



Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 23-186

For business meeting on November 17, 2023

Title

CEQA Actions: New Projects and Fees for Expedited Review

Agenda Item Type

Action Required

Effective Date

December 31, 2023

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rules 3.2200, 3.2220, 3.2221, 3.2223, 3.2240, 8.700, 8.702, 8.703, and 8.705

Date of Report

October 26, 2023

Recommended by

Appellate Advisory Committee
Hon. Louis Mauro, Chair

Contact

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Civil and Small Claims Advisory Committee
Hon. Tamara L. Wood, Chair

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Executive Summary

The Appellate Advisory Committee and the Civil and Small Claims Advisory Committee recommend amending California Rules of Court for the expedited resolution of actions and proceedings brought under the California Environmental Quality Act, to implement new legislation requiring inclusion of “infrastructure projects” for streamlined review as well as the requirement that applicants of certain infrastructure projects pay the costs of the trial and appellate courts in adjudicating challenges to those projects.

Recommendation

The Appellate Advisory Committee and the Civil and Small Claims Advisory Committee recommend that the Judicial Council, effective December 31, 2023, amend rules 3.2200, 3.2220, 3.2221, 3.2223, 3.2240 8.700, 8.702, 8.703 and 8.705 to add “infrastructure projects” as a “streamlined CEQA project” and to require the payment of trial court and appellate court costs for review of challenges to those projects as applicable.

The text of the amended rules is attached at pages 4–9.

Relevant Previous Council Action

Since 2011, the Legislature has enacted numerous bills providing expedited judicial review for legal challenges brought under the California Environmental Quality Act (CEQA) for specified projects. For certain projects subject to streamlined review, the Legislature has required project applicants to pay all or some of the costs of the trial court and Court of Appeal in hearing and deciding a CEQA case challenging the project. To implement these statutes, the council adopted and, as necessary, amended, rules 3.2200–3.2240 and 8.700–8.705 to set out certain pleading and service requirements and incentives to help streamline judicial review of challenged projects specified in various statutes.

Most recently, in 2021, the Legislature enacted two bills adding additional projects to receive expedited CEQA review: Senate Bill 7 (Stats. 2021, ch. 19) (environmental leadership development projects) and Senate Bill 44 (Stats. 2021, ch. 633) (environmental leadership transit projects). The council amended the rules governing expedited CEQA review to include these two new projects, effective January 1, 2023. In addition, to implement the statutory requirement that applicants pay the trial court and appellate costs associated with expedited adjudication of CEQA challenges of these projects, the council amended rules 3.2240 and 8.705 to set the required trial court and Court of Appeal fees at \$180,000 and \$215,000, respectively.

Analysis/Rationale

On July 10, 2023, the Legislature enacted Senate Bill 149 (Stats. 2023, ch. 60)¹ to add “infrastructure projects” to the list of projects to receive expedited CEQA review.² The statute defines “infrastructure project” as an “energy infrastructure project,” “semiconductor or microelectronic project,” “transportation-related project,” or “water-related project.”³ Where the project is an energy infrastructure project, semiconductor or microelectronic project, or water-related project, the project applicant, if the applicant is not the lead agency, must agree to pay the costs of the trial court and court of appeal in adjudicating a challenge to a lead agency’s action as a condition to the project being certified.⁴

To implement the statute, the proposed rule amendments add statutory citations and the term “infrastructure project,” along with the subsidiary terms “energy infrastructure project,”

¹ SB 149 may be viewed at https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB149.

² Pub. Resources Code, §§ 21189.80–21189.91.

³ *Id.*, § 21189.81(e).

⁴ *Id.*, § 21189.82(a)(1)(B)(i), (2)(B)(i), and (4)(B)(i).

“semiconductor or microelectronic project,” “transportation-related project,” and “water-related project,” to the existing streamlined CEQA rules.⁵

Policy implications

The committees recommend the amended rules to implement legislation and to ensure that the rules conform to law. The policy choices have been made by the Legislature.

Comments

This proposal was not circulated for public comment because it contains minor noncontroversial revisions to implement changes in law, and those changes are therefore within the Judicial Council’s purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

Alternatives considered

Because the new CEQA requirements and fees are mandated by the Legislature, the committees did not consider the alternative of no rules.

Fiscal and Operational Impacts

Implementing the new legislation requiring expedited review of CEQA challenges to new project types will certainly generate costs and operational impacts for both the trial court and the Court of Appeal in which the proceedings governed by these statutes are held. In particular, the legislation requires that courts prioritize these cases and devote considerable concentrated resources to resolve them, to the extent feasible, within the prescribed time. The primary operational impact is expected to be the additional time that other cases will have to wait while these cases move to the front of the line. The committees do not anticipate that this rule proposal will result in additional costs to other courts.

