



## Board Report

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**PLANNING AND PROGRAMMING COMMITTEE  
JANUARY 18, 2023**

**SUBJECT: OFFICE OF INSPECTOR GENERAL CEQA STREAMLINING REPORT**

**ACTION: RECEIVE AND FILE**

**RECOMMENDATION**

RECEIVE AND FILE Office of the Inspector General California Environmental Quality Act Streamlining Report and Recommendations.

**ISSUE**

The California Environmental Quality Act (CEQA) and its federal counterpart, the National Environmental Policy Act (NEPA), require extensive environmental reviews and community outreach for significant capital transportation projects. These laws are often blamed for delays in bringing transit projects to fruition. Construction delays can result in increased costs for a project. Metro has embarked on an ambitious plan to build out its transit network in advance of the 2028 Olympics and beyond, including both mega projects and numerous smaller projects. Expediting the delivery of these projects in a sustainable, environmentally conscientious way is a priority, and Metro is looking at multiple methods for expediting the delivery of these projects. Some Metro Board Members have repeatedly expressed a desire for further review in this area.

One aspect of expedited delivery is through streamlined environmental review. Our review and report focuses on areas where we believe the process can be improved without reducing the integrity of the review.

**BACKGROUND**

Metro's Office of the Inspector General (OIG) completed substantial work in researching the effects of the California Environmental Quality Act (CEQA) on Metro's ability to plan and build projects and options to streamline the CEQA process. Impact Sciences has supplemented the OIG's work to prepare this report. A total of 31 people were interviewed, including experts outside of Metro, to gain a cross section of perspectives on CEQA concerns. Building on the previous work performed by the OIG, the report includes recommendations for streamlining the environmental process for capital transit projects at Metro.

## **DISCUSSION**

### **Findings**

In order to identify issues, the Impact Sciences team reviewed the interviews conducted by the OIG prior to 2021 and conducted additional interviews in late 2021 and early 2022. Issues identified by interviewees or observed through our research are captured in a table starting on page 18 of the Report. The table includes a general discussion of the issue and a summary of the recommendation. A discussion of recommendations, along with the suggested outline for implementation, is provided in the next section of the report starting on page 27. The identified issues include:

- A. The utility of using exemptions when public outreach is required and the process of getting a statutory exemption is sometimes politicized.
- B. Uncertainty in the CEQA process due to the threat of lawsuits.
- C. Lengthy timeframes for completion of CEQA/NEPA documents.
- D. The impact on a project schedule due to late Project changes due to internal and external needs.
- E. The need for clarity in the roles between the Planning and Environmental Compliance units.
- F. The time it takes to address Final EIR comments.
- G. General concerns about exemptions (i.e., exemptions cannot be used with eminent domain). Interviewees were unclear if a CEQA exemption could be used if NEPA is required.
- H. Difficulties in compliance with mitigations post-approval and avoiding lawsuits.
- I. Modifications due to station changes or consideration of other factors after an EIR is complete may require using another EIR.
- J. Required coordination with other government agencies, particularly the State Historic Preservation Officer (SHPO), may be complicated and cause project delays.
- K. Joint CEQA and NEPA documents are lengthy and time consuming but may reduce risk.
- L. Land acquisition doesn't occur until after the CEQA document is approved.
- M. Perceptions that NEPA compliance is lengthy and challenging affect process strategies.
- N. Whether NEPA delegation for transit projects is advisable and possible.
- O. How finances might dictate decisions that affect operational effectiveness.
- P. The cost for public meetings to achieve CEQA compliance and public support.
- Q. Unions impact on CEQA EIRs.
- R. Whether judges in Los Angeles are well versed in CEQA law and its practical impacts on projects.
- S. CEQA lawsuits related to infill housing threaten to slow project completion.

### **Recommendations**

A variety of strategies and programs were identified to implement a streamlined Metro environmental review process and address and mitigate aspects of many of the identified issues. The recommendations have been organized based on short-term (1-2 years), mid-term (3-5 years), and long-term (5+ years) actions Metro could take.

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A. Short-Term Actions - Some short-term actions Metro might consider to improve the CEQA process include:

1. Create a CEQA/NEPA Advisory Team within Metro to advise the agency and all departments on key aspects of CEQA/NEPA compliance and to promote efficiency and good communication/eliminate communication silos.
2. Use in-house technical experts in key areas such as biological resources, cultural resources, and tribal cultural resources with a focus on building relationships with agencies outside of Metro. A NEPA liaison position could also be created to guide NEPA compliance at the agency.
3. Develop technical resources on-call contracts specific to biological and cultural resources as an alternative or in addition to an in-house position to speed consultant access. Metro could benefit from developing these resource areas separate from project contracts. Emphasis should be placed on utilizing small, medium, and disadvantaged businesses for equity advancement.
4. Maximize the use of cross functional teams by encouraging more frequent team meetings among Planning, Environmental Compliance, Real Estate Development, Procurement, Operations, Legal, and Program Management during the project development phase.
5. Take advantage of judicial streamlining options available to the agency under SB 44 and SB 922.
6. Scope CEQA and NEPA documents to ensure the right level of environmental review.
7. Prioritize technical studies to refine the scope of CEQA and NEPA documents.
8. Delineate project options from CEQA alternatives for a tiered approach to reduce the number of alternatives considered within an EIR or NEPA EIS/EA, if applicable.
9. Conduct project related outreach to community-based organizations and the public outside the CEQA process to expand information and maximize public knowledge and support of options.
10. Explore new technology for cataloging comments on EIRs and for sharing environmental documents with the public.
11. Improve staff communication to the Board around cost and schedule implications of Board actions and options.
12. Delegate some CEQA approvals to the Chief Executive Officer.

B. Mid-Term Actions - Some mid-term actions Metro might consider to improve the CEQA process include:

13. Develop an Exemptions Program / Toolkit to guide the agency's approach to exemptions.
14. Create a CEQA Implementation Guide for Metro projects to guide the agency's approach to creating, analyzing, and presenting CEQA documents.
15. Consider adopting Agency specific CEQA thresholds to refine the scope of CEQA documents.
16. Create standard performance-based mitigation measures and/or project design features that can be incorporated into standard design criteria for projects as appropriate.
17. Prepare a comprehensive regional Program EIR to evaluate the buildout of Metro's proposed transit system and allow tiering of individual projects based on shorter schedules.

C. Long-Term Actions - Long-term actions Metro could consider to improve the CEQA process include:

18. Pursue a wider range of exemptions for transit projects to advance climate goals.
19. Consider CEQA document parameters similar to those developed under SB 375 that would

further streamline environmental reviews and provide a more focused legal standard of review.

### **FINANCIAL IMPACT**

There are no specific, direct anticipated financial impacts from the information provided in this report to the agency. While some recommendations would affect the budget by potentially adding staff, the anticipated savings from faster environmental review and mitigating costly construction delays or litigation would make the end result cost neutral in terms of financial impact.

### **EQUITY PLATFORM**

In the OIG's opinion, there are no anticipated equity impacts identified as a result of this informational report. However, some recommendations do address equity concerns directly where warranted.

Recommendation number 3 specifically emphasizes utilizing small, medium, and disadvantaged businesses for equity advancement to develop technical resources for on-call contracts specific to biological and cultural resources as an alternative or in addition to an in-house position. This is consistent with Metro's overall policy with respect to Small Business Enterprises and Disadvantaged Business Enterprises. Use of the recommendations may improve information distribution, and feedback gathering from equity focused communities.

The report also notes under recommendation 9 that while exemptions should be used where appropriate, Metro should still conduct outreach on the project to gain community input and address equity concerns before the Notice of Exemption is filed.

As noted in the report, the use of a program EIR, which is recommendation 17, can provide the advantage of expediting projects for equity focused communities.

### **IMPLEMENTATION OF STRATEGIC PLAN GOALS**

The recommendations that the Office of Inspector General has put forward support Metro's Strategic Plan Goal #5: Provide responsive, accountable, and trustworthy governance within the Metro organization and CEO goals to exercise fiscal discipline to ensure financial stability. The OIG mission includes reviewing expenditures for fraud, waste, and abuse in Metro program, operations, and resources. Our goal is to provide rational, trustworthy information to the Board and support the efforts of Metro management to constantly improve and refine its efforts for the benefit of the public.

### **NEXT STEPS**

Our preliminary review with management regarding the OIG's report and recommendations was generally positive. Management will review and respond to recommendations and implement them as appropriate.

**ATTACHMENTS**

Attachment A - OIG / Impact Sciences CEQA Streamlining Report and Recommendations

Attachment B - Management Comments

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Karen Gorman  
Inspector General



# **CEQA STREAMLINING REPORT AND RECOMMENDATIONS**

**Los Angeles County  
Metropolitan Transportation Authority  
Office of the Inspector General**

**November 2022**

Los Angeles County  
Metropolitan Transportation Authority  
California Environmental Quality Act  
Streamlining Report and Recommendations

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**November 2022**

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# EXECUTIVE SUMMARY

This section highlights short-term, mid-term, and long-term actions to help streamline Metro's environmental review process.

# EXECUTIVE SUMMARY

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Metro's Office of the Inspector General (OIG) has completed substantial work in researching the effects of the California Environmental Quality Act (CEQA) on Metro's ability to plan and build projects, and options to streamline the CEQA process. Impact Sciences has supplemented the OIGs work to prepare this report. A total of 31 people were interviewed, including experts outside of Metro, to gain a cross section of perspectives on CEQA concerns. Building on the previous work performed by the OIG, this report includes recommendations for streamlining the environmental process for transit projects.

A variety of strategies and programs may be implemented to help streamline Metro's environmental review process. The recommendations have been organized based on short-term (1-2 years), mid-term (3-5 years), and long-term (5+ years) actions.

## **A. Short-Term Actions**

1. Create a CEQA/NEPA (National Environmental Policy Act) Advisory Team within Metro to advise the agency and all departments on key aspects of CEQA/NEPA compliance and to promote efficiency and good communication.
2. Use in-house technical experts in key areas such as biological resources, cultural resources, and tribal cultural resources with a focus on building relationships with agencies outside of Metro. A NEPA liaison position should also be created to oversee NEPA compliance at the agency.
3. Develop technical resources on-call contracts specific to biological and cultural resources as an alternative or in addition to an in-house position. Metro could benefit from developing these resource areas separate from project contracts. Emphasis should be placed on utilizing small, medium, and disadvantaged businesses for equity advancement.
4. Maximize the use of cross functional teams by encouraging more frequent team meetings among Planning, Environmental Compliance, Real Estate Development, Operations, Legal and Program Management during the project development phase.
5. Take advantage of judicial streamlining options available to the agency under SB 44 and SB 922.
6. Scope CEQA and NEPA documents to ensure the right level of environmental review.
7. Prioritize technical studies to refine the scope of CEQA and NEPA documents.

8. Delineate project options from CEQA alternatives to reduce the number of alternatives considered within an EIR or NEPA EIS/EA, if applicable.
9. Conduct project related outreach to community-based organizations and the public outside the CEQA process.
10. Explore new technology for cataloging comments on EIRs and for sharing environmental documents with the public.
11. Improve staff to Board communication around cost and schedule implications of Board actions.
12. Delegate some CEQA approvals to the Chief Executive Officer.

## **B. Mid-Term Actions**

13. Develop an Exemptions Program / Toolkit to guide the agency's approach to exemptions.
14. Create a CEQA Implementation Guide for Metro projects to guide the agency's approach to CEQA documents.
15. Consider adopting Agency specific CEQA thresholds to refine the scope of CEQA documents.
16. Create standard performance-based mitigation measures and/or project design features that can be incorporated into projects as appropriate.
17. Prepare a Program EIR to evaluate the buildout of Metro's proposed transit system and allow tiering of future projects.

## **C. Long-Term Actions**

18. Pursue a wider range of exemptions for transit projects to advance climate goals. Consider new CEQA documents similar to those developed under SB 375 that would further streamline environmental reviews and provide a greater legal standard of review.

