

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT

W14-02

Title	Action Requested
CEQA Actions: Rules to Implement Senate Bill 743	Review and submit comments by January 24, 2014
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend and renumber rule 3.1365 as rule 3.2205 and adopt a new rule 3.1365; renumber and amend rules 3.1366–3.1368 as rules 3.2206–3.2208; adopt rules 3.2200, 3.2220–3.2231, 3.2235–3.2237, 8.700–8703, and 8.705; amend rule 8.104; and repeal rule 8.497	July 1, 2014
	Contact
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Proposed by	
Civil and Small Claims Advisory Committee, Hon. Patricia M. Lucas, Chair	
Appellate Advisory Committee Hon. Raymond S. Ikola, Chair	

Executive Summary and Origin

These proposed rule changes are intended to fulfill the Judicial Council’s obligation under recently enacted legislation to adopt rules implementing expedited procedures for resolution of actions or proceedings under the California Environmental Quality Act attacking either “environmental leadership” projects, large projects that are required to meet specified environmental standards, and “Sacramento arena” projects relating to a new basketball arena and surrounding sports and entertainment complex planned for the City of Sacramento.

Background

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 under which challenges to such projects were to be brought directly to the Court of Appeal with geographic jurisdiction over the project, and that court was to complete its review within 175

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

days. (Pub. Resources Code, § 21185.) AB 900 required the Judicial Council to adopt rules of court to implement this expedited review procedure and it did so, adopting rule 8.497.

To date, only three projects have been approved as environmental leadership projects entitled to expedited judicial review under the AB 900 provisions, none of which has yet been the subject of a court challenge under CEQA. In March 2013, however, following a court trial, the Superior Court of Alameda County held that the provision in AB 900 requiring that a petition for writ relief be filed only in a Court of Appeal is unconstitutional.

This year, the Legislature once again addressed the question of expedited CEQA review by the courts in environmental leadership cases, as well as in cases relating to a new sports arena in Sacramento. Senate Bill 743 (Stats. 2013, ch. 386),¹ among other things:

- Addresses the constitutional issue raised by the Superior Court of Alameda County's decision by eliminating the requirement that a CEQA challenge to a leadership project be brought directly in the Court of Appeal;
- Replaces the statutory provisions relating to the time for the Court of Appeal to act on leadership cases with a requirement that the Judicial Council adopt rules that require the actions or proceedings, including any potential appeals therefrom, be resolved, within 270 days of certification of the record of proceedings (SB 743, § 11; amending Pub. Resources Code, § 21185); and
- Similarly provides for expedited review process for projects relating to a new basketball arena and surrounding sports and entertainment complex planned for Sacramento (SB 743, 7; adding Pub. Resources Code, § 21168.6.6).²

The Proposal

The proposed new rules and proposed rule amendments in this invitation to comment are designed to fulfill the Judicial Council's statutory obligation to adopt rules implementing the expedited judicial review procedure established by SB 743. Because SB 743 does not provide discrete time frames for actions and proceedings in the trial court and proceedings in the Court of Appeal, but instead provided a single time frame (270 days) in which both the trial court and appellate court proceedings were to be resolved, the Civil and Small Claims Advisory Committee and Appellate Advisory Committee worked together, with the assistance of subject matter experts from the courts and the bar, to develop and recommend the new rules required by SB 743.

¹ A copy of this legislation can be accessed at:

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB743&search_keywords=

² The bill also contains some amendments to substantive CEQA provisions, as well as extensive provisions concerning the environmental review process applicable to the Kings basketball arena project in Sacramento and the limited remedies available for violation of that process. None of those provisions, however, appear pertinent to court administration or procedures.

The main provisions of the rule changes are discussed below and the full text is shown in the rule attachment. A couple important preliminary notes:

- There are many provisions in CEQA—such as those addressing the statute of limitations, the time for service of a petition on the respondent public agency and real party in interest, the contents of the administrative record, settlement meetings, and mediation—that were not specifically modified by SB 743. Some of those provisions, such as the content of the administrative record, are already addressed by the rules of court applying to all CEQA cases. Others, such as the statute of limitations and time for service, make it all but impossible to meet the 270-day time frame envisioned by the Legislature. SB 743 does provide, for the Sacramento arena cases, that the expedited procedures to be established by the Judicial Council will apply “notwithstanding any other law.” (SB 743, §7, at new § 21168.6.6(c).) But the new law does not have a similar provision regarding environmental leadership cases. (Cf. SB 743, §11, amending § 21185). In light of this distinction in the statute, the advisory committees concluded that while the council is authorized to adopt rules notwithstanding the provisions of the Public Resources Code or the Code of Civil Procedure in relation to Sacramento arena cases, it could not do so in relation to environmental leadership cases.
- In an effort to meet the time for issuance of a decision specified in SB 743, many of the time frames specified in proposed rules are extremely short and many deadlines follow closely on one another. The rules permit extensions of time “for good cause” and “to promote the interests of justice,” so, depending on the circumstances, in an individual case some of the deadlines specified in the proposed rules may be extended, causing the resolution of the case to extend beyond the 270-day period specified in the statute.

Proposed trial court rules

Starting the proceedings

One way in which the Legislature has attempted to expedite the environmental review process for the Sacramento arena and the environmental leadership cases—in addition to mandating extremely fast court review—is to expedite the creation of the administrative record in such cases. In both types of cases, the public agency responsible for approving the project is also responsible for creating an electronic version of the administrative record as the project is being reviewed by the agency, and for certifying the final version of that record within five days of the agency’s issuing its statutorily mandated Notice of Determination.

SB 743 sets the certification of the record as the trigger for the 270-day period in which the trial court and Court of Appeal are to complete their review. The certification of the record, however, does not necessarily coincide with the commencement of a CEQA action in the courts—a petition can be filed up to 30 days after the Notice of Determination has been filed. (Pub.

Resources Code, § 21167.³) So up to 25 days of the 270-day period designated for the court's review of these CEQA decisions may have passed before the matter is within the jurisdiction of the court. The advisory committees attempted to address this issue by including in the proposed rules an incentive for parties to file their action more quickly in the form of extra briefing time for petitioners who file within 10 days of the issuance of a Notice of Determination (and so within 5 days of certification of the record and the beginning of the 270-day period). (See proposed rule 3.2227(a).)

An additional difficulty in meeting the 270-day timeline arises because 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, as noted above, SB 743 provides that the rules of court for the Sacramento arena cases are applicable notwithstanding any other law, the advisory committees concluded that the council may adopt rules in relation to Sacramento arena cases mandating that service be completed within one court day on all named parties, rather than over a two- to four-week period as permitted in the Public Resources Code. (See proposed rules 3.2222(c) and 3.2236.)

Because SB 743 does not provide similar authority with respect to leadership projects, the advisory committees concluded that they are unable to recommend a rule mandating faster service in those cases. Instead, the advisory committees propose a rule providing a strong incentive for earlier service in leadership cases by providing that if the petition is not served on the public agency and real party in interest within two days of filing, the time for filing petitioner's briefs on the merits in both the trial court and the appellate court will be decreased by one day for every additional two court days in which service is not completed. (See proposed rule 3.2222(d).)

Other trial court rules

The proposed rules require that, once started, the actions must proceed very swiftly through the trial court. Among other things, the proposed trial court rules would address the following:

- *Exemption from procedures for complex cases.* Exempt the Sacramento arena and leadership project statutes from the complex case rules, in order to eliminate any confusion about which case management conference (CMC) rules should apply, and exempt such cases from what can be a lengthy process of coordinating complex cases. (Proposed rule 3.2220(c).)
- *Time limits.* Allow extensions of time by the court only for good cause. Should the parties stipulate to extend time, the 270-period will essentially be extended for the length of that stipulated extension. The rule also provides for sanctions if any party fails to comply with the time requirements within the rules. (Proposed rule 3.2221.)

³ All statutory references hereafter are to the Public Resources Code unless otherwise indicated.

