

Memorandum

To : Mr. Robert K. Best, Director
Department of Transportation
1120 N Street
Sacramento, CA 95814

Date December 13, 1990

From : Department of Fish and Game

Subject: Memorandum of Agreement (MOA) Between Department of Transportation (Caltrans) and the Department of Fish and Game (DFG) Regarding Early Mitigation Planning for Transportation Improvements in California

The DFG concurs, by way of signature, with the terms and conditions specified in the attached MOA regarding Early Mitigation Planning for Transportation Improvements in California. We share your belief that this MOA is a significant step toward highly desirable environmental coordination between our two departments, and we believe that the MOA will provide the framework for more efficient and effective protection and enhancement of fish and wildlife resources potentially impacted by future transportation projects. Further, this MOA should provide desirable supplementation to the recently concluded MOU regarding California Endangered Species Act consultation procedures.

We appreciate the spirit of cooperation extended by Caltrans' staff during the formulation of this MOA, and, although the evolution of the MOA has been a lengthy process, it is apparent to us that the product reflects the quality of the effort expended by our departments to address outstanding issues. We hope to work closely with Caltrans in a well coordinated effort to identify potential environmental impacts in a timely manner; to minimize these impacts; and to implement compensation for unavoidable impacts well in advance of the actual generation of such impacts.

It is our understanding that we will receive a copy of the signed MOA after signature by other parties to the MOA, and that the MOA shall be activated upon signature by all parties.

We wish to thank you and your staff for a job well done.

Original Signed By
Michael D. McCollum for
Pete Bontadelli
Director

Attachment

bc: ✓ Dr. L. Eng-ESD w/attachment

MEMORANDUM OF AGREEMENT

Early Mitigation Planning

for

Transportation Improvements in California

A. PREAMBLE:

This Memorandum of Agreement (MOA) recognizes the importance of thorough and coordinated planning for California's future, and the need to balance development and the protection of valuable resources. Good transportation programming means supplying the improvements which support the short and long-term economic, environmental and social goals of society. This can be accomplished by implementing a long-range strategic planning process that will examine transportation systems in light of these goals prior to the development of individual projects.

The California Department of Transportation (Caltrans), working cooperatively with the Federal Highway Administration (FHWA), regional and local agencies, and the private sector, has the primary mission to plan, develop, manage, and maintain a safe, effective, and efficient transportation system; one that will support economic growth and provide safety and mobility to the general public. While accomplishing this mission Caltrans is required by State and Federal law, regulation, and policy to protect the natural environment and mitigate impacts resulting from necessary transportation improvements.

The U.S. Fish and Wildlife Service (FWS) and the California Department of Fish and Game (DFG) have the responsibility to provide leadership in the conservation, protection and enhancement of natural resources for the benefit of the general public. This responsibility is accomplished, in part, by providing information on biological resources and their values, assessing the impacts of various projects on those resources and by providing recommendations to avoid or minimize and offset unavoidable impacts to existing fish and wildlife habitat resulting from land and water developments.

The Army Corps of Engineers (Corps) and the Environmental Protection Agency (EPA) have the responsibility for maintaining the chemical, physical, and biological integrity of the Nation's waters. This includes determination of compliance with the provisions of the Federal Clean Water Act of 1977, as amended, and requires, under Section 404, an evaluation of project impacts and mitigation requirements, and a determination of public interest prior to the issuance of permits for the discharge of dredged or fill material into waters of the United States.

The goals of this Memorandum of Agreement are to: 1) improve coordination between the transportation agencies charged with developing transportation facilities, the resource agencies charged with protecting the natural environment, and the regulatory agencies charged with balancing the various public interests; 2) allow more timely resolution of conflicts between these agencies; and 3) obtain better results from funds spent for the compensation and enhancement of biological resources. These goals shall be achieved through: 1) the early consideration of biological impacts in transportation system planning; 2) continuous coordination and early consultation between the transportation agencies and the resource protection agencies; 3) replacement of valuable habitat unavoidably lost, through creation of high quality habitat prior to impact; and 4) the exercise of creativity within an atmosphere of mutual respect.

