

Report to the California Legislature Pursuant to Section 820.1 of the California Streets and Highways Code

Executive Summary

Background and Report Purpose

The California Department of Transportation (Caltrans) has been assigned the responsibilities of the United States Department of Transportation Secretary (Secretary) under the National Environmental Policy Act (NEPA) and other federal environmental laws, pursuant to Sections 6004 and 6005 of the 2005 Federal Transportation Reauthorization, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). Under Section 6005, Caltrans is participating in the “Surface Transportation Project Delivery Pilot Program” (Pilot Program), governed by a Memorandum of Understanding (MOU) between Caltrans and the Federal Highway Administration (FHWA) effective on July 1, 2007, for assignment of Environmental Impact Statement (EIS), Environmental Assessment (EA), and some Categorical Exclusion (CE) responsibilities. Caltrans has also assumed the Secretary’s responsibilities for CE determinations under Section 6004 through an MOU signed by Caltrans and FHWA on June 7, 2007.

To assume these responsibilities, SAFETEA-LU required states to authorize a limited waiver of their sovereign immunity under the 11th amendment of the U.S. Constitution and consent to accepting the jurisdiction of the federal courts on citizens’ claims related to any state-assumed responsibilities under the Pilot Program and Section 6004 MOUs. The California legislature passed Assembly Bill 1039 (Nunez, Chapter 31, Statutes of 2006) which authorized Caltrans’ waiver of sovereign immunity for this limited purpose, subject to California voters’ approval of a statewide bond measure. On November 7, 2006, the electorate approved Proposition 1B, thereby completing the waiver of Caltrans’ sovereign immunity, codified as Streets and Highways Code Section 820.1. This waiver remains in effect until January 1, 2009 unless it is extended or deleted by later statute.

To determine if the streamlining objectives of the Pilot Program are being achieved, Streets and Highways Code Section 820.1 requires that an analysis be conducted comparing the environmental review timeframes for the last 30 projects reviewed and approved by FHWA prior to enactment of Assembly Bill 1039 and Caltrans’ assumption of NEPA responsibilities, with the environmental review timeframes for those projects approved by Caltrans under its assumption of NEPA responsibilities that did not involve FHWA. This report fulfills this requirement.

Comparative Analysis

This comparative analysis has a number of inherent limitations:

- It is based on an extremely small sample of Pilot Program projects for which Caltrans made independent approvals without FHWA environmental document review involvement. This small sample is due to the limited period of time in which the Pilot Program has been in effect. The Pilot Program did not become effective until July 1, 2007, due to federal delays in issuing the Final Rule for the Pilot Program application.
- Each of the pre-Pilot Program and Pilot Program projects evaluated has a unique set of project parameters that affect the time required for NEPA approval. These include size and location of the project; nature, quality and extent of environmental resources at the project site; regulatory requirements; resource agency interest and involvement; and level of public interest and controversy. Due to the uniqueness of each project and the extremely small sample of Pilot Program projects, this analysis can only suggest possible trends, at best, on the effect of the Pilot Program on environmental review timeframes. Because of the average length of time required for the environmental process, a good comparison of environmental review timeframes with and without FHWA involvement may not be possible for one to two more years.
- Many of the pre-Pilot Program projects evaluated had environmental studies initiated as many as nine years ago, and therefore complete information on environmental review timeframes was not available.

Caltrans evaluated environmental review timeframes for the last 35 EA and EIS projects reviewed and approved by FHWA immediately prior to enactment of the waiver of sovereign immunity on May 19, 2006. Available timeframe information for these projects indicates that these pre-Pilot Program projects took:

- From 6.6 to 53.3 months for NEPA approval (from beginning of the Caltrans quality control [QC] process on the draft environmental document through NEPA approval) with a median time of 17.9 months
- A median time of 6.1 months for approval of draft environmental documents (from beginning of the draft environmental document QC process through draft document approval)
- A median time of 2.4 months for approval of final environmental documents (from beginning of the final environmental document QC process through final document approval)

The environmental timeframes for these 35 projects were compared with five projects for which Caltrans has independently made environmental approvals as the federal lead agency without FHWA involvement. Those environmental approvals made by Caltrans since initiation of the Pilot Program, for projects that had FHWA involvement during environmental document review leading up to the approval, were not included in the comparative analysis.

The comparative analysis shows the following:

- Since initiation of the Pilot Program, a 59 percent time savings has been achieved for approval of draft environmental documents. The three draft environmental documents independently reviewed by Caltrans were approved in a median time of 2.5 months, as compared to 6.1 months prior to the Pilot Program.

- A 71 percent time savings has been achieved for approval of final environmental documents. The two final environmental documents independently reviewed by Caltrans were approved in a median time of 0.7 months, as compared to 2.4 months prior to the Pilot Program.

Background and Report Purpose

Caltrans has been assigned the responsibilities of the Secretary under NEPA and other federal environmental laws for most highway projects in California, pursuant to two sections of the 2005 Federal Transportation Reauthorization called SAFETEA-LU.

Caltrans is participating in the Pilot Program pursuant to SAFETEA-LU Section 6005, codified as 23 U.S.C. 327. Under this program, the Secretary has assigned, and Caltrans has assumed, the Secretary's responsibilities for NEPA. Caltrans has also assumed all of FHWA's responsibilities for environmental review, interagency consultation, and other environmental-related actions under all applicable federal environmental laws and executive orders that pertain to the review or approval of projects assumed under the Pilot Program. The Pilot Program covers most highway projects in the State that require EISs and EAs/Findings of No Significant Impact (FONSI)s, as well as some CEs. The Pilot Program is governed by an MOU between Caltrans and FHWA, which became effective July 1, 2007. Five states, including California, are eligible to participate in the Pilot Program. California is the first state in the nation to enter the Pilot Program.

Caltrans has also assumed the Secretary's responsibilities for CE determinations under Section 6004 of SAFETEA-LU, codified as 23 U.S.C. 326. The CE assignment is open to all fifty states and is renewable every three years, if it is operating to the satisfaction of the FHWA and the state. Caltrans was assigned this responsibility under Section 6004 through an MOU between Caltrans and FHWA, signed June 7, 2007. California is also the first state in the nation to enter the CE assignment program.

To assume these responsibilities, SAFETEA-LU required states to authorize a limited waiver of their sovereign immunity under the 11th amendment of the U.S. Constitution and consent to accepting the jurisdiction of the federal courts on citizens' claims related to any state-assumed responsibilities under the Pilot Program and 6004 MOUs. In response to this requirement, the California legislature passed Assembly Bill 1039 (Nunez, Chapter 31, Statutes of 2006), signed by Governor Schwarzenegger on May 19, 2006, which authorized Caltrans' waiver of sovereign immunity for this narrow purpose, subject to approval of California voters on a statewide bond measure. On November 7, 2006, the electorate approved the transportation bond (Proposition 1B), thereby completing the waiver of Caltrans' sovereign immunity, codified as Street and Highways Code Section 820.1. This waiver remains in effect until January 1, 2009, unless it is extended or deleted by later statute.¹

Section 820.1 of California's Street and Highways Code requires that a report be submitted to the California legislature by January 1, 2008, that provides a comparative analysis of the environmental review timeframes for those projects with environmental approvals prior to

¹ Caltrans has concluded that the risks of accepting this waiver of its sovereign immunity are limited. Historically, FHWA has been sued on its NEPA decisions approximately 20 times annually nationwide and approximately once annually in California. There are no damages involved in NEPA cases. The remedy for loss of a NEPA legal challenge would likely consist of procedural requirements, such as redoing the NEPA document, and, under certain circumstances, payment of opposing counsel's legal fees. Over the last decade, FHWA's payment of legal fees in California has averaged \$27,000 annually.

