State of California
DEPARTMENT OF TRANSPORTATION

Business, Transportation and Housing Agency

Memorandum

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To: All District Deputy Directors
For Environmental Planning
All District Environmental Office/Branch Chiefs

Date: July 2, 2007

File: NEPA Delegation

From: JAY NORVELL
Chief
Division of Environmental Analysis

Subject: Assignment of Responsibilities under the Surface Transportation Project Delivery Pilot Program

I am pleased to announce that pursuant to Section 6005 of the Safe, Accountable, Flexible, Efficient Transportation Act: A Legacy for Users (SAFETEA-LU), effective July 1, 2007 the Federal Highway Administration (FHWA) has assigned, and Caltrans has assumed, the United States Department of Transportation (USDOT) Secretary's responsibilities under the National Environmental Policy Act (NEPA). The assignment applies to all projects on the State Highway System (SHS) and all Local Assistance Projects off the SHS within the State of California, with the exception of the responsibilities concerning certain categorical exclusions which were assigned to Caltrans under the June 7, 2007 MOU, projects excluded by definition, and specific project exclusions. On projects for which Caltrans has assumed NEPA responsibilities, Caltrans has also assumed the USDOT Secretary's responsibilities for environmental review and consultation under other federal environmental laws

The formal assignment of NEPA responsibilities took effect through the execution of a Memorandum of Understanding (MOU) between the (FHWA) and Caltrans. The MOU defines:

- The terms of the assignment,
- The federal environmental laws for which Caltrans has assumed FHWA responsibilities (section 3.2.1),
- Projects excluded at Caltrans' request (section 3.3.1)
- Projects excluded by definition (section 3.3.2),
- Assignment roles and responsibilities for Caltrans and FHWA.

A summary of MOU provisions, which will assist you in identifying new requirements, roles, and responsibilities, is attached. The complete MOU is posted on the NEPA Delegation webpage: http://www.dot.ca.gov/hq/env/nepa_pilot/index.htm.

To prepare for the assignment of responsibilities and its many requirements, the Division of Environmental Analysis has been revising its environmental policies and procedures and updating the Standard Environmental Reference (SER). We have developed a new Chapter 38, NEPA Delegation, which provides policy, procedure and guidance on all aspects of the Pilot Program. The entire SER has been updated to reflect our new responsibilities as well.

Chapter 38 covers:

- District/Region Quality Control Procedures
- Environmental Document Review Procedures
- Requirements for Categorical Exclusions under sections 6004 and 6005
- Signature Authorities for Environmental Documents
- Section 4(f) Responsibilities
- Internal Dispute Resolution
- Class of Action Determinations
- Review and Approval protocols for specific technical studies
- Consultation and Coordination with Federal Resource Agencies
- Self-Assessment and Process Reviews
- Pilot Program Performance Measures
- FHWA Audits
- Environmental Milestone Tracking
- Project Files and Document Retention
- Charging Practices

The information in Chapter 38 is policy and shall be followed by all Districts/Regions.

We take our new responsibilities under the Pilot Program very seriously and intend to execute them responsibly and successfully. Where we identify areas that need improvement, we will correct them quickly and effectively. Where we identify excellent

practices in the Districts/Regions we will share them around the state to expand our success.

California is the first state in the nation to be assigned these historic responsibilities. The assignment of responsibilities is an important step in the maturation of the Caltrans environmental program and is recognition of the quality, breadth, and depth of our excellent environmental staff. Thank you for your contributions that have made this assignment possible, and that will ensure its success.

If you have any questions regarding this policy memorandum, please call Cindy Adams, NEPA Delegation Manager, at (916) 653-5157.

Attachments

NEPA Delegation Pilot Program MOU
Overview of Key Provisions

Under the NEPA Delegation Pilot Program Memorandum of Understanding (MOU), Caltrans has assumed FHWA's responsibilities under NEPA as well as FHWA's consultation and coordination responsibilities under other Federal environmental laws for most highway projects in California, with the exception of projects that qualify for categorical exclusion under the Section 6004 MOU. Caltrans, in essence, is now the lead federal agency for those projects where it has assumed FHWA's responsibilities. The Pilot Program MOU between FHWA and Caltrans became effective on July 1, 2007 and outlines Caltrans' new responsibilities, including:

- Caltrans shall assume authority for the following classes of highway projects on the SHS and Local Assistance projects off of the SHS (Section 3.3.1):
  - All Class I, or environmental impact statement (EIS) projects, both on the State Highway System (SHS) and Local Assistance Projects off the SHS, with the exception of the following projects:
    - District 1: Eureka/Arcata Corridor Improvement
    - District 3: Interstate 5/Consumnes River Boulevard Interchange
    - District 3: Placer Parkway Corridor Preservation
    - District 4: Doyle Drive
    - District 4: Marin-Sonoma Narrows
    - District 5: Santa Cruz Auxiliary Lanes Soquel to Morrisey
    - District 7: I-5 Widening – Orange County Line to Route 605
    - District 8: Big Bear Lake Bridge Replacement
    - District 12: Southern Orange County Transportation Infrastructure Improvement Program (SOCTIIP)
    - District 12: Orange County Gateway
  - All Class II, or Categorically Excluded, projects that do not qualify for assignment of responsibilities pursuant to the June 7, 2007 MOU, both on the SHS and Local Assistance projects off the SHS, with the exception of the following project:
    - District 4: BART Seismic Retrofit of the Aerials Structures and Stations Along the Fremont, Concord, Richmond, and Daly City Lines
  - All Class III, or environmental assessment (EA) projects, both on the SHS and Local Assistance projects off the SHS, with the exception of the following projects:
    - District 4: Caldecott Improvement Project on State Route 24
    - District 4: Ala-880 Southbound HOV Lane Extension – Hegenberger to Marina Boulevard
    - District 4: SM-101, Widen and Add Auxiliary Lanes from March Road to Embarcadero
    - District 5: Highway 1 Congestion Management Study – Santa Cruz HOV Lanes
    - District 6: Fre-99 Island Park 6-lane
    - District 6: Mad-99 Avenue 12 Interchange Reconstruction
    - District 8: Needles Highway Safety Realignment Project
    - District 9: Iny-395 Olancha to Cartago 4 Lane
    - District 10: SJ-99 South Stockton Widen Freeway from 4 to 6 Lanes
    - District 10: SJ-99 Manteca 6-Lane
    - District 10: SJ-205 Auxiliary Lanes in Tracy
- Caltrans will maintain adequate organization and staff capability to effectively carry out delegation (Section 4.2.2).