B. AUTHORITY:

This Memorandum of Agreement is entered to aid in the recognition, preservation and enhancement of the environment.

It is recognized by all parties that participation in this Memorandum of Agreement does not guarantee or assure the issuance of any approvals or permits required under the applicable statutory authorities. It is further recognized that the decision to issue said approvals or permits remains within the sole discretion of the appropriate resource agency.

C. PURPOSE:

This Memorandum of Agreement (MOA) will establish a process for identification and evaluation of valuable natural resources and habitats at the earliest stages of transportation improvement planning, and provide a framework to implement coordinated mitigation planning at the beginning of the project development process leading to an Agreement on Mitigation Strategy for guidance during project design. It will facilitate compliance with state and federal environmental regulations and requirements established for the protection of biological resources, but does not replace review of the action at the appropriate time as required by environmental laws or regulations, or assure permit issuance and project endorsement. Early coordination will mean more efficient and effective planning, a high degree of cooperation among involved agencies and successful resolution of conflicts. Some of the advantages of early coordination and mitigation planning for impacts to biological resources will be: 1) increased opportunities to avoid adverse impacts to natural resources; 2) the opportunity to provide "in place" and functioning compensation and eliminate the lag time between loss and replacement of resource values; 3) the opportunity to integrate the mitigation into regional environmental goals and preservation objectives; 4) the establishment of more efficient and effective monitoring and evaluation procedures; 5) the ability to provide the greatest resource benefit for the expenditure of mitigation funds; 6) swift utilization of the diminishing opportunities for habitat conservation and preservation; and 7) the reduction in the potential for delays in project approval due to mitigation concurrence and permit processing.

This Agreement recognizes that protection, preservation and enhancement of biological resources must receive strong consideration in the process of developing transportation projects. Establishment of procedures for early and continual coordination and cooperation in developing mitigation plans will provide more cost effective and efficient mitigation, and ultimately, a higher level of protection and conservation of our valuable natural resources.

D. PRINCIPLES OF AGREEMENT

The signatory agencies agree to actively participate in a program that places high priority on early coordinated planning of transportation improvements to insure the protection of biological resources and take advantage of opportunities for their enhancement while providing the needed transportation facilities. Furthermore, as funding, staff, and priorities permit:

The Resource Agencies Agree to:

- 1) Commit or redirect staff and resources to accomplish early planning and coordination goals;
- 2) Assist Caltrans in evaluating impacts of future transportation improvement projects during the early planning stages and respond to requests for information, recommendations and coordination in a timely manner;

- 3) Identify the natural resources of concern within the area of potential impact and recommend measures to avoid, or minimize and compensate, impacts to natural resources;
- 4) Explore all appropriate mitigation and enhancement options consistent with the policies and guidelines of the agencies;
- 5) Assist in developing mitigation proposals that take into account the extent of the project impacts, the affected habitat values, benefits to the ecosystem, cost effectiveness and opportunities for coordinating with other conservation efforts; and
- 6) Consider application of excess compensation for future projects and permit "banking" when an appropriate opportunity exist.

Caltrans and FHWA Agree to:

- 1) Pursue a policy of proactive consideration of environmental issues and concerns in which the sequencing principles of avoidance, minimization and compensation are applied to natural resources;
- 2) Incorporate all feasible and practical features of project design which avoid and minimize adverse project impacts before employing compensation measures;
- 3) Where mitigation is required, achieve on-site and in-kind compensation whenever feasible and recommended by the resource agencies;
- 4) Implement compensation in advance of project impacts whenever feasible and appropriate;
- 5) Explore opportunities for natural resource enhancement during project development;
- 6) Keep all agencies updated on planning and project development activities;
- 7) Provide for monitoring and periodic evaluation to determine if modifications are necessary to ensure that project compensation measures meet the overall planned mitigation goal and permit requirements;
- 8) In addition, Caltrans agrees to provide for the sustained maintenance and operation of the compensation sites and habitat values sufficient to offset the unavoidable losses; and
- 9) To the extent that such activities are not part of regularly funded planning assistance and review, fund, on a reimbursable basis as needed and mutually agreeable, the resource agencies to provide technical assistance, technical studies, and expedited review as part of early mitigation planning.

