



memorandum

date May 20, 2014

to Scott Johnson, Environmental Planner, City of Sacramento

cc Desmond Parrington, ESC Project Manager, City of Sacramento

from Brian D. Boxer, AICP and Christina Erwin

subject Sacramento Entertainment and Sports Center & Related Development EIR Errata – May 20, 2014

Following the close of the Draft Environmental Impact Report (EIR) public comment period (December 16, 2013 through January 31, 2014), several letters were submitted to the City of Sacramento regarding the proposed Sacramento Entertainment and Sports Center & Related Development project (Proposed Project). Some of these letters were submitted to the City’s Current Planning Department or the City Manager’s Office as opposed to the City’s Environmental Planning Department, the entity responsible for preparing the EIR. Several letters were received after the close of the Draft EIR public comment period. As a result, some of the correspondence sent to the City was not included in the Final EIR, but is addressed herein.

Table 1 identifies letters received by the City on the Proposed Project that were not included in the Final EIR.

**TABLE 1
 LATE COMMENT LETTERS RECEIVED REGARDING THE PROPOSED PROJECT**

Letter #	Entity	Author(s) of Comment Letter/e-mail	Date Received	Author Submitted Comment Letter on the Draft EIR
1	United Auburn Indian Community (UAIC)	Gene Whitehouse, Chairman	February 20, 2014	Comment Letter O20
2		Kevin Dayton	April 9, 2014	
3	Unite Here, Local 49	Ty Hudson	April 9, 2014	Comment Letter O12
4		Glenda Marsh	April 9, 2014	
5		Matthew Korve	April 10, 2014	
6	Plaza Five Fifty Five	William Chang, Manager	April 10, 2014	Comment Letter I29
7	Sacramento Area Bicycle Advocates (SABA)	Jim Brown, Executive Director	April 10, 2014	Comment Letter O2
8	Old Sacramento Business Association (OSBA)	Terry Harvego, Vice Chairman	May 14, 2014	Comment Letters O9 and O15
9		J. Bolton Phillips	May 15, 2014	
10		Will Rowe	May 15, 2014	
11		Martha Sward and John Farrell	May 16, 2014	
12	The Smith Firm	Kelly T. Smith	May 16, 2014	Comment Letter O19
13	The Smith Firm	Kelly T. Smith	May 16, 2014	Comment Letter O19
14	Friends of the Swainson’s	Judith Lamare	May 6, 2014	

TABLE 1
LATE COMMENT LETTERS RECEIVED REGARDING THE PROPOSED PROJECT

	Hawk			
15	The Smith Firm	Kelly T. Smith	May 16, 2014	Comment Letter O19
16	The Smith Firm	Kelly T. Smith	May 16, 2014	Comment Letter O19
17	The Smith Firm	Kelly T. Smith	May 16, 2014	Comment Letter O19
18	The Smith Firm	Kelly T. Smith	May 16, 2014	Comment Letter O19
19		Karen Redman	May 16, 2014	
20		Christine Hansen	May 16, 2014	
21		Jeanie Keltner	May 18, 2014	
22		Maggie Coulter	May 19, 2014	
23		Ron Emslie	May 19, 2014	
24		Heather Fargo	May 19, 2014	
25	Environmental Council of Sacramento	Ron Maertz	May 20, 2014	Comment Letter O11
26		Kevin Coyle	May 20, 2014	Comment Letter I20
27		Sarah Foster	May 20, 2014	
28		Kelly T. Smith	May 20, 2014	Comment Letter O19
29		Ron Emslie	May 20, 2014	

Letter 1 requests ongoing coordination between the City and the UAIC regarding potentially significant cultural resources at the Downtown project site. Such coordination is ongoing.

Letter 2 discusses the potential for union members to raise CEQA issues in an attempt to obtain a Community Benefit Agreement or Project Labor Agreement. An article discussing union labor is attached to the letter. The letter does not raise any environmental issues.

Letter 3 requested the Planning and Design Commission recommend the ESC for approval. The comments suggest that not enough detail is known about the ancillary development, and the Planning and Design Commission should recommend against approving that part of the Proposed Project. The comments also object to the provision in the SPD allowing Planning Director approval of Conditional Use Permits. The Planning and Design Commission recommended project approval to the City Council on April 10, 2014.

Letter 4 expresses concern regarding the interface of trucks and bikes on 5th Street between L Street and J Street, and expresses support for realigning the bike lane to the west side of 5th Street between Capitol Mall and I Street. Response to Comment A3-8 in the Final EIR addresses potential options for maintaining on-street bicycle facilities along 5th Street between L and J Streets and maintaining consistency with the City's Bikeway Master Plan. The comment letter refers to a City-staff proposed solution presented to the project applicant to alleviate bike/truck interface concerns, but the letter does not provide specific information about that suggested solution. The letter further suggests the project applicant is not required by the City to accommodate bicycle accessibility to the Downtown project site. Section 4.10 in the Draft EIR describes bike facilities that will be incorporated as part of the Proposed Project including short-term and long-term bike parking, and the Final EIR further refines the locations of those proposed facilities (see Final EIR, Figure 2-24).

Letter 5 opposes the proposed digital billboards component of the Proposed Project due to the billboards' brightness at night and the potential for some billboards to obscure views of the downtown skyline. Specifically, the comments oppose proposed digital billboards at the I-5 at Water Tank and US 50 at Pioneer Reservoir sites. The I-5 at Water Tank site was not recommended by the Planning and Design Commission. An analysis of the aesthetics impacts of the proposed digital billboards, including light and glare considerations and potential impacts to viewsheds, was addressed in section 4.1, Aesthetics, Light and Glare in the Draft EIR.

Letter 6 notes that Plaza Five Fifty Five submitted a comment letter on the Draft EIR, but had not received a response to that comment letter prior to the Planning and Design Commission hearing on April 10, 2014. The comment letter submitted (dated January 31, 2014) on the Draft EIR was included as an attachment. Plaza Five Fifty Five's comment letter (Comment Letter I29) and responses to that letter are included in the Final EIR.

Letter 7 incorrectly interprets a statement in the project application design narrative as well as an accompanying graphic. The Proposed Project's would not provide for bicycle riding through the event plaza, including along 5th Street between L Street and J Street or along K Street between 3rd Street and 7th Street. There would be short-term bicycle parking racks in the event plaza, allowing bicycle users to ride to the Downtown project site and walk a bicycle through the event plaza to a publicly accessible bike rack. Figure 2-24, Bicycle Plan, in the Final EIR shows the proposed locations for possible bike share docking stations, short- and long-term bicycle parking, and bike valet services.

Letter 16 also raises concerns regarding the bicycle/truck interface along northbound 5th Street between L Street and J Street. As explained at the April 10, 2014 Planning and Design Commission hearing, a Class 2 bike lanes would be provided northbound and southbound on 5th Street between J and L Streets. The City does not believe that a two-way cycle track is necessary in order to provide safe bicycle access along 5th Street.

Letter 8 is addressed to Councilmember Steve Hansen, which was then forwarded to City staff. The letter requests that Old Sacramento's various issues are addressed to the satisfaction of the OSBA. The issues raised in this letter are similar to concerns raised and addressed in the Final EIR (see Final EIR Comment Letters O9 and O15) such as vehicular and pedestrian connectivity to Old Sacramento, parking availability, and economic conditions in Old Sacramento. The letter also requests ongoing communication with the City. The City and the project applicant continue to perform public outreach, including to the OSBA, regarding the timing of construction activities and refinement of the Event Transportation Management Plan.

Letter 9 provides a link to a video on You Tube (<http://www.youtube.com/watch?v=bWjNW6YyeH0>). The video purports to show Los Angeles Lakers fans and spectators outside of the Staples Center in Los Angeles, California. Some of the people shown in the video are standing while others are walking outside of the arena. One image shows a small active fire near the Staples Center building, while another image appears to show the remnants of a fire in the street or walkway. The audio indicates that tear gas is deployed on bystanders although direct evidence of that is unclear in the video. Neither the letter submitted nor the linked video provides any direct correlation between the video images, audio or event circumstances and the proposed Sacramento Entertainment and Sports Center & Related Development project. Impact 4.8-2 in the Draft EIR addresses outdoor crowd noise and its potential effect on sensitive receptors. Impact 4.9-1 in the Draft EIR addresses the provision of interior and exterior security at the ESC.

Letter 10 expresses concern about driver-safety and light spillover from the proposed US 50 at Pioneer Reservoir digital billboard site. Impacts 4.1-2 and 4.1-3 in the Draft EIR address lighting effects on traffic safety. Impact 4.1-2 in the Draft EIR addresses potential spillover light from the proposed digital billboards. The US 50 at Pioneer Reservoir billboard location was not determined to have a potentially significant impact on sensitive receptors due to the proposed billboard's distance from such receptors (residences), the proposed height of the billboard, and the viewing angle.

Letter 11 provides an opinion that digital billboards are ugly and create blight. Impact 4.1-1 in the Draft EIR discusses potential changes to the visual character and quality of the proposed digital billboard sites and their surroundings. Figure 2-30a in the Final EIR provides a representative photograph of an existing digital billboard within the city limits.

Letter 12 expresses concern about public rioting. The potential for and consequences of public riots and other scofflaw behavior are not CEQA issues and are not addressed in the Draft EIR or Final EIR. However, the Draft EIR addresses the provision of law enforcement, fire protection, and emergency services in section 4.10. In addition, Impact 4.8-2 in the Draft EIR addresses outdoor crowd noise and its potential effect on sensitive receptors.

Letter 13 expresses concern about the transportation analysis and the assessment of vehicle miles traveled (VMT). Response to Comment I14-1 in the Final EIR discusses the methodology used for assessing VMT. As explained in Response to Comment I14-1, the baseline VMT per attendee at Sleep Train Arena is 11.57 VMT per attendee, while a sold-out Kings game at the ESC is expected to generate 164,578 VMT, which is 9.40 VMT per attendee. Please see Final EIR Response to Comment I14-1 for further information regarding VMT methodology and analysis.

Letter 14 expresses an opinion that the proposed digital billboard at the Business 80 at Sutter's Landing Regional Park site should be eliminated from consideration to preserve wildlife resources at the park and within the American River Parkway. Section 4.3, Biological Resources, in the Draft EIR describes the Proposed Project's potential impacts to biological resources, including wildlife. Draft EIR Impact 4.3-1 describes potential impacts from construction and operation of the Business 80 at Sutter's Landing Regional Park digital billboard on listed wildlife species and their habitat, specifically elderberry shrubs and the valley elderberry longhorn beetle. Mitigation Measure 4.3-1(a) is proposed to protect elderberry shrubs and the valley elderberry longhorn beetle at that location. Draft EIR Impact 4.3-2 analyzes the potential impact on nesting raptors, migratory birds, and maternity roosts for special-status bat species. The analysis determined that construction activities including tree removal could impact wildlife species, but operation of and light emitted by the digital billboard at the Business 80 at Sutter's Landing Regional Park site would not adversely affect wildlife species. With the implementation of Mitigation Measures 4.3-2(a), 4.3-2(b), and 4.3-2(c), the Proposed Project would not cause a substantial reduction in local population size or reduce reproductive success to raptors, migratory birds, and special-status bat species. Thus, impacts to raptors, migratory birds, and special-status bats from implementation of the Proposed Project at the Downtown project site and the proposed digital billboard sites would be mitigated to a less-than-significant level.

Letter 15 questions the legality of Senate Bill 743 and includes an attachment. The attachment is an Invitation to Comment on "CEQA Actions: Rules to Implement Senate Bill 743" prepared by the Judicial Council of California and the Administrative Office of the Courts. The attachment provides background on Senate Bill 743 and describes the proposed legislative rules and proposed rule amendments designed to fulfill the Judicial Council's statutory obligation to adopt rules implementing the expedited judicial review procedure established by Senate Bill 743. Aside from the reference to Senate Bill 743 which applies to the Proposed Project, there is no reference in the attachment to the Proposed Project, and no reference that can be reasonably connected to environmental effects of the Proposed Project or the Draft EIR. Comments offering legal opinions on Senate Bill 743 and general comments regarding the project's relationship to that statute have been forwarded to the City Attorney for consideration. No further response is possible or required.

Letter 16 expresses concern regarding noise levels produced by construction and operation of the Proposed Project. The letter refers to “noise levels above the 4.5 decibel ordinance level.” The EIR does not make reference to a 4.5 decibel noise level, however it does make reference to the residential interior noise standards established by the City of Sacramento 2030 General Plan of 45 dBA Ldn and which is also identified as a threshold of significance for noise impacts.

Draft EIR Impact 4.8-1 analyzes the Proposed Project’s permanent increase in ambient exterior noise levels in the vicinity of the Downtown project site. The analysis concludes that there would be a significant impact resulting from increased on-road transportation noise; the addition of heating, ventilation, and air-conditioning (HVAC) systems at the project site; and ESC event noise such as outdoor speakers and amplified noise and crowd noise before and after events. Mitigation Measure 4.8-1(a) requires that on-site mechanical equipment and area-source operations such as loading docks be located as far as possible and/or shielded from noise sensitive land uses. Mitigation Measure 4.8-1(b) requires a qualified acoustical consultant to verify that the architectural and outdoor amplified sound system designs incorporate all acoustical features in order to comply with the City of Sacramento Noise Ordinance. While implementation of Mitigation Measures 4.8-1(a) and (b) would be undertaken as described in the Mitigation Monitoring Plan (see Final EIR, Chapter 4), the impact would remain significant and unavoidable.

