April 5, 2013

Mr. James Jordan, Regional Administrator
Federal Railroad Administration
Region 7
801 I Street, Suite 466
Sacramento, CA 95814

Dear Mr. Jordan:

The California Department of Transportation (Caltrans) wants to inform you of its continued assignment of consultation responsibilities under the National Environmental Policy Act (NEPA) and the federal environmental protection laws under NEPA’s regulatory umbrella.

On September 25, 2012, FHWA and Caltrans signed the Memorandum of Understanding (MOU) between Federal Highway Administration and the California Department of Transportation concerning the State of California’s Participation in the Project Delivery Program Pursuant to 23 USC 327, which became effective on October 1, 2012. This MOU was signed pursuant to the Moving Ahead for Progress in the 21st Century Act (MAP-21), and allows the Secretary of Transportation to assign, and the State of California to assume all responsibilities for consultation and coordination with federal resource, regulatory, and land management agencies for most federal-aid highway projects in California. The assignment of environmental decision making to Caltrans includes the federal-aid highway projects on federal lands and the FHWA’s federal lands (“direct federal”) projects when Caltrans designs and constructs the projects. Detailed information about NEPA Assignment is published on-line at http://www.dot.ca.gov/hq/env/nepa_pilot/html/nepa_delegation_pilot_program.htm. By statute, the State is deemed to be a federal agency for these assigned responsibilities.

Similarly, on June 7, 2010, the FHWA and Caltrans renewed the Memorandum of Understanding (MOU) between Federal Highway Administration, California Division, and the California Department of Transportation on State Assumption of Responsibilities for Categorical Exclusions (CE). This MOU was signed pursuant to 23 USC 326 which allows the Secretary of Transportation to assign, and the State of California to assume, the Secretary’s environmental decision making responsibilities for CEs. For these projects, the State may also be assigned the FHWA’s responsibilities for environmental consultation and coordination under other federal environmental laws. By statute, the State is deemed to be a federal agency for these assigned authorities and responsibilities.
Both MOUs, published on-line at http://www.dot.ca.gov/hq/env/nepa_pilot/html/nepa_delegation_pilot_program.htm, detail the roles and responsibilities for the FHWA and Caltrans in project-level environmental decision making, and the MOU for the NEPA Assignment Program (23 U.S.C 327) also includes a list of projects which will be retained by the FHWA. For the retained projects, the FHWA will continue to be involved in interagency dialogues with your agency for project-specific environmental decisions. As the NEPA Assignment Program continues, other projects to be retained by the FHWA, may be identified, according to the provisions of the MOU.

For the assigned projects, Caltrans is deemed to be the FHWA for project-level environmental decision making. For instance, Caltrans will conduct all consultation under the Endangered Species Act and the National Historic Preservation Act for the projects. For these projects, please address all correspondence to Caltrans, even if the FHWA was initially involved in the environmental process for the project.

Finally, it is important to mention that the NEPA Assignment does not affect the FHWA’s roles and responsibilities for other phases of project development beyond environmental analysis. For example, the FHWA’s existing right-of-way procedures for federal land transfers will not be affected by these changes.

If you have any questions, please contact Mr. Dale Jones, NEPA Assignment Manager, at (916) 653-5157.

Sincerely,

MALCOLM DOUGHERTY
Director

Enclosure: Memorandum of Understanding between Federal Highway Administration and the California Department of Transportation concerning the State of California’s Participation in the Project Delivery Program Pursuant to 23 USC 327.