

# **Third Report to the California Legislature Pursuant to Section 820.1 of the California Streets and Highways Code, January 1, 2011**

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## **Executive Summary**

This report is the third required by California State Legislature related to the California Department of Transportation's (Caltrans) "assumption" of the role of federal lead agency under the National Environmental Policy Act (NEPA). As required by Assembly Bill (AB) 2650, the purpose of this report is to assess whether the length of time that is required for review and approval of federal environmental documents has been reduced over the past three years since Caltrans took over the responsibility for NEPA approvals from the Federal Highway Administration (FHWA). AB 2650 also requires an evaluation to determine whether Caltrans' projects are now being delivered more quickly since Caltrans has become NEPA lead agency.

Caltrans has assumed FHWA's NEPA responsibilities pursuant to a federal law signed in 2005 called the Safe Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). Under SAFETEA-LU Section 6005, California is participating in the Surface Transportation Project Delivery Pilot Program (Pilot Program), also known as "NEPA Delegation." SAFETEA-LU enabled five states to apply for assumption of FHWA's NEPA responsibilities under the Pilot Program. The Pilot Program is intended to simplify and speed up the federal environmental review and approval process for transportation projects without reducing environmental protection. California is the only state that is participating in the Pilot Program.

The analyses conducted for this report indicate that NEPA environmental approvals under the Pilot Program have taken substantially less time than before the Pilot Program. These time savings have been achieved by eliminating one layer of government review formerly conducted by FHWA and consolidating NEPA reviews with Caltrans. The analysis also shows that the time that it takes to deliver Caltrans' projects has also been substantially shortened. This time savings is likely attributable to both Caltrans' new role as NEPA lead agency, as well as Caltrans' recent strong emphasis on rapid project delivery. This report concludes that the program's streamlining objectives have been met during the Pilot Program's first three years. Since the Program's objectives are being successfully met and the time for NEPA approvals has substantially decreased, Caltrans is seeking an extension of the program through Congress.

## Report Purpose and Organization

This report is being submitted to the California State Legislature regarding Caltrans' "assumption" of FHWA's responsibilities under NEPA and other federal environmental laws. This report is required under AB 2650 (Carter, Chapter 248, Statutes of 2008).

With Caltrans' "assumption" of FHWA responsibilities, Caltrans has taken over FHWA's responsibilities under NEPA and other federal environmental laws<sup>1</sup>. In doing so, Caltrans has become the lead for federal environmental approvals, accepting sole legal responsibility and liability under federal law for its decisions on transportation projects. This report discusses whether Caltrans' assumption of these responsibilities has shortened the length of the time that is required for environmental review and approval of NEPA documents for Caltrans' projects. The report also evaluates whether the length of time required for the delivery of Caltrans' projects to construction has shortened. The following sections are contained in this report<sup>2</sup>, as required by AB 2650—the full requirements under AB 2650 are presented in Appendix A.

- Background on AB 2650, Caltrans' environmental review and approval process for NEPA documents, and Caltrans' process for delivering projects to construction.
- A comparative analysis of the time required for the environmental review and approval process and overall project delivery process before and after Caltrans assumed FHWA's NEPA responsibilities.
- State and federal agencies that reviewed the environmental documents.
- Points in environmental review and approval process when delays occurred and the nature of delays.
- Caltrans' financial costs related to the Pilot Program.
- Litigation initiated against Caltrans under the Pilot Program.
- Comparison of costs and benefits under the Pilot Program.
- Pilot Program progress and conclusions.

## Background

Pursuant to a federal law signed in 2005 called SAFETEA-LU, Caltrans has assumed FHWA's NEPA responsibilities. Under Section 6004 of SAFETEA-LU, Caltrans determines if a transportation project qualifies for a Categorical Exclusion, a type of NEPA action that does not involve significant impacts. Under Section 6005 of SAFETEA-LU, California is participating in a pilot program. The Pilot Program is a national experiment that enabled five states to apply for assumption of FHWA's NEPA approval authorities that are not covered by Section 6004. The Section 6004 assignment program and the Pilot Program are intended to simplify and speed up the federal environmental review and approval process for transportation projects without

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<sup>1</sup> Caltrans has taken over most, but not all of FHWA's environmental approval responsibilities. By federal law, FHWA has retained responsibility for certain approvals under other federal environmental laws.

<sup>2</sup> A glossary of terms and list of acronyms used in this report follow the report sections.

reducing environmental protection. California is one of three states that is participating in the Section 6004 assignment program and the only state that is participating in the Pilot Program.

In passing SAFETEA-LU, the Section 6004 assignment and Pilot Programs were expected to streamline the environmental review and approval process by eliminating FHWA's role in reviewing and approving environmental documents and in consulting with federal resource agencies.<sup>3</sup> Rather than *both* Caltrans and FHWA sequentially reviewing and approving NEPA documents and being involved with federal resource agencies to comply with federal environmental regulations, Caltrans is now solely approving NEPA documents and consulting with federal resource agencies, thereby decreasing the number of steps in the environmental review process.

To assume FHWA's responsibilities under Sections 6004 and 6005, the State of California was required to waive its 11<sup>th</sup> Amendment right to sovereign immunity against actions brought by citizens in federal court. These waiver provisions were originally authorized by AB 1039 (Nunez, Chapter 31, Statutes of 2006). This bill was enacted on May 19, 2006, and approved by California voters on November 7, 2006. This original waiver was to remain in effect until January 1, 2009. AB 2650, enacted on August 1, 2008, extended the waiver until January 1, 2012. It extended Caltrans' participation in the Pilot Program until August 10, 2011 (when the Pilot Program currently ends) and in the Section 6004 assignment program until January 1, 2012. With these waivers, California has assumed sole legal responsibility and liability under federal law for its actions and decisions made under Sections 6004 and 6005 of SAFETEA-LU.

To determine whether the environmental review and approval process for NEPA documents was completed more quickly under the Pilot Program, AB 1039 required Caltrans to compare and analyze a set of environmental review and approval timeframes. To respond to this requirement, Caltrans compared projects reviewed and approved by FHWA before AB 1039 (pre-Pilot Program projects) to a set of projects approved by Caltrans following AB 1039 (Pilot Program projects). Caltrans submitted a report on its findings to the Legislature on January 1, 2008.

