

Memorandum

To: All District Directors
Attention Deputy District
Directors - Construction,
Maintenance, Planning,
Project Development

Date: January 27, 1993

File No: Materials & Methods
Concrete Asphalt - AC

From: **DEPARTMENT OF TRANSPORTATION**
Division of Construction

Subject: Department of Fish and Game (DFG) Agreement on AC Grindings,
Chunks and Pieces

This memo supersedes the following previous memos
guiding the use of AC grindings, chunks, and pieces:

1. Memo signed by John A. Apostolos dated September 9, 1992
(Attachment 3).
2. Memo signed by John A. Apostolos dated August 6, 1992
(Attachment 4).
3. Memo signed by John A. Apostolos and John Allison
dated January 16, 1992 (Attachment 5).
4. Memo signed by W. P. Smith dated January 10, 1992
(Attachment 6).

Criteria for implementing the attached understanding
(Attachment 1) on the use of these materials between
Caltrans and the CA Department of Fish and Game (DFG) are
outlined below.

Procedure

The intent of this memorandum is to provide Caltrans
personnel (i.e., RE's, PE's and other personnel who negotiate
1601 Agreements with DFG) with guidance on implementation.

The first step is to determine whether there are waters
of the State in proximity to the project that could be
affected by the reuse of AC. Waters of the State include: 1)
Perennial rivers, streams or lakes that flow or contain water
continuously for all or most of the year; or 2) Intermittent
lakes that contain water from time to time or intermittent
rivers or streams that flow from time to time, stopping and
starting at intervals, and may disappear and reappear.
Ephemeral streams, which are generally exempt under our
agreement with DFG, are those that flow only in direct
response to rainfall.

The reuse of AC pavement grindings as contemplated by this new understanding will normally be consistent with the Fish and Game Code and not require a 1601 Agreement when these materials are placed where they cannot enter the waters of the State. However, there are no set rules as to distances and circumstances applicable to the placement of asphaltic materials. Placement decisions must be made on case-by-case basis, so that such materials will be placed far enough away from the waters of the State to prevent weather (erosion) or maintenance operations from dislodging the material into State waters. Site-specific factors (i.e., steep slopes) should be given special care. Generally, when such materials are being considered for placement where there is a potential for problems, DFG should be notified to assist in determining whether a 1601 Agreement is appropriate and what mitigation strategies are available to prevent the materials from entering the waters of the State. When in doubt, it is recommended that the DFG be notified.

If there is the potential for reused AC materials to reach waters of the State through erosion or other means during construction, such work would normally require a 1601 Agreement. Depending on the circumstances, the following measures should be taken:

1. The reuse of AC pavement grindings as fill material and shoulder backing must conform to the Caltrans Standard Specifications, applicable manuals of instruction, contract provisions and the attached understanding (Attachment 1) as discussed above.
2. AC chunks and pieces in embankments must be placed above the water table and covered by at least one foot of material.

Dispute Resolution

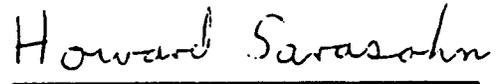
There may be circumstances where agreement between the DFG and Caltrans cannot be reached. Should the two agencies reach an impasse, the agencies shall enter into the binding arbitration process outlined in Section 1601 of the Fish and Game Code (See Attachment 2). However, keep in mind that this arbitration process does not exempt Caltrans from complying with the provisions of the Fish and Game Code. Also it should be noted that this process is time consuming, requiring as much as 72 days or more.

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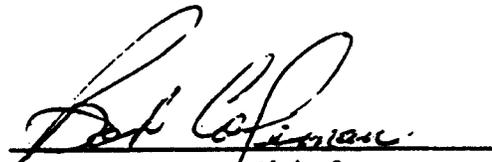
Most negotiations over the placement of AC grindings, chunks, and pieces will take place at the district level as a part of the 1601 Agreement process. However, Headquarters will be available to assist with resolving technical or policy questions as Caltrans will continue to work with DFG in developing long-term solutions. Any questions regarding the interpretation of this understanding should be referred to the following individuals:

Howard Sarasohn, Chief, Environmental Division (916) 263-3418/Calnet 8-435-3418
Roger Cook, Division of Construction (916) 654-2735/Calnet 8-464-2735
Kevin Herritt, Office of Project Planning and Design (916) 263-1071/Calnet 8-435-1071
Gary Gallegos, Division of Maintenance (916) 654-4792/Calnet 8-464-4792


DON BENJAMIN, Chief
Division of State and Local
Project Development


HOWARD SARASOHN, Chief
Environmental Division


JOHN A. APOSTOLOS, Chief
Division of Construction


BOB COLEMAN, Chief
Division of Maintenance

Attachments (6)

Memorandum

To : Mr. Richard P. Weaver, Deputy Director
Transportation Engineering
California Department of Transportation
1120 N Street
Sacramento, California 95814

Date : January 12, 1993

From : Department of Fish and Game

Subject : Memorandum of Understanding On The Use Of Asphalt

This draft Memorandum of Understanding (MOU) outlines the interim agreements between the California Departments of Fish and Game (DFG) and Transportation (Caltrans) reached during the meetings of September 2 and November 30, 1992 regarding the use of asphaltic materials. The intent of this MOU is to describe conditions where use of asphalt road construction material by Caltrans would not conflict with the Fish and Game Code.