Each of these actions could shorten the CEQA process incrementally by weeks or months and taken together could reduce the process by a significant period for any particular project. These improvements could also increase confidence in Metro projects which is a factor in funding.



# I. INTRODUCTION

The following includes an introductory discussion, background information regarding CEQA, and relevant case studies.

# I. INTRODUCTION

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## A. INTRODUCTION

Metro has embarked on an ambitious plan to build out its transit network in advance of the 2028 Olympics. In February 2019, the Metro Board approved a motion that prioritized funding for four ‘pillar’ fixed guideway projects: Eastside Transit Corridor Extension Phase 2 (Eastside), Green Line Extension to Torrance, Sepulveda Transit Corridor, and West Santa Ana Branch (WSAB) Transit Corridor. In addition to these pillar projects, Metro has numerous other projects under consideration which it hopes to have constructed by or near 2028, including first/last mile improvements and a bus rapid transit (BRT) network. The agency is looking at multiple methods for expediting delivery of these projects. One aspect of expedited delivery is through streamlined environmental review.

Metro’s Office of the Inspector General (OIG) has completed substantial work in researching the effects of California Environmental Quality Act (CEQA) on Metro’s ability to plan and build projects, and options to streamline the CEQA process. Impact Sciences has supplemented the OIG’s work to prepare this report. A total of 31 people were interviewed, including experts outside of Metro, in an effort to gain a cross section of perspectives on CEQA concerns. Building on the previous work performed by the OIG, this report includes recommendations for streamlining the environmental process for transit projects.

The report is comprised of the following sections:

- **Regulatory Context:** This section includes background on CEQA and the National Environmental Policy Act (NEPA), as well as case studies and the current regulatory context.
- **Identified Issues:** A matrix was created summarizing the broad themes of issues that were heard during the interviews conducted by OIG. A framing of the issue is presented along with an overview of recommendations for improvements.
- **Recommendations:** This section builds on the issues identified to provide detailed recommendations for improving and streamlining the environmental review process.
- **Summary of Findings:** This section is a summary of the recommendations for streamlining Metro’s environmental review process.

## B. BACKGROUND

### National Environmental Policy Act

The National Environmental Policy Act (NEPA), enacted on January 1, 1970, was the first major environmental law in the United States. It established a national policy for the environment and provided for the establishment of the Council on Environmental Quality (CEQ). NEPA requires

federal agencies to assess the environmental effects of proposed major federal actions prior to making decisions. NEPA ensures agencies consider the significant environmental consequences of their proposed actions and inform the public about their decision making.

Section 101 of NEPA sets forth a national policy "to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans." 42 U.S.C. 4331(a). Section 102 of NEPA establishes procedural requirements, applying that national policy to proposals for major federal actions significantly affecting the quality of the human environment by requiring federal agencies to prepare a detailed statement on: (1) the environmental impact of the proposed action; (2) any adverse effects that cannot be avoided; (3) alternatives to the proposed action; (4) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; and (5) any irreversible and irretrievable commitments of resources that would be involved in the proposed action. 42 U.S.C. 4332(2)(C).

This report primarily addresses the delivery of major capital projects as they relate to both CEQA and NEPA requirements. NEPA applies to all Metro projects that involve a federal agency action including funding, assisting, conducting or approving projects and programs (while NEPA implementation varies among federal agencies and within the US Department of Transportation, this report assumes Federal Transportation Administration (FTA) as the lead federal agency). Even relatively minor actions may require federal permits, and the process for obtaining the permits can have negative impacts if not considered early in the project development plan.

While FTA serves as the NEPA federal lead with approval authority for Metro projects (in most cases), it is typically Metro (with assistance from consultants) that prepares the NEPA documentation as a project sponsor, however the federal agency is still responsible for compliance. Compliance is conducted through preparation of a Categorical Exclusion (CE), Environmental Assessment (EA), or if a significant environmental effect is anticipated, an Environmental Impact Statement (EIS). Project sponsors, such as Metro may perform the technical studies, conduct outreach, and prepare documentation, but FTA, or other relevant federal agency, maintains responsibility for compliance with NEPA and other relevant environmental laws.

Caltrans serves as the de facto federal lead for NEPA compliance for highway projects as a result of obtaining NEPA Assignment. Caltrans has performed federal responsibilities for environmental decisions and approvals under NEPA for highway projects in California that are funded by the Federal Highway Administration (FHWA). These responsibilities have been assigned to Caltrans by FHWA pursuant to Memoranda of Understanding (MOU) signed by FHWA. These MOUs allow Caltrans to approve CEs, EAs, and EISs. Caltrans monitors its performance of federal NEPA responsibilities and reports to the FHWA to ensure consistency with the practices that were audited

by the FHWA. Caltrans reports to FHWA annually the results of its monitoring reviews. Caltrans environmental documents and files are reviewed to ensure they document federal content and procedural requirements. Caltrans has saved significant time in reviewing and approving its NEPA documents since undertaking NEPA Assignment. A median time savings of 12 months has been achieved in approving draft EAs; 15 months for final EAs (FONSIs); 25 months for DEISs; and 124 months for FEISs.<sup>1</sup> Similarly, the California High Speed Rail Authority has obtained NEPA assignment status from the Federal Railroad Administration (FRA).

## California Environmental Quality Act

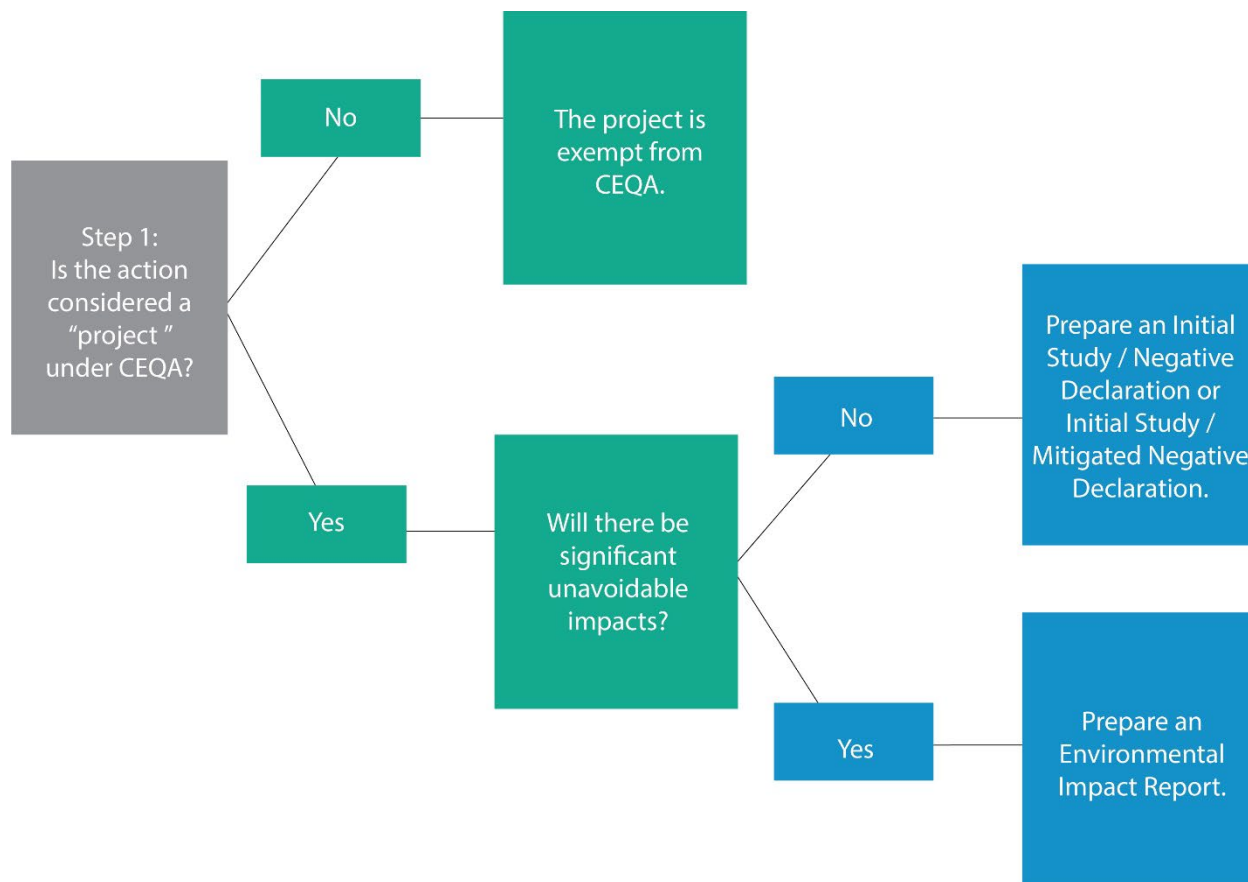
CEQA was enacted in 1970 to protect the environment and provide for public input into projects. The intent of CEQA is not to stop development, but to make sure development and projects do not harm the environment or that negative/harmful impacts are mitigated. Under CEQA, “environment” is defined as the physical conditions that exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, or objects of historic or aesthetic significance. It should be noted that even where negative impacts to the environment cannot be mitigated, CEQA still allows a project to move forward if there are “overriding concerns” such as the benefit to the public and community which outweigh the harm to the environment. CEQA has been amended several times since 1970. The *CEQA Guidelines* Section 15002 relates to the intent of CEQA and the *CEQA Statute and Guidelines* guide implementation of CEQA.

CEQA applies to Metro projects that may have a direct or foreseeable indirect impact on the environment. Compliance with CEQA is usually undertaken in a three-step process. In the first step, the lead agency determines if the action being considered is a “project” under CEQA.<sup>2</sup> If the action is deemed to be a project, the lead agency then determines if the project is exempt from CEQA. If the project is not exempt from CEQA, the lead agency determines whether the project is likely to result in a significant impact on the environment that cannot be mitigated to a less than significant level (often by completing an Initial Study). If the answer to that question is yes, the lead agency must prepare an Environmental Impact Report (EIR). If it is no, they may prepare an Initial Study / Negative Declaration (IS/ND) or Initial Study / Mitigated Negative Declaration (IS/MND).

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<sup>1</sup> Caltrans. *NEPA Assignment Fact Sheet*. Available online at: <https://dot.ca.gov/-/media/dot-media/programs/environmental-analysis/documents/env/nepa-factsheet-q60-a11y.pdf>, accessed August 23, 2022..pdf

<sup>2</sup> Metro is typically the Lead Agency for Metro projects undergoing CEQA review, meaning the Metro Board of Directors will take action on the project and approve or certify the environmental document



Metro works with consultants and other agencies to prepare the environmental documents. Depending on the project, Metro will prepare an Exemption, ND/MND, or EIR, (collectively referred to as the CEQA document). The CEQA document identifies the environmental impacts and, where appropriate, mitigation measures to reduce the impact. The public is involved in the process and is given notice of the availability of the CEQA document. This notice is used to inform the public of the project and seek comments from agencies and the public through various public outreach opportunities (i.e., public hearings, submittal of written comments, electronic forms, etc.). As the lead agency for transit projects, the Metro Board reviews and approves the CEQA documents. Caltrans is the CEQA lead agency for highway projects.

In general, CEQA has more stringent requirements than NEPA. Under CEQA, if the decision-making agency proceeds with a project that has unavoidable significant impacts, the decision-making agency must prepare a Statement of Overriding Considerations documenting how the benefits of the action being taken outweigh the negative environmental impacts. Additionally, CEQA requires the preparation of a Mitigation Monitoring and Reporting Program (MMRP) to ensure that mitigation measures are enforced. Under NEPA, there is no requirement for an agency to justify an action that has a negative impact on the environment, nor are mitigation measures required or monitored. While many of Metro’s major projects require both CEQA and NEPA compliance, either simultaneously or with CEQA compliance followed by NEPA, the use of Measure M and R funds put



Metro in a unique position to fund projects solely with local funding, thus eliminating the need to undergo NEPA compliance. Given the sometimes duplicative requirements of both CEQA and NEPA, this process can be lengthy and onerous. Other state agencies must also contend with overlapping state environmental and NEPA reviews. Some agencies have developed procedures to facilitate a more streamlined review such as aligning state requirements with NEPA and preparing a NEPA EIS that includes state requirements to avoid duplication. The following section examines approaches used by two other agencies to conduct federal and state environmental reviews.