AB 2650 required Caltrans to submit two additional reports to the Legislature that evaluate project delivery timeframes, in addition to environmental review and approval timeframes, to determine if time is also being saved in the overall project delivery process. In addition to the environmental review and approval steps, the project delivery process includes the time that is required to approve the project, approve the final design, acquire right-of-way, and undertake the steps needed to advertise the contract for project construction. Caltrans submitted a second report on its findings related to the environmental review and approval and project delivery timeframes to the Legislature on January 1, 2009. This report is the third report to the Legislature.

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<sup>3</sup> Under SAFETEA-LU, FHWA retains its approval authority over a relatively small number of projects within specified categories of projects or that were specifically identified in the Pilot Program MOU as being excluded from NEPA Delegation.

## Comparative Analysis

This section summarizes the comparative analysis of timeframes for the environmental review and approval and project delivery processes for pre-Pilot Program (FHWA involvement) and Pilot Program projects (no FHWA involvement). It describes the timeframes analyzed, methods used for the analysis, average and median timeframes calculated, and the time savings that have been achieved under the Pilot Program. See Appendix B for a detailed discussion of methods and results.

### Environmental Review and Approval Timeframes Analyzed

This comparative analysis distinguishes the environmental review and approval timeframes for the following Caltrans projects:

- **State highway projects** refer to projects within Caltrans' right-of-way, and
- **Local Assistance projects** refer to federally-funded local roadway projects off the State highway system.

A distinction is made in this analysis between State highway and Local Assistance projects since consultants hired by local agencies prepare the NEPA documents for all Local Assistance projects whereas Caltrans staff prepare the NEPA documents for most State highway projects. (The NEPA documents for some State highway projects are also prepared by consultants.) Review and approval of NEPA documents prepared by local agency consultants require an additional review step and therefore, additional time, since Caltrans is not preparing, but rather reviewing the NEPA document.

For State highway and Local Assistance projects combined, as well as for State highway projects only, the comparative analysis evaluates both types of documents that can be prepared under NEPA: environmental assessments (EA) and environmental impact statements (EIS). Caltrans prepares EAs or EISs to comply with NEPA depending on the environmental impacts that are expected to occur with project construction. Each document type is defined below:

- **EAs** are a type of NEPA document that are prepared for projects that cannot be approved with a Categorical Exclusion but will not cause significant adverse impacts on the environment. A draft and final report are required.
- **EISs** are a type of NEPA document that are prepared for projects that will cause a significant adverse impact on the environment. A draft and final EIS are required.

The following review and approval milestones for EAs and EISs are evaluated in this report:

- **Draft EA approval** refers to the timeframe from the date when environmental studies began to the date that the draft EA is approved.
- **Final EA approval** refers to the timeframe from the date when environmental studies began to the date that the final EA is approved.

- **Draft EIS approval** refers to the timeframe from the date that a Notice of Intent<sup>4</sup> is published in the Federal Register to the date that the draft EIS is approved.
- **Final EIS approval** refers to the timeframe from the date that a Notice of Intent is published in the Federal Register to the date that the final EIS is approved.
- **Project approval** refers to the timeframe from the date when environmental studies began (for EAs) or the date of the Notice of Intent (for EISs) to the date that the project is approved. This timeframe includes the time that was required for approval of NEPA and the project (i.e., the preliminary design of the project) and is marked by completing the Project Report.

The analysis distinguishes between EAs and EISs. EISs take longer to approve since their required noticing and public review periods are longer. EIS projects are also more complex than EA projects.

Table 1 presents the number of environmental documents included in the comparative analysis. The pre-Pilot Program projects include the last 39 projects with EAs or EISs that were approved by FHWA immediately before AB 1039 was enacted and the Pilot Program began. The Pilot Program projects include projects with EAs or EISs approved by Caltrans during the first three years of the Pilot Program. Table 1 shows that the sample size for EAs is much greater than for EISs. The small sample size for EISs limits the inferences that can be made from the EIS analysis.

**Table 1. Number of Environmental Documents for Pre-Pilot and Pilot Program Projects**

Type of Project	Type of NEPA Document			
	Draft EA	Final EA	Draft EIS	Final EIS
<b>Pre-Pilot Program</b>				
State Highway System	24	24	7	5
Local Assistance	7	7	1	1
<b>Total</b>	<b>31</b>	<b>31</b>	<b>8</b>	<b>6</b>
<b>Pilot Program</b>				
State Highway System	75	54	2	1
Local Assistance	8	5	2	0
<b>Total</b>	<b>83</b>	<b>59</b>	<b>4</b>	<b>1</b>

A list of the pre-Pilot and Pilot Program projects is contained in Table B-1 in Appendix B. Table B-1 also identifies the dates for each project milestone that is evaluated in this report.

<sup>4</sup> A Notice of Intent makes the public aware that an EIS is to be prepared.

## Other Environmental Approval Timeframes Evaluated

This comparative analysis also examines approvals under the federal Endangered Species Act (ESA) because ESA approvals are required before NEPA approval can be achieved. The process for completing these ESA approvals can affect the time needed for NEPA approval. ESA approvals are granted by U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) when these agencies determine that a “No-Jeopardy Biological Opinion” (Biological Opinion) can be issued for a project that is “likely to adversely affect” listed endangered or threatened species or their habitat. The Biological Opinion specifies the mitigation measures that must be implemented as part of the project so that project does not jeopardize the continued existence of the species or result in the destruction or adverse modification of their habitat.

The following ESA approval milestone was evaluated:

- **ESA approvals from USFWS and NMFS** refers to the time from Caltrans’ submittal of the biological assessment (a document required under the ESA for projects that may affect listed species or their habitat) to USFWS or NMFS to issuance of a Biological Opinion(s) by USFWS or NMFS.

Caltrans also examined federal environmental approvals under the National Historic Preservation Act Section 106 (protection of historic properties) and the U.S. Department of Transportation Act Section 4(f) approvals (protection of publicly-owned parks, recreation areas, and wildlife and waterfowl refuges and historic properties), but the sample sizes for approvals under these regulations were too limited to conduct a meaningful analysis.

## Project Delivery Timeframes Evaluated

This report also compares four project delivery timeframes, as described below:

- **Final design approval** is defined as the timeframe between project approval and approval of final design plans for the project.
- **Right-of-way acquired** is defined as the timeframe between project approval and acquisition of right-of-way.
- **Ready to list** is defined as the timeframe between project approval and the date that full, complete and accurate plans, project specifications and cost estimates are completed and the district certifies that the requirements of this milestone have been met. In the figures and tables, this is referred to as “ready to advertise construction contract.”
- **Overall project delivery** is defined as the timeframe from the date when environmental studies began to the date that the project is ready to list.

