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John Dangberg  
Assistant City Manager  
City of Sacramento  
915 I Street  
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Sacramento, CA 95814-2604

Re: ESC Feasibility Concerns

Dear Mr. Dangberg:

This letter is a follow-up to my letter dated March 28, 2012. The concerns raised in the March 20, 2012 meeting went to feasibility of the ESC project proposed by the City. Much of your March 27<sup>th</sup> letter and attachments focused on the City having assembled an experienced team that is capable of working on a project as complex as the ESC in as expeditious a manner as possible. Please note that we never questioned the experience of the team that the City assembled or the forces that they could bring to bear, but instead have asked whether it is feasible - - from a design, environmental, funding and cost standpoint - - for the ESC to be completed in time for the opening of the 2015-2016 NBA season. While we appreciate your optimism, it appears those feasibility obstacles remain, and in certain respects have increased.

Before commenting on your letter, we note that you did not address an important new issue that casts a giant shadow over the feasibility of the project. You stated that the "ESC project has strong political support throughout the region," but you failed to comment on the initiative drive launched by a citizens' group now called Sacramento Taxpayers Opposed to Pork ("STOP") intending to stop the City from funding the ESC.

As you are aware, a day after the March 20<sup>th</sup> meeting, the organizers of STOP filed a notice to put the following measure to a public vote in November 2012.

"The City shall provide no financial support for the development of an Entertainment and Sports Complex (ESC) in the Downtown Railyards site without the approval of a majority of voters."

The fact that this initiative drive is occurring makes it impossible for the City to provide current assurances that its funding plan is feasible. If STOP obtains enough signatures to require a vote (which may not be known until the end of June), the seminal question of whether the City can provide any funds (much less whether the funding plan is feasible) may well not be answered until November after the vote occurs and then only if the voters reject the measure. On the other hand, if the voters of Sacramento approve the measure, then no City financial support can be provided until a subsequent vote occurs and then only if voters approve the City providing the financial support. Given that as recently as November 2006, voters rejected by a 3-to-1 margin using City funding for

an arena in the same general area, we have a tremendous concern that the City funding plan and timeline are not feasible and that the parties will be wasting significant time and resources in a futile endeavor. In that regard, please provide us as with an opinion from the City's independent bond counsel as to whether the City, in light of the ongoing initiative drive and potential vote, can issue bonds in conjunction with any aspect of the ESC project, including the parking monetization plan or the refinancing of the existing arena.

Your failure to address this issue is puzzling as you clearly took the time after the March 20<sup>th</sup> meeting to secure from your consultants new documents that were attached to your March 27<sup>th</sup> letter.

We additionally have a number of concerns about your statement that the City is "on-track to complete the environmental review of the ESC project . . . by April 2013." In that regard, we note the following (using the headings and order used in your letter):

#### ESC Project EIR Schedule

Anyone familiar with the CEQA process knows that this is a difficult, tedious process that, even in the best of circumstances, is fraught with the potential for delays, particularly where the project is complex and the subject of intense public scrutiny and opposition. As the City is well aware, the Railyards EIR process commenced in about 2007 and has yet to be resolved by the courts. In that case, the Superior Court did not stay the project and, therefore, it was able to proceed. However, had the Court stayed the project, which is not uncommon, that project would already be five years behind schedule. Indeed, the reason that the California Legislature passed AB 900 to streamline the CEQA process for certain projects (see discussion below) was because it recognized that CEQA litigation can result in significant delays.

The first step in the review process is preparing the Environmental Impact Report ("EIR"). This typically takes 12 to 18 months to complete. In this case, you stated that the City claims that it can complete the EIR by December 10, 2012 (in 8 months) and have it approved and certified within the year. However, everyone, including the City and its consultants, agrees that the schedule for completion of the EIR is "aggressive." AECOM, the contractor being retained to perform the EIR admits that the project is on a "very compressed schedule" (it also uses the terms "condensed schedule" and "ambitious schedule") that requires things to move at "exceptional speed." It notes that "the ESC EIR schedule is aggressive" and that "the project will require an expedited CEQA process." AECOM notes that because of the extremely aggressive schedule, "there will be no time available in the schedule to reconsider assumptions after technical analyses are well underway." See Attachments 1 and 3 to your March 27<sup>th</sup> letter.

These concerns are significant for several reasons. First, AECOM's "aggressive" schedule is built on the assumption that the project will be fully defined by April 25, 2012 -- only three weeks from Wednesday. AECOM notes in Attachment 3 that the description needs to include building size and footprint, number of seats, circulation and access, parking, anticipated events, anticipated hours of operation, number of employees, construction methods and timeframes, on- and off-site infrastructure, changes to the anticipated future uses of the Historic Depot, if any." However, at present there is no agreed upon plan that would provide any of this information.

