

From: [Hill, Shannon](#)
To: [Downtown West Project](#)
Subject: FW: Downtown West Mixed-Use Plan (Google Project) - Environmental Leadership Development Project Application Certification
Date: Tuesday, August 25, 2020 10:45:39 PM
Attachments: [Public Notice Environmental Leadership Development Project 010220.pdf](#)

From: Hill, Shannon

Sent: Wednesday, January 8, 2020 5:58 PM

To: Hill, Shannon <Shannon.Hill@sanjoseca.gov>

Subject: Downtown West Mixed-Use Plan (Google Project) - Environmental Leadership Development Project Application Certification

PUBLIC NOTICE

Environmental Leadership Development Project (ELDP)

Application Certification

File Nos.: **GP19-009, PDC19-039, and PD19-029**

Project Title: **Downtown West Mixed-Use Project**

APN/Location: See Description at www.sanjoseca.gov/GoogleProject

Project Sponsor: Google LLC

In mid-2019, Google informed the City that it would apply to the State's Assembly Bill (AB) 900 program, also known as the Jobs and Economic Improvement through Environmental Leadership Act (California Public Resources Code Sections 21178-21189.3) that passed in 2011. For large development projects that both create jobs and meet a high standard of public benefits, AB 900 facilitates timely delivery of such community benefits by streamlining the judicial review process of the California Environmental Quality Act (CEQA). The Governor must approve a project's eligibility to participate in the AB 900 program.

For approved AB 900 projects, any legal challenges to the certification of the Environmental Impact Report (EIR) or the approval of the project described in the EIR is subject to the procedures set forth in Sections 21185 to 21186, inclusive, of the Public Resources Code. Such judicial actions would get filed in the Court of Appeal, and the Court issues its decision within nine months to the extent feasible. AB 900 does not affect the environmental impact analysis or public engagement under CEQA; in fact, the program enhances transparency requirements for timely posting of all EIR documents and materials on a public website once the draft EIR is circulated for public review.

On December 30, 2019, Governor Newsom certified the Downtown West Mixed-Use Plan (Google project) as an Environmental Leadership Development Project (ELDP). Within ten days of this certification, the lead agency—which is the City of San José—is required to issue a public notice, at the applicant's expense.

Refer to the attached public notice provided in in compliance with AB 900 requirements. This public notice will also appear in The Mercury News by January 8, 2019.

Shannon Hill, Planner

Planning, Building & Code Enforcement | Environmental Review Section
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PUBLIC NOTICE
Environmental Leadership Development Project (ELDP)

Date: January 2, 2020
File Nos.: **GP19-009, PDC19-039, and PD19-029**
Project Title: **Downtown West Mixed-Use Project**
APN: Multiple
Project Sponsor: Google LLC
Staff Contact: Shannon Hill, Environmental Project Manager
(408) 535-7872
shannon.hill@sanjoseca.gov

THE APPLICANT HAS ELECTED TO PROCEED UNDER CHAPTER 6.5 (COMMENCING WITH SECTION 21178) OF THE PUBLIC RESOURCES CODE, WHICH PROVIDES, AMONG OTHER THINGS, THAT ANY JUDICIAL ACTION CHALLENGING THE CERTIFICATION OF THE EIR OR THE APPROVAL OF THE PROJECT DESCRIBED IN THE EIR IS SUBJECT TO THE PROCEDURES SET FORTH IN SECTIONS 21185 TO 21186, INCLUSIVE, OF THE PUBLIC RESOURCES CODE. A COPY OF CHAPTER 6.5 (COMMENCING WITH SECTION 21178) OF THE PUBLIC RESOURCES CODE IS INCLUDED BELOW.

PUBLIC RESOURCES CODE – PRC
Division 13. ENVIRONMENTAL QUALITY [21000 – 21189.3]
(Division 13 added by Stats. 1970, Ch. 1433.)

