

Federal Highway Administration  
California Division

Categorical Exclusion (CE) Assignment Program Monitoring Review  
(23 U.S.C. 326)

FY 2009-2010



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## I. Executive Summary

Pursuant to 23 U.S.C. 326, Caltrans assumed the Federal Highway Administration's (FHWA) authority and responsibilities for determining if a transportation project qualifies for a Categorical Exclusion (CE) under the National Environmental Policy Act (NEPA). For the categorically excluded projects, Caltrans also assumed the FHWA's responsibilities for interagency consultation under other Federal environmental protection laws administered by other Federal agencies, such as the Endangered Species Act, Clean Water Act, the National Historic Preservation Act, and the Coastal Zone Management Act. The CE Assignment Program has been in effect in California since June 7, 2007.

Title 23 U.S.C. 326 mandates the FHWA California Division to conduct monitoring reviews periodically to assess and document Caltrans' level of compliance with the provisions of the CE Assignment Memorandum of Understanding (MOU), which outlines specific performance measures and compliance indicators. As agreed upon in the FHWA and Caltrans MOU, these reviews are to occur every 15 months. This report summarizes the results of the FHWA California Division's second monitoring review of Caltrans' activities and performance in the Program.

The FHWA California Division independently verified Caltrans' successful implementation of the six recommendations made in the first CE Assignment Program Monitoring Review, which had been conducted in FY 2008.

The FHWA California Division identified successful practices in Caltrans' implementation of the Program:

Caltrans District 1 and 7 have flexibilities in sharing staff resources between their capital and local assistance programs.

Caltrans Districts 1 and 7 have effectively engaged Federal resource and regulatory agencies with regards to impacted resources.

The report includes seven specific observations and recommendations in the following program areas:

1) Definitions of FHWA Nexus and Federal Nexus

**Recommendation 1:**

The FHWA California Division recommends that Caltrans Headquarters issue statewide guidance on "FHWA-nexus" and "Federal nexus," and make a specific reference to 23 CFR 771.107(c) in the Standard Environmental Reference (SER).

2) Projects on Federal lands

**Recommendation 2a:**

The FHWA California Division recommends that the SER include a section dedicated to how Caltrans meets Federal land management agencies' NEPA implementing regulations for issuing the CEs associated with Federal-aid projects on Federal lands.

**Recommendation 2b:**

If Caltrans plans to include the FHWA's Federal Lands projects in the scope of the CE Assignment Program in California, we recommend that Caltrans initiate dialogue with the FHWA's Central Federal Lands Highway Division.

- 3) Documentation of after-the-fact compliance on the CEs issued for Emergency Opening (EO) component of Emergency Relief (ER) program:

**Recommendation 3:**

FHWA recommends that Caltrans' SER include a dedicated section for the NEPA process associated with ER projects (with a specific focus on the EO component), and that the various agency definitions of what constitutes an emergency be discussed in this section. There also should be specific reference and guidance to 23 USC 125 included in the SER.

- 4) New additions of project categories in the "c" and "d" lists

**Recommendation 4:**

The FHWA California Division recommends that Caltrans Headquarters outreach to the 12 districts to make sure that the changes are effectively communicated to Caltrans environmental staff at the districts, and that all pertinent projects development manuals (e.g., Caltrans Right of Way Manual, Traffic Manual) be updated to reflect the changes.

- 5) Application of the new category in d(12)

**Recommendation 5:**

The FHWA California Division recommends closer coordination between Caltrans environmental and ROW sections to assure that Caltrans' use of the new category in d(12) be limited to its intended purpose in documenting the acquisition of land for hardship or protective purposes, and for advance land acquisition loans under 49 U.S.C. 5309(b) in public transportation projects

- 6) Other follow-up items for Caltrans' next Self-assessment.

**Recommendation 6:**

The FHWA California Division recommends that Caltrans, in its next self-assessment, follow-up on the other recommendations for improved quality assurance, quality control, and process improvements identified during the interviews and the desk reviews. These recommendations are detailed in the accompanying management letter with this report.

Within 30 days of receipt of this final report, the FHWA California Division requests that Caltrans provide an Implementation Plan on how Caltrans intends to address the recommendations in this report.

The overall conclusion of this review is that CE Assignment in California has been implemented at an acceptable level of performance.

## **II. Background and Introduction**

CEs are a class of NEPA actions which, based on past experience with similar actions in similar contexts, do not involve individual or cumulatively significant impacts to the natural or human environment. These are actions which do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic, or other resource; do not involve significant air, noise, or water quality impacts; do not have impacts on travel patterns; and do not otherwise, either individually or cumulatively, have any significant environmental impacts (23 CFR 771.117(a)).