## C. CASE STUDIES

### **Washington State Environmental Policy Act, Washington State Department of Transportation**

The Washington State Department of Transportation (WSDOT) is responsible for the planning, development, and construction of state transportation projects, and is the lead agency for transportation projects subject to Washington State Environmental Policy Act (SEPA) and NEPA. In 2016, WSDOT issued a report detailing the issues, laws, and regulations that relate to streamlining review processes for SEPA and NEPA reviews. The report concluded that in general, WSDOT has been successful in streamlining environmental reviews.

Large complex transportation projects can use a combined NEPA/SEPA process to ensure there is little duplication. WSDOT can choose to use NEPA requirements in lieu of SEPA review. In general, SEPA requirements are less strict than NEPA requirements and state exemptions have been aligned to ensure that projects that are categorically exempt from NEPA can be exempt from SEPA without supplemental state requirements.

In practice, SEPA allows agencies to reduce duplication by using existing environmental documents. When a detailed EIS is prepared pursuant to NEPA, that EIS can be used in lieu of a separate SEPA EIS. WSDOT prepares NEPA and SEPA documents for state transportation proposals and issues joint NEPA/SEPA EISs.

Furthermore, WSDOT has an agreement with FHWA and can act as FHWA's signature authority when they are the lead agency for the NEPA review of certain highway project actions.

Finally, when future funding is undetermined, or projects are initiated without federal funding, but could receive funding or require an unexpected federal approval later in the design process that would trigger a NEPA review, WSDOT typically follows NEPA guidelines from the start and thereby avoid delays during the project planning development phase, as NEPA requirements are generally stricter than SEPA requirements.

## New York State Environmental Quality Review Act

Compared with NEPA, New York's State Environmental Quality Review (SEQR) impact thresholds are similar or more stringent. The threshold SEQR is "*may* cause an adverse environmental impact." Additionally, even if a project is subject to review under NEPA, the project must still satisfy the requirements of SEQR.

The State has made efforts to streamline environmental reviews. State and federal environmental review can be coordinated to avoid duplication. A coordinated SEQR/NEPA review can include joint procedures on environmental assessments, scoping and EISs, public hearings, and public notices. An EIS prepared for NEPA can be used as a basis for SEQR findings. However, several topics must be included in the NEPA EIS to satisfy SEQR. Lead agencies can request that they be added to the NEPA EIS at the beginning of the process, or a SEQR lead agency may prepare a supplemental EIS.

Additionally, like NEPA, SEQR classifies actions as Type I, Type II, or Unlisted to categorize projects that may be eligible for an environmental review exemption, similar to Categorical Exemptions. Type I generally includes large projects that may have significant adverse impacts and are not exempt. Type II includes smaller projects that are exempt from SEQR. Unlisted activities include all actions that are not Type I or II. In 2018, the State increased the number of projects that can be classified as Type II, thereby reducing the burdens of environmental review for small projects.

## Lessons Learned

While CEQA differs from other state environmental reviews, Metro can implement similar processes and procedures to better coordinate CEQA and NEPA reviews and avoid duplication. This report discusses several approaches that could be used to streamline environmental review when both CEQA and NEPA are required. Unlike Washington State law, CEQA is stricter than NEPA (i.e., a lower impact threshold for most categories), therefore, using the state process to inform the NEPA process (like the New York approach) is one way to streamline review. This would need to be undertaken through coordination with the FTA or other relevant federal agency. An MOU or agreement with the FTA, like Washington's approach, could outline how integration should occur. Metro is currently considering NEPA assignment which would create a similar structure to Washington (i.e., having Metro as the lead for federal projects). Further, more clear alignment between CEQA and NEPA, like New York's approach, could be achieved through modifications to CEQA at the state level.



## II. REGULATORY CONTEXT

This section includes background on CEQA and the National Environmental Policy Act, as well as case studies and the current regulatory context.

## II. REGULATORY CONTEXT

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### A. NATIONAL

#### **Executive Order 13807**

On August 15, 2017, President Donald J. Trump signed Executive Order (EO) 13807: Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects. EO 13807 addresses the need for a coordinated, predictable, and transparent Federal environmental review. To accomplish this, EO 13807 establishes several tools, including the One Federal Decision (OFD), where a designated lead Federal agency works with other relevant cooperating Federal agencies to complete a single record of decision. Additionally, each major infrastructure project will have a permitting timetable for environmental reviews and authorizations, and agencies will be held accountable to those timetables through performance measures and financial penalties. The aim is to provide greater predictability to project sponsors. Finally, the order establishes an average two-year goal across all agencies to process environmental reviews and authorizations for major infrastructure projects.

#### **Executive Order 13990**

On January 20, 2021, President Joe Biden issued Executive Order 13990, "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis," which declared the Administration's policy to listen to the science; to improve public health and protect the environment; to ensure access to clean air and water; to reduce greenhouse gas emissions; to bolster resilience to the impacts of climate change; and to prioritize both environmental justice and the creation of the well-paying union jobs necessary to deliver on these goals. EO 13990 directs federal agencies to immediately review and take action to address the federal regulations and other actions during the last four years that conflict with the national objectives and to immediately commence work to confront the climate crisis. Council on Environmental Quality (CEQ) was directed to review CEQ's 2020 regulations implementing changes to NEPA procedures and identify necessary changes or actions to meet the objectives of EO 13990.

#### **Executive Order 14008**

On January 27, 2021, President Biden signed Executive Order 14008, Tackling the Climate Crisis at Home and Abroad. EO 14008 sets forth the Biden administration's policies to address climate change through both foreign and domestic policies and demonstrates the administration's intent to make addressing climate change a top priority for nearly every department and agency of the federal government. EO 14008 follows and expands on EO 13990. In line with these EO directives, CEQ is reviewing the 2020 NEPA regulations to identify necessary revisions to comply with the law; meet the environmental, climate change, and environmental justice objectives of EOs 13990 and

14008; ensure full and fair public involvement in the NEPA process; provide regulatory certainty to stakeholders; and promote better decision making consistent with NEPA's statutory requirements.

### **NEPA Implementing Regulations**

On October 7, 2021, CEQ proposed a two-phase rulemaking process to modify certain regulations for implementing NEPA to generally restore regulatory provisions that were in place prior to the 2020 Final Rule<sup>3</sup> and reflect Biden administration's Executive Orders 13990 and 14008.

Phase 1 has been finalized and includes provisions related to "purpose and need." The statement of purpose and need in an environmental impact analysis shapes the range of alternatives to be considered by an agency (and thereby limits or expands the scope of the federal environmental review). Agencies will now be able to modify the purpose and need of their action without being constrained by the applicant's goals. The ruling clarifies that CEQ regulations are a floor, not a ceiling, and agencies can develop their own approaches. The ruling also reinstates the 1978 definitions of "direct effects," "indirect effects," and "cumulative effects." The CEQ proposes to eliminate language that directed agencies not to consider effects as significant when the effects are "remote in time, geographically remote, or the product of a lengthy causal chain," which will allow agencies to consider climate change and environmental justice impacts if they are "reasonably foreseeable."

Phase 2 will include broader changes to the NEPA regulations to align with the Biden administration's environmental, climate change, and environmental justice objectives.

### **Infrastructure Investment and Jobs Act (IIJA)**

On November 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act (IIJA) also referred to as the Bipartisan Infrastructure Law (BIL). The Act amends United States Code to provide permanent NEPA streamlining provisions to the federal permitting and environmental review process for "major projects" as defined under NEPA, (One Federal Decision). The OFD streamlining provisions effectively decrease the federal permitting timeline for infrastructure projects by requiring: 1) federal agencies to coordinate immediately and create a joint project schedule; 2) one agency to lead the NEPA process; 3) the lead agency to invite other agencies to participate in the environmental review within 21 calendar days instead of the prior time limit of 45 calendar days; 4) agencies to work at the same time and not wait in turn; 5) the NEPA review process to be completed within two years from the publication of the notice of intent, pursuant to a schedule developed by the lead agency; 6) the generation of a readable review document with a

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<sup>3</sup> The 2020 Final Rule comprehensively updates, modernizes, and clarifies the regulations to facilitate more efficient, effective, and timely NEPA reviews by Federal agencies in connection with proposals for agency action.

200-page limit for the alternatives analysis portion of an EIS; and 7) the production of a timely “record of decision” within 90 days of the agencies’ issuance of the final EIS.

### **Expedited Project Delivery Pilot Program – Section 3005(b)**

The Expedited Project Delivery (EPD) Pilot Program, authorized by Section 3005(b) of the Fixing America’s Surface Transportation Act (FAST Act), is aimed at expediting delivery of new fixed guideway capital projects, small starts projects, or core capacity improvement projects. These projects must utilize public-private partnerships, be operated and maintained by employees of an existing public transportation provider and have a federal share not exceeding 25 percent of the project cost. Eligible projects are new fixed guideway capital projects, small start projects, or core capacity improvement projects that have not entered into a full funding grant agreement with FTA. The law defines these types of eligible projects for the EPD Pilot Program in a manner similar to FTA’s Capital Investment Grants (CIG) program.

On March 28, 2022, U.S. Transportation Secretary Pete Buttigieg announced the FTA is recommending \$4.45 billion in Fiscal Year (FY) 2023 to advance new rail and bus rapid transit projects for first-time funding and to continue funding for projects with existing construction grants through the Capital Investment Grants (CIG) Program and EPD Pilot Program. The announcement included the selection of two initial projects under the EPD Pilot Program, including the recommendation of \$250,000,000 for Metro’s West San Fernando Valley Transit Corridor Phase 1 Project.

## **B. STATE**

### **Senate Bill 375**

In 2008, the California Legislature adopted SB 375, which (1) relaxes CEQA requirements for some housing projects that meet goals for reducing greenhouse gas (GHG) emissions and (2) requires the regional governing bodies in each of the State’s major metropolitan areas to adopt, as part of their regional transportation plan, sustainable community strategies that will meet the region’s target for reducing GHG emissions. SB 375 creates incentives for implementing the sustainable community strategies by allocating federal transportation funds only to projects that are consistent with the emissions reductions.

Local governments are then to devise strategies for housing development, road-building and other land uses to shorten travel distances, reduce vehicular travel time, and meet the new targets. If regions develop these integrated land use, housing, and transportation plans, residential projects

that conform to the sustainable community strategy (and therefore contribute to GHG reduction) can have a more streamlined environmental review process.<sup>4</sup>

SB 375 strongly links the co-location of transit and housing as a means for meeting the State's aggressive climate goals. SB 375 allows streamlined CEQA review of certain types of projects including full exemptions when projects are located near an existing or planned transit station. The streamlined CEQA documents also benefit from the higher legal standard of review (i.e., substantial evidence standard). In practice, because SB 375 allows for streamlining of projects near an existing or planned transit station, housing is being constructed before the transit. As discussed later in this report, using similar exemptions to construct transit (which is lagging housing) is one method of streamlining environmental review.

### **Senate Bill 288<sup>5</sup>**

In 2020, Governor Gavin Newsom signed Senate Bill 288 to amend CEQA to streamline the environmental review of sustainable transportation alternatives and related infrastructure. Specifically, Senate Bill (SB) 288 exempts the following projects from CEQA review as a categorical exemption: (i) specific transportation-related projects, including bus rapid transit projects, light rail service projects, construction or maintenance of charging or refueling stations for zero-emission buses; (ii) projects that improve customer information and wayfinding for transit riders, bicyclists, or pedestrians; (iii) city or county projects designed to minimize parking requirements; and (iv) similar transportation oriented projects. The bill sunsets in 2023 but was extended with the passage of SB 922.

