



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

*Item No.: 22-071*

For business meeting on: March 11, 2022

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**Title**

CEQA Actions: New Projects and Fees for Expedited Review

**Agenda Item Type**

Action Required

**Effective Date**

March 11, 2022

**Rules, Forms, Standards, or Statutes Affected**

Adopt Cal. Rules of Court, rule 3.2240; amend rules 3.2200, 3.2220, 3.2221, 3.2222, 3.2223, 8.700, 8.702, 8.703, and 8.705

**Date of Report**

March 2, 2022

**Recommended by**

Appellate Advisory Committee  
Hon. Louis R. Mauro, Chair  
Civil and Small Claims Advisory Committee  
Hon. Tamara L. Wood, Chair

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### Executive Summary

As mandated by the Legislature, the Judicial Council previously adopted rules and established procedures to implement a statutory scheme for the expedited resolution of actions and proceedings brought under the California Environmental Quality Act (CEQA) challenging certain projects that qualified for such streamlined procedures. The Appellate Advisory Committee and the Civil and Small Claims Advisory Committee recommend amending several rules to implement recent legislation requiring inclusion of additional projects for streamlined review. The committees also recommend the adoption of a new rule and the amendment of an existing rule to implement statutory provisions requiring that, for two projects, the council, by rule of court, establish fees to be paid by project applicants to the courts for the additional costs of streamlined CEQA review.

### Recommendation

The Appellate Advisory Committee and the Civil and Small Claims Advisory Committee recommend that the Judicial Council, effective March 11, 2022:

1. Adopt rule 3.2240 of the California Rules of Court to implement statutory provisions requiring that project applicants pay trial court costs in cases concerning certain streamlined CEQA projects and to provide that costs paid under the rule are not recoverable.
2. Amend rules 3.2200, 3.2220, 3.2222, 3.2223, 8.700, 8.702, 8.703, and 8.705 to add and define the new term “streamlined CEQA project,” and add provisions regarding new projects that qualify for expedited procedures.
3. Amend rules 3.2221 and 8.702 to remove references to a 270-day time limit for expedited CEQA review, and replace them with general references to the “statutorily prescribed time.”
4. Amend rule 8.705 to implement statutory provisions requiring that project applicants pay appellate court costs in cases concerning certain streamlined CEQA projects, and to provide that costs paid under the rule are not recoverable.
5. Amend the titles of chapter 2 of division 22 of title 3, and chapter 1 of division 3 of title 8 of the California Rules of Court to refer to “streamlined CEQA projects” rather than listing the statutes that provide for expedited procedures.

The text of the amended rules is attached at pages 12–19.

### **Relevant Previous Council Action**

In 2011, the Legislature enacted Assembly Bill 900 (Stats. 2011, ch. 354), creating an expedited judicial review procedure for CEQA cases relating to “environmental leadership projects.” AB 900 required that challenges to such projects be brought directly to the Court of Appeal and that project applicants seeking certification of a project agree to pay the costs of the Court of Appeal in an amount determined by Judicial Council rule. (Pub. Resources Code, §§ 21183(f), 21185.)<sup>1</sup> To implement AB 900, the council adopted California Rules of Court, rule 8.497.<sup>2</sup> Subsequently, the statutory provision requiring that a petition for writ relief be filed only in the Court of Appeal was ruled unconstitutional by the Superior Court of Alameda County; this ruling was not challenged on appeal.

In 2013, the Legislature again addressed expedited CEQA review by the courts in Senate Bill 743 (Stats. 2013, ch. 386). SB 743 eliminated the provision requiring that a CEQA challenge to a leadership project be brought directly in the Court of Appeal and instead required the Judicial Council to adopt rules requiring that actions or proceedings, including any appeals, be resolved within 270 days of certification of the record of proceedings. (Sen. Bill 743, § 11; amending Pub. Resources Code, § 21185.) The Legislature did not identify specific time frames for resolution in the trial court or the Court of Appeal, specifying only a total period of 270 days for completion of the proceedings. (§§ 21185, 21168.6.6.) SB 743 also provided an expedited review process for

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<sup>1</sup> All further statutory references are to the Public Resources Code unless otherwise noted.

<sup>2</sup> All further rule references are to the California Rules of Court.

projects relating to a new basketball arena and surrounding sports and entertainment complex planned for Sacramento. (Sen. Bill 743, § 7; adding § 21168.6.6.)<sup>3</sup>

In 2014, the Judicial Council adopted rules 3.2220–3.2231 and 8.700–8.705<sup>4</sup> to implement SB 743.<sup>5</sup> In developing those rules, the committees determined, among other things, that there was a distinction made in the Legislature’s delegation of authority to the council with respect to procedures it could adopt for the Sacramento arena cases versus the environmental leadership cases. Specifically, SB 743 provided that for the Sacramento arena cases the expedited procedures to be established by the Judicial Council will apply “[n]otwithstanding any other law.” (§ 21168.6.6(c).) There was no similar provision in the statutes regarding environmental leadership cases. (§ 21185.)