The assignment of environmental decision-making for Section 6004 CEs to Caltrans is governed by a Memorandum of Understanding (MOU). The term of the MOU is for three years after which time it can be renewed. The State's performance of the MOU provisions is subject to monitoring by the FHWA, and the State's documented performance will be considered when the MOU is up for renewal. The U.S. DOT can terminate the entire MOU, terminate any individual responsibility assigned, or exclude a project from the MOU if there is evidence that the State is not meeting the responsibilities identified in the MOU.

Caltrans assumed FHWA's authority and responsibilities for determining if a transportation project qualifies for a Section 6004 CE on June 7, 2007. For these categorically excluded projects, Caltrans also assumed the FHWA's responsibilities for coordination and consultation under other Federal environmental laws, such as the Endangered Species Act, Clean Water Act, Clean Air Act, the National Historic Preservation Act, Coastal Zone Management Act, and Section 4(f) of the U.S. Department of Transportation Act. In the implementation of CE Assignment in California, Caltrans' environmental review, interagency coordination and consultation, public participation, and other related responsibilities for the 6004 CEs assigned under the MOU are subject to the same existing and future procedural and substantive requirements as if the responsibilities were carried out by the FHWA.

Title 23 U.S.C. 326 also requires the FHWA to conduct monitoring reviews of the State to assure compliance with the stipulations of the MOU, as well as with the FHWA's regulations and policies in environmental analysis, including Caltrans' compliance with the requirements of the Federal environmental laws administered by Federal resource and regulatory agencies. The monitoring reviews are also intended to verify that the State has the financial resources to carry out the requirements of the MOU.

This is the second CE Assignment monitoring review performed by FHWA in California. The review was conducted in two phases, which involved a desk review of selected Section 6004 CE determinations in the first phase, and site visits in Caltrans Districts 1 (Eureka) and 7 (Los Angeles) in the second phase. In this review, it was the review team's intention to choose to examine one district in a predominantly rural setting (i.e., District 1 in Northern California) and another in a predominately urban/metropolitan

setting (i.e., District 7 in Southern California). With this being the second review, it is believed that it can be used to build on information gleaned from the previous review and provide a basis for future reviews to continue identifying any needed improvements in the program.

In Caltrans Districts 1 and 7, the review team conducted interviews with Caltrans district staff to determine if there were any issues related to Caltrans' implementation of CE Assignment at the district level. The review enabled the review team to determine and document if any identified issues were isolated incidents, procedural implementation errors, and if anything was systemic in nature. The data and information collected in the desk review and the site visits was analyzed by the review team to identify trends for both successful practices and for the areas that need the FHWA's technical advice and assistance. The review team coordinated with Caltrans Headquarters throughout these activities to ensure that they were in agreement with the FHWA's observations and recommendations for process improvements at the statewide level.

Based on these conversations with Caltrans Headquarters staff about the relevance and representativeness of the observations and recommendations in this report, the review team notes that Caltrans is the largest State Department of Transportation and has a highly decentralized institutional structure comprised of 12 individual districts. Several of these districts (northern and central areas), more or less, function as regional entities. Section 6004 CE decisions are almost always made at the district level. Due to the extensive variability of the State, individual districts may have variable processes and procedures based on affected resources, organization, risk and resource management strategies and interagency relationships.

The observations and associated recommendations are discussed in further detail in the body of the report.

### **III. Purpose**

The purpose of the review was to examine and document the level of Caltrans' compliance with the provisions of the CE Assignment MOU, including compliance with NEPA and other Federal environmental laws. Specifically, the review focused on the two high-risk areas identified in the FY09 Environmental Program Analysis. These were the 6004 CEs associated with Federal-aid projects on Federal lands and documentation of after-the-fact compliance for the 6004 CEs associated with the Emergency Opening component of the Federal-aid projects funded by the FHWA's Emergency Relief Program. In these two areas, the review team examined both procedural and substantive compliance in Caltrans Districts 1 and 7.

#### **IV. Objectives**

The primary objective of this monitoring review was to evaluate and document Caltrans' performance and successes achieved under the CE Assignment in California. Based on the FHWA California Division's FY 2008 and 2009 Environmental Program Analyses and the results of the attendant risk assessments, this year's review had seven specific objectives:

1. Verify that the CE determinations and documentation are appropriate, and that they comply with applicable laws, regulations, and the provisions of the MOU
2. Review Caltrans' processes for the identification and documentation of CE determinations
3. Review Caltrans' resources and training programs associated with the CE Assignment; verify that staff qualifications and expertise are commensurate with environmental decision-making capacity
4. Review Caltrans' own performance monitoring activities to track cost and time savings attributable to the CE Assignment Program
5. Review the effectiveness of the lines of communication between Caltrans Headquarters and Caltrans Districts in disseminating new national policies and guidance
6. Verify the accuracy of the quarterly reports submitted to FHWA
7. Review the adequacy of the CE determinations and supporting technical studies associated with the Emergency Relief Program

The review team also followed up on the observations and recommendations made in the FY 2008 CE Assignment monitoring review.

