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CALIFORNIA ENVIRONMENTAL QUALITY ACT: IMPACTS ON DELIVERING STATE HIGHWAY TRANSPORTATION PROJECTS

Passed by the Legislature and signed by Governor Reagan in 1970, the California Environmental Quality Act (CEQA) is a law that requires state and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those impacts, if feasible. CEQA requirements are regularly considered by the California Department of Transportation (Caltrans) as part of its delivery of state highway system transportation projects. Following a request to assess CEQA impacts on transportation project delivery, we collected data from Caltrans related to costs, duration, and the resulting CEQA documents from the environmental review process. Our review of Caltrans projects completed between 2014 and 2017 suggests that CEQA did not have significant adverse impacts on project delivery overall.

This report offers background information on CEQA and the Caltrans project delivery process, presents data provided by Caltrans, and discusses challenges and findings the data reveals. Finally, this report offers potential next steps if the Legislature is interested in investigating the issue further.

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 and the threat of litigation.

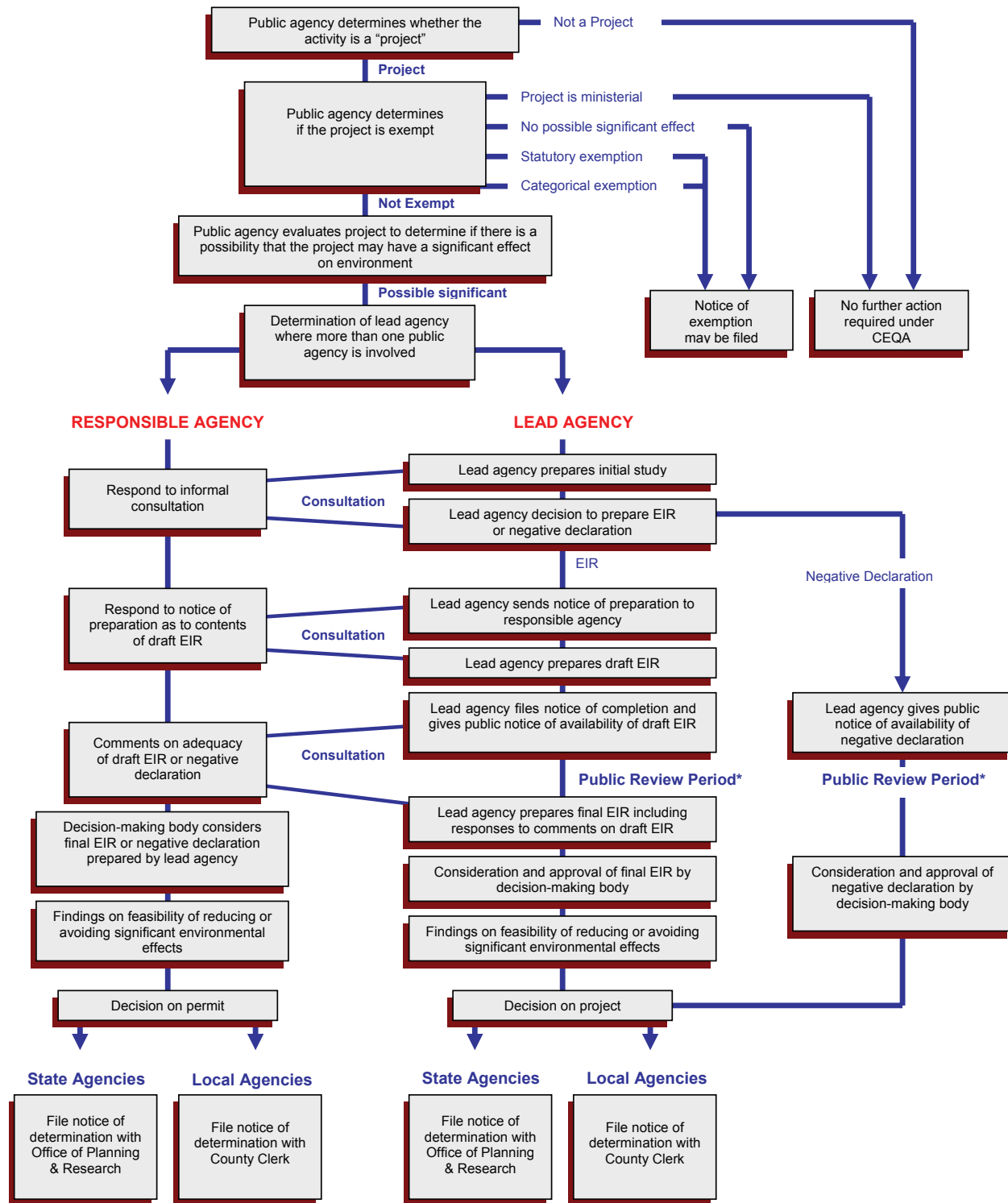
CEQA Review Process

Figure 1 on the following page shows the CEQA review process flowchart.