### **Senate Bill 44**

On October 7, 2021, Governor Newsom signed Senate Bill 44, which established specified procedures for the environmental review for an environmental leadership transit project within the County of Los Angeles in preparation for the 2028 Summer Olympic and Paralympic Games and the increased need for public transit. The bill defines an environmental leadership project as a fixed guideway project that:

- Operates at zero emissions.
- For projects more than two miles in length, the project reduces emissions by no less than 400,000 metric tons of greenhouse gases directly in the corridor, without using offsets.

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<sup>4</sup> California Legislative Information, *SB-375 Transportation planning: travel demand models: sustainable communities strategy: environmental review*. Available online at: [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=200720080SB375](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=200720080SB375), accessed May 6, 2022.

<sup>5</sup> California Legislative Information, Public Resources Code – PRC Division 13. Environmental Quality [21000 - 21189.70.10]. Available online at: [https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=21080.25&lawCode=PRC](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=21080.25&lawCode=PRC), accessed May 6, 2022.

- If the project is no more than two miles in length, the project reduces emissions by no less than 50,000 metric tons of greenhouse gases directly in the corridor, without using offsets.
- The project reduces no less than 30,000,000 vehicle miles traveled in the corridor.
- For projects in Los Angeles County, the project needs to be consistent with the Southern California Association of Governments' Regional Transportation Plan/ Sustainable Communities Strategy.
- The project applicant demonstrates sustainable infrastructure through LEED or Envision.

The bill requires the Judicial Council to adopt procedures requiring review or approval of the EIR for the first seven environmental leadership transit projects, and the resolution of any appeals within 365 days.<sup>6</sup> The EIR for any project wishing to take advantage of SB 44 must include specific language from the bill in the appendix clearly stating the intent to use SB 44. This bill sunsets on January 1, 2025. To date, no Metro projects have used this process.

### Senate Bill 922

Senate Bill 922, Jumpstarting Sustainable Transportation, modifies the provisions and eliminates the sunset in SB 288 (Wiener, 2020) to ensure California can create an equitable and sustainable transportation system without unnecessary delays. SB 922 extends statutory exemptions to CEQA for transportation projects that significantly advance the state's climate, public safety and public health goals, reducing the associated cost and time burdens.<sup>7</sup>

SB 922 also modifies the types of projects eligible for streamlining. Specifically, projects that apply must now meet one of the following requirements:

- Make streets safer for walking and biking;
- Speed up bus service on streets;
- Make it possible to run bus service on highways;
- Expand carpooling options;
- Build new or modernize old light rail stations;
- Support parking policies that reduce drive-alone trips & congestion; or
- Improve wayfinding for people using transit, biking, or walking.

Additionally, to ensure that the exemption is not misapplied to projects with detrimental impacts, these projects must also:

- Be located in an existing public right of way;

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<sup>6</sup> California Legislative Information, *SB-44 California Environmental Quality Act: streamlined judicial review: environmental leadership transit projects*. Available online at: [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220SB44](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB44), accessed May 6, 2022.

<sup>7</sup> Governor's Office of Planning and Research. *CEQA Review of Sustainable Transportation Projects Technical Advisory*. 2021. Available online at: [https://www.opr.ca.gov/docs/20210709-Sustainable\\_Transportation\\_TA.pdf](https://www.opr.ca.gov/docs/20210709-Sustainable_Transportation_TA.pdf), accessed May 4, 2022.



- Not add new auto capacity;
- Not demolish affordable housing; and
- Use a skilled and trained workforce or have a project labor agreement in place.

SB 288 has been used by many agencies across the state to streamline projects. Transit agencies, including the San Francisco Municipal Transportation Agency, the Los Angeles Department of Transportation, AC Transit, and CalTrain, have invoked this streamlining. Other transit agencies that have made use of SB 288 include: Yuba-Sutter Transit, Tahoe Transportation District, Napa Valley Transportation Authority, Santa Rosa CityBus, Fairfield and Suisun Transit, Monterey-Salinas Transit District, Culver City CityBus, Long Beach Transit, and Riverside Transit Authority. Streamlined projects include protected pedestrian walkways and bike lanes, bus rapid transit projects, electric vehicle charging for buses, and more.

If implemented by Metro, SB 922 could help speed up approvals for its bus rapid transit and active transportation programs. Specifically, Metro has identified the following as the top five candidates eligible for Measure M Countywide BRT program funds, including: Atlantic Blvd (East Los Angeles Gold Line terminus to Downtown Long Beach), Broadway (Little Tokyo Gold Line Station to Imperial Highway), Cesar Chavez/Sunset (Atlantic Blvd via Vermont/Los Feliz/Central to Broadway), La Cienega (Santa Monica Blvd via Obama/Jefferson to Slauson), and Venice Blvd (Pacific Avenue via Flower Street to 7th Street). SB 922 could allow for exemptions under CEQA for these projects.

Further (as described below) SB 44 creates a statutory exemption rather than a new categorical exemption. This is important because categorical exemptions still require supporting documentation to ensure the project meets the requirements of the exemption while statutory exemptions do not.

### **CEQA Exemptions**

Exemptions under CEQA can help agencies save time and money in processing qualifying projects, including both public projects undertaken by the agency itself and private development projects. However, the improper application of an exemption to a project deprives decision makers and the public of information about project impacts. It also exposes the lead agency to delays in project implementation if, as a result of a successful legal challenge, the agency is ordered to rescind its approvals and re-start the environmental review process for the project.

### ***Types of Exemptions Relevant to Transportation Projects***

There are three main types of CEQA exemptions:

**Statutory Exemptions:** Statutory exemptions are projects specifically excluded from further CEQA consideration as defined by the State Legislature (PRC § 21080 et seq). A statutory exemption

applies to any given project that falls under its definition, regardless of the project's potential impacts to the environment.

The *CEQA Guidelines* include a statutory exemption for certain types of transportation projects under PRC § 21080(b)(10), (11), (12) General Statutory Exemptions.<sup>8</sup> CEQA does not apply to:

- A project for the institution or increase of passenger or commuter services on rail or highway rights-of-way already in use, including modernization of existing stations and parking facilities, such as upgrading the lighting, appearance, technology, and accessibility to increase ridership experience. For purposes of this paragraph, "highway" shall have the same meaning as defined in Section 360 of the Vehicle Code.
- A project for the institution or increase of passenger or commuter service on high-occupancy vehicle lanes already in use, including the modernization of existing stations and parking facilities.
- Facility extensions not to exceed four miles in length which are required for the transfer of passengers from or to exclusive public mass transit guideway or busway public transit services.

**Categorical Exemptions:** Categorical exemptions are made up of classes of projects that generally are considered not to have significant impacts on the environment. Categorical exemptions are identified by the State Resources Agency and are defined in the *CEQA Guidelines* (14 CCR Section 15300-15331). Unlike statutory exemptions, categorical exemptions have exceptions. Therefore, Metro must first determine if the project is subject to one of the exceptions to the exemption.

*CEQA Guidelines* Sections 15301 to 15333 provide a list of exemptions to CEQA (known as classes). The Secretary of the California Resources Agency has determined that the projects in these classes do not have significant effect on the environment, and therefore are categorically exempt from CEQA. However, there are exceptions to the exemptions, outlined in *CEQA Guidelines* Section 15300.2.

First, Classes 3 (new construction of small structures), 4 (minor alterations to the land), 5 (minor alterations of the land in limited uses), 6 (information collections), and 11 (accessory structures) are qualified by consideration of where the project is to be located. A project that would ordinarily be insignificant in its impact on the environment may, in a particularly sensitive or hazardous area, be significant.

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<sup>8</sup> California Legislative Information, Public Resources Code – PRC Division 13. Environmental Quality [21000 - 21189.70.10]. Available online at: [https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=PRC&sectionNum=21080](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=PRC&sectionNum=21080), accessed May 6, 2022.

Second, all classes of exemption are inapplicable when the cumulative impact of successive projects of the same type in the same place over time is significant -- for example, annual additions to an existing building under Class 1.

Third, a categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

**CEQA Guidelines § 15301. Existing Facilities (“Class 1”)**

Class 1 is noted here as it is the most likely to be used for Metro projects. Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use. Existing facilities include existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities<sup>9</sup> and therefore covers projects such as:

- a. Road grading for the purpose of public safety
- b. Addition of bicycle facilities, including but not limited to:
  - i. bicycle parking
  - ii. bicycle-share facilities
  - iii. bicycle lanes
- c. Transit improvements such as bus lanes
- d. Pedestrian crossings
- e. Street trees
- f. Other similar alterations that do not create additional automobile lanes

**Note:** The Class 1 Categorical Exemption, like all categorical exemptions, is limited by the exceptions contained in *CEQA Guidelines* § 15300.2.

**Common Sense Exemptions:** Even if an action or project does not fall within any statutory or categorical exemption, if it can still be seen with certainty that there is no possibility that the activity may have a significant impact on the environment, the common sense exemption (formerly the “general rule”) applies. According to the *State CEQA Guidelines*, “Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA” [*State CEQA Guidelines* Section 15061(b)(3)]. A lead

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<sup>9</sup> The types of ‘existing facilities’ listed are not intended to be all-inclusive of the types of projects which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion.

agency's determination that the common sense exemption applies must be supported with evidence.<sup>10</sup>

### Agency Specific CEQA Thresholds of Significance

Lead agencies have discretion to formulate their own thresholds of significance for what constitutes a significant impact in CEQA. Lead Agencies can set thresholds on a project-by-project basis, or they can adopt thresholds to be consistently applied to all projects.<sup>11</sup> While many agencies have adopted specific thresholds for vehicle miles traveled (VMT)—as required by Office of Planning and Research (OPR)—agencies are under no obligation to use Appendix G thresholds for projects. As an example, the County of Ventura includes several additional thresholds beyond what is included in the CEQA Appendix G Guidelines, such as whether a project will interfere with existing bus transit facilities, or cause demand for additional bus transit.<sup>12</sup> Metro currently uses Appendix G thresholds (sometimes modified) to analyze project impacts.

Thresholds established for general use by a lead agency must be adopted by ordinance, resolution, rule, or regulation; be subjected to public review; and be supported by substantial evidence (*State CEQA Guidelines* § 15064.7(b)). Thresholds used only for a specific project are not required to be adopted by ordinance or other formal means. However, “[w]hen using a threshold, the lead agency should briefly explain how compliance with the threshold means that the project’s impacts are less than significant” (*State CEQA Guidelines* § 15064(b)(2)). Further, where appropriate, thresholds should be dynamic and flexible to account for application in different settings (rural vs. urban) and site-specific conditions. Before adopting thresholds, agencies should review relevant case law.

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<sup>10</sup> CEQA Portal Topic Paper, *CEQA Exemptions*. February 2020  
<https://ceqaportal.org/tp/CEQA%20Exemptions%20Paper%202020%20Update.pdf>

<sup>11</sup> California Association of Environmental Professionals. *CEQA Portal Topic Paper: Thresholds of Significance*. Available online at: [https://ceqaportal.org/tp/CEQA%20Portal%20Topic%20Paper\\_Thresholds%20of%20Significance\\_2020%20Update.pdf](https://ceqaportal.org/tp/CEQA%20Portal%20Topic%20Paper_Thresholds%20of%20Significance_2020%20Update.pdf), accessed May 4, 2022.

<sup>12</sup> Ventura County. *Initial Study Assessment Guidelines*. Available online at: <https://s29422.pcdn.co/wp-content/uploads/2020/06/VMT-Draft-for-Public-Review-Clean-Version.pdf>, accessed May 4, 2022.



### III. IDENTIFIED ISSUES

This section includes a matrix summarizing the broad themes of issues that were heard during the interviews conducted by OIG. A framing of the issue is presented along with an overview of recommendations for improvements.

