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## REVIEW OF ENVIRONMENTAL LEADERSHIP DEVELOPMENT PROJECTS

In 2011, the Legislature created a process for certain projects that show environmental leadership to receive expedited judicial review for litigation under the California Environmental Quality Act (CEQA). Since 2011, a handful of individual projects also were authorized by the Legislature to receive expedited CEQA judicial review through a similar process. For this report, all the projects are referred to as Environmental Leadership Development Projects, or ELDPs.

This report reviews ELDPs that have qualified for expedited CEQA judicial review through the various processes created by the Legislature. The report initially provides a background on the CEQA review process and ELDP legislation. Next, the report provides an overview of ELDPs, legal challenges against ELDPs filed under CEQA, and estimated benefits provided by the projects. Finally, this report assesses CEQA streamlining provided to ELDPs and presents key issues and options for legislative consideration.

### CALIFORNIA ENVIRONMENTAL QUALITY ACT

A public agency must comply with CEQA when it undertakes a project that may cause either a direct physical change in the environment or a reasonably foreseeable indirect change in the environment. CEQA is a self-executing statute, and public agencies are entrusted with CEQA compliance. CEQA provisions are enforced, as necessary, by the public through litigation.

Certain types of projects are exempt from the CEQA review process. The exemptions apply to projects when (1) the project is exempt in a statute, known as “statutory exemptions,” or (2) the project is exempt through CEQA guidelines adopted by the California Natural Resources Agency, known as “categorical exemptions.” If the project is not exempt, the lead agency is required to prepare an initial study to determine whether the project could have a significant impact on the environment. If it is determined that the project will not have a significant impact on the environment, the lead agency will prepare a “negative declaration.” If the project is determined to have potentially significant impacts on the environment, but the impacts could be mitigated or avoided, the lead agency will prepare a “mitigated



negative declaration.” If the lead agency determines a project’s significant environmental impacts cannot be avoided, the agency is required to prepare a more extensive environmental impact report (EIR). An EIR analyzes each significant environmental impact expected to result from the proposed project and recommends steps to avoid or minimize the impacts.

Noncompliance with any aspect of the CEQA review process is enforced through litigation. Timelines for filing a legal challenge for noncompliance depend on the alleged reason for noncompliance and range from 30 days to 180 days from the lead agency’s final determination.<sup>1</sup> Before hearing the merits of a CEQA challenge, the administrative record (or record of proceedings) must be prepared and filed with the court. The administrative record is the set of documents considered by the lead agency in making the final project determination. The record includes all project application materials, staff reports, transcripts from public hearings, and written comments, among other documents.<sup>2</sup> Unique to CEQA cases, the plaintiff has the option of preparing the administrative record or requesting the lead agency do so.<sup>3</sup> If the plaintiff makes the request, the lead agency is required to prepare and certify the administrative record no later than 60 days from the request date.<sup>4</sup> The courts are required to give CEQA-related cases preference over all other civil actions, and the Court of Appeal is required to hear the case within one year of its filing.<sup>5</sup> Additionally, larger counties must assign CEQA-related cases to judges with specialized expertise in CEQA.<sup>6</sup> There is no specified timeline for the court to render a decision.



## LEGISLATIVE HISTORY OF ENVIRONMENTAL LEADERSHIP DEVELOPMENT PROJECTS

For simplicity, all projects resulting from the legislation listed below are referred to as ELDPs in this report.

### AB 900 (Buchanan), Chapter 354, Statutes of 2011

AB 900 initially established the Jobs and Economic Improvement through Environmental Leadership Act of 2011, which created a process for certain projects to be certified as ELDPs and receive expedited judicial review procedures under CEQA. The bill defined an ELDP as a wind or solar renewable energy project, clean energy manufacturing project, or other type of project that meets various environmental criteria, including:

- > Certified as Leadership in Energy and Environmental Design (LEED) silver by the U.S. Green Building Council
- > Achieves a 10 percent or greater standard for transportation efficiency
- > Located on an infill site
- > Consistent with the region’s sustainable community strategy (SB 375 (Steinberg), Chapter 728, Statutes of 2008)
- > Does not result in any net additional greenhouse gas (GHG) emissions
- > Enters into a binding and enforceable agreement that all mitigation measures required from AB 900 will be monitored and enforceable by the lead agency

In addition to the environmental requirements, an ELDP must result in a minimum investment of \$100 million and create high-wage, highly skilled jobs that pay prevailing wages.

Under the initial AB 900 statute, once the governor certified a project as an ELDP, it received CEQA streamlining, including:

- > Any CEQA litigation was to skip review in Superior Court and be immediately filed in the Court of Appeal with geographic jurisdiction over the project

- > Required the Court of Appeal to issue its decision on the case within 175 days of the filing of the petition
- > Authorized the court to appoint a special master to assist in managing the expedited timeline
- > Required the lead agency to prepare the administrative record concurrently with environmental review and to certify the record within five days of approving the project

AB 900 required the project applicant to pay the costs of the Court of Appeal in hearing the case, appointment of a special master, and concurrent preparation of the record.