- *E-filing and service.* Require electronic filing in all courts where it can occur, require that all service on represented parties must be by electronic means, and provide that such service is exempted from the two-day extension of time provided in the Code of Civil Procedure. (Proposed rule 3.2222.)
- *Responsive pleadings.* Require that any pleadings filed in response to the petition, including motions to change venue, be served and filed within 10 days of service of the petition, and any opposition be filed within 10 days after that. (Proposed rule 3.2224.)
- *Administrative record.* Restate the statutory requirement that the administrative record in the Sacramento arena cases be lodged within 10 days of the filing of the petition (see SB 743, at § 21168.6.6(f)(8)) and require the same in environmental leadership cases. (Proposed rule 3.2225.)
- *Case management conference.* Require the court to hold a CMC within 30 days of the filing of the petition. (Proposed rule 3.2226(a).) Require that the parties file a joint CMC statement addressing various issues and that the court consider them all at the CMC, including:
 - Any outstanding issues regarding the administrative record;
 - Briefing schedules for any other motions that may need to be addressed before the hearing on the merits;
 - Identification of all issues to be included in the briefing on the merits;
 - Page limits for briefs on the merits, including whether each side may file more than one brief;
 - Final briefing schedule, should it be different than as provided in the rules;
 - Any potential for settlement discussions; and
 - Various other issues, including any the court deems appropriate.
 (Proposed rule 3.2226(c)–(d).) The committees invite specific comments on whether there are issues in addition to those set out in rule 3.2226(c) that should be considered at the CMC.
- *Briefing schedule.* Require that, unless otherwise ordered by the court, each side may only file a single brief on the merits, on the following schedule:
 - Petitioner has 25 days after CMC, or 35 days if the early-filing incentive applies;
 - Respondent and real parties have 25 days to file an opposition; and
 - Petitioner has 10 days to file a reply. (Proposed rule 3.2227(a).)
- *Hearings.* Require that the court hold a hearing on the merits within 80 days of the CMC. (Proposed rule 3.2227(b).) This time frame would result, in cases in which petitioner has earned extra briefing time through the early-filing incentive, in the hearing occurring within 10 days after the reply brief is due; the hearing would be as long as 20 days after the reply is due if no incentive applies. The committees invite comment on whether it would be sufficient for the court to have 5 days after the reply is due to hold the hearing, thus making it possible to add another 5 days to the incentive for early filing.

- *Judgments.* Provide that the court should issue its decision within 30 days of the hearing, and require that the decision be in writing. The proposed rules also clarify that, because these cases do not involve trials of questions of fact, they do not fall within the scope of Code of Civil Procedure section 632 regarding statements of decision. (Proposed rule 3.2228.)
- *Postjudgment motions.* Require that postjudgment motions be made on an extremely short time frame. In all cases governed by the rules, motions to void or correct the judgment under Code of Civil Procedure 473 would have to be served and filed within 5 days of notice of entry of judgment—the same time within which any notice of appeal has to be filed under the proposed appellate rule. (Proposed rule 3.2231(b).)⁴ In Sacramento arena cases, motions for new trial and motions to vacate judgment would have to be brought within the same time frame. (Proposed rule 3.2231(b).) The proposed rules do not shorten the deadline for filing motions for new trial and for motions to vacate judgment in environmental leadership cases, because such rules would be inconsistent with statutes providing 15 days in which to file such motions. (See Code Civ. Proc., §§657 (motion for new trial) and 663 (motion to vacate judgment).)

Court of Appeal rules

As with the trial court rules, the proposed rules for the Court of Appeal require that actions covered by SB 743 proceed very swiftly. Among other things, the proposed rules would address the following:

- *Application.* The proposed rules would only govern appeals and writ proceedings in the Court of Appeal to review a superior court judgment or order in an action or proceeding governed by the provisions of SB 743. (Proposed rule 8.700(b).) These rules would not cover:
 - Petitions for writs seeking initial review in the Court of Appeal of an EIR or project approval under CEQA for the Sacramento arena project or leadership projects. Although the Court of Appeal has concurrent jurisdiction with the superior court in such original proceedings, the usual practice is to for matters to be reviewed in the superior court first.
 - Petitions for review in the Supreme Court. Early versions of SB 743 included provisions specifying time frames for petitions for review in the California Supreme Court relating to the Sacramento arena project and leadership projects. These provisions were taken out of the version of SB 743 that was ultimately enacted. The advisory committees concluded that this reflected legislative intent that the 270-day time period included in SB 743 was not intended to cover any potential petition for review process and, thus, no provisions addressing that process are included in these proposed rules.

⁴ The environmental leadership cases can be encompassed by the rule shortening time on motions under Code of Civil Procedure section 473 because those motion are subject to the notice provisions of Code of Civil Procedure section 1005, which expressly permits exceptions as provided by other laws. (Code. Civ. Proc., § 1005(b).)

The proposed rules also specify that, except as provided in these special rules for the Sacramento arena and leadership cases, the general rules on appeals and writ proceedings govern. (Proposed rules 8.702(a) and 8.703(a).) Given this approach, the advisory committees would particularly appreciate comments on whether there are additional topics that should be addressed in the proposed rules rather than be governed by the general appellate rules.

- *Service and filing.* The proposed rules would generally require that all service be by personal delivery, electronic service, express mail, or other means reasonably calculated to ensure delivery of the document not later than the close of the business day after the document is filed or lodged with the court. The rules would also permit the court to order that all documents be electronically filed and be served electronically on parties that have stipulated to electronic service. As in the trial court rules, parties represented by counsel would be deemed to have stipulated to electronic service and the rules would exempt electronic service under these rules from the two-day extension of time provided in the Code of Civil Procedure. (Proposed rule 8.701.)
- *Notice of appeal.* As part of the attempt to meet the 270-day time period specified by SB 743, the proposed rules would set an extremely short deadline for filing a notice of appeal. A notice of appeal would have to be filed within 5, rather than the usual 60, days after the superior court clerk or a party serves a document entitled “Notice of Entry” of judgment or a file-stamped copy of the judgment. (Proposed rule 8.702(b).) Note that this is the same time period for filing postjudgment motions in Sacramento arena cases and, in an environmental leadership case, the deadline for filing a notice of appeal may be earlier than the deadline for filing a motion for new trial or a motion to vacate. The committees invite comment on whether the time for filing the notice of appeal is feasible, including whether the time should be 5 *court* days. The committees also invite comment on how best to address the potentially overlapping deadlines for filing postjudgment motions and notices of appeal in environmental leadership cases, including by:
 - Adding an advisory committee comment referencing the fact that the deadline for filing notices of appeal may be earlier than the time for some posttrial motions in environmental leadership cases;
 - Extending the time for filing the notice of appeal in environmental leadership cases to correspond with the deadline for filing motions to vacate or motions for new trial, even though this will make it even less likely that the court will be able to meet the 270-day deadline in such cases; or
 - Making some other change in the proposed rules.
- *Extensions of time to appeal.* Like current rule 8.108(b) and (c), the proposed rules would extend the time to file a notice of appeal when a new trial motion or motion to vacate a judgment is timely filed and denied. However, the proposed rule provides for a much shorter extension of this time period—5, rather than 30, days. (Proposed rule 8.702(c).) The committees would particularly appreciate comments on whether this rule should also address

extensions related to motions to reconsider an appealable order, or whether these do not arise in the types of cases subject to SB 743.

- *Record on appeal.* The proposed rules would make several changes to the general rules relating to records on appeal, including:
 - Requiring that parties proceed by appendix in lieu of using a clerk’s transcript;
 - Requiring that the appellant’s notice designating the record be filed with the notice of appeal, which is 10 days earlier than in regular appeals;
 - Requiring that, if the appellant wants a record of the oral proceedings, a reporter’s transcript be used. In regular appeals, appellants have other options, such as an agreed statement, that can be used instead of a reporter’s transcript;
 - Requiring that the reporter’s transcript be prepared within 10 days after the court notifies the reporter to prepare the transcript, which is 20 days earlier than in regular appeals. Note that under rule 8.130, the court notifies the reporter to prepare the transcript as soon as the required deposit or permissible alternative is provided to the court and that deposit is supposed to accompany the designation. Thus, if the appellant makes the deposit at the time both the notice of appeal and designation are filed, as required, the reporter’s transcript should be prepared around 10 to 15 days after the notice of appeal is filed.
 - Giving the appellant only 5, rather than 15, days’ notice to cure a default in making the required deposit for a designated reporter’s transcript. (Proposed rule 8.702(d).)