E. IMPLEMENTATION OF EARLY MITIGATION PLANNING AND COMPENSATION FOR BIOLOGICAL RESOURCES

Successful implementation of early mitigation is contingent on a commitment by all involved parties to a coordinated evaluation and planning effort. Caltrans and the resource agencies shall initiate a program to review future transportation projects and identify, by ecoregion, projects that may affect resources under the jurisdiction of the resource agencies and those that warrant further interest. It shall be a primary objective to begin an early assessment of potential biological impacts and develop plans to avoid impacts to fish and wildlife resources insofar as possible and to offset unavoidable losses. The following five

steps will be used to accomplish agency coordination, mitigation evaluation and implementation of advance compensation:

- 1) Caltrans will schedule routine coordination meetings to identify future project proposals that may affect natural resources;
- 2) If the resource agencies concur that their continued involvement is warranted, as resources permit, they will assist Caltrans in assessing potential impacts, identifying alternatives to avoid and/or minimize impacts, and determine mitigation requirements;
- 3) Caltrans will prepare a conceptual mitigation proposal based on the findings and recommendations from step 2, and including avoidance and minimization strategies and implementation of habitat restoration/creation as compensation for probable unavoidable resource loss;
- 4) The resource agencies will review and comment on the proposal and Caltrans will modify and revise the proposal, as necessary, to respond to the agencies' comments;
- 5) An Agreement on Mitigation Strategy incorporating the Caltrans proposal will be executed by Caltrans, FHWA and the Resource Agencies.

Any signatory agency can terminate its participation on a particular early mitigation planning effort at any time. The other agencies may continue at their discretion. Guidelines and more detailed procedures for this early mitigation coordination process will be developed jointly as needed.

F. CONCURRENCE AND CREDIT

When an individual transportation project for which a mitigation strategy was developed is undergoing preliminary design and environmental studies, an evaluation will be made to determine if all appropriate avoidance and impact minimization measures have been incorporated. Caltrans will request concurrence from the resource agencies in this evaluation. If concurrence is granted, then the compensation plan as agreed upon in the Agreement of Mitigation Strategy will be the basis for offsetting the remaining unavoidable impacts. This process will be documented in the project Environmental Document.

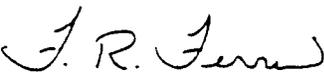
Any habitat compensation values that have become established through development of advanced compensation in excess of those agreed upon by the agencies to offset project impacts may become available for other transportation projects. The evaluation for application of the excess compensation to another project will be made during the mitigation planning process for the other project.

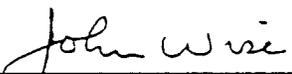
G. MODIFICATION AND TERMINATION OF THE MEMORANDUM OF AGREEMENT:

1. This agreement and the operating procedures may be modified with the written approval of all signatories to the Memorandum of Agreement. Modifications may be proposed by a single or inter-agency team of signatories. Proposed modifications will be submitted for a sixty day period of review to all signatories.
2. A signatory may terminate its participation in this agreement upon written notice to all other signatories.
3. This agreement is intended to supplement, not replace, any existing agreements between any of the parties.

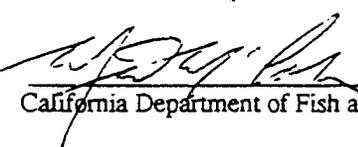

California Department of Transportation
Date 12/6/90


Federal Highway Administration
Date 12-19-90


US Army Corps of Engineers
Date 4-30-91


US Environmental Protection Agency
Date 5.13.91


US Fish and Wildlife Service
Date 3/15/91


California Department of Fish and Game
Date 12/14/90