## SB 292 (Padilla), Chapter 353, Statutes of 2011

SB 292 was similar to AB 900 in that it had predetermined environmental requirements in exchange for CEQA streamlining, but SB 292 applied to only one project, a proposed downtown Los Angeles football stadium (Farmers Field) and convention center. SB 292 did not have a certification process for the governor to approve the project as an ELDP to receive the streamlining benefits. The project's environmental requirements differed from AB 900, instead including:

- > Required to achieve carbon neutrality by having zero-net additional GHG emissions from private car trips by the end of the first National Football League (NFL) season. SB 292 also required that GHG offset credits could be used only after feasible local measures had been implemented
- > Required a 10 percent reduction in car trips compared with other NFL stadiums using a "trip ratio" metric of the total annual per capita number of private automobiles arriving at the stadium

Differences in the project's CEQA streamlining benefits included:

- > Required any litigation challenging the certification of the EIR to be filed within 30 days of the lead agency's notice of determination
- > Set certain time limits on filing and serving briefs
- > Required the court to hear and decide the case within 60 days of the filing of the last reply brief. If the timeline was not met, SB 292 allowed the applicant to withdraw, terminating the

case in the Court of Appeal's jurisdiction, as well as eliminating any duty to comply with the environmental requirements described above

- > Required an appeal to the California Supreme Court to be filed within 15 days of the decision, required the filing of opposition briefs within 15 days after that, and required the state Supreme Court to decide the case within the earlier of 30 days of the petition or 15 days of the opposition brief
- > Limited the court's ability to grant any extensions of time to meet SB 292 deadlines

Additionally, SB 292 limited the court's ability to issue an injunction on the construction or operation of the project unless the project presents an imminent threat to public health and safety or contains important Native American artifacts.

## SB 743 (Steinberg), Chapter 386, Statutes of 2013

Similar to SB 292, SB 743 uses the framework of AB 900 to apply to only one project, the Sacramento Kings sports and entertainment arena in downtown Sacramento. SB 743 also did not have a certification process for the governor to approve the project as an ELDP to receive the streamlining benefits. The project's environmental requirements differed from AB 900 in the following ways:

- > LEED gold certification rather than silver
- > Reduce vehicle miles traveled (VMT) per attendee by 15 percent below the existing Sacramento Kings arena (Sleep Train Arena north of downtown Sacramento)
- > Reduce GHG emissions per attendee exceeding the targets adopted by the city pursuant to SB 375
- > Allow the use of GHG offset credits only after feasible local measures have been prioritized and implemented

In March 2013, Alameda Superior Court struck down the AB 900 provision that CEQA litigation immediately be filed in the Court of Appeal, bypassing review in Superior Court. SB 743 repealed this provision, as well as the requirement for the court to issue its decision within 175 days. Instead, SB 743 required CEQA lawsuits and any appeals for ELDPs and the Kings arena to be resolved within



270 days from when the lead agency certifies the administrative record.

SB 743 also limited the court's ability to issue an injunction on the construction or operation of the Kings arena, similar to SB 292.

### SB 734 (Galgiani), Chapter 210, Statutes of 2016

SB 734 required a multifamily residential project certified under AB 900 to provide unbundled parking, such that private vehicle parking spaces are priced and rented or purchased separately from dwelling units. SB 734 also added some wage conditions and enforcement provisions.

### AB 246 (Santiago), Chapter 522, Statutes of 2017

AB 246 updated the environmental requirements for ELDPs found in AB 900 as follows:

- > Increased LEED certification from silver to gold
- > Increased the transportation efficiency requirement from 10 percent to 15 percent
- > Required the project to demonstrate compliance with commercial and organic waste recycling

AB 246 also changed the requirement that judicial review be completed within 270 days from the lead agency's certifying the administrative record to 270 days, to the extent feasible, from filing the administrative record with the court.

### AB 734 (Bonta), Chapter 959, Statutes of 2018

AB 734 also used the framework of AB 900 to apply to a single project, the Oakland sports and mixed-use project (Oakland Athletics stadium). Unlike SB 292 and SB 743, AB 734 requires the governor to certify the project to receive the CEQA streamlining benefits. The project's environmental requirements differ from AB 900 in the following ways:

- > Requires that 50 percent of the GHG emissions reductions necessary to achieve the zero-net additional GHG emissions requirement be from on-site and local reduction measures
- > Limits the types of GHG offset credits that can be purchased to achieve the other 50 percent of the necessary GHG emissions reductions
- > Requires a transportation demand management (TDM) plan that achieves a 20 percent reduction in vehicle trips

### AB 987 (Kamlager-Dove), Chapter 961, Statutes of 2018

AB 987 was similar to AB 734 but applied only to a proposed basketball arena for the Los Angeles Clippers in Inglewood. The project's environmental requirements differ from AB 734 in the following ways:

- > Requires a TDM plan that achieves a 15 percent reduction in vehicle trips by 2030
- > Requires additional reductions of local criteria pollutants (at least 400 tons of nitrogen oxides and 10 tons of fine particulate matter)

## SUMMARY OF ENVIRONMENTAL LEADERSHIP DEVELOPMENT PROJECTS

Table 1 on the following page contains information on 18 ELDPs identified for this review. The governor had certified 12 projects as ELDPs at the time of this report, while four await certification. The projects from SB 292 and SB 743 that did not require certification from the governor also are included in Table 1. Of the 18 ELDPs in Table 1, two have been completed and three have been terminated, while the rest are in various stages of progress.