In Attachment 9, dated March 19, 2012, the City's consultant notes that "there remain some site planning challenges that are yet to be resolved. The site planning issues are primarily focused on the footprint of the facility and the ability to provide adequate space for service vehicles and bus



access, convenient pedestrian connections to the ESC and all other transit modes, the relationship to surrounding uses and structures, the potential future location of the planned Sacramento Intermodal Transportation Facility. . . potential joint development sites and the location of a planned VIP Parking Structure.” The document notes that while potential solutions have been discussed, the adjustments may affect the footprint which could still have other impacts. It notes that these issues have not been resolved “or located on a site plan suitable for environmental review.” While the City assumes that this effort can be completed within a six-to-eight week time period, there are no assurances that this can be done and, indeed, it seems highly unlikely that all of these issues can be resolved in such a short period of time.

In addition, however, even if the project could be reasonably defined within this period, it is a virtual certainty that the project will evolve after it is “defined.” This will occur either because the parties determine that changes are needed, other jurisdictions or regulatory agencies (such as CalTrans, the Federal Transportation Administration or the Federal Railroads Administration) determine that changes must be made, or concerned residents and businesses express concerns that justify project changes. In fact, AECOM itself stated that this project “is under . . . intense public scrutiny” which “invariably means that the project will evolve, not only in its physical features, but also its financing, programming and planned operations.” However, AECOM admits that its schedule does not include any time to consider any such changes. Thus, AECOM effectively admits that it is impossible to complete the EIR within the allotted time.

#### Railyards Specific Plan EIR

You stated that this EIR was approved by the Superior Court, that the City is confident that the decision will be upheld and that there has been no delay as a result of the CEQA litigation. While the City may be confident that it will be upheld, the fact that it has now been pending before the Court of Appeal for over two years indicates that the appellate court has significant concerns about the EIR. And, while it is correct that the project was able to proceed, that is only because the no stay was imposed by the Court. Had a stay been imposed, the project would already be delayed over five years.

#### Supplement to Railyards Specific Plan EIR

In order to expedite the process, AECOM asserts that “much of the project-specific analysis of the ESC project can be tiered from the Railyards EIR.” Yet, only a couple of sentences before in Attachment 3, AECOM noted that the Railyards EIR is currently subject to appeal and in your letter, you stated that “the ESC project EIR is not being tiered from the Railyards Specific Plan EIR.” There is clearly confusion on this point. In either case, there is a serious risk of delay if the City uses the prior analysis and adopts similar mitigation measures to those proposed in the Railyards EIR and the Court then strikes that EIR, forcing the City to re-evaluate portions of the ESC EIR.

#### Timing for ESC Project EIR

We have addressed the timing of the EIR above. In addition, you stated that if the ESC EIR is challenged, the City can proceed until a court ruling is issued. This, however, assumes that the Court does not stay the project. If it does, the project will not be able to proceed.



### ESC EIR Challenges/AB 900 Process

You stated that the City expects to obtain the benefits of, and expedited review process available under, AB 900. First, even if the City does obtain this benefit, the process would not be completed until at least the end of 2013, even if there is no appeal to the California Supreme Court. Your letter assumes that the EIR will be completed by April, 2013. Under the expedited review, a decision must be rendered within 175 days after the filing of a petition for review (and we can assume that it will take the full amount of time) which must be filed within 30 days after the EIR is approved. Therefore, review is likely to take an additional seven months; that means that even if the City obtains expedited review, and there are no other delays, the Court of Appeal review is not likely to be completed until about December 2013. This would leave only an abbreviated timeline for construction.

In any event, we have serious questions about whether this project can qualify for expedited review under AB 900. As your letter noted, in order to qualify under AB 900, the project may not result in any increase in greenhouse gas ("GHG") emissions. As of this time, the California Air Resources Board has only processed one project through AB 900 and that involved a solar farm, which would clearly result in reduced GHG emissions. CARB has never approved a project of this type.

You stated that the City believes it will qualify for AB 900 because "relocating the existing arena from North Natomas to downtown Sacramento next to the heavy rail, light rail and intercity bus station will result in greater transportation efficiency and reduced greenhouse gas emissions as compared to existing conditions." Thus, the City appears to believe that relocating the arena will result in less vehicular traffic and reduced greenhouse gas emissions as compared to current conditions.

First, however, the construction alone will result in significant GHG emissions that will have to be offset. Your letter does not explain how this can be done. Second, the City's own figures do not support the claim that there will be less trip generation for the downtown project. In the September technical review report, the City estimated that 70% to 80% of ESC users would use private vehicles. We think that the likelihood of a percentage this low is small. However for our purposes we will assume that 25% use mass transportation and there are no emissions associated with those 25% (though, in reality, this is not the case because mass transit generates GHG emissions and people will likely drive to the mass transportation). The City has assumed that the new arena will serve approximately 3.2 million visitors per year and that the occupancy factor is 2.5 per vehicle. That means that for the new arena there will be vehicle emissions associated with 960,000 trips per year (3.2 million visitors x 75% of trips/2.5 per vehicle). However, the total attendance for the existing facility has averaged 1.5 million per year over the past five years. Using the same optimistic assumption that there are 2.5 persons per vehicle, that means there are approximately 600,000 vehicle trips per year to the existing arena. Thus, using the City's own assumptions, the new arena will result in approximately 360,000 additional vehicle trips per year, or, a 60% increase in GHG emissions associated with vehicles, even if 25% of the attendees use mass transportation. Given the large amount of GHG emissions associated with the construction and the large increase in emissions associated with vehicle traffic, we fail to see how the City will be able to demonstrate that there is no increase.<sup>1</sup>