Attachments and Links

1. Cal. Rules of Court, rules 3.2200, 3.2220, 3.2221, 3.2223, 3.2240, 8.700, 8.702, 8.703, and 8.705, at pages 4–9
2. Link A: Senate Bill 149,
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB149

⁵ Because the statutory regime refers to “infrastructure projects” collectively in various sections, the committees recommend including the term “infrastructure project” in the rules’ definition of “streamlined CEQA project.” However, the more specific terms “energy infrastructure project,” “semiconductor or microelectronic project,” and “water-related project” are used in the proposed rules regarding fees, 3.2223(3), 3.2240, 8.702(b)(2)(C), 8.703(b)(2)(C), and rule 8.705, because, under the statute, the applicants for these projects, but not “transportation-related projects,” must pay the costs of the trial court and Court of Appeal in hearing and deciding a case challenging the project.

Rules 3.2200, 3.2220, 3.2221, 3.2223, 3.2240, 8.700, 8.702, 8.703, and 8.705 of the California Rules of Court are amended, effective December 31, 2023, to read:

Rule 3.2200. Application

Except as otherwise provided in chapter 2 of the rules in this division, which govern actions under Public Resources Code sections 21168.6.6–21168.6.9, 21178–21189.3, 21189.50–21189.57, ~~and~~ 21189.70–21189.70.10, and 21189.80–21189.91, the rules in this chapter apply to all actions brought under the California Environmental Quality Act (CEQA) as stated in division 13 of the Public Resources Code.

Rule 3.2220. Definitions and application

(a) Definitions

As used in this chapter:

(1) A “streamlined CEQA project” means any project within the definitions stated in (2) through ~~(8)~~(9).

~~(2)–(8)~~ ***

(9) An “infrastructure project” means an “energy infrastructure project,” a “semiconductor or microelectronic project,” a “transportation-related project,” or a “water-related project” as defined in Public Resources Code section 21189.81 and certified by the Governor under Public Resources Code sections 21189.82 and 21189.83.

(b) Proceedings governed

The rules in this chapter govern actions or proceedings brought to attack, review, set aside, void, or annul the certification of the environmental impact report or the grant of any project approvals for a streamlined CEQA project. Except as otherwise provided in Public Resources Code sections 21168.6.6–21168.6.9, 21178–21189.3, 21189.50–21189.57, ~~and~~ 21189.70–21189.70.10, and 21189.80–21189.91 and these rules, the provisions of the Public Resources Code and the CEQA Guidelines adopted by the Natural Resources Agency (Cal. Code Regs., tit. 14, § 15000 et seq.) governing judicial actions or proceedings to attack, review, set aside, void, or annul acts or decisions of a public agency on the grounds of noncompliance with the California Environmental Quality Act and the rules of court generally apply in proceedings governed by this rule.

(c) ***

1
2
3 **Rule 3.2221. Time**
4

5 (a) ***
6

7 (b) **Extensions of time by parties**
8

9 If the parties stipulate to extend the time for performing any acts in actions
10 governed by these rules, they are deemed to have agreed that the statutorily
11 prescribed time for resolving the action may be extended by the stipulated number
12 of days of the extension, and to that extent to have waived any objection to
13 noncompliance with the deadlines for completing review stated in Public Resources
14 Code sections 21168.6.6–21168.6.9, 21185, 21189.51, ~~and~~ 21189.70.3, and
15 21189.85. Any such stipulation must be approved by the court.
16

17 (c) **Sanctions for failure to comply with rules**
18

19 If a party fails to comply with any time requirements provided in these rules or
20 ordered by the court, the court may issue an order to show cause as to why one of
21 the following sanctions should not be imposed:
22

23 (1)–(2) *** _____
24

25 (3) If the failure to comply is by respondent or a real party in interest, removal of
26 the action from the expedited procedures provided under Public Resources
27 Code sections 21168.6.6–21168.6.9, 21185, 21189.51, ~~and~~ 21189.70.3, and
28 21189.85, and these rules; or
29

30 (4) ***
31
32

33 **Rule 3.2223. Petition**
34

35 In addition to any other applicable requirements, the petition must:
36

37 (1) ***
38

39 (2) State one of the following:
40

41 (A) The proponent of the project at issue provided notice to the lead agency
42 that it was proceeding under Public Resources Code section 21168.6.6,

21168.6.7, 21168.6.8, or 21168.6.9 (whichever is applicable) and is subject to this rule; or

(B) The proponent of the project at issue provided notice to the lead agency that it was proceeding under Public Resources Code sections 21189.80–21189.91 and is subject to this rule; or

~~(B)~~(C) ***

~~(C)~~(D) ***

~~(D)~~(E) ***

- (3) If an environmental leadership development, Oakland ballpark, ~~or~~ Inglewood arena project, energy infrastructure project, semiconductor or microelectronic project, or water-related project, provide notice that the person or entity that applied for certification of the project as such a project must make the payments required by rule 3.2240 and, if the matter goes to the Court of Appeal, the payments required by rule 8.705;