**Table 1**  
**Summary of Environmental Leadership Development Projects**

Project Name	Description	Location—City (County)	Year of Certification	Project Status
Apple Campus 2	Office and research campus	Cupertino (Santa Clara County)	2012	Opened in 2017
Soitec Solar Energy Project	144-megawatt (MW) solar concentrating projects, consisting of two separate installations	Unincorporated San Diego County	2012	Terminated
McCoy Solar Energy	A 750-MW net alternating current solar power installation	Unincorporated Riverside County	2013	Withdrew as ELDP after Alameda Superior Court decision in 2013
8150 Sunset Boulevard	Residential housing, retail, and restaurant redevelopment on a 2.56-acre site	Los Angeles (Los Angeles)	2015	In progress
Golden State Warriors Arena	Creates 18,064-seat arena (Warriors Arena), a multipurpose event center and office, retail, and open space uses	San Francisco (San Francisco)	2015	Completion expected in 2019
Qualcomm Stadium Reconstruction Project	Replace the existing Qualcomm Stadium with a new multiuse stadium	San Diego (San Diego)	2016	Terminated due to San Diego Chargers' move to Los Angeles
Crossroads Hollywood	Creates residential housing units and hotel rooms	Los Angeles (Los Angeles)	2016	In progress
6220 West Yucca	Residential housing and hotel redevelopment on a 1.16-acre site	Los Angeles (Los Angeles)	2017	In progress
Potrero Power Station	Convert a closed power station to housing, commercial, community facilities, and entertainment/assembly uses on a 29-acre site	San Francisco (San Francisco)	2018	In progress
Hollywood Center	Residential housing and usable open space development on a 4.46-acre site	Los Angeles (Los Angeles)	2018	In progress
1045 Olive Street	Residential housing and commercial redevelopment on a .96-acre site	Los Angeles (Los Angeles)	2018	In progress
10 South Van Ness Avenue, Mixed Use	Residential housing, public space, and business redevelopment on a 1.17-acre site	San Francisco (San Francisco)	2018	In progress
Hollywood & Wilcox	Develop a mixed-use project composed of multifamily residential dwelling units and retail, office, and restaurant uses	Los Angeles (Los Angeles)	Not yet certified	In progress
Los Angeles Clippers Arena (AB 987)	New arena, practice and training facility, and office space for the LA Clippers, as well as ancillary development including a sports medicine clinic and retail, restaurant, community space, and hotel uses	Inglewood (Los Angeles)	Not yet certified	In progress
3333 California Street	Create new residential housing and retail, office, and child care center uses	San Francisco (San Francisco)	Not yet certified	In progress
Oakland Athletics Stadium (AB 734)	Baseball stadium, residential housing, hotel, entertainment, office, retail, and open space redevelopment on a 55-acre site	Oakland (Alameda)	Not yet certified	In progress
Los Angeles Stadium (Farmers Field, SB 292)	Create a sports and entertainment center	Los Angeles (Los Angeles)	N/A	Terminated due to financial reasons
Sacramento Kings Arena (SB 743)	Create a sports and entertainment center	Sacramento (Sacramento)	N/A	Opened in 2016

# SUMMARY OF CEQA LEGAL CHALLENGES AND TIMELINES

To date, three ELDPs have been challenged under CEQA through litigation and received expedited judicial review pursuant to legislation requiring CEQA litigation streamlining. These projects are the Sacramento Kings arena, Golden State Warriors arena, and the 8150 Sunset Boulevard mixed-use development project. Below is a description of each of the lawsuits, including the estimated timelines for the cases to be resolved.

## Sacramento Kings Arena

Several CEQA lawsuits were filed against the Sacramento Kings arena. The cases were consolidated into *Adriana Gianturco Saltonstall et al. v. City of Sacramento* and filed June 10, 2014. The overarching claim was that the city prematurely approved the arena project because the EIR process (1) did not study an alternative that would have involved remodeling an existing arena, (2) was deficient in its analysis of traffic congestion on an interstate freeway, and (3) misrepresented the size of crowds inside and around the downtown arena. The trial court in Sacramento issued a decision on October 17, 2014, denying all the CEQA challenges. The Court of Appeal affirmed the trial court's decision on February 18, 2015, and the petition for review by the California Supreme Court was denied May 20, 2015.



As discussed in the history of the ELDLP legislation, SB 743, which authorized the CEQA streamlining of the Kings arena, required that any CEQA-related judicial review, including any appeals, be resolved within 270 days from certification of the administrative record. This provision was modeled after AB 900; however, it is important to note neither AB 900 nor SB 743 specifies whether the timeline should be counted as 270 calendar or business days, and both are unclear as to whether appeals to the Supreme Court should count in the judicial review timeline. In this case, the city of Sacramento certified the administrative record on June 2, 2014. When excluding the appeal to the Supreme Court, the timeline between certification of the administrative record and the Court of Appeal's decision was 178 business days or 261 calendar days.<sup>7</sup> When including the appeal to the Supreme Court, the timeline between certification of the record and the Supreme Court denial was 243 business days or 352 calendar days.

## Golden State Warriors Arena

The Warriors arena and related development at Mission Bay in San Francisco was challenged under CEQA by multiple interested parties. The consolidated case, *Mission Bay Alliance et al. v. Office of Community Investment and Infrastructure*, claimed the project (1) failed to consider land-use consequences, biological resources, hazardous materials, or existing recreational facilities; (2) did not identify a specific funding source for increased regional transit service; (3) was inconsistent with the local GHG strategy; and (4) would not receive a place of entertainment permit due to crowd noise. The petition was initially filed erroneously in Sacramento Superior Court on January 7, 2016. On March 11, 2016, the petition was moved and filed in San Francisco Superior Court. A trial court ruled in favor of the Warriors on July 18, 2016. The Court of Appeal issued its decision on November 29, 2016. A request for review by the Supreme Court was denied on January 17, 2017.

The Warriors arena project was certified as an AB 900 project in April 2015, thus requiring the

judicial review timeline, including any appeals, of 270 days from certification of the administrative record. At the time of the initial petition's filing, the lead agency had not certified the administrative record, so the petitioners elected to prepare the record themselves. Because the initial case was erroneously filed in Sacramento, and the lead agency did not certify the record, it is unclear what initial starting point should be used for purposes of determining the judicial review timeline. If the date of the initial filing on January 7, 2016, in Sacramento Superior Court is used as a starting point, when excluding appeals to the Supreme Court, the timeline between the initial filing and the Court of Appeal decision was 225 business days or 327 calendar days. When including the appeal to the Supreme Court, the timeline between the initial filing in Sacramento and the Supreme Court denial was 257 business days or 376 calendar days.