- *Superior court clerk duties relating to appeals.* The proposed rules would require the superior court clerk to transmit items to the parties and to the reviewing court very quickly—within two court days after the notice of appeal is filed—including:
 - Sending the register of actions to the parties to assist them preparing appendices; and
 - Sending an electronic copy of the administrative record to the Court of Appeal. (Proposed rule 8.702(e).)

- *Briefs on appeal.* The proposed rules would establish a very quick briefing schedule; unless otherwise ordered by the reviewing court:
 - Appellant would be required to serve and file the opening brief within 25 days after the notice of appeal is served and filed;
 - Respondent would be required to file its brief within 25 days after the appellant files its opening brief; and
 - Appellant would be required to file any reply brief within 15 days after respondent files its brief. (Proposed rule 8.702(f)(2).)

As in the trial court rules, the appellate rules provide that if the parties stipulate to extend the time to file briefs, the 270-period will be extended for the length of the stipulated extension. The rule also provides that if a party fails to timely file a brief, they will have only 5 days from service of notice by the clerk to cure that default or sanctions may be imposed. (Proposed rule 8.702(f)(4) and (5).)

In addition, the rules would:

- Require briefs to be electronically filed unless otherwise ordered by the reviewing court (proposed rule 8.702(f)(1));
 - Allow parties to submit briefs that do not contain citations to the reporter’s transcript if it is not yet available (proposed rule 8.702(f)(3)(B)); and
 - Require parties to submit e-brief versions of their briefs within five days after filing the brief (proposed rule 8.702(f)(3)(C)).
- *Oral argument on appeal.* The proposed rules would require that, unless otherwise ordered by the reviewing court, oral argument would be set within 45 days of the date the last reply brief is due. This time period is intended to reflect that it is the practice of the reviewing courts to review the briefs and the record and analyze the issues prior to oral argument. (Proposed rule 8.702(g).)
 - *Writ proceedings.* The proposed rules would provide that, in general, the regular rules relating to writ proceedings in the Court of Appeal would apply in Sacramento arena or leadership project cases. However, the proposed rules would require that a writ petition be filed very quickly—within 30 days after service of notice of entry of the superior court judgment or order being challenged. (Proposed rule 8.703.)
 - *Special fee.* Public Resources Code section 21183(e), which was enacted in 2011 as part of AB 900, provides that the applicant for certification of a project as a leadership project “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.” The Judicial Council adopted rule 8.497(i) to implement that statutory provision. Because the committees are recommending the repeal of rule 8.497, the provisions relating to this fee would be moved to a new rule in this chapter. (Proposed rule 8.705.) The proposed new rule also includes references to appeals as well as writ proceedings, and the sanction of proceeding in the superior court if the fee is not paid has been deleted.

Alternatives Considered

In light of the statutory provision requiring the council to develop rules providing for resolution of the subject proceedings within 270 days, the advisory committees considered shorter time frames for setting the case management conference, for parties’ filing briefs on the merits in the trial courts and appellate briefs in the Courts of Appeal, for the trial court to make its decision after the hearing, and for the Courts of Appeal to consider a case before oral argument. However, the committees concluded that the time frames in the proposed rules are already so short as to be unrealistic and declined to propose anything shorter. These cases will be, by definition, about large and complex projects. It would be a disservice to the parties and to the

public to require any shorter time for the parties to brief the issues or for the courts' decision-making process.

Implementation Requirements, Costs, and Operational Impacts

Implementing the new expedited procedures will generate costs and operational impacts for both the trial courts and Courts of Appeal in which the proceedings governed by these rules are filed. While the \$100,000 fee for each appeal authorized by statute should offset these additional costs in the Courts of Appeal, no such fee is authorized in the trial courts.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory are interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- The proposed rules provide petitioners who file a court action within 10 days from issuance of the Notice of Determination with 10 extra days for filing their brief on the merits. (See rule 3.2227(a).) Should an additional 5 days be added to that incentive, in order to make it more likely that cases will be filed quickly, but leaving the possibility of only 5 days between the filing of a reply brief and hearing by the trial court?
- Should the incentive for early filing be referred to in the rule regarding filing and service (rule 3.2222)?
- Is the case management conference (CMC) set too early under the proposed rules (see rule 3.2226)? Should another 5 or 10 days be provided to make sure all parties have been served and can participate in the joint preparation of the CMC statement? If yes, where else in the process could time be shortened in order to try to meet the goal of resolution of the action within 270 days?
- Are there issues or items in addition to those set out in rule 3.2226(c) that should be included in the matters to be considered at the CMC?
- Are there any additional topics that should be addressed in the proposed appellate rules for Sacramento arena and leadership projects rather than be governed by the general appellate rules?
- Is the 5-day time period for filing the notice of appeal feasible? Should this time period be changed to 5 *court* days or some other period?
- Is there any way to address within these rules the issues that may arise in environmental leadership cases because the proposed time for filing a notice of appeal comes before the deadline for filing certain posttrial motions? Should an advisory committee comment be added referencing this? Should the time for filing the notice of appeal be extended to correspond with the deadline for filing motions to vacate or motions for new trial?

The advisory committees also seek comments from *courts* on the following cost and implementation matter:

- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- What costs will the trial courts incur in implementing the underlying statutes and these rules?

Attachments and Links

1. Proposed trial court rules, at pages 13–24.
2. Proposed appellate court rules, at pages 25–37
3. SB 743 may be viewed at

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB743&search_keywords=

Rule 3.1365 of the California Rules of Court would be renumbered as rule 3.2205 and a new rule 3.1365 would be adopted; rules 3.1366–3.1368 would be amended and renumbered as rules 3.2206–3.2208; rules 3.2200, 3.2220–3.2231, 3.2235–3.2237, 8.700–8.703, and 8.705 would be adopted; rule 8.104 would be amended; and rule 8.497 would be repealed, effective July 1, 2014, to read:

1 **Title 3. Civil Rules**

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3 **Division 11. Law and Motion**

4
5 **Chapter ~~8~~ 7. ~~Other~~ Civil Petitions**

6
7 **Rule 3.1365. Petitions Under the California Environmental Quality Act**

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9 Rules for petitions for relief under the California Environmental Quality Act have been
10 renumbered and moved to Division 22 of these rules, beginning with rule 3.2200.

11
12 **Advisory Committee Comment**

13 Former rule 3.1365 on the form and format of administrative record lodged in a CEQA proceeding has
14 been renumbered as rule 3.2205.

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19 **Division 22. Petitions Under the California Environmental Quality Act**

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21 **Chapter 1. General Provisions**

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24 **Rule 3.2200. Application**

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26 Except as otherwise provided in chapter 2 for actions under Public Resources Code sections
27 21168.6.6 and 21178–21189.3, the rules in this chapter apply to all actions under the California
28 Environmental Quality Act (CEQA) as set forth in Division 13 of the Public Resources Code.