These timeframes were evaluated, as required by AB 2650, to determine if the environmental approval time savings on Pilot Program projects was sustained through the remainder of the project delivery process.

The timeframes for final design approval, acquisition of right-of-way, and preparing projects for advertisement of their construction contracts are an approximation of the time that it takes to reach these milestones. Data was not available to measure when each of these timeframes began. Therefore, the project approval dates were used as an approximation of when these milestones began. The analyses of these timeframes for pre-Pilot Program and Pilot Program projects are intended to reflect relative differences in the duration of time before and since the Pilot Program began. The absolute duration of these timeframes that are presented in this report are at best an approximation.

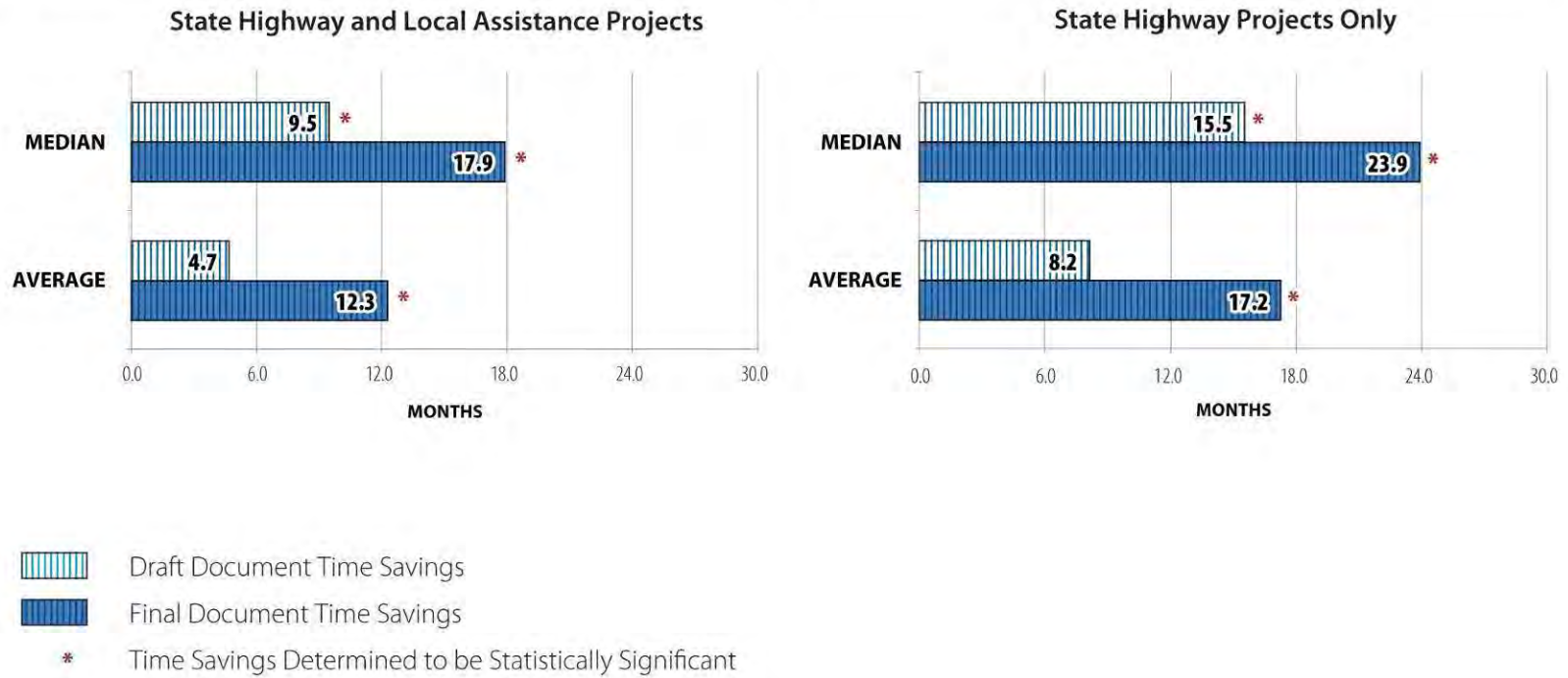
## **Results of Comparative Analysis**

The comparative analysis indicates that a substantial savings in environmental review and approval and project delivery timeframes have been achieved since the Pilot Program began. Figure 1 graphically shows the time savings as the differences in the median and average durations for EA approvals under the Pilot Program (no FHWA involvement) when compared against the median and average durations that were needed for these approvals before the Pilot Program began (FHWA involvement).<sup>5</sup> Figure 2 shows the time savings for the project delivery milestones, including the overall project delivery time savings. Time savings in these project delivery phases is attributable at least in part to recent Caltrans' initiatives for rapid project delivery. Table 2 highlights those time savings that are statistically significant. Times savings were determined to be statistically significant if they reached a 5 percent significance level. (A 5 percent significance level indicates that there is a low likelihood, or a one in 20 chance, that the time savings would occur by chance. See Appendix B for further details on the statistical analyses conducted for the comparative evaluation.)

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<sup>5</sup> For simplicity, this report refers to differences between the median time frames or average timeframes before and since the Pilot Program began as the "median and average time savings".

