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9 SIERRA CLUB

FILED
Superior Court Of California,
Sacramento
04/05/2018
mrubalcaba
By _____, Deputy
Case Number:
34-2018-80002859

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

SIERRA CLUB, a California non-profit Corporation)

Petitioner)

v.)

CALIFORNIA DEPARTMENT OF TRANSPORTATION, LAURIE BERMAN, Director; and, DOES 1-20;)

Respondents)

PLACER COUNTY TRANSPORTATION PLANNING AGENCY and, DOES 21-100;)

Real Parties in Interest)

Case No. _____

VERIFIED PETITION FOR WRIT OF MANDATE

BY FAX

1 enjoy, and protect wild places, and to use all lawful means to achieve these objectives. The
2 Sierra Club has expressed particular concern for the environment in which its members live,
3 including Placer County. Chapter members live, work, travel and enjoy recreational activities
4 in Placer County. Sierra Club and its members are adversely affected by Respondents' failure
5 to comply with CEQA in approving the Project. Sierra Club submitted written comments on the
6 Initial Study and the IS/MND.

7 5. Respondent California Department of Transportation ("CalTrans") is an agency of
8 the State of California. CalTrans is the CEQA "lead agency" for the Project. As lead agency
9 for the Project, CalTrans is responsible for preparation of an environmental document and
10 describes the Project and its impacts, and if necessary evaluates mitigation measures and/or
11 alternatives to lessen or avoid any significant environmental impacts. CalTrans is responsible
12 for implementing and complying with the provisions of CEQA and the CEQA Guidelines with
13 respect to the Project.

14 6. Respondent Laurie Berman is the Director of CalTrans. As Director, Ms Berman
15 is responsible for the day-to-day operation of CalTrans. Ms. Berman is sued in her official
16 capacity as Director of CalTrans.

17 7. Petitioner is unaware of the true names and capacities of Respondents identified as
18 Does 1-20. Petitioner is informed and believes, and on that basis alleges, that Respondents Does
19 1-20, inclusive, are individuals, entities or agencies with material interests affected by the Project
20 with respect to the Project or by the County's actions with respect to the Project. When the true
21 identities and capacities of these Respondents have been determined, Petitioner will, with leave
22 of Court if necessary, amend this Petition to insert such identities and capacities.

23 8. Real Party in Interest Placer County Transportation Planning Agency is
24 responsible for all transportation planning activities in Placer County (excluding the Tahoe
25 basin) and transportation revenue allocation. The Placer County Transportation Agency is
26 composed of nine members: two from the Placer County Board of Supervisors; one member
27 appointed by the Board of Supervisors and one member from City of Roseville, City of
28 Rocklin, City of Lincoln; City of Auburn; Town of Loomis; and City of Colfax. The Placer

1 County Transportation Planning Agency is a responsible agency and joint preparer of the
2 Initial Study/Mitigated Negative Declaration.

3 9. Petitioner is unaware of the true names and capacities of Real Parties in Interest
4 identified as Does 21-100. Petitioner is informed and believes, and on that basis alleges, that
5 Respondents Does 21-100, inclusive, are individuals, entities or agencies with material
6 interests affected by the Project or by CalTrans' actions with respect to the Project. When the
7 true identities and capacities of these Real Parties in Interest have been determined, Petitioner
8 will, with leave of Court if necessary, amend this Petition to insert such identities and
9 capacities.

10 BACKGROUND FACTS

11 **A. THE PROJECT**

12 10. State Route 65 is the north-south transportation route in the west/south Placer
13 County area. SR 65 departs to the north west from I-80 as a four-lane divided highway over a
14 viaduct between Roseville on the west and Rocklin on the east; it turns north at the Blue Oaks
15 Boulevard interchange; it then proceeds north to Lincoln Boulevard/Old SR 65 which goes into
16 Lincoln. It then continues north west and west past Nelson Lane where a new interchange is
17 proposed; then swinging north between North Dowd Road on the west and Airport Road, it
18 goes due north until crossing Wise Road, after which the divided northbound highway ends.
19 Then the two-lane bypass route goes north-northwest to the intersection with Riolo Road and
20 Sheridan. It then merges with Old Route 65 and proceeds northwest across the county line to
21 Wheatland.

22 11. The Project widens State Route ("SR") 65 from north of Galleria Boulevard/
23 Stanford Ranch Road to Lincoln Boulevard in Placer County. The total length of the Project is
24 6.3 miles along SR 65. CalTrans asserts that the additional capacity would help planned and
25 anticipated growth along the corridor and would help achieve the mobility and economic
26 development goals to PCTPA.

27 12. The Initial Study identified two build alternatives: Alternative 1 – Carpool
28 Alternative and Alternative 2 – General Purpose Lane Alternative. Both alternatives have

1 common design details that include highway widening, Pleasant Grove Creek bridge widening;
2 ramp metering; and utility relocation.

3 13. The Initial Study fails to identify a preferred alternative.