Draft EIR Impact 4.8-2 analyzes the potential for the Proposed Project to produce residential interior noise levels of 45 dBA Ldn or greater. As described on page 4.8-25 of the Draft EIR, the nearest existing residential receptors to the Downtown project site (in the Riverview Plaza, Ping Yuen Apartments, and Wong Center) would be exposed to interior noise levels less than 45 Ldn (assuming 20 dBA exterior-to-interior attenuation by the building structure). In addition, the approximately 100 foot tall practice facility would completely block the line of site of the ESC from the Hotel Marshall and Jade Apartments residences, which would substantially reduce noise exposure at these receptors and ensure interior noise levels less than 45 Ldn. The analysis determined that interior noise levels at proposed on-site residences within the SPD area could exceed City thresholds, resulting in a significant impact. Mitigation Measure 4.8-2(a) requires project applicants for residential development to submit a detailed noise study, prepared by a qualified acoustical consultant, to identify design measures necessary to achieve the City interior standard of 45 Ldn in the proposed new residences. The building plans submitted for building permit approval shall be accompanied by certification of a licensed engineer that the plans include the identified noise-attenuating design measures and satisfy the requirements of the mitigation measure. As described in the Mitigation Monitoring Plan, these actions shall be undertaken prior to the issuance of building permits for the proposed future residential units. Because noise mitigation involves detailed design information, it would be impractical to more specifically define these measures at any time prior to a future application for a specific residential project. However, the City is aware of a multitude of noise mitigating design features, including building orientation, insulation, and other noise-mitigating building materials, such that it is reasonable to conclude that this mitigation is reasonably foreseeable. Mitigation Measure 4.8-2(b) requires the implementation of Mitigation Measure 4.8-1(b) to minimize noise from outdoor amplified sound systems. The timing of that mitigation would be prior to design review approval permit.

Letter 17 provides an attachment of the recently proposed rules the Judicial Council to implement Senate Bill 743. The attachment is an Invitation to Comment on “CEQA Actions: Rules to Implement Senate Bill 743” prepared by the Judicial Council of California and the Administrative Office of the Courts, the same attachment provided in Letter 15. Comments offering legal opinions on Senate Bill 743 and general comments regarding the project’s

relationship to that statute have been forwarded to the City Attorney for consideration. No further response is possible or required.

Letter 18 provides an attached letter, “Second Saturday to go the way of Thursday Night Market?” published in the Sacramento Press on September 19, 2010. The article describes the success of Thursday Night Market and Second Saturday events as both were well-attended events. The article touches on outdoor noise caused by event attendees, signage and lighting near the event locations, parking availability, and crowd control. Impact 4.8-2 in the Draft EIR addresses outdoor crowd noise caused by the proposed ESC and its potential effect on sensitive receptors. Signage and lighting considerations for the Proposed Project are addressed in section 4.1 of the Draft EIR. Parking is addressed in section 4.10 of the Draft EIR. Crowd control and police protection are addressed in Draft EIR Impact 4.9-1. Pedestrian management and traffic management are addressed in the Revised Event Transportation Management Plan included in Chapter 2 of the Final EIR.

Letter 19 suggests that the Final EIR fails to address deficiencies of the Draft EIR. The letter does not provide identification of any specific deficiencies in the Draft EIR, nor does it provide any general or specific suggested solutions. No further response is possible.

Letter 20 suggests that the Final EIR fails to address deficiencies identified in comments on the Draft EIR particularly with regard to traffic, noise, and other impacts created by the proposed digital billboards. The letter does not identify any specific comments on the Draft EIR which the commenter believes are inadequately addressed. The Final EIR addresses comments on the environmental analysis received during the Draft EIR public comment period. No other response is possible. The letter also generally objects to the Proposed Project and the EIR.

Letter 21 suggests that the Final EIR fails to address deficiencies identified in comments on the Draft EIR particularly with regard to traffic, noise, and other impacts created by the proposed digital billboards. The letter does not identify any specific comments on the Draft EIR which are inadequately addressed. The Final EIR addresses comments on the environmental analysis received during the Draft EIR public comment period. No other response is possible. The letter also generally objects to the Proposed Project and the EIR.

Letter 22 suggests that the Final EIR fails to address deficiencies identified in comments on the Draft EIR particularly with regard to traffic, noise, and other impacts created by the proposed digital billboards. The letter does not identify any specific comments on the Draft EIR which are inadequately addressed. The Final EIR addresses comments on the environmental analysis received during the Draft EIR public comment period. No other response is possible. The letter also generally objects to the Proposed Project and the EIR.

Letter 23 suggests that the Final EIR fails to address deficiencies identified in comments on the Draft EIR particularly with regard to traffic, noise, and other impacts created by the proposed digital billboards. The letter does not identify any specific comments on the Draft EIR which are inadequately addressed. The Final EIR addresses comments on the environmental analysis received during the Draft EIR public comment period. No other response is possible. The letter also generally objects to the Proposed Project and the EIR.

Letter 24 provides comment that opposes the proposed changes to the City's billboard statute (amending the Sacramento City Code by amending Section 15.148.815 and adding Section 15.148.965, relating to digital billboards on City-owned lands). The letter opposes the elimination of relocation agreements, suggesting the addition of new billboards to the city contribute to blight. Impact 4.1-1 in the Draft EIR discusses potential changes to the visual

character and quality of the proposed digital billboard sites and their surroundings. Figure 2-30a in the Final EIR provides a representative photograph of an existing digital billboard near Jibboom Street in the city limits. The letter also suggests that digital billboards near roadways increase driver distraction. Impacts 4.1-2 and 4.1-3 in the Draft EIR address lighting effects on traffic safety.

Letter 25 provides comment on several responses to comments contained in the Final EIR. The comment regarding Response to Comment O11-2 focused on only a portion of the response which addressed issues related to downtown single room occupancy hotel units. The response also addressed wider concerns regarding effects on land values and noted that social and economic effects are not considered physical environmental effects under CEQA unless they are part of a linkage between the project and physical effects on the environment. Final EIR Response to Comment O11-3 responds to the comments about consistency with the Housing Element, and reiterates the project's proposed contribution to the Housing Trust Fund fee program. The City's program does not require the proposed project to commit to construction of a specific number of units. Final EIR Response to Comment O11-4 addresses a comment that requests the addition of a mitigation measure related to training and hiring of local employees and creation of affordable housing. As noted by the commenter, the response does not address the connection between the requested mitigation measure and physical environmental effects because the original comment (O11-4) made no such connection, and, further, the City is aware of no such connection. Finally, Letter 25 states that the Urban Decay Analysis contained in Chapter 5 of the Draft EIR does not disclose the nature of cumulative retail projects. These projects are fully described in Exhibits 29-31 of Appendix H to the Draft EIR, which contains the detailed Urban Decay Analysis that is summarized in Chapter 5. Letter 25 does not raise any new environmental issues that were not previously addressed in the EIR.

Letter 26 provides commentary on several responses to comments contained in the Final EIR. The comments provided in Letter 26 reiterate the author's original comments contained in his letter on the Draft EIR, included in the Final EIR as Letter O20. The comments raise a number of concerns about very large events that could occur at the proposed ESC, and the potential for unruly or scofflaw crowd behavior associated with those events. Information documenting the rarity and unpredictability of very large events is presented in the EIR. As noted above, crowd control and police protection are addressed in Draft EIR Impact 4.9-1. The potential for and consequences of scofflaw behavior are not CEQA issues and are not addressed in the EIR. Letter 26 does not raise any new environmental issues that were not previously addressed in the EIR.

Letter 27 addresses concerns regarding the potential effects of the project on parking and traffic in Midtown Sacramento. The analysis presented in the EIR supports a conclusion that the effects of the proposed ESC on the Midtown transportation system supporting residents and businesses would not be substantial. As noted in Chapter 4.10, studies undertaken for the EIR concluded that there are more than adequate parking spaces to accommodate cars from a sold-out event at the ESC taking into account existing parking demand. Thus, concerns about displacement of parking from downtown into Midtown are not supported by the evidence provided in the EIR. Letter 27 does not raise any new environmental issues that were not previously addressed in the EIR.

Letter 28 raises concerns about traffic impacts on Interstate 80 and State Route 160. Section 4.10, Transportation, of the Draft EIR addresses project-specific and cumulative traffic impacts on regional highways including Interstate 80 and State Route 160. The letter does not raise any new environmental issues that were not previously addressed in the EIR.

Letter 29 is a resubmission of the same comments included in Letter 23. Letter 29 does not raise any new environmental issues that were not previously addressed in the EIR.

Analysis and Conclusion

We have reviewed all of the attached correspondence for issues that may pertain to the EIR. All potential environmental issues raised in these comment letters were addressed in the Sacramento Entertainment and Sports Center & Related Development EIR. The comments addressed in this Erratum do not identify any environmental effects beyond those described in the Sacramento Entertainment and Sports Center & Related Development EIR, and no further analysis is required.



MIWOK United Auburn Indian Community
MAIDU of the Auburn Rancheria

Gene Whitehouse
Chairman

John L. Williams
Vice Chairman

Danny Rey
Secretary

Brenda Adams
Treasurer

Calvin Moman
Council Member

February 20, 2014

Stacia Cosgrove
City of Sacramento
300 Richards Blvd., Third Floor
Sacramento, CA 95811

Subject: Entertainment and Sports Center, Project Number P13-065

Dear Stacia Cosgrove,

Thank you for providing additional information regarding the above referenced project. The United Auburn Indian Community (UAIC) of the Auburn Rancheria is comprised of Miwok and Southern Maidu (Nisenan) people whose tribal lands are within Placer County and whose service area includes El Dorado, Nevada, Placer, Sacramento, Sutter, and Yuba counties. The UAIC is concerned about development within its aboriginal territory that has potential to impact the lifeways, cultural sites, and landscapes that may be of sacred or ceremonial significance. We appreciate the opportunity to continue to comment on this and other projects in your jurisdiction.

In order to ascertain whether or not the project could affect cultural resources that may be of importance to the UAIC, we are currently reviewing the information provided by your agency. Please continue to send copies of future environmental documents for the proposed project so that we have the opportunity to comment on potential impacts and proposed mitigation measures related to cultural resources. The information gathered will provide us with a better understanding of the project and cultural resources on site and is invaluable for consultation purposes. Please contact us if any Native American cultural resources are in, or found to be within, your project area.

Thank you again for taking these matters into consideration, and for involving the UAIC in the planning process. We look forward to reviewing additional documents that have not already been sent as requested. Please contact Marcos Guerrero, Cultural Resources Manager, at (530) 883-2364 or email at mguerrero@auburnrancheria.com if you have any questions.

Sincerely,

Gene Whitehouse,
Chairman

CC: Marcos Guerrero, CRM

Stacia Cosgrove

From: Kevin Dayton <kdayton@laborissuessolutions.com>
Sent: Wednesday, April 09, 2014 10:54 PM
To: burchillcitypc@gmail.com; ed@loftgardens.com; dcovill@cbnorcal.com; sacplanning_declines@me.com; pharveycitypc@aol.com; todd.s.kaufman@gmail.com; othermeeta@gmail.com; ALofaso@sbcglobal.net; kimjoanmc@att.net; phyllis@phyllisnewton.com; dnybo@wateridge.net; jparrinello08@comcast.net; tr5753@att.com
Cc: David Kwong; Stacia Cosgrove; Scott Johnson
Subject: Planning & Design Commission: Speak Out at 4/10 Meeting Against "Greenmail" - Unions Exploiting CEQA for Economic Objectives on ESC - Kings Arena

Dear Members of the City of Sacramento Planning and Design Commission:

According to an article on the *Sacramento Business Journal* web site today ([Union Group Makes Noise Over Development Around Arena](#) – April 9, 2014), the Sacramento Central Labor Council is demanding that the Planning Commission extract the ancillary development from your proposed approval of the Environmental Impact Report under the California Environmental Quality Act (CEQA) for the Entertainment and Sports Center Special Planning District (SPD).

Unions threatening to use CEQA as a tool to extract economic benefits such as labor agreements is no surprise to anyone who has followed proposed developments in the Sacramento region over the past 15 years. Look at the history of environmental review for these projects:

- Sacramento Railyards
- Sutter Medical Center Expansion
- Promenade at Natomas
- Greenbriar
- Delta Shores
- Township 9
- Metropolitan Hotel
- West Roseville Specific Plan
- Roseville Galleria Expansion
- Rio del Oro in Rancho Cordova
- Placer Vineyards
- Regional University Specific Plan
- Roseville Energy Center
- Cosumnes Power Plant

This new threat from the Sacramento Central Labor Council was expected. I wrote a comprehensive article published in www.UnionWatch.org on March 11, 2014 predicting how the Entertainment and Sports Center Final Environmental Impact Report would be targeted with union CEQA objections as a strategy to get a union Community Benefit Agreement/Project Labor Agreement on ancillary development. (See text below.)

Most of the development partners targeted in this union CEQA greenmail attempt will lay low and wring their hands hoping this costly CEQA exploitation can be settled somehow without raising costs to the point that it jeopardizes the entire project. But as members of the Planning and Design Commission, you have the authority and the responsibility of service to the public to investigate the objectives of these CEQA complaints.

At the April 10, 2014 Planning and Design Commission meeting, please ask the union representatives and their lawyers the following questions:

1. What does the City of Sacramento and Sacramento Basketball Holdings (SBH) need to do to resolve your concerns about the environmental impact of the ancillary development around the new Entertainment and Sports Center (aka Sacramento Kings Arena)?
2. Does a Community Benefit Agreement or Project Labor Agreement have to be part of any settlement to relieve your environmental concerns?
3. Do you believe backroom deals such as this one to end union CEQA objections against the San Diego Convention Center Phase 3 Expansion are an appropriate way to resolve environmental concerns? ([Link to email outlining the deal between the Mayor of San Diego and the head of the San Diego-Imperial Counties Labor Council, AFL-CIO](#))
4. Who will you designate to negotiate any settlements with the City of Sacramento and Sacramento Basketball Holdings (SBH)?

For a project of such importance for the Sacramento region, the ulterior motives of groups that identify shortcomings under CEQA need to be examined and aired for the public good. Thank you for the courage to investigate and expose this scheme. See you at the meeting.