One particular challenge in meeting the 270-day time period for completing review of these cases in the courts was the time for service of a petition. The Public Resources Code provides that a party may take up to 10 business days after filing its petition to serve the respondent public agency and another 20 business days after that to serve any real party in interest. (§§ 21167.6(a), 21167.6.5(a).) Because SB 743 authorized rules of court in Sacramento arena cases “[n]otwithstanding any other law,” the council adopted rules mandating that service on all named parties be completed within three court days, rather than over a two- to four-week period. (Rule 3.2236.) The service rule for environmental leadership cases included an incentive for earlier service rather than a mandate. (See rule 3.2222(d).)

In 2015, Senate Bill 836 added provisions similar to those enacted by SB 743, requiring that the Judicial Council adopt rules to apply the expedited review procedures for resolution of CEQA challenges to “capitol building annex projects.” SB 836 required review within 270 days from the date of certification of the administrative record. (§ 21189.51.) Effective July 2016, the council amended the rules to include capitol building annex projects.

In an effort to avoid constitutional concerns regarding the enactments, all of the legislation included language to the effect that the expedited time frames are “to the extent feasible.”

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<sup>3</sup> SB 743 retained the requirement that the project applicant in environmental leadership cases pay for Court of Appeal costs, and did not add a similar provision in the Sacramento arena cases or provide for payment of trial court costs in either category.

<sup>4</sup> The existing rule providing for payment of costs to the Court of Appeal was at that time renumbered as rule 8.705.

<sup>5</sup> The 2014 report to the Judicial Council is available at [www.courts.ca.gov/documents/jc-20140425-itemM.pdf](http://www.courts.ca.gov/documents/jc-20140425-itemM.pdf).

## Analysis/Rationale

### New projects eligible for expedited review

In four recent bills,<sup>6</sup> the Legislature expanded the projects for which streamlined administrative approval and CEQA expedited review are available:

- Assembly Bill 734 (Stats. 2018, ch. 959)<sup>7</sup> (Link A) added the “Oakland Sports and Mixed-Use Project,” comprising projects developed by the Oakland Athletics in a certain area in Oakland, including a baseball park and adjacent residential, retail, commercial, cultural, entertainment, and recreational uses (Oakland ballpark project). (See § 21168.6.7.)
- Assembly Bill 987 (Stats. 2018, ch. 961)<sup>8</sup> (Link B) added projects located in Inglewood, California, comprising an NBA arena plus related parking and access infrastructure; office space; a sports medicine clinic; retail, restaurant, and community spaces; and a hotel (Inglewood arena project). (See § 21168.6.8.)
- Assembly Bill 1826 (Stats. 2018, ch. 40)<sup>9</sup> (Link C) expanded the statutes providing expedited review of the capitol building annex project to include work related to that project, such as parking or visitor facilities, as well as a new state office building close to the capitol (expanded capitol annex project). (See §§ 21189.50–21189.53 and Gov. Code, § 9125.)
- Assembly Bill 2731 (Stats. 2020, ch. 291)<sup>10</sup> (Link D) added transit-oriented development projects related to the redevelopment of Old Town Center in San Diego (Old Town Center project). (See §§ 21189.70 et seq.)

The amended rules implement the new legislation by adding these projects to the list of projects to which the existing rules for expedited CEQA review apply. The rules also include new fees

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<sup>6</sup> An invitation to comment on proposed rule amendments to implement two more statutes will be circulated in spring 2022. Senate Bill 7 (Stats. 2021, ch. 19) reenacts with certain changes the Jobs and Economic Improvement Through Environmental Leadership Act of 2011, which was repealed by its own terms January 1, 2021. It provides for certification of certain large projects that would replace old facilities with new ones that reduce pollution and generate jobs, including residential, retail, commercial, sports, cultural, entertainment, and recreational-use projects (environmental leadership projects). (See §§ 21178 et seq.) Senate Bill 44 (Stats. 2021, ch. 633) adds sustainable public transit projects in Los Angeles in preparation for the 2028 Summer Olympic and Paralympic Games (environmental leadership transit projects). (See § 21168.6.9.)

<sup>7</sup> AB 734 may be viewed at [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB734](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB734).

<sup>8</sup> AB 987 may be viewed at [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB987](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB987).

<sup>9</sup> AB 1826 may be viewed at [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB1826](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1826).

<sup>10</sup> AB 2731 may be viewed at [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200AB2731](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB2731).

for expedited review, in both the trial and appellate courts, of challenges to Oakland ballpark and Inglewood arena projects, as required by those statutes.