Looked at another way, it could be instructive to consider how the timeline for the Warriors arena lawsuit would be computed under current law. SB 246 changed the judicial review starting time to be the administrative record's filing with the court rather than when the lead agency certifies the administrative record. The change eliminated the time between record certification and the beginning of litigation, for which the courts do not have jurisdiction. Although SB 246 did not apply to the Warriors arena project, it could be instructive to consider the judicial review timeline if the project was subject to it as current projects will be. In the Warriors arena case, the administrative record was filed with the San Francisco court on March 30, 2016. Using this as the starting timeline and excluding appeals to the Supreme Court, the timeline between the filing of the record and the Court of Appeal's decision was 168 business days or 244 calendar days. When including appeals to the Supreme Court, the timeline between the initial filing and the Supreme Court denial was 200 business days or 293 calendar days.



## 8150 Sunset Boulevard Mixed-Use Development

Four petitioners filed separate CEQA cases on December 1, 2016, challenging approval of the 8150 Sunset Boulevard project: *Los Angeles Conservancy v. City of Los Angeles*; *Fix the City, Inc. v. City of Los Angeles*; *JDR Crescent v. City of Los Angeles*; and *Manners v. City of Los Angeles*. The trial court ordered the four related cases to coordinate and consolidate their arguments as much as possible, delaying initial hearing of the case. The Los Angeles Conservancy (LAC) petitioned the Superior Court to prevent the destruction of a bank building (the Lytton Building) that it stipulated had historical significance, while the other petitioners presented 24 allegations of CEQA noncompliance. The trial court granted the LAC's petition in full on July 21, 2017, while denying the claims of the other parties on all other issues. The decision allowed the project to proceed but barred the proposed destruction of the Lytton Building. The subsequent Court of Appeal ruling was issued on March 23, 2018, with a modified opinion and denial of the request for a rehearing finalized on April 19, 2018. The Court of Appeal agreed with the city's claim that the trial court erred in finding it failed to comply with CEQA and rejected all cross-appeals from the petitioners except for one related to the conversion of a traffic lane. An appeal to the Supreme Court was denied on June 13, 2018.

The project was certified as an AB 900 project in April 2015 and therefore had a required judicial review timeline, including any appeals, of 270 days from certification of the administrative record. The city of Los Angeles certified the administrative record on November 11, 2016. When excluding the appeal to the Supreme Court, the timeline between the certification of the administrative record and the final Court of Appeal's modified decision was 357 business days or 523 calendar days. When including the appeal to the Supreme Court, the timeline between the certification of the record and the Supreme Court denial was 395 business days or 578 calendar days.

## ESTIMATED ELDP BENEFITS

Estimating actual benefits from ELDPs is challenging due to only two projects (Apple campus and Sacramento Kings arena) having been completed at the time of this report, as well as the difficulty in acquiring verified post-project estimates. Below, this report details estimated benefits from ELDPs related to GHG emissions reductions, transportation efficiency, housing, and jobs. Most of the estimates should be considered expected rather than actual benefits as the majority of ELDPs are not yet complete. Additionally, the estimates provided below are mostly those represented by the ELDP applicants and have not been independently verified.

### Greenhouse Gas Emission Reductions

ELDPs must show they will not result in any net additional emissions of GHGs, including those from employee transportation, as determined by the California Air Resources Board (ARB). The governor has provided guidelines for an applicant to submit a proposed methodology for quantifying a project's net additional GHGs to ARB. The guidelines require the applicant to quantify, at a minimum, both direct and indirect GHG emissions associated with the project construction and operation and the net emissions of the project after accounting for any mitigation measures. ARB is required to determine whether the project will result in any net additional emissions of GHGs within 60 days of receiving the documentation from the applicant.

Table 2 on page 9 shows a summary of the estimated GHG emissions from ELDPs verified by ARB. The requirement that a project result in no net additional emissions of GHGs has led projects to estimate baseline GHG emissions from the current existing conditions. This process is similar to a factor used to assess GHG emissions impacts during the CEQA environmental review process.<sup>8</sup> The table shows each project's estimated total operational GHG emissions, total construction emissions, and total baseline GHG emissions from the current existing conditions.

Table 2 provides estimated operational GHG emissions after mitigation measures were incorporated into the modeling for all projects except the Potrero power plant. Some projects provided GHG emissions estimates both before and after design mitigation measures were implemented, such as acquiring LEED certification. However, most projects provided estimates only after mitigation measures were incorporated. Some mitigation measures likely include early design changes to the project due to some project developers targeting ELDP certification early in their project design process. Although the GHG emissions reductions might be attributable to the ELDP requirements, they are difficult, if not impossible, to quantify and are therefore not included in Table 2.

Assessing and comparing GHG emissions benefits across projects is challenging for numerous reasons, including:

- > Existing conditions vary dramatically between projects, making the baselines for projects to reach to achieve zero-net additional GHG emissions fairly ambiguous. For example, the total unmitigated Potrero power plant project GHG emissions were well below the conservative baseline under the assumption that the previously closed natural gas power plant on the site represented existing ongoing conditions. In stark contrast to this, the Hollywood Center project did not assume any GHG emissions in its existing conditions baseline. The Potrero project did not mitigate any of its emissions to reach the GHG requirement, while all the emissions from the Hollywood Center development required mitigation. The governor's guidelines provide no guidance in estimating baseline emissions, so the project applicants appear to have wide discretion in estimating their baseline emissions.

**Table 2**  
**Summary of Estimated Greenhouse Gas Emissions**

Project Name	Total Operational GHG Emissions (MT CO <sub>2</sub> e )	Total Construction GHG Emissions (MT CO <sub>2</sub> e )	Total Baseline GHG Emissions (MT CO <sub>2</sub> e )
Apple Campus 2	130,469	47,884	271,450
8150 Sunset Boulevard	60,207	3,977	66,348
Golden State Warriors Arena	505,651	10,066	390,374
Crossroads Hollywood	441,046	9,439	112,710
6220 West Yucca	122,449	2,245	18,780
Potrero Power Station	485,035	32,313	3,655,650
Hollywood Center	249,952	24,128	0
1045 Olive Street	233,573	7,113	14,040
10 South Van Ness Avenue	69,9861	5,595	19,710
3333 California Street	118,719	4,273	116,190

\* MT CO<sub>2</sub>e = metric tons of carbon dioxide equivalent.