FIGURE 1

CEQA Process Flowchart



Source: California Environmental Resources Evaluation System, http://ceres.ca.gov/topic/env_law/ceqa/flowchart/index.html.

*The public review and comment period shall not be less than 30 days and nor should it be longer than 60 days, per the CEQA Guidelines at http://ceres.ca.gov/topic/env_law/ceqa/guidelines/.

As Figure 1 shows, certain types of projects are exempt from the CEQA review process. The exemptions apply to projects when either (1) the project is exempt in a statute, known as “statutory exemptions,” or (2) the project is exempt through CEQA guidelines adopted by the 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 it could have a significant impact on the environment. If it is determined 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 potentially have significant impacts on the environment, but the impacts can 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. Possible alternative projects need to be considered, including the option of no project at all. If the project approval includes mitigation measures, the agency must adopt a reporting or monitoring program to ensure the measures occur.

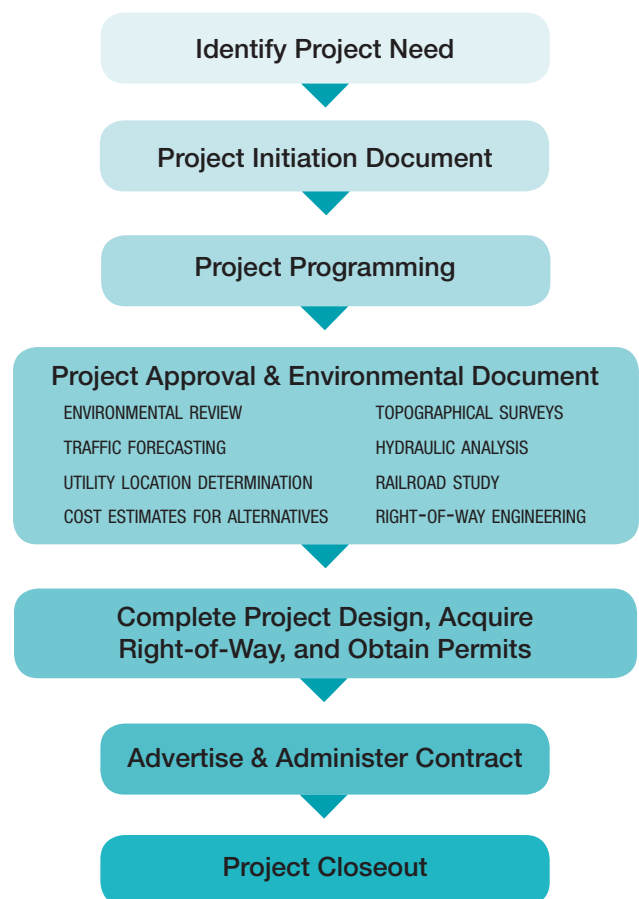
CALTRANS STATE HIGHWAY PROJECT DELIVERY

Caltrans is responsible for maintaining and repairing the state’s highway system and does so through two programs—the Highway Maintenance Program and the State Highway Operation and Protection Program (SHOPP). The Highway Maintenance Program performs routine maintenance projects on the state highway system, while SHOPP projects repair and rehabilitate the highway system. SHOPP projects can involve straightforward construction work, such as repairing highway guardrails, or much more complex work, such as completely removing and rebuilding bridges.

Caltrans’ project delivery process for work on the state highway system involves numerous steps

between identifying the need for a project and closing out a project. The steps include processes such as preparing project initiation documents, performing environmental studies, acquiring rights-of-way and permits, designing the project, and administering the construction contract. Figure 2 below shows a flowchart of the steps Caltrans takes when delivering a state highway system project. This figure expands on the phase of a project during which environmental documents are prepared.

FIGURE 2
Caltrans Project Delivery Flowchart



Environmental Review

During the environmental review process for a state highway system project, Caltrans conducts studies in compliance with CEQA, the National Environmental Policy Act (NEPA), and other environmental laws such as the Endangered Species Act, Clean Water Act, and Migratory Bird Treaty Act. All state highway system projects must comply with CEQA, and

Caltrans complies with NEPA for eligible projects to ensure federal funds are eligible for most state highway system projects.

Caltrans attempts to streamline its environmental review process by concurrently conducting environmental studies in compliance with various laws and producing a joint CEQA/NEPA environmental document. Caltrans reports it is unclear whether CEQA or NEPA are the primary drivers to completing the joint environmental document. Although CEQA has more substantive requirements to identify each significant environmental impact from a project, NEPA requires all other applicable federal environmental laws be analyzed in its final document.