### **Scope of rules to be amended**

The new statutes regarding the Oakland ballpark project, the Inglewood arena project, the expanded capitol annex project, and the Old Town Center project include similar provisions regarding expedited review:

Rules 3.2220 to 3.2237, inclusive, of the California Rules of Court, as may be amended by the Judicial Council, shall apply to any action or proceeding brought to attack, review, set aside, void, or annul the certification or adoption of any environmental impact report for the project that is certified pursuant to subdivision (d) or the granting of any project approvals, to require the action or proceeding, including any potential appeals therefrom, to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court.

(Pub. Resources Code, § 21168.6.7(c) (Oakland); see also §§ 21168.6.8(f) (Inglewood), 21189.51 (expanded capitol annex, within 270 days of certification of the record of proceedings), and 21189.70.3 (Old Town Center, within 270 business days of the filing of the certified record).)

Although rules referenced in the statutes are trial court rules only, this proposal amends both trial court and appellate rules. The statutes state that any action or proceeding relating to the environmental impact report, “including any potential appeals therefrom,” must be completed within the specified number of days “to the extent feasible.” Thus, it appears that the provisions are intended to encompass appeals as well as trial court proceedings.<sup>11</sup>

### **Time for expedited review**

The current trial court and appellate rules for expedited CEQA review include references to a 270-day time limit for completing court proceedings. Both rule 3.2221(b) regarding stipulated extensions of time in the trial court, and rule 8.702(f)(4) regarding stipulated extensions of time to file a brief in the Court of Appeal, state: “If the parties stipulate to extend the time ..., they are deemed to have agreed that the time for resolving the action may be extended beyond 270 days.” When these rules were adopted in 2014, as discussed above, the statutes to which the rules

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<sup>11</sup> The amended rules recommended by the committees do not include the rules directed solely to the Sacramento arena projects, even though those rules (rules 3.2235–3.2237) are included in the rules cited in the statutes. As noted above, those rules were adopted only for cases involving Sacramento arena projects because of the provision in that statute that the expedited procedures would apply “notwithstanding any other law.” Although a similar phrase is included in AB 987 (the Inglewood arena statute) and AB 2731 (the Old Town Center San Diego statute), there is no such provision in AB 734 (the Oakland ballpark statute). Because all three statutes use similar provisions regarding expedited review and direct that the same rules apply, it appears the Legislature intended that review for all three projects be the same. Since the mandatory service rules could not be applied to Oakland ballpark cases, they have not been applied to Inglewood arena or Old Town Center cases. And because the council had previously concluded that the special service rules should not be amended to apply to the original capitol annex project cases, the committees did not consider applying them to cases under the expanded capitol annex statute, AB 1875.

applied (§§ 21168.6.6(c)–(d), 21185, and 21189.51) required that the actions or proceedings, including any appeals, be resolved, to the extent feasible, within 270 days of certification of the record or the filing of the certified record. However, the statute governing Old Town Center projects contains a different time limit—within *270 business days* of the filing of the certified record. To accommodate different time periods under the statutes and to avoid confusion, the committees recommend replacing references in the provisions regarding stipulations to “270 days” with the “statutorily prescribed” time. (See amended rules 3.2221(b), 8.702(f).)

### **New fees for expedited review**

The Oakland ballpark statute<sup>12</sup> and the Inglewood arena statute<sup>13</sup> include nearly identical provisions requiring that, before the Governor certifies a project for streamlining (including the expedited court review), the project applicant must agree to pay for “any additional costs incurred by the courts in hearing and deciding any case” subject to the statutes. The statutes provide that the costs be determined by the council.

These provisions (set out in the footnotes) are similar to the provision for costs in former section 21182(f)<sup>14</sup> of the 2011 environmental leadership act, AB 900. The primary difference is that the earlier provision provides for payment of “the costs of the Court of Appeal . . . in hearing and deciding” the expedited case, while the new laws provide for payment of “any additional costs” to the trial court as well as the appellate court.

For cases brought under the Oakland ballpark and Inglewood arena statutes, the committees recommend fee amounts of \$120,000 at the trial court level, to be paid by the project developer within 10 days of the filing of the petition, and \$140,000 at the appellate level, to be paid within 10 days of the filing of a notice of appeal. As discussed below, in developing these proposed amounts, the committees looked to the former fee for streamlined environmental leadership cases, the experiences in cases that have been litigated under those rules, and the provision in the new ballpark and arena statutes that the amount is for “additional” costs incurred by the courts in providing expedited review.

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<sup>12</sup> Section 21168.6.7(d)(6) (Oakland ballpark): “The project applicant agrees to pay for any additional costs incurred by the courts in hearing and deciding any case brought pursuant to this section, including payment of the costs for the appointment of a special master if deemed appropriate by the court, in a form and manner specified by the Judicial Council, as provided in the rules of court adopted by the Judicial Council.”