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31 **Rule ~~3.1365~~ 3.2205. Form and format of administrative record lodged in a CEQA**
32 **proceeding**

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34 * * * *

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37 **Rule ~~3.1366~~ 3.2206. Lodging and service**

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39 The party preparing the administrative record must lodge it with the court and serve it on each
40 party. A record in electronic format must comply with rule 3.~~1367~~2207. A record in paper format
41 must comply with rule 3.~~1368~~2208. If the party preparing the administrative record elects, is
42 required by law, or is ordered to prepare an electronic version of the record, (1) a court may
43 require the party to lodge one copy of the record in paper format, and (2) a party may request the

1 record in paper format and pay the reasonable cost or show good cause for a court order
2 requiring the party preparing the administrative record to serve the requesting party with one
3 copy of the record in paper format.
4
5

6 **Rule 3.1367 3.2207. Electronic format**
7

8 **(a) Requirements**
9

10 The electronic version of the administrative record lodged in the court in a proceeding
11 brought under the California Environmental Quality Act must be:
12

- 13 (1) In compliance with rule ~~3.1365~~2205;
- 14
15 (2) Created in portable document format (PDF) or other format for which the software
16 for creating and reading documents is in the public domain or generally available at a
17 reasonable cost;
- 18
19 (3) Divided into a series of electronic files and include electronic bookmarks that
20 identify each part of the record and clearly state the volume and page numbers
21 contained in each part of the record;
22
- 23 (4) Contained on a CD-ROM, DVD, or other medium in a manner that cannot be
24 altered; and
25
- 26 (5) Capable of full text searching.
27

28 The electronic version of the index required under rule ~~3.1365~~2205(b) may include
29 hyperlinks to the indexed documents.
30

31 **(b) Documents not included**
32

33 Unless otherwise required by law, any document that is part of the administrative record
34 and for which it is not feasible to create an electronic version may be provided in paper
35 format only. Not feasible means that it would be reduced in size or otherwise altered to
36 such an extent that it would not be easily readable.
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39 **Rule 3.1368 3.2208. Paper format**
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1
2 **Chapter 2. California Environmental Quality Act Proceedings under Public Resources**
3 **Code sections 21168.6.6 and 21178–21189.3**
4

5 **Article 1. General Provisions**
6

7 **Rule 3.2220. Definitions and application**
8

9 **(a) Definitions**

10 As used in this chapter:
11

12
13 (1) An “environmental leadership development project” or “leadership project” means a
14 project certified by the Governor under Public Resources Code sections 21182–
15 21184.
16

17 (2) The “Sacramento entertainment and sports center project” or “Sacramento arena
18 project” means an entertainment and sports center project as defined by Public
19 Resources Code section 21168.6.6, for which the proponent provided notice of
20 election to proceed under that statute described in section 21168.6.6(j)(1).
21

22 **(b) Proceedings governed**
23

24 The rules in this chapter govern actions or proceedings brought to attack, review, set aside,
25 void, or annul the certification of the environmental impact report or the grant of any
26 project approvals for the Sacramento arena project or an environmental leadership
27 development project. Except as otherwise provided in Public Resources Code sections
28 21168.6.6 and 21178–21189.3 and these rules, the provisions of the Public Resources Code
29 and the CEQA Guidelines adopted by the Natural Resources Agency (Cal. Code Regs., tit.
30 14, § 15000 et seq.) governing judicial actions or proceedings to attack, review, set aside,
31 void, or annul acts or decisions of a public agency on the grounds of noncompliance with
32 the California Environmental Quality Act and the rules of court generally apply in
33 proceedings governed by these rules.
34

35 **(c) Complex case rules**
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37 Any action or proceeding governed by these rules is exempted from the rules regarding
38 complex cases.
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40
41 **Rule 3.2221. Time**
42

43 **(a) Extensions of time**
44

45 The court may order extensions of time only for good cause and in order to promote the
46 interests of justice.

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2 **(b) Extensions of time by parties**
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4 If the parties stipulate to extend the time for performing any acts in actions governed by
5 these rules, they are deemed to have agreed that the time for resolving the action may be
6 extended beyond 270 days by the number of days by which the performance of the act has
7 been stipulated to be extended, and to that extent to have waived any objection to
8 noncompliance with the deadlines for completing review stated in Public Resources Code
9 sections 21168.6.6(c)–(d) and 21185. Any such stipulation must be approved by the court.

10
11 **(c) Sanctions for failure to comply with rules**
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13 If a party fails to comply with any time requirements provided in these rules or ordered by
14 the court, the court may issue an order to show cause why one of the following sanctions
15 should not be imposed:

16
17 (A) Reduction of time otherwise permitted under these rules for the performance of other
18 acts by that party;

19
20 (B) If failure to comply is by petitioner or plaintiff, dismissal of the petition;

21
22 (C) If the failure to comply is by respondent or a real party in interest, removal of the
23 action from the expedited procedures provided under Public Resources Code
24 sections 21168.6.6(c)–(d) and 21185 and these rules; or

25
26 (D) Any other sanction that the court finds appropriate.
27
28

29 **Rule 3.2222. Filing and service**
30

31 **(a) Electronic filing**
32

33 All pleadings and other documents filed in actions or proceedings governed by this chapter
34 must be filed electronically unless the action or proceeding is in a court that does not
35 provide for electronic filing of documents.
36

37 **(b) Service**
38

39 Other than the petition, which must be served personally, all documents that the rules in
40 this chapter require be served on the parties must be served personally or electronically.
41 All parties represented by counsel are deemed to have agreed to accept electronic service.
42 All self-represented parties may agree to such service.
43
44

1 **(c) Service of petition in action regarding Sacramento arena project**

2
3 Service of the petition or complaint in an action governed by these rules and relating to a
4 Sacramento arena project must be made according to the rules in article 2.
5

6 **(d) Service of petition in action regarding environmental leadership project**

7
8 If the petition or complaint in an action governed by these rules and relating to an
9 environmental leadership project is not personally served on any respondent public agency,
10 any real party in interest, and the Attorney General within two court days following filing
11 of the petition, the time for filing petitioner’s briefs on the merits in rule 3.2227(a) and rule
12 8.702(e), will be decreased by one day for every additional two court days in which service
13 is not completed unless otherwise ordered by the court for good cause shown.
14

15 **(e) Exemption from extension of time**

16
17 The extension of time provided in Code of Civil Procedure section 1010.6 for service
18 completed by electronic means does not apply to any service in actions governed by these
19 rules.
20
21

22 **Rule 3.2223. Petition**

23
24 In addition to any other applicable requirements, the petition must:
25

26 (1) On the first page, directly below the case number, indicate that the matter is either a
27 “Sacramento Arena CEQA Challenge” or an “Environmental Leadership CEQA
28 Challenge”;

29
30 (2) State that either:

31
32 (A) The proponent of the project at issue provided notice to the lead agency that it
33 was proceeding under Public Resources Code section 21168.6.6 and is subject
34 to this rule; or

35
36 (B) That the project at issue was certified by the Governor as a leadership project
37 under Public Resources Code sections 21182–21184 and is subject to this rule;
38

39 (3) If a leadership project, provide notice that the person or entity that applied for
40 certification of the project as a leadership project must, if the matter goes to the
41 Court of Appeal, make the payments required by Public Resources Code section
42 21186(h); and

43
44 (4) Be verified.
45

1
2 **Rule 3.2224. Response to petition**

3
4 **(a) Responsive pleadings**

5
6 (1) The respondent and any real party in interest, within 10 days after service of the
7 petition or complaint on that party or within the time ordered by the court, must
8 serve and file:

9
10 (A) Any answer to the petition;

11
12 (B) Any motion challenging the sufficiency of the petition, including any motion
13 to dismiss the petition;

14
15 (3) Any other response to the petition; or

16
17 (4) Any motion to change venue.

18
19 (2) Any such answer, motion, or other response from the same party must be filed
20 concurrently.

21
22 **(b) Opposition**

23
24 Any opposition or other response to a motion challenging the sufficiency of the petition or
25 to change venue must be served and filed within 10 days after the motion is served.

26
27
28 **Rule 3.2225. Administrative record**

29
30 **(a) Lodging and service**

31
32 Within 10 days after the petition is served on the lead public agency, that agency must
33 lodge the certified final administrative record in electronic form with the court and serve
34 notice on the petitioner and real party in interest that the record has been lodged with the
35 court. Within that same time, the agency must serve a copy of the administrative record in
36 electronic form on any petitioner and real party in interest who has not already been
37 provided a copy.

38
39 **(b) Paper copy of record**

40
41 Upon request and payment of the reasonable cost of preparation, or upon order of the court
42 for good cause shown, the lead agency must provide a party with the record in paper
43 format.