Caltrans' assumption of NEPA responsibilities, that involved FHWA, and those projects approved after Caltrans' assumption of NEPA responsibilities, that did not involve FHWA in environmental document review. Section 820.1 of California's Street and Highways Code also requires that Caltrans identify all financial costs it has incurred related to the assumption of responsibilities pursuant to Section 326 and subsection (a) of Section 327 of Title 23 of the United States Code. The full text of the report requirements is presented in Appendix A. This report fulfills these requirements.

This report describes the following:

- Status of the Pilot Program
- Overview of the monitoring and data management procedures and tools that Caltrans has put into place to carry out the responsibilities it has assumed under the Pilot Program
- Methodology used to collect information for the comparative analysis
- Description of the environmental review time frames for pre-Pilot Program and Pilot Program projects
- Comparative analysis of pre-Pilot Program and Pilot Program project timeframes
- A summary of financial costs incurred by Caltrans related to its assumption of responsibilities under the Pilot Program

Status of the Pilot Program

Section 6005 of SAFETEA-LU required that states applying for the assumption of FHWA responsibilities submit an application based on regulations to be promulgated by FHWA not later than 270 days after enactment of SAFETEA-LU, or May 5, 2006. The Final Rule for the Pilot Program application was published in the Federal Register on February 12, 2007, over 9 months later than mandated by Congress. The Final Rule became effective on March 14, 2007. Caltrans publicly noticed the availability of its draft application for review and comment on March 14 2007, the date the Final Rule became effective. The draft application was available for public review for 30 days, from March 14-April 16, 2007, as required by the Final Rule. After responding to fifteen comment letters on the application, Caltrans submitted its final application for the Pilot Program to FHWA on May 21, 2007. The Pilot Program MOU became effective on July 1, 2007. Based on the limited period of time in which the Pilot Program has been in effect, this comparative analysis of projects includes an extremely small sample of Pilot Program projects.

Monitoring and Data Management under the Pilot Program

To ensure Caltrans' compliance with the Pilot Program and Section 6004 MOUs, the respective MOUs require that Caltrans monitor its performance. The Pilot Program MOU requires that:

- Caltrans carry out regular quality assurance and QC relating to its assumed responsibilities, including those related to its project decisions, environmental analysis, and project file documentation (Section 8.2.5 of the Pilot Program MOU).
- Caltrans perform self-assessments at least every six months to determine if its processes are working properly, identify weaknesses, and take corrective actions, as needed (Section 8.2.6).
- Caltrans report quarterly to FHWA on its approvals and decisions (Section 8.2.7).
- Caltrans collect and maintain appropriate data related to attainment of a number of specified performance measures, mutually established with FHWA (Sections 10.1 and 10.2).
- FHWA conduct audits of Caltrans to ensure its compliance with the MOU (Section 11.1.1).

Similarly, the 6004 MOU requires that:

- Caltrans submit a list of CE determinations to FHWA each quarter (Section IV(F)(1) of the 6004 MOU).
- Caltrans submit a report to FHWA at the conclusion of the 18th and 30th month of the MOU, summarizing its performance under the MOU (Section IV(F)(2)).
- Caltrans maintain electronic and paper project records pertaining to its MOU responsibilities and the projects processed under the MOU (Section IV(F)(3)).
- FHWA periodically review Caltrans' records to evaluate its performance under the MOU (Section IV(F)(5)).

To comply with these requirements, Caltrans has added elements to its QC procedures for reviewing environmental documents, implemented a formal self-assessment program for environmental compliance, and established formal data management practices for its projects. These Pilot Program procedures and programs are described in detail in Caltrans' on-line reference for environmental compliance, the Standard Environmental Reference (SER) (<http://www.dot.ca.gov/ser/vol1/sec6/ch38nepa/chap38.htm>), and are summarized below. These procedures will ensure Caltrans' compliance with the Pilot Program and Section 6004 MOUs and assist Caltrans and FHWA in determining whether the streamlining objectives of the Pilot Program are being achieved.

Environmental Document Review Process

Prior to its assignment of NEPA responsibilities under the Pilot Program, Caltrans prepared environmental documents under NEPA and other federal environmental laws on behalf of FHWA. Caltrans District staff reviewed these documents consistent with its QC review procedures, and documents were revised as necessary prior to forwarding them to FHWA for review and approval. Caltrans Headquarters and Legal staff also reviewed all EISs prior to their submittal to FHWA. FHWA would review environmental documents and return them to Caltrans for revision. After incorporating FHWA's comments, Caltrans would submit the revised documents back to FHWA for final approval prior to public circulation or distribution. Some documents underwent multiple revision cycles prior to FHWA's approval. For Local

Assistance projects (local roadway projects funded, at least in part, with federal funding), with environmental documents prepared by local agencies and their consultants, Caltrans reviewed the consultant-prepared reports prior to submitting them to FHWA for review and approval.

With the Pilot Program in place, Caltrans is now responsible for NEPA approval for projects under the Pilot Program; FHWA is no longer involved in environmental document review and approval for these projects. To respond to its new role under the Pilot Program, Caltrans has modified its environmental document review procedures, as follows:

- To ensure compliance with FHWA's NEPA regulations, policies, and guidance and the requirements of all applicable federal laws, executive orders, and regulations, all Pilot Program NEPA documents are undergoing a NEPA Quality Control Review. The NEPA QC Reviewer must meet minimum qualification requirements and complete Caltrans' NEPA Compliance training.
- Environmental documents that Caltrans has defined as a "complex EAs" are being treated similar to EISs in that they are being reviewed by an interdisciplinary team at Caltrans Headquarters.
- Caltrans Legal staff is performing required legal sufficiency reviews for final EISs and Section 4(f) evaluations.
- All environmental document reviewers, including Caltrans staff, local agencies, and consultants, now sign a QC Certification form at the conclusion of their reviews, certifying that the environmental document meets requirements.

Self-Assessments

As required by the Pilot Program, Caltrans is implementing a formal process review or "self-assessment" program for environmental compliance. Under this program, Caltrans is regularly performing self-assessments of its QC & Quality Assurance (QA) process to determine whether its procedures are working as intended and taking corrective actions, as needed. Caltrans is also assessing its progress toward meeting the performance measures identified in the Pilot Program MOU. The results of these reviews are summarized in self-assessment reports required by the Pilot Program MOU. Caltrans is scheduled to submit its first self-assessment report to FHWA in December 2007.

Data Management

In order to efficiently and consistently capture data for measuring and reporting environmental document timeframes, as required by the Pilot Program, Caltrans developed a NEPA project tracking spreadsheet that is being used to track environmental milestones for Caltrans projects. The spreadsheet information is being used to develop required monitoring reports related to the Pilot Program, including Caltrans' self-assessment report and quarterly reports under Sections 6004 and 6005. The spreadsheet data was also used in developing the comparative analysis for this report.

Caltrans also developed a uniform environmental file system for all of its projects, to support efficient filing and retrieval of information for audit and reporting purposes.