<sup>13</sup> Section 21168.6.8(b)(6) (Inglewood arena): “The project applicant agrees to pay any additional costs incurred by the courts in hearing and deciding any case subject to this section, including payment of the costs for the appointment of a special master if deemed appropriate by the court, in a form and manner specified by the Judicial Council, as provided in the Rules of Court adopted by the Judicial Council.”

<sup>14</sup> Section 21183(f) (environmental leadership): “The project applicant agrees to pay the costs of the Court of Appeal in hearing and deciding any case, including payment of the costs for the appointment of a special master if deemed appropriate by the court, in a form and manner specified by the Judicial Council, as provided in the Rules of Court adopted by the Judicial Council pursuant to Section 21185.”

### ***Court time spent on prior environmental leadership cases***

The environmental leadership rule originally adopted by the council in 2012<sup>15</sup> provides for payment of a fee of \$100,000 by the project developer at the time a notice of appeal is filed, as well as payment of the costs of any special master or contract personnel retained to work on the case. As stated in the report to the council on the original rule, that \$100,000 amount was determined as follows:

This proposed fee was calculated based on estimates collected from courts about the time spent by judges, justices, research attorneys, and judicial assistants on recent CEQA cases regarding projects of the size eligible for participation in the act's expedited review procedure. The fee assumes that, on average, the following amount of time will be spent on such a case:

- 108 hours by the justice assigned to prepare a draft decision;
- 10 hours by each of the other two justices on the panel;
- 230 hours by research attorneys; and
- 31 hours by judicial assistants.

Additional amounts for other staff time, benefits, and overhead were also included in calculating the total fee.

(Judicial Council of Cal. rep., p. 8.)<sup>16</sup>

It turns out that the estimates made in 2012 fell far short of reality for the work necessary for an appellate court to complete the expedited process. In late 2016, the Judicial Council submitted a legislatively required report on how AB 900 (the environmental leadership statute) had fared in the courts and the impact it had on judicial administration. At that time, a single case had been tried and appealed under the environmental leadership project rules, a challenge to the Event Center and Mixed-Use Development at Mission Bay Blocks 29–32 (the Golden State Warriors' Mission Bay project). The details of the timing of that case, in which the Court of Appeal decision was issued 327 days after the case was initially filed,<sup>17</sup> are set out in a report to the Legislature. After an initial delay of 64 days to litigate whether the case should be moved from

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<sup>15</sup> See rule 8.705. Originally adopted as rule 8.497, the rule has been renumbered since but is otherwise unchanged.

<sup>16</sup> Judicial Council of Cal., Advisory Com. Rep., *Appellate Procedure: Review of California Environmental Quality Act Cases Under Public Resources Code Sections 21178–21189.3* (Apr. 11, 2012), p. 8, [www.courts.ca.gov/documents/jc-20120424-itemA1.pdf](http://www.courts.ca.gov/documents/jc-20120424-itemA1.pdf).

<sup>17</sup> At the time of the report, oral argument had not yet been held. However, it was held shortly thereafter, and the Court of Appeal issued its opinion on November 29, 2016. Work on the case was not completed within 270 days for several reasons, but primarily because of time expended on petitioner's efforts at the trial court and the Court of Appeal, Third Appellate District to keep the case in Sacramento (where initially filed) rather than in San Francisco (where it was ultimately decided). Per the case dockets in Appendix C to the 2012 council report, 64 days elapsed between the time of filing and the time when the case was eventually received in the Superior Court of San Francisco County. The court time expended in those 64 days by the Superior Court of Sacramento County and the Court of Appeal, Third Appellate District was not taken into consideration in developing the amount of the new fee.

Sacramento to San Francisco, the courts moved quite expeditiously, consistent with the expedited procedures. The report to the Legislature describes the work entailed as follows:

The Mission Bay project CEQA case is extremely large and complex. The administrative record filed in both the trial court and the Court of Appeal comprises 56 volumes—more than 168,000 pages. The joint appendix filed in the Court of Appeal is 1,514 pages in length. The petitioners’ petition for writ of mandate filed in the trial court included three separate causes of action raising multiple issues regarding the approval of the Mission Bay project. The petitioners’ brief filed in the Court of Appeal, First Appellate District also raised multiple issues. Many of the issues raised in this case involve highly technical questions that require specialized expertise to evaluate.

(Judicial Council of Cal., *Jobs and Economic Improvement Through Environmental Leadership Act: Report to the Legislature Under Assembly Bill 900, Public Resources Code Section 21189.2* (Dec. 1, 2016), p. 6.)

The time spent to adjudicate these complex issues was estimated as follows:

- The CEQA judge at the Superior Court of San Francisco County spent five hours a day on the case (he could not spend full time because of other commitments at the court), as well as 15 hours each weekend throughout the time the case was at the trial court. This equals approximately 740 hours (the equivalent of 92 workdays) of time on the case. In addition, the equivalent of one full-time research attorney worked on the case throughout the time it was in the trial court (91 workdays), resulting in well over 700 hours of research attorney time.
- At the Court of Appeal, First Appellate District, the Mission Bay case took precedence over all other cases assigned to the division handling this case, including juvenile dependency cases. One appellate justice and two research attorneys (rather than the usual single attorney) worked on this case, essentially on a full-time basis, for a total of three months or approximately 60 workdays each. The more than 900 hours (or 120 workdays) of research time at the Court of Appeal is also significantly more than the 230 hours (or 29 workdays) originally estimated in establishing the \$100,000 fee in the leadership cases.