4 **B. CALTRANS' APPROVAL OF THE PROJECT**

5 14. In May 2017, CalTrans released for public review and comment the Initial Study
6 with Proposed Negative Declaration.

7 15. On March 6, 2018, CalTrans approved the Project and found the Project will not
8 have a significant effect on the environment.

9 16. On March 6, 2018, CalTrans field with the State of California, Office of Planning
10 and Research (State Clearing House) a Notice of Determination under Public Resources Code,
11 section 21152. The Notice of Determination fails to identify which alternative CalTrans
12 approved.

13 **JURISDICTION AND VENUE**

14 17. This Court has jurisdiction over the matters alleged in this Petition pursuant to
15 Code of Civil Procedure section 1085, and Public Resources Code section 21168.5. In the
16 alternative, this Court has jurisdiction pursuant to Code of Civil Procedure section 1094.5 and
17 Public Resources Code section 21168.

18 18. Pursuant to Code of Civil Procedure section 394(a), venue is proper in this Court
19 because CalTrans is located in the County of Sacramento.

20 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**
21 **AND INADEQUACY OF REMEDY**

22 19. Petitioner has performed any and all conditions precedent to filing the instant action
23 and has exhausted any and all available administrative remedies to the extent required by law.

24 20. Petitioner has complied with the requirements of Public Resources Code, section
25 21167.5 by sending via facsimile and Federal Express written notice of this action to the
26 Respondents. A copy of this written notice and proof of service are attached as Exhibit A to this
27 Petition for Writ of Mandate.
28

1 29. The IS/MND relies upon an inaccurate baseline to analyze the Project's impacts.
2 The IS/MND relies upon outdated data to describe baseline conditions. For example, the
3 IS/MND uses 2012 conditions to describe baseline air quality data and traffic data from 2009 to
4 2012 to describe existing conditions. The IS/MND's failure to provide an adequate baseline
5 impacts the IS/MND's ability to meaningfully analyze the Project's impacts.

6 30. Substantial evidence in the administrative record supports a "fair argument" that
7 the Project may result in a significant impact to the environment. The substantial evidence
8 before Respondents demonstrate, at a minimum, that:

9 a. The Project may have significant impacts to air quality. The IS/MND
10 relies upon outdated traffic data to evaluate the Project's air quality impacts. The IS/MND also
11 fails to provide a description of its methodological approach or analysis in used in its air quality
12 analysis. The Project has the potential to result in significant increase in mobile source air
13 toxics due to the substantial increase in average daily traffic on SR 65. The Project may result
14 in impacts to air quality resulting from induced demand resulting in additional Vehicle Miles
15 Travelled ("VMT") and air quality emissions.

16 b. The IS/MND also fails to include thresholds for determining the Project's
17 air quality impacts. For example, although the Project's increase in construction-related NOx
18 emission exceeds the Placer County Air Pollution Control District's thresholds of significance,
19 the IS/MND concludes that the emissions would be less than significant.

20 c. The Project may have significant impacts to Greenhouse Gas Emissions.
21 Despite evidence in the IS/MND indicating that the Project would result in significant GHG
22 emissions, the IS/MND found that it is too speculative to make a determination regarding
23 significance of the project's direct impact and its contribution on the cumulative scale to climate
24 change. The Project, with its yearly emissions of more than 32,000 tons per year of CO2
25 (IS/MND exceeds the commonly established thresholds of significance. Its contribution to
26 climate change must therefore be considered significant.

27 d. The Project has the potential to result in a significant increase in
28 operational noise. The IS/MND relies on an unrealistically high threshold for evaluating

1 impacts and then concludes that such impacts would be less than significant. The IS/MND
2 asserts that significant traffic noise impacts are considered to occur at receptor locations where
3 predicted design-year noise levels are at least 12 dB higher than existing noise levels. The
4 IS/MND, however, fails to explain as to why it relies on this inappropriately high threshold.
5 This threshold is not appropriate under CEQA. The project may have a significant noise impact
6 as it results in substantial permanent increase in ambient noise levels in the project vicinity
7 above levels existing without the Project.

8 e. The Project may have significant impacts to noise related to construction.
9 The IS/MND fails to provide a specific analysis of the construction related noise impacts and
10 fails to provide any mitigation for the potentially significant impacts.

11 f. The Project may have significant impacts to biological resources and vernal
12 pools. The IS/MND fail to adequately discuss, analyze and mitigate the Project's impact to
13 biological resources and vernal pools.

14 31. The Project has growth-inducing impacts that the IS/MND fails to address. The
15 widening of SR 65 and increasing capacity removes one of the primary barriers to growth in the
16 area: inadequate traffic capacity. The Project would facilitate access and induce development
17 and growth on vacant land in the vicinity of the Project. Adding lanes increases capacity for
18 awhile but eventually induces more congestion, more VMT and increases GHG emissions.
19 The widening of SR 65 widening will allow for new interchanges, and the Placer Parkway. As
20 a result, the Project will result in the development of open lands, wetlands and vernal pools.