Numerous other project delivery activities occur concurrently with the environmental review process, which Caltrans refers to as the project approval and environmental document phase. Some of the activities are shown in Figure 2 on the previous page. All of the activities in the project approval and environmental document phase must be completed before a project enters final design and ultimately is ready to list for construction bids.

CALTRANS DATA

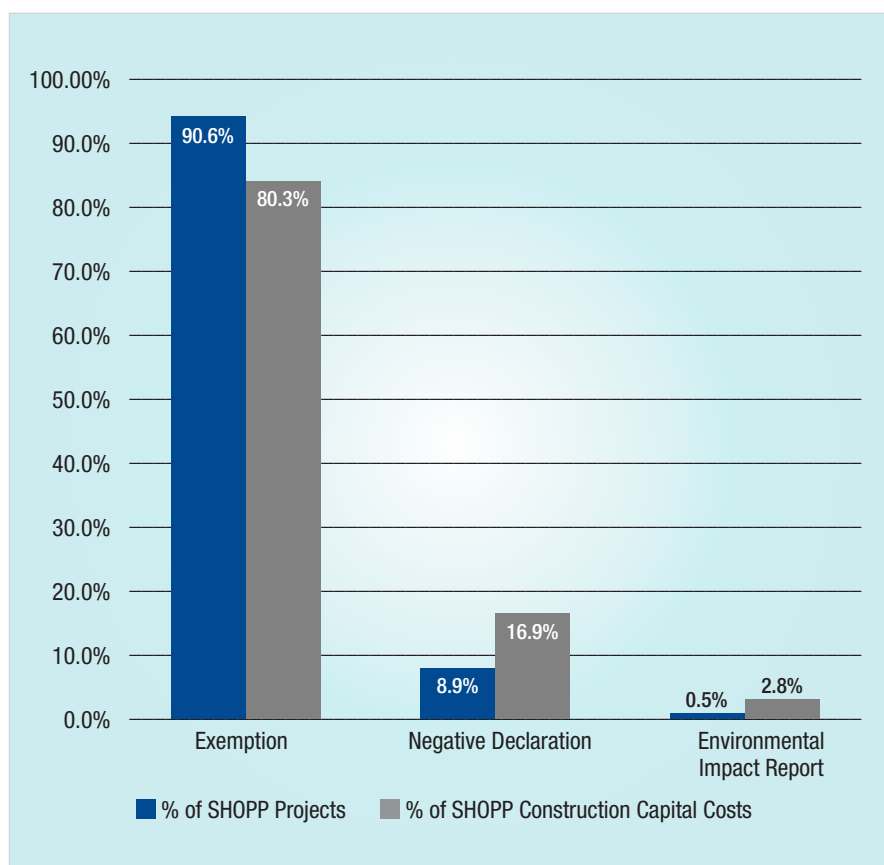
Caltrans provided environmental review process data for 751 SHOPP projects that completed construction in fiscal years (FY) 2014–15, 2015–16, and 2016–17. The data provides information on costs, duration, and the resulting CEQA documents from producing the joint

CEQA/NEPA environmental document. Below is a summary of each of these data sets.

CEQA Documents

Caltrans' environmental review results in a CEQA document that is either a categorical/statutory exemption, a negative/mitigated negative declaration, or an EIR. Figure 3 below shows a breakdown of the resulting CEQA documents from the data Caltrans provided on completed SHOPP projects from FY 2014–15 to FY 2016–17. As the figure shows, more than 90 percent of the projects were either categorically or statutorily exempt from CEQA, while only 0.5 percent of the projects resulted in an EIR. The results are similar to those found in a survey conducted by the Senate Environmental Quality Committee using data from FY 2011–12 to FY 2015–16.¹

FIGURE 3
Caltrans' CEQA Documents



¹ California Senate Environmental Quality Committee, California Environmental Quality Act Survey, http://senv.senate.ca.gov/sites/senv.senate.ca.gov/files/ceqa_survey_full_report_-_final_12-5-17.pdf.

Additionally, Figure 3 shows that projects exempt from CEQA represent just over 80 percent of the total SHOPP construction capital costs in the data set, while projects that result in negative declarations represent almost 17 percent, and EIRs represent 2.8 percent. This result suggests smaller and less costly projects are typically exempt from CEQA, while projects that require a negative declaration or EIR typically are larger in size and construction costs.

Costs

From FY 2014–15 to FY 2016–17, 0.5 percent of total SHOPP project expenditures were spent to produce the joint CEQA/NEPA environmental document, approve the project for final design, and begin the permitting process with natural resources agencies. This means that for every dollar spent on a SHOPP project, less than a half-cent was spent on developing the CEQA document. Caltrans' attempts to streamline its environmental review process and therefore the costs of staff time are not specific to CEQA but rather to any activities necessary to complete the joint environmental document.