Since 2016, a second project certified under the environmental leadership statute has been involved in litigation—the Sunset Boulevard Project, a major mixed-use construction project in Los Angeles. This litigation, filed in the Superior Court of Los Angeles County and appealed to the Court of Appeal, Second Appellate District, was similarly large and complex, with four separate complaints asserting CEQA violations, two of which went up on appeal.<sup>18</sup> The trial court judge, an experienced CEQA judge, spent hundreds of hours on the case but, because of

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<sup>18</sup> *L.A. Conservancy v. City of L.A.; Fix the City, Inc. v. City of Los Angeles* (Mar. 23, 2018, B284093) [nonpub. opn.].

the complexity of the case and her need to spend time on other matters, the judgment took 230 days to issue. The Court of Appeal decision took a similar amount of time. The trial court judge reported that if she had been able to work on the case full time, she may have been able to have the judgment issued within the desired timeline.

### ***Development of new fee amounts***

As described above, AB 734 (the Oakland ballpark project) and AB 987 (the Inglewood arena project) require the project applicants to pay any “additional” court costs (“as provided in the rules of court adopted by the Judicial Council”) to adjudicate CEQA challenges brought against the project within 270 days. Given the typical scope of CEQA cases that qualify for expedited procedures and the court resources used in the Mission Bay and Sunset Boulevard cases, the committees concluded that the only possible way for courts to comply with the statutory timeline would be to take the case out of normal processing and assign personnel to it full time.

Accounting for weekends and court holidays, 270 days is equivalent to approximately 182 workdays. Splitting this time equally between the trial and appellate courts provides each court with roughly 91 workdays to hear and decide the case.

Indeed, the trial court judge in the Mission Bay case estimated that he spent the equivalent of 92 workdays on the case and was assisted by two research attorneys who together spent a similar amount of time. Similarly, the trial court judge in Sunset Boulevard estimated that she may have been able to meet the expedited timeline if she had worked on the case full time. Appellate review of the Mission Bay case took a comparable amount of time. One appellate court justice and two research attorneys worked on that case for roughly 60 workdays each, or 180 workdays total. One appellate court justice and one research attorney spending 91 workdays on a case would also amount to approximately 180 workdays. The only data with respect to the time for appellate review in the Sunset Boulevard case is from the docket—a decision was filed 234 days after the notice of appeal was filed.

Accordingly, the cost of a judicial officer and a research attorney to work full time for 91 workdays at each court level appears to be a reasonable estimate for “additional costs” to adjudicate an expedited CEQA challenge. Such an estimate does not include other appellate court justice time, staff time, or overhead, all of which were factored into the calculation for the fee required in current rule 8.705, which aimed to cover *all* appellate court costs for environmental leadership projects.<sup>19</sup> The estimates<sup>20</sup> are as follows:

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<sup>19</sup> Inclusion of other staff time, judicial officer and staff benefits, and overhead, may be appropriate when determining the fee for projects brought under SB 7 (future environmental leadership projects) and SB 44 (environmental leadership transit projects), both of which require the project applicant to agree “to pay the costs of the trial court and the court of appeal in hearing and deciding” any challenge to the project under CEQA.

<sup>20</sup> These estimates are based solely on salary compensation, such as would be paid to an assigned judge or a retired annuitant research attorney, and do not include judicial officer or attorney benefits.

- In the trial court, the cost of a judge for 91 days and one research attorney for 91 days would be approximately \$120,000.
- In the appellate court, the cost of one appellate justice for 91 days and one research attorney for 91 days would be approximately \$140,000.

The committees thus recommend that the above amounts be charged for the expedited review by the trial court and the Court of Appeal, respectively. (See rules 3.2240 and 8.705.) As permitted by the statutes, the proposed rules also allow for costs for any special master required for the matter to be charged directly to the project developer, as is currently provided in the environmental leadership cases.

### **Other amendments**

At the time it was circulated in 2012, a couple of comments received on the proposal for the \$100,000 fee for expedited CEQA review by the Court of Appeal in environmental leadership cases suggested that the rule should clarify that this is not a recoverable cost. The Appellate Advisory Committee declined to include this provision at the time,<sup>21</sup> but noted that, if this issue was not addressed by the Legislature, the committee would consider the possibility of circulating a new proposal regarding this issue in the future. The committees included a specific question on this issue in the invitation to comment and now recommend that the rules provide that any fee or cost paid under the rule is not a recoverable cost. (See rules 3.2240(4), 8.705(5).)