1 **(c) Motions regarding the record**

2
3 Unless otherwise ordered by the court:

- 4
- 5 (1) Any request to augment or otherwise change the contents of the administrative
6 record must be made by motion served and filed no later than the filing of that
7 party's initial brief.
- 8
- 9 (2) Any opposition or other response to the motion must be served and filed within 10
10 days after the motion is filed.
- 11
- 12 (3) Any motion regarding the record will be heard at the time of the hearing on the
13 merits of the petition unless the court orders otherwise.
- 14

15

16 **Rule 3.2226. Initial case management conference**

17

18 **(a) Timing of conference**

19

20 The court should hold an initial case management conference within 30 days of the filing
21 of the petition or complaint.

22

23 **(b) Notice**

24

25 The petitioner must provide notice of the case management conference to the respondent,
26 the real party in interest, and any responsible agency or party to the action that has been
27 served prior to the case management conference within one court day of receiving notice
28 from the court or at time of service of the petition or complaint, whichever is later.

29

30 **(c) Subjects for consideration**

31

32 At the conference, the court should consider the following:

33

- 34 (1) Whether all parties named in the petition or complaint have been served;
- 35
- 36 (2) Whether a list of responsible agencies has been provided and notice provided to
37 each;
- 38
- 39 (3) Whether all responsive pleadings have been filed and, if not, when they must be
40 filed, and whether any hearing is required to address them;
- 41
- 42 (4) Whether severance, bifurcation, or consolidation with other actions is desirable and,
43 if so, a relevant briefing schedule;
- 44
- 45 (5) Whether to appoint liaison or lead counsel, and either set a briefing schedule on this
46 issue or actually appoint counsel;

- 1
2 (6) Whether the administrative record has been certified and served on all parties,
3 whether there are any issues with it, and whether the court wants to receive a paper
4 copy;
5
6 (7) Whether the parties anticipate any motions prior to the hearing on the merits,
7 concerning discovery, injunctions, or other matters, and, if so, a briefing schedule for
8 these motions;
9
10 (8) What issues the parties intend to raise in their briefs on the merits and whether any
11 limitation of issues to be briefed and argued is appropriate;
12
13 (9) Whether a schedule for briefs on the merits different from the schedule provided in
14 these rules is appropriate;
15
16 (10) Whether the submission of joint briefs on the merits is appropriate and the page
17 limitations, whether aggregate or per brief;
18
19 (11) When the hearing on the merits of the petition will be held and the amount of time it
20 will require;
21
22 (12) The potential for settlement and whether a schedule for settlement conferences or
23 alternative dispute resolution should be set;
24
25 (13) Any stipulations between the parties;
26
27 (14) Whether a further case management conference should be set; and
28
29 (15) Any other matters that the court finds appropriate or that should be addressed in the
30 court's case management order.
31

32 **(d) Joint case management conference statements**

33
34 At least three court days before the case management conference, the petitioner and all
35 parties that have been served with the petition must serve and file a joint case management
36 conference statement that address the issues identified in (c) and any other pertinent issues.
37

38 **(e) Preparation for the conference**

39
40 At the conference, lead counsel for each party and each self-represented party must appear
41 by telephone or personally, must be familiar with the case, and must be prepared to discuss
42 and commit to the party's position on the issues listed in (c).
43
44
45

1 **Rule 3.2227. Briefing and hearing**

2
3 **(a) Briefing schedule**

4
5 Unless otherwise ordered by the court:

- 6
7 (1) The petitioner must serve and file its brief within 25 days after the case management
8 conference, unless petitioner served and filed the petition within 10 days of the
9 public agency’s issuance of its Notice of Determination, in which case the petitioner
10 must file and serve its brief within 35 days after the case management conference.
11
12 (2) Within 25 days after the petitioner’s brief is filed, the respondent public agency
13 must—and any real party in interest may—serve and file a respondent’s brief.
14 Respondents and real parties must file a single joint brief unless otherwise ordered
15 by the court.
16
17 (3) Within 5 days after the respondent’s brief is filed, the parties must jointly file an
18 appendix of excerpts that contains the documents or pertinent excerpts of the
19 documents cited in the parties’ briefs.
20
21 (4) Within 10 days after the respondent’s brief is filed, the petitioner may serve and file
22 a reply brief.

23
24 **(b) Hearing**

- 25
26 (1) The hearing should be held within 80 days of the case management conference,
27 extended by the number of days to which the parties have stipulated to extend the
28 briefing schedule.
29
30 (2) If the court has, within 90 days of the filing of the petition or complaint, set a hearing
31 date, the provision in Public Resources Code section 21167.4 that petitioner request
32 a hearing date within 90 days is deemed to have been met and no further request is
33 required.
34
35

36 **Rule 3.2228. Judgment**

37
38 The court should issue its decision and final order, writ, or judgment within 30 days of the
39 completion of the hearing in the action. The court must include a written statement of the factual
40 and legal basis for its decision. Code of Civil Procedure section 632 does not apply to actions
41 governed by the rules in this division.
42

43
44 **Rule 3.2229. Notice of settlement**

45
46 The petitioner or plaintiff must immediately notify the court if the case is settled.

1
2
3 **Rule 3.2230. Settlement procedures and statement of issues**
4

5 In cases governed by the rules in this chapter, unless otherwise ordered by the court, the
6 procedures described in Public Resources Code section 21167.8, including the filing of a
7 statement of issues, are deemed to have been met by the parties addressing the potential for
8 settlement and narrowing of issues within the case management conference statement and
9 discussing those points as part of the case management conference.

10
11 **Rule 3.2231. Postjudgment motions**
12

13 **(a) Exemption from statutory provisions**
14

15 In any actions governed by the rules in this article, any postjudgment motion except for a
16 motion for attorney’s fees and costs is governed by this rule. Such motions are exempt
17 from the timing requirements otherwise applicable to postjudgment motions under Code of
18 Civil Procedure section 1005. Motions in Sacramento arena cases are also exempt from the
19 timing and procedural requirements of Code of Civil Procedure sections 659 and 663.
20

21 **(b) Time for postjudgment motions**
22

23 **(1) Time for motions under Code of Civil Procedure section 473**
24

25 Moving party must serve and file any motion before the earlier of:
26

27 **(A) Five days after the court clerk’s mailing to the moving party a document**
28 **entitled “Notice of Entry” of judgment or a file-stamped copy of the judgment,**
29 **showing the date either was served; or**
30

31 **(B) Five days after the moving party is served by any party with a written notice of**
32 **judgment or a file-stamped copy of the judgment, accompanied by a proof of**
33 **service.**
34

35 **(2) Time for motions for new trial or motions to vacate judgment**
36

37 Moving party in Sacramento arena cases must serve and file motion before the
38 earlier of:
39

40 **(A) Five days after the court clerk’s mailing to the moving party a document**
41 **entitled “Notice of Entry” of judgment or a file-stamped copy of the judgment,**
42 **showing the date either was served; or**
43

44 **(B) Five days after the moving party is served by any party with a written notice of**
45 **judgment or a file-stamped copy of the judgment, accompanied by a proof of**
46 **service.**

1
2 **(c) Memorandum of points and authorities**

3
4 A memorandum in support of a postjudgment motion may be no longer than 15 pages.

5
6 **(d) Opposition to motion**

7
8 Any opposition to the motion must be served and filed within five days of service of the
9 moving papers and may be no longer than 15 pages.

10
11 **(e) Reply**

12
13 Any reply brief must be served and filed within two court days of service of the opposition
14 papers and may be no longer than five pages.

15
16 **(f) Hearing and decision**

17
18 The court may set a hearing on the motion at its discretion. The court should issue its
19 decision on the motion within 15 days of the filing of the motion.

20
21
22 **Article 2. CEQA Challenges to Approval of Sacramento Arena Project**

23
24 **Rule 3.2235. Application**

25
26 This article governs any action or proceeding brought to attack, review, set aside, void, or annul
27 the certification of the environmental impact report or any project approvals for the Sacramento
28 arena project.

