

TCC Action Item Follow-up for the January 24, 2019 Meeting

Federal Reimbursement for CEQA

On August 23, 2017 the following CEQA-related activities from Transportation Coop Committee (TCC) members were sent to FHWA with an inquiry as to whether-or-not they would be federally-reimbursable.

1. Planning staff fees
2. Consultant fees for writing CEQA docs
3. Archaeological monitoring fees
4. Environmental monitoring fees (noise, air, etc.)
5. Soil testing
6. Historical review
7. Internal staff time
8. Costs associated with preparing a CEQA IS/ND and EIRs for FLAP grants on projects on Federal Land, where the federal agency will not perform a concurrent or Joint NEPA/CEQA Document
9. Costs associated with writing CEQA document. (Note: County does not have much discretionary funding, and as such we would not proceed with CEQA if we did not know we were going to get federal funding for the actual project being considered).
10. Costs associated with writing CEQA Exemptions that have associated studies.

On September 15, 2017 FHWA responded as follows:

- At this point, pending further research and discussion, any work done specifically for a CEQA document, which is work done for a different purpose, is not eligible. The solution to this problem is for local agencies to start any project that might be Federalized at a later date, as a NEPA-CEQA document. NEPA and CEQA are so similar, that the cost of starting the process as a NEPA-CEQA document would negligible. Under this scenario, only the work to develop the document that is specific only to CEQA, would not be eligible. If a local agency starts a CEQA document and Federalizes the document at a later point, the work that is also required for a NEPA document could be eligible. FHWA will need to discuss what would be eligible internally prior to providing any guidance.
- There are several bullets that describe issues related to control of a local document, or that Caltrans would not defend a local document in court. Since FHWA doesn't have jurisdiction over non-Federalized projects, I'm not sure how to respond to that issue, but FHWA would not expect Caltrans to defend a local project in court, unless it falls under NEPA Assignment. I think we'll need to discuss issues of this nature in more depth.
- FHWA will not participate in the cost of developing a CEQA-only document, so there wouldn't be a need for further legislation to participate in the cost to develop the document.
- Planning staff costs would not be reimbursable if that work was done for a CEQA-only document. If the document was Federalized prior to completion of the CEQA document, FHWA might participate if the project was Federalized and the previous work was applicable to a NEPA-CEQA document. This question needs further investigation.
- Archeological and environmental monitoring are typically accomplished post-NEPA. If that work was described in a NEPA or NEPA-CEQA document as part of the mitigation requirements, then the work is eligible. In general, work that is required as mitigation, is eligible. If soil testing is

required to develop the information necessary to complete a NEPA or NEPA-CEQA document, then it is eligible. If soil testing is required as mitigation, or is required for a permit, then it is eligible.

- Historic review fall into the same category as the two bullets above.
- Internal staff time is eligible if it is related to developing a NEPA document, or a NEPA-CEQA document. Since, "Internal staff time" is a little ambiguous, we should discuss this in more detail.
- Number 9 presents several complicated scenarios, but in general, if a NEPA or NEPA-CEQA document are not being produced, the cost are not eligible. If there is a scenario where a Federal land management agency requires their own NEPA document, and they perform studies that a project proponent needs to complete a NEPA, or NEPA-CEQA document, those costs may be eligible, if the project proponent would have contracted those costs out. I think this is another area would require further discussion, and ultimately be incorporated into official guidance.