



## OUTLINE OF FEASIBILITY CONCERNS

### I. FEASIBILITY OF ACHIEVING TIMELINE.

Numerous important timing issues need to be factored into the timing analysis, and the project timeline may not be met.

1. **The City is Behind on its Own Schedule.** The Project Entitlement and Review Schedule prepared by the City requires 16 to 20 months to complete in order for construction to be completed for the commencement of the 2015 NBA Season (see City Staff ESC Technical Review Report dated September 13, 2011 (Technical Review Report), page 6 of 50). However, the City is already behind its own timeline (see Project Timeline in City Six Month Milestones Report dated October 18, 2011). What is the new timeline and how can we be guaranteed that it will be met?

### 2. **California Environmental Quality Act (CEQA); Environmental Impact Report.**

A. **General Timing.** CEQA requirements normally take a minimum of 15 months to several years to satisfy. If there are legal challenges, a Petition for Writ of Mandate must be filed within 30 days, which is likely to take 6 months to 1 year, and an appeal takes a minimum of one year. Given the CEQA issues, how can the City guarantee that the team and fans will be able to enjoy a new arena within the previously agreed upon timeline?

B. **Timing for Railyards Specific Plan.** The process for the EIR for the Railyards Specific Plan is still pending in the Court of Appeals almost 6 years after it was started. We are unaware of any reason why the timing for the EIR for the ESC would not be similar and would appreciate your response.

C. **City Reports.** The City's own reports indicate that the City cannot meet the 2015 deadline.

(i) The Project Entitlement and Review Schedule states that approximately 16 to 20 months are required to complete the EIR. However, it does not appear that significant work has even begun on this critical element. Even if the City started today, the City would likely not complete the EIR until about September, 2013 at the earliest under its own timeline.

(ii) The City Staff also noted that "if a supplement to the Railyards Specific Plan EIR is prepared, the Final Supplemental EIR should be completed within approximately 15 months of the date the City issues a Request for Proposals to environmental consultants for the project." (see Technical Review Report page 19 of 50). It is not clear how the City can prepare a supplement before the Railyards EIR is approved. What will the City do if the Court invalidates the Railyards EIR and how will that impact the timeline?



(iii) The Feasibility Study Report dated May, 2011 stated that to finish by 2015, the City would have to start the EIR effort by summer 2011 and finish by summer 2012. (see Feasibility Study Report dated May 2011). In October 2011, the City Staff reiterated that "that the schedule for completion of the project by 2015 was very constrained. In order to complete the project by 2015, predevelopment activities must commence as soon as possible." (see October 18, 2011 – Report to Council Attachment 1). To meet their schedule, the City would need to complete the EIR by summer 2012 even if there no challenges. Given that the City is already about one year behind (and without taking into account the complexity of the EIR or potential challenges), how can the City ensure completion of the project by the 2015 deadline.

How do you respond to these issues?

**D. Complex Review Process.**

(i) The City itself has already determined that a complete review of all environmental issues will be required for this project. This process typically takes 12 -18 months to complete (the City itself estimated 12-14 months depending on whether there could be concurrent review (see Staff Report to City Council dated March 6, 2012 (the Staff Report) page 10 of 45)). Given that this is a more complex project than most, it is reasonable to expect it will take 18 months. As noted above, the City has not retained a contractor to perform the environmental assessment (while a Request for Proposal went out in October, no contract has been awarded). Therefore, this phase of the process is not likely to be completed until about September 2013 at the earliest.

(ii) The EIR for the ESC appears to be at least partially dependent on the Railyards Specific Plan EIR as the Railroad Specific Plan would need to be amended to address the establishment of the ESC and its associated facilities within the Depot District. (see Technical Review Report page 8 of 50). However, the adequacy of that EIR has been challenged by citizen groups among others and is on appeal. Oral argument has not been set. Key issues included traffic, historic preservation, groundwater and archaeological issues (which are described in Section 3 below).

(iii) Our understanding is that the railyard sites have only been cleaned up to levels for construction workers. DTSC must determine whether additional work is required as no activities that will disturb the soil are generally allowed without a Soil Management Plan approved by DTSC in advance (see letter dated October 31, 2011 from Ruth Cayabyab, Project Manager, DTSC, to Tom Buford, Senior Planner, City of Sacramento). This may require a risk assessment and could take additional time.