> For the reasons mentioned above, it is difficult to quantify GHG emissions reductions due to mitigation measures. Determining whether the mitigated GHG reductions are due to ELDP requirements, or would have been reduced regardless of the ELDP certification process, also presents challenges. For example, the Apple campus had widely promoted itself as a zero-net-energy building and might have eliminated GHG emissions from energy use regardless of ELDP requirements.<sup>9</sup>

The vast majority of operational GHG emissions from ELDPs are from mobile sources, typically ranging from 70 percent to 80 percent of the total operational emissions. After mobile sources, energy use is the second largest source of emissions, typically representing about 20 percent to 30 percent of total operational emissions. All other operational GHG emissions sources are mostly insignificant.

The GHG emissions reductions required to achieve the zero-net additional emissions requirement found in Table 2 were met predominantly by the purchase of GHG offset credits. Two exceptions are the Apple

campus, which used the Direct Access program to mitigate its construction emissions, and the 8150 Sunset Boulevard project, which additionally used renewable energy procurement to eliminate construction GHG emissions.<sup>10</sup>

## Transportation Efficiency

AB 900 requires ELDPs to achieve a 15 percent greater standard for transportation efficiency than for comparable projects, defined as the per capita number of vehicle trips by employees, visitors, or customers of the project. As mentioned previously, transportation efficiency was defined differently for bills similar to AB 900. SB 743 required a 15 percent per capita VMT reduction compared with the existing arena, while AB 734 and AB 987 require certain total vehicle trip reductions compared with operations without a TDM program. AB 987 is the only bill that allowed an extended timeline for the project applicant to achieve the transportation reduction requirements, as well as require any post-verification. AB 987 also imposes additional vehicle trip reductions if the 15 percent reduction fails to be achieved by 2030.



The benefits of achieving a transportation efficiency requirement for ELDPs is largely unknown. In general, project applicants appear to create a reasonable plan for achieving greater transportation efficiency than similar developments. However, because it is unclear what data should be used in measuring transportation efficiency and how to define a comparable project, it is difficult to ascertain what benefit the modeling exercise had on mitigating local community traffic impacts. Additionally, it is unclear whether the initial transportation efficiency modeling to achieve ELDP certification was or will be used by lead agencies in mitigating transportation impacts.

The Sacramento Kings arena is one example of known transportation efficiency benefits resulting from meeting the ELDP requirement. For this project, SB 743 specified what type of data should be used to measure transportation impacts, as well as stating clearly how the new arena’s efficiency should be compared. The city of Sacramento said the exercise was helpful in achieving transportation efficiency for the city, as cell phone data was first used to estimate VMT from trips to the old arena and then used to model traffic impacts to the new arena.

## Housing Units

Many ELDPs are housing projects, and some have been proposed to provide affordable housing units. Table 3 provides a summary of the proposed housing units from ELDPs. As none of the projects have been completed, the numbers in Table 3 represent housing units as proposed by the project applicants and could differ from actual housing units eventually built.

## Job Creation

One of the requirements to be certified as an ELDP is the project must create high-wage, highly skilled jobs. Table 4 below shows a summary of jobs created by ELDPs as proposed by the applicant. Because reporting job numbers was not required as part of the ELDP process, not all projects provided job estimates in their applications. Additionally, completed projects are not required to report on actual jobs created, so estimates were not readily available for the two completed projects. One exception is the Sacramento Kings arena. The Sacramento City Council required a jobs audit of the arena post-completion to investigate compliance with local job requirements. The audit verified that the Sacramento Kings arena project created 3,661 construction jobs.<sup>11</sup> Permanent jobs were not audited or estimated.

**Table 3**  
**Summary of Proposed Housing Units**

Project Name	Proposed Housing Units
<b>8150 Sunset Boulevard</b>	249 residential, of which 28 will be affordable housing
<b>Crossroads Hollywood</b>	950 residential
<b>6220 West Yucca</b>	210 residential
<b>Potrero Power Station</b>	2,400 to 3,000 residential
<b>Hollywood Center</b>	872 residential, of which 133 will be affordable senior housing
<b>1045 Olive Street</b>	794 residential
<b>10 South Van Ness Avenue</b>	980 residential
<b>Hollywood &amp; Wilcox</b>	260 multifamily residential, up to 10 percent of which would be workforce housing
<b>3333 California Street</b>	558 residential, some of which will be affordable housing
<b>Oakland Athletics Stadium (AB 734)</b>	3,000 residential

## CEQA STREAMLINING

As outlined previously, the shortened judicial review timeline of 270 days was not always met, depending on how the timeline is counted. However, compared with the normal litigation timeline for CEQA cases, the three ELDPs appear to have moved through the litigation process much faster. Normal timelines for CEQA litigation typically last between three to five years, depending on the complexity of the project and case. Considering the size and complexity of the ELDPs litigated under CEQA, the shortened judicial review timeline likely has provided a significant streamlining benefit for the project developers. Additionally, according to the CEQA lawyers interviewed for this report (including counsel representing all of the petitioners in the three cases challenged under CEQA), the shortened timeline is unlikely to adversely affect the ability of petitioners to present their issues before the court.

As argued by the Judicial Council, a potential drawback to the shortened judicial review timeline is the impact on the courts. In its 2016 report to the Legislature, the Judicial Council stated that the courts devoted more resources to the Warriors arena CEQA case and required significant overtime from staff to process the case to meet the shortened judicial review timeline.<sup>12</sup> The shortened timeline could put pressure on the courts to make decisions more quickly than is comfortable. Additionally, although the project applicant is required to reimburse the Court of Appeal for its costs to process the expedited case, no such reimbursement is available to the trial courts. Prioritizing CEQA lawsuits also could delay other cases before the court, raising concerns regarding equal access to justice.