Analysis of Pre-Pilot and Pilot Program Projects

To meet the requirements of the comparative analysis required by AB 1039, Caltrans identified the last 35 projects, excluding categorically excluded projects, reviewed and approved by FHWA immediately prior to enactment of the waiver of sovereign immunity on May 19, 2006. The environmental timeframes for these 35 projects were compared with five projects for which Caltrans has independently made environmental approvals as the federal lead agency, without FHWA involvement. Those environmental approvals made by Caltrans since initiation of the Pilot Program, but that had FHWA involvement in environmental document review, were not included in the comparative analysis. The sample of Pilot Program projects for which Caltrans had independent decision-making is extremely small since the Pilot Program only began on July 1, 2007. Because of the average length of time required for the environmental process, a good comparison of environmental review timeframes with and without FHWA involvement may not be possible for one to two more years.

The 35 pre-Pilot Program projects and five Pilot Program projects are described in Table 1. Each of these projects has a unique set of project characteristics that affects its complexity and, in turn, the time required to achieve NEPA approval. These characteristics include size and location of the project; sensitivity of the project site in terms of the nature, quality, and extent of environmental resources that will be affected by project construction; other environmental issues related to the project site's human-made environment such as hazardous materials and air quality; regulatory requirements; resource agency interest and involvement; and level of public interest and controversy. Due to the unique characteristics of the pre-Pilot Program and Pilot Program projects and the small sample size of the Pilot Program projects, this comparative analysis can only, at best, suggest possible trends on the effect of the Pilot Program on environmental review timeframes. Many of these projects also had environmental studies initiated as many as nine years ago, and therefore complete information on environmental review timeframes was not available.

Methodology

To collect information on the environmental timeframes for the 35 pre-Pilot Program projects, Caltrans environmental staff completed an environmental milestone tracking spreadsheet. District environmental files for the 35 projects were then reviewed, and one-on-one interviews with the environmental coordinators were conducted for each of the projects. Data for the Pilot Program projects were gathered from the new NEPA project tracking spreadsheet, supplemented with interviews with environmental assessment staff.

Pre-Pilot Program Projects

EAs were prepared for 34 of the pre-Pilot Program projects, and an EIS was prepared for one project (see Table 1). Twenty-four projects were on the State Highway System (SHS) and 11 were federally-funded Local Assistance projects on local roads. A number of these projects also

involved environmental resources that triggered the need to comply with other federal environmental laws.

The complex procedural and documentation requirements of certain federal environmental laws can increase the time that is needed for NEPA approval. To comply with some of these laws, approval from another federal agency is also required. The primary federal laws that affect NEPA approval times include Section 7 of the federal Endangered Species Act, Section 4(f) of the U.S. Department of Transportation Act, and Section 106 of the National Historic Preservation Act. The pre-Pilot Program projects involved resources protected by these Acts, as described below (Table 1):

- Twenty-one projects required at least one federal Endangered Species Act Section 7 Biological Opinion (BO), and four projects required at least one letter of concurrence (LOC) from the U.S. Fish and Wildlife Service (USFWS) and/or the National Marine Fisheries Service (NMFS). BOs are required for projects that are “likely to adversely affect” listed species or their critical habitat, whereas LOCs are prepared for projects that are “not likely to adversely affect” such species. For this analysis, both types of projects are evaluated together since those projects with LOCs had similar environmental review timeframes to projects with BOs.
- Five projects required a Section 4(f) evaluation under the U.S. Department of Transportation Act for use of historic sites or publicly owned parks, recreation areas, or wildlife/waterfowl refuges. Complete Section 4(f) timeframe information was available only for two projects. Due to this small sample size, the effect of Section 4(f) reviews on the overall environmental approval schedule is not further evaluated in this report.
- Eighteen projects had properties that were listed or eligible for listing on the National Register of Historic Places (NRHP) under Section 106 of the National Historic Preservation Act. Of these, three projects had adverse effects on the NRHP properties, requiring concurrence from the State Historic Preservation Officer (SHPO). Only one of the three projects had complete Section 106 timeframe information available. Due to this small sample size, the effect of Section 106 reviews on the overall environmental approval schedule is not further evaluated in this report.

Factors Affecting Environmental Approval Timeframes

A wide variety of factors contributed to the time it took to complete the pre-Pilot Program environmental documents. The most common factors that contributed to longer processing timeframes are listed below with the first five factors (Section 7 issues, local agency/consultant issues, project design changes, and delays in completing the draft Project Report) being the most common and the remaining factors occurring on at least two or more projects:

- Section 7 issues including
 - New species listed
 - Additional surveys required
 - Substantial revisions required for Section 7 documentation
 - Considerable time to obtain resource agency approval

- Local agency or consultant-related issues including
 - Disagreements over design or mitigation considerations
 - Slow turnaround on incorporating Caltrans and FHWA comments into the environmental document
 - Poor initial quality of documents resulting in multiple review cycles
- Changes to project design requiring changes to technical studies, federal environmental compliance documents, and the environmental document; and additional consultation with resource agencies
- Incomplete draft Project Reports causing delays in releasing draft environmental documents for public circulation
- Coordination with cooperating agencies including U.S. Forest Service, Tahoe Regional Planning Agency, and the Bureau of Land Management
- Issues related to the MOU for the NEPA/Clean Water Act Section 404 Integration Process for Federal-Aid Surface Transportation Projects
- Temporary loss of funding
- Projects not in conforming Transportation Improvement Programs (TIP), a requirement for the air quality conformity determinations that must be made prior to environmental document approval

In general, Caltrans staff for the 35 pre-Pilot Program projects stated that FHWA, while conducting required reviews of NEPA documents, attempted to work efficiently to facilitate the environmental review process and did not hinder it. Staff noted that FHWA was willing to expedite its reviews when needed by:

- Agreeing to meet in person or talk by phone to discuss and approve document revisions
- Providing informal, interim reviews of revisions
- Providing email approval on editorial revisions
- Quickly turning around documents

Timeframes for Environmental Approvals

Figures 1 through 4 graphically summarize the environmental review and approval timeframes for the 35 pre-Pilot Program projects, and indicate the median timeframe for each type of approval. Because timeframe information was not available for some review parameters on all 35 projects, the timeframe information is based on a smaller number of projects, as indicated in each of the figures.

Most notably, the timeframe information indicates the following:

- **Approval of draft and final environmental documents:** From the start of the Caltrans QC review of the administrative draft environmental document to the signing of the FONSI or final EIS, the pre-Pilot Program projects took a median time of approximately 17.9 months for NEPA approval, with a couple of projects taking as few as 6.9 months and one project taking 53.3 months (Figure 1). The one EIS project took less time for NEPA approval than did 7 of the EA projects.

The NEPA approval timeframe includes the following:

- Review and approval of the draft and final environmental documents by Caltrans District staff, Caltrans Headquarters and/or Legal staff when applicable (only two examples of these reviews appeared in project files), and FHWA. This measure also includes the time required to revise the draft and final documents based on District, Headquarters, Caltrans Legal, and FHWA comments and to resubmit the documents for further review and approval. (The review and approval timeframes for the draft environmental document are shown in Figure 2. The review and approval timeframes for the final document are shown in Figure 3.)
- Required approvals from other federal agencies such as the USFWS, NMFS, and SHPO.

Because these time frames begin at the point in time when the initial versions of the administrative draft environmental document are complete, they do not include the initial document preparation time, or the time it took to conduct field surveys and analyze data.

The factors that most often affected the NEPA approval times are described above in the section entitled “Factors Affecting Environmental Approval Timeframes.”