(iv) The ESC must balance historic depot and intermodal transportation center issues while simultaneously addressing concerns about scale and massing overwhelming the historic depot and shops. City Staff has noted that the project will require "consideration of any impacts to historic resources" (see Technical Review Report page 8 of 50) and those concerns are shared by U.S. Representative Doris Matsui (D-Sacramento) (see March 8, 2012 press release from U.S. Representative Matsui). This issue is likely to generate community opposition. What is the plan for dealing with potential opposition and avoiding significant delays?



(v) Sacramento is part of "Phase 2" of the statewide high-speed rail project. The California High-Speed Rail Authority has advised the City that even though its planning for the connection to Sacramento is moving slowly, the City must plan the ESC in a manner consistent with, and complimentary to, the eventual implementation of high-speed train service to Sacramento (see Letter dated October 28, 2011 from the California High-Speed Rail Authority). As the planning for the high-speed train service has not been completed, it is possible that the EIR may need to be revised well into the process to address high-speed rail concerns.

(vi) The City proposes to apply for environmental streamlining under AB 900, Pub. Res. Code §21178 et. seq. (see Staff Report page 8 of 45). However, that provision requires that there be no increase in greenhouse gas emissions, which will almost certainly not be the case for the ESC, particularly since, as noted above, the Sacramento Metropolitan Air Quality Management District has already raised concerns about greenhouse gas emissions. Even so, a challenge would delay the project considerably.

(vii) Citizens already have voiced opposition to the ESC both in the submission of letters to the City and in testimony before the City Council. If this opposition results in a legal challenge to the ESC, as was the case with respect to the opposition to the Railyards EIR, one can expect that the Superior Court phase alone (Writ of Mandate) will take at least an additional six to twelve months. That would mean no approval until at least about the middle of 2014. If there is an appeal, the review process would take considerably longer. Even if it only took another year, which is minimal for an appeal in California (and may be optimistic in light of state budget shortfalls), it would not be completed until at least the middle of 2015, which would mean construction could not be completed until at least 2017.

3. **Railyards EIR.** The Railyards Specific Plan Draft Environmental Impact Report dated August 2007 (Railyards EIR) is instructive as to matters that must be taken into account in the development of the ESC and that will significantly and adversely affect the timing and cost of the ESC. These matters include, but are not limited to, the following:

- Historic and Archaeological Resources
- Traffic
- Pedestrians
- Parking

4. **Infrastructure.**

A. **Transportation.** Numerous transportation infrastructure elements are not addressed by the current plan; they must be factored into the timeline and City budget. See also Section 2B of Part III of this Outline with respect to additional funding concerns relating to these elements. In addition, the failure to adequately address traffic concerns is one of the key issues in the appeal of the Railyards EIR.



(i) Needed Improvements Not in ESC Plan. City Staff has identified the following transportation improvements that are needed at a minimum for the operation of the ESC and have not been programmed or funded (see Technical Review Report, pages 39-40 of 50):

<u>Description</u>	<u>Estimated Time to Complete</u>
Bercut/Jibboom/Railyards Intersection	12-18 months
Extension of 3 <sup>rd</sup> Street from F to I Street	36-48 months
Realignment of Light Rail Station	TBD
Transit way extension of F Street	TBD
Extension of H Street from 3 <sup>rd</sup> to 5 <sup>th</sup> Street	TBD
Relocation of bus area	TBD

The City's funding plan for the last four improvements was to secure federal funds. However, we are not aware that a funding application was submitted in October 2011. City Staff has warned that if federal funding is not obtained currently, it is uncertain when there will be another chance to obtain federal funding for the Intermodal project. Construction schedules have not been developed and the City Staff acknowledges that at best, only some of the needed improvements might be completed for a 2015 ESC opening (see Technical Review Report, page 40 of 50). The failure to complete these efforts will make it extremely difficult to access the property and will result in significant traffic problems.

(ii) California Department of Transportation (Caltrans).