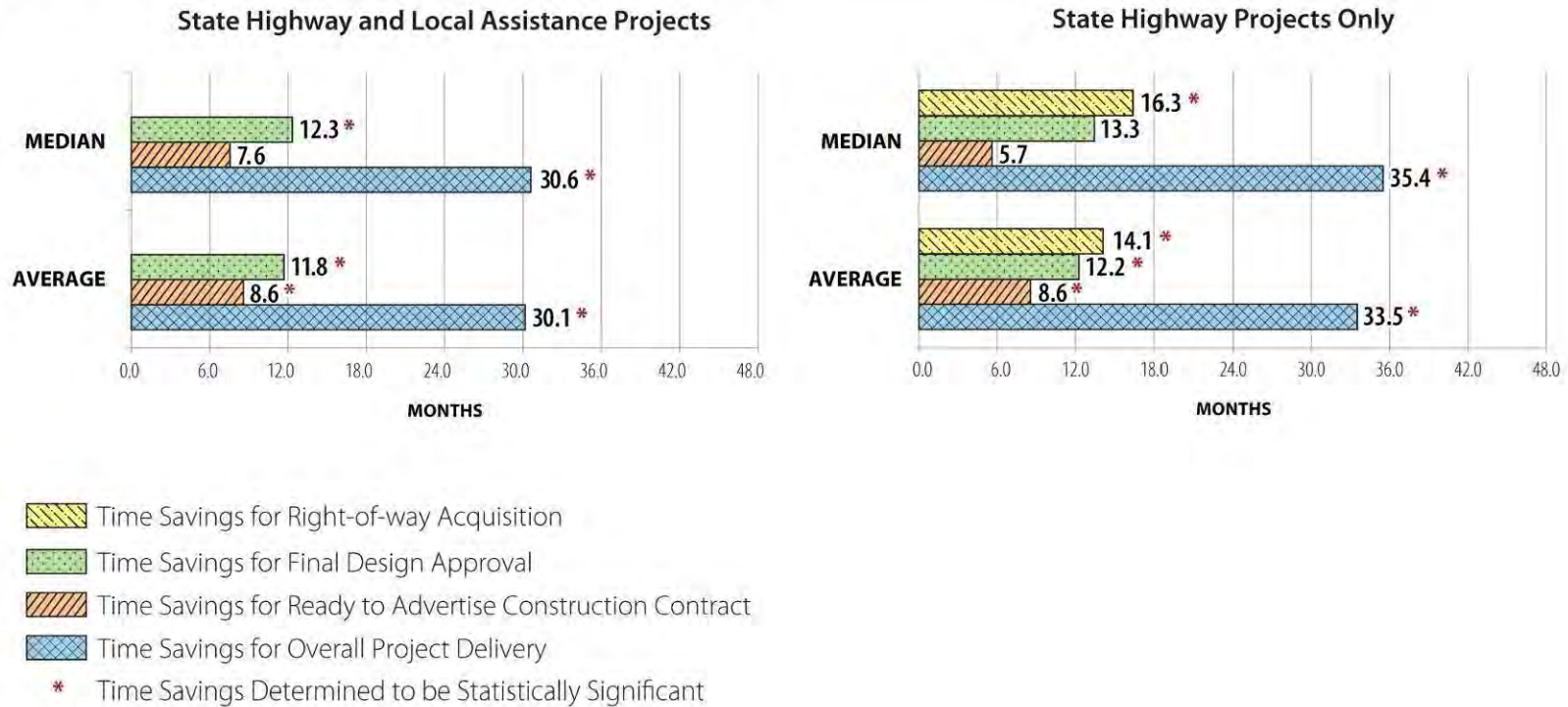
## Time Savings for Environmental Assessments



**Figure 1**  
**Time Savings for Environmental Document Approvals**  
**under the Pilot Program**



## Time Savings for Environmental Assessments



Note: Data was not available for Local Assistance projects for the comparison of timeframes for the acquisition of right-of-way

**Figure 2**  
**Time Savings for Project Delivery Milestones**  
**under the Pilot Program**

**Table 2. Median and Average Environmental Approval and Project Delivery Time Savings under the Pilot Program**

Milestones by Type of Environmental Document—Type of Project	Time Savings Achieved During Pilot Program (months) <sup>a</sup>	
	Median	Average
<b>Environmental Assessments—State Highway and Local Assistance Projects</b>		
Draft Environmental Document Approval	9.5	4.7
Final Environmental Document Approval	17.9	12.3
Right-of-Way Acquired <sup>b</sup>	–	–
Final Design Approval	12.3	11.8
Ready to List	7.6	8.6
Overall Project Delivery	30.6	30.1
<b>Environmental Assessments—State Highway Projects Only</b>		
Draft Environmental Document Approval	15.5	8.2
Final Environmental Document Approval	23.9	17.2
Right-of-Way Acquired	16.3	14.1
Final Design Approval	13.3	12.2
Ready to List	5.7	8.6
Overall Project Delivery	35.4	33.5
<b>Environmental Impact Statements—State Highway and Local Assistance Projects</b>		
Draft Environmental Document Approval <sup>c</sup>	47.3	53.8
Final Environmental Document Approval <sup>d</sup>	97.9	94.3
Right-of-Way Acquired <sup>b</sup>	–	–
Final Design Approval	11.0	14.5
Ready to List	8.5	7.5
Overall Project Delivery	103.6	96.2
<b>Environmental Impact Statements—State Highway Projects Only</b>		
Draft Environmental Document Approval <sup>e</sup>	47.7	81.6
Final Environmental Document Approval <sup>f</sup>	157.0	114.5
Right-of-Way Acquired	13.3	16.8
Final Design Approval	9.1	15.1
Ready to List	6.4	6.5
Overall Project Delivery	170.1	126.1

Note: Shading indicates those time savings that are statistically significant at the 5% significance level. This means that there is only a one in 20 chance that this relationship would occur by chance.

<sup>a</sup> Time savings are based on comparison of pre-Pilot Program and Pilot Program projects. See Table B-1 for milestone dates for each pre-Pilot Program and Pilot Program project. See Table B-2 for number of projects and duration of elapsed time for each milestone. See Figures B-1 through B-8 for the distribution of environmental approval and project delivery timeframes for each NEPA document type.

<sup>b</sup> Right-of-way data is not available for Local Assistance Pilot Program projects. Therefore, the amount of time required for right-of-way acquisition cannot be compared between pre-Pilot Program and Pilot Program projects.

<sup>c</sup> Represents a sample size of eight pre-Pilot Program and four Pilot Program draft EISs