Kevin Dayton
 President and CEO
 Labor Issues Solutions, LLC
 3017 Douglas Blvd., Ste. 300
 Roseville, CA 95661
 (916) 439-2159
kdayton@laborissuessolutions.com

See my blog postings about generally unreported California state and local policy issues at www.laborissuessolutions.com
 Twitter: [@DaytonPubPolicy](https://twitter.com/DaytonPubPolicy)

How a Basketball Arena Would Expand the Unionized Workforce in Sacramento: Part 3

BY KEVIN DAYTON ON MARCH 11, 2014 · LEAVE A COMMENT

This is [Part Three](#), explaining how unions may attempt to win control of the construction and permanent jobs at the ancillary development around the arena. [Part One](#) explained the background of how construction trade unions have already obtained a monopoly on the construction workforce for the arena itself. [Part Two](#) explained the union plot to monopolize the service jobs at the arena.

Factions in the Construction Industry: Trusting Pragmatism Versus Principled Cynicism

Leaders of the Sacramento regional construction industry were on the sidelines as the new ownership of the Sacramento Kings basketball team privately negotiated a Project Labor Agreement with trade unions for construction of the new downtown arena. Yet construction business associations such as Associated General Contractors (AGC) and Associated Builders and Contractors (ABC) still supported the city's plan for the arena.

In a pragmatic decision, these construction associations took the risk to trust that private developers for buildings near the arena will not require their contractors to sign Project Labor Agreements. This development will supposedly include 475,000 square feet of office, 350,000 square feet of retail and commercial space, up to 550 new residential units, and up to 250 hotel rooms, for a grand total of as much as 1.5 million square feet. Up to 11,000 jobs would result.

In exchange for acquiescing to the Project Labor Agreement on the arena, these associations expect fair and open competition for adjacent projects within the city's Entertainment and Sports District. The *Sacramento Bee* reported this perspective expressed at a January 27, 2014 rally of contractors and union leaders in support of the arena:

John Cooper of Associated General Contractors said his group, which represents both union and nonunion builders, supports the arena project. "We see an opportunity for huge leaps and bounds when it comes...to job creation," said Cooper, the AGC's regional manager.

But Cooper said he'd "pull my support" if the ancillary development – a hotel, retail and more – isn't open to all bidders. He said "I've been assured" there won't be a project labor agreement covering this ancillary development, like there is for the arena itself.

Political consultant Chris Lehane, who is part of The4000's leadership, said it's "premature to ask those questions" about how the ancillary development would be built.

"Our focus right now is to make sure we get those 11,000 jobs," Lehane said.

A handful of electrical contractors objected vehemently to this arrangement. They felt that allowing unions to have a monopoly on construction of the basketball arena would set a precedent for other major projects in the region. In addition, they did not trust union leaders or the politicians backed by union leaders to resist such a lucrative target once it was definite.

Dissenting from the major trade associations, these contractors individually provided enough campaign funding to revitalize a floundering signature-gathering campaign on petitions for a ballot measure for voters to establish a city charter provision requiring voter approval of a public subsidy for an entertainment or sports facility. Arena supporters feared – and arena opponents expected – that Sacramento voters would approve this check and balance against the proposed \$258 million public subsidy for the basketball arena.

Enough signatures were collected to qualify the petition for the June 2014 ballot, but the city clerk disqualified the petitions because of numerous technical errors. The campaign then sued to overturn the city clerk's decision, but a Sacramento County Superior Court judge agreed with the city clerk's judgment and also ruled that the city charter could not be amended in this manner.

Can Unions Resist Grabbing More Work Through CEQA Greenmail?

Which of these two positions among bickering groups of contractors will be proven right? One possible indication of the future is an ultra-last-minute attempt by unions to amend a last-minute bill in the California State Legislature providing certain breaks to the arena and surrounding development from the California Environmental Quality Act (CEQA), the primary tool of unions to extort concessions from private developers. (This practice is known as "greenmail.")

Late in the 2013 session, Senate President pro Tem Darrell Steinberg (D-Sacramento) amended Senate Bill 743 to make some minor modifications to the California Environmental Quality Act and "expedite judicial review of

the entertainment and sports center project” for the Sacramento Kings basketball team. Despite some griping from Left and Right, SB 743 passed 56-15-7 in the Assembly and 32-5-2 in the Senate. This occurred early in the evening of the last day of the 2013 session.

As the midnight deadline for legislative action approached, Assembly Bill 852 mysteriously appeared on the Assembly floor, courtesy of Assemblyman Roger Dickinson (D-Sacramento). This bill supposedly made technical corrections to SB 743, passed earlier in the evening.

Reportedly a specific individual senior staffer for the Assembly Republican Caucus became suspicious of the bill and investigated it. This staffer realized that it was some sort of union scheme to remove the CEQA breaks for development around the downtown Sacramento arena.

The *Sacramento Bee* described what happened next:

In a final flare of end-of-session drama, Assembly Republicans led the defeat of a last-minute labor-inspired cleanup bill related to legislation passed earlier in the evening to hasten the building of a new arena in downtown Sacramento.

Assembly Bill 852 surfaced late on Thursday evening, after both houses had passed Sen. Darrell Steinberg’s SB 743 to streamline the construction of a new arena for the Sacramento Kings. AB 852 was cast as a minor cleanup bill, making just a small change to the arena bill by further restricting which projects could be exempted from some environmental review.

It was requested by labor unions, Steinberg said, who feared that other businesses would get in on the streamlined environmental review procedures intended for the arena.”The concern from labor was that Wal Mart and the big box stores could potentially take advantage of that part of (SB) 743 to get an exemption,” he said.

The 2013 legislative session wrapped up in anger and partisan rancor as the Assembly Republican leadership refused to support AB 852 and accused the Democrats of trickiness. The bill only received 28 votes in the Assembly, and the legislature adjourned for the year with SB 743 intact.

Of course, there was no plan for a Wal-Mart next to the Kings arena. But the distaste of the Left for Wal-Mart provided a politically-potent rationale to “fix” SB 743. An article in *Salon* provided a perspective on SB 743 otherwise neglected by the news media:

Along with special exceptions for a new stadium for Sacramento’s basketball team, the new law restricts some grounds for CEQA lawsuits. “It’s going to give much more leeway to big companies to just come in and ram these projects through,” said James Araby, who directs the Western States Council of the United Food & Commercial Workers union...

The UFCW and Wal-Mart – and allies on both sides – faced off with particular fury not long before the final SB 743 vote, as legislators considered language labor argued was needed to stop the bill from becoming a loophole for unchecked Wal-Mart expansion...

[Assemblymember Lorena] Gonzalez, a former labor council secretary-treasurer, told *Salon* that in fights with Wal-Mart, “one of the only tools we’ve been able to use is CEQA, and specifically the traffic impact of Wal-Mart.” Following what she called “massive lobbying by the Chamber of Commerce” and “mainly by Wal-Mart,” the labor-backed amendment failed.

An official with the union-aligned Planning and Conservation League acknowledged in the article that “We all know that Wal-Mart is one of the biggest targets of CEQA lawsuits.”

Is it likely that the amendments backed by the United Food & Commercial Workers union will reappear at the last minute in a budget trailer bill or some other gut-and-amend bill in 2014? Of course it is, and every union will benefit from ending the CEQA break.

More evidence that unions will use environmental laws to target the ancillary development around the Kings arena comes from comments submitted to the City of Sacramento concerning the Draft Environmental Impact Report for the Entertainment and Sports District. As noted in Part 2, the UNITE HERE Local Union No. 49 submitted objections to the report along with remarks about wanting to retain and represent service workers at the new arena.

In addition, a group called Sacramento Coalition for Shared Prosperity submitted objections in conjunction with a demand for a “Community Benefits Agreement” that developers must sign for ancillary development. That agreement, modeled on the L.A. Live Community Benefits Agreement for development around the Staples Center, could guarantee “union jobs” for hotels, restaurants, janitors, parking attendants, and construction trade workers, among various occupations.

Perhaps the biggest threat to the downtown arena is the possibility that SB 743 is unconstitutional and that the arena doesn’t even qualify under the criteria in SB 743. If a court agreed with either of these claims, the environmental review would probably need to start from the beginning.

How will the Sacramento Kings basketball team ownership and the City of Sacramento respond to these costly union demands, packaged with the grounds for potential environmental lawsuits? If unions exploit the weakness of SB 743, they may get the whole package – provided the resulting cost increase allows the Entertainment and Sports District to get built in the first place.

The Three-Part Series: How a Basketball Arena Would Expand the Unionized Workforce in Sacramento

1. See [How a Basketball Arena Would Expand the Unionized Workforce in Sacramento: Part 1](#)
(how construction trade unions have already obtained a monopoly on the construction workforce for the arena)
2. See [How a Basketball Arena Would Expand the Unionized Workforce in Sacramento: Part 2](#)
(how unions are likely to win representation of the food and service workers at the new downtown Sacramento arena)
3. See [How a Basketball Arena Would Expand the Unionized Workforce in Sacramento: Part 3](#)
(how unions will likely target the ancillary development around the arena)

Sources

[Union Leaders and Building Contractors Rally in Support of Arena](#) – *Sacramento Bee* – March 11, 2014

[UNITE HERE Local 49 comments on Draft Environmental Impact Report](#)

[Sacramento Coalition for Shared Prosperity comments on Draft Environmental Impact Report](#)

[California Senate Bill 743](#)

[California Assembly Bill 852](#)

[Legislature Rejects Late Night Attempt to Tweak Kings Arena Bill](#) – *Sacramento Bee* – September 12, 2013

[Very Sneaky, Walmart: How The Mega-Retailer Rolled Back California Regulations](#) – *Salon* – October 14, 2013

[Regional Sports and Entertainment Facilities in the Urban Core Attract Costly Political Meddling: Sacramento Kings as a Case Study](#) – www.FlashReport.org – December 16, 2013

UNITE HERE



1796 Tribute Road, Suite 200 • Sacramento, California 95815
Telephone (916) 564-4949 • FAX (916) 564-4950

April 9th, 2014

Planning and Design Commission
C/o Community Development Department
City of Sacramento
300 Richards Boulevard, 3rd Floor
Sacramento, CA 95811

Dear Planning and Design Commissioners:

Tomorrow you will vote on the most important development project in downtown Sacramento in decades. Tomorrow's hearing is planned to be the final hearing before the Planning and Design Commission regarding the Entertainment and Sports Center (ESC) and the ancillary development that the Kings propose to build on the Downtown Plaza site, surrounding the ESC. As such, it is your **last chance to help shape – in any significant way – this vitally important project.**

Unlike the ESC itself, the proposed ancillary development has been the subject of very little public discussion and has received very little scrutiny. In fact, it has scarcely been described. The Planning Entitlement Application submitted by the Kings last November proposes 1.5 million square feet of mixed-use development, but answers "TBD" to virtually every question that would help describe, in even the most basic terms, what the development is going to be: the height of the buildings, the lot coverage, whether the residential units will be condominiums or rental apartments, and so on. Neither the application, nor the proposed Special Planning District, nor any public statements by the development team indicate what mix of uses will ultimately be developed, how the various uses will be arranged on the site, or anything else that would give the public an idea of what will be built at this crucial downtown location.

Despite this, the Kings are asking for – and City staff is recommending – **sweeping entitlements that will allow the Kings (or any future developer to whom the Kings sell the land) to develop almost anything they want – anywhere from zero to 1.5 million square feet – with very few meaningful conditions attached. The proposed Development Agreement would make these entitlements irrevocable**, meaning the Commission, the City Council, and the public would no longer have any say over land use, intensity, or other important characteristics of development on the Downtown Plaza site. The only discretionary approvals the developers will need in the future are site plan and design review, which would be guided only by the Central City Urban Design Guidelines, most of which are recommendations rather than requirements. (The SPD stipulates that development within its boundaries would be "subject to the development standards and design requirements established in the ESC SPD and the Central City Urban Design Guidelines," but the SPD itself only establishes one development standard, which serves only to *relax* the City's bicycle parking requirements.)

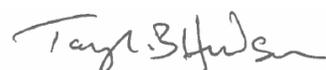
It is a step in the right direction that the City staff – upon hearing repeated objections from the Commission – has abandoned its proposal to have all site plan and design review heard at the Planning Director level, bypassing the Planning and Design Commission and City Council.

However, this last-minute change does not solve the whole problem. For example, Conditional Use Permits that normally (in the C-3 zone) require the approval of the Planning and Design Commission, in the ESC SPD would only require the approval of the Planning Director, which means they would not be appealable to the City Council – the same process the Commission objected to with regard to site plan and design review. This “streamlined” process covers CUP’s for uses such as **liquor store, auto dealership, bar, nightclub, and tobacco retailer**. Even worse, the SPD would explicitly remove the CUP requirement for a retail store larger than 125,000 square feet (eliminating the public’s and the City’s ability to influence or discourage the development of a controversial business such as **Walmart**), and inexplicably seems to eliminate the CUP requirement for a firearms business. While the SPD would still require CUP’s for bars and nightclubs (albeit granted at the Director level), the staff recommendation would grant in advance five bar/nightclub CUP’s, without any indication of where these businesses would be located, or what kind of bars are nightclubs they would be. This recommendation defeats the entire purpose of the CUP process, which is designed, according to the City Code, “to review the location and conduct of certain land uses that are known to have a distinct impact on the area in which they are located, or are capable of creating special problems for bordering properties, unless given special attention.”

In summary, the SPD and the Development Agreement, taken together, amount to the planning equivalent of a blank check. In the absence of any description of what will actually be built (or any real commitment on the part of the Kings to build anything at all, other than the arena itself and the surrounding plaza), the staff recommendation would grant the irrevocable right to build up to 1.5 million square feet of almost anything, with no height limits; no lot coverage requirement; no lot size, width, or depth requirements; no requirements regarding environmental sustainability; relaxed bicycle parking requirements; no ability to review the location or conduct of up to five bars or nightclubs; no discretion over the development of retail stores of any size; and unaccountable Director-level review of several potentially impactful or problematic uses. **If the City ever attempted to add conditions to the development of any project within the SPD – such as a height limit or a requirement that a building be LEED certified – the City could be judged to be in violation of the Development Agreement and subject to injunctive action.**

It is clear that not enough public discussion has taken place regarding the ancillary development for the Commission to responsibly grant such sweeping, irrevocable development rights. **Fortunately, the solution is simple.** By **separating items C, D, E, and I** from the rest of the staff recommendation, approving the rest of the items, and holding the four separated items for consideration at a future hearing, the Commission can allow the ESC development process to proceed, while ensuring that the ancillary development will be subject to the scrutiny that such an important project requires. This way, the timelines for the construction of the arena can be met, the Kings can beat the NBA’s deadline by a year, and the process of designing and approving the ancillary development – which will reshape downtown Sacramento forever – can be done right.