In addition, the United States Forest Service (USFS) and FHWA Headquarters requested that the FHWA California Division look into Caltrans' environmental procedures for Federal-aid transportation projects on Federal lands (e.g., national forests, national parks, and Bureau of Land Management (BLM) lands) and the review team incorporated this issue into the objectives of the monitoring review.

#### **V. Scope and Approach**

The scope of this monitoring review covered Section 6004 CEs issued in Caltrans Districts 1 and 7 between July 1, 2008 and June 30, 2009.

These CEs had been reported to the FHWA California Division in the fifth, sixth, seventh, and the eighth quarterly reports.

The following steps were taken in data collection and analysis:

- Reviewed the level of evaluation effort by CE type, i.e., the "c" list, "d" list, and the Appendix A list

- Gathered program-level data on Caltrans' performance of the obligations specified in the MOU
- Reviewed the quarterly reports of CE determinations submitted by Caltrans, as required by the MOU
- Interviewed Caltrans Headquarters and district staff to confirm that the CE analysis, preparation, and decision-making process is consistent with the requirements of the MOU
- Provided Caltrans staff a questionnaire to assess if the State is meeting the resource adequacy requirement
- Reviewed CE determinations and supporting technical studies (e.g., Biological Assessments, Section 4(f) *de minimis* findings, Historic Property Survey Reports) on randomly selected projects in Caltrans Districts 1 and 7
- Reviewed agency and public complaints and indications of concern about the decision-making process under the MOU, as well as Caltrans' responses and actions in response to the complaints
- Coordinated among the National, State, and Local Program Teams within the FHWA California Division to identify any staff concerns about the interfaces among Caltrans CE determinations and FHWA decisions in other aspects of project development (e.g., new / modified access to the Interstate, right of way decisions under the Stewardship & Oversight Agreement)
- Reviewed Caltrans' gross data on CEs during the period in question, and looked for any unexpected trends or anomalies
- Explored Caltrans' environmental procedures for the two high-risk areas identified in the FY09 environmental program analysis (i.e., Federal-aid projects on Federal lands and Emergency Opening component of Emergency Relief projects)
- Investigated how well Caltrans met the quality and timeliness goals

During the time period covered by this review, Caltrans made 1,382 assigned Section 6004 CE determinations on a statewide basis. Of the 1,382 CE determinations, 419 were for projects on the State Highway System (including those that are locally sponsored), and 963 were for local assistance projects off the State Highway System.

For the CE determinations issued in Districts 1 and 7, the FHWA California Division conducted a desk review. The desk review involved 100% sampling for both districts, including both capital and local projects. The intention of the survey was to correlate the project descriptions stated on the CE forms with the regulatory definitions of the categories of CE determinations in 23 CFR 771.117, and Appendix A of the MOU.

After the desk review, the review team conducted site visits on September 14-15, 2009 in Caltrans District 7 (Los Angeles), and on September 21-22, 2009 in Caltrans District 1 (Eureka). The standard list of interview questions the review team utilized during the site visits is attached in Appendix A of this report. Each site visit began with a kick-off meeting explaining the purpose and scope of the review, and a detailed discussion of the thought process behind the selection of the interview questions. The review team interviewed Caltrans staff from both Capital Programs and Local Assistance. In each

district, the review team also examined the environmental administrative records (including any available technical studies and interagency consultation/coordination correspondence) of eight projects in each district selected for secondary review. A close out meeting was held in each district at the end of both site visits.

## **VI. Status of the October 2008 Recommendations**

The FHWA California Division independently verified Caltrans' implementation of the six recommendations made in the first CE Assignment Monitoring Review, which had been conducted in FY 2008. These recommendations are attached in Appendix B. The review team verified that Caltrans made all appropriate revisions to the SER, Caltrans' statewide environmental policy and guidance document, to address the six issues at the headquarters level. At the district level, we also verified that the same issues did not come up during the project reviews in this second CE Assignment Monitoring Review. In particular, the review team made the following observations:

- During the project reviews, conducted during the site visits in Caltrans Districts 1 and 7, the review team observed that the Biological Assessment used to support the CE determinations contained Section 7 terminology consistent with the U.S. Fish and Wildlife Service's Section 7 Consultation Handbook.
- During the project reviews, conducted during the site visits in Caltrans Districts 1 and 7, the review team observed that the CE decisions were being made for fully-funded projects programmed in a financially constrained Transportation Improvement Plan.
- Caltrans has established lines of communication with the FHWA California Division and FHWA Headquarters to notify the FHWA of all planned future training associated with NEPA Assignment. Caltrans' NEPA Assignment Training Plan, prepared to satisfy the regulatory requirement for the Section 6005 Program, also includes training attributable to the CE Assignment, and the Training Plan was appropriately coordinated with the FHWA California Division.
- Caltrans has established an iterative process between the districts and headquarters to assure the accuracy of the list of CE determinations in the required quarterly reports. Caltrans' accuracy has significantly increased from 10% under-reporting observed in the first review to less than 2% under-reporting. In addition, Caltrans Headquarters was able to track the missing CEs, and provide them to the review team in a timely fashion.
- The CE forms have been revised to include name, title, signature, and date blocks to clearly identify the senior environmental planners signing the CE determinations.
- The SER has been revised to include the FHWA's national guidance documents for Programmatic Section 4(f) determinations, including the one for independent bicycle and pedestrian facilities. During the project reviews, the review team did not observe any issues with the Section 4(f) *de minimis* findings or programmatic Section 4(f) determinations made to support the CE decisions.

## **VII. Review Results**

### **Program-Level Results**

**Objective 1.** Verify that the CE determinations and documentation are appropriate, and that they comply with applicable laws, regulations, and the provisions of the MOU

**Results:**

The review team examined 196 CE determinations from Caltrans Districts 1 and 7 in the desk review, and conducted secondary project-level reviews during the site visits. Overall, use of a CE was appropriate and generally supported by the technical studies and the outcomes of interagency consultations with Federal resource and regulatory agencies. The administrative records for the CEs included documentation of compliance with applicable laws, regulations, and the provisions of the MOU.

**Objective 2.** Review Caltrans' processes for the identification and documentation of CE determinations

**Results:**

The review team examined Chapter 30 of Caltrans' SER, and determined that Caltrans' statewide process for the identification and documentation of CE determinations complies with FHWA requirements and MOU provisions. The review team found Chapter 30 of Caltrans' SER user-friendly, comprehensive, and consistent with the FHWA's regulatory requirements in 23 CFR 771.117.

**Objective 3.** Review Caltrans' resources and training programs associated with the CE Assignment; verify that staff qualifications and expertise are commensurate with environmental decision-making capability

**Results:**

Through the interviews conducted in the site visits, the review team examined Caltrans' resources and training programs associated with the CE Assignment, and verified that staff qualifications and expertise are commensurate with the environmental decision-making capability. In particular, the review team verified that Caltrans' senior environmental planners were signing the CE determinations, and that the technical specialists for the analysis of biological and historical resources were appropriately qualified.

**Objective 4.** Review Caltrans' own performance monitoring activities to track cost and time savings attributable to the CE Assignment Program

Results:

The review team examined the scope, methodology, and the results of Caltrans' first self-assessment for the CE Assignment, and the team was satisfied with Caltrans' approach in conducting the required self-assessments. However, the review team noted that Caltrans does not document any cost or time savings attributable to the Program.

**Objective 5.** Review the effectiveness of the lines of communication between Caltrans Headquarters and Caltrans Districts in disseminating new national policies and guidance.

Results:

The review team observed effective lines of communication among Caltrans Headquarters, the two regions, and the twelve districts in new national policies and guidance documents. In addition to the web-based SER, Caltrans Headquarters leads weekly teleconferences with the regions and districts to discuss new national policies and their implementation at the district level.

**Objective 6.** Verify the accuracy of the quarterly reports submitted to the FHWA.

Results:

The review team verified the accuracy of the quarterly reports submitted to the FHWA California Division, and observed significant improvements in this area.

**Objective 7.** Review the adequacy of the CE determinations and supporting technical studies associated with the Emergency Relief Program

Results:

The review team verified Caltrans' procedures for documenting after-the-fact compliance in the CE determinations associated with Emergency Opening (EO) projects in the Emergency Relief Program. The team conducted secondary reviews of actual CEs for EO projects during the two site visits, and found them to be satisfactory.

**Successful Practices**

1. Both Caltrans District 1 and 7 have flexibilities in sharing staff resources between their Capital and Local Assistance Programs on an as-needed basis. These flexibilities can be important in addressing endangered species (i.e., biologists) and historic resources (i.e., archeologists). This can be particularly important in managing the additional workload due to Recovery Act-funded projects, which has been compounded by State furloughs.

2. Both Caltrans Districts 1 and 7 have effectively engaged Federal resource and regulatory agencies, as needed, with regards to impacted resources. District 1 has a dedicated staff person to facilitate dialogue with Native American tribal governments,

and District 7 has a dedicated environmental stewardship office that tracks environmental commitment compliance for both Section 6004 CEs and higher level NEPA documents.