### III. IDENTIFIED ISSUES

The Impact Sciences team reviewed the interviews conducted by the OIG prior to 2021 and conducted additional interviews in late 2021 and early 2022 to supplement earlier work. Each identified issue, as stated by interviewees or observed through our research, is first stated in the table below, followed by a general discussion of the issue and a summary of the recommendation. Full recommendations, along with the outline for implementation, are provided in the next section.

| Identified Issues   | Discussion and Recommendations   |
|---|--|
| <b>Primary Issues</b>   |  |
| <p><b>A.</b> Interviewees questioned the utility of exemptions for the following reasons:</p> <ul style="list-style-type: none"> <li>• Public outreach is required</li> <li>• Concern the Metro Board or public would think Metro was not following the correct process</li> <li>• The process of getting a statutory exemption is political</li> </ul> | <p>Exemptions are intended to save time and cost related to CEQA compliance for certain activities and projects, including those that the California Legislature or the California Secretary of Natural Resources determined would not have a significant impact on the environment. When a project fits within one of the specified categorical or statutory exemptions, the lead agency need not prepare an Initial Study or any other CEQA document.</p> <p>When a lead agency determines that a project is exempt from CEQA (CEQA Guidelines 15061), a Notice of Exemption (NOE) may be prepared and filed by a lead agency after it has decided to carry out or approve a project. The NOE allows public input but shortens the overall timeframe of the CEQA document. Metro should still conduct outreach on the project to gain community input and address equity concerns before the NOE is filed.</p> <p>The Board Members and representatives interviewed widely supported exemptions and encouraged Metro to use them more frequently (in combination with robust public outreach).</p> <p>Statutory exemptions (CEQA Guidelines 15260) are certain projects the legislature has deemed to be exempt from CEQA whether or not they have the potential to have an impact on the environment. SB 922 is one example of a widely supported statutory exemption that can be used by Metro. Several other categorical exemptions are available and could be used. It should be noted that projects associated with the 1980 Summer Olympics received a statutory exemption under CEQA. See CEQA Guidelines 15272.</p> <p>Note, in our research we were not provided with a list of projects Metro is considering for exemptions.</p> <p><b>Recommendation</b></p> <p>Metro should develop an Exemptions Program/Toolkit (see IV.B) that details how and when public participation occurs with exemptions. Any equity concerns with reducing opportunities for public input should also be addressed. The Toolkit could provide benefits to both Metro staff, consultants, elected officials, project partners and the general public to better understand project delivery requirements that impact schedule and cost by providing a clear process for using exemptions.</p> |

| Identified Issues  | Discussion and Recommendations  |
|--|---|
|  | <p>Having guidelines for when and how to prepare exemptions will increase their use across the agency. See IV.B for discussion of developing an Exemptions Toolkit as well as IV.A for using public outreach when preparing an exemption.</p> <p>Lastly, the success of SB 922 shows there is support at the legislature for CEQA streamlining. Metro should pursue CEQA streamlining tools, and not only exemptions. Streamlined documents like those prepared under SB 375 for mixed use projects can also speed up the CEQA process and provide more robust legal coverage.</p>  |
| <p><b>B.</b> Uncertainty in the CEQA lawsuit process makes CEQA compliance frustrating</p> | <p>CEQA-related uncertainty can come in the form of legal challenges, mitigation costs and unanticipated finds (e.g., buried cultural resources, endangered species) among others. Although CEQA cases are expedited by the courts, the timeline for when a case will be heard can be up to a year. Multiple appeals also cause delays.</p> <p><b>Recommendation</b></p> <p>Robust community outreach, and a carefully maintained Administrative Record (See IV.A) can help reduce uncertainty in the legal process. A well prepared CEQA document is the best defense. Metro should create a CEQA Implementation Guide (IV.B) for internal use by staff and consultants that provides guidance on how to properly prepare the Administrative Record. The Exemptions Toolkit, Agency Specific CEQA Thresholds and a Program EIR (See IV.B) can also help reduce uncertainty by providing clear processes and more legal cover for controversial projects.</p>   |
| <p><b>C.</b> Lengthy timeframe for CEQA/NEPA documents</p>                                 | <p>The timeframe for an EIR can be 12-18 months and for an EIS can be double. Careful scoping of the environmental document can reduce the timeframe significantly.</p> <p><b>Recommendation</b></p> <p>Carefully weigh the need for and benefits of a preparing a CEQA document first versus a joint CEQA/NEPA document. Factors to consider include project goals, risks and uncertainties (e.g., project priority and complexity, schedule, funding needs/sources, project alignment and stations certainty, construction phasing likelihood, elected official involvement potential, public controversy). It is noted that recent regulatory changes (e.g., One Federal Decision) minimize the EIS schedule to 24 months and add page limits which may reduce schedule and cost.</p> <p>For most projects, Metro should focus on preparing the CEQA document and related technical studies first. Within this report we refer to this as the ‘CEQA First’ approach. CEQA First is particularly important when considering if an EIS is needed. By preparing the technical studies and CEQA document first, substantial time savings can be realized if it is determined an EA under NEPA can be prepared instead of an EIS.</p> <p>Other time saving approaches for CEQA include use of exemptions where appropriate (See IV.B), conducting public outreach outside of the required CEQA public review periods (IV.A), limiting extension of public review periods, conducting Tribal/State Historic Preservation Officer coordination upfront, and considering MOUs with Caltrans. All of these approaches are discussed throughout this report.</p> |

| Identified Issues   | Discussion and Recommendations  |
|---|---|
| <p><b>D.</b> Project changes because of internal and external needs end up delaying the CEQA process.</p> | <p>Two recent examples include WSAB and Eastside Transit Corridor. The WSAB EIR was before the Metro Board when a request was made to study an additional station as part of the EIR.<sup>13</sup> The addition of a new station has the potential to require recirculation of the EIR resulting in delays to the project. Board members must balance the desires of their constituents with the additional time and cost impacts delay will cause on a project.</p> <p>For Eastside, the project was proceeding on a CEQA only route (using Measure M funds). Funding sources that could not have been foreseen (Covid funds) became available for the project. As a result, NEPA needed to be followed. In this case, subsequent Board reports indicated the need to comply with NEPA did not result in a substantial delay as many of the existing reports could be used for NEPA. Metro staff acted nimbly to identify an opportunity immediately.</p> <p><b>Recommendation</b></p> <p>Close coordination with the Board, and detailed information regarding potential schedule and cost implementations, are critical. Board members indicated they do not always get sufficient information about schedule and cost implications of their actions. (See IV.A)</p> <p>Careful scoping and phasing of documents (i.e., CEQA First) should also be considered before a joint document is undertaken. The minimal delay to Eastside as a result of required federal funding supports focusing on the CEQA document rather than assuming a joint CEQA/NEPA document is preferred.<sup>14</sup></p> <p>Creating a schedule that accounts for the likelihood of Board involvement and time to address Board requests (including changes to the project) will better manage expectations.</p> <p>Recommend a risk register and/or a more robust discussion of project risks in Board reports.</p> |
| <p><b>E.</b> Lack of clarity in the roles between the Planning and Environmental Compliance</p>           | <p>The general understanding of Metro’s organization is the Planning Department leads large projects (i.e., WSAB, Eastside, etc.) through the CEQA and NEPA process and then hands off the construction and operation environmental work, such as mitigation monitoring and add-on environmental (supplemental EIRs, Addenda, etc.) to the Environmental Compliance group. Planning indicated cross-functional project teams include representatives from Environmental Compliance; however, the level of involvement across departments is not standardized.</p> <p><b>Recommendation</b></p> <p>Close coordination with Planning and the Environmental Compliance group during project scoping and environmental review may lead to substantial time and cost savings. Review of project features that could avoid/minimize impacts and mitigation measures in advance of the EIR or use of agreed upon standard project features that could avoid/minimize impacts and mitigation measures will ease compliance issues post adoption. (See IV.A)</p>   |

<sup>13</sup> CEQA requires an agency consider the ‘whole of the action’ therefore, separating portions of a project to analyze them separately can result in a piecemealing claim by opponents.

<sup>14</sup> However, if the CEQA document is certified prior to the start of NEPA, there would likely be negative implications to the schedule.



| Identified Issues   | Discussion and Recommendations   |
|---|--|
| <p><b>F.</b> Addressing Final EIR comments takes time.</p>  | <p>Due to the volume of EIR comments, logging comments and responding to them takes a considerable amount of time. Further, many of the letters are limited to few issues. A major concern for Final EIRs is the time required to log the comments and making sure all comments are addressed in a CEQA-compliant manner.</p> <p><b>Recommendation</b></p> <p>Metro should review its process for organizing EIR comments. Project and EIR comments should be separated and responded to by different project team members, and master or topical responses should be used to reduce the number of individual responses. Lastly, Metro should explore options for software that can quickly log and categorize comments. Consideration should also be given to new technology that can better convey project environmental documents to the public. Providing more reader friendly and accessible (i.e., mobile device compatible) documents can help the general public understand the documents and where/how input can best be provided.</p>  |
| <p><b>G.</b> Other General Concerns about Exemptions:<br/>Exemptions cannot be used with eminent domain.<br/>Interviewees were unclear if a CEQA exemption could be used if NEPA is required.</p> | <p>Metro frequently uses eminent domain on projects, in these cases exemptions may be of limited utility.</p> <p>In cases where both a Categorical Exclusion under NEPA and a Categorical Exemption under CEQA may apply, the agencies should coordinate to ensure that the consideration of potential effects is consistent with the review of extraordinary circumstances or exceptions. (CEQ and Governor’s Office of Planning and Research 2014).</p> <p>Both NEPA and CEQA provide for certain statutory exemptions. As acts of Congress and of the California Legislature, NEPA and CEQA are subject to exceptions also enacted by Congress or the Legislature. The exemptions can be complete, limited, or conditional depending on the statutory language in the exemption. Many CEQA statutory exemptions are contained within CEQA while others are found in other regulations. The NEPA statutory exemptions are contained in other regulations.</p> <p><b>Recommendation</b></p> <p>The Exemptions Toolkit should provide guidance on when exemptions can be used and detail the types of projects that would potentially qualify including situations where both CEQA and NEPA apply, Metro also should pursue other CEQA streamlining tools (IV.B) for when the use of an exemption is not suitable.</p> |
| <p><b>H.</b> Interviewees expressed a concern that noncompliance with mitigation post-approval leads to lawsuits.</p>   | <p><i>CEQA Guidelines</i> Section 15097 spells out the requirements for mitigation monitoring and reporting: A public agency may delegate reporting or monitoring responsibilities to another public agency or to a private entity which accepts the delegation; however, until mitigation measures have been completed the lead agency remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with the program.</p> <p><b>Recommendation</b></p> <p>In many cases, Metro is obligated to implement mitigation measures for its projects. Metro does not currently have one systemwide method for tracking mitigation measures and relies on various consultants across multiple departments and teams. Metro should consider improvements to</p>  |