Sincerely,



Ty Hudson
Research Analyst

April 9, 2014

Subject: Entertainment and Sports Complex – Bicycle access to 5th Street

Dear Planning Commissioners:

I am a member of the Sacramento City and County Bike Advisory Committee. I present my comments as my own and am not representing the Committee. This is because the ESC developer has never approached our Committee to obtain input or feedback on bike access impacts or bike components of the project. Thus, our Committee did not have the opportunity to formally take action in compliance with the Brown Act to provide recommendations as the Committee as a whole.

As a downtown worker, City resident and full-time bike commuter, I am personally concerned about the developer's plans for how to integrate bicycle access and large truck access to the ESC on the north-bound side of 5th street as it goes under the plaza between L and J Streets. Currently, there is a bike lane on each side of 5th street. The developer has proposed, as I understand it, to realign the north-bound bike lane on the outside of the truck ingress and egress lanes. Based on experience, City staff believe, and I concur, this will prove dangerous to bicyclists because they will have to navigate around large trucks crossing the bike lane where the trucks ingress and egress the underground area beneath the arena. This plan will essentially make this portion of 5th Street off-limits to bicyclists even though existing City installed bike lanes extend to the north and south on 5th Street. These lanes will go nowhere because it will be too dangerous to ride between L and J Streets. The recent addition of bike lanes along 5th Street has so far been a great improvement to the downtown travel grid.

I request that the Planning Commission require the developer incorporate a solution for this issue that meets the intent and goals of the excellent bike facility design planning that the City is currently implementing all over the downtown core. In fact, the City staff have offered an idea to the developer to eliminate the unworkable 5th Street bike lane proposed in the project. My understanding is that the developer has rejected the idea because they don't want to. City staff proposed to instead provide a 2-way bike trail on the west side of 5th Street (south-bound), extending from the rail station to Capitol Avenue. This extent is necessary in order to provide access points to and from the trail. It also has the benefit of enhancing bike access to and from the station and to the new innovative 'green' bike lanes on Capitol Avenue. What fantastic safe access to and from the downtown core this would be!

There are two reasons the Planning Commission should address this problem, and support potential solutions, including correcting the project scope so that it truly includes the project impact footprint.

- 1) The City is actively implementing forward-looking and innovative bike facilities all over downtown, which have already greatly improved the bike-ability of Sacramento's core and bike access into and out of the core. This has been hailed enthusiastically by the hundreds of bike commuters traveling in the downtown core. The developer's proposal can only be seen as unsatisfactory and having intentionally ignored the needs of residents and workers downtown.
- 2) Allowing the developer to escape participation in making the ESC a part of these bike travel enhancements is unfair to what is being required of other projects in the City; will shift the future cost to taxpayers to fix the inadequate proposed design; and results in the ESC simply being viewed as yet another poorly designed large concrete building rather than a project that contributes to the status of our City as forward-looking, green, and expanding our transportation choices.

I hope that the Commission is keeping in mind the momentum for promoting bike usage in our downtown core and will champion what the City and public have already envisioned for making our City a great place to live and work. The Commission can ensure that the ESC contributes to that vision, rather than ignore it while everyone skips to the bank with their profits, leaving City taxpayers to clean up after the mistakes. Please uphold the City and residents' interests I present here.

Sincerely,

Glenda Marsh
2208 Murieta Way
Sacramento, CA 95822
916-476-9538

Stacia Cosgrove

From: Stacia Cosgrove
Sent: Thursday, April 10, 2014 10:55 AM
To: Stacia Cosgrove
Subject: FW: Proposed LED signage associated with new Arena plan

From: Matt Korve [mailto:matt_korve@hotmail.com]
Sent: Thursday, April 10, 2014 9:49 AM
To: Planning; CityPublicInformationOffice; Steve Hansen
Subject: Proposed LED signage associated with new Arena plan

Honorable Mayor and Council Members, and Commission Members

The City of Sacramento is unlike any other. We are a city yes, but we have been able to maintain the feel of community without the need for reducing ourselves to the common mistakes that other cities have made. Being an older city, we have a past that we protect. We promote trees, parks, bike paths, historical structures, good food, walkability, and a beautiful skyline.

The arena has been a project of much debate over the past few years. Design and location were a major part of the discussion so that it didn't take away from the feel of Old Town while promoting the improvement of Downtown. However, in its wake, the request for the LED signage along the freeways has created a new issue.

For years, my wife has commuted over Sacramento River, being able to see the skyline of Downtown and the river bridge to welcome her home. The trees block out the light pollution which makes the view that much more special. She is also familiar with the blinding effects of the LED signage, as she has had to drive past the LED signage within Fairfield at night for years.

Promotion of the arena is understood, however altering the ordinance, using City land, and taking away from the view of Sacramento is not the way to do it. The light pollution from the LED signs can be blinding and unappealing, making the City look like any other city, taking away the skyline for publicity of an arena that the City is already well aware of. Taking away from our City land, especially those housing utility structures, for a private entity only hurts the City by limiting the utilities from improving their facilities, adding costs to construction and maintenance. It's an arena, not the heart of Sacramento. The heart in its history, its unique community feel, and the ordinances that have protected our skyline for years.

Please protect our skyline and the utility facilities, and do not approve the signage requests at Pioneer Reservoir or the Freepport water tank.

Sincerely,

*Matthew Korve
2600 Land Park Dr., Sacramento*



April 10, 2014

Scott Johnson, Associate Planner
City of Sacramento, Community Development Department
Environmental Planning Services
300 Richards Boulevard, Third Floor
Sacramento, CA 95811
SRJohnson@cityofsacramento.org

Sent via email and hand delivered

RE: April 10, 2014 Planning Commission Hearing on the Sacramento Entertainment and Sports Center (ESC) & Related Development (State Clearinghouse Number: SCH 2013042031).

Dear Mr. Johnson:

The owners of Plaza Five Fifty Five located at 555 Capitol Mall would like to submit this letter for the Planning Commission's consideration at tonight's public hearing on the Sacramento Entertainment and Sports Center (ESC) & Related Development (State Clearinghouse Number: SCH 2013042031).

We understand that the Planning Commission will be holding tonight's public hearing on the ESC prior to the release of the Final Environmental Impact Report for the project. As a result, we understand that at this time we are unable to receive a response to the comment letter (copy attached) dated January 31, 2014 we submitted as part of the City's environmental review process.

While we continue to support the project and believe it will be an important catalyst for the revitalization of Downtown Sacramento, we would like to ensure that the Final EIR addresses the impacts to our building and includes appropriate mitigations to those impacts.

Unfortunately, we will be unable to attend tonight's meeting and would therefore request that copies of this letter be provided to the members of the Planning Commission.

Sincerely,

Plaza Five Fifty Five, LLC, a Delaware Limited Liability Company


By: William Chang
Manager

Attachment

cc: Clark Morrison, Cox Castle

Plaza
FIVE FIFTY FIVE

January 31, 2014

Scott Johnson, Associate Planner
City of Sacramento, Community Development Department
Environmental Planning Services
300 Richards Boulevard, Third Floor
Sacramento, CA 95811
SRJohnson@cityofsacramento.org

Sent via email and hand delivered

RE: Comments on the Draft Environmental Impact Report for the Sacramento
Entertainment and Sports Center & Related Development (December 2013); State
Clearinghouse Number: SCH 2013042031

Dear Mr. Johnson:

Thank you for the opportunity to review and comment on the Draft Environmental Impact Report (DEIR) for the Sacramento Entertainment and Sports Center & Related Development (ESC) Project. The owners of Plaza Five Fifty Five located at 555 Capitol Mall, offer this letter in strong support of the proposed project and believe it will be an important catalyst for the renaissance of Downtown Sacramento. We also send the letter to identify a number of concerns regarding the adequacy of the DEIR as it relates to impacts to the property at 555 Capitol Mall and pursuant to the California Environmental Quality Act (CEQA), Pub. Res. Code Sections 21000 *et seq.*

Beginning in the fall of 2013, as we became aware of the plans for the ESC, we contacted the project sponsors and the City staff in an attempt to better understand the potential effects of the project on our property. Concurrently, 555 Capitol Mall had begun the process of preparing an application for City approval of an ambitious plan for the redevelopment of our property. The proposed planning application will be submitted in February 2014 and will include a multi-phased, mixed-use development including the conversion of the existing two buildings to a combination of residential, retail, office and other uses. City staff and Plaza 555 representatives conferred in early October 2013 and reviewed the Lionakis Architects plan. The presentation was focused on integrating and maximizing Plaza 555's future plan and avoiding access limitations and back-of-house impacts interpreted from the conceptual renderings of the ESC. Shortly thereafter City staff shared these concepts and concerns with the ESC project sponsors.

Upon receiving notice of the 45-day comment period for the DEIR, we contacted and have met with the project sponsors to explain our concerns and we have had discussions with their traffic-engineering consultants, Fehr and Peers. Through those conversations, meetings and email correspondence, we expressed our concerns regarding: 1) a significant obstruction to the ingress and egress to our parking garage prior to, during and after events; and 2) the long-term effects of the project design that placed all of the ESC "back of house" operations on L Street, directly opposite our project.

We appreciate the time they have taken to meet with us to date, yet we are still striving to resolve the following deficiencies contained in the DEIR and the proposed Draft Traffic Management Plan (TMP) attached to the DEIR as Appendix L:

1. Impacts to 555 Capitol Mall Due to Proposed Pre-Event and Post-Event Street Closures:

The proposed street closure plan for 5th, 6th and L Street as depicted in the Draft TMP, significantly and negatively impacts our property, by severely restricting ingress and egress to and from our nearly 800 parking stall, multi-story parking garage. (Page 46 incorrectly assumes an exit from our parking lot onto 5th Street.) In addition, the street closures will cause significant and negative impacts to our loading and unloading operations, which occur in the evenings and weekends in the "service alley" between the buildings and the parking structure at 555.

The street closure plan will result in significant delays and create significant air quality and noise impacts as vehicles will be required to idle for extended periods waiting to enter or exit the garage and service alley. These impacts are specifically damaging to our property in ways that are severe and disproportionately significant when compared to other properties in the vicinity.

The DEIR does not evaluate these and other potentially significant impacts related to implementation of the TMP, despite the fact that the Draft TMP appended to the DEIR includes detailed information regarding the location of street closures near 555 Capitol Mall. Given this level of detail, impacts related to the TMP are reasonably foreseeable, and therefore should be evaluated in the EIR pursuant to CEQA. 14 Cal. Code Regs. Section 15064(d). In addition to analyzing impacts related to the street closures and other elements of the TMP, the DEIR should identify mitigation measures to minimize any significant impacts caused by the TMP. 14 Cal. Code Regs. Section 15126.4. The City should not defer until later the formulation of any such mitigation measures. *See San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th 645.

Recommendation: We recommend that the street closure plan be amended to accommodate ingress and egress to our parking garage and service alley, and/or the ESC should be obligated to make physical modifications to the garage to ensure adequate ingress and egress as well as loading and unloading operations at

555 Capitol Mall. The DEIR should include additional environmental analysis of these impacts from the TMP in order to identify suitable mitigation measures to reduce the impacts of the TMP to less than significant levels including:

- a. A full description and analysis of the traffic impacts related to delivery, service and support vehicles related to arena operations including truck queuing and staging on L Street and exiting on 5th Street.
- b. Accurate illustrations of vehicular ingress/egress similar to pedestrian versions included in report
- c. Citation as to those with specific responsibility/authority for the physical changes that will be required to adequately mitigate these impacts, and the operational changes that will be required to address long term traffic management.

2. L-Street Street Improvements and Building Façade

As illustrated in conceptual plans for the ESC presented to the City, the L Street frontage of the proposed project will result in direct impacts to 555 Capitol Mall in that the L-Street frontage supports all “back of house” operations for the ESC. This “back of house” function, along with the proposed truck entrance and the proposed pedestrian walkway that is elevated above L Street, if not altered or addressed adequately with the design, will combine to create a blighting influence and result in unnecessary challenges for the future redevelopment for properties fronting on L-Street.

Aesthetic impacts related to this “back of house” feature are not adequately depicted in the set of photosimulations included in the DEIR. Although the DEIR includes a photosimulation of the project site from the corner of L Street and 7th Street, the DEIR does not include a photosimulation depicting the project’s “back of house” design and operations relative to the properties adjacent to that portion of the site. As such, the DEIR does not adequately identify aesthetic impacts or potential mitigation measures related to this design aspect of the project.

Recommendation: The L Street frontage of the ESC needs to be designed to mitigate these blighting influences and to ensure that the future redevelopment of other properties along L Street is encouraged. The frontage needs to be pedestrian-oriented with active uses and attention to the street design elements, building openings and other uses that have transparent windows and doors that open onto L Street. The TMP should contemplate service vehicle queuing, staging, and travel paths to limit or avoid conflicts with this more pedestrian-orientated use of L Street.

Summary:

We remain enthusiastic supporters of the ESC and sincerely believe that there are mitigations that can adequately address our concerns. We eagerly look forward to working with the City and the ESC sponsors in seeking out these acceptable resolutions.

Sincerely,

Plaza Five Fifty Five, LLC, a Delaware limited liability company

A handwritten signature in blue ink, appearing to read 'W. Chang', is written over a light blue horizontal line.