### **Recommendations for Improvement**

Based on the results of the desk review and the information gathered during the site visits in Caltrans Districts 1 and 7, the review team has made the following six observations, examined their root causes and effects, and made attendant recommendations for process improvements. Given Caltrans' waiver of sovereign immunity and acceptance of legal risk associated with the implementation of the CE Assignment, as well as the program-level compliance findings stated in the overall review opinion, the six issues are presented as observations and recommendations for future process improvements, rather than findings of regulatory non-compliance.

**1. Definition of FHWA Nexus and Federal Nexus:** The review team observed that there is some confusion among District 7 environmental planning staff regarding the interpretation of the FHWA-nexus that triggers NEPA for their projects in the environmental phase (23 CFR 771.107(c)). During the course of the desk review and the interviews, the review team observed that District 7 had unnecessarily prepared Section 6004 CE determinations for a T-Mobile cell phone tower adjacent to U.S. 101 in Ventura County, a facility upgrade project for a commercial vehicle inspection facility along U.S. 101 in Ventura County, and a sewage upgrade project at a Caltrans maintenance station along I-405. Caltrans told the review team that they prepared the Section 6004 CE determinations because the projects were associated with a U.S. route and an Interstate. The review team also noted that the environmental planning staff was uncertain about the Federal-aid eligibility of these three projects. In response, the review team advised Caltrans District 7 that these projects are not Federal-aid eligible, and there was no need to prepare NEPA documentation for the projects. Since Caltrans District 7 is a predominantly urban district with many locally-sponsored projects on the State Highway System, Caltrans District 7's overreach in applying NEPA may also result in unnecessary preliminary engineering costs for local public agencies in Los Angeles and Ventura Counties.

#### **Recommendation 1:**

The FHWA California Division recommends that Caltrans Headquarters issue statewide guidance on "FHWA-nexus" and "Federal nexus," and make a specific reference to 23 CFR 771.107(c) in the SER.

**2. Projects on Federal lands:** Caltrans has multiple segments of the State Highway System that cross national forests, national parks, and BLM lands. In Caltrans District 1, there are also a few segments of the State Highway System on tribal lands, held in trust by the U.S. Government. The review team observed that there is no readily available cross-reference in the SER to the Federal land management agencies' NEPA implementing regulations, and that most Caltrans staff in Districts 1 and 7 were uncertain about to what extent they should satisfy the Federal land management agencies' NEPA requirements in the Section 6004 CEs. For example, the U.S. Forest Service's (USFS)

NEPA implementing procedures have recently been moved from the Forest Service Manual (FSM) Section 1950 and the Forest Service Handbook (FSH) Section 1909.15 to 36 CFR 220. USFS explanatory guidance in interpreting the Council on Environmental Quality regulations and agency procedures remains in FSH 1909.15, and USFS' NEPA authority, objectives, policy, and responsibilities remains in FSM 1950. Similarly, the National Park Service's (NPS) NEPA implementing procedures are discussed in the NPS Director's Order-12, which is published on-line at [http://www.nature.nps.gov/protectingrestoring/DO12Site/01\\_intro/011\\_intro.htm](http://www.nature.nps.gov/protectingrestoring/DO12Site/01_intro/011_intro.htm). In addition, the BLM has a guidance document that describes how the BLM becomes a cooperating agency under NEPA for many activities on BLM lands, including Federal-aid highway projects. This document is also published on-line at [http://www.blm.gov/pgdata/etc/medialib/blm/wo/Planning\\_and\\_Renewable\\_Resources/coop\\_agencies.Par.69801.File.dat/CAGUIDE05.pdf](http://www.blm.gov/pgdata/etc/medialib/blm/wo/Planning_and_Renewable_Resources/coop_agencies.Par.69801.File.dat/CAGUIDE05.pdf).

**Recommendation 2a:**

The FHWA California Division recommends that Caltrans update the SER to include Federal land management agencies' NEPA implementing regulations.

In addition, NEPA Assignment allows Caltrans to become the NEPA-lead for the FHWA's Federal Lands projects when Caltrans would design and construct the project. Caltrans indicated this is an area they may pursue, but currently there has been no formal dialogue between Caltrans and the FHWA Central Federal Lands Division. Before such assignment could occur, this aspect of NEPA Assignment (for both Sections 6004 and 6005) would need to be formalized between Caltrans and the FHWA Central Federal Lands Highway Division to clarify project stewardship and oversight responsibilities during the NEPA phase.

**Recommendation 2b:**

If Caltrans plans to include the FHWA's Federal lands projects in the scope of the CE Assignment in California, we recommend that Caltrans initiate dialogue with the FHWA's Central Federal Lands Highway Division.