Caltrans has notified the City that the City must take into account the following mitigation strategies early on in the ESC planning process for implementation and/or costs (see Technical Review Report, page 41 of 50). If these are not taken care of before the opening of the ESC, there will be enormous access and traffic problems:

- Special Event Traffic Management Planning
- Interstate 5 Bus/Carpool Lanes
- Interstate 5 Auxiliary Lane northbound from Highway 50 ramp to P St on-ramp
- Interstate 5 Transition Lane southbound from Garden Highway off-ramp to Garden Highway on-ramp
- Reconstruction of Interstate 5/Highway 50 Interchange including the addition of freeway-to-freeway bus/carpool lane connectors.



(iii) Other Improvements Identified by the City that May Need to be Built into Plan. The City also had identified the following improvements as potentially being necessary for the operation of the ESC (see Technical Review Report, page 41 of 50):

- Widening of 7<sup>th</sup> Street to four lanes and pedestrian tunnel west of 7<sup>th</sup> Street
- Extension of 5<sup>th</sup> and 6<sup>th</sup> Street from Railyards Blvd. to Richards Boulevard
- Ultimate Capacity Improvements at Richards and Interstate 5 interchange
- Improvement to the State Route 160 and Richards Interchange
- Enhancements of the Intermodal Light Rail Station and increased traffic capacity.

There is no time estimate, cost estimate or funding source for any of these anticipated improvements.

**B. Utilities.** There are also numerous utility issues that are not addressed by the current plan and that must be factored into the timeline and City budget. See also Section 1C and 2D of Part III of this Outline with respect to additional funding concerns relating to these elements.

(i) Railways Project Entitlements. The Railways Project Entitlements require that full project water, sewer, drainage, and water quality master plans be approved by the Department of Utilities prior to recording of any final map. The City Staff does not know if a final map will be triggered prior to approval (see Technical Review Report, page 43 of 50).

(ii) Relocation of Water Main. A 42-inch water transmission main that is being constructed may need to be relocated as part of the project, which may be infeasible and/or extremely costly (see Technical Review Report, page 43 of 50).

(iii) Dewatering System. Dewatering is required for construction and a permanent foundation dewatering system may be needed. Approvals would need to be obtained from the Department of Toxic Substance Control (DTSC), Regional Water Quality Board, County of Sacramento and City of Sacramento for any groundwater pumping needed for dewatering and for any permanent foundation discharge (see Technical Review Report, page 44 of 50). Additionally, a temporary discharge permit during construction would require the approval of not only the Department of Utilities, but also the City, the County of Sacramento Environmental Management Department and the DTSC (see Technical Review Report, page 43 of 50).

(iv) Drainage Mains. The City's proposal includes the cost of drainage mains, but the financing of the improvements associated with either drainage option have not been evaluated (see Technical Review Report, pages 45-46 of 50).



(v) Loss of Drainage Detention Basins. Cost estimates for mitigating the loss of drainage detention basins have not been included (see Technical Review Report, page 46 of 50).

(vi) Majority of Utilities Infrastructure Not Funded. The City Staff concluded that the majority of utilities infrastructure is not funded for construction and would need to be built earlier than planned to support the ESC (see Technical Review Report, page 48 of 50):

<u>Improvement</u>	<u>Estimated Time to Deliver</u>
Relocate or install sewer mains	TBD
Relocate Track Relocation interim detention basin	TBD
Relocate future interim detention basin for 5 <sup>th</sup> and 6 <sup>th</sup> Street	TBD
Construct storm drainage system for ESC	TBD
Construct water distribution mains	TBD
Relocate existing sewer and water mains serving the Central Shops	TBD

(vii) Critical Utility Elements to Planning and Design. Two items have been identified as critical to planning and design of ESC (see Technical Review Report, page 49 of 50):

- Location of large diameter and critical water, sewer and drainage mains on the west side of the project
- Need to construct either the drainage pump station or detention basin and associated pipelines.