By, William Chang
Manager

cc: Clark Morrison, Cox Castle



**SACRAMENTO AREA
BICYCLE ADVOCATES**

909 12th St, Ste. 116
Sacramento, CA 95814

sacbike.org
saba@sacbike.org
916 444-6600

April 10, 2014

Stacia Cosgrove
City of Sacramento, Community Development Department
300 Richards Boulevard, Third Floor
Sacramento, CA 95811
SCosgrove@cityofsacramento.org

Subject: Entertainment and Sports Center Project (ESC) (P13-065)

Dear Ms. Cosgrove,

Thank you for this opportunity to comment on the Entertainment & Sports Center proposal being considered by the Sacramento Planning & Design Commission.

I'm writing on behalf of the Sacramento Area Bicycle Advocates members and supporters and the many thousands of other residents of the Sacramento region who use bicycles for transportation (or wish they could), including those who want to be able to ride their bicycles to the Entertainment & Sports Center (ESC).

In addition to previous comments and testimony we've submitted on this project, I'm writing to request four amendments to the Conditions of Approval.

First, we're encouraged to see this statement in the Design narrative: "The plaza has been configured to welcome people of all abilities, on foot or bicycle, young or old." We're equally encouraged to see the illustration depicting a person riding a bicycle up the ramp toward the plaza from L and 5th streets.

As we've stated previously, the lack of bicycle facilities on surrounding streets isolates the ESC site from the rest of the city for people traveling by bicycle or wanting to do so. Making the plaza accessible to those riding bicycles will close a critical gap in the downtown bikeway network along K Street between 7th and 4th streets, connecting to Old Sacramento and the river trail system. It will also open paths of travel for people who do not feel safe riding with the heavy, fast vehicle traffic on L, J and 5th streets.

The site plans show emergency vehicle access through the plaza and on ramps connecting at J and 5th, K and 7th, L and 5th, and K at 5th without explicitly indicating that bicycles can be ridden on these routes and ramps. Therefore, we request the addition of a Condition of Approval indicating that emergency vehicle access routes and connecting ramps will be accessible as routes for riding bicycles into and through the plaza.

Second, we continue to be concerned about the potential for conflicts between people on bicycles and truck traffic accessing the loading docks in the 5th Street undercrossing between L and J streets. The northbound route is currently hazardous for people on bicycles due to a combination of factors: northbound traffic traveling at high speed (sometimes 50 MPH or more), the gap in the bicycle lane beginning 100 yards south of J Street, and the dedicated right turn lane at J Street that requires people on bicycles continuing north on 5th to move left across a

lane of fast traffic while riding up the only significant grade in the Central City. Truck traffic crossing the bicycle lane, especially continuing northbound across J Street, will significantly increase the hazards to people on bicycles.

We're encouraged by the recent presentation by City staff at the Sacramento City-County Bicycle Advisory Committee about a proposal to relocate northbound bicycle traffic away from the loading zone ramps into a physically protected, two-way bicycle lane on the opposite (west) side of 5th Street. This type of facility is the best option for preventing conflicts between bicycles and trucks near the ESC loading dock ramps.

Therefore, we recommend amending *Conditions of Approval, H. Conditional Use Permit - Sports Complex, Item H16* to direct the applicant to include a protected bicycle lane on the west side of 5th Street among the possible treatments for further review.

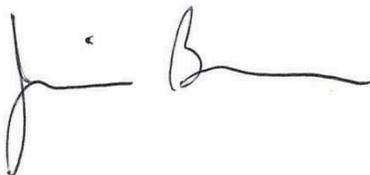
Finally, we're pleased to see concrete suggestions for the placement of bicycle parking surrounding the arena. However, the plan does not indicate how secure that parking will be; conventional bicycle racks located away from buildings and activity areas will not be secure and thus not used. Therefore, we recommend amending *Conditions of Approval, K. Site Plan and Design Review- ESC, Practice Facility, Plaza, and Map, Item K6* to specify that bicycle parking spaces will be secured within physical enclosures, such as bicycle lockers, fencing or a staffed facility.

Additionally, the Conditions for Approval do not address long term bicycle parking for the 1,200 temporary event employees. As they are likely to hold low-wage service positions, many of these employees are likely to rely on bicycles as primary transportation. Therefore, we recommend amending *Conditions of Approval, K. Site Plan and Design Review- ESC, Practice Facility, Plaza, and Map, Item K6* to specify how and where long term bicycle parking will be provided for temporary event employees.

The Conditions of Approval also refer to the "valet bicycle parking scheme" for "large events" without indicating how its capacity will be estimated. We have previously requested that bicycle parking capacity reflect 5% of maximum anticipated attendance, an amount consistent with the City's Climate Action Plan. Therefore, we recommend amending *Conditions of Approval, K. Site Plan and Design Review- ESC, Practice Facility, Plaza, and Map, Item K8* to specify that the number of spaces for valet bicycle parking at large events will be equal to 5% of maximum anticipated attendance.

Thank you again for this opportunity to make these recommendations. Please feel welcome to contact me with questions or for more information.

Respectfully,

A handwritten signature in black ink, appearing to read "Jim Brown". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jim Brown
Executive Director



May 14, 2014

Councilman Steve Hansen
City of Sacramento
Councilmember-District 4
915 I Street, 5th Floor
Sacramento, CA 95814

Dear Councilman Hansen:

We have reviewed the detailed responses to our comments submitted on the EIR and would be happy to provide you a summary. At this point, we believe the best outcome would be for your leadership to help carry our message forward and ensure that Old Sacramento continues to thrive by communicating the importance of the items below. The outline below is a summary we would look to share with others, but look to you to help make sure it gets implemented.

Old Sacramento is a 28 acre district made up of private property owners, private business, City assets and State assets all the while being a Nationally Recognized Historic District. It is not owned by one company or one entity and thus affects different parties in different ways. As a result, the effect on all types of interested parties needs to be considered. The City has two major roles in Old Sacramento, they are the largest property owner and they also have responsibility for normal public services, particularly related to events. The primary issues that affect Old Sacramento generally as we look to the construction and operation of the ESC along with other future developments are as follows:

- *Traffic once the ESC is built.*
- *Communication during construction.*
- *Connectivity during construction.*
- *Communication once the ESC is operational.*
- *Connectivity once the ESC is operational.*
- *Maintaining the economic viability and the historical integrity of the district.*
- *Affordable parking, validation and valet options of our guests, employees and residents.*
- *A city structure for Old Sacramento that will ensure good stewardship of the extensive city assets and a structure that will complement the business district and historical programming.*

May 14, 2014

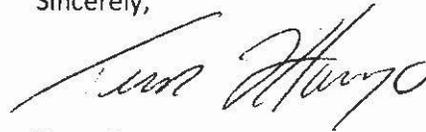
Page 2

While the Final EIR begins to address a few of these issues, it is clear there is still a significant amount of planning to do. We feel that it is important to begin to address our issues and that at a minimum, Old Sacramento representatives be involved in the following committees, task forces or input groups mentioned in the EIR or that have been recently formed:

- *Review of the TMP once it is implemented.*
- *Downtown transportation Study of 2014.*
- *The transportation advisory committee that will provide updates during the design and construction process and to coordinate transportation issues.*
- *Provide input to the operational discussion regarding the Old Sacramento garages.*
- *Be in communication with the City's outreach consultant, Crocker and Crocker, in coordination with the City staff.*
- *As a general statement, ensure Old Sacramento is considered on every issue.*

As you know, many people from the City to private investors have made a large commitment to Old Sacramento. We look forward to your support in ensuring our input is not only heard, but acted upon. The ESC and the projected 1.65 million visitors it intends to bring along with other developments should be a catalyst to further enhance the district. However, if not done with appropriate recognition of the effects on Old Sacramento, there could be a negative impact. We believe it is important that people recognize that Old Sacramento draws over 3.0 million visitors per year and we do not want to see the number of visitors to Old Sacramento decline, nor the experience. As with any project of this magnitude, careful planning and communication can create the best outcome. We look forward to working with you diligently to enhance what is the City's number one tourist destination and see our City grow.

Sincerely,



Terry Harvego
Vice Chairman
Old Sacramento Business Association

Scott Johnson

From: J Phillips <comment2@mac.com>
Sent: Thursday, May 15, 2014 11:22 AM
To: Scott Johnson
Subject: Subject: NBA arena comment

Mr. Johnson: Please include the following video in the record of comments on the FEIR for the Sacramento NBA arena. This information addresses responses to comments provided by the City in the final EIR.

<http://www.youtube.com/watch?v=bWjNW6YyeH0>

Thank you,

J. Bolton Phillips

On May 15, 2014, at 11:03 AM, "will rowe" <warowel@msn.com> wrote:

Greetings Councilman Hansen. Our household has become aware of a proposal to install an illuminated billboard at the I-5/50 intersection. Aside from serious driver-safety issues, such a sign should be designed so that incident light does not cascade across our neighborhood. I live within several blocks of the the sign location and request your assistance in assuring that it does not shine across our homes.

thank you

Will Rowe
438 T Street

On May 16, 2014, at 10:41 AM, "mward@surewest.net" <mward@surewest.net> wrote:

Dear Mr Dangberg, Mayor Johnson, and City Council Members,

This will be quick. Don't create blight in Sacramento by approving the overgenerous deal to let the Kings erect six large, bright, ugly digital billboards around town. It's bad enough that you're considering letting the Kings do this, but it seems that the proposed change to the city ordinance governing billboards would allow the same deal to similar groups in the future as well.

Nobody, but nobody likes those ugly billboards except the people raking in the money from them. You need to think about the beauty of Sacramento and the people who live here who will be subjected to this blight before you cement this deal. Interesting, livable cities don't go out of their way to generate ugliness.

Martha Sward and John Farrell

708 35th Street, Sacramento 95816

Scott Johnson

From: Kelly T. Smith <ktsmith@thesmithfirm.com>
Sent: Friday, May 16, 2014 3:18 PM
To: Scott Johnson
Subject: Kings EIR comment: crowd baseline

Mr. Johnson (yes I'm sending this to you): The Kings arena final EIR fails to establish the baseline conditions for riots and crowd control. Despite repeated urging by the public in the face of downtown after-dark event closures (Thursday Night Market, Second Saturdays), including murders, the FEIR should have provided the level of police and fire response and other emergency response available now and whether it is adequate to deal with post-game rioting of drunken losers emerging from 17,000 seats at one time. Thank you for your attention to this matter. The potential of such rioting, jamming traffic (worse than it already will be), and interfering with other more civilized downtown uses (such as real entertainment), is significant...

Kelly T. Smith
THE SMITH FIRM
1541 Corporate Way, Suite 100
Sacramento, CA 95831
T: (916) 442-2019
M: (916) 607-1998
www.thesmithfirm.com

CONFIDENTIALITY NOTICE: This electronic mail message and any attached files contain information intended for the exclusive use of the individual or entity to whom it is addressed and may contain information that is proprietary, privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any viewing, copying, disclosure or distribution of this information is strictly prohibited and may be subject to legal restriction or sanction. Please notify the sender immediately by return email or call (916) 442-2019 and delete the original message without making any copies.

NOT INTENDED AS A SUBSTITUTE FOR A WRITING: Notwithstanding the Uniform Electronic Transactions Act or the applicability of any other law of similar substance or effect, absent an express statement to the contrary, this email message, its contents, and any attachments are not intended to represent an offer to enter into a contract or an acceptance of any offer, and are not otherwise intended to bind the sender, The Smith Firm, any of its clients, or any other person or entity.

Scott Johnson

From: Kelly T. Smith <ktsmith@thesmithfirm.com>
Sent: Friday, May 16, 2014 3:21 PM
To: Scott Johnson
Subject: Kings arena EIR comment: vehicle miles baseline

Mr. Johnson: The FEIR for the Kings arena project fails to provide a proper baseline for its analysis of vehicle miles traveled (VMT). In particular, the FEIR extends the failure of the DEIR by failing to provide the public with the current baseline VMT derived for the current Sleep Train arena. Without that information, the public and decision makers are unable to compare adjusted figures provided in the FEIR.

Kelly T. Smith
THE SMITH FIRM
1541 Corporate Way, Suite 100
Sacramento, CA 95831
T: (916) 442-2019
M: (916) 607-1998
www.thesmithfirm.com

CONFIDENTIALITY NOTICE: This electronic mail message and any attached files contain information intended for the exclusive use of the individual or entity to whom it is addressed and may contain information that is proprietary, privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any viewing, copying, disclosure or distribution of this information is strictly prohibited and may be subject to legal restriction or sanction. Please notify the sender immediately by return email or call (916) 442-2019 and delete the original message without making any copies.

NOT INTENDED AS A SUBSTITUTE FOR A WRITING: Notwithstanding the Uniform Electronic Transactions Act or the applicability of any other law of similar substance or effect, absent an express statement to the contrary, this email message, its contents, and any attachments are not intended to represent an offer to enter into a contract or an acceptance of any offer, and are not otherwise intended to bind the sender, The Smith Firm, any of its clients, or any other person or entity.

From: Judith Lamare [<mailto:swainsonshawk@sbcglobal.net>]

Sent: Tuesday, May 6, 2014 2:00 PM

To: Mayor Johnson; Angelique Ashby; Jay Schenirer; Steve Cohn; Steve Hansen; Allen Warren; Kevin McCarty; Bonnie Pannell; Darrell Fong

Cc: David Kwong; John F. Shirey; John Dangberg

Subject: ESC Digital Billboards, Sutter Landing Park

Dear Mayor and Councilmembers, City Manager and Planning Director

This letter supports the elimination of the Sutter's Landing Park site for a dual face digital billboard.

THE ENTERTAINMENT AND SPORTS CENTER FINAL IMPACT REPORT
CHAPTER 2, PAGES 2-3 TO 2-4 STATES

"The Draft EIR evaluated ten potential digital billboard locations in the City of Sacramento. Since publication of the Draft EIR, the project applicant identified seven sites as preferable:

- • I-5 at Water Tank (dual face);
- • US 50 at Pioneer Reservoir (dual face);
- • Business 80 at Sutter's Landing Regional Park (dual face);
- • Business 80 at Del Paso Regional Park/Haggin Oaks (dual face);
- • SR 99 at Calvine Road (dual face);
- • I-5 at Bayou Road (one face); and
- • I-5 at Sacramento Railyards (dual face).

