State of California
**DEPARTMENT OF TRANSPORTATION**

Business, Transportation and Housing Agency

# Memorandum

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**To:** DISTRICT DEPUTY DIRECTORS
Environmental

**Date:** April 8, 2009

**From:** JAY NORVELL
Chief
Division of Environmental Analysis

**Subject:** Guidance for the Joint Issue Memo for the Dispute Resolution Process for Section 7 Endangered Species Act Consultation

This memo provides additional guidance to the Dispute Resolution Process for Section 7 Endangered Species Act Consultation that was formalized in November 2006 for all projects where Caltrans or FHWA is the lead agency.

Enclosed is a template for a "Joint Issue Memo for Dispute Resolution Process for Section 7 Consultations." This was developed collaboratively between the U.S. Fish and Wildlife Service (USFWS), the California Department of Transportation (Caltrans) and the Federal Highway Administration (FHWA)-California Division. The example template identifies the necessary information needed at a higher level of decision-making and provides a uniform presentation of the issue(s).

Additional clarifications of the dispute resolution process are provided below. It is emphasized that all correspondence must be exchanged in a timely manner.

1) The elevating agency would request formal elevation of the issue(s) in dispute to the other agency, by hard copy or by email. The commencement date of the elevation would be when the appropriate contact of the other agency confirms receipt of the request. Note, the email or letter should never be the first indication that the agencies disagree on an issue(s).

2) The elevating agency would prepare the first draft of the joint memo, excluding the other Agency's perspective of the issue. The memo would then be completed upon the completion of the other Agency's perspective. The memo will then be sent to the respective contacts at the next level, followed by a timely meeting or conference call. If beneficial, any agency may request that meetings be facilitated; however, it is that agency's responsibility to provide such facilitation. Similar procedures would be implemented if the issue(s) cannot be resolved at that level and the process moves to the next level on the decision ladder. Even though an issue(s) may be in the process of elevation, continuous effort should be made at any involved level to mutually resolve the issue(s).

If you have any questions, please contact Gregg Erickson at (916) 654-6296 or Amy Pettler at (916) 651-8166.

Attachment: Template

U.S. Fish and Wildlife Service and California Department of Transportation
Joint Issue Memo for Dispute Resolution Process for Section 7 Consultations

DATE:

TO: Level ___ Representatives from USFWS, Caltrans, FHWA (non-assigned Projects)

FROM: Name and contact information for US Fish and Wildlife Service, ___Field Office, California Department of Transportation, ___District, and Federal Highways Administration (Non-Assigned Projects)

SUBJECT: Dispute Resolution Process for _____proposed project

PURPOSE OF MEMO: Describe Level of elevation for decision (see Dispute Resolution Ladder http://www.dot.ca.gov/ser/downloads/guidance/Dispute_Resolution_Process.pdf ) statement describing need for elevation.

ISSUES: Background: short narrative of project, points of disagreement, and where the dispute began in the consultation process. (e.g. compensation amount; effects determination, additional information requested, etc.)

CALTRANS/FHWA POSITION: Caltrans/FHWA view of issue. Describe Caltrans/FHWA perspective and position on each point of disagreement

USFWS POSITION: FWS view of issue. Describe FWS perspective and position on each point of disagreement.

PROPOSED RESOLUTION(S): Caltrans - Explain how your proposed resolution addresses the issues as described above.

FWS – Explain how your proposed resolution addresses the issues as described above.

TIMELINE FOR ELEVATION LEVEL X: Meeting scheduled with Level __ Reps _<date>_____
Solution codified or Next Level Elevation by _____date. (Reference http://www.dot.ca.gov/ser/downloads/guidance/Dispute_Resolution_Process.pdf as needed)

(red text indicates guidance)