The fact that the project will likely result in increased GHG emissions will also create additional approval issues. When the City proposed a Draft Environmental Impact Report for its 2030

<sup>1</sup> Moreover, this does not account for the additional GHG emissions associated with increased traffic and waiting times at intersections which will undoubtedly result from the increased traffic.



Proposed Plan, the California Attorney General's office submitted comments regarding the failure of the DEIR to adequately address GHG emissions and climate change. As AECOM notes in Attachment 3, the City's General Plan Policy now states that the City shall work with CARB to comply with AB 32 reductions to 1990 emission levels by 2020 which equates to a 29% reduction in emissions compared to "business-as-usual" conditions. Given that the construction of the arena is likely to result in increased, rather than decreased emissions, the project will likely be inconsistent with the General Plan Policy. If so, the City will need to find that the ESC will result in significant environmental impacts and require implementation of mitigation measures. In addition, this is likely to engender opposition to the project by residents, environmental groups and, perhaps, the State.

#### CalTrans/Other Improvements

You asserted that the proposed freeway improvement projects suggested by Caltrans are similar to what was proposed in 2007 for the Railyards EIR and that some of the transportation improvements contemplated in the Railyards Specific Plan may not be needed for the ESC project alone. First, the Railyards EIR did not consider the traffic impacts associated with the ESC. These are expected to generate in the range of an additional 6,000 trips each way for a sold out event during a very limited period of time. This will likely create significant traffic problems. Caltrans had significant concerns without consideration of these additional trips. It will certainly have concerns with these additional trips.

#### Outside Agency Approvals

The City previously stated that because the project was coincident with a portion of the site previously designated for the Sacramento Intermodal Transit-Facility and that the facility would have to be moved, review under the National Environmental Policy Act ("NEPA") may be required. Indeed, in the September technical review report, the City stated that "the major areas of uncertainty are design and the extent of review required under the federal National Environmental Policy Act." Your letter did not respond directly to this, instead stating that "approval by federal agencies for the ESC project is not required as there are no federal funds being used for the ESC development." While it may be correct that federal review is not required for the ESC itself, that does not mean that it is not required to address impacts on the Intermodal Facility. The City has not addressed how it intends to comply with NEPA.

#### Historic Preservation and Cultural Resources

Your only response to this concern is that guidelines already exist for the Railyards Specific Plan area and that draft plans have been prepared for the Depot building. However, this does not address the concerns that have been raised regarding the scale of this project compared to historical buildings in the area. This issue is likely to generate significant public comment and may result in significant opposition to the project (*see, e.g.*, published comments of Representative Matsui which were made approximately 11 months after the date of Attachment 15).

You stated that the possibility of locating buried archaeological resources is "highly unlikely" and asserted that the site has already been disturbed by grading for the soil remediation that extended 15 feet below grade. We request that the City provide documentation regarding what specific locations were excavated to this depth. We note that in Attachment 13 the City's consultant noted that in fact "it is likely that construction of the ESC will encounter buried historic archaeological resources." While it noted that to date, there have not been significant finds and that construction delays have been minimal, they could not say that significant finds could not be made which



would result in delays and we note that historical finds resulted in significant delays at another project only blocks away.

#### Financing

Paragraph 5 of your letter fails to address our questions regarding the financing plan for the ESC project and instead, asserts ambiguous references to potential revenue streams from land sales. What is clear, is that the City has yet to solidify a financing plan.

In sum, your letter does not provide any objective measure of assurance that the new arena will be completed in time for the 2015-16 NBA season. All of your assumptions and projections are based on a premise that the Kings will be playing in the new arena for the 2015-16 NBA season. However, the issues we have identified likely will prevent the City from meeting its timeline, and thus pose imminent obstacles to the new arena being ready for the 2015-16 NBA season. Such a failure will result in irreparable harm to the Kings, not to mention the losses the City likely will suffer.

Please note that in the interest of time we are trying to provide you with our feedback as quickly as possible. As a result, the foregoing comments are not intended to address all of our continuing concerns. We look forward to having further discussions with you about these and other issues, such as design, financing, parking distances and whether residents would view the parking rate increases as modest.

Should you have any questions, please do not hesitate to call.

Very truly yours,

Scott Zolke  
Partner

A handwritten signature in blue ink, appearing to read 'Paul A. Jacobs'.

cc: Paul A. Jacobs, Esq.  
Eileen Teichert, Esq.