29
30 **Rule 3.2236. Service of petition**

31
32 **(a) Respondent**

33
34 Unless the respondent public agency has agreed to accept service of summons
35 electronically, the petitioner or plaintiff must personally serve the petition or complaint on
36 the respondent public agency within one court day after the date of filing.

37
38 **(b) Real parties in interest**

39
40 The petitioner or plaintiff must serve the petition or complaint on any real party in interest
41 named in the pleading within three court days after the date of filing.

42
43 **(c) Attorney General**

44
45 The petitioner or plaintiff must serve the petition or complaint on the Attorney General
46 within one court day after the date of filing.

1
2 **(d) Responsible agencies**
3

4 The petitioner or plaintiff must serve the petition or complaint on any responsible agencies
5 or public agencies with jurisdiction over a natural resource affected by the project within
6 two court days of receipt of a list of such agencies from respondent lead public agency.
7

8 **(e) Proof of service**
9

10 The petitioner or plaintiff must file proof of service on each respondent, real party in
11 interest, or agency within one court day of completion of service.
12

13 **Rule 3.2237. List of responsible agencies**
14

15 Respondent public agency must provide the petitioner or plaintiff, not later than three court days
16 following service of the petition or complaint on the public agency, with a list of responsible
17 agencies and any public agency having jurisdiction over a natural resource affected by the
18 project.
19
20

21 **Title 8. Appellate Rules**
22

23 **Division 1. Rules Relating to the Supreme Court and Courts of Appeal**
24

25 **Chapter 2. Civil Appeals**
26

27 **Article 1. Taking the Appeal**
28

29 **Rule 8.104. Time to appeal**
30

31 **(a) Normal time**
32

33 (1) Unless a statute, ~~or~~ rule 8.108, or rule 8.702 provides otherwise, a notice of appeal
34 must be filed on or before the earliest of:

35
36 (A) 60 days after the superior court clerk serves on the party filing the notice of
37 appeal a document entitled “Notice of Entry” of judgment or a file-stamped
38 copy of the judgment, showing the date either was served;

39
40 (B) 60 days after the party filing the notice of appeal serves or is served by a party
41 with a document entitled “Notice of Entry” of judgment or a file-stamped copy
42 of the judgment, accompanied by proof of service; or

43
44 (C) 180 days after entry of judgment.
45

46 (2) – (3) * * *

1
2 (b)–(e) * * *

3
4
5 **Chapter 8. Miscellaneous Writs**

6
7 **Rule 8.497. Review of California Environmental Quality Act cases under Public Resources**
8 **Code sections 21178–21189.3**

9
10 **(a)—Application**

11
12 (1) ~~This rule governs actions or proceedings in the Court of Appeal alleging that a public~~
13 ~~agency has approved or is undertaking an environmental leadership development~~
14 ~~project in violation of the California Environmental Quality Act. As used in this rule,~~
15 ~~an “environmental leadership development project” or “leadership project” means a~~
16 ~~project certified by the Governor under Public Resources Code sections 21182–~~
17 ~~21184.~~

18
19 (2) ~~Except as otherwise provided in Public Resources Code sections 21178–21189.3 and~~
20 ~~this rule, the provisions of the Public Resources Code and the CEQA Guidelines~~
21 ~~adopted by the Natural Resources Agency (Cal. Code Regs., tit. 14, § 15000 et seq.)~~
22 ~~governing judicial actions or proceedings to attack, review, set aside, void, or annul~~
23 ~~acts or decisions of a public agency on the grounds of noncompliance with the~~
24 ~~California Environmental Quality Act apply in proceedings governed by this rule.~~

25
26 **(b)—Service**

27
28 ~~Except as otherwise provided by law, all documents that this rule requires be served on the~~
29 ~~parties must be served by personal delivery, electronic service, express mail, or other~~
30 ~~means consistent with Code of Civil Procedure sections 1010, 1011, 1012, and 1013 and~~
31 ~~reasonably calculated to ensure delivery of the document to the parties not later than the~~
32 ~~close of the business day after the document is filed or lodged with the court.~~

33
34 **(c)—Petition**

35
36 (1) *Service and filing*

37
38 ~~A person alleging that a public agency has approved or is undertaking a leadership~~
39 ~~project in violation of the California Environmental Quality Act must serve and file a~~
40 ~~petition for a writ of mandate in the Court of Appeal with geographic jurisdiction~~
41 ~~over the project.~~

42
43 (2) *Form and contents*

44
45 ~~In addition to any other applicable requirements, the petition must:~~
46

1 (A) State that the project at issue was certified by the Governor as a leadership
2 project under Public Resources Code sections 21182-21184 and is subject to
3 this rule;

4
5 (B) Provide notice that the person or entity that applied for certification of the
6 project as a leadership project must make the payments required by (h);

7
8 (C) Include any other claims required to be concurrently filed by the petitioner
9 under Public Resources Code section 21185; and

10
11 (D) Be verified.

12
13 **(d) Administrative record**

14
15 (1) *Lodging and service*

16
17 ~~Within 10 days after the petition is served on the lead public agency, that agency~~
18 ~~must lodge the certified final administrative record with the Court of Appeal and~~
19 ~~serve on the parties a copy of the certified final administrative record and notice that~~
20 ~~the record has been lodged with the court.~~

21
22 (2) *Form and contents*

23
24 (A) ~~Unless otherwise ordered by the Court of Appeal, the lead agency must lodge~~
25 ~~with the court one copy of the record in electronic format and one copy in~~
26 ~~paper format and serve on each party one copy of the record in electronic~~
27 ~~format. The record in electronic format must comply with rules 3.1365 and~~
28 ~~3.1367. The record in paper format must comply with rules 3.1365 and 3.1368.~~

29
30 (B) ~~A party may request the record in paper format and pay the reasonable cost or~~
31 ~~show good cause for a court order requiring the lead agency to serve the~~
32 ~~requesting party with one copy of the record in paper format.~~

33
34 (C) ~~The record must include all of the materials specified in Public Resources~~
35 ~~Code section 21167.6.~~

36
37 (3) *Motions regarding the record*

38
39 (A) ~~Any request to augment or otherwise change the contents of the administrative~~
40 ~~record must be made by motion in the Court of Appeal. The motion must be~~
41 ~~served and filed within 25 days after the record is served.~~

42
43 (B) ~~Any opposition or other response to the motion must be served and filed within~~
44 ~~10 days after the motion is filed.~~

1 (C) ~~The Court of Appeal may appoint a special master to hear and decide any~~
2 ~~motion regarding the record. The order appointing the special master may~~
3 ~~specify the time within which the special master is required to file a decision.~~

4
5 **~~(e) Notice of settlement~~**

6
7 ~~The petitioner must immediately notify the court if the case is settled.~~

8
9 **~~(f) Response to petition~~**

10
11 (1) ~~Within 25 days after service of the administrative record or within the time ordered~~
12 ~~by the court, the respondent and any real party in interest must serve and file any~~
13 ~~answer to the petition; any motion challenging the sufficiency of the petition,~~
14 ~~including any motion to dismiss the petition; and any other response to the petition.~~
15 ~~Any such answer, motion, or other response from the same party must be filed~~
16 ~~concurrently.~~

17
18 (2) ~~Any opposition or other response to a motion challenging the sufficiency of the~~
19 ~~petition must be served and filed within 10 days after the motion is filed.~~

20
21 **~~(g) Briefs~~**

22
23 (1) ~~*Service and filing*~~

24
25 ~~Unless otherwise ordered by the court:~~

26
27 (A) ~~The petitioner must serve and file its brief within 40 days after the~~
28 ~~administrative record is served.~~

29
30 (B) ~~Within 30 days after the petitioner's brief is filed, the respondent public agency~~
31 ~~must—and any real party in interest may—serve and file a respondent's brief.~~

32
33 (C) ~~Within 20 days after the respondent's brief is filed, the petitioner may serve~~
34 ~~and file a reply brief.~~

35
36 (2) ~~*Form and contents*~~

37
38 ~~The briefs must comply as nearly as possible with rule 8.204.~~

39
40 **~~(h) Certificate of Interested Entities or Persons~~**

41
42 (1) ~~Each party other than a public agency must comply with the requirements of rule~~
43 ~~8.208 concerning serving and filing a *Certificate of Interested Entities or Persons*.~~

44
45 (2) ~~The petitioner's certificate must be included in the petition. Other parties must~~
46 ~~include their certificate in their brief, or if the party files an answer or other response~~

1 to the petition, a motion, an application, or an opposition to a motion or application
2 in the Court of Appeal before filing its brief, the party must serve and file its
3 certificate at the time it files the first answer, response, motion, application, or
4 opposition. The certificate must appear after the cover and before any tables.
5

6 (3) — If a party fails to file a certificate as required under (1) and (2), the clerk must notify
7 the party by mail that the party must file the certificate within 10 days after the
8 clerk's notice is mailed and that failure to comply will result in one of the following
9 sanctions:

10
11 (A) — If the party is the petitioner, the court will strike the petition; or

12
13 (B) — If the party is the real party in interest, the court will strike the document.