21 32. The IS/MND fails to address the Project's cumulative impacts as required by
22 Public Resources Code, section 21083(b) and CEQA Guidelines, section 15064(i). The
23 IS/MND fails to address the Project's cumulative impacts to biological and agricultural
24 resources.

25 **PRAYER FOR RELIEF**

26 **WHEREFORE**, Petitioner prays for judgment as follows:

27 1. That this Court issue a peremptory writ of mandate ordering Respondents to:
28

1 (a) vacate and set aside approval of the Mitigated Negative Declaration on the
2 grounds that it violates the California Environmental Quality Act, Public Resources Code
3 section 21000 *et seq.*

4 (b) vacate and set aside its approval of the Project on the grounds that it
5 violates the California Environmental Quality Act, Public Resources Code section 21000 *et*
6 *seq.*

7 (c) withdraw the Notice of Determination for the Project;

8 (d) prepare, circulate and consider a legally adequate EIR for the Project;

9 (e) suspend approval of any and all construction of the Project until the
10 Respondents are in compliance with CEQA;

11 (f) suspend all activity that could result in any change or alteration to the
12 physical environment until Respondents have taken such actions as may be necessary to bring
13 their determination, findings or decision regarding the Project into compliance with CEQA;

14 2. For Petitioner's costs associated with this action;

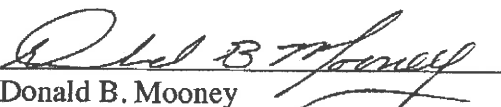
15 3. For an award of reasonable attorneys' fees pursuant to Code of Civil Procedure
16 section 1021.5; and

17 4. For such other and further relief as the Court may deem just and proper.

18
19 Dated: April 5, 2018

Respectfully submitted,

20 LAW OFFICES OF DONALD B. MOONEY

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22 By 
23 Donald B. Mooney
24 Attorney for Petitioner Sierra Club
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VERIFICATION

I am the attorney for Petitioner Sierra Club. Petitioner is located outside the County of Yolo, State of California, where I have my office. For that reason, I make this verification for and on Petitioner's behalf pursuant to California Code of Civil Procedure section 446. I have read the Petition for Writ of Mandate and know its contents. The matters stated in it are true and correct based on my knowledge, except as to the matters that are stated therein on information and belief and as to those matters, I believe them to be true.

I declare under penalty of perjury that the above is true and correct. Executed this 5th day of April, 2018, at Davis, California.

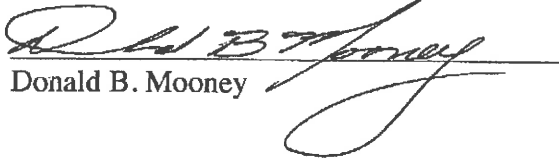

Donald B. Mooney

EXHIBIT A

EXHIBIT A

LAW OFFICE OF DONALD B. MOONEY

417 Mace Boulevard, Suite J-334

Davis, CA 95618

503-304-2424

dbmooney@dcn.org

April 2, 2018

**VIA FEDERAL EXPRESS
AND FACSIMILE
(916-654-6608)**

Laurie Berman, Director
California Department of Transportation
1120 "N" Street
Sacramento, CA 95814

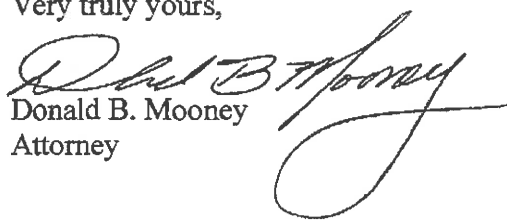
Re: NOTICE OF INTENT TO FILE CEQA PETITION

Dear Mr. Dougherty:

Please take notice that under Public Resources Code section 21167.5, that Petitioner Sierra Club intends to file a petition for Writ of Mandate in Sacramento County Superior Court under the provisions of the California Environmental Quality Act against you and the California Department of Transportation ("Caltrans"), challenging CalTrans' approval of the Mitigated Negative Declaration for the State Route 65 Capacity and Operational Improvements Project ("Project") and approval of the Project.

The petition for writ of mandate will request that the court direct respondents to vacate and rescind approval of the Mitigated Negative Declaration and approval of the Project. Additionally, the petition will seek Petitioner's costs and attorney's fees associated with this action.

Very truly yours,


Donald B. Mooney
Attorney

PROOF OF SERVICE

I am employed in the County of Yolo; my business address is 417 Mace Boulevard, Suite J-334, Davis, California; I am over the age of 18 years and not a party to the foregoing action. On April 2, 2018, I served a true and correct copy of as follows:

NOTICE OF INTENT LETTER DATED APRIL 2, 2018

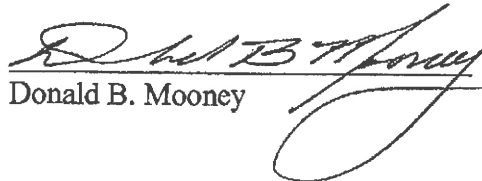
____(by mail) on all parties in said action listed below, in accordance with Code of Civil Procedure §1013a(3), by placing a true copy thereof enclosed in a sealed envelope in a United States mailbox in Davis, California.