**3. Documentation of after-the-fact compliance on the CEs issued for Emergency Opening (EO) component of the Emergency Relief (ER) Program:** The review team observed that Caltrans district staff is in need of statewide guidance on how to address and document after-the-fact compliance for the Section 6004 CEs issued for EO projects. The environmental planners interviewed during the site visits expressed specific interest in a detailed explanation of the application of Federal environmental requirements to time-sensitive EO projects, and how this is different than that for Permanent Restoration (PR) projects in the ER Program. The environmental staff also mentioned that the different resource and regulatory agencies are likely to have different definitions of what constitutes an "emergency," and that there is a strong need for a statewide guidance which discusses these various definitions and how they have to be reconciled in a time-sensitive EO situation. The review team identified five projects in District 7 that did not constitute "emergencies" based on the project description and the information provided (e.g., 07018 where road damage occurred in 2006, but the repair was not undertaken for

several months). For the purpose of the Endangered Species Act, “an emergency is an act of God, disasters, casualties, national defense or security measures, etc., and includes response activities that must be taken to prevent imminent loss of human life and property (50 CFR 402.05).” For the U.S. Army Corps of Engineers, “an emergency is a situation, which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under the standard process (33 CFR 325.2(e)(4)).” In addition, FHWA’s regulatory definition of what qualifies as an emergency repair and what constitutes a catastrophic failure are identified at 23 CFR 668.103. These definitions are not nearly as restrictive as those of other agencies and can be problematic if natural resources are impacted that require consultation or permitting. In accordance with CE c(9), specific reference to 23 USC 125 should be included in the SER.

**Recommendation 3:**

FHWA recommends that Caltrans’ SER include a dedicated section for the NEPA process associated with ER projects (with a specific focus on the EO component), and that the various agency definitions of what constitutes an emergency be discussed in this section. There also should be specific reference and guidance to 23 USC 125 included in the SER.

**4. New additions of project categories in the “c” and “d” lists:** In 2008, the FHWA went through a rulemaking process to add two new categories of CE activities on the “c” list, and two new categories of CE activities on the “d” list. Three of the four additions involve the interface between the environmental and right of way (ROW) phases of project development. The fourth new CE category involves Intelligent Transportation Systems projects. The review team observed that many of the district staff is not familiar with these new additions, and that Caltrans’ Right-of-Way and Traffic Manuals do not reflect the updates.

**Recommendation 4:**

The FHWA California Division recommends that Caltrans Headquarters outreach to the 12 districts to make sure that the changes are effectively communicated to Caltrans environmental staff at the districts, and that all pertinent project development manuals (e.g., Caltrans Right of Way Manual, Traffic Manual) be updated to reflect the changes.

**5. Application of the new category in d(12):** Based on the results of the initial desk review, the review team observed that Caltrans District 7 used the new category in d(12) for documenting 11 excess parcel disposal decisions. This category is intended for ROW acquisitions for hardship and protective purposes, or for loans under 49 U.S.C. 5309(b) for public transportation projects. Generally, the correct category should have been d (6).

**Recommendation 5:**

The FHWA California Division recommends closer coordination between Caltrans environmental and ROW sections to assure that Caltrans' use of the new CE category d(12) be limited to its intended purpose in documenting the acquisition of land for hardship or protective purposes, or for advance land acquisition loans under 49 U.S.C. 5309(b) in public transportation projects.

**6. Other follow-up items for Caltrans' next self-assessment** During the on-site interviews and/or desk reviews of CE documentation the review team identified several other process improvement opportunities that we wanted to bring to Caltrans' attention and recommend that Caltrans follow-up on these items in future self-assessments. The details of those issues have been included in the management letter accompanying this report.

**Recommendation 6:**

FHWA recommends that Caltrans expand upon our review in its next self-assessment, identify any underlying causes, such as incomplete project descriptions on the CE forms, assess their relevance at the statewide level, and implement additional QA/QC measures.

**VII. Implementation**

FHWA California Division requests that Caltrans provide us an Implementation Plan on or before May 30, 2010 on how Caltrans intends to address the recommendations in this report and the accompanying cover letter.

Caltrans' response to the FHWA California Division should include specific milestones, schedules, and deliverables which will document Caltrans' full implementation of the recommendations. The plan should also specify any possible distinctions between the issues relevant to "capital" projects (i.e., on the State Highway System) and those relevant to local assistance projects (i.e., off the State Highway System).

**VIII. Conclusion, Review Opinion, and Looking Ahead**

The results, at this time, of our desk review, as well as the field observations during the two site visits in Caltrans Districts 1 and 7, indicate that CE Assignment in California has been implemented at an acceptable level of performance.