These seven potential digital billboard sites will be forwarded to the City Council for its consideration, with the expectation that, consistent with the provisions identified in the March 2013 Preliminary Term Sheet, if the Proposed Project is approved, only six potential locations would be chosen by the City Council to proceed with development of a digital billboard. As part of the environmental review process, Caltrans reviewed its digital billboard development standards against the ten potential digital billboard sites identified in the Draft EIR. Caltrans determined there would not be any current conflict with their standards at the US 50 at Pioneer Reservoir, SR 99 at Calvine Road, or I-5 at Sacramento Railyards locations. Four locations (I-5 at Water Tank, Business 80 at Sutter's Landing Regional Park, Business 80 at Del Paso Regional Park/Haggin Oaks, and I-5 at Bayou Road) would require zoning changes to allow digital billboards in those locations. "

Please eliminate the potential for a digital billboard at Sutter's Landing Regional Park in order to protect and preserve the wildlife and wilderness values of the park and its connection to the American River Parkway. Wildlife is scarce in the City and this Park provides a unique and rich wildlife experience for citizens, including children, who are able to observe foraging and nesting raptors here. The billboard and related maintenance activities will cause disturbance to wildlife habitat.

Thank you for your consideration of this issue.

Judith Lamare, President
Friends of the Swainson's Hawk
717 K Street, Ste 529
Sacramento, CA 95814
916 447 4956
www.swainsonshawk.org
swainsonshawk@sbcglobal.net

Scott Johnson

From: Kelly T. Smith <ktsmith@thesmithfirm.com>
Sent: Friday, May 16, 2014 4:42 PM
To: Scott Johnson
Subject: Kings arena comment; Judicial Council tentative rules
Attachments: Judicial Council invitation for comments.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Mr. Johnson: The FEIR for the King's arena fails to address the legality of the Steinberg bill, AB 743, adopted as California Public Resources Code §21168.6.6. As evidence of this FEIR defect please include the attached document in the administrative record. Thanks.

Kelly T. Smith
THE SMITH FIRM
1541 Corporate Way, Suite 100
Sacramento, CA 95831
T: (916) 442-2019
M: (916) 607-1998
www.thesmithfirm.com

CONFIDENTIALITY NOTICE: This electronic mail message and any attached files contain information intended for the exclusive use of the individual or entity to whom it is addressed and may contain information that is proprietary, privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any viewing, copying, disclosure or distribution of this information is strictly prohibited and may be subject to legal restriction or sanction. Please notify the sender immediately by return email or call (916) 442-2019 and delete the original message without making any copies.

NOT INTENDED AS A SUBSTITUTE FOR A WRITING: Notwithstanding the Uniform Electronic Transactions Act or the applicability of any other law of similar substance or effect, absent an express statement to the contrary, this email message, its contents, and any attachments are not intended to represent an offer to enter into a contract or an acceptance of any offer, and are not otherwise intended to bind the sender, The Smith Firm, any of its clients, or any other person or entity.

Judicial Council of California • Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov/policyadmin-invitationstocomment.htm

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
Proposed by	Contact
Civil and Small Claims Advisory Committee, Hon. Patricia M. Lucas, Chair	Anne M. Ronan, 415-865-8933, anne.ronan@jud.ca.gov
Appellate Advisory Committee Hon. Raymond S. Ikola, Chair	Heather Anderson, 415-865-7691, heather.anderson@jud.ca.gov

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:

Title 3. Civil Rules

Division 11. Law and Motion

~~Chapter 7. Other Civil Petitions~~

Rule 3.1365. Petitions Under the California Environmental Quality Act

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

Advisory Committee Comment

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

Division 22. Petitions Under the California Environmental Quality Act

Chapter 1. General Provisions

Rule 3.2200. Application

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

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

* * * *

Rule ~~3.1366~~ 3.2206. Lodging and service

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

37
 38
 39 **Rule 3.1368 3.2208. Paper format**

40
 41 * * * *

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
11 As used in this chapter:

- 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**

36
37 Any action or proceeding governed by these rules is exempted from the rules regarding
38 complex cases.

39
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.

1
2 **(b) Extensions of time by parties**
3

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**
12

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.
44
45

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

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

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

15 **(i) — Court costs**

16 (1) — In fulfillment of the provision in Public Resources Code section 21183 regarding
 17 payment of the Court of Appeal’s costs:

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

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

25 (i) — The costs of any special master appointed by the Court of Appeal in the
 26 case; and

27 (ii) — The costs of any contract personnel retained by the Court of Appeal to
 28 work on the case.

29 (2) — If the fee or costs under (1) are not timely paid, the Court of Appeal may transfer the
 30 case to the superior court with geographic jurisdiction over the project, and the case
 31 will proceed under the procedures applicable to projects that have not been certified
 32 as leadership projects.
 33

34 **(j) — Extensions of time**

35 The court may order extensions of time only for good cause and in order to promote the
 36 interests of justice.
 37

Advisory Committee Comment

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

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

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

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

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

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

Rule 8.700. Definitions and application

(a) Definitions

As used in this chapter:

- (1) An “environmental leadership development project” or “leadership project” means a project certified by the Governor under Public Resources Code sections 21182–21184.
- (2) The “Sacramento entertainment and sports center project” or “Sacramento arena project” means the 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 as described in section 21168.6.6(j)(1).

(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,

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.

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 (1) Electronic filing

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

24 (2) Time to serve and file briefs

25 Unless otherwise ordered by the reviewing court:

- 26
- 27 (A) An appellant must serve and file its opening brief within 25 days after the
28 notice of appeal is served and filed.
- 29
- 30 (B) A respondent must serve and file its brief within 25 days after the appellant
31 files its opening brief.
- 32
- 33 (C) An appellant must serve and file its reply brief, if any, within 15 days after
34 the respondent files its brief.
- 35
- 36

37 (3) Contents and form of briefs

- 38 (A) The briefs must comply as nearly as possible with rule 8.204.
- 39
- 40 (B) If a designated reporter’s transcript has not been filed at least 5 days before
41 the date by which a brief must be filed, an initial version of the brief may be
42 served and filed in which references to a matter in the reporter’s transcript are
43
- 44
- 45
- 46

Scott Johnson

From: Kelly T. Smith <ktsmith@thesmithfirm.com>
Sent: Friday, May 16, 2014 5:07 PM
To: Scott Johnson
Subject: Kings arena comment: noise mitigation

Mr. Johnson. The mitigation plan provided with the King's arena FEIR includes an illusory mitigation measure for the significant impact of noise levels above the 4.5 decibel ordinance level, as it applies only prospectively. CEQA requires enforceable mitigation measures which are not delayed into the future. Noise levels at existing residences will be above the ordinance level and thus remain at a significant level.

Kelly T. Smith
THE SMITH FIRM
1541 Corporate Way, Suite 100
Sacramento, CA 95831
T: (916) 442-2019
M: (916) 607-1998
www.thesmithfirm.com

CONFIDENTIALITY NOTICE: This electronic mail message and any attached files contain information intended for the exclusive use of the individual or entity to whom it is addressed and may contain information that is proprietary, privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any viewing, copying, disclosure or distribution of this information is strictly prohibited and may be subject to legal restriction or sanction. Please notify the sender immediately by return email or call (916) 442-2019 and delete the original message without making any copies.

NOT INTENDED AS A SUBSTITUTE FOR A WRITING: Notwithstanding the Uniform Electronic Transactions Act or the applicability of any other law of similar substance or effect, absent an express statement to the contrary, this email message, its contents, and any attachments are not intended to represent an offer to enter into a contract or an acceptance of any offer, and are not otherwise intended to bind the sender, The Smith Firm, any of its clients, or any other person or entity.

Scott Johnson

From: Kelly T. Smith <ktsmith@thesmithfirm.com>
Sent: Friday, May 16, 2014 5:56 PM
To: Scott Johnson
Subject: Kings arena comment: Judicial council rules
Attachments: Judicial Council rule on SB 743.pdf

Mr. Johnson: In response to the Kings arena FEIR, please find attached recent proposed rules from the Judicial Council attempting to implement SB 743.

Kelly T. Smith
THE SMITH FIRM
1541 Corporate Way, Suite 100
Sacramento, CA 95831
T: (916) 442-2019
M: (916) 607-1998
www.thesmithfirm.com

CONFIDENTIALITY NOTICE: This electronic mail message and any attached files contain information intended for the exclusive use of the individual or entity to whom it is addressed and may contain information that is proprietary, privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any viewing, copying, disclosure or distribution of this information is strictly prohibited and may be subject to legal restriction or sanction. Please notify the sender immediately by return email or call (916) 442-2019 and delete the original message without making any copies.

NOT INTENDED AS A SUBSTITUTE FOR A WRITING: Notwithstanding the Uniform Electronic Transactions Act or the applicability of any other law of similar substance or effect, absent an express statement to the contrary, this email message, its contents, and any attachments are not intended to represent an offer to enter into a contract or an acceptance of any offer, and are not otherwise intended to bind the sender, The Smith Firm, any of its clients, or any other person or entity.

Judicial Council of California • Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

W14-02

Title

CEQA Actions: Rules to Implement Senate
 Bill 743

Action Requested

Review and submit comments by January 24,
 2014

Proposed Rules, Forms, Standards, or Statutes

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

Proposed Effective Date

July 1, 2014

Contact

Anne M. Ronan, 415-865-8933,
anne.ronan@jud.ca.gov

Heather Anderson, 415-865-7691,
heather.anderson@jud.ca.gov

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:

Title 3. Civil Rules

Division 11. Law and Motion

Chapter ~~8~~ 7. ~~Other~~ Civil Petitions

Rule 3.1365. Petitions Under the California Environmental Quality Act

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

Advisory Committee Comment

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

Division 22. Petitions Under the California Environmental Quality Act

Chapter 1. General Provisions

Rule 3.2200. Application

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

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

* * * *

Rule ~~3.1366~~ 3.2206. Lodging and service

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

37
 38
 39 **Rule 3.1368 3.2208. Paper format**

40
 41 * * * *

Chapter 2. California Environmental Quality Act Proceedings under Public Resources Code sections 21168.6.6 and 21178–21189.3

Article 1. General Provisions

Rule 3.2220. Definitions and application

(a) Definitions

As used in this chapter:

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

(2) 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).

(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 or an environmental leadership development project. Except as otherwise provided in Public Resources Code sections 21168.6.6 and 21178–21189.3 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 these rules.

(c) Complex case rules

Any action or proceeding governed by these rules is exempted from the rules regarding complex cases.

Rule 3.2221. Time

(a) Extensions of time

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

1
2 **(b) Extensions of time by parties**
3

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**
12

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.
44
45

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

Advisory Committee Comment

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

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

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

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

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

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

Rule 8.700. Definitions and application

(a) Definitions

As used in this chapter:

- (1) An “environmental leadership development project” or “leadership project” means a project certified by the Governor under Public Resources Code sections 21182–21184.
- (2) The “Sacramento entertainment and sports center project” or “Sacramento arena project” means the 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 as described in section 21168.6.6(j)(1).

(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,

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.

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.
46
47

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

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.
 46
 47

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 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

Scott Johnson

From: Kelly T. Smith <ktsmith@thesmithfirm.com>
Sent: Friday, May 16, 2014 6:21 PM
To: Scott Johnson
Subject: Kings arena comment: Sacramento Press, Second Saturday
Attachments: Sacramento Press article-Second Saturday.pdf

Mr. Johnson: In comment on the Kings arena FEIR response to comments, please find the attached article.

Kelly T. Smith
THE SMITH FIRM
1541 Corporate Way, Suite 100
Sacramento, CA 95831
T: (916) 442-2019
M: (916) 607-1998
www.thesmithfirm.com

CONFIDENTIALITY NOTICE: This electronic mail message and any attached files contain information intended for the exclusive use of the individual or entity to whom it is addressed and may contain information that is proprietary, privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any viewing, copying, disclosure or distribution of this information is strictly prohibited and may be subject to legal restriction or sanction. Please notify the sender immediately by return email or call (916) 442-2019 and delete the original message without making any copies.

NOT INTENDED AS A SUBSTITUTE FOR A WRITING: Notwithstanding the Uniform Electronic Transactions Act or the applicability of any other law of similar substance or effect, absent an express statement to the contrary, this email message, its contents, and any attachments are not intended to represent an offer to enter into a contract or an acceptance of any offer, and are not otherwise intended to bind the sender, The Smith Firm, any of its clients, or any other person or entity.

Sacramento Press

Share

Sacramento Press

Log In

Join

In The City



Events

Arts

Sports

See California

SEARCH

Second Saturday to go the way of Thursday Night Market?



by Brandon Darnell September 19, 2010 4:09 PM

Comments 6

Like 0

Tweet 0



The Sept. 12 shooting has some Sacramentans wondering if the Second Saturday Art Walk is going to go the way of K Street's Thursday Night Market.

According to Michael Picker, The Thursday Night Market was inspired by an event in San Louis Obispo and was intended to be a small-scale street fair people could stop by on their way home from work, but it grew to attract crowds far larger than anticipated as people went home first, picked up their families and then returned to the market.

Picker, who was chief of staff for Mayor Joe Serna Jr. when Thursday Night Market was introduced, both the Thursday Night Market and Second Saturday Art Walk became victims of their own success.

"Everybody plans for what can go awry," Picker said, "but sometimes too much goes right, and you get too many people."

But Rob Kerth, executive director of the Midtown Business Association, said the two events share many things, but they remain different.

"I'm not sure that we've got something going wrong here," Kerth said. "There's a lot of folks showing up, and they have a good time, and any number of businesses say it's their most important day of the month."

The key difference between the two, according to Michael Ault, executive director of the Downtown Sacramento Partnership – which produced the Thursday Night Market – is that Second Saturday has a much greater focus and involves the business community more.

"At the end of Thursday Night Markets, many retailers weren't even open because they weren't finding it a successful draw to their businesses because their voice wasn't utilized," Ault said.