C. Track Requirement Issues. By letter dated October 31, 2011 to Tom Buford, Senior Planner, City of Sacramento, the Sacramento Regional Transit District (SRTD) notified the City of the need to address both light rail operations and track requirement issues. While Section 5A(i) above refers to the relocation of the light rail, the scope of these issues requires an in-depth review regarding the impact to the timeline and funding requirements:

- The City must identify and secure an easement and site for the storage of 8 light rail vehicles on two sets of tracks in the immediate area of the ESC so that the storage tracks can be used for staging of trains. The City must reimburse the SRTD for the cost of relocation as well as for securing and providing the storage area.
- The City must identify the approach and mechanism for conveying to the SRTD replacement easements for the relocated track, station, platform and related facilities. More importantly, all replacement facilities must be in place before the SRTD will release its interest in the existing easements.



5. **Government Agency Approvals Necessary to ESC Development.** The timely development of the ESC depends upon approvals being given by a number of governmental agencies other than the City. These agencies include the following:

- Federal Highway Administration
- Federal Railroad Administration
- Federal Transit Administration
- Federal Emergency Management Agency
- California Department of Transportation
- California Department of Toxic Substances Control
- California Regional Water Quality Board
- Sacramento Metropolitan Air Quality Management District
- County of Sacramento

What assurances can be made that these approvals can be timely obtained?

6. **Political Concerns.** Political support is vital for the ESC to proceed on a timely basis. Although the City Council has given preliminary approval for moving forward, there are a number of concerns about the political support for the ESC, including concerns raised by Councilmember Kevin McCarty, Governor Brown and U.S. Representative Masui. In addition, a number of citizens and citizen groups have similarly voiced concerns about the ESC and challenges to the ESC EIR from some citizen group should be expected.

## II. **SITE PLAN AND DESIGN.**

These concerns include the following:

1. **Arena Floor to be at Grade Level or Below Grade Level.** A decision has not been made whether to have the Arena facility floor be below grade level or above grade level (see Technical Review Report, page 23 of 50). Each alternative creates feasibility issues. The City Staff recommend against depressing the arena floor because of ground water conditions which exist on the site (see Technical Review Report, page 23 of 50). However a floor at grade level creates concerns about fan enjoyment in entering a raised arena and also creates a massing problem which is not supported by U.S. Representative Mitsui. A decision on how to proceed will affect the EIR as well as a number of other timing, cost and funding issues.

2. **Loading and Truck Marshalling Area.** The desired location for the loading and truck marshalling area may conflict with support columns for the Interstate 5 freeway (see Technical Review Report, page 24 of 50). This is likely to present major timing and cost issues, that have yet to be adequately addressed by the City.





3. **Intermodal Transit Facility.** The site plan calls for shifting the Intermodal Transit Facility to Lot 40, which is a privately owned 2-acre parcel that would need to be acquired (see Technical Review Report, pages 24 and 30 of 50 and Staff Report, page 9 of 45). Although the budget includes funds for the purchase of this Lot, is there any assurance that the owner has agreed to that amount or would eminent domain proceedings need to occur? What is the potential effect on timing, cost and funding?

4. **Parking.** A desired walking distance from a parking facility should be no more than ¼-mile, representing an average 5-minute walking duration (see Technical Review Report, page 28 of 50). The plans for the ESC do not appear to achieve this:

A. **Required Spaces.** Based on City Staff assumptions (which may subsequently understate the parking requirements), the City Staff concluded that the ESC would need 6,000 spaces with the Intermodal facility requiring an additional 1,027 spaces. However, only 3,404 spaces currently exist within a ¼ mile radius of the site. The City Staff also recommended 1,500-1800 premium spaces (see Technical Review Report, page 34 of 50).

B. **Insufficient Parking.** Even if a new parking structure were built with the number of premium spaces recommended by the City Staff, the ESC would still be lacking approximately 2,000 spaces within the ¼-mile radius.

Current City plans, however, call for less premium spaces than that recommended by the City Staff, with only 1,000 spaces provided, which exacerbates the parking shortage within a reasonable distance of the site (see Staff Report, pages 32 and 43 of 45).

More importantly, the City has not been reviewing parking availability in the context of a ¼-mile radius, but instead has analyzed this in the context of a ½-mile radius (see Staff Report, page 9 of 45). A ½ mile walk from a parking facility to an arena is less than desirable to the vast majority of fans, and especially so for premium patrons.