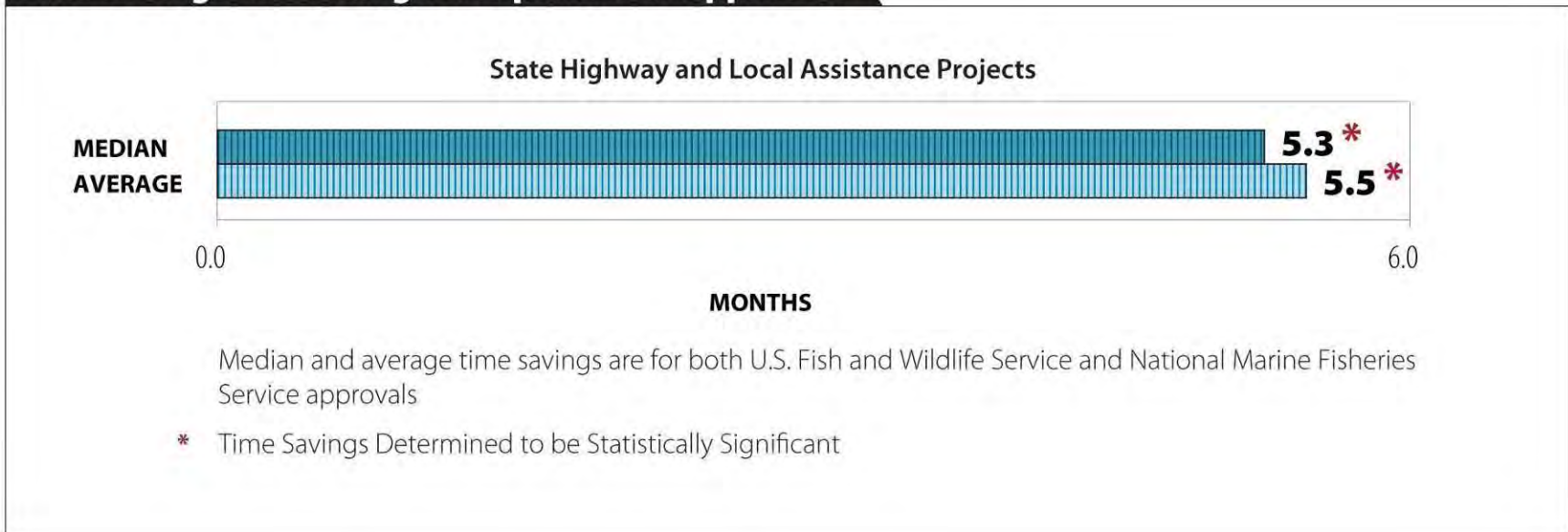
<sup>d</sup> Represents a sample size of six pre-Pilot Program and one Pilot Program final EISs

<sup>e</sup> Represents a sample size of seven pre-Pilot Program and two Pilot Program draft EISs

<sup>f</sup> Represents a sample size of five pre-Pilot Program and one Pilot Program final EISs

Figure 3 and Table 3 show the time savings for ESA approvals under the Pilot Program.

## Time Savings for Endangered Species Act Approvals



**Figure 3**  
**Time Savings for Endangered Species Act Approvals**  
**under the Pilot Program**

**Table 3. Median and Average Endangered Species Act Approval Time Savings<sup>a</sup>**

Milestone by Resource Agency	Endangered Species Act Approval Timeframes and Time Savings (months)	
	Median	Average
U.S. Fish and Wildlife Service Approvals	3.2	5.7
National Marine Fisheries Service Approvals	5.2	4.6
Combined Agency Approvals	5.3	5.5

*Note:* Shading indicates those time savings that are statistically significant at the 5% significance level. This means that there is only a one in 20 chance that this relationship would occur by chance.

<sup>a</sup> Time savings are based on comparison of pre-Pilot Program and Pilot Program projects. See Table B-3 for milestone dates for each pre-Pilot Program and Pilot Program project with one or more Endangered Species Act approval and Table B-4 for number of projects and timeframes for each milestone.

These tables and figures indicate the following:

- **Environmental review and approval time savings under the Pilot Program:** The median time savings for approval of final EAs on all Caltrans’ projects was 17.9 months (and an average of 12.3 fewer months) under the Pilot Program as compared to prior to the Pilot Program. Both median and average time savings are statistically significant.

The time savings were greater for State highway projects than for State highway and Local Assistance combined. This relationship is not surprising since as noted earlier, the NEPA documents for Local Assistance projects require an additional layer of review.

The median and average time savings are substantially greater for EISs than for EAs. However, due to the small sample size of EISs (six pre-Pilot Program and one Pilot Program final EISs), these savings are not statistically significant. It is also difficult to draw conclusions from this small sample size.

- **Project delivery time savings under the Pilot Program:** The time savings for each project delivery milestone show similar relationships to those identified for environmental review and approvals. Time savings for these project delivery milestones is likely related to recent Caltrans’ initiatives emphasizing rapid project delivery. The median time savings for each of the following milestones for State highway and Local Assistance projects with approved EAs—approval of final designs and preparing projects so that their construction contracts could be advertised<sup>6</sup>—ranged from 7.6 (prepare projects for advertisement) to 12.3 (final design approval) fewer months during the Pilot Program (average of 8.6 [prepare projects for advertisement] to 11.8 [final design approval] fewer months). With the exception of the 7.6 months savings in time, these time savings are statistically significant.
- **Overall project delivery time savings under the Pilot Program:** The delivery of Caltrans EA projects has taken a median of 30.6 fewer months under the Pilot Program (average of 30.1 fewer months).

<sup>6</sup> Data for right-of-way acquisition time frames were not available for Local Assistance projects. This function is performed by and schedules controlled by the local agency.

Considering State highway EA projects only, the median time savings was 35.4 months. These time savings are statistically significant.

The time savings for delivering EIS projects are much greater than EAs, but these savings are not statistically significant and represent a smaller sample size.

While NEPA Delegation has played a significant role in overall project delivery time savings, it is impossible to isolate the effect that the Pilot Program has had on the delivery of projects. A number of non-quantifiable factors have an unknown effect on the time that it takes to deliver projects to construction.

In recent years, Caltrans has re-emphasized the need to accelerate delivery of its projects in all parts of the organization through a number of mechanisms including tracking and reporting commitments for completion of the project delivery process. This renewed focus on efficient project delivery and meeting project delivery commitments has likely played a major role in the time savings achieved during the overall project delivery process under the Pilot Program.

- **ESA approval time savings under the Pilot Program:** ESA approvals made by both USFWS and NMFS took a median of 5.3 fewer months (average of 5.5 fewer months) under the Pilot Program than they did prior to the Pilot Program. These median and average savings in time are statistically significant.

### **Additional Factors That May Affect Environmental Approval and Project Delivery Timeframes**

Several analyses were also conducted to evaluate factors that have potential to affect timeframes under the Pilot Program. These analyses did not consider pre-Pilot Program projects.

- **Have timeframes improved over the course of the Pilot Program?** An analysis was conducted to determine whether time savings have improved since the Pilot Program began. (See Tables B-5 and B-6 for the approval dates and timeframes.) Specifically, the environmental document approval timeframes during the first 18 months of the Pilot Program (July 1, 2007 to December 31, 2008) were compared with those during the second 18 months of the program (January 1, 2009 to June 30, 2010).

As shown in Table B-6, the median time that it took for draft EA approvals decreased by 5.9 months (not statistically significant) during the second 18 months as compared to the first 18 months of the Pilot Program. (The average time was shortened by 9.5 months; this time savings was statistically significant.)