14
15 (4) — If the party fails to comply with the notice under (3), the court may impose the
16 sanctions specified in the notice.
17

18 **(i) — Court costs**

19
20 (1) — In fulfillment of the provision in Public Resources Code section 21183 regarding
21 payment of the Court of Appeal's costs:

22
23 (A) — Within 10 days after service of the petition on the real party in interest, the
24 person who applied for certification of the project as a leadership project must
25 pay a fee of \$100,000 to the Court of Appeal.

26
27 (B) — If the Court of Appeal incurs any of the following costs, the person who
28 applied for certification of the project as a leadership project must also pay,
29 within 10 days of being ordered by the court, the following costs or estimated
30 costs:

31
32 (i) — The costs of any special master appointed by the Court of Appeal in the
33 case; and

34
35 (ii) — The costs of any contract personnel retained by the Court of Appeal to
36 work on the case.
37

38 (2) — If the fee or costs under (1) are not timely paid, the Court of Appeal may transfer the
39 case to the superior court with geographic jurisdiction over the project, and the case
40 will proceed under the procedures applicable to projects that have not been certified
41 as leadership projects.
42

43 **(j) — Extensions of time**

44
45 The court may order extensions of time only for good cause and in order to promote the
46 interests of justice.
47

1 **Advisory Committee Comment**

2
3 **Subdivision (b).** This provision does not apply to service of the petition on the respondent public agency
4 or real party in interest because the method of service on these parties is set by Public Resources Code
5 sections 21167.6 and 21167.6.5.
6

7 **Subdivision (c).** Under this provision, a proceeding in the Court of Appeal is initiated by serving and
8 filing a petition for a writ of mandate as provided in rule 8.25, not by filing a complaint and serving a
9 summons and the complaint.
10

11 **Subdivision (d)(3)(C).** Public Resources Code section 21185 provides that the court may appoint a
12 master to assist the court in managing and processing cases subject to this rule. Appointment of a special
13 master to hear and decide motions regarding the record is just one example of when a court might make
14 such an appointment.
15

16 **Subdivision (f).** A party other than the petitioner who files an answer, motion, or other response to a
17 petition under (e) may be required to pay a filing fee under Government Code section 68926 if the
18 answer, motion, or other response is the first document filed in the proceeding in the reviewing court by
19 that party. See rule 8.25(c).
20

21 **Subdivision (g).** On application of the parties or on its own motion, the court may set different briefing
22 periods. For example, if a motion to augment or otherwise modify the contents of the record is filed, the
23 court might order that petitioner’s brief be filed within a specified time after that motion is decided.
24
25
26

27 **Chapter 11. Review of California Environmental Quality Act cases under Public Resources**
28 **Code sections 21168.6.6 and 21178–21189.3**

29
30 **Rule 8.700. Definitions and application**

31
32 **(a) Definitions**

33
34 As used in this chapter:

- 35
36 (1) An “environmental leadership development project” or “leadership project” means a
37 project certified by the Governor under Public Resources Code sections 21182–
38 21184.
39
40 (2) The “Sacramento entertainment and sports center project” or “Sacramento arena
41 project” means the entertainment and sports center project as defined by Public
42 Resources Code section 21168.6.6, for which the proponent provided notice of
43 election to proceed under that statute as described in section 21168.6.6(j)(1).
44

45 **(b) Proceedings governed**

46
47 The rules in this chapter govern appeals and writ proceedings in the Court of Appeal to
48 review a superior court judgment or order in an action or proceeding brought to attack,

1 review, set aside, void, or annul the certification of the environmental impact report or the
2 granting of any project approvals for an environmental leadership development project or
3 the Sacramento arena project.
4
5

6 **Rule 8.701. Filing and service**
7

8 **(a) Service**
9

10 Except when the court orders otherwise under (b) or as otherwise provided by law, all
11 documents that the rules in this chapter require be served on the parties must be served by
12 personal delivery, electronic service, express mail, or other means consistent with Code
13 of Civil Procedure sections 1010, 1011, 1012, and 1013 and reasonably calculated to
14 ensure delivery of the document to the parties not later than the close of the business day
15 after the document is filed or lodged with the court.
16

17 **(b) Electronic filing and service**
18

19 Notwithstanding rules 8.71(a) and 8.73, the court may order that:
20

21 (1) All documents be filed electronically;
22

23 (2) All documents be served electronically on parties who have stipulated to electronic
24 service. All parties represented by counsel are deemed to have stipulated to
25 electronic service. All self-represented parties may so stipulate.
26

27 **(c) Exemption from extension of time**
28

29 The extension of time provided in Code of Civil Procedure section 1010.6 for service
30 completed by electronic means does not apply to any service in actions governed by these
31 rules.
32
33

34 **Rule 8.702. Appeals**
35

36 **(a) Application of general rules for civil appeals**
37

38 Except as otherwise provided by the rules in this chapter, rules 8.100–8.278, relating to
39 civil appeals, apply to appeals under this chapter.
40

41 **(b) Notice of appeal**
42

43 (1) Time to appeal
44

45 The notice of appeal must be served and filed on or before the earlier of:
46

1 (A) Five days after the superior court clerk serves on the party filing the notice of
2 appeal a document entitled “Notice of Entry” of judgment or a file-stamped
3 copy of the judgment, showing the date either was served; or

4
5 (B) Five days after the party filing the notice of appeal serves or is served by a
6 party with a document entitled “Notice of Entry” of judgment or a file-
7 stamped copy of the judgment, accompanied by proof of service.

8
9 (2) *Contents of notice of appeal*

10
11 The notice of appeal must:

12
13 (A) State that the superior court judgment or order being appealed is governed by
14 the rules in this chapter;

15
16 (B) Indicate whether the judgment or order pertains to the Sacramento arena
17 project or a leadership project; and

18
19 (C) If the judgment or order being appealed pertains to a leadership project,
20 provide notice that the person or entity that applied for certification of the
21 project as a leadership project must make the payments required by rule
22 8.705.

23
24 (c) **Extending the time to appeal**

25
26 (1) *Motion for new trial*

27
28 If any party serves and files a valid notice of intention to move for a new trial or,
29 under rule 3.2237, a valid motion for a new trial and that motion is denied, the time
30 to appeal from the judgment is extended for all parties until the earlier of:

31
32 (A) Five days after the superior court clerk or a party serves an order denying the
33 motion or a notice of entry of that order; or

34
35 (B) Five days after denial of the motion by operation of law.

36
37 (2) *Motion to vacate judgment*

38
39 If, within the time prescribed by subdivision (b) to appeal from the judgment, any
40 party serves and files a valid notice of intention to move—or a valid motion—to
41 vacate the judgment and that motion is denied, the time to appeal from the judgment
42 is extended for all parties until five days after the superior court clerk or a party
43 serves an order denying the motion or a notice of entry of that order.