X (by facsimile) to the person at the phone number address set forth below:

X (by overnight delivery service) via Federal Express to the person at the address set forth below:

Laurie Berman, Director
California Department of Transportation
1120 "N" Street
Sacramento, CA 95814
(916-654-6608)

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 2, 2018, at Davis, California.


Donald B. Mooney

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Attorneys for Petitioner
SIERRA CLUB

FILED
Superior Court Of California,
Sacramento
04/05/2018
mrubalcaba
By _____, Deputy
Case Number:
34-2018-80002859

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

SIERRA CLUB, a California non-profit Corporation)

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CALIFORNIA DEPARTMENT OF TRANSPORTATION, LAURIE BERMAN, Director; and, DOES 1-20;)

Respondents)

PLACER COUNTY TRANSPORTATION PLANNING AGENCY and, DOES 21-100;)

Real Parties in Interest)

Case No. _____

NOTICE OF PREPARATION OF RECORD OF PROCEEDINGS

BY FAX



SUPERIOR COURT OF CALIFORNIA
County of Sacramento
720 Ninth Street Room 102
Sacramento, CA 95814-1380
(916) 874-5522
www.saccourt.ca.gov

NOTICE OF CASE ASSIGNMENT
Proceeding for Writ of Mandate and/or Prohibition

Case Number : 34-2018-80002859-CU-WM-GDS

This case has been assigned for all purposes to the judicial officer indicated below pursuant to rule 3.734 of the California Rules of Court and Sacramento Superior Court Local Rule 2.01; it is exempt from the requirements of the Trial Court Delay Reduction Act and the Case Management Program under Chapter 11 of the Sacramento Superior Court Local Rules.

JUDGE	COURT LOCATION	DEPT.
Steven M Gevercer	Gordon D. Schaber Courthouse	27

The petitioner shall serve all parties with a copy of this order and a copy of the Sacramento Superior Court Guide to the Procedures for Prosecuting Petitions for Prerogative Writs. The Guide is available in Room 102 of the courthouse, from the clerk of the department to which this matter has been assigned, and on the "Civil" page of the Sacramento Superior Court internet website (www.saccourt.ca.gov).

Scheduling

Contact the clerk in the assigned department to schedule any judicial proceedings in this matter, including hearings on ex parte applications and noticed motions.

JUDGE	DEPT.	PHONE
Hon. James P. Arguelles	17	(916) 874-5511
Hon. Steven M. Gevercer	27	(916) 874-6697
Hon. Richard K. Sueyoshi	28	(916) 874-6695
Hon. Allen Sumner	42	(916) 874-5672

Other Information

Pursuant to Local Rule 2.01, all documents submitted for filing in this case shall be filed in person at the Civil Front Counter (Room 102) or by mail addressed to the Clerk of the Sacramento Superior Court, Attn: Civil Division-Room 102, with the exception of certain documents filed on the day of the hearing. For specific requirements, please see the Sacramento Superior Court Guide to the Procedures for Prosecuting Petitions for Prerogative Writs.

Any administrative record must be lodged with the assigned department.

Date: 04/05/2018

Signed: *M. Rubalcaba*
 Maryann Rubalcaba, Deputy Clerk



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO
720 Ninth Street ~ Room 102
Sacramento, CA 95814-1380
916-874-5522 - Website: www.saccourt.ca.gov**

**GUIDE TO THE PROCEDURES FOR PROSECUTING PETITIONS
FOR PREROGATIVE WRITS
(as specified in Local Rule 2.26(E))**

This guide to the procedures for prosecuting petitions for writs of mandate and other prerogative writs in the Sacramento Superior Court is made available for your general information pursuant to Local Rule 2.26(E). A protocol for each department to which writs are assigned (hereinafter "assigned writ department") supplements these procedures with respect to the filing of documents, the scheduling of hearings, and the use of tentative rulings. The protocol is available from the assigned writ department and on the "Civil" page of the court's website under [Prerogative Writ Departments and Protocol](#).

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Filing a Writ Petition:

Step	Action
1.	File an original and two copies of the petition and a civil case cover sheet at the civil front counter in Room 102 on the first floor of the main courthouse. <u>Or</u> mail an original and two copies of the petition and a civil case cover sheet to the Civil Division - Room 102, 720 9th Street, Sacramento, CA 95814.
2.	Pay the filing fee pursuant to Government Code section 70611 in Room 102.
3.	Receive from the civil front counter clerk a Notice of Case Assignment and a copy of this Guide to the Procedures for Prosecuting Petitions for Prerogative Writs.