~~(4)~~–(5) ***

Rule 3.2240. Trial court costs in certain streamlined CEQA projects

In fulfillment of the provisions in Public Resources Code sections 21168.6.7, 21168.6.8, 21168.6.9, ~~and~~ 21183, and 21189.82 regarding payment of trial court costs with respect to cases concerning environmental leadership development, environmental leadership transit, Oakland ballpark, ~~and~~ Inglewood arena, energy infrastructure, semiconductor or microelectronic, or water-related projects:

- (1) Within 10 days after service of the petition or complaint in a case concerning an environmental leadership development project, the person or entity that applied for certification of the project as an environmental leadership development project must pay a fee of \$180,000 to the court.
- (2) Within 10 days after service of the petition or complaint in a case concerning an energy infrastructure project, a semiconductor or microelectronic project, or a water-related project, the project applicant, if the applicant is not the lead agency, must pay a fee of \$180,000 to the court.

~~(2)~~(3) ***

1 ~~(3)~~(4) ***

2
3 ~~(4)~~(5) ***

4
5 ~~(5)~~(6) ***

6
7 ~~(6)~~(7) ***

8
9
10 **Rule 8.700. Definitions and application**

11
12 **(a) Definitions**

13
14 As used in this chapter:

15
16 (1) A “streamlined CEQA project” means any project within the definitions
17 stated in (2) through ~~(8)~~(9).

18
19 ~~(2)–(8)~~ ***

20
21 (9) An “infrastructure project” means an “energy infrastructure project,” a
22 “semiconductor or microelectronic project,” a “transportation-related
23 project,” or a “water-related project” as defined in Public Resources Code
24 section 21189.81 and certified by the Governor under Public Resources Code
25 sections 21189.82 and 21189.83

26
27 **(b)** ***

28
29
30 **Rule 8.702. Appeals**

31
32 **(a)** ***

33
34 **(b) Notice of appeal**

35
36 (1) ***

37
38 (2) *Contents of notice of appeal*

39
40 The notice of appeal must:

41
42 (A)–(B) ***

1 (C) If the judgment or order being appealed pertains to an environmental
2 leadership development project, an Oakland ballpark project, ~~or~~ an
3 Inglewood arena project, an energy infrastructure project, a
4 semiconductor or microelectronic project, or a water-related project,
5 provide notice that the person or entity that applied for certification or
6 approval of the project as such a project must make the payments
7 required by rule 8.705; and
8

9 (D) ***

10
11 (c)–(e) ***

12
13 (f) **Briefing**

14
15 (1)–(3) ***

16
17 (4) *Extensions of time to file briefs*

18
19 If the parties stipulate to extend the time to file a brief under rule 8.212(b),
20 they are deemed to have agreed that the statutorily prescribed time for
21 resolving the action may be extended by the stipulated number of days of the
22 extension for filing the brief and, to that extent, to have waived any objection
23 to noncompliance with the deadlines for completing review stated in Public
24 Resources Code sections 21168.6.6–21168.6.9, 21185, 21189.51, ~~and~~
25 21189.70.3, and 21189.85 for the duration of the stipulated extension.
26

27 (5) ***

28
29 (g) ***

30
31
32 **Rule 8.703. Writ proceedings**

33
34 (a) ***

35
36 (b) **Petition**

37
38 (1) ***

39
40 (2) *Contents of petition*

41
42 In addition to any other applicable requirements, the petition must:
43

1 (A)–(B) ***

2
3 (C) If the judgment or order pertains to an environmental leadership
4 development project, an Oakland ballpark project, ~~or~~ an Inglewood
5 arena project, an energy infrastructure project, a semiconductor or
6 microelectronic project, or a water-related project, provide notice that
7 the person or entity that applied for certification of the project as such a
8 project must make the payments required by rule 8.705; and
9

10 (D) ***
11
12

13 **Rule 8.705. Court of Appeal costs in certain streamlined CEQA projects**
14

15 In fulfillment of the provisions in Public Resources Code sections 21168.6.7, 21168.6.8,
16 21168.6.9, ~~and~~ 21183, and 21189.82 regarding payment of the Court of Appeal's costs
17 with respect to cases concerning environmental leadership development, environmental
18 leadership transit, Oakland ballpark, ~~and~~ Inglewood arena, energy infrastructure,
19 semiconductor or microelectronic, or water-related projects:
20

21 (1) Within 10 days after service of the notice of appeal or petition in a case concerning
22 an environmental leadership development project, the person or entity that applied
23 for certification of the project as an environmental leadership development project
24 must pay a fee of \$215,000 to the Court of Appeal.
25

26 (2) Within 10 days after service of the petition or complaint in a case concerning an
27 energy infrastructure project, a semiconductor or microelectronic project, or a
28 water-related project, the project applicant, if the applicant is not the lead agency,
29 must pay a fee of \$215,000 to the court.
30

31 ~~(2)~~(3) ***
32

33 ~~(3)~~(4) ***
34

35 ~~(4)~~(5) ***
36

37 ~~(5)~~(6) ***
38

39 ~~(6)~~(7) ***