C. **Premium Parking Is Not in Premium Location.** The premium parking spaces are not "premium" spaces as they are nowhere near to the arena. Although the City's Term Sheet refers to the new parking structure as being adjacent to the ESC, the Letter of Intent for the development of the premium parking structure provides for a structure to be located blocks from the arena in an area which is almost ½-mile from the site and farther away from the site than some existing parking structures (see Staff Report, pages 32 and 43 of 45; and Walker Parking Consultants Report dated November 23, 2011 (Walker Report), Appendix 1-3).

D. **Unknown Parking Availability.** Because the City intends to use parking facilities that are already in use for other parking needs, the City Staff noted that there is limited information whether there will be available parking spaces just prior to an event at the ESC even within a ½ mile distance from the site (see Technical Review Report, page 34 of 50).

E. **No On-Site or Immediately Adjacent Parking.** Although an exhibit to the Term Sheet described on-site parking as "TBD" (see Staff Report, page 40 of 45), parking will not be available on-site (see Technical Review Report, page 34 of 50). As it does not





appear that there will be any parking immediately adjacent to the site, where will players and coaches be parking and how will their pre-game and post-game security needs be addressed?

5. **Remediation Work.** Additional remediation work will "possibly be required to use the area for an arena (see Technical Review Report, pages 30 and 42 of 50). This will require coordination with the DTSC and will impact the timeline and costs. See Section 2E of Part III of this Outline regarding additional funding needs.

6. **Architectural Guidelines/Historic Area.** The ESC will likely be subject to special architectural guidelines to protect historic resources in the area. The City Staff Report anticipated that the guidelines would have been adopted and approved by all parties by now (see Technical Review Report, page 27 of 50), but that has not occurred. What is the impact on the timeline? In addition, because the site is located in a sensitive archaeological area, it will need to be monitored during construction. If archaeological finds are made, the project may need to be delayed while those finds are investigated. This could result in significant delays which are totally outside of the City's control.

In addition, the site is in an area that may contain Native America burial and/or cultural sites. This will require coordination with Native American tribes. If such sites are located, there could be significant delays and the location may have to be moved (see Letter dated October 13, 2011 from Native American Heritage Commission to Tom Buford, Senior Planner, City of Sacramento, and Letter dated October 10, 2011 from Shingle Springs Band of Miwok Indians to Tom Buford, Senior Planner, City of Sacramento).

7. **Team Offices and Practice Facilities.** Team offices and practice facilities at the ESC should be part of the design, but the City Staff notes that the Report does not address those issues and further discussion is required. (see Technical Review Report, page 23 of 50). How is this glaring omission to be remedied?

### III. **SIGNIFICANT ADDITIONAL FUNDING MAY BE NEEDED.**

The City's funding plan ignores or sidelines a number of significant project costs that must be incurred. The plan also uses questionable assumptions and does not adequately account for the financial risk that the City is undertaking. From a funding standpoint, the City would need to demonstrate that it both willing, and in a financial position, to fund all of these additional costs and take on the attendant additional risks.

1. **City Plans Rely Heavily On ESC Ticket Sales.** The estimates used by the City for the revenues that it will derive, and the costs that it will incur, from the operation of the ESC are dependent on the ESC achieving the estimated attendance figures. If the ESC does not achieve the attendance levels the City has estimated, the City General Fund could be adversely affected. What is the basis of the City's projections and is it clear that the team cannot guarantee that these attendance figures and resulting City revenues will be met?

2. **Additional Funding Needs Identified But Not Funded.** The City Staff has noted a number of areas in which additional costs are anticipated, but those costs have not yet been identified or funded. The inability of the City to provide the additional funding required, or



the lack of desire to provide this additional funding, could create an insurmountable obstacle to timely completing the ESC.

A. **Intermodal.** Several components of the Phase 2 Intermodal project will need to be constructed to support the ESC but funding has not been secured by the City for that construction (see Technical Review Report, page 30 of 50).

B. **Transportation Infrastructure.** Additional roads and other transportation infrastructure needed for circulation and access to the ESC will need to be identified through the EIR process and funded (see Technical Review Report, page 30 of 50).