- **Approval of draft document:** From the start of the Caltrans QC review of the administrative draft environmental document to FHWA’s approval to circulate the draft document, a median time of approximately 6.1 months was required with a minimum time of 1.0 month and a maximum time of 35.5 months (Figure 2). These timeframes include Caltrans and FHWA review of the draft document, as well as document revision in response to comments, as described above.
- **Approval of final document:** From start of Caltrans’ QC review of the final document to the signing of the FONSI/final EIS by FHWA, the projects took a median time of 2.4 months, about one-third the time required to process the draft documents (Figure 3). This relationship is not surprising as the final document, which contains responses to public review comments on the draft document, final resource agency coordination and consultation documentation, and final mitigation commitments, is simpler to review than the draft document, containing the environmental analysis. These timeframes include Caltrans and FHWA review of the final document, as well as document revision in response to comments, as described above.
- **Section 7 consultation:** The federal Endangered Species Act Section 7 consultation process took a median time of 11.4 months (Figure 4). This consultation process is required for projects needing BOs and/or LOCs from USFWS and/or NMFS.

Although the timeframe statutorily provided to the USFWS and NMFS for issuing BOs is 135 days, the resource agencies typically exceed this timeframe. Of the 20 pre-Pilot Program projects that had BO timeframe information, only 7 met this statutory timeframe.

State and Federal Agencies that Reviewed Environmental Documents

AB 1039 specifies that this report identify the State and federal agencies that reviewed each project and the amount of time the environmental documents were reviewed by each agency. Table 2 provides a list of the state and federal agencies that commented on the pre-Pilot Program project draft environmental documents. This list was generated based on the comment letters contained in the final environmental documents for each project. Although the time that each agency took to review each environmental document is unknown, their comment letters were received during the draft environmental document public review period of 30-60 days.

Nature of FHWA Comments

FHWA comments on the pre-Pilot Program draft environmental documents focused on the general areas listed below. These FHWA comments were common to many of the documents that were reviewed:

- Lack of supporting documentation
- Inconsistencies between the environmental document and the technical studies
- Need to update data
- Need to clarify design details and environmental impacts
- Need to clarify status of federal consultations and procedural requirements
- Editorial revisions

Pilot Program Projects

Data through the first quarter of the state fiscal year (July 1 through June 30) were used for the Pilot Program project information. Between the Pilot Program effective date of July 1, 2007 and October 1, 2007, Caltrans approved the following number of environmental and NEPA decision documents (Table 1):

- Six EAs (four with FHWA involvement)
- Two draft EISs (one with FHWA involvement)
- Four FONSIIs (two with FHWA involvement)

In addition, between July 1, 2007, and October 1, 2007, the following approvals under Section 7 of the federal Endangered Species Act were made (Table 1):

- Two Section 7 BOs were issued by USFWS

- One Section 7 LOC was issued by NMFS

With the exception of two of these EAs, one of the draft EISs, and two of the FONSIIs, FHWA had been involved in all of these approvals, including document review and decision-making, prior to initiation of the Pilot Program. Four of the EAs, one draft EIS, two of the FONSIIs, and all three Section 7 approvals do not reflect environmental review timeframes with Caltrans acting independently as federal lead agency. Therefore, these projects in which FHWA had environmental or compliance document review involvement, or engaged in consultation, are not evaluated further in this report.

The five projects (two draft EAs, one draft EIS, and two FONSIIs), for which Caltrans made independent approvals, can be characterized as follows (Table 1):

- All five projects are SHS projects.
- Two projects require Section 7 approvals. Of these, one project has an approved BO from USFWS; FHWA was involved in consulting with USFWS on this BO. For the other project, Section 7 documentation has been submitted to USFWS and NMFS, and approval by these agencies is pending.
- One project involves compliance with Section 4(f). The draft environmental document for this project contains a Section 4(f) de-minimis conclusion that will be approved with the final environmental document.
- One project had No Effect on historic properties under Section 106 of the NHPA, and therefore, did not require concurrence by the SHPO.

State and Federal Agencies that Reviewed Environmental Documents

Table 2 provides a list of the State and federal agencies that commented on the three Pilot Program project draft environmental documents. As with the pre-Pilot Program projects, this list was generated based on the comment letters received on the draft environmental documents for the three projects.

Those agencies that reviewed the draft environmental document for the two independently approved Pilot Program FONSIIs are not included in Table 2 because, even though these FONSIIs were independently approved by Caltrans, FHWA was involved in reviewing and approving the draft environmental documents for these projects.

Comparison of Environmental Review Timeframes

The 35 pre-Pilot Program projects were compared with the five Pilot Program projects to determine if any time was saved in the environmental review process for projects approved since initiation of the Pilot Program. As noted earlier, due to the unique characteristics of each pre-Pilot Program and Pilot Program project and the small sample sizes of both sets of projects, this comparative analysis can only suggest possible trends on the effect of the Pilot Program on environmental review timeframes. Because of the average length of time required for the

environmental process, a good comparison of environmental review timeframes with and without FHWA involvement may not be possible for one to two more years.

The pre-Pilot Program project timeframes compare with the limited number of Pilot Program project timeframes, as follows (comparisons of timeframes for NEPA approval and Section 7 consultations could not be made due to the limited time in which the Pilot Program has been effective):

- **Approval of draft document:** Under the Pilot Program, three draft environmental documents were approved in a median time of 2.5 months, as compared to 6.1 months prior to the Pilot Program (Figure 2). This reduction in approval time represents a 59 percent savings in time.
- **Approval of final document:** Under the Pilot Program, two final environmental documents were approved in a median time of 0.7 months, as compared to 2.4 months prior to the Pilot Program (Figure 3). This reduction in approval time represents a 71 percent savings in time.

Time was saved in environmental document approval during review of both draft and final environmental documents. Review timesavings occurred by eliminating one layer of government review, removing exchange of documents and comments between agencies, and consolidating all NEPA review at Caltrans.

These data indicate that streamlining objectives of the Pilot Program have been met in the first three months of the Pilot Program.

Caltrans' Financial Costs Related to the Pilot Program

Caltrans' Pilot Program financial costs to date are limited to personnel resources to plan for and implement the Pilot Program. Just under three Capital Outlay Support Personnel Years (PY) were expended from October 2005 through June of 2007 in planning, applying for, and preparing to implement the Pilot Program. The Local Assistance program expended 1.3 PYs in fiscal year 2006/2007 preparing for Pilot Program implementation.

Based on Pilot Program expenditure data, as of October 22, 2007, 2.3 Capital Outlay Support PYs have been expended since the Pilot Program became effective on July 1, 2007. If the charging practices to date continue through the fiscal year, approximately 7.5 Capital Outlay Support PYs will be expended for SHS projects in the first year of the Pilot Program. Caltrans Headquarters Division of Environmental Analysis will expend two of these PYs in overall management of the Pilot Program, including planning and execution of self-assessments, mandatory reporting, statewide preparation for FHWA audits, and Pilot Program training. The remaining PYs will be expended in the Caltrans Districts/Regions for project NEPA QC reviews, managing documentation and records, participating in self-assessments, and preparing for FHWA audits. The Local Assistance program expects to expend 5.7 PYs this fiscal year. One PY will be expended in Headquarters' Local Assistance Division to manage Local Assistance aspects of the Pilot Program, with the remainder expended in the Districts on the same efforts as

described above, as well as to provide increased service to local agencies that participate in the Local Assistance program.