Caltrans has also addressed the six recommendations (attached in Appendix B) made in the first CE Assignment Monitoring Review report to the FHWA California Division's satisfaction. The recommendations have resulted in process improvements and revisions to Caltrans' SER.

The review team independently verified Caltrans' procedural compliance with the provisions of the MOU, examined supporting documentation for the CE determinations, and observed Caltrans' improvement in all six performance areas:

- Compliance with governing Federal environmental laws, regulations, and provisions of the MOU,
- Processing projects assigned under the MOU: State identification, documentation, and review of effects,
- Excluded projects,
- Required State resources, qualifications, expertise, standards, and training,
- State quality control,
- MOU performance monitoring and quality assurance.

In addition, the review team found six other program areas in which improvements can be made. The review team's observations and recommendations associated with the six program areas are discussed in detail in the "Recommendations for Improvement" section of the report and accompanying transmittal letter. The FHWA California Division is available to provide technical advice and assistance as Caltrans addresses the recommendations.

During the site visits in Eureka and Los Angeles, environmental management officials indicated an ongoing interest in obtaining constructive feedback on regulatory flexibilities in risk management, successful practices, and areas for improvement. By addressing the recommendations made in this report and cover letter, FHWA anticipates continued improvements in this program.

FHWA California Division will begin to conduct the third CE Assignment Monitoring Review in fall 2010.

## Appendix A: Site Visit Interview Questions

### CE Assignment Monitoring Review Interview Questions:

#### General:

1. What is your overall experience with implementing the CE Assignment Program (Program) in the District?
2. In your experience, has the implementation of the Program resulted in time and cost savings? How do you track these savings?
3. How did the additional projects funded by the Recovery Act and the State furloughs influence resource management decisions in implementing the program?

#### Emergency Relief Projects:

1. Please describe the environmental review process associated with the 6004 CEs for Federal-aid projects funded by the Emergency Relief Program.
2. How does the process differ between the emergency opening and permanent restoration aspects of the ER Program?

#### Federal-Aid Projects on Federal Lands:

1. What is your experience in making 6004 CE determinations for Federal-aid projects in national forests, national parks, and BLM lands?
2. To what extent does Caltrans consider Federal land management agencies' NEPA implementing regulations in making 6004 CE determinations?

#### Follow-Up on Last Year's Review:

1. How did Caltrans HQ communicate with the District about the results and observations noted in last year's CE Assignment Review?
2. What kind of response strategies did the District come up with based on these results and observations?

#### Eligibility and Fiscal Constraint

1. How does the environmental decision maker verify the eligibility of the project at the time the 6004 CE determination is made?
2. How does the environmental decision maker verify that the project is fiscally constrained (programmed in a conforming TIP)?

## Local Agencies

1. How does the District outreach to local public agencies (and their consultants) to explain Caltrans' new roles and responsibilities under NEPA Assignment?

## Appendix B: Observations and Recommendations Made in the First CE Assignment Monitoring Review Report (October 2008)

### **B. Technical Advice and Assistance**

#### **1. Consistent Use of Section 7 Terminology**

We observed some confusion between the terms used in CEQA compliance and the terms that should be used in Endangered Species Act Section 7 consultations with the U.S. Fish & Wildlife Service and NOAA Fisheries Service. For example, some of the informal consultation letters mentioned that the project will have “a less than significant affect on the listed species,” rather than making a “not likely to adversely affect” finding, and seeking concurrence.

In another instance, Caltrans made a “no affect” finding for a project, and then mentioned that the project is “covered” in a Programmatic Biological Opinion, and no further Section 7 consultation is needed.

#### **Recommendation**

In keeping the administrative record for Section 7 consultations, and in preparing Biological Assessments that support the consultations, we recommend that Caltrans use Section 7 terminology explained in the U.S. FWS Section 7 Consultation Handbook. This Handbook is intended for Federal agencies to use as a reference in Section 7 consultations, and it is published on-line at <http://www.fws.gov/endangered/consultations/s7hndbk/s7hndbk.htm>.

#### **2. Transportation Planning Requirements and Their Relationship to NEPA Decisions (FHWA Policy Memorandum Dated January 28, 2008)**

The review team observed only local assistance projects in District 8 were able to provide documentation of fiscal constraint (i.e., FSTIP printout) in the project files kept by environmental staff. In all other cases, the environmental planners assumed that the

projects were listed in a Regional Transportation Plan (in a Metropolitan Area), or in a Statewide Long Range Transportation Plan (for projects in a rural area).

### **Response and Recommendation**

The FHWA's recent policy memorandum explains planning, programming, and air quality conformity requirements that need to be satisfied prior to making a CE determination. The review team shared copies of this memorandum with environmental planners in both districts.