Serving a Writ Petition:

Step	Action
1.	Serve the writ petition on respondent(s) and real party(ies) in compliance with the requirements of Code of Civil Procedure (CCP) sections 1107 and 1088.5. Until compliance with these statutory service requirements is established by the filing of an appropriate proof of service, the court cannot hear or act on the petition.
2.	Along with the writ petition, serve copies of the Notice of Case Assignment and this Guide to the Procedures for Prosecuting Petitions for Prerogative Writs.

For service of an application for an alternative writ, see below, "Setting a Hearing on the Merits of a Writ Petition, (2) Securing issuance of an alternative writ."

Filing Subsequent Papers:

Step	Action
1.	File an original and two copies of all subsequent documents related to the writ petition either at the civil front counter in Room 102 or by mail addressed to the Civil Division - Room 102, 720 9th Street, Sacramento, CA 95814. <i>Exception:</i> Documents filed one day before or on the day of the hearing shall be filed with the courtroom clerk in the assigned writ department after any applicable fees have been paid in Room 102.
2.	File documents by fax in compliance with rule 2.303 of the California Rules of Court. Documents faxed directly to the court will not be filed .
3.	Specify on the first page of each document the date, time and department of any scheduled hearing to which the document applies. To set a hearing, see below, "Bringing Motions before the Hearing on the Merits of a Writ Petition" and "Setting a Hearing on the Merits of a Writ Petition."

**Noticing Related
Writ Cases and
Possible Consolidation:**

Step	Action
1.	When filing a Notice of Related Case pursuant to rule 3.300(d) of the California Rules of Court regarding two or more writ cases assigned to different judges in this court, file the Notice in each writ case .
2.	When filing a Response to a Notice of Related Case pursuant to rule 3.300(g) of the California Rules of Court, file the Response in each writ case .
3.	Serve the Notice or Response on each party to each case .

Note that the court proceeds with respect to related writ cases under rule 3.300(h)(1) of the California Rules of Court (CRC) as follows:

- The judges assigned to civil writ cases listed in a Notice Of Related Case filed and served pursuant to CRC 3.300(d) identify which one of them is assigned to the earliest filed case, information which should be included in the Notice of Related Case pursuant to CRC 3.300(c)(2). That judge proceeds under CRC 3.300(h)(1)(A) to determine whether the cases are related within the meaning of CRC 3.300(a).
- If the judge assigned to the earliest filed case determines that the cases are related, the judge orders the cases related and assigned to his or her department. That order is filed in each of the related cases and served on the parties to each of the related cases pursuant to CRC 3.300(i). In addition, an Amended Notice of Case Assignment, reassigning to the judge each of the related cases not previously assigned to him or her, is filed and served upon all parties to each reassigned case. Courtesy copies of the order and Amended Notice(s) of Case Assignment are sent to the judges previously assigned to any of the related cases.
- If the judge assigned to the earliest filed case determines that the cases are not related within the meaning of CRC 3.300(a), the judge issues a minute order stating and briefly explaining the determination. This minute order is filed in each of the cases listed in the Notice of Related Case and is served on all parties to the listed cases pursuant to CRC 3.300(i).
- In response to an order determining that the cases are not related, any party to any of the cases listed in the Notice of Related Case may file a motion pursuant to CRC 3.300(h)(1)(D) to have the cases related. The motion must be filed with the Presiding judge or a judge designated by the Presiding Judge.

Applying for a
Temporary Stay in
Administrative Mandate
Proceedings (CCP § 1094.5 (g) or (h)):

Step	Action
1.	<p>Prepare an ex parte application for an order temporarily staying operation of the administrative decision under review in the proceeding. Identify whether the temporary stay order is requested pursuant to subdivision (g) or (h) of the CCP § 1094.5. Specify "Ex Parte" in the title of the application.</p> <p>Pursuant to rules 3.1201 and 3.1202 of the California Rules of Court and this Guide to the Procedures for Prosecuting Petitions for Prerogative Writs, an ex parte application for a stay order includes the following supporting documents and papers:</p> <ul style="list-style-type: none"> ▪ Endorsed copy of the petition. ▪ Points and authorities, declarations and other supporting documents, including relevant portions of the administrative record if available. ▪ Proposed order to show cause why the administrative decision under review in the proceeding should not be temporarily stayed pending a hearing on the merits of the writ petition (OSC). This proposed OSC should contain: <ul style="list-style-type: none"> - blank spaces for the date and time of the hearing on the OSC, - an order for service of the OSC and any supporting papers not previously served with a blank space for a date of service prior to the hearing on the OSC, and - an order staying the administrative decision pending the hearing on the OSC. ▪ Proposed stay order. ▪ Notice of hearing on the petition with blank spaces for date and time (unless the stay is being requested in conjunction with an application for an alternative writ). ▪ Declaration regarding notice, as specified in rule 3.1204. <p>In addition, CCP § 1094.5 (g) and (h) require that proof of service of a copy of the application on the respondent accompany an application for a stay. See subdivisions (g) and (h) for required manner of service.</p>
2.	<p>Contact the assigned writ department to reserve an ex parte hearing date and time and to determine whether the assigned writ department requires any of the documents or papers listed above in Step 1 to be filed before the hearing. Note that some writ departments hear writ matters only on Fridays.</p>
3.	<p>Notify respondent(s) and real party(ies) of the hearing on the ex parte stay application in accordance with rule 3.1203 of the California Rules of Court. Include the details of this notification in the declaration regarding notice prepared pursuant to rule 3.1204.</p> <p>Note: The court prefers at least 48 hours' notice but, upon a showing of urgency, will accept less notice.</p>
4.	<p>If the assigned writ department does not require any of the documents listed above in Step 1 to be filed before the ex parte hearing, file and serve the documents and papers as soon as possible and no later than the time of the hearing. (See rule 3.1206 of the California Rules of Court).</p>