| Identified Issues  | Discussion and Recommendations   |
|--|--|
|  | <p>tracking mitigation compliance to be sure all required mitigation is tracked and records can be easily accessed in the event of a legal challenge. Noncompliance concerns can be avoided by following best practices and having clear guidelines and record keeping regarding mitigation monitoring. Recommendations are also included in this report for standard mitigation measures which could help with tracking and compliance.</p>   |
| <p><b>I.</b> Because project alignments and stations are frequently modified as a result of technical studies and other factors, the only way to consider alternatives is by using an EIR.</p> | <p>A fundamental mandate of CEQA is that “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of the project” (PRC Sections 21002, 21081). Therefore, as part of the decision-making process for projects involving the preparation of an EIR, governmental agencies are required under CEQA to consider alternatives to proposed actions affecting the environment (PRC Section 21001(g)).</p> <p><b>Recommendation</b></p> <p>The complexity and linear nature of Metro projects lend themselves to multiple alignments and options. High interest in many projects by the public, Metro Board, local elected official decision-makers, and other stakeholders often results in project design changes during the environmental process resulting in project delays and higher project costs. (See IV.A)</p> <p><i>CEQA Guidelines</i> Section 15126.6 states an EIR need not evaluate every conceivable alternative. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation.</p> <p>Alternatives suggested by the public need to be considered, however, in many cases, the public is suggesting a project option or preferred alignment and not a CEQA alternative. This distinction should be maintained throughout the CEQA document. The approach to alternatives should be documented and clarified within the CEQA Implementation Guide. (IV.B)</p> |
| <p><b>J.</b> Required coordination with other government agencies, in particular the State Historic Preservation Officer (SHPO), causes project delays.</p>                                    | <p>Consultation with regulatory and resource agencies and other government entities including FTA, Tribes or the Office of Historic Preservation (OHP) is a critical early step in the environmental review process. Consultation with Tribes and OHP is required where the project has the potential to impact Tribal or historic resources. Early consultation and early preparation of technical studies for Tribal or OHP review can help speed the process. Early coordination is doubly important if the Metro project may include a federal agency because there are similar federal Tribal/SHPO consultation requirements under the National Historic Preservation Act that may need to be followed by the federal agency.</p> <p><b>Recommendation</b></p> <p>Metro should have documented procedures in programmatic agreements or MOUs for 1) dealing with Tribal and historic resources and 2) what to do in the event of an unexpected find.</p> <p>Metro should also consider an in-house position to initiate, manage and troubleshoot all Tribal and SHPO contact at all phases of projects including development, design, construction and maintenance. (See IV.A)</p>  |

| Identified Issues   | Discussion and Recommendations  |
|---|---|
| <p><b>K.</b> Interviewees expressed concern that joint documents are lengthy and time consuming</p> | <p>Many of Metro’s largest projects are scoped as EIR/EIS because both local (Measure M) and federal funding are used. Several interviewees commented that it is unclear when a joint document is necessary and appropriate.</p> <p><b>Recommendation</b></p> <p>In many cases, joint documents do not demonstrate any significant cost or time savings. While there may be some cost savings in preparing one document, so as to not duplicate work product, the timing of the studies and the requirements for CEQA and NEPA makes it difficult to realize actual time or cost savings. Proper scoping and phasing of documents (i.e., undergoing CEQA first and then determining the appropriate NEPA document) should be considered before a joint document is undertaken. Significant cost and schedule savings can be realized if the outcome of early consultation is that an EA is needed rather than an EIS. This approach should be included in the CEQA Implementation Guide. (IV.B)</p> |
| <p><b>L.</b> Land acquisition occurs after the CEQA document is approved</p>                        | <p>Once the environmental analysis is complete, the real estate group is tasked with acquiring the land for alignments, staging, etc. However, at this point there is little opportunity for changes to real estate needs. Input from the real estate team would be most useful during the planning phase. Factors including the potential expense of land acquisition, or presence of existing contamination and/or cultural resources on land being considered for acquisition are an important consideration for decisions about alternatives.</p> <p><b>Recommendation</b></p> <p>Creation of cross functional teams that include real estate can help to define alternatives that minimize impacts to cultural resources or contaminated sites, as well as identify less expensive property or other potential concerns early. (IV.A)</p>  |
| <p><b>M.</b> Perceptions that NEPA compliance is lengthy and challenging</p>                        | <p>The NEPA process is designed to allow the public and decision makers time to review and understand the environmental effects of a project. However, proper NEPA scoping and a ‘CEQA first’ strategy could help to reduce the effort necessary for NEPA documents and even could help reduce the level of review for NEPA documents (i.e., and EA versus and EIS).</p> <p><b>Recommendation</b></p> <p>Dedicated NEPA staff liaisons could also help speed the process by developing long term relationships with federal agencies and providing institutional knowledge on approach to Metro projects.</p>   |
| <p><b>N.</b> NEPA Delegation for Transit Projects</p>   | <p>Several interviewees expressed an interest in NEPA delegation or NEPA Assignment.<sup>15</sup> This item recently went to the Metro Board for consideration as a NEPA strategy. Caltrans currently has NEPA approval authority for highway projects. In general, NEPA delegation streamlines the federal environmental review and approval process by eliminating FHWA’s project-specific review and approval.</p>   |

<sup>15</sup> NEPA Delegation or NEPA Assignment is a process by which the State is delegated authority to assume federal responsibility for transportation projects.

| Identified Issues   | Discussion and Recommendations   |
|---|--|
|   | <p>This process is regularly applied to State highway projects under Caltrans but has not been implemented for major transit projects.</p> <p><b>Recommendation</b></p> <p>This item was included in the April 28, 2022, Board meeting, with the action that Metro staff will continue to explore this option. The report also indicates initial conversations with FTA on Eastside have indicated there may be time savings by conducting the CEQA document first, as the analysis completed or underway will inform the NEPA document (consistent with the approach suggested throughout this report).</p> <p>An alternative approach to NEPA assignment is to expand in-house staff capability with NEPA/CEQA mega-project management capabilities to serve as program manager who could provide technical expertise to Planning teams (and its consultants). Another approach would be to use a single consultant to serve solely in this capacity (i.e., NEPA coordination and oversight) rather than rely on individual project-dedicated consultant teams.</p>  |
| <p><b>O.</b> Finances dictate decisions</p>   | <p>The high cost of building Metro’s transportation network can result in certain projects, or aspects of projects, being constructed instead of others.</p> <p><b>Recommendation</b></p> <p>Reducing costs is essential to delivering Metro’s ambitious program. Consideration should be given to broad programs that can reduce costs on individual projects. Examples include preparation of a Program EIR to streamline future reviews which can help create future cost savings. (See IV.B) Such a document would necessitate periodic updating to remain useful but could still result in substantial time savings for future projects.</p>  |
| <p><b>P.</b> The cost for public meetings is substantial and CEQA requires public meetings.</p> | <p>CEQA requires a scoping meeting during the Notice of Preparation period and recommends a public meeting during the Draft EIR circulation period.<sup>16</sup> Metro goes beyond the requirements of CEQA by adding multiple public meetings. Many of these meetings are focused on the project and not the EIR. Public meetings can be costly when accounting for staff and consultant time, preparations, room accommodations, etc. During the pandemic, Metro used virtual meetings to reach the public. A combination of in person and virtual meetings can reduce overall costs. Given the precedence of Metro’s established robust engagement process it may not be desirable for Metro to reduce the overall number of public meetings. In addition, reducing the number of public meetings would generally not impact the CEQA schedule unless comment periods are extended.</p> <p><b>Recommendation</b></p> <p>Meetings and hearings on the project should be held outside (preferably before) the CEQA document public comment period. Community outreach to address topics such as alignments should be held outside the public comment period. Addressing these issues outside the formal CEQA process has several benefits 1). may reduce the number of comments received on the CEQA document 2) may refine the scope of the environmental analysis outside of the CEQA process</p> |

<sup>16</sup> While a public meeting is not required during the public comment period, it is recommended (CEQA Guidelines 15202 (a)(b))

| Identified Issues   | Discussion and Recommendations   |
|---|--|
|   | <p>creating a more refined project 3) may reduce overall community opposition. (See IV.A) Virtual meetings should continue as they provide an opportunity to reach different people and cost less than in person meetings.</p>   |
| <p><b>Other General CEQA Topics Not Relevant to Metro</b></p>   |  |
| <p><b>Q.</b> Unions use CEQA as a tool for labor agreements</p>   | <p>Labor unions including Laborers' International Union of North America (LiUNA) and Southwest Carpenter's Union have begun to challenge CEQA documents for development projects. In many cases, when the applicant enters into a Project Labor Agreement (PLA) with the union(s), the legal challenge is dropped.</p> <p><b>Recommendation</b></p> <p>Challenges to Metro projects typically come from community groups or property owners rather than labor unions. Metro typically uses project labor agreements and has requirements to use union labor on contracts. In addition, CEQA streamlining legislation frequently requires use of union labor on projects. Therefore, union labor would be required if taking advantage of CEQA streamlining in cases such as SB 44 or SB 922. No action necessary.</p>  |
| <p><b>R.</b> Some interviewees expressed a concern that judges for Los Angeles may not be well versed in CEQA</p> | <p>Judges regularly attend trainings by some of the top environmental attorneys in the state. However, even the best judges can appear to get it wrong sometimes.</p> <p><b>Recommendation</b></p> <p>Overall, this points to the importance of informed CEQA strategy from the outset and a solid Administrative Record to be sure all necessary information is reviewed and included in the case.</p>  |
| <p><b>S.</b> CEQA Lawsuits for infill housing slow projects (comment was specific to housing projects)</p>        | <p>Between 2013 and 2015, 0.71 percent of all CEQA reviewed projects were subject to litigation.<sup>17</sup> While this number is low, during this time 33 percent of the litigated CEQA reviews targeted housing projects. Of all the CEQA litigations targeting housing within the Southern California Association of Governments region, essentially all (99 percent) of the units proposed were in higher density existing communities targeted for transit-oriented development.<sup>18</sup> Several interviewees expressed a general sense that CEQA slows projects down, especially housing projects. In cases where CEQA is used as a 'tool' by NIMBY (i.e., not in my backyard) groups, historic preservationists, labor unions, or others, the perceived intent is often to stop the project or extract benefit, rather than improve the environmental effects of a project. NIMBYism is very much also an issue for transportation projects with representatives in neighborhoods fighting expansion of the transportation network (transit and highway) across Los Angeles County</p> <p><b>Recommendation</b></p> <p>No specific recommendation for Metro, as this comment does not directly relate to Metro's CEQA process. However, Metro should consider pursuing legislation that would streamline transit projects</p> |

<sup>17</sup> Senate Environmental Quality Committee. *California Environmental Quality Act (CEQA) Survey FY 2011/12 to FY 2015/16*. 2017.

<sup>18</sup> Holland & Knight. *In the Name of the Environment*. 2015. Available online at: <https://www.hklaw.com/files/Uploads/Documents/Alerts/Environment/InfillHousingCEQALawsuits.pdf>, accessed May 4, 2022.

| Identified Issues | Discussion and Recommendations   |
|-------------------|--|
|                   | like streamlining options for housing under SB 375. These streamlined documents offer a higher legal standard of review than an MND and are less cumbersome than an EIR. |



# IV. RECOMMENDATIONS

This section builds on the issues identified in the previous section to provide detailed recommendations for improving and streamlining Metro’s environmental review process.

## IV. RECOMMENDATIONS

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A variety of strategies and programs may be implemented to help streamline Metro's environmental review process. The recommendations have been organized based on short-term (1-2 years), mid-term (3-5 years), and long-term (5+ years) actions.

### **A. SHORT-TERM ACTIONS**

#### **Create a CEQA/NEPA Advisory Team within Metro**

This team should be separate from Planning and Environmental Compliance Departments. The group can advise all departments on proper CEQA/NEPA compliance, conduct trainings on the CEQA Implementation Guide (see recommendations below) and will be tasked with revising the Guide as necessary.

#### **Use In-House Technical Experts**

Metro largely relies on consultants for preparation of environmental documents and supporting studies. Use of consultants can result in a lack of consistency or knowledge as different consultants are used project to project.

In house technical experts in the field of biology, cultural resources, and tribal cultural resources would allow Metro's in-house team to develop relationships with other agencies (i.e., SHPO, California Department of Fish and Wildlife, Tribes) to build long lasting relationships. An additional in-house position to consider is a NEPA liaison (across all projects). The liaison could also be tasked with pursuing NEPA Assignment. The position does not need to be a full time position but could be added to an existing position description.

#### **Develop Technical Resources On-Call Contracts Specific to Biology and Cultural Resources**

Consultant teams often include their technical experts. While one team may have a strong cultural expertise, they may not have a strong biologist on the team. Planning currently has on-calls and/or bench contracts for environmental (general), transportation, planning, etc. and while many of these teams have biologists or cultural resources experts, having qualified teams of just those resources areas will allow Metro to retain highly qualified technical experts specific to the resource needed.<sup>19,20</sup>

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<sup>19</sup> This has the added benefit of allowing Metro to grow its small, disadvantaged and medium sized programs by engaging small businesses in projects early on. If the technical reports can be separated from the EIRs, small, medium and disadvantaged businesses can better compete on those contracts, creating more equitable contracting opportunities.

