

Revised Draft (1/31/02)

MEMORANDUM OF UNDERSTANDING
Between
CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS)
And
CALIFORNIA DEPARTMENT OF FISH AND GAME (DFG)

I. PURPOSE

The purpose of this Memorandum of Understanding (MOU) is to establish responsibilities and procedures of the signatory agencies (Parties) relative to the priority review of transportation projects involving the California Department of Transportation (CALTRANS) and the California Department of Fish and Game (DFG). The goal of this agreement is to obtain timely involvement by DFG staff in the development of Caltrans projects, so that the proposed actions are sensitive to the protection of natural resources for which the DFG is responsible under statutes and regulations, include any conditions necessary to comply with the State's environmental laws, and are processed without delay. Through such early coordination and involvement, the Parties hope that transportation projects can be designed and implemented promptly to meet the ever-changing transportation needs of California in a manner that is sensitive to environmental resources and public interests.

II. BACKGROUND

- A. Federal-aid transportation funding increases to CALTRANS within The Transportation Equity Act for the 21st Century (TEA-21), will substantially increase the number of transportation projects DFG must review pursuant to California Environmental Quality Act (P.R.C. 21000 et seq.), California Endangered Species Act (Fish and Game Code 2050 et seq.), Sections 1601 of the Fish and Game Code, Native Plant Protection Act (Fish and Game Code Sections 1900-1913), and the Memorandum of Understanding dated, December 1990. The DFG is responsible for reviewing Federal, state (CALTRANS), and local actions, which may affect fish and wildlife and other (environmental) resources.
- B. CALTRANS would like the DFG to increase its level of early involvement during the project planning and development process so that final DFG reviews will not constitute an unnecessary delay in CALTRANS project implementation. The DFG has indicated that it cannot, without additional resources, provide CALTRANS with priority reviews of CALTRANS projects, nor increase the DFG's involvement in CALTRANS' transportation planning and development process. The Parties believe it would be mutually beneficial to increase DFG staff and support to enable the DFG to provide CALTRANS with priority project reviews.
- C. CALTRANS and the DFG have entered into Standard Agreement 43A0057, through which CALTRANS is providing funding for additional DFG staff reviewers. This MOU establishes the responsibilities and operating procedures of the Parties with respect to priority reviews and other activities as covered in that Agreement.

III. REGULATORY COMPLIANCE AND MOU COOPERATION

In no way shall it be construed or implied that either CALTRANS or the DFG, by entering in this MOU, is intending to abrogate its obligation and duty to comply with the regulations promulgated under the California Environmental Quality Act (P.R.C. 21000 et seq.), California Endangered Species Act (Fish and Game Code 2050 et seq.), Sections 1601 of the Fish and Game Code, Native Plant Protection Act (Fish and Game Code Sections 1900-1913), and other pertinent legislation related to the conservation and development of California natural resources.

In addition, this MOU does not change existing commitments between CALTRANS and DFG to follow the Memorandum of Understanding, dated December 1990 regarding threatened and endangered species consultation.

IV. GENERAL PROVISIONS

This MOU is intended to:

1. Enable CALTRANS to reduce project delivery time and save staff time and resources by providing for improved and more predictable resource agency coordination;
2. Enable CALTRANS and the DFG to fully consider, address and protect environmental resources early in the development of transportation actions;
3. Avoid conflicts late in project development through close coordination during early transportation project planning and development stages;
4. Provide sufficient information to DFG for the timely analysis of project effects and to assist CALTRANS in developing appropriate mitigation measures;
5. Maximize the effective use of limited DFG personnel resources by focusing attention on projects that would most affect protected environmental resources, and, where appropriate, incorporating watershed and/or ecosystem management type activities so as to lessen the need for project specific species protection;
6. Provide a mechanism for expediting project coordination when necessary; and
7. Provide procedures for resolving any disputes in this resource partnering effort.