The median time savings for final EA approvals during the second 18 months of the program was 6.9 months (average savings was 1.6 months) as compared to the first 18 months. These time savings are not statistically significant. It is likely that this improvement is partly related to Caltrans staff's increased experience in implementing Pilot Program requirements, such as new environmental document review procedures.

- **Do ESA approvals affect timeframes?** An analysis was conducted to determine whether Pilot Program final EA and final EIS approval timeframes were affected by ESA approvals. The analysis indicates that projects with ESA approvals take a median of 3.5 months longer (and an average of 1.7 months longer) to complete NEPA approval than projects without ESA approvals. However, these differences were not statistically significant at the 5 percent level. This analysis indicates that although obtaining ESA approval can increase the time required to obtain NEPA approval, many other factors also affect final EA and final EIS approval timeframes. Data on projects with ESA approvals can be found in Tables B-1 and B-3.
- **Does project approval take longer for environmental documents managed by Caltrans versus local agencies?** This evaluation compared the time it took for project approvals (defined as the timeframe from the date when environmental studies began to the date that the project was approved including the time that was required for approval of NEPA and the preliminary project design) when Caltrans was directly responsible for preparation of the environmental document versus project approvals in which a local or regional agency was responsible for the environmental document. Projects for which Caltrans is directly responsible for preparation of the environmental documents are on the State highway system. Projects for which a local or regional agency is responsible for preparing the environmental document can either be on local roadways (i.e. Local Assistance projects) or on the State highway system. (In this case, the local agency is sponsoring a project on a State highway.)

For projects in which Caltrans was responsible, the environmental document would either have been prepared by Caltrans staff or a consultant under Caltrans' direction. For projects with local/regional agency sponsors (including Local Assistance projects), the environmental document would have been prepared by a consultant under the direction of the local agency.

Table B-8 indicates that EAs managed by Caltrans took a median of 8.3 fewer months (average of 8.5 fewer months) to approve than those managed by a local/regional agency (see also Table B-7 for dates and project approval timeframes for these environmental documents). These differences are statistically significant.

This finding likely stems from a number of factors:

- An additional layer of review and exchange of documents and comments are required for environmental documents prepared by a consultant working for a local/regional agency.
- Additional coordination is required for environmental documents Caltrans oversees versus those for which it is directly responsible.
- Extensive revisions are sometimes required for consultant-prepared environmental documents. Caltrans provides on-line guidance and annotated environmental document outlines for local agencies and their consultants to use in preparing NEPA documents. Many local agencies, while familiar with the California Environmental Quality Act (CEQA), have little or no experience with NEPA.
- Local Assistance projects rely on local matching funds that are often more volatile than state funding and can result in interruptions in the environmental approval process.

- **Does the magnitude of project capital costs affect project approval timeframes?** Caltrans evaluated the timeframe for project approval against project capital costs for Pilot Program projects that have reached this milestone. The statistical analysis indicated that capital costs have a negligible effect on the time it takes for project approval (i.e. projects with higher capital costs do not necessarily require more time for project approval). See Appendix B for details on the statistical analyses conducted.
- **Does the magnitude of costs to acquire right-of-way affect project approval timeframes?** Caltrans evaluated project approval timeframes against projected costs to acquire right-of-way for Pilot Program projects. This analysis indicated a marginally statistically significant relationship.

Figure B-9 illustrates the relationship between right-of-way costs and the time it takes for project approval. This figure shows that right-of-way costs are a predictor of project approval timeframes. Project approval time generally increases as right-of-way costs increase. (See also Table B-9 for project approval dates and timeframes for each project with estimated right-of-way acquisition costs).

## Overall Conclusion

Time was saved during the environmental review and approval process for Pilot Program projects by eliminating one layer of government review, removing the exchange of documents and comments between Caltrans and FHWA, allowing direct consultations between Caltrans and federal regulatory agencies, and consolidating all NEPA reviews at Caltrans. Time was also saved in the overall project delivery process. Overall project delivery time savings are likely attributable to Caltrans' recent emphasis on rapid project delivery, in addition to the environmental approval time savings of the Pilot Program. It can be concluded that the time savings achieved during the environmental review process has had a beneficial effect on Caltrans' project delivery timeframes. The streamlining objectives of the Pilot Program have been met during the Pilot Program's first three years. Since the Program's objectives are being successfully met and provide streamlining benefits to the NEPA approval process, Caltrans is requesting an extension of the Pilot Program and of the waiver of its 11<sup>th</sup> Amendment right to sovereign immunity.

## State and Federal Agencies that Reviewed Environmental Documents

Table B-10 provides a list of the State and federal agencies that commented on the 39 pre-Pilot Program and 86 Pilot Program project draft environmental documents. This list was generated based on the comment letters received on the draft environmental documents for these projects. Because State and federal agencies review the environmental document during the public review period, the time that each agency took to review each environmental document is unknown. However, their comment letters were received during the draft environmental document public review period of 30–60 days.

## **Points in the Environmental Review Process when Project Delays Occurred and the Nature of Delays**

Table B-11 presents a summary of the reasons that Pilot Program projects experienced project delays. Each project had a unique set of project factors that affected the time required to reach NEPA approval and to deliver the project. As shown in Table B-11, factors such as project funding that are unrelated to the NEPA review and approval process also affected environmental approval timeframes. The most common factors that affected the environmental review and approval process timeframes are listed below in descending order of frequency.

- Modifications to project design.
- Extensive revisions or coordination required on consultant-prepared environmental documents or technical studies.
- Lengthy ESA Section 7 consultation processes.
- Extensive agency or public comments on environmental document, resulting in lengthy revision and approval timeframes.
- Extensive coordination with various agencies with approval authority over the project regarding project design, required mitigation, or technical analyses.
- Funding issues.
- Delays related to air quality conformity analysis, including lengthy review, amendment needed to the regional transportation plan or transportation improvement program, and changing analysis requirements.
- Change in type of NEPA document to be prepared.
- Project scoping challenges.
- Lengthy Clean Water Act Section 404/NEPA integration processes.
- Lengthy Section 106 consultation processes.

## **Circumstances when FHWA Hindered and Facilitated Project Delivery**

As reported in the last AB 2650 report, Caltrans staff for the pre-Pilot Program projects stated that FHWA attempted to work efficiently to facilitate the environmental review process, without hindering it, in conducting its required environmental and legal sufficiency reviews. Staff noted that FHWA was willing to expedite its reviews when needed by agreeing to meet in person or talk by telephone to discuss comments and approve document revisions; providing informal, interim reviews of revisions; providing email approval of editorial revisions; and completing formal reviews of documents quickly.