At the ex parte hearing, depending on the nature of the factual and legal issues raised by the stay application and the practical exigencies of the matter, the court will either rule on the stay application immediately or issue the proposed OSC with or without a temporary stay order pending the hearing on the OSC at a specified date and time.

If the court grants a stay at the ex parte hearing or the hearing on the OSC, the court will sign and file the proposed stay order and set a date and time for a hearing on the merits of the petition. The court clerk will record the hearing date and time in the notice of hearing on the petition, or if the court has ordered the issuance of an alternative writ, in the alternative writ.

If the court denies a stay at the ex parte hearing or the hearing on the OSC, the court, upon petitioner's request, will set a date and time for a hearing on the merits of the petition. The clerk will record the hearing date and time in the notice of hearing on the petition, or if the court has ordered the issuance of an alternative writ, in the alternative writ.

**Applying for a
Temporary Stay
in Traditional Mandate
Proceedings (CCP § 1085):**

Step	Action
1.	Follow the statutory and regulatory provisions for obtaining a temporary restraining order (TRO), an order to show cause why a preliminary injunction should not be issued (OSC), and/or a preliminary injunction, set forth in the Code of Civil Procedure (including but not limited to CCP §§ 525, 526, 527, 528 and 529) and rule 3.1150 of the California Rules of Court. These provisions constitute rules of practice for temporary stays in mandate proceedings brought under CCP § 1085 in the absence of temporary stay provisions specific to such mandate proceedings. (See CCP § 1109.)
2.	When following the statutory and regulatory procedures for obtaining a TRO and/or an OSC, comply with the ex parte procedures outlined above in "Applying for a Temporary Stay in Administrative Mandate Proceedings" and in rule 3.1201 et seq. of the California Rules of Court.
3.	If no TRO or OSC is sought, notice a motion for a preliminary injunction following the procedures set forth below in "Bringing Motions Before the Hearing on the Merits"

Note that a temporary stay in proceedings on a petition for a writ of prohibition may be obtained by following the procedures set forth below under "Setting a Hearing on the Merits of a Petition, (2) Securing issuance of alternative writ." An alternative writ of prohibition, unlike an alternative writ of mandate, stays specified action by the respondent until further order of the court. (See CCP §§ 1087, 1104.)

**Bringing Motions before
The Hearing on the
Merits of a Writ Petition:**

Motions on the pleadings and other pretrial matters brought in civil actions -- including motions for change of venue, demurrers, motions to strike, motions to dismiss, discovery motions, and motions for summary judgment -- may generally be brought in writ proceedings. (See CCP § 1109.)

Motions addressing the merits of the petition in whole or in part should be calendared for a hearing at the same time as the hearing on the merits. Motions directed at resolving issues preliminary to and distinct from the issues related to the merits of the petition, such as untimeliness of the petition under an applicable statute of limitations, should be calendared before the hearing on the merits of a writ petition. The court, in the exercise of its discretion to control the order of litigation before it, may advance the hearing on a motion to a date before the hearing on the merits or may postpone a motion to the hearing on the merits when such advancement or postponement will promote the efficient conduct and disposition of the proceeding.

Because a writ petition is usually disposed of by a hearing on the merits which is limited to oral argument on written briefs and documentary evidence, the usefulness of a motion for summary judgment or summary adjudication in economically disposing of an unmeritorious case or claim is substantially reduced in writ proceedings. Thus, before bringing a motion for summary judgment or summary adjudication, counsel should carefully evaluate whether the purpose of the motion can be achieved more directly and completely through a hearing on the merits of the petition.

Step	Action
1.	Contact the assigned writ department to reserve a date and time available on the department's calendar for a hearing on the motion. Prior to reserving a date, contact the other parties to the writ petition and determine their availability on the date. Some assigned writ departments hear writ matters only on Fridays.
2.	<p>Notice the motion in accordance with the civil law and motion procedures in CCP § 1005 and in compliance with the California Rules of Court, including rules 3.1110 through 3.1113, 3.1115, 3.1116, 3.1300, and 3.1320 through 3.1324. Comply with the page limits for memoranda set forth in rule 3.1113.</p> <p>If the assigned writ department uses the tentative ruling system, the notice of motion must contain tentative ruling language available from the department.</p>

Setting a Hearing on the Merits of a Writ Petition:

If a hearing on the merits of a writ petition has not been set in conjunction with an ex parte hearing on an application for a temporary stay, it may be set either by (1) noticing a hearing on the petition or (2) securing issuance of an alternative writ.