Chapter 6.5: Jobs and Economic Improvement through Environmental Leadership Act of 2011

§21178.

The Legislature finds and declares all of the following:

- (a) The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) requires that the environmental impacts of development projects be identified and mitigated.
- (b) The act also guarantees the public an opportunity to review and comment on the environmental impacts of a project and to participate meaningfully in the development of mitigation measures for potentially significant environmental impacts.
- (c) There are large projects under consideration in various regions of the state that would replace old and outmoded facilities with new job-creating facilities to meet those regions' needs while also establishing new, cutting-edge environmental benefits to those regions.
- (d) These projects are privately financed or financed from revenues generated from the projects themselves and do not require taxpayer financing.

- (e) These projects further will generate thousands of full-time jobs during construction and thousands of additional permanent jobs once they are constructed and operating.
- (f) These projects also present an unprecedented opportunity to implement nation-leading innovative measures that will significantly reduce traffic, air quality, and other significant environmental impacts, and fully mitigate the greenhouse gas emissions resulting from passenger vehicle trips attributed to the project.
- (g) These pollution reductions will be the best in the nation compared to other comparable projects in the United States.
- (h) The purpose of this chapter is to provide unique and unprecedented streamlining benefits under the California Environmental Quality Act for projects that provide the benefits described above for a limited period of time to put people to work as soon as possible.

§21180.

For the purposes of this chapter, the following terms shall have the following meanings:

- (a) "Applicant" means a public or private entity or its affiliates, or a person or entity that undertakes a public works project that proposes a project and its successors, heirs, and assignees.
- (b) "Environmental leadership development project," "leadership project," or "project" means a project as described in Section 21065 that is one the following:
 - (1) A residential, retail, commercial, sports, cultural, entertainment, or recreational use project that is certified as LEED gold or better by the United States Green Building Council and, where applicable, that achieves a 15-percent greater standard for transportation efficiency than for comparable projects. These projects must be located on an infill site. For a project that is within a metropolitan planning organization for which a sustainable communities strategy or alternative planning strategy is in effect, the infill project shall be consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy, for which the State Air Resources Board, pursuant to subparagraph (H) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code, has accepted a metropolitan planning organization's determination that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets.
 - (2) A clean renewable energy project that generates electricity exclusively through wind or solar, but not including waste incineration or conversion.
 - (3) A clean energy manufacturing project that manufactures products, equipment, or components used for renewable energy generation, energy efficiency, or for the production of clean alternative fuel vehicles.
- (c) "Transportation efficiency" means the number of vehicle trips by employees, visitors, or customers of the residential, retail, commercial, sports, cultural, entertainment, or recreational use project divided by the total number of employees, visitors, and customers.

§21181.

This chapter does not apply to a project if the Governor does not certify the project as an environmental leadership development project eligible for streamlining pursuant to this chapter prior to January 1, 2020.

§21182.

A person proposing to construct a leadership project may apply to the Governor for certification that the leadership project is eligible for streamlining provided by this chapter. The person shall supply evidence and materials that the Governor deems necessary to make a decision on the application. Any evidence or materials shall be made available to the public at least 15 days before the Governor certifies a project pursuant to this chapter.

§21183.

The Governor may certify a leadership project for streamlining pursuant to this chapter if all the following conditions are met:

- (a) The project will result in a minimum investment of one hundred million dollars (\$100,000,000) in California upon completion of construction.
- (b) (1) The project creates high-wage, highly skilled jobs that pay prevailing wages and living wages and provide construction jobs and permanent jobs for Californians, and helps reduce unemployment. For purposes of this subdivision, "jobs that pay prevailing wages" means that all construction workers employed in the execution of the project will receive at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code. If the project is certified for streamlining, the project applicant shall include this requirement in all contracts for the performance of the work.
- (2) (A) If the project is certified pursuant to this chapter, contractors and subcontractors shall pay to all construction workers employed in the execution of the project at least the general prevailing rate of per diem wages.
- (B) Except as provided in subparagraph (C), the obligation of the contractors and subcontractors to pay prevailing wages pursuant to subparagraph (A) may be enforced by the Labor Commissioner through the issuance of a civil wage and penalty assessment pursuant to Section 1741 of the Labor Code, which may be reviewed pursuant to Section 1742 of the Labor Code, within 18 months after the completion of the project, or by an underpaid worker through an administrative complaint or civil action. If a civil wage and penalty assessment is issued, the contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages pursuant to Section 1742.1 of the Labor Code.
- (C) Subparagraph (B) does not apply if all contractors and subcontractors performing work on the project are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the project and provides for enforcement of that obligation through an arbitration procedure. For purposes of this subparagraph, "project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.
- (c) The project does not result in any net additional emission of greenhouse gases, including greenhouse gas emissions from employee transportation, as determined by the State Air Resources Board pursuant to Division 25.5 (commencing with Section 38500) of the Health and Safety Code.
- (d) The project applicant demonstrates compliance with the requirements of Chapters 12.8 (commencing with Section 42649) and 12.9 (commencing with Section 42649.8) of Part 3 of Division 30, as applicable.

- (e) The project applicant has entered into a binding and enforceable agreement that all mitigation measures required pursuant to this division to certify the project under this chapter shall be conditions of approval of the project, and those conditions will be fully enforceable by the lead agency or another agency designated by the lead agency. In the case of environmental mitigation measures, the applicant agrees, as an ongoing obligation, that those measures will be monitored and enforced by the lead agency for the life of the obligation.
- (f) The project applicant agrees to pay the costs of the Court of Appeal in hearing and deciding any case, including payment of the costs for the appointment of a special master if deemed appropriate by the court, in a form and manner specified by the Judicial Council, as provided in the Rules of Court adopted by the Judicial Council pursuant to Section 21185.
- (g) The project applicant agrees to pay the costs of preparing the record of proceedings for the project concurrent with review and consideration of the project pursuant to this division, in a form and manner specified by the lead agency for the project.

§21184.

- (a) The Governor may certify a project for streamlining pursuant to this chapter if it complies with the conditions specified in Section 21183.
- (b) (1) Prior to certifying a project, the Governor shall make a determination that each of the conditions specified in Section 21183 has been met. These findings are not subject to judicial review.
- (2) (A) If the Governor determines that a leadership project is eligible for streamlining pursuant to this chapter, he or she shall submit that determination, and any supporting information, to the Joint Legislative Budget Committee for review and concurrence or nonconcurrence.
- (B) Within 30 days of receiving the determination, the Joint Legislative Budget Committee shall concur or nonconcur in writing on the determination.
- (C) If the Joint Legislative Budget Committee fails to concur or nonconcur on a determination by the Governor within 30 days of the submittal, the leadership project is deemed to be certified.
- (c) The Governor may issue guidelines regarding application and certification of projects pursuant to this chapter. Any guidelines issued pursuant to this subdivision are not subject to the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

21184.5.

- (a) Notwithstanding any other law, except as provided in subdivision (b), a multifamily residential project certified under this chapter shall provide unbundled parking, such that private vehicle parking spaces are priced and rented or purchased separately from dwelling units.
- (b) Subdivision (a) shall not apply if the dwelling units are subject to affordability restrictions in law that prescribe rent or sale prices, and the cost of parking spaces cannot be unbundled from the cost of dwelling units.

§21185.

On or before July 1, 2014, the Judicial Council shall adopt a rule of court to establish procedures applicable to actions or proceedings brought to attack, review, set aside, void, or annul the certification of the environmental impact report for an environmental leadership development

project certified by the Governor pursuant to this chapter or the granting of any project approvals that require the actions or proceedings, including any potential appeals therefrom, be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court.

§21186.

