



Board Report

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Agenda Number:

**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.

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

Prepared by: Alan Bennett, Legal Research Specialist, (213) 244-7313

Reviewed/Approved by: Karen Gorman, Inspector General, (213) 244-7337



Karen Gorman
Inspector General