Despite the CEQA streamlining benefit provided to ELDPs, some projects faced other litigation that caused delays. For example, in addition to the CEQA-related challenge to the Warriors arena, a second lawsuit filed in Alameda County sought to invalidate an agreement between San Francisco and the Warriors, which included a \$10 million Mission Bay Transportation Improvement Fund for controlling traffic flow in the area. The Warriors team has said the non-CEQA-related lawsuit likely delayed the opening of the arena by one year. Additionally, although CEQA litigation over the 8150 Sunset

Boulevard project has been resolved, the project has been delayed due to the city's cultural heritage commission holding up demolition of the debated historic building.

Both the concurrent preparation of the administrative record and establishing rules of the court appear to have helped shorten the judicial review timeline for the ELDP CEQA cases. The streamlining benefits are discussed in more detail on the following pages.

**Table 4**  
**Summary of Proposed Jobs Created**

Project Name	Proposed Jobs
<b>Apple Campus 2</b>	9,187 construction and 6,000 to 10,000 permanent
<b>8150 Sunset Boulevard</b>	1,375 construction and 511 permanent
<b>Golden State Warriors Arena</b>	Not stated
<b>Crossroads Hollywood</b>	5,240 permanent
<b>6220 West Yucca</b>	1,995 construction and 194 permanent
<b>Potrero Power Station</b>	Unknown construction and 4,700 permanent
<b>Hollywood Center</b>	7,565 construction and 1,126 permanent
<b>1045 Olive Street</b>	4,720 construction and 550 permanent
<b>10 South Van Ness Avenue</b>	Not stated
<b>Hollywood &amp; Wilcox</b>	Not stated
<b>Los Angeles Clippers Arena (AB 987)</b>	Not stated
<b>3333 California Street</b>	75 to 175 construction and 395 permanent
<b>Oakland Athletics Stadium (AB 734)</b>	Not stated
<b>Sacramento Kings Arena (SB 743)</b>	3,661* construction and unknown permanent

\* Actual.

## Concurrent Preparation of Administrative Record

Rather than preparing the administrative record after a CEQA-related lawsuit is filed, lead agencies are required to prepare the record concurrently with the environmental review process for ELDPs. This requirement has been beneficial to streamlining CEQA for a couple of reasons. First, the largest source of CEQA litigation delays are arguments over preparing the administrative record. Although CEQA statute requires the administrative record be certified within 60 days of filing litigation, in practice preparing the record can take anywhere from three months to a year or longer for larger, more complex projects.

Second, requiring the lead agency to prepare the record concurrently eliminated the option for the petitioner to prepare the record. Petitioners might elect to prepare the record themselves to minimize their potential cost responsibility of record preparation if they lose the case. Courts previously decided that taxpayers should not have to bear the cost of preparing the administrative record for lawsuits brought by private entities, and in theory, petitioners could reduce this cost by preparing the record more cheaply than the lead agency.<sup>13</sup> However, having petitioners prepare the record could lead to delays in CEQA litigation because they lack access to the lead agency records, which require extensive public records requests to gain. There also is a potential for petitioners to use the record preparation process to delay the case as there are no time limits for them to prepare the record. Additionally, lead agencies usually are hesitant to

prepare the record concurrently because if the petitioners later elected to prepare it themselves, the lead agency would not be reimbursed for its efforts or staff costs. AB 900 and other similar bills eliminated the issues by requiring the project applicant to pay for concurrent preparation of the record by the lead agency.

Requiring concurrent preparation of the record likely has reduced CEQA litigation timelines for ELDPs by more than a year as these are typically larger and more complex projects. However, the requirement has come at some cost to the lead agencies required to prepare the record. The statutes require the lead agency to post all written comments on a website within five days of receipt, as well as to certify the record within five days of its approval of the project. Lead agencies report that both timelines can be extremely tight and burdensome and typically require excessive overtime to meet. Certification of the record in particular requires extra time for lead agencies as the large and complex record must be reviewed and approved by multiple departments before certification. Additionally, some jurisdictions interpret the five-day timeline as calendar days rather than business days, making the timelines exceptionally short, especially when they fall over a holiday weekend.

## Rules of the Court

AB 900 and other similar legislation require the Judicial Council to adopt rules of the court to establish procedures to meet the shortened judicial review timeline. Specifically, the rules of the court require only electronic versions of the record, as well as hyperlinks to the cited record pages.<sup>14</sup> Although administrative records can be thousands of pages long, the existing CEQA statute does not require the record to be in electronic format, and hard copy records are the default. The electronic version and hyperlinking requirements in AB 900 and other similar bills likely have provided a streamlined process for accessing and reviewing the administrative record throughout the litigation process for large ELDPs.



# KEY ISSUES AND OPTIONS FOR CONSIDERATION

## Addressing Local Environmental Impacts

The Legislature may want to consider how it specifically defines a project as an environmental leader. The ELDPs reviewed in this report likely have an insignificant environmental impact on a global and statewide level; however, the projects could have a significant impact at the local scale. For example:

- > Projects in relatively low-density areas could have significant negative local impacts by increasing VMT in the region. A local impact perspective may consider a project to be an environmental leader if the project takes extraordinary measures to reduce its VMT significantly.
- > Large sports arenas could have significant adverse local impacts through acute traffic congestion during events. The community may perceive a project to be an environmental leader if it has an extraordinarily robust TDM plan that specifically addresses its traffic impacts.
- > A housing project may be seen as an environmental leader by occupants if the building is extraordinarily energy efficient.
- > A project in a nonattainment air basin may be seen by the local community as showing environmental leadership if the project takes extraordinary measures to reduce local criteria pollutants.