To date, there are no pending or current federal lawsuits against Caltrans on Pilot Program projects, and no costs have been expended on litigation.

Benefits related to the Pilot Program include the following:

- Time savings for environmental document reviews and approvals
- Expedited delivery of Caltrans projects and associated reductions in project-related cost escalations

Due to the limited time in which the Pilot Program has been in effect, the benefits of the Pilot Program cannot be fully and reasonably quantified and evaluated against costs. It will likely be one to two more years before a meaningful cost-benefit analysis of the Pilot Program can be conducted.

Appendix A. California's Street and Highways Code Section 820.1

Section 820.1(d)(1) of California's Street and Highways Code requires the following:

(d) The department shall, no later than January 1, 2008, submit a report to the Legislature that includes the following:

(1) A comparative analysis of the environmental review process under the National Environmental Policy Act (Chapter 55 (commencing with Section 4321) of Title 42 of the United States Code) for the 30 projects, excluding those projects categorically excluded from environmental review, undertaken immediately preceding the enactment of this section that involved the Federal Highway Administration and the environmental review process for all projects undertaken following enactment of this section that did not involve the Federal Highway Administration. This analysis should address the following:

(A) For each project included in the analysis, the environmental review process under the National Environmental Policy Act, including which state and federal agencies reviewed the environmental documents and the amount of time the documents were reviewed by each agency, shall be described.

(B) The points in the environmental review process under the National Environmental Policy Act when project delays occurred and the nature of the delays.

(C) The time saved in the environmental review process for projects undertaken following enactment of this section in comparison to the review process for projects undertaken prior to the enactment of this section. The points in the review process when time was saved.

(D) The circumstances when the Federal Highway Administration hindered and facilitated project delivery.

(2) All financial costs incurred by the department to assume the responsibilities pursuant to Section 326 of, and subsection (a) of Section 327 of, Title 23 of the United States Code, including, but not limited to, the following:

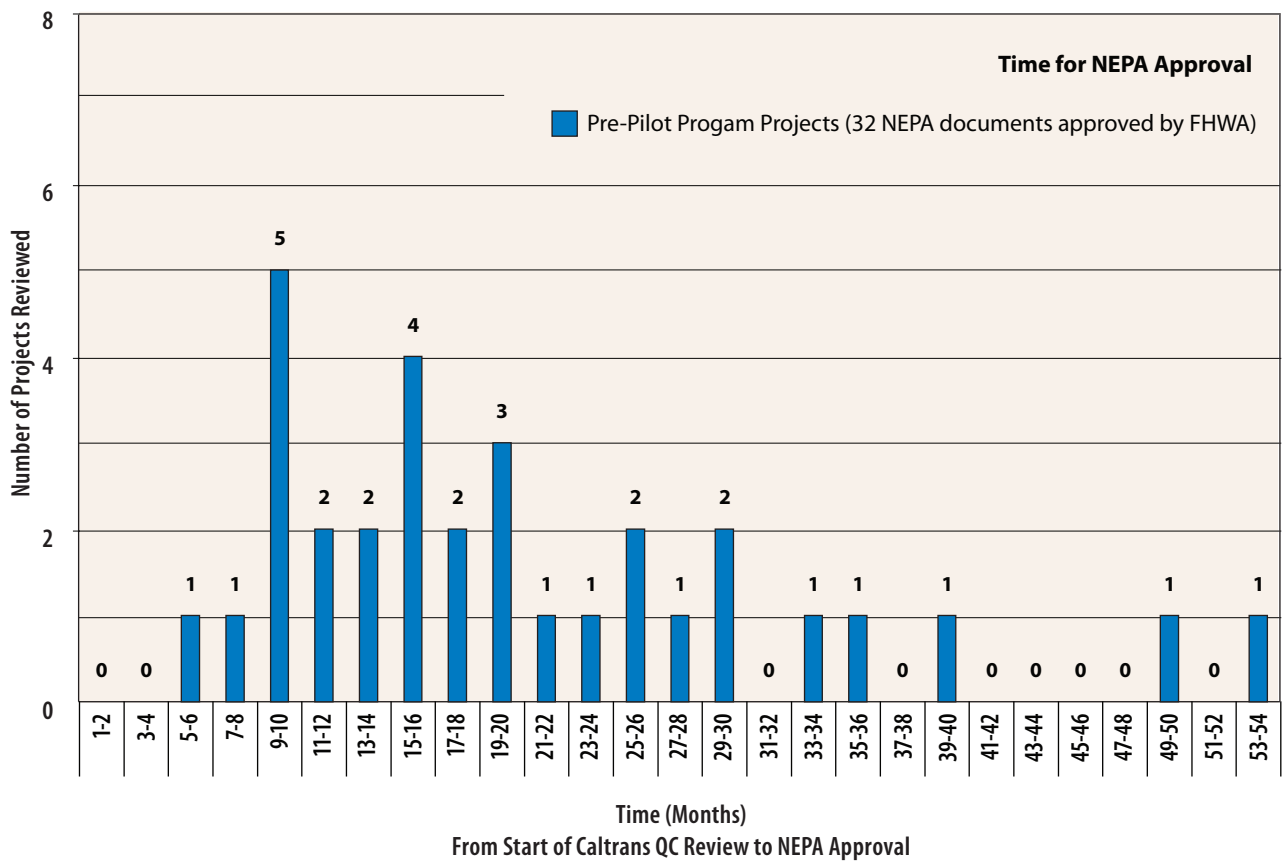
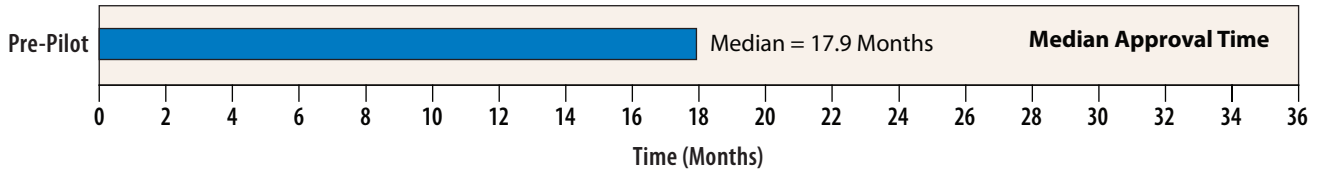
(A) Personnel to conduct and review environmental documents and to manage litigation.

(B) Administrative costs.

(C) Litigation.

(3) An explanation of all litigation initiated against the department for the responsibilities assumed pursuant to Section 326 of, and subsection (a) of Section 327 of, Title 23 of the United States Code.