Background

Section 5650 of the Fish and Game Code states that it is unlawful to deposit asphalt, other petroleum products, or any material deleterious to fish, plant life, or bird life where they can pass into the waters of the State. In addition, Section 1601 of the Fish and Game Code requires notification to the DFG prior to construction of a project that will result in the disposal or deposition of debris, waste or other material containing crumbled, flaked, or ground pavement where it can pass into any river, stream, or lake designated by the DFG. When constructing transportation facilities, Caltrans frequently uses asphalt in mixed or combined materials such as Asphalt Concrete (AC) pavement. Caltrans also uses recycled AC grindings and chunks. There is a potential for these materials to reach the waters of the State through erosion or inappropriate placement during construction. This MOU provides a working agreement between DFG and Caltrans to facilitate Caltrans' continued use of asphaltic materials and avoid potential conflicts with the Fish and Game Code.

General Understandings

1. These understandings are interim in nature, and will be reviewed and updated after additional study and consideration by Caltrans and DFG.
2. DFG and Caltrans have established two committees, a joint technical committee and a joint policy committee, to review issues related to asphalt use in transportation projects. The joint technical committee will evaluate the potential impacts of asphaltic materials for the joint policy committee who will in turn determine appropriate implementation.

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3. These understandings are intended to facilitate Caltrans' use of asphaltic materials where such use is consistent with the Fish and Game Code. The DFG does not have authority to exempt Caltrans from the provision of the Fish and Game Code. Caltrans will remain responsible for compliance with these provisions. The DFG does not consider use of asphaltic materials when consistent with this memorandum to be a violation of the Fish and Game Code.

Specific Understandings

1. Asphalt Use in Embankments

Caltrans may use AC chunks and pieces in embankments when these materials are placed where they will not enter the waters of the State.

2. Use of AC Pavement Grindings as Shoulder Backing

Caltrans may use AC pavement grindings as road shoulder backing when these materials are placed where they will not enter the waters of the State.

3. Streambed Alteration Agreements

Caltrans will notify the DFG pursuant to Section 1601 of the Fish and Game Code when a project involving the use of asphaltic materials or crumbled, flaked, or ground pavement will alter or result in the deposition of pavement material into a river, stream, or lake designated by the DFG. When the proposed activity incorporates the agreements reached under Section 1601 of the Fish and Game Code, and is consistent with Section 5650 of the Fish and Game Code and this memorandum, the DFG will agree to the use of these materials.

In conclusion, Caltrans and the DFG intend to continue working cooperatively to refine this interim understanding, to resolve any remaining technical and policy questions, and to develop a long-term approach to resolving this subject.

Questions regarding this MOU may be referred to the following individuals:

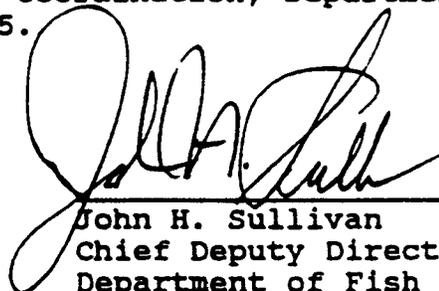
Mr. John L. Turner, Chief, Environmental Services Division,
Department of Fish and Game (916) 653-7560;

Mr. Pete Phillips, Environmental Specialist IV,
Environmental Services Division, Department of Fish and Game
(916) 653-9714;

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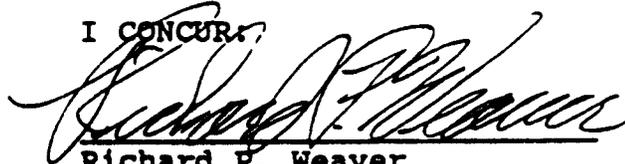
Mr. Howard A. Sarasohn, Chief, Environmental Division,
Department of Transportation, (916) 920-7786;

Mr. Roger Cook, Environmental Coordination, Department of
Transportation, (916) 654-2735.



John H. Sullivan
Chief Deputy Director
Department of Fish and Game

I CONCUR:



Richard P. Weaver
Deputy Director
Transportation Engineering
Department of
Transportation

cc: Mr. John H. Sullivan
Chief Deputy Director
Department of Fish and Game

Mr. John Turner
Mr. Pete Phillips
Department of Fish and Game

Mr. Richard Weaver
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Transportation Engineering
Department of Transportation