<sup>20</sup> Consider using on-call contracts rather than bench contracts. Once a team is selected for the on-call, additional work is solicited through task orders instead of the longer RFP process required through bench contracts.



### **Create Cross Functional Teams**

Development of cross functional teams that include representatives from planning, environmental compliance, and real estate among others can identify issues with mitigation measure implementation or real estate acquisition early.

### **Take Advantage of Judicial Streamlining Options**

Judicial streamlining can help address uncertainty regarding timeline. Recent legislation has limited the amount of time for judicial review for certain CEQA lawsuits. SB 7 (Atkins, 2021) provides judicial streamlining for certain CEQA lawsuits as does SB 44 (Allen, 2021). This idea originated in AB 900 (Buchanan, 2011) but has been iterated over the years through various pieces of legislation. The judicial streamlining program is active for certified Environmental Leadership Development Projects, or Environmental Leadership Transit Projects (ELTPs) under SB 44. The current certification program is specified by SB 44 (Allen, 2021) for transit projects, and is administered by OPR. SB 44 established specific procedures for the environmental review for an environmental leadership transit project within the County of Los Angeles.

Senate Bill (SB) 7 and SB 44 both revive and expand the previously enacted Environmental Leadership Development Project (ELDP) litigation process. These laws provide important litigation benefits for ELDP and ELTP projects, aiming to shorten the duration of CEQA lawsuits from more than three years to less than one year. (Public Resources Code Section 21178, *et seq.*) SB 44 requires the Judicial Council to adopt procedures requiring review or approval of the environmental impact report for the first seven environmental leadership transit projects.

Under SB 44, an ELTP must meet the following criteria: 1) operates at zero emissions; 2) For projects more than two miles in length, the project reduces emissions by no less than 400,000 metric tons of greenhouse gases directly in the corridor, without using offsets; 3) If the project is no more than two miles in length, the project reduces emissions by no less than 50,000 metric tons of greenhouse gases directly in the corridor, without using offsets; 4) The project reduces no less than 30,000,000 vehicle miles traveled in the corridor; 5) For projects in Los Angeles County, the project needs to be consistent with SCAG's RTP/SCS; and 6) The project applicant demonstrates sustainable infrastructure through LEED or Envision. The bill sunsets on January 1, 2025. ELTP was created in preparation for the 2028 Summer Olympic and Paralympic Games and the increased need for public transit

### **Litigation Benefits of ELDP and ELTP Designation**

While more elaborate review and litigation procedures apply to ELDP/ELTP projects, including requirements related to the administrative record, the CEQA litigation streamlining benefits include:

- Completion of the trial and appeal court proceedings within 270 days, “to the extent feasible,” based on California of Court Rules of Court, Title 3, Division 22, Chapter 2, as adopted by the Judicial Council. However, the 270-day process is not a mandatory maximum, and the few ELDP projects challenged in lawsuits prior to the expiration of the first ELDP program were in court for about a year rather than 270 days. However, this accelerated litigation process is substantially less than the three to four years often required to complete the normal CEQA superior and appellate court process.
- Key to this expedited litigation process is the concurrent preparation of the record of proceedings with the administrative process, and the option for the lead agency to elect to prepare the record rather than give CEQA petitioners the right to elect to do so.

### Carefully Scope CEQA and NEPA Documents

Phasing CEQA/NEPA will help to reduce the amount of work on the NEPA document (when a NEPA document is needed). CEQA studies may be used to refine the NEPA scope and, as a result, in some cases an EA (rather than an EIS) could be prepared under NEPA which would shorten the overall environmental timeline by more than one year. If an EIS is still required, there would still be time savings as: 1) initial consultation and scoping has occurred with Federal agencies and 2) the project has undergone refinements to narrow the scope of review under NEPA. Additional benefits may include the identification and inclusion of additional project elements (e.g., stations, alignments) in the CEQA process, thereby offsetting NEPA delays.

### Prioritize Technical Studies

Initiating technical studies early in the process will allow Metro to more appropriately scope documents. With changes to the *CEQA Guidelines* where level of service and parking are no longer impacts, most of the impacts identified in the environmental documents for light rail and bus rapid transit (BRT) are related to noise and historic resources. Technical studies prepared in advance of the CEQA document can identify what type of environmental document is necessary and could also be useful in identifying project feature refinements that could avoid or minimize adverse impacts. The recommendation for a Metro CEQA Implementation Guide will also help improve technical studies by creating appropriate thresholds for the agency.

### Delineate Project Options from CEQA Alternatives

The purpose of an alternative analysis is to look at ways to avoid or reduce the significant environmental impacts of a proposed project. Whereas an analysis of alternatives is not required in an Initial Study under CEQA, an alternatives analysis is required in EAs and EISs.

However, alternatives analyses in EAs are typically less rigorous than those contained in EISs. The complexity and linear nature of Metro projects lend themselves to multiple alignments and options. For CEQA, the key is differentiating between CEQA alternatives and project options.

Metro frequently includes multiple alignments and options within its EIRs. Many of these alignments and options do not meet the CEQA definition of alternatives in that they do not specifically target the reduction of potentially significant impacts pursuant to CEQA. In fact, many environmental issues most of concern for the public and the Board (i.e., parking and level of service) are no longer evaluated under CEQA. Therefore, alternatives focused on these topics are not necessary as they do not relate to CEQA impacts.

Further, Metro needs to balance consideration of alternatives suggested by the public or decision makers (this can include stations, alignments and even technology (i.e., light or heavy rail)) with the goal of writing environmental documents clearly and in plain language as is required by CEQA.

*CEQA Guidelines* Section 15126.6 states an EIR need not evaluate every possible conceivable alternative. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation.

While alternatives suggested by the public need to be considered, in many cases, the public is suggesting a project option or preferred alignment but not necessarily a CEQA alternative.

Metro should clearly identify alternatives in its environmental documents, including those considered and not carried forward for full analysis, and separate CEQA alternatives from public project options.

#### **Conduct Outreach to Community Based Organizations and the Public Outside the CEQA Process**

Metro's robust participation plan includes numerous public meetings during the EIR scoping period and during the draft EIR public review period. Public review times for EIRs are often expanded beyond 45 and 60 days for public comment. In reviewing a sample of the public comments received on Metro's most recent EIRs, many of the comments are on the project itself and not on the adequacy of the EIR. Comments frequently are centered on potential project alignments and neighborhood concerns. Instead of holding additional public meetings during the comment period or scoping period, these meetings could be held outside of the CEQA process as community meetings.

This report encourages clear separation between CEQA outreach and community outreach. An example of this is the Vermont Corridor BRT project where public outreach is being conducted before the CEQA process is started. Conducting broad outreach and community engagement outside of the CEQA process will also help to reduce the volume of comments on the EIR. This also helps to reduce equity concerns that might arise due to lack of public outreach on Metro's part when using an exemption. The outreach plan for exemptions should be included in the Exemption Toolkit.

### **Improved Technology for EIRs**

Cataloguing comments on CEQA and NEPA documents is time consuming and costly. Metro should explore software and new methods for categorizing EIR comments. Similarly, the agency should explore new technology for sharing environmental documents with the public. Examples include more reader-friendly naming conventions and mobile device accessible documents. By helping the public better understand the project through more reader-friendly and accessible documents, comments on the documents may be reduced.

### **Improved Board Communication**

Metro management regularly meets with the Metro Board and their staff to brief them on Metro business. For pillar projects, schedule and cost implications of project changes should be regularly communicated. Potential delays and project implications of design or other changes should be made available through a risk register or similar document that can be shared during regular meetings. Metro has previously used tools to demonstrate the tradeoff between different budget options as part of the public review of the agency's budget and could explore similar opportunities with staff to Board communication.

### **Delegate Some CEQA Approvals to the Chief Executive Officer**

Currently, Metro engages the Board for selection of a locally preferred alternative (LPA) and release of large environmental documents. The CEO has limited discretion to approve projects. Delegation of some CEQA approvals to the Chief Executive Officer would speed the process for projects that do not require a public hearing.

## **B. MID-TERM ACTIONS**

### **Develop a CEQA Exemptions Program / Toolkit**

Proper use of exemptions can be ensured through a toolkit or handbook. The toolkit would list all possible exemptions (statutory and categorical) and the types of projects that could be considered within each. It would also provide the preferred format for the exemption which would include consideration of the exceptions to the exemption, as well as appropriate filing times and methods. The template for the exemption, including the Notice of Exemption, and staff report, should be maintained as part of the CEQA Implementation Guide. A process for public outreach for exemptions should also be included as part of the toolkit. A checklist that lays out when an exemption is appropriate and the exceptions to the exemptions should be included. The toolkit should be available for all departments to use and encouraged where appropriate.

### **Create a CEQA Implementation Guide for Metro Projects**

Metro should prepare its own CEQA Implementation Guide (CEQA Guide). The CEQA Guide should set 'screening criteria' specific to Metro. In addition, the CEQA Guide should be used by consultants to create the framework for the environmental document – including organization of an EIR, components of a project description, chapter layout, approach to alternatives, thresholds, approach to analysis, how to file documents, responsible and trustee agencies, when to conduct public outreach and hearings, etc. The Guide would be internal to Metro and, to be nimble, need not be adopted by the Metro Board. By regularly maintaining an internal Guide, changes could be made as the *CEQA Guidelines* are updated. The Guide could be maintained on a shared drive (or the cloud) where it could be updated as the Public Resources Code is amended.

### **Consider Agency Specific Thresholds**

CEQA Appendix G questions are widely used by Metro in EIRs; these Appendix G thresholds are more suited to development projects than linear transportation projects. Metro should consider developing transportation specific thresholds that will more accurately reflect the types of projects undertaken by the agency. Metro Board would likely need to adopt the thresholds to be able to use them within all Metro documents.

### **Create Performance Based Mitigation Measures/ Project Design Features**

Performance based mitigation measures set a metric (performance standard) that must be achieved for the mitigation to be implemented. Development of performance-based mitigation measures and incorporation of these measures into projects agency wide can streamline environmental review. If adopted, the performance standards can become part of the project's design thereby avoiding or minimizing project impacts from the outset and reducing the need for mitigation and, in some cases, reducing the level of review necessary for the CEQA document (i.e., a proposed mitigated negative declaration could become an exemption). In combination with a Program EIR and its own CEQA thresholds, Metro could streamline environmental review where exemptions, focused EIRs, and other streamlined documents would be easier to prepare.

### **Prepare a Program EIR**

A program EIR is an EIR prepared on a series of actions that can be characterized as one large project, and are related either:

- Geographically,
- As logical parts in the chain of contemplated actions,
- In connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program, or

- As individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways.

The use of a program EIR can provide the following advantages:

- Provide an occasion for a more exhaustive consideration of effects and alternatives than would be practical in an EIR on an individual action,
- Ensure consideration of cumulative impacts that might be slighted in a case-by-case analysis,
- Create consistency and equity between individual projects,
- Better inform long term planning,
- Avoid duplicative reconsideration of basic policy considerations,
- Allow the lead agency to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts, and
- Allow reduction in paperwork.

A program EIR will be most helpful in dealing with subsequent activities if it deals with the effects of the program as specifically and comprehensively as possible. With a good and detailed analysis of the program, many subsequent activities could be found to be within the scope of the project described in the program EIR, and no further environmental documents would be required. In cases where the activity is outside the scope of the program EIR, an addendum or other supplemental document could be prepared.

Metro could consider a program EIR for parts of its network such as bus shelters, or other commonly occurring project components. A program EIR could also be prepared for certain geographies (i.e., Northeast Los Angeles). Once the program EIR is adopted, addenda and/or supplemental EIRs can be used to environmentally clear future projects.