Note: The court prefers, as more efficient and economical for both itself and the parties, the procedure of noticing a hearing on the petition.

The date set for a hearing on the merits of a writ petition, whether by notice or alternative writ, should allow the parties to file briefs in accordance with the following schedule established in Local Rule 2.26(D):

Opening brief:	Due 45 days before the hearing
Opposition brief:	Due 25 days before the hearing
Reply brief:	Due 15 days before the hearing

Note that Local Rule 2.28(D) limits the length of opening and opposition briefs to 30 pages and reply briefs to 20 pages instead of the page limits in rule 3.1113 of the California Rules of Court.

The date of the hearing on the merits may be expedited and the briefing schedule shortened upon an application setting forth circumstances warranting an expedited hearing. The application for an expedited hearing may be made orally at a hearing for a temporary stay or alternative writ or on an ex parte basis in accordance with rule 3.1201 through 3.1206 of the California Rules of Court.

(1) Noticing a hearing on a writ petition

Step	Action
1.	Contact the assigned writ department to reserve an available date and time for a hearing on the writ petition. Prior to reserving a date, contact the other parties to the writ petition and determine their availability on the date. Writ petitions are normally heard on Fridays.
2.	Prepare and file a notice of hearing on the writ petition specifying the reserved hearing date and time. If the assigned writ department uses the tentative ruling system, the notice of hearing must contain tentative ruling language available from the department.
3.	File the notice of hearing either at the civil front counter in Room 102 or by mail addressed to the Civil Division - Room 102, 720 9th Street, Sacramento, CA 95814.
4.	Serve a copy of the notice of hearing on respondent(s) and real party(ies) no later than the time allowed for filing and serving the opening brief. If not previously served, the writ petition, the Notice of Assignment, and this Guide should also be served no later than the time for filing and serving the opening brief.

(2) Securing issuance of an alternative writ

The alternative writ is an order to show cause that calendars a writ petition for a hearing on the merits. With the exception of an alternative writ of prohibition issued pursuant to CCP § 1104, the alternative writ does not, in and of itself, accomplish a stay or afford any affirmative relief.

Note that, with the alternative writ method, two writs may be issued in the proceeding. First, the alternative writ is issued to set a hearing on the merits of the petition. Second, a peremptory writ may issue after the hearing on the merits.

Step	Action
1.	<p>Prepare an ex parte application for an alternative writ. Specify "Ex Parte" in the title of the application.</p> <p>As provided in rules 3.1201 and 3.1202 of the California Rules of Court and this guide, an ex parte application for an alternative writ includes the following supporting documents and papers:</p> <ul style="list-style-type: none"> ▪ Endorsed copy of the petition. ▪ Points and authorities and any other supporting documents. ▪ Proposed order directing issuance of alternative writ. ▪ Proposed alternative writ with blank spaces for the date and time of a hearing on the petition. (Include a signature block for the clerk, not the judge.) <p>Declaration regarding notice, as specified in rule 3.1204.</p>

2.	<p>Promptly confer with all counsel to agree upon a mutually convenient hearing date from among the dates provided by the clerk and any necessary changes in the briefing schedule.</p> <p>If counsel cannot agree to a continuance, a new hearing date and/or changes in the briefing schedule, the party seeking the continuance may apply for a continuance by noticed motion.</p>
3.	<p>Promptly present to the court a stipulation signed by all parties, including the reason for the continuance, the agreed upon hearing date and any agreed upon changes in the briefing schedule, with a proposed order.</p> <p>Pay the filing fee for the stipulation and order pursuant to subdivision (c) of Government Code section 70617 in Room 102.</p>
4.	<p>When the stipulation and order has been signed and filed by the court, serve the stipulation and order on all parties.</p>

Note that these procedures do not apply when a motion is dropped from the calendar by the moving party. In such circumstances, the moving party must telephonically notify the court and all other parties as far as possible in advance of the date on which the motion is to be heard and send a confirming letter to the court with copies to the other parties.

Dismissing a Writ Petition:

Step	Action
1.	Promptly notify the assigned writ department pursuant to rule 3.1385 of the California Rules of Court when a writ proceeding is settled or otherwise disposed of.
2.	File a dismissal of the writ proceeding in the assigned writ department within 45 days after the date of the settlement pursuant to rule 3.1385(b) or after the date specified in the notice of conditional settlement pursuant to rule 3.1385(c).

Lodging an Administrative Record:

Step	Action
1.	When securing a date and time for a hearing on the merits of the petition, inform the clerk in the assigned writ department about the size of the administrative record in the case. Determine the department's preferences regarding the format, binding and container for the administrative record.