V. AGENCY SPECIFIC PROVISIONS

A. California Department of Fish & Game

DFG shall supplement its existing staff, which currently reviews CALTRANS projects on a routine basis, with qualified journey-level project review specialists and other

personnel, within projected funding levels by CALTRANS under Agreement 43A0057 or any successor agreement. DFG shall use the funds provided to defray the costs of salaries and associated benefits and to reimburse reasonable travel expenses in order to:

1. Participate actively in CALTRANS scoping, planning, and project development meetings and field reviews when requested to identify critical issues, key decision points, and potential conflicts as early as possible. Participation includes sharing, where appropriate, the most current information to ensure that good transportation decisions result. The level of participation will be determined by the project's relative priority, as identified by CALTRANS, as well as the DFG's current and projected workload of priority projects and activities. Coordination shall occur as described below.
2. Participate with other federal, state, and local agencies in the concurrent and proactive review of transportation projects including proposed mitigation, and provide any concurrences, permits, licenses, approvals, opinions, or recommendations, as required. The level of participation will be determined by the project's relative priority, as identified by CALTRANS, as well as the DFG's current and projected workload of priority projects and activities.
3. Participate in State and regional level transportation planning meetings, their related activities, and the review of environmental elements of any planning documents as requested. The level of participation will be determined by the project's relative priority, as identified by CALTRANS, as well as DFG's current and projected workload of priority projects and activities.
4. The DFG will coordinate their comments for reviews on draft and final environmental impacts statements and other environmental documents, and provide timely agency responses.
5. Provide timely project-specific information on DFG decisions or pending actions that will affect CALTRANS.
6. Participate actively in the development of programmatic approaches to address environmental issues and prepare for emergency situations.
7. Attend appropriate CALTRANS and/or FHWA sponsored training.
8. Perform other related priority tasks as requested by CALTRANS and agreed to by the USFWS.

B. California Department of Transportation

CALTRANS will provide adequate funding, by multi-year standard/interagency agreement to fund additional DFG staff for the purpose of expediting review of selected priority projects and other identified activities. To facilitate the DFG's reviews and activities, CALTRANS will:

1. Identify individual projects and other identified activities requiring priority involvement by DFG under this MOU (Attachment A). A list will be provided at an initial meeting; the list will be reviewed and revised as necessary at quarterly meetings described below.
2. Provide adequate information regarding projects and other specific activities. Upon request, provide supplemental information necessary to assure that the DFG can effectively accomplish tasks V. A. 1-8.
3. In coordination with the DFG, establish realistic timelines for the DFG involvement.
4. Maintain a single focal point contact in each CALTRANS district included in the area of the DFG jurisdiction covered under this agreement.
5. Hold an initial kick-off meeting with the DFG involving those CALTRANS districts covered by specific agency jurisdiction and the contract.
6. Provide to the DFG, on a regular basis a consolidated and prioritized list of projects and schedules from each CALTRANS District and formally request the DFG's participation as appropriate.
7. Participate in DFG sponsored training.

VI. STANDARD OPERATING PROCEDURES

A. Project Coordination and Consultation

All requests to initiate DFG coordination and consultation for a project or program will be submitted in writing to ??? varies by Region or by fax ???. Requests must include the project name, location, and description; the reason for DFG's' involvement; and the anticipated level and duration of involvement.

B. Meetings

All requests from CALTRANS involving the Regional DFG staff under this agreement will be submitted in writing or email to the appropriate regional supervisor contact with a copy to the DFG HQ Coordinator. CALTRANS will provide sufficient lead-time for scheduling and establishing travel authorizations. Such requests must include an agenda that clearly characterizes what is expected from DFG participation and the desired outcome of the meeting. Written materials attached to the request must contain sufficient information to enable DFG staff to prepare for, and actively participate in the meeting.

VII. PRIORITY PROJECTS AND ACTIVITIES

- A. CALTRANS will provide DFG a list of priority projects and special activities to be treated as priorities, which will be known as Attachment A to this MOU.
CALTRANS will update the list on a quarterly basis, or more frequently if warranted.
- B. If the current and/or projected workload of priority projects and activities exceeds the DFG ability to provide the services specified in this MOU, the DFG will consult with CALTRANS regarding an adjustment of priorities.
- C. If CALTRANS fails to identify its priority projects and activities, the DFG will establish its own priorities in accordance with the objectives of this MOU.
- D. In addition to identifying priority projects and activities, CALTRANS will make a reasonable effort to provide the DFG with information on other projects that may affect the DFG workload and staff availability (e.g., schedules for Draft or Final Environmental Documents, endangered species consultations).