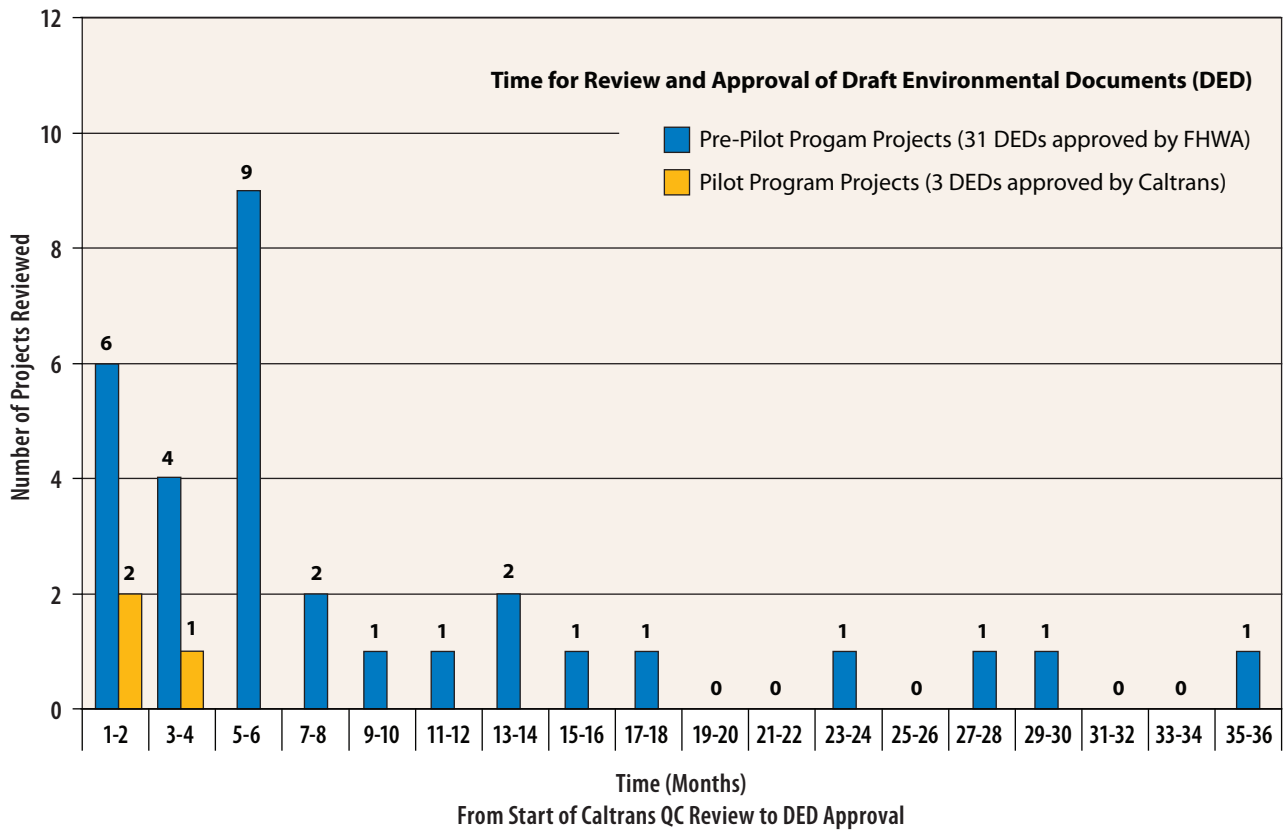
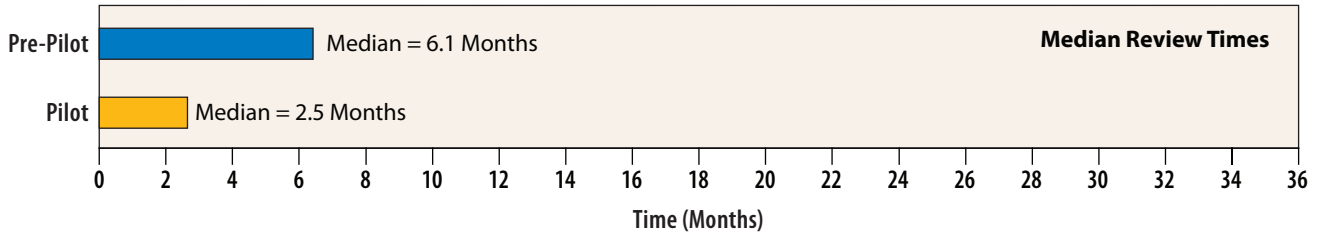
(4) A comparison of all costs and benefits of assuming these responsibilities.



Note: Months are shown in 2-month increments.
For example, "3-4" represents 3.0-4.9 months.



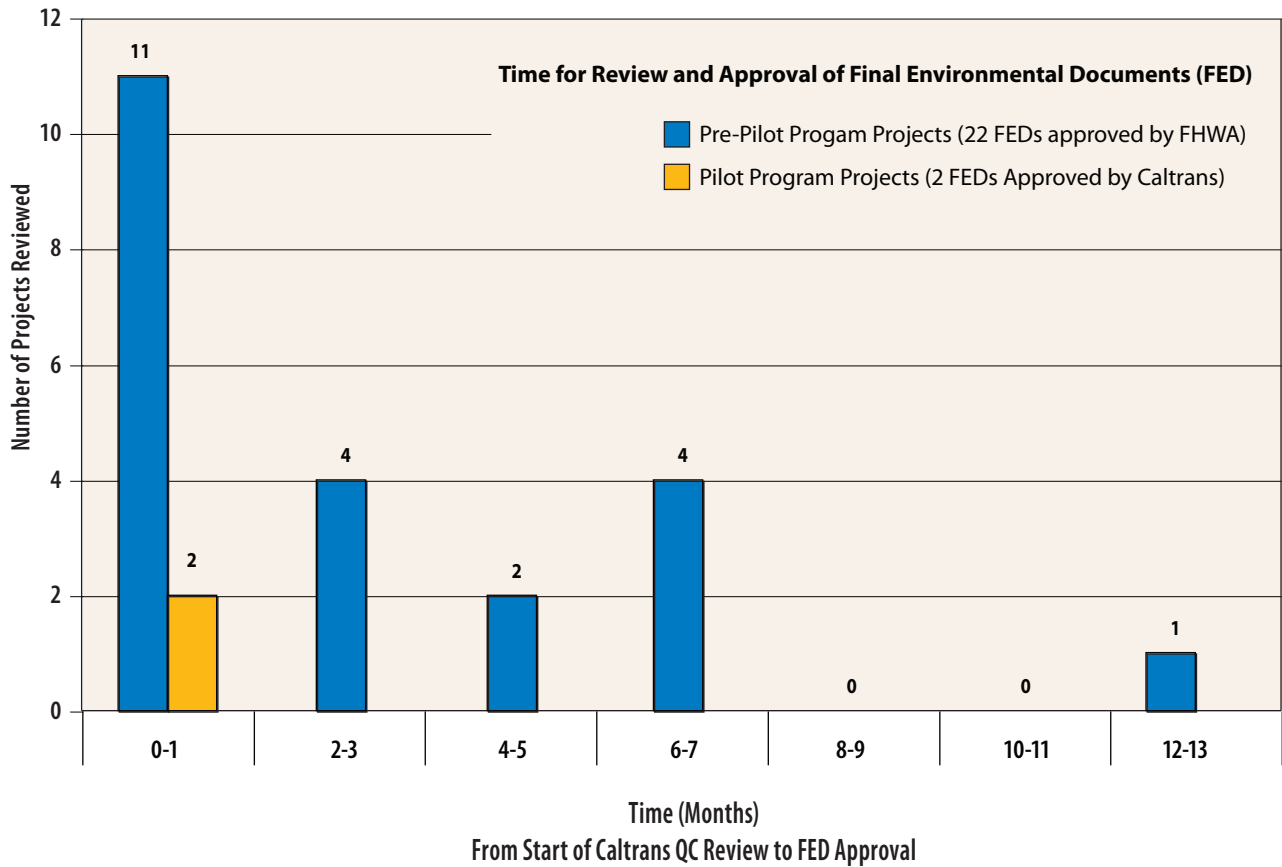
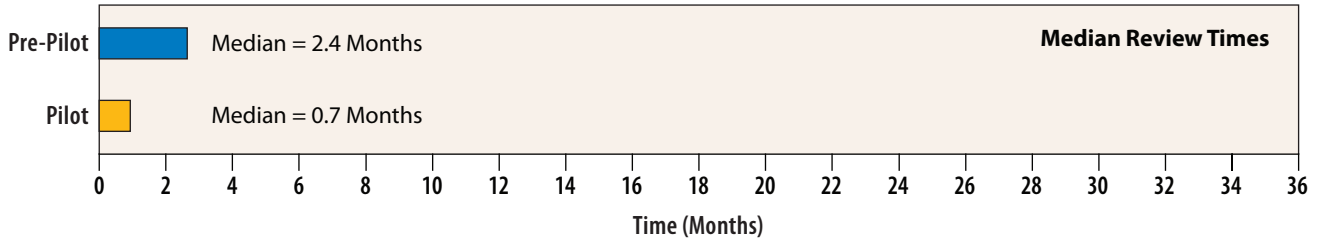
Figure 1
NEPA Approval (Pre-Pilot Program Projects)