To reduce unnecessary complexity, the committees also recommend amending the titles of two chapters of the rules (chapter 2 of division 22 of title 3 and chapter 1 of division 3 of title 8) to refer to “streamlined CEQA projects” in place of the growing list of Public Resources Code sections under which CEQA review may be streamlined.

### **Policy implications**

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

### **Comments**

The proposal circulated for public comment from December 20, 2021, until January 14, 2022. Circulation was expedited based on the possibility that the Oakland ballpark project could be approved as early as March 2022, with any potential litigation to take place soon thereafter. The committees wanted to be sure that project proponents, as well as the public generally, had an opportunity to comment on the proposal before the new fees were implemented.

The committees have received no comments.

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<sup>21</sup> The committee noted in its report to the council at that time that such a provision had not been included in the rule as circulated and was a sufficiently substantive change that the committee could not recommend it without further circulation.

### **Alternatives considered**

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

The committees considered a different method of determining the costs to be paid: require the posting of a \$100,000 deposit, calculate the court's actual costs for hearing and deciding that particular matter at the conclusion of the case, and require payment of actual costs at the end of the case. The committees ultimately decided against this approach, however, because of the administrative burden associated with calculating and collecting these costs in each case.

### **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, 3.2222, 3.2223, 3.2240, 8.700, 8.702, 8.703, and 8.705, at pages 12–19
2. Link A: Assembly Bill 734,  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB734](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB734)
3. Link B: Assembly Bill 987,  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB987](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB987)
4. Link C: Assembly Bill 1826,  
[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB1826](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1826)
5. Link D: Assembly Bill 2731,  
[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200AB2731](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB2731)

Rule 3.2240 of the California Rules of Court is adopted and rules 3.2200, 3.2220, 3.2221, 3.2222, 3.2223, 8.700, 8.702, 8.703, and 8.705 are amended, effective March 11, 2022, 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 21168.6.6–21168.6.8, 21178–21189.3, ~~and 21189.50–21189.57, and 21189.70–21189.70.10,~~ 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.

**Chapter 2. California Environmental Quality Act Proceedings ~~Under Public Resources Code Sections 21168.6, 21178–21189.3, and 21189.50–21189.57~~ Involving Streamlined CEQA Projects**

**Article 1. General Provisions**

**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 (7).
- ~~(1)(2)~~ (2) An “environmental leadership development project” or “leadership project” means a project certified by the Governor under Public Resources Code sections 21182–21184.
- ~~(2)(3)~~ (3) The “Sacramento entertainment and sports center project” or “Sacramento arena project” means an entertainment and sports center project as defined by Public Resources Code section 21168.6.6, for which the proponent provided notice of election to proceed under that statute described in section 21168.6.6(j)(1).
- (4) An “Oakland sports and mixed-use project” or “Oakland ballpark project” means a project as defined in Public Resources Code section 21168.6.7 and certified by the Governor under that section.
- (5) An “Inglewood arena project” means a project as defined in Public Resources Code section 21168.6.8 and certified by the Governor under that section.
- ~~(3)(6)~~ (6) An “expanded capitol building annex project” means a state capitol building annex project, annex project–related work, or state office building project as defined by Public Resources Code section 21189.50.

(7) An “Old Town Center transit and transportation facilities project” or “Old Town Center project” means a project as defined in Public Resources Code section 21189.70.

**(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 ~~the Sacramento arena project, a leadership project, or a capitol building annex project~~ a streamlined CEQA project. Except as otherwise provided in Public Resources Code sections 21168.6.6–21168.6.8, 21178–21189.3, and 21189.50–21189.57, and 21189.70–21189.70.10 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) Complex case rules**

\* \* \*

**Rule 3.2221. Time**

**(a) Extensions of time**

\* \* \*

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

If the parties stipulate to extend the time for performing any acts in actions governed by these rules, they are deemed to have agreed that the statutorily prescribed time for resolving the action may be extended ~~beyond 270 days~~ by the number of days by which the performance of the act has been stipulated to be extended, and to that extent to have waived any objection to noncompliance with the deadlines for completing review stated in Public Resources Code sections 21168.6.6(e)–(d)–21168.6.8, 21185, and 21189.51, and 21189.70.3. Any such stipulation must be approved by the court.