2.	<p>Contact the assigned writ department to reserve an available date and time for an ex parte hearing on the application for an alternative writ and to determine whether the department requires the papers listed above in Step 1 to be filed before the hearing.</p> <p>Note that some writ departments hear writ matters only on Fridays. Also note that, absent a showing of good cause or waiver by the respondent(s) and real party(ies), some departments will not issue an alternative writ unless the writ petition and application for the alternative writ have been served on respondent(s) and real party(ies) at least five days before the ex parte hearing. (See CCP § 1088, requiring service of copy of petition in conjunction with application for alternative writ; CCP § 1107, providing a five-day period for respondent(s) and real party(ies) to respond to a writ petition after receiving service of the petition.)</p>
3.	<p>Notify the respondent(s) and real party(ies) of the date and time of the ex parte hearing on the alternative writ pursuant to rule 3.1203 of the California Rules of Court. Include the details of this notification in the declaration regarding notice pursuant to rule 3.1204.</p> <p>Note: The court prefers at least 48 hours' notice but, upon a showing of urgency, will accept less notice.</p>
4.	<p>If the assigned writ department does not require any of the documents listed above in Step 1 to be filed before the hearing, file and serve on all parties the documents and papers as soon as possible and no later than the time of the hearing.</p>

If the court grants the application for an alternative writ, the court signs and files the proposed order directing issuance of the alternative writ that sets the petition for a hearing on the merits. The clerk then issues the proposed alternative writ with the date and time of the hearing and provides it to the petitioner after the petitioner has paid the issuance fee in Room 102. The writ must be served upon respondent(s) and real party(ies) in the same manner as a summons in a civil action unless the court expressly orders otherwise. (See CCP §§ 1073, 1096.) Once served, the writ must be filed with a proof of service.

Applying for a Continuance:

After a hearing has been set on a motion or on the merits of a petition, it may be continued only upon approval of the court. If the continuance requires a change in the briefing schedule, such change must also be approved.

Step	Action
1.	<p>Present a telephone request for a continuance of the hearing to the clerk in the assigned writ department, including the reason(s) for the continuance and any necessary changes in the briefing schedule. Present the request as far in advance of the scheduled hearing date as possible.</p> <p>Upon the court's approval, the clerk will provide available dates on the court's calendar to which the hearing may be continued.</p>

2.	<p>Lodge the administrative record with the assigned writ department no later than 25 days prior to the hearing on the merits of a writ petition. If the record is not lodged by this time, some assigned writ departments may take the matter off calendar.</p> <p>Consult with the assigned writ department if you wish to lodge the administrative record more than 25 days before the hearing on the merits of a writ petition.</p>
3.	<p>Attach a cover sheet to the administrative record and any boxes containing the record that lists the:</p> <ul style="list-style-type: none"> ▪ Case name, ▪ Case number, ▪ Date and time of the hearing.

At the hearing on the merits of the petition, the court will mark the administrative record as an exhibit and admit it into evidence. At the conclusion of the proceedings on the petition, the court may return the administrative record to the party who lodged it or destroy it pursuant to CCP § 1952 through 1952.3 and subdivision (i) of CCP § 1094.5.

The Hearing on the Merits:

All hearings on writ petitions proceed by way of oral argument. If a party wishes to present oral testimony at the hearing, the party must obtain permission pursuant to rule 3.1306 of the California Rules of Court.

If the assigned writ department uses a tentative ruling system and posts a tentative ruling on the court day before the hearing on the writ petition, a party desiring to be heard must contact the clerk and request oral argument by the time designated in the posted tentative ruling. When requesting oral argument, the party must advise the clerk that all other parties have been notified.

Appearing by Telephone:

Parties may appear by telephone in accordance with Local Rule 2.04.

Note that some assigned writ departments permit telephonic appearances in hearings on motions only on a limited basis and in hearings on the merits of a writ petition only under compelling circumstances.

**Preparing a
Judgment and
Peremptory Writ:**

If the court denies the writ petition, the party designated by the court shall, pursuant to rule 3.1312 of the California Rules of Court, prepare, serve on all parties, and present to the court a judgment denying the petition.

If the court grants the writ petition:

Step	Action
1.	The party designated by the court prepares (1) a judgment granting the writ petition and (2) a peremptory writ. The peremptory writ includes a signature block for the clerk, not the judge.
2.	Pursuant to rule 3.1312 of the California Rules of Court, prepare, serve on all parties, and present to the court a judgment granting the petition and the peremptory writ. The judgment, when approved, will be signed by the court. The clerk will issue the peremptory writ and provide it to the petitioner for service upon respondent(s) and real party(ies) after the petitioner pays the issuance fee in Room 102.
3.	Serve a copy of both the judgment granting the writ petition and the peremptory writ on the respondent(s) and real party(ies). The writ must be served in the same manner as summons in a civil action. (CCP §§ 1073, 1096, 1107.)
4.	Return the original peremptory writ with a proof of service to the assigned writ department for filing.
5.	Prepare, serve, and file in the assigned writ department a notice of entry of judgment pursuant to CCP § 664.5(a).