## C. LONG-TERM ACTIONS

### **Pursue Wider Exemptions for Transit Projects to Advance Climate Goals**

The link between transit projects and the state's climate goals is well established. Much legislation is being pushed to streamline housing, however, without the infrastructure in place (i.e., transit) the climate benefits will not be realized. The legislature should also allow for streamlining of transit projects through preparation of documents similar to a Sustainable Communities Environmental Assessment (SCEA) or Sustainable Communities Project Exemption (SCPE) which provide a higher legal standard of review without the lengthy timeframe of an EIR. The legislature should also clarify the definition of 'infill' to include transportation projects.



# V. SUMMARY FINDINGS

A summary of the recommendations for streamlining Metro's environmental review process is presented in this section.

## V. SUMMARY OF FINDINGS

The following recommendations are based on the discussion above.

| Action  | Description  | Responsible Agency/Department  | Potential Cost/Time Savings | Level of Effort (High, Medium, Low)   |
|---|--|--|-----------------------------|---|
| <b>Short-Term Actions (1-2 years)</b>   |  |  |                             |   |
| Create a CEQA/NEPA Team.  | Create a CEQA/NEPA advisory team within Metro.   | Metro – Countywide Planning and Development  | \$/++                       | Medium, due to the need to hire new staff or expand existing staff assignments. |
| Use In-House Technical Experts.   | Develop/hire in-house technical experts to build relationships with resource agencies (i.e., SHPO, CDFW, and Tribes) and increase institutional knowledge.   | Metro – Countywide Planning and Development<br><br>Metro – Human Capital and Development | \$/+                        | Medium, due to the need to hire new staff or expand existing staff assignments. |
| Create Cross Functional Teams.  | For large projects, create cross functional teams that include representatives from other departments – including planning, environmental compliance, and real estate.   | Metro – Countywide Planning and Development  | \$\$\$/+++                  | Low.  |
| Develop Technical Resources On-Call Contracts Specific to Biology and Cultural Resources. | Create a qualified pool of consultants on technical topics including historic, tribal cultural resources and biological resources. This recommendation has the added benefit of potentially increasing small business participation.<br><br>Speed the procurement process by using on-call contracts rather than bench contracts. Once a team is selected for the on-call, additional work is solicited through task orders instead of the longer RFP process. | Metro – Countywide Planning and Development<br><br>Metro – Vendor/Contract Management    | \$/+                        | Medium, requires preparing scopes and contracts.                                |
| Take Advantage of Judicial Streamlining.  | Pursue Expedited Project Delivery under Section 3005(b) for federally funded projects.<br><br>Pursue ELDP status under SB 44 for large projects.   | Metro – Countywide Planning and Development<br><br>Metro – Vendor/Contract Management    | \$\$\$/+++                  | Low, requires minimal training.   |



V. Summary of Findings

| Action   | Description  | Responsible Agency/Department  | Potential Cost/Time Savings | Level of Effort (High, Medium, Low)  |
|--|--|--|-----------------------------|--|
| Carefully Scope CEQA/NEPA Documents.   | Use technical studies to refine the scope of CEQA and NEPA documents.  | Metro – Countywide Planning and Development  | \$\$/++                     | Low.   |
| Prioritize Technical Studies.  | Prepare technical studies for CEQA documents to narrow the scope of the document.  | Metro – Countywide Planning and Development  | \$\$/++                     | Low.   |
| Delineate Project Options from CEQA Alternatives.  | Limit CEQA discussion to CEQA alternatives.  | Metro – Countywide Planning and Development  | \$/+                        | Low.   |
| Conduct Outreach to Community Based Organizations and the Public Outside the CEQA Process. | Use the outreach process to narrow and/or identify preferred alignments to analyze within the environmental document.  | Metro – Countywide Planning and Development  | \$/+                        | Low.   |
| Use technology to speed the Final EIR process.   | Explore software and new methods for categorizing Final EIR comments.  | Metro – Countywide Planning and Development<br>Metro – Information and Technology Services | \$/++                       | Medium, requires research to find new technology and teams willing to implement. |
| Improved Board Communication.  | Brief the Metro Board on the potential delay and cost increases from project changes. This should be part of the report that goes to the Board as part of project updates. This could be in the form of a risk register or similar document. | Metro – Countywide Planning and Development<br>Metro -Board Appointed Officers             | \$\$/++                     | Low.   |
| Delegate Some CEQA Approvals to the Chief Executive Officer.                               | Delegate some environmental approvals to the Chief Executive Officer.  | Metro – Countywide Planning and Development<br>Metro – Office of the CEO                   | \$/+++                      | Low.   |
| <b>Mid-Term Actions (3-5 years)</b>  |  |  |                             |  |
| Develop an Exemptions Program/Toolkit.   | Create an Exemptions Toolkit that provides templates and resources for how to successfully use exemptions.   | Metro – Countywide Planning and Development  | \$/+++                      | High, requires expertise to prepare the Toolkit.                                 |

V. Summary of Findings

| Action   | Description   | Responsible Agency/Department   | Potential Cost/Time Savings | Level of Effort (High, Medium, Low)                       |
|--|---|---|-----------------------------|---|
| Create a CEQA Implementation Guide for Metro Projects.   | Develop a CEQA Implementation Guide for internal Agency use.  | Metro – Countywide Planning and Development   | \$/+++                      | High, requires expertise to prepare the Guide.            |
| Consider Agency Specific Thresholds.   | Consider adopting CEQA thresholds appropriate to transportation/transit projects.   | Metro – Countywide Planning and Development   | \$/++                       | High, requires expertise to prepare the thresholds.       |
| Create Performance Based Mitigation Measures/Project Design Features.  | Adopt standard measures that can be used as project design features. These design features can be incorporated into environmental documents and also will allow for more CEQA exemptions.   | Metro – Countywide Planning and Development   | \$/+                        | Low, Metro can use existing measures as a starting point. |
| Prepare a Program EIR.   | Prepare a Program EIR to environmentally clear components of Metro’s transportation network (i.e., bus shelters) or geographic areas (i.e., northeast Los Angeles).   | Metro – Countywide Planning and Development   | \$/+++                      | Medium, requires technical expertise.                     |
| <b>Long-Term Actions (5+ years)</b>  |   |   |                             |   |
| Pursue Wider Exemptions for Transit Projects to Advance Climate Goals.   | Push for legislation that clarifies transit as an infill project to allow for the use of streamlined environmental documents such as a SCEA or SCPE for transit projects. Transit projects need to catch up to the housing projects to ensure the region meets climate goals. | Metro – Countywide Planning and Development<br>Metro – Board of Appointed Officers<br>Metro – Office of the CEO<br>Metro – Government Relations | \$\$\$/+++                  | High, requires legislative action.                        |
| <b>Key</b>   |   |   |                             |   |
| \$ = low cost savings<br>\$\$ = medium cost savings<br>\$\$\$ = high cost savings<br>+ = low time savings<br>++ = medium time savings<br>+++ = high time savings |   |   |                             |   |



# VI. REFERENCES

A listing of information is provided to locate and retrieve resources that were used in the preparation of this report.

## VI. REFERENCES

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- California Association of Environmental Professionals. *CEQA Portal Topic Paper: Thresholds of Significance*. Available online at: [https://ceqaportal.org/tp/CEQA%20Portal%20Topic%20Paper\\_Thresholds%20of%20Significance\\_2020%20Update.pdf](https://ceqaportal.org/tp/CEQA%20Portal%20Topic%20Paper_Thresholds%20of%20Significance_2020%20Update.pdf), accessed May 4, 2022.
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# VII. REPORT PREPARERS

Agency and consultant contributors to this report are acknowledged herein.

## VII. REPORT PREPARERS

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The Office of the Inspector General directed this work effort. Impact Sciences prepared the final report with assistance from The Sohagi Law Group.

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The OIG's office and Impact Sciences interviewed a wide range of people between 2019 and 2022. The following persons were interviewed as part of the research phase:

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# IMPACT SCIENCES

# Management

# Comments

## **Comment 1**

**From:** Turner, Michael

**Sent:** Wednesday, December 7, 2022 2:36 PM

**To:** Bennett, Alan <BennettA@metro.net>; Gookin, Sharon <GookinS@metro.net>; De La Loza, James <DelalozaJ@metro.net>; Sosa, Ray <SosaRa@metro.net>; Mieger, David <MiegerD@metro.net>; Pennington, Bryan <PenningtonB@metro.net>; Vides, Jennifer <VidesJ@metro.net>; Rapose, Yvette <RAPOSEY@metro.net>; Eggers, Elena <EggersE@metro.net>; Safer, Charles <SaferC@metro.net>

**Cc:** Wiggins, Stephanie <WIGGINSS@metro.net>; Gorman, Karen <GORMANK@metro.net>

**Subject:** RE: LA Metro OIG CEQA Streamlining Recommendations Report

Good Afternoon Alan,

The slide referencing seeking expansion of CEQA exemptions is fine with GR. We will continue to work with all internal and external stakeholders to see how we can expand the current authorization. We won't have any comments on the rest of the presentation.

**Michael Turner**

LA Metro

Executive Officer

Government Relations

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**Metro provides excellence in service and support.**

## Comment 2

**From:** Sosa, Ray

**Sent:** Thursday, December 8, 2022 8:01 AM

**To:** Bennett, Alan <BennettA@metro.net>

**Cc:** Mieger, David <MiegerD@metro.net>; De La Loza, James <DelalozaJ@metro.net>

**Subject:** RE: LA Metro OIG CEQA Streamlining Recommendations Report

Alan,

David and Jim might have more comments but here are my comments.

- This is a great compilation of streamlining recommendations. I believe many are actually conducted but not formally documented. For instance, focusing on technical reports that can be completed quickly while waiting for data/info on longer lead technical reports. Please add a caveat to the recommendations that some of these streamlining efforts might be in practice but could be more formally tracked as to when and how it has been done. If it is in the document already, then great but I did not see this caveat.
- I also did not see a distinguishment between the larger project environmental projects vs. the smaller more operational project environmental documents. We have two different groups at Metro that lead environmental documentation. One does use a number of the right sized, streamlined approach to environmental documents projects related to our existing operations such as a new building at a maintenance yard, etc. The other, Planning, due to the size and complexity focus on the greater level of environmental documentation.
- I would modify the technology recommendation to be a little stronger. Metro should take the time to review best practices across the country and across industries (not just transportation) where agencies have used new platforms to disseminate technical information to the public, agencies and stakeholders, to improve time it takes for decision-making at each stage of the environmental process. FTA actually encourages this in the form of stressing the use of info graphics in documents and has tried to restrict size of documents (# of pages). FHWA and FRA have used web-based platforms for their environmental documents recently and greatly improved the decision-making process not only with the public but with technical third party agencies.

Thank you for the opportunity to comment.



# OIG CEQA Streamlining Report

Presenters:

Karen Gorman, Inspector General, LA Metro

Alan Bennett, OIG Legal Research Specialist, LA Metro

Jessica Kirchner Flores, CEO, Impact Sciences, Inc.



Metro

This OIG report explores how Metro might streamline its processes related to the California Environmental Quality Act (“CEQA”).

**Issues Considered Include:**

- Volume & methods of public outreach
- Use of statutory exemptions
- Uncertainty caused by threats of litigation
- Delay caused by late changes
- Eminent Domain
- Narrowing of options
- CEQA vs. NEPA
- Use of Project Labor Agreements



### **Short Term Recommendations Include:**

- 5. Take advantage of judicial streamlining options
- 9. Conduct outreach to CBOs & public inside & outside CEQA
- 11. Improve staff to Board communication around cost and schedule

### **Mid Term Recommendations Include:**

- 13. & 14. Develop an Exemptions Program / Toolkit / Standard Guidelines to simplify and speed process

### **Long Term Recommendation Includes:**

- 18. Pursue options & exemptions that advance climate & equity goals



# Questions?



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