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

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

1 (1)–(2) \* \* \*

2  
3 (3) If the failure to comply is by respondent or a real party in interest, removal of  
4 the action from the expedited procedures provided under Public Resources  
5 Code sections 21168.6.6(e)–(d), 21168.6.8, 21185, ~~and~~ 21189.51, and  
6 21189.70.3, and these rules; or  
7

8 (4) \* \* \*

9  
10 **Rule 3.2222. Filing and service**

11  
12 (a)–(c) \* \* \*

13  
14 (d) **Service of petition in action regarding ~~leadership project and capitol building~~**  
15 **~~annex project~~ streamlined CEQA project other than the Sacramento arena**  
16 **project**  
17

18 If the petition or complaint in an action governed by these rules and relating to a  
19 streamlined CEQA project other than the Sacramento arena project ~~leadership~~  
20 ~~project or a capitol building annex project~~ is not personally served on any  
21 respondent public agency, any real party in interest, and the Attorney General  
22 within three court days following filing of the petition, the time for filing  
23 petitioner’s briefs on the merits provided in rule 3.2227(a) and rule 8.702(e)(f) will  
24 be decreased by one day for every additional two court days in which service is not  
25 completed, unless otherwise ordered by the court for good cause shown.  
26

27 (e) \* \* \*

28  
29 **Rule 3.2223. Petition**

30  
31 In addition to any other applicable requirements, the petition must:

32  
33 (1) On the first page, directly below the case number, indicate that the matter is  
34 ~~either a “Sacramento Arena CEQA Challenge,” or an “Environmental~~  
35 ~~Leadership CEQA Challenge,” or a “Capitol Building Annex Project” a~~  
36 “Streamlined CEQA Project”;  
37

38 (2) State one of the following:

39  
40 (A) The proponent of the project at issue provided notice to the lead agency  
41 that it was proceeding under Public Resources Code section 21168.6.6,  
42 21168.6.7, or 21168.6.8 (whichever is applicable) and is subject to this  
43 rule; or  
44

(B) The project at issue was certified by the Governor as a leadership project under Public Resources Code sections 21182–21184 and is subject to this rule; or

(C) The project at issue is an expanded capitol building annex project as defined by Public Resources Code section 21189.50 and is subject to this rule; or

(D) The project at issue is an Old Town Center project as defined by Public Resources Code section 21189.70 and is subject to this rule;

(3) If a leadership project, provide notice that the person or entity that applied for certification of the project as a leadership project must, if the matter goes to the Court of Appeal, make the payments required by ~~Public Resources Code section 21183(f)~~ rule 8.705; and

(4) If an Oakland ballpark or Inglewood arena project, provide notice that the person or entity that applied for certification of the project as an Oakland ballpark or Inglewood arena 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; and

(4)(5) \* \* \*

### **Rule 3.2240. Trial Court Costs in Oakland Ballpark and Inglewood Arena Projects**

In fulfillment of the provisions in Public Resources Code sections 21168.6.7 and 21168.6.8 regarding payment of trial court costs with respect to cases concerning certain streamlined CEQA projects:

(1) Within 10 days after service of the petition or complaint in a case concerning an Oakland ballpark project or an Inglewood arena project, the person or entity that applied for certification of the project as a streamlined CEQA project must pay a fee of \$120,000 to the court.

(2) If the court incurs the costs of any special master appointed by the court in the case or of any contract personnel retained by the court to work on the case, the person or entity that applied for certification of the project must also pay, within 10 days of being ordered by the court, those incurred or estimated costs.

(3) If the party fails to timely pay the fee or costs specified in this rule, the court may impose sanctions that the court finds appropriate after notifying the party and providing the party with an opportunity to pay the required fee or costs.

(4) Any fee or cost paid under this rule is not recoverable.

**Chapter 1. Review of California Environmental Quality Act Cases Under Public Resources Code Sections ~~21168.6.6, 21178 21189.3, and 21189.50 21189.57~~**  
**Involving Streamlined CEQA Projects**

**Rule 8.700. 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 (7).
- ~~(1)(2)~~ (2) An “environmental leadership development project” or “leadership project” means a project certified by the Governor under Public Resources Code sections 21182–21184.
- ~~(2)(3)~~ (3) The “Sacramento entertainment and sports center project” or “Sacramento arena project” means an entertainment and sports center project as defined by Public Resources Code section 21168.6.6, for which the proponent provided notice of election to proceed under that statute described in section 21168.6.6(j)(1).
- (4) An “Oakland sports and mixed-use project” or “Oakland ballpark project” means a project as defined in Public Resources Code section 21168.6.7 and certified by the Governor under that section.
- (5) An “Inglewood arena project” means a project as defined in Public Resources Code section 21168.6.8 and certified by the Governor under that section.
- ~~(3)(6)~~ (6) An “expanded capitol building annex project” means a state capitol building annex project, annex project–related work, or state office building project as defined by Public Resources Code section 21189.50.
- (7) An “Old Town Center transit and transportation facilities project” or “Old Town Center project” means a project as defined in Public Resources Code section 21189.70.

**(b) Proceedings governed**

The rules in this chapter govern appeals and writ proceedings in the Court of Appeal to review a superior court judgment or order in an action or proceeding brought to attack, review, set aside, void, or annul the certification of the environmental impact report or the granting of any project approvals for an

1 ~~environmental leadership development project, the Sacramento arena project, or a~~  
2 ~~capitol building annex~~ a streamlined CEQA project.