Notwithstanding any other law, the preparation and certification of the record of proceedings for a leadership project certified by the Governor shall be performed in the following manner:

- (a) The lead agency for the project shall prepare the record of proceedings pursuant to this division concurrently with the administrative process.
- (b) All documents and other materials placed in the record of proceedings shall be posted on, and be downloadable from, an Internet Web site maintained by the lead agency commencing with the date of the release of the draft environmental impact report.
- (c) The lead agency shall make available to the public in a readily accessible electronic format the draft environmental impact report and all other documents submitted to, or relied on by, the lead agency in the preparation of the draft environmental impact report.
- (d) A document prepared by the lead agency or submitted by the applicant after the date of the release of the draft environmental impact report that is a part of the record of the proceedings shall be made available to the public in a readily accessible electronic format within five business days after the document is released or received by the lead agency.
- (e) The lead agency shall encourage written comments on the project to be submitted in a readily accessible electronic format, and shall make any comment available to the public in a readily accessible electronic format within five days of its receipt.
- (f) Within seven business days after the receipt of any comment that is not in an electronic format, the lead agency shall convert that comment into a readily accessible electronic format and make it available to the public in that format.
- (g) Notwithstanding paragraphs (b) to (f), inclusive, documents submitted to or relied on by the lead agency that were not prepared specifically for the project and are copyright protected are not required to be made readily accessible in an electronic format. For those copyright-protected documents, the lead agency shall make an index of these documents available in an electronic format no later than the date of the release of the draft environmental impact report, or within five business days if the document is received or relied on by the lead agency after the release of the draft environmental impact report. The index must specify the libraries or lead agency offices in which hardcopies of the copyrighted materials are available for public review.
- (h) The lead agency shall certify the final record of proceedings within five days of its approval of the project.
- (i) Any dispute arising from the record of proceedings shall be resolved by the superior court. Unless the superior court directs otherwise, a party disputing the content of the record shall file a motion to augment the record at the time it files its initial brief.
- (j) The contents of the record of proceedings shall be as set forth in subdivision (e) of Section 21167.6.

§21187.

Within 10 days of the Governor certifying an environmental leadership development project pursuant to this section, the lead agency shall, at the applicant's expense, issue a public notice in no less than 12-point type stating the following:

"THE APPLICANT HAS ELECTED TO PROCEED UNDER CHAPTER 6.5 (COMMENCING WITH SECTION 21178) OF THE PUBLIC RESOURCES CODE, WHICH PROVIDES, AMONG OTHER THINGS, THAT ANY JUDICIAL ACTION CHALLENGING THE CERTIFICATION OF THE EIR OR THE APPROVAL OF THE PROJECT DESCRIBED IN THE EIR IS SUBJECT TO THE PROCEDURES SET FORTH IN SECTIONS 21185 TO 21186, INCLUSIVE, OF THE PUBLIC RESOURCES CODE. A COPY OF CHAPTER 6.5 (COMMENCING WITH SECTION 21178) OF THE PUBLIC RESOURCES CODE IS INCLUDED BELOW."

The public notice shall be distributed by the lead agency as required for public notices issued pursuant to paragraph (3) of subdivision (b) of Section 21092.

§21188.

The provisions of this chapter are severable. If any provision of this chapter or its application is held to be invalid, that invalidity shall not affect any other provision or application that can be given effect without the invalid provision or application.

§21189.

Except as otherwise provided expressly in this chapter, nothing in this chapter affects the duty of any party to comply with this division.

§21189.1.

If, prior to January 1, 2021, a lead agency fails to approve a project certified by the Governor pursuant to this chapter, then the certification expires and is no longer valid.

§21189.2.

The Judicial Council shall report to the Legislature on or before January 1, 2017, on the effects of this chapter on the administration of justice.

§21189.3

This chapter shall remain in effect until January 1, 2021, and as of that date is repealed unless a later enacted statute extends or repeals that date.

Date

1/2/20

Rosalynn Hughey, Director

Rosalynn Hughey