Many of the bills similar to AB 900, such as SB 743, AB 734, and AB 987, attempt to localize the environmental requirements needed to receive CEQA streamlining benefits. As an alternative to doing this for individual projects, the Legislature could consider structural changes to the process to place greater emphasis on how a project meets with a local community's definition of environmental leadership. Some options include:

- > Using alternative requirements and metrics that ensure the projects are seen as environmental leaders to local communities: for example, requiring upfront impact fees to be spent mitigating local impacts.
- > Requiring an administrative agency or third party with the appropriate technical skills to design

and update the ELDP certification program. The flexibility provided by the LEED certification process is an example.

- > Shifting the burden of proving environmental leadership onto the project applicants. For a project to be certified by the governor, applicants could be required to submit a proposal approved by the lead agency with local community input.

## Use of a Baseline is Problematic

The benefits of achieving zero-net additional GHG emissions and the transportation efficiency requirements are largely unknown, uncertain, and likely vary significantly between projects. This is primarily due to the ambiguous use of a baseline to measure reductions. After reviewing ELDP applications, project applicants appear to have much discretion in choosing various assumptions in their modeling exercises to determine their baselines.

The ambiguity of estimating a baseline also presents challenges in verifying a project application before certification. The ELDP certification process requires staff at ARB and the Governor's Office of Planning and Research (OPR) to verify the GHG emissions quantification methods and the transportation efficiency modeling, respectively. In addition, once the governor has determined an ELDP is eligible for CEQA streamlining, the Joint Legislative Budget Committee is required to review the determination, requiring the Legislative Analyst's Office to provide concurrence or nonconcurrence recommendations to the committee for each project.

The Legislature may want to consider alternative metrics or processes for reducing GHG emissions and achieving transportation efficiency that do not allow the project applicants to determine the baseline or do not use a baseline at all. Alternatives could eliminate the ambiguity with estimating the benefits from these projects, as well as provide a more robust and concrete verification process before certification.

## Require Upfront Traffic Impact Fees

Rather than requiring transportation efficiency improvements when compared with a baseline, the Legislature could require traffic impact fees from ELDPs based on the results of a traffic impact study. Different projects will have varying levels of traffic impacts to local communities, and mitigation

strategies need to be tailored and specific to the impacts. Traffic impact fees could be provided to the lead agency to invest in optimal locally specific strategies to mitigate traffic impacts from the ELDP project. A project applicant should still be required to use a TDM plan to reduce traffic impacts, which will give the applicants incentive to lower overall traffic impacts through design changes to avoid fees.

Impact fees should be designed to scale with the project impacts after mitigation measures have been implemented, and applicants could have proposed mitigation measures approved by the lead agency before submitting to OPR for verification. OPR also could be required to produce guidelines to assess the impact fees, as well as stipulations on spending and reporting requirements by the lead agencies.

This proposed alternative would eliminate the uncertainty with using a baseline for transportation efficiency, provide more upfront benefits before certification, and provide greater assurance that the transportation mitigation strategies would be tailored to address locally specific traffic impacts from the ELDP.

## Focus Greenhouse Gas Emissions Requirements on Specific Sources

The Legislature could consider eliminating the requirement for the zero-net additional GHG emissions and instead replace it with robust requirements from specific GHG sources. This option would eliminate the uncertainty with estimating a baseline for reaching the current requirement, as well as align better with the intent language in AB 900 that states projects will fully mitigate the GHG emissions resulting from passenger vehicle trips. Although the requirement for zero-net additional GHG emissions seems reasonable from a mitigation approach during the environmental review process, after reviewing projects it is difficult to conclude that this requirement is robust and leads to defining a project as an environmental leader in GHG reductions. The Legislature could consider how it wants to define leadership in GHG emissions reductions, as well as attempt to localize any required reductions.

Instead of the current zero-net additional GHG emissions requirement, the ELDP certification

process could focus on specific emissions sources and require the following:

- Target mobile GHG source reductions through VMT reductions. The Legislature could consider one of two options for ELDPs:

- **Impact Fees.** Pay impact fees to local air districts based on their estimated VMT impacts to invest strategically in reducing GHG emissions and local criteria air pollution from mobile sources. Assessing impact fees would give project developers incentive to reduce VMT through design changes, as well as target local emissions reductions that best address the specific challenges facing that particular regional air basin. Similar to the assessment of traffic impact fees, the applicant could have the proposed mitigation measures approved by the lead agency before submitting to OPR for verification. OPR also could be required to produce guidelines to assess fees for the VMT impacts, as well as stipulations on spending and reporting requirements by the local air districts.

- **VMT Threshold.** The Legislature could require VMT reductions as compared with regional averages as the baseline. In addition to providing CEQA streamlining benefits to the Sacramento Kings arena, SB 743 required OPR to update how transportation impacts are measured through the CEQA review process. In 2018, OPR finalized guidelines for lead agencies to use per capita VMT to assess transportation impacts from projects.<sup>15</sup> Regional VMT averages across the state have already been developed and will likely be used by lead agencies to assess impacts. In the guidelines, OPR recommends VMT thresholds to determine whether the project will have significant impacts. For example, residential projects are unlikely to increase regional VMT as long as the per capita VMT from the project is at least 15 percent below the regional average.<sup>16</sup> For ELDPs expected to be environmental leaders, the Legislature could require higher reduction levels than the recommended thresholds from these projects.

- Target emissions reductions from energy use through energy efficiency and renewable energy requirements:

- **Energy Efficiency.** The Legislature could require higher standards than the current building code (Title 24, Part 6). One option could be to require ELDPs to achieve Tier 1 energy efficiency in the California Green Building Standards Code (CalGreen, Title 24, Part 11). The Tier 1 level contain feasible standards the California Energy Commission develops as an optional extra requirement for local jurisdictions to adopt.
  - **Renewable Energy.** The Legislature could consider promoting renewable energy use through specific requirements, such as requiring ELDPs to have a demand response program, on-site renewable energy generation, or renewable energy procurement mandates, among others.
- Target GHG emissions from construction by requiring they be fully mitigated by purchasing GHG offsets verified by ARB

## Require Jobs and Housing Reporting

To help better understand the benefits provided by ELDPs, the Legislature could consider requiring ELDPs to report on the estimated jobs and housing units created (if applicable) and the actual numbers once a project is completed.