With Second Saturday, Ault said, there is much more focus, and both the business and the community are committed to making it work.

"Second Saturday started off as an event to drive people to art galleries, and it has really evolved into a social scene," Ault said, "and it's a wonderful nexus where it's gone, but we need to figure out how to make it grow and how to grow effectively."

Picker advised looking into how other major cities handle their big events and see what can be learned from their experience.

Kerth said the MBA has been studying events in other cities, including San Francisco, Old Pasadena and Berkeley, and there are several steps that need to be taken to make Second Saturday a better event.

"We need to get parking out of the neighborhoods so people aren't walking through them and being noisy and causing problems," Kerth said, adding that in the future, the MBA will be posting better signage and lighting as well as passing out pamphlets at venues to inform visitors of nearby off-street parking he said many are unaware of.

In an effort to get teens to go home after 10 p.m., Kerth said the MBA is contacting local high schools and encouraging them to get the message out to students.

"We did that this month, and we got a response from about four schools," Kerth said. "We're going to push much harder next month ... but we're not going to get all the kids to go home. We know that."

It was an over-concentration of teens looking for a social atmosphere that largely contributed to the death of Thursday Night Markets, according to Picker.

"When large groups of teens started showing up, it turned away from being a family event," Picker said. "That was hard for us. It was a turning point. How do you get teens to go home? If you push them to go home, they want to defy authority."

Picker said throwing more police at the problem didn't help, but running street sweepers down the venue did – until resources were stretched too thin.

"I think that's what's going on with Second Saturday," Picker said. "It's not a crime issue, it's a population management issue. Unfortunately, this time there was a shooting."

Kerth acknowledged that the MBA sees problems with the population at the event, which ebbs and flows during the night.

The crowds peak at about 9 p.m., he said, then they drop off until about 11 p.m., when they begin to grow again.

"The chances of a 17-year-old having a good outcome to their night after 10 p.m. goes down," he said.

Another problem Kerth acknowledged is people drinking on the streets, detailed in [this article](#).

Despite the acknowledged problems with the event, Kerth said Second Saturday is fundamentally different from the Thursday Night Markets in size.

While Thursday Night Markets were confined to an approximately four-block stretch on K Street, Second Saturday ranges all over from Old Sacramento to Alhambra Boulevard and from Broadway to F Street, according to Kerth.

Kerth said the efforts the MBA is making – from educating people about parking to encouraging teens to go home at the 10 p.m. curfew and working to stop the illegal "tailgating" – will not "make a fundamental change, but they'll head things in the right direction."

Kerth, Ault and Picker all agreed that there are lessons to be learned from other events, whether they be Thursday Night Markets, Jazz Jubilees, Pacific Rim Festivals or larger events in other cities.

"There's a lot of community and political will to keep this going forward," Ault said. "We need to preserve it because it's a very special entity."

Picker said that, thinking regionally, downtown and Midtown Sacramento are the "main street" for the area.

"There is a need for people to get together within the Sacramento Valley and be creative and not be constrained by strip malls," he said. "You've got to plan for success, though. Maybe every couple of years you need to shake it up and do something different."

Kerth said that Second Saturday is far from being just a memory.

"I get asked a lot from folks, 'Is this the end?' and my answer has been, 'Well, I'm still coming down to have fun, are you?'" he said. "Rumors of our demise are greatly exaggerated."

Brandon Darnell is a staff reporter for The Sacramento Press.

Share

 Facebook
  Twitter
  Google
  Pinterest
  Reddit
  StumbleUpon

 Email
  Print

Related



Second Saturday's controversial year
In "business"

City seeks answers, suspect after Second Saturday killing
Sacramento Police said Monday that gang violence led to a fatal shooting within a crowd gathered outside a Midtown bar after a Second Saturday Art Walk. Police presence was stepped...
In "20th street"

Second Saturday to close early
This weekend's Second Saturday Art Walk will end a little earlier and see an increased police presence, one month after a fatal shooting rocked Sacramento's central city. While art galleries...
In "art"

Subscribe to SacPress

Email Subscription

Subscribe

 RSS - Posts



Conversation



Express your views, debate, and be heard with those in your area closest to the issue.



lisab23

September 19, 2010 | 8:31 PM

Most are not calling for an end to Second Saturday. Second Saturday is fundamentally different from Thursday Night Market because it's in a neighborhood not a business district vacated at dark. We are, however calling for actual management of the event. Streets must be left open to stop the massive gathering in one spot and we must broaden the geography to encompass more spots downtown to bridge the odd perceived gulf between the two. Mr. Kerth was quoted in the Bee as saying (paraphrasing) he didn't like the idea of managing Second Saturday, that he liked the randomness of it. That's OK when the

event is small but you cannot let an event of this size be a free for all, it must be managed well and at times limited to what the venue, in this case Midtown, can handle. As an art walk, it sort of makes sense to have a single or group of non-profit arts groups running it, not a business association whose primary mission is the profitability of its members – many of whom are bars and clubs. It's not a good fit for running the Art Walk. Solutions are out there to keep this event fun and I remain very hopeful we will arrive at solutions that keep the Art Walk and after hours safe and peaceful.

[report user](#) [reply](#)



John Boyer

September 20, 2010 | 1:00 PM

Real question is why arent we putting more security on the streets?. Im alarmed on how thin our security forces are in the US. Bring our troops home and put em to work on our own soil!

[report user](#) [reply](#)



richardrich

September 20, 2010 | 8:14 PM

That's the scariest thing I've read in months.



John Gladding

September 20, 2010 | 2:34 PM

Perhaps street sweepers could be a cheap solution. Get businesses to chip in for a couple street sweepers to clean up the streets and shoo the kids away. "Too many people, not enough resources" seems to be the problem... Seems to me that if you have that many people you should be able to find a way to fund the resources.

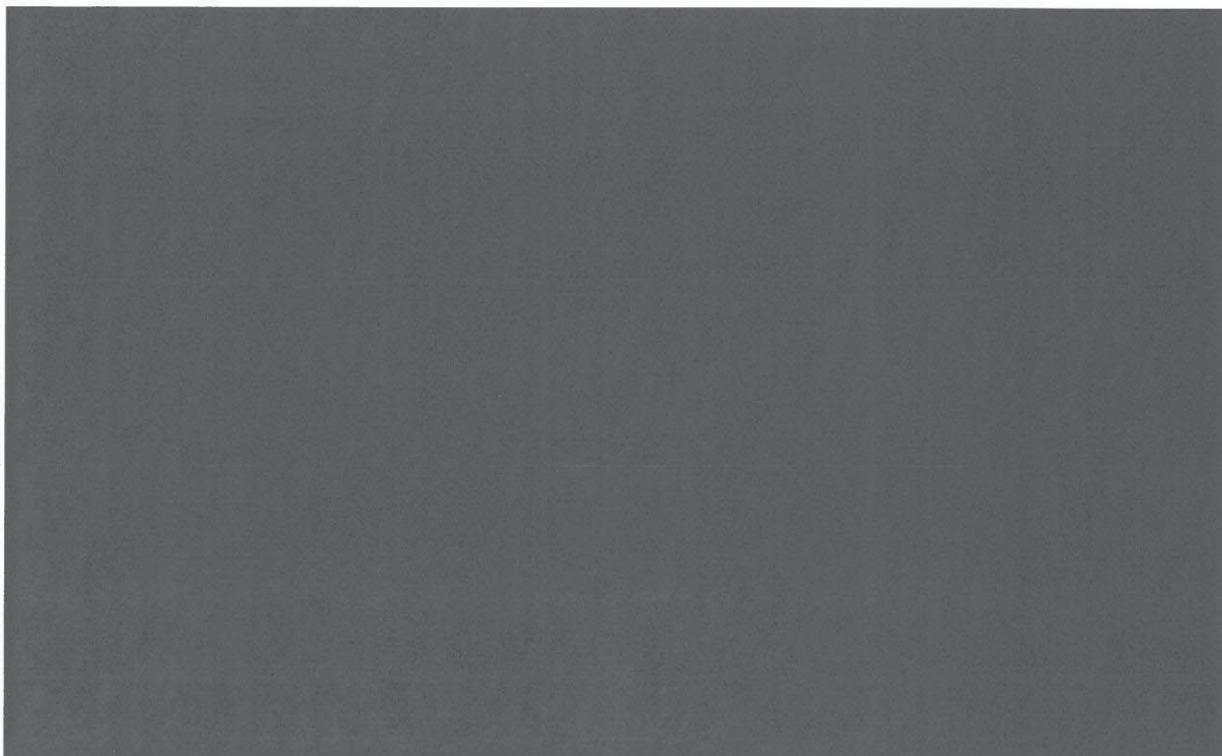
[report user](#) [reply](#)



William Burg

September 20, 2010 | 8:57 PM

"The scoops are on their way!"



kcwilsonii

September 20, 2010 | 5:20 PM

"It was an over-concentration of teens looking for a social atmosphere that largely contributed to the death of Thursday Night Markets, according to Picker."

"I think that's what's going on with Second Saturday," Picker said. It's not a crime issue, it's a population management issue. Unfortunately, this time there was a shooting."

I have a basic problem with both the above statements

Why on earth should either result in anybody getting shot? Why is anybody out hauling a gun around to begin with?

Think we have missed the big picture here.

[report user](#) [reply](#)

Leave a Reply

Enter your comment here...

The Sacramento Press is an online community newspaper covering news in Sacramento's central city and first suburbs. Sign up, share your story, and add your voice to the conversation.

Join us!

[About Us](#)

[Terms of Use](#)

[Privacy Policy](#)

[Contact Us](#)

[Contribute](#)

[Advertising](#)

[Website Development](#)

© 2014 David Terry Marketing

Scott Johnson

From: Karen Redman <kbredman@surewest.net>
Sent: Friday, May 16, 2014 8:05 PM
To: Scott Johnson
Subject: Sacramento Entertainment and Sports Center & Related Development, Project Number: P13-065

The response to comments provided in the Final EIR fails to address the deficiencies of the draft EIR.

Karen Redman

Scott Johnson

From: Christine Hansen <cchansen31@gmail.com>
Sent: Saturday, May 17, 2014 7:17 AM
To: Scott Johnson
Subject: Objection to Final EIR for Sports Arena

Dear Mr. Johnson:

The Final EIR for the Kings Arena fails to address many of the defects identified by the comments on the Draft EIR, in particular the traffic impacts, noise, and billboards.

Please register my objection to the City's adoption of the project and EIR.

Sincerely,

Christine Hansen

Scott Johnson

From: jeanie keltner <jeaniekeltner@sbcglobal.net>
Sent: Sunday, May 18, 2014 4:02 PM
To: Scott Johnson
Subject: FEIR comment on Kings Arena

The final EIR for the Kings arena does not adequately address such defects and problems as traffic impacts, noise and billboards identified in the comments on the draft EIR.

Please register my objection to the City's adoption of the project and EIR.

Thank you.

Sincerely,

Jeanie Keltner
916 444 3203

Scott Johnson

From: Maggie Coulter <mcoulter@dcn.org>
Sent: Monday, May 19, 2014 10:24 AM
To: Scott Johnson
Subject: EIR for Kings Arena comment

Please register my objection to the City's adoption of the Arena project and its EIR. The EIR for the Arena does not adequately address the environmental impacts related to traffic impacts, noise and billboards.

Thank you.

Maggie Coulter
5601 V Street
Sacramento, CA 95817
916-456-1420

Scott Johnson

From: Stop Arena Subsidy <stoparenasubsidy@gmail.com>
Sent: Monday, May 19, 2014 1:19 PM
To: Scott Johnson
Cc: Ron
Subject: Comments on Kings arena REIR

Dear Mr. Johnson:

The Final EIR for the Kings Arena fails to address many of the defects identified by the comments on the Draft EIR, in particular the traffic impacts, noise, and billboards.

Please register my objection to the City's adoption of the project and EIR."

Sincerely,

Ron Emslie
916 813 4200

From: Heather Fargo [<mailto:h-fargo@comcast.net>]

Sent: Monday, May 19, 2014 5:46 PM

To: Angelique Ashby; Steve Cohn; Darrell Fong; Steve Hansen; Kevin McCarty; Bonnie Pannell; Jay Schenirer; Allen Warren; Mayor Johnson

Cc: John F. Shirey; Shirley Concolino

Subject: Billboard statute on 5/20/14 agenda

Mayor and Council Members:

I am writing to oppose the proposed changes to the city's billboard statute. The current rules limit the intrusion of new billboards, and helped to remove what is generally referred to as blight. Changeable billboards are not only unattractive, they are distracting, and we already have enough distracted drivers. At least apply location criteria that protects the few views that we have, especially our skyline and waterfronts. The current billboard at Jibboom St. really distracts from both the waterfront and future Science Center.

Previous councils worked hard to make Sacramento more attractive. These signs take us in the wrong direction.

If it's such a great idea and so necessary to build the new arena, perhaps the city could talk Roseville, Folsom, Elk Grove and other cities into placing them along their freeways and adding that revenue as a small contribution to the cost of this regional facility.

Thanks for considering my concerns.

Heather Fargo
Mayor of Sacramento 2000-2008

Scott Johnson

From: Ron Maertz <ronmaertz@surewest.net>
Sent: Monday, May 19, 2014 9:08 PM
To: Scott Johnson
Cc: 'Alex Kelter'; Rick Guerrero
Subject: FINAL ENVIRONMENTAL IMPACT REPORT FOR THE SACRAMENTO ENTERTAINMENT AND SPORTS CENTER & RELATED DEVELOPMENT PROJECT (P13-065)

Scott,

The Environmental Council of Sacramento submits the following comments on the subject FEIR. **Please acknowledge receipt of these comments.**

O11-2

City chose to respond to a different comment from the one that was made. In response to the apparent threat to the availability of SRO units near the arena, the City pointed out that, even with the removal of the Hotel Marshall from the SRO program, the number of available units would not fall below the legal floor of 712 units. But the comment did not allege this would occur. The comment was:

“The immediate vicinity of the SESC includes a mixture of housing types including Single Room Occupancy. Urban redevelopment projects of this type sometimes stimulate the real estate market to the point that people who might, say, have minimum-wage jobs at the SESC could no longer afford to maintain their households. If this occurred, a preventable increase in transportation costs, greenhouse gas emissions and unemployment could easily result for these individuals.”

