U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
CALIFORNIA DIVISION
650 Capitol Mall, Suite 4-100
Sacramento, CA 95814

June 21, 2007

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Mr. Will Kempton, Director
California Department of Transportation
1120 N Street
Sacramento, CA 95814

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DIRECTOR'S OFFICE

Attention: Federal Resources Office, Room 35
For Jay Norvell

Dear Mr. Kempton:

SUBJECT: Project-Level Conformity Determinations and NEPA Assumption

The purpose of this letter is to inform the California Department of Transportation (Caltrans) of changes to the process for obtaining project-level conformity determinations. These changes will be effective with the execution of the Memorandum of Understanding between the Federal Highway Administration (FHWA) and the California Department of Transportation Concerning the State of California's Participation in the Surface Transportation Project Delivery Pilot Program pursuant to Section 6005 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).

Historically, FHWA has made project-level conformity determinations as part of our final decision for the National Environmental Policy Act (NEPA) process. As a result of Caltrans' participation in both the Section 6004 of SAFETEA-LU, State Assumption of Responsibility for Categorical Exclusions, and the Section 6005 Pilot Program, FHWA will be assigning most aspects of the environmental review process to Caltrans. One exception to the assignment is project-level conformity determinations for the projects assumed under the Section 6005 Pilot Program. FHWA maintains the responsibility for making conformity determinations on these projects.

The major changes to the project-level conformity determination process are as follows:

- For categorical exclusions (CEs) under Section 6004 of SAFETEA-LU, Caltrans will be making the conformity determination prior to the approval of the CE classification;

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- FHWA will be responsible for project-level conformity determinations for projects processed with a CE, an environmental assessment (EA) or an environmental impact statement (EIS) pursuant to the Section 6005 Pilot Program of SAFETEA-LU;
- For CEs under the Section 6005 Pilot Program, FHWA will make the conformity determination prior to the approval of the CE classification; and,
- For EAs and EISs under the Section 6005 Pilot Program, FHWA will make the conformity determination after the preferred alternative is identified and prior to completion of the final environmental document.

For project-level conformity determinations, where the NEPA document is being processed under the Section 6005 Pilot Program, Caltrans will need to send FHWA, separate from the environmental review process, a request for a conformity determination. FHWA's role for transportation conformity determinations will now be similar to that of the other federal resources agencies, such as the U.S. Fish and Wildlife Service. Requests for project-level conformity determinations should be sent to the attention of Maiser Khaled, Director of Project Development and Environment.

Additional information regarding this change is provided in the Questions and Answers contained in Attachment 1. A revised project-level conformity determination checklist, contained in Attachment 2, is also included for your use.

Please distribute this information to the Caltrans' District Offices and any other agencies that might be affected by this change. If you have any questions regarding these changes, please contact Ms. Mayela Sosa at (916) 498-5057 or Ms. Jean Mazur at (916) 498-5732.

Sincerely,

Mayela Sosa

For
Gene K. Fong
Division Administrator

Enclosures