Note: Months are shown in 2-month increments.
 For example, "3-4" represents 3.0-4.9 months.



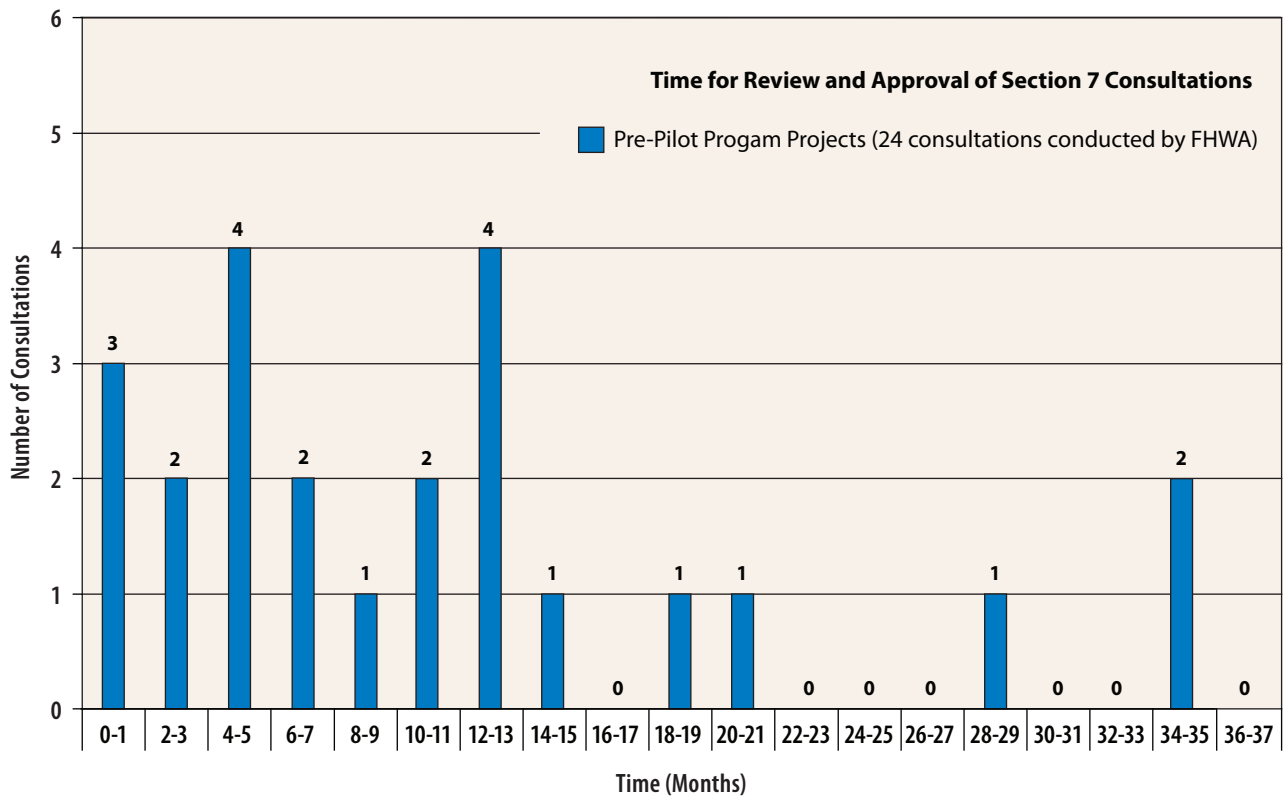
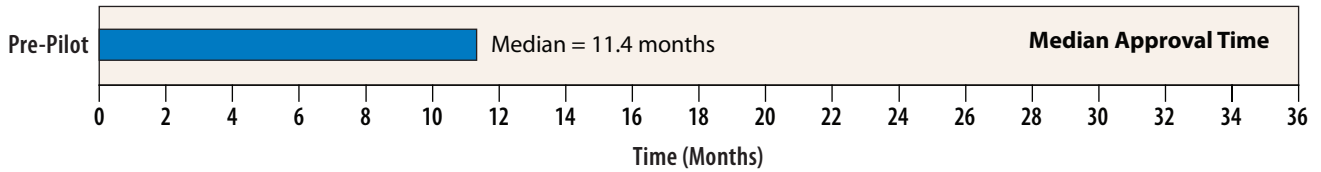
Figure 2
Draft Environmental Document Review
(Comparison of Pre-Pilot Program and Pilot Program Projects)



Note: Months are shown in 2-month increments.
 For example, "2-3" represents 2.0-3.9 months.



Figure 3
Final Environmental Document Review
(Comparison of Pre-Pilot Program and Pilot Program Projects)



From Submittal of Section 7 Documentation to U.S. Fish and Wildlife Service/National Marine Fisheries Service to Section 7 Approval

Note: Months are shown in 2-month increments.
For example, "2-3" represents 2.0-3.9 months.



Figure 4
Section 7 Consultations
(Pre-Pilot Program Projects)