Outside of applying for federal funding (the availability of which is uncertain at best), the City does not have a funding plan in place for any of the many transportation improvements that need to be accelerated to support the ESC. Additional improvements may be needed to support or mitigate the operation of the proposed ESC, and the cost of those additional improvements may be significant (see Technical Review Report, pages 39-40 of 50). How will those significant costs be funded?

See Section 5A of Part II of this Outline for a more detailed discussion of the transportation items that have not been budgeted or funded.

C. **Utility Infrastructure.** Utility infrastructure improvements are not presently funded (see Technical Review Report, page 46 of 50). See Section 5B of Part II of this Outline for a more detailed discussion of the utility infrastructure items that have not been funded.

D. **Drainage.** The City's proposal includes the cost of drainage mains, but the financing of the improvements associated with either drainage option is not included (see Technical Review Report, pages 45-46 of 50). Similarly, cost estimates for mitigating the loss of drainage detention basins have not been included (see Technical Review Report, page 46 of 50).

E. **Remediation.** Additional remediation work will "possibly be required to use the area for an arena (see Technical Review Report, page 30 of 50).

F. **Use of Parking Concession Model.** If the City uses a concession model to monetize parking, the \$52 million of outstanding tax-exempt debt on City parking garages would either have to be paid off and/or converted to taxable debt (see Staff Report, pages 9 and 16 of 45). If that occurs, what are the additional costs that will be incurred by the City and how will those costs be funded?

A final concession agreement also could reduce the payment to the City below the minimum value of the parking assets and below the amount that the City needs to fund the ESC (see Staff Report, page 16 of 45).

G. **Change in City Reports.** As discussed in this Outline, the Technical Review Report noted a number of areas in which there would be a need for additional improvements and for which funding sources would need to be identified. The City Staff Report



used for the March 6, 2012 City Council meeting, however, glosses over a number of these issues. For example: (i) in instances in which the Technical Review Report listed the funding source as TBD, the City Staff Report simply states: "Funding will come from a combination of sources including Measure A land sale, Railyards development (Inland), and the ESC project budget....Timing and cash flow will be worked out between the City and Inland American, the Railyards owner (see Staff Report, page 9 of 45); (ii) "there will be more detail on infrastructure needs upon completion of the environmental impact report" (see Staff Report, page 10 of 45); and (iii) the schedule for planning, environmental and building review has now been reduced to 12 to 14 months, instead of the 16 to 20 months described in the Technical Review Report (see Staff Report, page 10 of 45). It is disconcerting that the City Staff Report reflects a different position and tone from the Technical Review Report and these issues require careful examination.

**3. Use of Questionable Assumptions.** Some questionable assumptions were used in determining the funding resources that the City will be able to provide.

**A. Ability to Timely Sell Natomas Property.** The City's funding plan includes \$18 million from land sales, which will require the sale of its Natomas property (see Presentation, City ESC Capital Contribution slide; and Staff Report, page 19 of 45). However, the Natomas property is in a flood basin and is subject to a building moratorium imposed by the Federal Emergency Management Agency (FEMA) that will remain in place until certain FEMA criteria are satisfied to assure that levees will be improved to withstand a 100-year flood. The City Staff has stated that to maximize value, the property should be held until the building moratorium is lifted-an event over which the City has no control (see Staff Report page 19 of 45).

New uses to make the property marketable will require a change to the zoning and/or the General Plan designation. While the City may approve those changes, an environmental study and traffic study will need to be conducted (see Natomas Reuse Report dated September 13, 2011, page 6).

There is no assurance as to when or if that may occur, but funds from a land sale will not be available at the time the City is to make its contribution for the start of construction.

**B. Parking.** The Walker Report assumes a \$0.50 increase in all rate categories in each of 2013 and 2015 from a current rate of \$1.00-\$1.50 per hour. Given that City parking rates have not increased in several years, is that assumption justified and will it be supported by the City Council? (See Walker Report, page 28 and Appendix Table 11-14).

The Walker Report does not analyze the income stream or value to the City under the City's Term Sheet which would provide the Team with all parking revenue from Team events. How does that affect the potential income from monetization scenarios?