1 **(d) Record on appeal**

2
3 **(1) Record of written documents**

4
5 The record of the written documents from the superior court proceedings other than
6 the administrative record must be in the form of a joint appendix or separate
7 appellant's and respondent's appendices under rule 8.124.
8

9 **(2) Record of the oral proceedings**

10
11 **(A) The appellant must serve and file with its notice of appeal a notice**
12 **designating the record under rule 8.121 specifying whether the appellant**
13 **elects to proceed with or without a record of the oral proceedings in the trial**
14 **court. If the appellant elects to proceed with a record of the oral proceedings**
15 **in the trial court, the notice must designate a reporter's transcript.**
16

17 **(B) Any party that submits a copy of a Transcript Reimbursement Fund**
18 **application in lieu of a deposit under rule 8.130(b)(3) must serve all other**
19 **parties with notice of this submission when the party serves its notice of**
20 **designation of the record. Within five days after service of this notice, any**
21 **other party may submit to the trial court the required deposit for the**
22 **reporter's transcript under rule 8.130(b)(1), the reporter's written waiver of**
23 **the deposit under rule 8.130(b)(3)(A), or a certified transcript of all of the**
24 **proceedings designated by the party under rule 8.130(b)(3)(C).**
25

26 **(C) Within 10 days after the superior court notifies the court reporter to prepare**
27 **the transcript under rule 8.130(d)(2), the reporter must prepare and certify an**
28 **original of the transcript and file the original and required number of copies**
29 **in superior court.**
30

31 **(D) If the appellant does not present its notice of designation as required under**
32 **(A) or if any designating party does not submit the required deposit for the**
33 **reporter's transcript under rule 8.130(b)(1) or a permissible substitute under**
34 **rule 8.130(b)(3) with its notice of designation or otherwise fails to timely do**
35 **another act required to procure the record, the superior court clerk must serve**
36 **the defaulting party with a notice indicating that the party must do the**
37 **required act within two court days of service of the clerk's notice or the court**
38 **may impose one of the following sanctions:**
39

40 **(i) If the defaulting party is the appellant, the court may dismiss the**
41 **appeal; or**

42
43 **(ii) If the defaulting party is the respondent, the court may proceed with**
44 **the appeal on the record designated by the appellant.**
45
46

1 **(e) Superior court clerk duties**

2
3 Within two court days following the filing of a notice of appeal under this rule, the
4 superior court clerk must:

5
6 (1) Serve the following on each party:

7
8 (A) Notification of the filing of the notice of appeal; and

9
10 (B) A copy of the register of actions, if any.

11
12 (2) Transmit the following to the reviewing court clerk:

13
14 (A) A copy of the notice of appeal;

15
16 (B) A copy of the appellant's notice designating the record; and

17
18 (C) An electronic copy of the administrative record.

19
20 **(f) Briefing**

21
22 (1) Electronic filing

23
24 Unless otherwise ordered by the reviewing court, all briefs must be electronically
25 filed.

26
27 (2) Time to serve and file briefs

28
29 Unless otherwise ordered by the reviewing court:

30
31 (A) An appellant must serve and file its opening brief within 25 days after the
32 notice of appeal is served and filed.

33
34 (B) A respondent must serve and file its brief within 25 days after the appellant
35 files its opening brief.

36
37 (C) An appellant must serve and file its reply brief, if any, within 15 days after
38 the respondent files its brief.

39
40 (3) Contents and form of briefs

41
42 (A) The briefs must comply as nearly as possible with rule 8.204.

43
44 (B) If a designated reporter's transcript has not been filed at least 5 days before
45 the date by which a brief must be filed, an initial version of the brief may be
46 served and filed in which references to a matter in the reporter's transcript are

1 not supported by a citation to the volume and page number of the reporter's
2 transcript where the matter appears. Within 10 days after the reporter's
3 transcript is filed, a revised version of the brief must be served and filed in
4 which all references to a matter in the reporter's transcript must be supported
5 by a citation to the volume and page number of the reporter's transcript
6 where the matter appears.

7
8 (C) Unless otherwise ordered by the court, within 5 days after filing its brief, each
9 party must submit an electronic version of the brief that contains hyperlinks to
10 material cited in the brief, including electronically searchable copies of the
11 record on appeal, cited decisions, and the parties' other briefs. Such briefs
12 must comply with any local requirements of the reviewing court relating to
13 e-briefs.

14
15 (4) Extensions of time to file briefs

16
17 If the parties stipulate to extend the time to file a brief under rule 8.212(a), they are
18 deemed to have agreed that the time for resolving the action may be extended
19 beyond 270 days by the number of days by which the parties stipulated to extend
20 the time for filing the brief and, to that extent, to have waived any objection to
21 noncompliance with the deadlines for completing review stated in Public Resources
22 Code sections 21168.6.6(c)–(d) and 21185 for the duration of the stipulated
23 extension.

24
25 (5) Failure to file brief

26
27 If a party fails to timely file an appellant's opening brief or a respondent's brief, the
28 reviewing court clerk must serve the party with a notice indicating that if the
29 required brief is not filed within two court days of service of the clerk's notice, the
30 court may impose one of the following sanctions:

31
32 (A) If the brief is an appellant's opening brief, the court may dismiss the appeal;

33
34 (B) If the brief is a respondent's brief, the court may decide the appeal on the
35 record, the opening brief, and any oral argument by the appellant; or

36
37 (C) Any other sanction that the court finds appropriate.

38
39 (g) **Oral argument**

40
41 Unless otherwise ordered by the reviewing court, oral argument will be held within 45
42 days after the last reply brief is filed. The reviewing court clerk must send a notice of the
43 time and place of oral argument to all parties at least 15 days before the argument date.
44 The presiding justice may shorten the notice period for good cause; in that event, the clerk
45 must immediately notify the parties by telephone or other expeditious method.

1 **Rule 8.703. Writ proceedings**

2
3 **(a) Application of general rules for writ proceedings**

4
5 Except as otherwise provided by the rules in this chapter, rules 8.485–8.493, relating to
6 writs of mandate, certiorari, and prohibition in the Supreme Court and Court of Appeal,
7 apply to writ proceedings under this chapter.

8
9 **(b) Petition**

10
11 **(1) Time for filing petition**

12
13 A petition for a writ challenging a superior court judgment or order governed by the
14 rules in this chapter must be must be served and filed on or before the earliest of:

15
16 **(A)** Thirty days after the superior court clerk serves on the party filing the
17 petition a document entitled “Notice of Entry” of judgment or order, or a
18 file-stamped copy of the judgment or order, showing the date either was
19 served; or

20
21 **(B)** Thirty days after the party filing the petition serves or is served by a party
22 with a document entitled “Notice of Entry” of judgment or order, or a file-
23 stamped copy of the judgment or order, accompanied by proof of service.

24
25 **(2) Contents of petition**

26
27 In addition to any other applicable requirements, the petition must:

28
29 **(A)** State that the superior court judgment or order being challenged is governed
30 by the rules in this chapter;

31
32 **(B)** Indicate whether the judgment or order pertains to the Sacramento arena
33 project or a leadership project; and

34
35 **(C)** If the judgment or order pertains to a leadership project, provide notice that
36 the person or entity that applied for certification of the project as a leadership
37 project must make the payments required by 8.705.

38
39
40 **Rule 8.705. Court of Appeal costs in leadership projects**

41
42 In fulfillment of the provision in Public Resources Code section 21183 regarding payment of the
43 Court of Appeal’s costs with respect to cases concerning leadership projects:

- 1 (1) Within 10 days after service of the notice of appeal or petition in a case concerning a
2 leadership project, the person who applied for certification of the project as a leadership
3 project must pay a fee of \$100,000 to the Court of Appeal.
4
- 5 (2) If the Court of Appeal incurs any of the following costs, the person who applied for
6 certification of the project as a leadership project must also pay, within 10 days of being
7 ordered by the court, the following costs or estimated costs:
8
- 9 (A) The costs of any special master appointed by the Court of Appeal in the case; and
10
- 11 (B) The costs of any contract personnel retained by the Court of Appeal to work on the
12 case.
13
- 14 (3) If the party fails to timely pay the fee or costs specified in this rule, the court may impose
15 sanctions that the court finds appropriate after notifying the party and providing the party
16 with an opportunity to pay the required fee or costs.
17