing California. In enacting what it called the Housing Crisis Act of 2019, the Legislature adopted the following findings, among many others:

- (1) California is experiencing a housing supply crisis, with housing demand far outstripping supply. In 2018, California ranked 49th out of the 50 states in housing units per capita.

(2) Consequently, existing housing in this state, especially in its largest cities, has become very expensive. Seven of the 10 most expensive real estate markets in the United States are in California. In San Francisco, the median home price is \$1.6 million.

(3) California is also experiencing rapid year-over-year rent growth with three cities in the state having had overall rent growth of 10 percent or more year-over-year, and of the 50 United States cities with the highest United States rents, 33 are cities in California.

(4) California needs an estimated 180,000 additional homes annually to keep up with population growth, and the Governor has called for 3.5 million new homes to be built over the next 7 years.

(5) The housing crisis has particularly exacerbated the need for affordable homes at prices below market rates.

(6) The housing crisis harms families across California and has resulted in all of the following:

(A) Increased poverty and homelessness, especially first-time homelessness.

(B) Forced lower income residents into crowded and unsafe housing in urban areas.

(C) Forced families into lower cost new housing in greenfields at the urban-rural interface with longer commute times and a higher exposure to fire hazard.

(D) Forced public employees, health care providers, teachers, and others, including critical safety personnel, into more affordable housing farther from the communities they serve, which will exacerbate future disaster response challenges in high-cost, high-congestion areas and increase risk to life.

(E) Driven families out of the state or into communities away from good schools and services, making the ZIP Code where one grew up the largest determinate of later access to opportunities and social mobility, disrupting family life, and increasing health problems due to long commutes that may exceed three hours per day.

(7) The housing crisis has been exacerbated by the additional loss of units due to wildfires in 2017 and 2018, which impacts all regions of the state. The Carr Fire in 2017 alone burned over 1,000 homes, and over 50,000 people have been displaced by the Camp Fire and the Woolsey Fire in 2018. This temporary and permanent displacement has placed additional demand on the housing market and has resulted in fewer housing units available for rent by low-income individuals.

(8) Individuals who lose their housing due to fire or the sale of the property cannot find affordable homes or rental units and are pushed into cars and tents.

(Stats.2019, c. 654, § 2.)

The Governor is calling upon all cities and counties to step up and face these crises by approving more housing units on a very considerable scale. The cities and counties represented by the League, CSAC, and RCRC are attempting to do so. They are well acquainted, though, with the economic and financial realities facing housing developers in California. In general, the lending institutions backing housing projects are extremely reluctant to free up money for spending on construction until it is clear that a particular project will not be challenged under CEQA or until any CEQA litigation over the project has ended. Up until recently, this hesitancy amongst bankers has translated into a de facto waiting period after project approval of either 30 days or some period of years in which litigation occurs. With Emergency Rule 9 in place in its current form, any applicants who got their approvals after the first week of March 2020 may have to wait until several months from now to get a green light from their lenders. Since no one at present knows when the Governor will lift the current emergency declaration, all that local governments and project proponents know at present is that the green light will not come until 90 days plus thereafter. If the declaration is lifted on July 1st, for example, this would mean that the period of uncertainty would persist until at least September 29th, near the normal end of the annual “building season” (which traditionally has ended in mid-October). Under the modifications to Emergency Rule 9 that the League, CSAC, and RCRC are proposing, the green light would come as early as July 31st. During these extra two months of August and September, with bank loans flowing, project proponents could get to work moving their projects forward. For projects that do not require long lead times for engineering work or additional layers of planning approvals, such work might take the form of construction, including the construction of affordable housing, homeless shelters, and other needed facilities and projects.

Based on all of the foregoing, the League, CSAC, and RCRC respectfully propose the following modifications to Emergency Rule 9, which has already been recommended to the Judicial Council by the California Building Industry Association:

Notwithstanding any other law, the statutes of limitation for civil causes of action are tolled from April 6, 2020, until the shorter of the following: (1) 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted; or (2) the expiration of the full normal statute of limitations for a particular claim (e.g., 30 or 35 days for most claims arising under the California Environmental Quality Act or 60-days for validation actions), with the full limitations period recommencing with the lifting of the state of emergency.

Under this language, a would-be petitioner contemplating a CEQA or the Coastal Act lawsuit would get the full benefit of the operative statute of limitations, which would start from scratch at the time the Governor lifts the emergency declaration. The League, CSAC, and RCRC considered recommending a proposal by which a partly-expired limitations period would commence where it left off on April 6, 2020, but they ultimately concluded that such a proposal might be too harsh. Under such an approach, a would-be petitioner for whom 25 of the 30 days

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of a 30-day limitations period had run on April 6th would have only five days in which to file litigation after the declaration is lifted. Under the proposed language, in contrast, such would-be petitioner would get the benefit of a full new 30-day clock when the emergency declaration is lifted.

The League, CSAC, and RCRC believe that this proposal therefore strikes a reasonable balance of the competing policy considerations facing the Judicial Council in these challenging times. They are hopeful that the Council will consider their suggested language.

Sincerely,



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