

Revised Draft 1/31/02

MEMORANDUM OF UNDERSTANDING
Between the
CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS)
And the
U.S. FISH AND WILDLIFE SERVICE, SACRAMENTO FIELD OFFICE
(USFWS)
REGARDING PRIORITY REVIEW OF TRANSPORTATION PROJECTS

JANUARY 31, 2002

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 U.S. Fish and Wildlife Service (USFWS). The goal of this agreement is to obtain timely involvement by USFWS staff in the development of Caltrans projects, so that the proposed actions are sensitive to the protection of natural resources for which the USFWS is responsible under federal statutes and regulations, include any conditions necessary to comply with the nation'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 USFWS must review pursuant to the National Environmental Policy Act of 1970, Endangered Species Act of 1973 (as amended), the Federal Fish and Wildlife Coordination Act of 1958 (as amended) and the Memorandum of Understanding National Environmental Policy Act and Clean Water Act Section 404: Intergration Process for Surface Transportation Projects in Arizona, California, and Nevada (December 27, 1993). The USFWS is responsible for reviewing Federal, state (Caltrans), and local actions, which may affect protected environmental resources.
- B. CALTRANS would like the USFWS to increase its level of early involvement during the project planning and development process, so that

final USFWS reviews will not constitute an unnecessary delay in CALTRANS project implementation. The USFWS has indicated that it cannot, without additional resources, provide CALTRANS with priority reviews of CALTRANS projects, nor increase the USFWS' involvement in CALTRANS' transportation planning and development process. The Parties believe it would be mutually beneficial to increase USFWS staff and support to enable the USFWS to provide CALTRANS with priority project reviews.

- C. CALTRANS and the USFWS have entered into Standard Agreement 43A0046, through which CALTRANS is providing funding for additional USFWS 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.
- D. While the Federal Highway Administration (FHWA) is not a party to Agreement 43A0046 nor a signatory to this MOU, the Parties recognize FHWA's role as the federal lead agency for federal-aid transportation projects in California. In its capacity as federal lead agency, the FHWA will be actively involved in project-specific coordination and coordination activities of the Parties undertaken in accordance with this MOU.

III. REGULATORY COMPLIANCE AND MOU COOPERATION

In no way shall it be construed or implied that either CALTRANS or the USFWS, by entering in this MOU, is intending to abrogate its obligation and duty to comply with the regulations promulgated under the National Environmental Policy Act of 1970, Endangered Species Act of 1973 (as amended), the Federal Fish and Wildlife Coordination Act of 1958 (as amended), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977). In addition, this MOU does not change existing commitments to follow the Memorandum of Understanding, National Environmental Policy Act and Clean Water Act Section 404 Integration Process for Surface Transportation Projects in Arizona, California, and Nevada (December 27, 1993) or any updates.

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 USFWS 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 the USFWS for timely analysis of project effects, and to assist CALTRANS in developing appropriate mitigation measures;
5. Maximize the effective use of limited USFWS 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. U.S. Fish and Wildlife Service

USFWS 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 43A0046 or any successor agreements. USFWS 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 USFWS' 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 USFWS' 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 USFWS' current and projected workload of priority projects and activities.
4. The USFWS 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 USFWS 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.
9. Perform the following activities related to the Memorandum of Understanding, National Environmental Policy Act and Clean Water Act Section 404 Integration Process for Surface Transportation Projects in Arizona, California, and Nevada (NEPA/404 Integration Process):
 - a. Participate in the NEPA/404 Integration Process.
 - b. Actively participate in any renegotiation of the existing NEPA/404 Integration Process, to address the January 2002 changes in the 404 Nationwide and Individual Permits, as well as any subsequent changes in permitting requirements.

- c. Provide timely coordination and project-related reviews and responses (such as concurrence on project need and purpose, alternatives for evaluation, or the least environmentally damaging practicable alternative) to efficiently accomplish the objectives of the NEPA/404 Integration Process.
- d. Follow agreed-to dispute resolution procedures as the mechanism to address unresolved issues.

B. California Department of Transportation

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

1. Identify individual projects and other identified activities requiring priority involvement by USFWS 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 USFWS can effectively accomplish tasks V. A. 1-9.
3. In coordination with the USFWS, establish realistic timelines for the USFWS involvement.
4. Maintain a single focal point contact in each CALTRANS district included in the area of the USFWS jurisdiction covered under this agreement.
5. Hold an initial kick-off meeting with the USFWS involving those CALTRANS districts covered by specific agency jurisdiction and the contract.
6. Provide to the USFWS, on a regular basis a consolidated and prioritized list of projects and schedules from each CALTRANS District and formally request USFWS' participation as appropriate.
7. Work closely with the USFWS to adjudicate workload conflicts and adjust project priorities and schedules to make optimal use of available staff resources.

8. Participate in USFWS sponsored training.

VI. STANDARD OPERATING PROCEDURES

A. Project Coordination

All requests to initiate USFWS coordination and consultation for a project or program will be submitted in writing to (Single focal point), USFWS or by fax (#####). Requests must include the project name, location, and description; the reason for USFWS' involvement; and the anticipated level and duration of involvement.

B. Meetings

All requests for meetings will be submitted in writing to (Single focal point), USFWS or by fax (#####). Requests must provide sufficient lead time for scheduling and establishing travel authorizations. Such requests must include an agenda that clearly characterizes what is expected from USFWS participation and the desired outcome of the meeting. Written materials attached to the request must contain sufficient information to enable USFWS staff to prepare for, and actively participate in the meeting.