3  
4 **Rule 8.702. Appeals**

5  
6 (a) \* \* \*

7  
8 (b) **Notice of appeal**

9  
10 (1) \* \* \*

11  
12 (2) *Contents of notice of appeal*

13  
14 The notice of appeal must:

- 15  
16 (A) State that the superior court judgment or order being appealed is  
17 governed by the rules in this chapter;  
18  
19 (B) Indicate whether the judgment or order pertains to ~~the Sacramento~~  
20 ~~arena project, a leadership project, or a capitol building annex~~ a  
21 streamlined CEQA project; and  
22  
23 (C) If the judgment or order being appealed pertains to a leadership project,  
24 an Oakland ballpark project, or an Inglewood arena project, provide  
25 notice that the person or entity that applied for certification or approval  
26 of the project as ~~a leadership~~ such a project must make the payments  
27 required by rule 8.705.  
28

29 (c)–(e) \* \* \*

30  
31 (f) **Briefing**

32  
33 (1)–(3) \* \* \*

34  
35 (4) *Extensions of time to file briefs*

36  
37 If the parties stipulate to extend the time to file a brief under rule 8.212(b),  
38 they are deemed to have agreed that the statutorily prescribed time for  
39 resolving the action may be extended ~~beyond 270 days~~ by the number of days  
40 by which the parties stipulated to extend the time for filing the brief and, to  
41 that extent, to have waived any objection to noncompliance with the deadlines  
42 for completing review stated in Public Resources Code sections 21168.6.6(e)–  
43 ~~(d)~~ 21168.6.8, 21185, and 21189.51, and 21189.70.3 for the duration of the  
44 stipulated extension.  
45

46 (5) \* \* \*

1  
2 (g) \* \* \*

3  
4 **Advisory Committee Comment**

5  
6 **Subdivision (b).** It is very important to note that the time period to file a notice of appeal under  
7 this rule is the same time period for filing most postjudgment motions in a case regarding the  
8 Sacramento arena project, and in a case regarding ~~a leadership project or capitol building annex~~  
9 any other streamlined CEQA project, the deadline for filing a notice of appeal may be earlier than  
10 the deadline for filing a motion for a new trial, a motion for reconsideration, or a motion to vacate  
11 the judgment.  
12

13 **Rule 8.703. Writ proceedings**

14  
15 (a) \* \* \*

16  
17 (b) **Petition**

18  
19 (1) \* \* \*

20  
21 (2) *Contents of petition*

22  
23 In addition to any other applicable requirements, the petition must:

- 24  
25 (A) State that the superior court judgment or order being challenged is  
26 governed by the rules in this chapter;  
27  
28 (B) Indicate whether the judgment or order pertains to ~~the Sacramento~~  
29 ~~arena project, a leadership project, or a capitol building annex~~ a  
30 streamlined CEQA project; and  
31  
32 (C) If the judgment or order pertains to a leadership project, an Oakland  
33 ballpark project, or an Inglewood arena project, provide notice that the  
34 person or entity that applied for certification of the project as a  
35 ~~leadership~~ such a project must make the payments required by rule  
36 8.705.  
37

38 **Rule 8.705. Court of Appeal costs in ~~leadership~~ certain streamlined CEQA projects**

39  
40 In fulfillment of the provisions in Public Resources Code sections 21168.6.7, 21168.6.8,  
41 and 21183 regarding payment of the Court of Appeal's costs with respect to cases  
42 concerning leadership, Oakland ballpark, and Inglewood arena projects:  
43

- 44 (1) Within 10 days after service of the notice of appeal or petition in a case concerning  
45 a leadership project, the person ~~who~~ or entity that applied for certification of the  
46 project as a leadership project must pay a fee of \$100,000 to the Court of Appeal.  
47

1 (2) Within 10 days after service of the notice of appeal or petition in a case concerning  
2 an Oakland ballpark project or Inglewood arena project, the person or entity that  
3 applied for certification of the project as an Oakland ballpark project or Inglewood  
4 arena project must pay a fee of \$140,000 to the Court of Appeal.  
5

6 ~~(2)~~(3) If the Court of Appeal incurs the costs of any special master appointed by the Court  
7 of Appeal in the case or of any contract personnel retained by the Court of Appeal  
8 to work on the case, the person ~~who~~ or entity that applied for certification of the  
9 project as a leadership project, an Oakland ballpark project, or an Inglewood arena  
10 project must also pay, within 10 days of being ordered by the court, those incurred  
11 or estimated costs.  
12

13 ~~(3)~~(4) If the party fails to timely pay the fee or costs specified in this rule, the court may  
14 impose sanctions that the court finds appropriate after notifying the party and  
15 providing the party with an opportunity to pay the required fee or costs.  
16

17 (5) Any fee or cost paid under this rule is not a recoverable cost.  
18