VIII. PERFORMANCE MEASURES

Specific performance measures will be agreed to by CALTRANS and the DFG and used as the primary means of monitoring activities under this MOU. These measures will be known as Attachment B to this MOU. These performance measures may be revised by mutual agreement of CALTRANS and the DFG without necessitating a formal revision or amendment to this MOU.

IX. STATUS REPORTS AND MEETINGS

The following requirements pertain to reports and meetings related to implementation of this MOU:

- A. DFG shall provide a monthly report to CALTRANS that documents the time spent by DFG staff on CALTRANS projects and activities. Each report shall identify the

project(s), the type of action (e.g., permit review, consultation, scoping meetings, etc.), and the time spent on each.

- B. DFG shall provide an annual summary report of progress made under this MOU to CALTRANS Project Officer identified below. This report will describe achievements, including any improvements the DFG has documented in coordinating and streamlining environmental reviews, and will summarize expenditures to date. This report will be submitted no later than September 1st, and will cover the preceding state fiscal year (July 1-June 30). The report also will identify any recommendations for improving consultation and coordination among the Parties to this MOU.
- C. A staff level group from CALTRANS and the DFG will meet on a quarterly or other mutually agreed upon basis to review their commitments, raise issues, remedy outstanding concerns, and to consider revisions to the provisions of this MOU. Representatives from the FHWA and/or other agencies may also be invited, if appropriate and agreed to by CALTRANS and the DFG.

X. DISPUTE RESOLUTION

Any disputes that are not readily resolved at the staff or project manager level will promptly be referred to the supervisory level for resolution. Any disputes that cannot be resolved at the supervisory level will be referred in writing to management for resolution.

Dispute resolution can be initiated on request of any signatory agency. Reasons may include:

1. Unresolved written disagreement;
2. Lack of response within agreed-upon time limits; or
3. Substantive departure from the MOU process

XI. FUNDING

- A. Implementation of this MOU by the DFG is funded through Standard Agreement 43A0057 between CALTRANS and the DFG.
- B. CALTRANS may seek reimbursement from the FHWA for a portion of CALTRANS expenditures under Agreement 43A0059. However, Agreement 43A0059 is valid whether or not there is federal participation in the funding.

XII. PERIOD OF PERFORMANCE

A. This MOU shall become effective upon execution by both Parties, and shall terminate on December 31, 2002, unless extended by amendment or terminated sooner in accordance with paragraph B, below.

B. Either CALTRANS or the DFG may terminate this MOU upon sixty (60) days written notice addressed to the Project Officer of the other agency, as listed below. The agency requesting termination should show cause that there has been a failure on the part of another party to substantially fulfill its responsibilities under this MOU, and only after providing notice and sufficient opportunity for remedy.

XIII. PROJECT OFFICERS

A. California Department of Fish and Game

Joseph Vincenty, CALTRANS Project Coordinator
California Department of Fish and Game
Habitat Conservation Planning Branch
1416 Ninth Street, 13TH Floor
Sacramento, CA 95814
Phone: (916) 651-8710 Fax: (916) 653-2599
e-mail: jvincent@dfg.ca.gov

B. CALTRANS

Sheila Mone, Chief, Office of Interagency Relations and Staff Development
California Department of Transportation
Division of Environmental Analysis – MS 27
P.O. Box 942874, Sacramento, CA 94274-0001 (mail)
1120 N Street, Sacramento, CA 95814 (courier)
Phone: (916) 653-8746 Fax: (916) 653-7757
e-mail: sheila_mone@dot.ca.gov

XIV. SIGNATURES

This MOU takes effect when signed by both officials below and continues in force until terminated by either party. Modifications may be made upon mutual agreement in writing of the signatories.