Prior to NEPA Delegation, FHWA and Caltrans jointly implemented measures to streamline the NEPA approval process including the following:



- FHWA administratively delegated the approval of selected Categorical Exclusions to Caltrans.
- FHWA allowed Caltrans to informally consult with the resource agencies.
- To streamline FHWA’s review, Caltrans conducted quality control (QC) and legal reviews of its environmental documents before submittal to FHWA.
- Caltrans and FHWA internally reorganized their staffs to best manage the environmental workload and to clarify environmental review responsibilities.

These measures, jointly developed by Caltrans and FHWA, streamlined the NEPA approval process prior to NEPA Delegation.

### Caltrans’ Financial Costs Related to the Pilot Program

Table 4 presents personnel years (PYs) and expenditures over the first three years of the Pilot Program. Table 4 shows that fiscal year 2008/2009 had the highest expenditure of PYs, while fiscal year 2007/2008 had the highest monetary costs. The number of annual PYs averaged 12.8 over the three years, as compared to 16 to 20 annual PYs used by FHWA before the Pilot Program. Over the 3-year Pilot Program, PYs and annual costs have declined with the lowest expenditures occurring during fiscal year 2009/2010.

**Table 4. Personnel Years and Monetary Expenditures During the First Three Years of the Pilot Program**

	Personnel Years	Dollars (1,000,000s)
<b>Fiscal Year 2007/2008</b>		
State Highway projects	7.25	\$1.6 <sup>a</sup>
Local Assistance projects	5.7	
Consultant	– <sup>b</sup>	\$0.3
<b>Total</b>	<b>13.0</b>	<b>\$1.9</b>
<b>Fiscal Year 2008/2009</b>		
State Highway System	9.73	\$1.0
Local Assistance	4.4	\$0.5
Consultant	– <sup>b</sup>	\$0.3
<b>Total</b>	<b>14.1</b>	<b>\$1.8</b>
<b>2009/2010</b>		
State Highway System	7.2	\$0.8
Local Assistance	4.1	\$0.4
Consultant	– <sup>b</sup>	\$0.3
<b>Total</b>	<b>11.3</b>	<b>\$1.5</b>

<sup>a</sup> Separate cost estimates for Local Assistance and State Highway projects are unavailable

<sup>b</sup> Personnel Years not calculated for consultant costs

Caltrans' legal costs, under the Pilot Program, for the 2009/2010 fiscal year totaled approximately \$80,000 for 520 labor hours. These costs were from a lawsuit filed by the Natural Resources Defense Council and two citizen groups, as discussed in the following section.<sup>7</sup> The federal case has not been resolved.

## **Litigation Initiated Against Caltrans under the Pilot Program**

Two lawsuits have been initiated against Caltrans over the past three years under the Pilot Program. This rate of NEPA litigation is the same as FHWA experienced before the Pilot Program began (average of one lawsuit per year over the 10 year period prior to the Pilot Program).

In the first case, the Natural Resources Defense Council and two citizen groups (East Yard Communities for Environmental Justice and Coalition for a Safe Environment) sued Caltrans in federal court under NEPA challenging the approval of the final environmental document for the State Route 47 Alameda Corridor Truck Expressway Project within the Ports of Los Angeles and Long Beach. The U.S. Department of Transportation, FHWA, and Caltrans are the defendants in the NEPA case. The Alameda Corridor Transportation Authority is the real party of interest. The lawsuit challenges the air quality conformity determination, climate change analysis, adequacy of the EIS, and range of alternatives evaluated. As of the date of writing this report, a ruling has not been issued; the parties are still preparing their written statements.

In the second case, residents in a neighborhood adjacent to a proposed bike path from Culver City to western Santa Monica sued Caltrans for issuing a NEPA Categorical Exclusion for the project. Caltrans, FHWA, the Los Angeles Metropolitan Transportation Authority, and the City of Los Angeles were named as defendants. The residents argued that construction of the bike path behind their homes would result in significant environmental impacts. Because a Categorical Exclusion can only be issued if no significant impact would occur, the residents argued that Caltrans' determination was inadequate. Following extensive review, Caltrans withdrew the Categorical Exclusion. The residents agreed to dismiss the case, under the condition that Caltrans inform them of any future Categorical Exclusion determinations contemplated for the project.

## **Comparison of Costs and Benefits under the Pilot Program**

Table 4 presents the costs associated with the Pilot Program. This table indicates that annualized costs under the Pilot Program have decreased from \$1.9 million in fiscal year 2007/2008 to \$1.8 million and \$1.5 million in 2008/2009 and 2009/2010, respectively.

As discussed above, time savings have been achieved for *all* evaluated timeframes under the Pilot Program. Based on Table 2, the approval of final environmental documents took a median of 17.9 months less under the Pilot Program. The time saved during the environmental review

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<sup>7</sup> Another lawsuit has been initiated against Caltrans, but there were no legal costs incurred during the 2009/2010 fiscal year.

and approval process also contributed to substantial time savings during the overall project delivery process. As shown in Table 2, the median time savings for the overall project delivery process was 30.6 months.

The public benefits from earlier delivery of needed transportation improvements in terms of the expedited completion of safer roadways and improved traffic flow conditions, as well as the quicker generation of the economic stimulus that project construction brings.

## **Pilot Program Progress and Conclusions**

Caltrans has been successful in assuming FHWA's NEPA approval and interagency consultation responsibilities, as evidenced by Caltrans' preparation and approval of NEPA documents that meet federal regulations, policies, guidance, and standards and FHWA's Pilot Program audit findings. The results of the comparative analysis conducted for this report also indicate that the streamlining objectives of the Pilot Program are being strongly met. These streamlining objectives have been achieved by consolidating the environmental review and approval process within Caltrans rather than having review and approval activities move back and forth between Caltrans and FHWA.

The streamlining objectives of the Pilot Program are important to Caltrans in being able to better meet its mission of improving mobility across California. The environmental approval time savings that have occurred under the Pilot Program, together with a heightened emphasis on efficient project delivery at Caltrans, have translated into substantial overall time savings in the project delivery process. Caltrans' participation in the Pilot Program is contributing to the speedier delivery of needed transportation projects to the public and to stimulating the economy as the construction of projects occurs more quickly.