C. NEPA/404 Integration Process

1. All requests for USFWS' participation in the NEPA/404 Integration Process will be submitted in writing to (Single focal point), USFWS or by fax (#####).
2. All meeting requests related to the NEPA/404 Integration Process must also include an assessment of impacts to waters of the U.S. including the area of jurisdiction and anticipated impacts to aquatic resources.
3. Requests for NEPA/404 concurrence or agreement must be submitted in writing to (Single focal point), USFWS or by fax (#####). Such requests must clearly identify the stage of the NEPA/404 process and must include an assessment of impacts to waters of the U.S. including the area of jurisdiction and anticipated impacts to aquatic resources. Other pertinent information determined by the actual stage of the process must also be provided.

VII. PRIORITY PROJECTS AND ACTIVITIES

- A. CALTRANS will provide the USFWS 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 USFWS ability to provide the services specified in this MOU, USFWS will consult with CALTRANS regarding an adjustment of priorities.
- C. If CALTRANS fails to identify its priority projects and activities, USFWS 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 USFWS with information on other projects that may affect USFWS workload and staff availability (e.g., schedules for Draft or Final Environmental Impact Statements, formal and informal endangered species consultations).

VIII. PERFORMANCE MEASURES

Specific performance measures will be agreed to by CALTRANS and the USFWS 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 USFWS 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. The USFWS shall provide a monthly report to CALTRANS that documents the time spent by the USFWS staff on CALTRANS projects and activities. The report shall identify the project(s), the type of action (e.g., permit review, endangered species consultation, scoping meetings, etc.), and the time spent on each.
- B. The USFWS 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 USFWS 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 coordination among the Parties to this MOU.

C. An appropriate management group from the USFWS and CALTRANS will meet on a quarterly or other mutually agreed upon schedule 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 USFWS.

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 either party. Reasons may include:

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

XI. FUNDING

- A. Implementation of this MOU by the USFWS is funded through Standard Agreement 43A0046 between CALTRANS and the USFWS.
- B. CALTRANS may seek reimbursement from the FHWA for a portion of CALTRANS expenditures under Agreement 43A0046. However, Agreement 43A0046 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 USFWS 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. USFWS:

Andrew Yuen, Deputy Field Supervisor
U. S. Fish and Wildlife Service,
Carlsbad Fish and Wildlife Office

mail: 2730 Loker Avenue West
Carlsbad, CA 92008

phone : (760) 431-9440

fax: (760) 431-5902

e-mail:

B. CALTRANS:

Sheila Mone, Chief, Interagency Relations & Staff Development Office
California Department of Transportation
Division of Environmental Analysis – MS27

mail: P.O. Box 942874
Sacramento, CA 94274

courier: 1120 N Street
Sacramento, CA 95814

phone: (916) 653-7746

fax: (916) 653-7757

e-mail: sheila_mone@dot.ca.gov

XIV. SIGNATURES

This MOU will take effect when signed by officials below and will continue to be effective until December 31, 2002, unless extended by amendment or terminated sooner by either CALTRANS or the USFWS. Modifications may be made upon mutual agreement, in writing, on the part of the signatories.

For the California Department of Transportation

GARY R. WINTERS, Chief, Division of Environmental Analysis (Date)

For the U.S. Fish and Wildlife Service:

JAMES BARTEL, Field Supervisor (Date)

Attachment A

<u>Project/Activity</u>	<u>CT Contact</u>	<u>Agency Involvement</u>	<u>Agency Contact</u>	<u>Target Date</u>
-------------------------	-------------------	---------------------------	-----------------------	--------------------

Attachment B

PERFORMANCE MEASURES

I. Background and Purpose

The following performance standards and measures have been established for the CALTRANS/FHWA/USFWS 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 USFWS's performance on a quarterly basis. The USFWS performance will be compared with the agreed-upon performance measures; inadequate performance may lead to re-evaluation of the MOU and Standard Agreement 43A0046. In accordance with Article VIIIIX of the MOU, these Performance Measures may be revised by mutual agreement of CALTRANS and the USFWS. 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. Grammatical changes should not be a reason to delay a document.
- B. Timelines: Review of documents should be as timely as possible. The target turnaround time will be 20 working days upon receipt of complete documentation by the USFWS. USFWS 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 USFWS. It is recognized that there will be cases of multiple or overlapping reviews; in those situations Caltrans will determine priority of review in coordination with all concerned parties. Extensions to review time will be agreed to on a case by case basis. For all major public documents such as a DEIS/FEIS, review and comment must be completed prior to the formal deadline.
- C. Reviews, written responses, concurrence, consultations and/or permit actions will be provided within the statutory or otherwise agreed-to timeframes (e.g., response to NEPA/404 Integration Process requests for concurrence or agreement).
- D. Rating of the substance of comments will be based on a review projects and comments provided by surveying participants as agreed to by Caltrans and U.S. Fish & Wildlife Service. Rating of timeliness will use a scale such as:

Outstanding (95-100% on time), Commendable (85-94% on time), Satisfactory (84-75% on time), and Needs Improvement (75% or less).

III. Technical Assistance/Programmatic Activities

- A. Meetings: Reviewing staff should attend and actively participate in and/or facilitate 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 a meeting must be missed, USFWS 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 USFWS 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: Maximum use and initiation of field reviews is encouraged. USFWS staff should make every effort to participate in field reviews with the project proponent. If such requests conflict with other priority project work, USFWS 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: USFWS' participation in field reviews/ meetings as agreed to by CALTRANS and USFWS 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. USFWS 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, the USFWS will participate in the development of programmatic approaches or additional Memoranda of Understanding (MOUs) as time allows.

IV. Reporting

Article X of the MOU requires the USFWS to submit monthly 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. The USFWS

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.