Duration

Complete duration data on timelines to process the joint CEQA/NEPA environmental document were available for only 320 of the 751 projects in the data set, due to many projects being initiated before a new project management system was in place at Caltrans. Of the 320 projects analyzed for this request, the average time to complete the project approval and environmental document phase (which includes the joint CEQA/NEPA environmental document) was 15 months. This timeline is driven not only by activities to comply with CEQA and NEPA, but also by the other activities performed during the project approval and environmental document phase. Caltrans reports the other activities performed during the project approval and environmental document phase typically drive the project schedule more than CEQA and NEPA.



FINDINGS

As discussed previously, the data provided by Caltrans presents some challenges in isolating CEQA impacts. Despite this, the data reveals the following:

- > **CEQA Documents.** The vast majority (90.6 percent) of transportation projects were exempt from CEQA, which also represents a large majority (80.3 percent) of construction capital costs. Only a small fraction (0.5 percent) of projects required an EIR, although these projects tend to be larger and therefore represent a somewhat larger proportion of construction capital costs (2.8 percent).
- > **Costs.** Only a small fraction (less than 0.5 percent) of total project costs can be attributed to developing the CEQA document. This result likely is due to the vast majority of projects being exempt from CEQA and therefore requiring a minimal amount of staff time for processing. Although Caltrans states it is unclear whether CEQA or NEPA are the primary cost drivers, it appears unlikely that CEQA results in significant costs to delivering state highway system transportation projects overall.
- > **Duration.** Data on duration is the most difficult in which to isolate CEQA impacts, and it would be incorrect to attribute the 15-month project

approval and environmental document phase duration to the environmental review process. This timeline includes numerous activities (some of which were shown in Figure 2) during the project approval and environmental document phase, and it should not be inferred that Caltrans requires 15 months just to complete the joint CEQA/NEPA document. While some engineering activities in the project approval and environmental document phase are based in part on environmental impact information, others occur concurrently and are not dependent on environmental studies. Considering again that the vast majority of projects are exempt from CEQA and the staff costs for developing the CEQA document are small, it appears likely that other, more time-consuming activities predominantly drive the timelines during the project approval and environmental document phase. Additionally, anecdotal evidence from discussions with Caltrans staff indicates that completing the joint CEQA/NEPA document does not typically cause project approval and environmental document phase delays.

CEQA Litigation

Although litigation data was not collected for this report, frivolous CEQA legal challenges present another area that could have negative impacts on delivering state highway system transportation projects. The Senate Environmental Quality Committee survey previously found that at most, 0.9 percent of all Caltrans' projects over a five-year period resulted in CEQA litigation.² Although a small number of individual transportation projects might be negatively impacted by frivolous CEQA litigation, such a small portion of projects legally challenged under CEQA makes it unlikely that frivolous litigation has a significant impact on delivering highway system transportation projects throughout the state on a whole.

CEQA Benefits

To comprehensively assess CEQA impacts on state highway system project delivery, any costs and delays must be weighed against the environmental benefits CEQA provides by avoiding potential damage. Quantifying these benefits is complicated but necessary when attempting to assess whether CEQA has an overall positive or negative impact on transportation projects. For example, if the benefits of reducing adverse air quality impacts from a state highway system transportation project were greater than the costs for Caltrans to conduct the environmental review, CEQA would be considered a net benefit to society.

CONCLUSION

Some transportation stakeholders have expressed concerns that CEQA and other environmental laws negatively affect project costs and timing delays. However, after considering the data and issues discussed above, this review suggests that CEQA did not have significant adverse effects on project delivery overall.

Despite this conclusion based on available data, if the Legislature is interested in further investigating the impacts CEQA has on state highway system transportation project delivery, it could consider



² California Senate Environmental Quality Committee, California Environmental Quality Act Survey, http://senv.senate.ca.gov/sites/senv.senate.ca.gov/files/ceqa_survey_full_report_-_final_12-5-17.pdf.

requiring Caltrans to collect data that specifically isolates CEQA impacts. For example, the Legislature could require Caltrans to report on the following:

- > Separate costs specifically related to developing the CEQA document, rather than in combination with producing the joint CEQA/NEPA document
- > Any delays during the project approval and environmental document phase specifically caused by CEQA. Project managers should report on the length of the delay, what specific project tasks were delayed due to CEQA, and any unique project characteristics
- > Known environmental impacts that have been avoided or mitigated specifically through the CEQA process



To avoid burdening Caltrans with potentially time-consuming data collection requirements, the Legislature could consider requiring this information to be reported on a random and statistically significant sample of projects.



Written by Paul Jacobs. 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**.