This report acknowledges that there are limitations in terms of what can be concluded from the analysis conducted for this report. It is impossible to isolate the effect that the Pilot Program, by itself, has had on the delivery of projects. A complex array of factors that interact in non-quantifiable ways with each other affect the time that it takes to deliver projects to construction.

FHWA's audits of the Pilot Program have continued to conclude that Caltrans is progressing in its proficiency in using new environmental document QC tools and in implementing new QC procedures under the Pilot Program. Caltrans acknowledges that minor deviations from the QC procedures have occurred for some Pilot Program projects. "Perfect" implementation of these procedures may not be attainable due to the large number of staff undertaking these procedures for a relatively large number of projects.

The Pilot Program benefits Caltrans in less tangible ways as well. Before the Pilot Program began, both Caltrans (under CEQA) and FHWA (under NEPA) had responsibility for project-specific environmental decision-making. Under the Pilot Program, Caltrans is responsible for making independent environmental decisions and is fully accountable for these decisions under NEPA, as well as CEQA. This consolidation of environmental decision-making at Caltrans provides clarity in decision-making for project stakeholders and the public, as well as efficiency.

Furthermore, with Caltrans now as lead agency under both federal and state environmental regulations, and working directly with both state and federal resource agencies, Caltrans is better able to integrate its regulatory approach to satisfy both State and federal requirements. This results in better and more efficient environmental compliance and more proactive, innovative and responsive environmental stewardship at Caltrans.

## Glossary of Terms Used in this Report

The following terms used in this report are defined below. These definitions apply to the terms as they are used in this report.

**Assumption:** Caltrans has “assumed” or taken over FHWA’s responsibilities under NEPA and other federal environmental laws.

**Begin Environmental Studies:** The date when environmental studies began is used as the beginning date for a number of timeframes that are evaluated in this report including the time it took for environmental document approval and overall project delivery. The date when environmental studies began is the date that the Caltrans Districts began the environmental compliance process including conducting environmental field surveys, environmental data collection, and preparing environmental technical studies.

**Biological Opinion:** Document that contains the opinion of the USFWS or NMFS as to whether or not a federal action is likely to jeopardize the continued existence of species listed on the federal Endangered Species Act list or result in the destruction or adverse modification of critical habitat as designated by USFWS and NMFS.

**Categorical Exclusion:** Type of NEPA action that will not result in significant adverse impacts on the quality of the natural or human environment.

**Environmental Assessment (EA):** Informational NEPA document that support federal actions that are not Categorical Exclusions and that will not result in significant adverse impacts on the quality of the natural or human environment.

**Environmental Document:** An EA or EIS. Draft and final versions of EAs and EISs are prepared under NEPA.

**Environmental Impact Statement (EIS):** Informational NEPA document for federal actions that are likely to cause significant adverse impacts on the quality of the natural or human environment.

**Environmental Review and Approval Process:** Process for review and approval of NEPA documents to ensure that they meet federal standards and requirements. NEPA approval is required before a federal action may be approved.

**Final Design Approval Timeframe:** The elapsed time between when a project is approved and the final design plans for the project are approved.

**Limited Waiver of Sovereign Immunity:** This waiver was required for states to participate in the NEPA Delegation programs. Under this waiver, Caltrans has waived its constitutional 11<sup>th</sup> Amendment right to protection from lawsuits brought by citizens in federal court. To participate in the programs, if sued, Caltrans must defend its NEPA actions and decisions in Federal court.

**Local Assistance Project:** Local roadway project off the state highway system for which federal funds are being used for project development and/or construction.

**NEPA Delegation:** FHWA has “delegated” to Caltrans the responsibilities under NEPA and other federal environmental laws that were formerly FHWA’s under Sections 6004 and 6005 of SAFETEA-LU. “NEPA Delegation” is a common term for the programs that were legally assigned to Caltrans through SAFETEA-LU.

**Milestone:** A major step or approval in the process for delivering a project to construction. These milestones include: draft environmental document approval, final environmental document approval, project approval, right-of-way acquired, final design approval, ready to list, and overall project delivery.

**Natural Marine Fisheries Service (NMFS):** Federal agency that is responsible for implementing federal Endangered Species Act requirements for marine and anadromous fish species.

**Pilot Program Project:** The Pilot Program is a temporary program provided by Section 6005 of SAFETEA-LU that enabled five states, including California, to apply for assumption of FHWA’s NEPA responsibilities. California is the only state participating in the Pilot Program. The environmental documents for evaluated Pilot Program projects were reviewed and approved solely by Caltrans.

**Pre-Pilot Program Project:** The environmental documents for evaluated pre-Pilot Program projects were approved solely by FHWA.

**Project Approval:** Project approval is one of the milestone dates used in this report. The project approval date is when the preliminary engineering designs for a project are approved. NEPA approval is obtained prior to the project approval date. Project approval is marked by completing the Project Report.

**Project Delivery Timeframe:** The elapsed time from the date when environmental studies began to the date that the project was ready to be advertised for bid including the time that was required for environmental review and approval, project approval, acquisition of right-of-way that was needed for the project, and completion and approval of final design plans.

**Resource Agency:** Agencies that are responsible for implementing federal environmental regulations that are integrated into the NEPA approval process. These agencies include USFWS, NMFS, U.S. Army Corps of Engineers, and the State Historic Preservation Officer.

**Right-of-way Acquisition Timeframe:** The elapsed time between project approval and when acquisition of right-of-way was completed.

**Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU):** Federal bill passed in 2005 that reauthorized transportation funds for federal surface transportation projects, including FHWA projects, and that allowed for the NEPA Delegation programs.

**Section 6004:** Section 6004 of SAFETEA-LU allowed all 50 states to take over responsibility for the approval of Categorical Exclusions from FHWA upon execution of a Memorandum of Agreement with FHWA.

**U.S. Fish and Wildlife Service (USFWS):** Federal agency that is responsible for implementing federal Endangered Species Act requirements for terrestrial and freshwater animal and plant species.

## List of Acronyms Used in this Report

AB	Assembly Bill
Biological Opinion	No-Jeopardy Biological Opinion
Caltrans	California Department of Transportation
CEQA	California Environmental Quality Act
EA	environmental assessment
EIS	environmental impact statement
ESA	Endangered Species Act
FHWA	Federal Highway Administration
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service
Pilot Program	Surface Transportation Project Delivery Pilot Program
PY	personnel year
QC	quality control
SAFETEA-LU	Safe Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users
USFWS	U.S. Fish and Wildlife Service