## Extend and Clarify 270-Day Judicial Review Timeline

Although not all CEQA litigation cases met the 270-day timeline (depending on how it is measured), all of the cases moved through the judicial review process much faster than they normally would have. This has likely benefited developers by potentially reducing delays and providing upfront financial security. However, the impacts to the courts from such a short timeline also should be taken into consideration when determining how fast the Legislature would like the cases resolved. The Legislature could extend the timeline, such as requiring resolution somewhere between one to two years, which would still provide a significant benefit to developers while at the same time easing the burden on the courts. Additionally, the Legislature could consider clarifying how to calculate the timeline by explicitly stating whether the days should be counted as calendar days or

business days, as well as whether appeals to the Supreme Court should be included in the expedited judicial review process.

## Reduce Impacts From Concurrent Preparation of Record

The requirement for the lead agency to concurrently prepare the administrative record appears to provide significant streamlining benefits. However, some of the timelines in AB 900 and other similar legislation appears to have negative impacts on lead agency staff. Specifically, the five-day requirement for the lead agency to post written comments on a website, as well as the five-day requirement to certify the administrative record after approving the project, are reportedly burdensome on lead agency staff. The Legislature could consider extending the five-day requirement for a lead agency to post written comments on a website to 10 business days. The Legislature also could consider extending the five-day requirement for a lead agency to certify the record to 20 business days.



## Appendix: List of Interviews

### **Brandt-Hawley Law Group**

December 12, 2018

Susan Brandt-Hawley, attorney

### **California Air Resources Board**

October 18, 2018

Nicole Dolney, branch chief

Lezlie Kimura, manager

Heather King, air pollution specialist

### **California Energy Commission**

February 22, 2019

Christopher Meyer, manager

Payam Bozorgchami, senior engineer

### **City of Cupertino**

January 17, 2019

Aarti Shrivastava, assistant city manager/director of community development

Piu Ghosh, city planner

### **City of Los Angeles**

January 23, 2019

Luciralia Ibarra, principal city planner

William Lamborn, city planner

John Fox, deputy city attorney

### **City of Sacramento**

February 25, 2019

John Dangberg, assistant city manager

Tom Buford, environmental planner

### **City of San Francisco**

January 25, 2019 and February 27, 2019

Chris Kern, principal planner

Elizabeth Purl, senior planner

Rachel Schuett, senior planner

### **Court of Appeal, 3rd Appellate District**

December 5, 2018

Associate Justice Ron Robie

### **Gideon Law**

November 6, 2018

Gideon Kracov, attorney

### **Governor's Office of Planning and Research**

October 4, 2018 and October 30, 2018

Natalie Kuffel, land-use counsel and interim legislative director

Jeannie Lee, senior counsel

Scott Morgan, deputy director

Chris Ganson, senior planner

### **Judicial Council of California**

November 6, 2018

Daniel Pone, attorney and governmental affairs

### **Legislative Analyst's Office**

October 12, 2018

Helen Kerstein, principal fiscal and policy analyst

### **Remy Moose Manley, LLP**

December 12, 2018

Whitman Manley, attorney

### **Shute, Mihaly & Weinberger LLP**

January 10, 2019

Ellison Folk, attorney

### **The Smith Firm**

January 23, 2019

Kelly T. Smith, attorney

### **The Sohagi Law Group, PLC**

December 12, 2018

Margaret Sohagi, Esq.

### **University of California, Berkeley**

October 25, 2018

Eric Biber, professor of law

## Endnotes

- 1 PRC §21167.
- 2 PRC §21167.6 (e).
- 3 PRC §21167.6 (a) (b) (2).
- 4 PRC §21167.6 (b).
- 5 PRC §21167.1 (a).
- 6 PRC §21167.1 (b).
- 7 Timeline calculations exclude starting date and include end date as according to the Code of Civil Procedure sections 12–12c 12. Timelines were computed using an online calculator: <https://www.timeanddate.com/date/workdays.html?d1=7&m1=1&y1=2016&d2=17&m2=1&y2=2017&ti=on&>.
- 8 CCR Title 14 §15064.4.
- 9 <https://www.greenbiz.com/blog/2013/11/19/6-proposals-will-make-apples-new-hq-super-green>.
- 10 Direct Access service is retail electric service where customers purchase electricity from a competitive provider instead of from a regulated electric utility. The utility delivers the electricity that the customer purchases from the provider to the customer over its distribution system.
- 11 <http://www.cityofsacramento.org/-/media/Corporate/Files/Auditor/Audit-Reports/Follow-Up-Audit-of-the-Golden1-Center-Local-Hiring-and-Business-Involvement.pdf>.
- 12 <https://www.courts.ca.gov/documents/lr-2016-jobs-and-economic-improvement.pdf>.
- 13 *Black Historical Society v. City of San Diego*, 134 Cal. App. 4th 670, 677 (2005).
- 14 California Rule of Court 3.2225 and 3.2227.
- 15 [http://opr.ca.gov/docs/20190122-743\\_Technical\\_Advisory.pdf](http://opr.ca.gov/docs/20190122-743_Technical_Advisory.pdf).
- 16 Ibid.







**Written by Paul Jacobs with contributions from Russell Manning at the request of Senate President pro Tempore Toni G. Atkins.** The California Senate Office of Research is a nonpartisan office charged with serving the research needs of the California State Senate and assisting Senate members and committees with the development of effective public policy. The office was established by the Senate Rules Committee in 1969. For more information, please visit <http://sor.senate.ca.gov> or call **(916) 651-1500**.