Thus, City’s answer to this comment was totally unresponsive, except for the affirmation that, indeed, the number of SRO hotel spaces will decline as stated in the ECOS comment. No mitigation was proposed for this acknowledged decline.

O11-3

City’s response includes the following:

. “The Proposed Project includes new housing opportunities in downtown Sacramento and will pay City of Sacramento Housing Trust Fund fees, as appropriate, that helps to achieve the goals and policies listed above.

. “The comment requests assessment of the consistency of the Proposed Project with a number of other goals and policies of the 2013-2021 Housing Element, including policies H-1.2.5, H-1.3.1, H-1.3.2, H-1.3.4, and H-3.1.1. The policies cited in the comment address future actions of the City related to such issues as the process of receiving neighborhood input on development, encouraging social equity and elimination of discrimination, economic integration of neighborhoods, providing housing opportunity for all segments of the community, and promotion of extremely low income housing. These policies address social and economic issues, and the comment does not describe any relationship of these policies to physical environmental effects, which are the focus of evaluation in an EIR. Please also see Response to Comment O4-17 for a discussion of the consideration of social and economic effects under CEQA, and Response to Comment O11-2 regarding the potential indirect effects of the Proposed Project on single room occupancy housing in the downtown area.” But the project does not commit to any specific number of housing units. In response to comment O11-14, a commitment of “up to 550 multi-family residential units” is made, but it does not represent a true commitment because the range of the proposed entitled number of units includes zero. The same applies to the project’s contribution to the Housing Trust Fund. These statements are, therefore, unresponsive.

O11-4

City's response includes the following:

"Housing affordability is not an effect of the Proposed Project on the existing physical environment. Please also see Response to Comment O4-17 for a discussion of the consideration of social and economic effects under CEQA."

Response to Comment O4-17 follows:

"Under the heading, "Economic Viability," the comment includes an array of requested actions and programs related to economic and social issues that would promote housing availability and cost, business improvement, and street parking in the Alkali Flat and Mansion Flats neighborhoods. Under CEQA, economic and social effects are relevant only insofar as they may serve as a link in a chain of cause and effect that may connect the proposed action with a physical environmental effect, or they may be part of the factors considered in determining the significance of a physical environmental effect. The comment includes no discussion or information that suggests a connection between the requested measures and the physical environmental effects of the Proposed Project. No evidence has been presented that the Proposed Project would affect, involve or otherwise be connected to the availability or affordability of housing or the level of business activity in the Alkali Flat or Mansion Flats neighborhoods. As such, there is no basis upon which to require the project to implement the measures suggested in this comment."

But the project has already caused (1) building owners nearest the project to raise rents and lease costs, and (2) a plan to remove at least one SRO hotel from the city's SRO program. City provides no evidence to demonstrate at what distance from the project these appreciated land values will fall to zero, leaving open the question of whether Alkali Flat or Mansion Flats will be affected.

City's response to this question also includes the following:

. "As stated on page 5-18 of the Draft EIR, the analysis concludes that the Proposed Project combined with cumulative retail projects would not cause or contribute to urban decay." However, City does not identify what these "cumulative retail projects" are, making this response impossible to analyze and assess for responsiveness. Project itself is lacking in specifics regarding its own retail projects, in that the proposed range of square footage includes zero.

Ron Maertz
Land Use Chair
Environmental Council of Sacramento

Scott Johnson

From: Kevin Coyle <caysea@comcast.net>
Sent: Monday, May 19, 2014 9:38 PM
To: Scott Johnson
Subject: Your responses were inadequate and your EIR is insufficient

My dear Mr. Johnson,

I found your responses to my comments on the arena DEIR to be inadequate.

Here are 9 specific examples of your failure to deliver the goods followed by two general comments.

You wrote: “Regional Transit does not plan to reduce service in other parts of the city in order to accommodate demand at the Downtown project site.”

I wasn’t talking about RT’s plans now. I was talking about the plans they will have to make if thousands of people have to wait in line for 45 minutes to get an RT ticket. In the real world, the ticket queues plus the large, milling crowds plus the alcohol suggest a real possibility for what I called “incidents.” In these situations, crowd control measures, plus the noise of the crowd being controlled, impact the environment with respect to noise, traffic flow and automotive emissions into the air. I can’t see how ignoring these truths in the EIR properly informs the decision-making body.

You wrote: “Further no correlation exists between reduced transit service and blighted environmental conditions.”

In making that argument, you should at least give the title and author of one peer-reviewed study that supports your theory. If you can’t get a bus home X nights a month, you will have incentive to move to a neighborhood with better political connections and bus service. If people begin to abandon a neighborhood, property values go down, meaning poorer people will live there who can less afford to maintain their property up to middle class standards, and the neighborhood will have even less political clout to maintain or enhance other city services. I call that blight.

You wrote: “the Proposed Project would be located in an existing urban environment, which includes occasional police activity and helicopter flyovers.”

When I wrote about the sounds of police helicopters being a true noise issue, I explicitly was not talking about “occasional...helicopter flyovers.” I wrote about the noise pollution a

neighborhood experiences when the bird circles for hours. Not long ago, the helicopter circled for a long time in our neighborhood because there was a rumor that a notable gang leader had been seen—to contain one possible suspect, not to contain thousands of drunken revelers. One time, the copter circled near my house for over 2 hours, I left for 30 minutes, and it was still there when I returned. The Sacramento PD considers the helicopter a very useful tool, particularly when unruly crowds are involved.

You wrote: “Section 4.9, Public Services, in the Draft EIR discusses police presence and law enforcement at the Downtown project site.”

Because police services were discussed in the DEIR, I felt encouraged to comment on policing issues and the inadequacy of your analysis. I argued that the DEIR tended to downplay and obscure the realities of a mixture of boisterous crowds, alcohol, policing measures and Sacramento’s long tradition of unruly, drunken crowds at night. In the 1980s, the St. Patrick’s Day Parade was held after dark on J Street. There were many unruly drunks. It was changed into a daylight venture and moved to Old Sacramento.

In the 1990s, drunken, unruly crowds at the Thursday Night Market drew complaints from citizens, police and city officials, so this popular event was terminated. The Sacramento Heritage Festival was a popular outdoor event, but became a drunken orgy and ceased to exist. More recently, we’ve had several murders associated with the Second Saturday Art Walk, and there is talk of cancelling it.

You can’t have drunken, unruly crowds and an adequate police response without a lot of noise and traffic tie-ups, which in turn increase air pollution.

In most cultures on this planet, in case you are new here, people like to occasionally gather in large crowds, ingest a psychoactive substance, and get wild and crazy. In Sacramento, the number one drug used at outdoor gatherings is alcohol. This is reality; denying it distorts the EIR.

You wrote: “In a survey of 13 other arenas in similar-sized cities around the country, out of over 1,000 events, only 3 had attendance over 18,000.... Because of the infrequency of these events, they are not evaluated further in this EIR.”

Again, a guiding premise of the project is that the arena and plaza will host many, many large events. Again, it doesn’t take 18,000 people to set off a major disturbance that absorbs most of Sacramento’s police force and ties up downtown traffic for hours.

You wrote: “Because of the infrequency and unique character of these types of events, it would be impossible to account for them in the context of an EIR.”

This is another example of you minimizing potential problems because you don't grasp the dynamics of mixing crowds, alcohol, Sacramento and policing practices. How do you know that large events at the arena will be infrequent? One of the City's big pitches in seeking support for the arena was that it would host many more large events than was possible at the present arena in Natomas. Another big pitch was that the public plaza associated with the arena would be Sacramento's night-time gathering spot. Yet another pitch was that these big crowds would generate the market which would entice a huge surge in "induced development" throughout the area. For you to say big crowds will be infrequent contradicts most of the purposes of the project.

Also, drunken, unruly crowds don't have to be all that big to draw a large and nervous police response. To support your view, the EIR should have some discussion of how many squad cars would be drawn to the scene of a public disturbance involving just 5000 people and how much the police response and the subsequent melee with the crowd will lead to noise and traffic congestion. In my experience, unruly crowds become much, much louder at the first sniff of tear gas.

A few smart people with a good "hook" and skill with Facebook and Twitter could turn out 5,000 people for an informal rave in the plaza. It's not that hard.

Do the police enjoy fighting with 5,000 drugged-out ravers? What does the police chief say about that? How much does one of those fights cost taxpayers, and how do the costs not effect other services citywide?

You wrote: "The environmental effects of induced growth are addressed in Section 5.4.3, page 5-9 of the Draft EIR."

Yes, they are—5 whole pages!!!!!! My point was that you did not address those effects to a degree sufficient to properly inform the decision-making body of the consequences of their decision. Key word: insufficient.

You wrote about the growth the City hopes to stimulate by this venture: "actual environmental consequences of this type of economic growth are too speculative to predict or evaluate."

I completely agree. Does the EIR sufficiently inform the decision-making body of this problem—such an important problem that it should be vigorously called to their attention? Would you agree that the induced growth triggered by the "Project" will contribute much more noise, traffic congestion and air pollution to the Sacramento area than the "Project" itself? Shouldn't the fact that these unpredictable environmental consequences of the induced growth may be horrible ones be called to the decision-making body's attention? I would say

yes, especially given the decision-making body's stated intent to induce massive growth. I think the EIR obscures this important decision point.

You wrote: "The information available regarding the proposed mixed use development is sufficient to evaluate the potential physical environmental impacts of the project."

Here, you lack credibility. Since the SPD hasn't yet been designed, and the final agreement between the City and the ownership group hasn't been settled, we don't know if the SPD will include 500 condos, a luxury hotel and a bevy of fine shops and restaurants or will amount to two condos and a cigar store. Therefore, the level of traffic, pollution and noise is too speculative to predict or evaluate. Instead of speculating on the unpredictable, why not wait and do an EIR on the SPD after you know there will really be one and what it will entail? Doesn't CEQA expect EIRs to be based on known quantities?

My general observations about your questionable "responses" to my legitimate comments are as follows: the EIR ignores some important environmental issues, plays down some issues and distorts other. It is not based on the real experiences Sacramento has had for decades. Therefore, I find it completely inadequate for its purpose: to guide the decision-making body with full, balanced, unbiased information on ALL the issues of concern and relevance. Your responses to me encapsulate in just a few pages the general tendency of the EIR to duck or massage the tough questions, the questions about which the decision-making body most desperately needs full, unbiased information.

Worse are the many ways in which the EIR's description of the project differs so drastically from what the members of that decision-making body have been talking about for 14 months. You think that large events will be rare, 7 out of 9 City Council members think those events will be common. You think large outdoor events in the plaza will be rare. The 7 think they will be common. You think the SPD will be modest. They think it will be grand or grandiose. You think induced growth will tend to be modest. They think it will be huge.

My worry is that with your EIR, the Council will go blithely forward on the project as they conceive it, rather than the Potemkin project you analyzed in the EIR. In such a situation, does your EIR serve the intent of CEQA? I can't imagine how.

With all due respect,

Kevin Coyle, Sacramento

Scott Johnson

From: sarah foster <sarahfoster7433@att.net>
Sent: Tuesday, May 20, 2014 12:11 AM
To: Scott Johnson
Subject: Kings' Arena Final EIR

To: SRJohnson@cityofsacramento.org

Subject: Kings' Arena FEIR

Mr. Johnson:

The Final EIR for the proposed Kings' Arena fails to address many of the defects identified by comments on the Draft EIR, my particular concern being the impact of increased traffic and displacement of parking in surrounding neighborhoods.

I live in Midtown near the intersection of Capital and 23rd St. There's a growing restaurant scene developing just down the street from me on Capital.

The streets are not devoid of traffic, but neither are they gridlocked. Parking is not an insurmountable problem. There is usually sufficient parking for residents, attendees to the churches, and customers of businesses along Capital, L, K and J Streets and north-south streets from 16th to 29th .

That will change. It's not hard to visualize the effect of thousands of cars circling our residential and commercial blocks, their drivers looking for parking spaces. Arena-goers will seek parking near the new facility, forcing residents and shoppers that are currently able to park downtown to go further east, into Midtown – displacing residents and shoppers in that part of town. .

This matter of parking displacement of residents and customers of local businesses in Midtown and other neighborhoods has not been sufficiently addressed. in the Final EIR. The impact of the Arena and associated traffic problems on the quality of life of our community must be carefully studied and provisions made for mitigation.

Please register my objection to the adoption of the Arena Plan and its much-flawed EIR.

Very truly yours,

Sarah E. Foster

Scott Johnson

From: Kelly T. Smith <ktsmith@thesmithfirm.com>
Sent: Tuesday, May 20, 2014 9:51 AM
To: Scott Johnson
Subject: Kings arena comment; freeway interchange impacts

Mr. Johnson: The FEIR prepared for the downtown Sacramento corporate sports arena fails to address the potentially significant impacts to Interstate 80 and SR 160, and the potential for mitigation to reduce those impacts.

Kelly T. Smith
THE SMITH FIRM
1541 Corporate Way, Suite 100
Sacramento, CA 95831
T: (916) 442-2019
M: (916) 607-1998
www.thesmithfirm.com

Scott Johnson

From: Stop Arena Subsidy <stoparenasubsidy@gmail.com>
Sent: Tuesday, May 20, 2014 10:01 AM
To: Scott Johnson
Cc: Ron
Subject: Comments on Kings arena REIR

Dear Mr. Johnson:

The Final EIR for the Kings Arena fails to address many of the defects identified by the comments on the Draft EIR, in particular the traffic impacts, noise, and billboards.

Please register my objection to the City's adoption of the project and EIR.

Sincerely,

Ron Emslie

2833 32nd Street,
Sacramento, CA 95817
P. O. Box 5175
Sacramento, Ca 95817

916 813 4200
email: rhe3333@gmail.com