For the California Department of Transportation:

GARY R. WINTERS, Division Chief

(Date)

Division of Environmental Analysis

For the California Department of Fish and Game:

RONALD D. REMPEL, Deputy Director, Habitat Conservation Division (Date)

Attachment A

Project/Activity CT Contact Agency Involvement Agency Contact Target Date

ATTACHMENT B
PERFORMANCE MEASURES

I. Background and Purpose

The following performance standards and measures have been established for the CALTRANS/DFG MOU Regarding Priority Review of Transportation Projects (MOU). The CALTRANS Resource Partnering Program Coordinator will work with the CALTRANS districts to review and evaluate the DFG's performance on a quarterly basis. The DFG's performance will be compared with the agreed-upon performance measures; inadequate performance may lead to re-evaluation of the MOU and Standard Agreement 43A0057. In accordance with Article VIII of the MOU, these Performance Measures may be revised by mutual agreement of CALTRANS and the DFG. Revision of this Attachment will not necessitate a formal amendment of the MOU.

II. Document/Project Reviews

- A. Substance of Comments: Comments provided on documents should provide as much technical assistance, expertise and guidance as possible and should be in keeping with the highest of environmental standards. Comments should be justifiable and consistent with issues.
- B. Timeliness: The following standards apply to DFG's review of documents and responses to requests for comments and/or concurrence. The following standards apply:
 - C. Review of documents for CALTRANS "priority projects" (Attachment A) should be as timely as possible. The target turnaround time will be 20 working days upon receipt of complete documentation by DFG. DFG will inform CALTRANS as early as possible if a submittal is incomplete. A longer review period may be specified by CALTRANS in a cover letter, or established by mutual agreement of CALTRANS and DFG. It is recognized that there will be cases of multiple ongoing reviews; in those situations, CALTRANS will determine the order of review in coordination with all concerned parties. Without specific direction from CALTRANS, DFG will use "first in – first to be reviewed" as the agreed-upon procedure for managing the review workload.
 - D. All mandatory reviews, written responses, concurrences, agreements and recommendations will be provided within statutory or otherwise agreed-to time frames.
 - E. Evaluation of comment timeliness will be based on review of a random selection of projects and comments provided by customer service surveys. Rating of timeliness will use a scale such as: Outstanding (95-100% on time); Commendable (85-94% on

time); Satisfactory (75-84% on time); and Needs Improvement (less than 75% on time).

III. Technical Assistance/Programmatic Activities

- A. Project Meetings: Reviewing staff should attend or otherwise actively participate in, and/or facilitate priority project meetings requiring their input or expertise. These meetings will be identified and mutually agreed to as early as possible so as to make most efficient use of staff time as described in Section VI. A. In the event that such a priority project meeting must be missed, DFG should coordinate with the host to determine if assistance can be provided by other means. It is understood and agreed that meetings should not be used as a means to solicit the DFG to do the basic environmental work expected of the transportation agencies in their respective roles. Holding meetings to present supporting materials and information and resolve environmental issues, as well as to review work accomplished, is acceptable but must be balanced so as to insure that substantive issues will be addressed.
- B. Field Reviews: Use and initiation of field reviews is encouraged. DFG staff should make every effort to participate in field reviews with the project proponent. If such requests conflict with other priority project work, DFG staff will notify CALTRANS of this as early as possible so that alternative arrangements can be made. Additional field reviews or site visits should be scheduled as needed.
- C. Standards: DFG's participation in field reviews/ meetings as agreed to by CALTRANS and EPA will be rated as follows: Outstanding (active participation in 90% of agreed to meetings); Commendable (active participation in 80% of agreed to meetings); and Satisfactory (active participation in 75% of agreed to meetings). Further evaluation and corrective action may be needed if attendance and participation fall below 75% of agreed to meetings. DFG is expected to participate in 100% of the quarterly MOU status meetings held in accordance with Article IX.C of the MOU.
- D. Programmatic Activities: At CALTRANS' request, DFG will participate in the development of programmatic approaches or additional Memoranda of Understanding (MOUs) as time allows.

IV. Reporting

Article IX of the MOU requires DFG to submit quarterly and annual reports to CALTRANS. 100% compliance with these requirements is expected. These will begin the month after the MOU is signed by all parties. DFG will also work with CALTRANS to examine baseline information regarding previous review activities. This information may be used for comparison and evaluation of new efforts under this MOU as well as to adjust performance measures where necessary.