We recommend that a new tab be established in the new filing system for the documentation to meet these requirements. We also recommend that the FHWA's January 28, 2008 policy memorandum be published in the Standard Environmental Reference.

### **3. Notices of Training (23 U.S.C. 326 MOU Stipulation IV.E.3)**

While Caltrans provided to the FHWA a training plan for the NEPA Assignment Pilot Program (SAFETEA-LU Section 6005), and the review team confirmed that the two districts were delivering the planned training sessions, no notices of training were provided to the FHWA California Division for the purpose of the CE Assignment Program. The review team learned that both Districts 3 and 8 conducted multiple training sessions for the successful implementation of the CE Assignment program with no notice to the FHWA. We have also learned that both Districts went above and beyond the planned sessions in training Caltrans staff, local agencies, and environmental consultants.

### **Recommendation**

Lines of communication should be established among Caltrans districts, Caltrans headquarters, FHWA California Division, and FHWA Headquarters to meet this requirement. For the purpose of the CE Assignment Program, the FHWA California Division is interested in learning how Caltrans assesses training needs, how training sessions are developed to meet these needs, and how and when they are delivered.

These notices may also help harmonize efforts between the FHWA California Division and Caltrans to maximize the benefits of planned training sessions. For example, the FHWA California Division routinely invites the FHWA Resource Center to Sacramento for delivering training sessions, and seats are reserved for Caltrans employees to attend these sessions. Reciprocal arrangements can be made through which environmental specialists in the FHWA California Division may be able to attend some of the sessions delivered by Caltrans.

These notices can be sent to FHWA California Division to satisfy the requirements of the Section 6004 and Section 6005 MOUs at the same time.

**4. Accurate Quarterly Reporting of Projects  
(23 U.S.C. 326 MOU Stipulation IV.F.1)**

During data analysis, the review team noticed that there were numerous inconsistencies between the information in the first two quarterly reports, and the actual CEs reviewed by the team in Districts 3 and 8. These inconsistencies are discussed in detail in the data analysis section of the report.

**Recommendation:**

We recommend that Caltrans implement QA/QC activities to assure that the data reported to FHWA on a quarterly basis is consistent with the actual CE determinations made by Caltrans Districts. Data quality and accuracy in the quarterly reports is important to FHWA for both "full disclosure" reasons, and for the statistical purposes of the monitoring reviews.

**5. Name, Title, Signature, Date  
(23 U.S.C. 326 MOU Stipulation IV.B.4)**

It was difficult to read the signatures on some of the CE forms reviewed by the team. The CE form has a signature block, but does not have a place for printing the decision maker's full name.

**Recommendation**

We recommend that the statewide CE form be revised to include a section for the CE decision makers to print out their full names, and then sign and date the document.

**6. Application of Section 4(f) to Transportation Enhancement Projects in District 3**

The team reviewed how Section 4(f) was applied to a locally-sponsored bikeway project which begins in a city park and travels along designated-open space area in District 3. The review team found that the local project sponsor's consultant and Caltrans District 3 discussed the application of Section 4(f) to this project in an e-mail dated November 9, 2007. In this e-mail, a reference was made to a 2001 letter by the FHWA California Division, which advised Caltrans that "the potential Section 4(f) use by the bikeway of existing or proposed parkland is exempt under TEA-21 for the use of Transportation Enhancement Activity (TEA) funding which is proposed for the project."

Based on this e-mail, the review team learned that District 3 decided not to prepare any Section 4(f) documentation for the project.

**Recommendation:**

Unlike what is mentioned in the November 9, 2007 e-mail and in the FHWA California Division's 2001 letter to Caltrans District 3, TEA-21 did not create any specific

programmatic exemption from the application of Section 4(f) for projects in the transportation enhancement program.

We recommend that Caltrans follow the FHWA Section 4(f) Policy Paper regarding the application of Section 4(f) especially when evaluating whether there is a Section 4(f) use. We agree that a bikeway constructed in a city park, in a case where the bikeway remains under the park agency's jurisdiction, would not be a 4(f) use since the parkland is not permanently incorporated into a transportation facility. This concept was not mentioned in the project file, which also did not include any letters of concurrence from the local park officials with jurisdiction.

We recommend that Caltrans District 3 disseminate FHWA's policy paper on applying Section 4(f) to bikeways and transportation enhancement projects as widely and as quickly as possible. The application of Section 4(f) to transportation enhancements is also discussed in the FHWA's new Section 4(f) regulations in 23 CFR 774.13 (f) and (g).

Caltrans must include in its project files all appropriate Section 4(f) documentation. Such documentation includes a determination whether Section 4(f) properties are present in the project area, whether the project might "use" a Section 4(f) property, and whether or not the provisions of Section 4(f) apply. This documentation could consist of an email or letter to the project file that would show evidence of compliance.