Table 1. Description of Pre-Pilot Program and Pilot Program Projects

Caltrans District	Project Description		Type of NEPA Document	State Highway System (SHS) or Local Assistance?	Section 7		Section 4(f)	Section 106
	County	Project Name			USFWS	NMFS		
Pre-Pilot Program Projects								
1	Mendocino	US 101 Confusion Hill Realignment	EA	SHS	BO	BO		
1	Mendocino	SR 128/253 Culvert Rehabilitation	EA	SHS				
1	Humboldt	US 101/Alton Interchange	EA	SHS	BO/LOC	BO/LOC		NE
2	Shasta	Cypress Avenue at Sacramento River Bridge Replacement	EA	Local Assistance		BO		
3	Butte	SR 70 Freeway Extension/Ophir Interchange	EA	SHS	BO			
3	Placer	SR 28 Tahoe City to Kings Beach/Kings Beach to State Line Environmental Improve.	EA	SHS			Individual	
3	Colusa, Sutter	SR 20 Overlay and Widening from Butte Vista Way to Hageman Road	EA	SHS	BO			
3	Butte	Skyway Widening	EA	Local Assistance				
3	Yolo	Tower Bridge Pedestrian/Bicycle Improvements	EA	Local Assistance	LOC	LOC	Individual	AE
4	Santa Clara, San Benito	SR 152/SR 156 Flyover Interchange	EA	SHS	BO			NAE
4	Contra Costa	SR 4 Widening from Loveridge Road to Hillcrest Avenue	EA	SHS	BO			NE
4	Alameda	I-680 Sunol Grade Northbound HOV Lane	EA	SHS	BO			NE
4	Solano	SR 12 Jameson Road Truck Climbing Lane	EA	SHS	BO			NE
4	San Mateo	SR 92 Shoulder Widening and Curve Correction	EA	SHS	BO	BO		NE
5	San Luis Obispo	SR 46 2-Lane to 4-Lane Expressway	EA	SHS	BO			NE
5	Monterey	US 101 Prunedale Construct Interchanges and Operational Improvements	EA	SHS	BO			NE
5	Monterey	US 101/Airport Boulevard Interchange	EA	SHS				NE
6	Kern	Seventh Standard Road Widening	EA	Local Assistance	BO			NE
6	Fresno	SR 41 Excelsior Expressway Widening	EA	SHS	BO			
6	Tulare	SR 65 Terra Bella Expressway Widening	EA	SHS	BO			NE
6	Kern	SR 184 Weedpatch Widening	EA	SHS	BO			NE
7	Los Angeles	First Street Viaduct and Street Widening	EIS	Local Assistance			Individual	AE
7	Los Angeles	Bridge No. 53C0086 Replacement on Beverly Boulevard over Rio Hondo Channel	EA	Local Assistance				NAE
7	Ventura	SR 23 Widening from Route 101 to SR 118 (Moorpark Freeway)	EA	SHS				
7	Ventura	SR 34 and Lewis Road Widening from Hueneme Road to Route 101	EA	SHS				
7	Ventura	US 101 pedestrian walkway near Mussel Shoals & La Conchita	EA	SHS				
7	Los Angeles	Gap closure project— construct Cross Valley Connector	EA	Local Assistance	LOC			
8	Riverside	I-10 - Palm Drive/Gene Autry Trail Interchange Improvement	EA	Local Assistance	BO			
8	San Bernardino	I-15 Joint Port of Entry, Construct Commercial Vehicle Enforcement Facility	EA	SHS	BO			
8	San Bernardino	I-10 Cypress Avenue Overcrossing	EA	SHS				
8	Riverside	Jurupa Avenue Underpass	EA	Local Assistance			Programmatic	NE
8	Riverside	River Road Bridge Replacement	EA	Local Assistance	BO			
10	Merced	SR 140 Bradley Overhead Bridge Replacement and Widening	EA	SHS	BO		Individual	AE
10	Merced	SR 59 16th Street/Olive Avenue Widening	EA	SHS		LOC		
12	Orange	SR 74 Safety Improvements	EA	SHS	BO			
Totals for Pre-Pilot Program Projects			34 EAs 1 EIS	24 SHS 11 Local Assistance	20 BOs 3 LOCs	4 BOs 3 LOCs	4 Individual 1 Programmatic	3 AEs 2 NAEs 13 NEs

Table 1. Continued

Caltrans District	Project Description		Caltrans Approvals Made After 7/1/07	State Highway System (SHS) or Local Assistance?	Section 7		Section 4(f)	Section 106
	County	Project Name			USFWS	NMFS		
Pilot Program Projects-Independent Caltrans Approvals Without FHWA Involvement								
3	Nevada	La Barr Meadows Widening	FONSI	SHS				
4	Alameda	SR 580 Construct New Interchange	FONSI	SHS	BO ²			
4	Napa and Solano	SR 29/12 Interchange, SR 12 Jameson Canyon Road Widening	EA	SHS	BO ³	LOC ³		NE
5	San Benito	SR 156 Improvement Project	EA	SHS				
11	San Diego	SR 76 Improvement	Draft EIS	SHS			De-minimis ⁵	
Subtotals for Pilot Program Projects Without FHWA Involvement			1 EA 1 Draft EIS 2 FONSI s	5 SHS	2 BOs	1 LOC	1 De-minimis	1 NE
Pilot Program Projects- Caltrans Approvals With FHWA Environmental Review Involvement								
4	Sonoma	SR 101 HOV Widening-Central	FONSI	SHS	BO ⁴	LOC ²		NE
6	Kern	SR 14 Freeman Gulch 4-Lane ¹		SHS	BO ²			NAE
6	Tulare	SR 216 Houston Avenue 4-Lane	EA	SHS			Programmatic ⁵	
7	Ventura	SR 101 Modify Del Norte Interchange	EA	SHS				
8	Riverside	SR 91 Construct HOV Lanes, Modify Interchange	FONSI	SHS				NE
8	Riverside	SR 91 Construct Eastbound Lane in Orange and Riverside Counties	EA	SHS				NE
8	San Bernardino	SR 10 Reconstruct Citrus Avenue Interchange in Fontana	EA	SHS				NE
8	Los Angeles	Alameda Corridor Truck Expressway	Draft EIS	SHS			Individual ⁵	
Subtotals for Pilot Program Projects With FHWA Involvement			4 EAs 1 Draft EIS 2 FONSI s	7 SHS	2 BOs	1 LOC	1 Programmatic 1 Individual	4 NEs 1 NAEs

¹ This project had Section 7 compliance only. See Section 7 column.

² Section 7 compliance after July 1, 2007. FHWA was involved in Section 7 consultation.

³ Section 7 documentation has been submitted to resource agency. Issuance of Section 7 compliance by resource agency is pending.

⁴ Section 7 compliance prior to July 1, 2007.

⁵ Section 4(f) approval is pending approval of final environmental document.

Notes: Type of NEPA Document

- EA = environmental assessment
- EIS = environmental impact statement
- FONSI = Finding of No Significant Impact

Project Sponsor

- SHS = State Highway System project
- Local Assistance = local roadway project that is using federal funds

Section 7

- LOC = Letter of Concurrence
- BO = Biological Opinion

Section 106

- NE = No Effect
- NAE = No Adverse Effect
- AE = Adverse Effect

Projects without Section 7, Section 4(f), or Section 106 issues have blank cells.

**Table 2. Pre-Pilot and Pilot Program Projects:
State and Federal Agencies that
Commented on Draft Environmental Documents**

Commenting Agency	Number of Comment Letters	
	Pre-Pilot	Pilot
State Agencies		
Air Resources Board	3	
Caltrans	2	1
Department of Boating & Waterways	1	
Department of Conservation	5	2
Department of Fish & Game	13	1
Department of Forestry	1	1
Department of General Services	2	
Department of Health Services	1	
Department of Parks & Recreation	4	
Department of Toxic Substances Control	1	1
Department of Water Resources	2	
Division of Safety and Dams	1	
Highway Patrol	5	
Office of Planning and Research	3	
Public Utilities Commission	2	
Reclamation Board	2	
Regional Water Quality Control Board	7	1
Resources Agency	1	
State Lands Commission	3	
State Office of Historic Preservation	6	
Transportation Commission	1	
Waste Management Board	1	
Federal Agencies		
Army Corps of Engineers	6	
Bureau of Land Management	1	
Bureau of Reclamation	1	
Coast Guard	2	
Department of Food and Agriculture	1	
Department of the Interior	1	
Environmental Protection Agency	7	
Federal Emergency Management Agency	1	
Federal Highway Administration	4	
Fish and Wildlife Service	9	
Geological Survey	1	
National Marine Fisheries Service	5	
National Park Service	1	
National Resources Conservation Service	1	
Native American Heritage Commission	6	1