- The State of California must assume sole responsibility and liability for its NEPA actions and decisions and be subject to Federal court jurisdiction (Section 4.3.1).
- Caltrans shall be subject to the same procedural and substantive requirements as FHWA in carrying out the assignment, including federal laws and regulations, Executive Orders, official FHWA guidance and policy (Section 5.1.1).
- Caltrans shall be solely responsible and solely liable for the responsibilities it assumes, and shall defend all claims at its own expense (Section 6.1.1).
- Caltrans shall make all reasonable and good faith efforts to work with affected parties and attempt to resolve any and all conflicts prior to potential litigation (Section 6.3.1).
- Caltrans shall coordinate with all Federal, State, and local resource agencies early and appropriately, and shall make all reasonable & good faith efforts to resolve any conflicts that arise (Sections 7.1.1 and 7.2.2).
- FHWA will not provide any project-level assistance to Caltrans (Section 8.1.1).
- FHWA will not intervene, broker, act as intermediary, or be otherwise involved in any issue involving Caltrans's consultation or coordination with another Federal agency (Section 8.1.2). However, FHWA may attend meetings between Caltrans and other Federal agencies and submit comments in the following extraordinary circumstances:
    - FHWA reasonably believes that Caltrans is not in compliance with the MOU;
    - FHWA determines that an issue between Caltrans and the other Federal agency concerns emerging national policy issues under development by the USDOT; or
    - Upon request by either Caltrans or the other Federal agency and agreement by FHWA.
- Caltrans will maintain its project files and make them available for FHWA inspection (Section 8.2.4).
- Caltrans agrees to carry out regular QA & QC to ensure it is meeting requirements of law and of the MOU (Section 8.2.5).
- Caltrans will perform "self-assessments" at least every 6 months to determine if its processes are working properly, identify weaknesses, and take corrective action (Section 8.2.6).
- Caltrans will report quarterly to FHWA on its approvals and decisions (Section 8.2.7).
- FHWA's California Division Office will submit documents to the Federal Register on behalf of Caltrans (Section 8.4.1).
- FHWA's California Division Office will provide project level conformity determinations for EAs and Draft and/or Final EISs for projects in nonattainment or maintenance areas for ozone, carbon monoxide, particulate matter, and nitrogen dioxide (Section 8.5.1).
- Before executing any Federal-aid project agreement for construction, design-build, or final design services contracts, Caltrans will submit a certification to the FHWA California Division Office stating that Caltrans has fully carried out all responsibilities assumed under the MOU (Section 8.6.1).
- FHWA will reassume authority for any project it determines Caltrans is out of compliance with MOU (Section 9.1.1).
    - Caltrans may also request that FHWA reassume authority (Section 9.1.2).
- Caltrans and FHWA established the following performance measures by which Caltrans will be evaluated (Part 10):
    - *Compliance with NEPA and other Federal laws and regulations*
        - Maintain documented compliance with procedures and processes set forth in the MOU
        - Maintain documented compliance with requirements of all Federal laws and regulations
    - ***Attainment of supportable NEPA decisions***

        - Maintain internal quality control and assurance measures and processes, including evidence of legal sufficiency, compliance with environmental document content standards and procedures, and documentation of project records.
    - *Monitor relationships with agencies and the general public*
        - Assess change in communication among Caltrans, Federal and State resource agencies, and the public.
        - Maintain effective responsiveness to substantive comments received from the public, agencies and interest groups on NEPA documents.
        - Maintain effective NEPA conflict resolution processes whenever appropriate.
    - *Timely completion of NEPA process*
        - Compare time to completion for environmental document approvals before and after assumption of responsibilities.
        - Compare time to completion for key interagency consultations formerly requiring FHWA before and after delegation.
        - Collect and maintain all necessary and appropriate data related to the attainment of its performance measures.
- FHWA will conduct audits to ensure Caltrans' compliance with the MOU (Section 11.1.1)
    - Caltrans will make records and employees available for audits (Section 11.1.1)
- FHWA will provide Caltrans training, as necessary, on the duties that Caltrans assumes under the Pilot Program (Section 12.1.1).
- Pilot Program will terminate on August 10, 2011, at which time assigned duties will be transferred back to FHWA (Section 13.1.1).
    - Caltrans and FHWA will develop a transition plan. That plan may provide that Caltrans will continue to discharge environmental responsibilities on projects for which it has assumed, but not yet completed, responsibilities.
- Caltrans' waiver of sovereign immunity sunsets on January 1, 2009. If the State Legislature does not extend the Eleventh Amendment waiver, then Caltrans' participation in the Pilot Program will end on this date (Section 13.2.1).
- FHWA may terminate Caltrans' participation in the Pilot Program if it determines that Caltrans is not adequately carrying out its responsibilities (Section 13.3.1.).