State of California, Department of Transportation
Application for Assumption of
Federal Highway Administration
Responsibilities Pursuant to the
Surface Transportation Project
Delivery Pilot Program, 23 CFR 773

May 2007

By my signature, I hereby authorize the submission of this application for assumption of FHWA's responsibilities pursuant to the Surface Transportation Project Delivery Pilot Program, 23 CFR 773, by the California Department of Transportation.

Signed: _____

Will Kempton, Director
California Department of Transportation

Date: May 18, 2007

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Additional information on the Pilot Program can be found at:
http://www.dot.ca.gov/hq/env/nepa_pilot/index.htm

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Executive Summary

The State of California Department of Transportation (Caltrans) appreciates the opportunity to apply for participation in the Surface Transportation Project Delivery Pilot Program (Pilot Program) pursuant to Section 6005 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (23 U.S.C. 327) and hereby submits the enclosed application. This application follows the requirements established in the Final Rule for the Pilot Program application issued in the Federal Register (Vol. 72, No. 28) on February 12, 2007.

Caltrans' draft application was publicly noticed on March 14, 2007 for a 30-day comment period. A notice was published in a major newspaper of general circulation in each of the twelve Caltrans Districts and sent to each of the County Clerk offices in the State for posting. Caltrans also distributed the application with a letter requesting comments to its standard environmental document public distribution list. Further details on the public noticing process are described later in this application. Fifteen comment letters were received. Summaries of all comments received and of changes made to the application in response to these comments are provided in this application. Appendix E contains copies of all comments received and the responses that Caltrans provided to each of the commenters.

Caltrans is applying to assume all of the Federal Highway Administration's (FHWA) responsibilities under the National Environmental Policy Act (NEPA) for State Highway System (SHS) and local street and road projects in California, with specific exclusions as described below. Caltrans is also applying to assume all of FHWA's responsibilities for environmental review, consultation, and other environmental-related actions pertaining to the review or approval of projects assumed under the Pilot Program. This request for assignment under Section 6005 will exclude specific ongoing projects that will be identified in the Pilot Program Memorandum of Understanding (MOU), project types excluded by the Final Rule, and all categorically excluded projects assumed by the Memorandum of Understanding (MOU) under Section 6004 of SAFETEA-LU. Section 773.106(b)(1) of this application lists 13 specific ongoing projects for exclusion from the Pilot Program; this list is subject to change until the Pilot Program MOU is signed.

Caltrans is uniquely qualified to assume these responsibilities as the agency has over three decades of experience in working with FHWA in implementing NEPA and as lead agency under the California Environmental Quality Act (CEQA) for highway projects in California. As the agency responsible for improving mobility across California, one of Caltrans' strategic goals is to be a steward or caretaker of the environment by preserving and enhancing California's resources and assets. Caltrans' philosophy and policies hold much in common with NEPA and FHWA's Vital Few Goals of environmental stewardship and streamlining. In implementing its stewardship goal, Caltrans protects and enhances California's environment and quality of life in accordance with the environmental, economic, and social goals of California. Caltrans plans, designs, constructs, and maintains its transportation systems while safeguarding the environment for future generations.

Caltrans' environmental policies are derived from CEQA, which is similar in philosophy and policy to NEPA. Pursuant to the CEQA process, Caltrans examines and discloses the potential significant environmental effects of its proposed activities; identifies the ways that environmental damage can be avoided or significantly reduced; prevents significant, avoidable environmental damage by revising its projects and/or enacting mitigation; and publicly discloses the reasons why its projects are approved when significant environmental effects are involved. As part of this process, Caltrans undertakes timely and consistent consultation with the public, local jurisdictions, regional transportation planning agencies, resource and regulatory agencies, and Tribal Governments. Caltrans will continue its commitment to working cooperatively with its partners under the Pilot Program.

Caltrans' environmental stewardship policy extends to its commitment to conserve listed endangered and threatened species. This commitment derives, in part, from its responsibility under the California Fish and Game Code Section 2055, to conserve endangered and threatened species under the California Endangered Species Act. Caltrans also regularly acts on behalf of FHWA in consulting with its federal resource agency partners for certain aspects of compliance under Section 7 of the federal Endangered Species Act (ESA) and the Magnuson-Stevens Fishery Conservation and Management Act (MSA). In addition to these project-related responsibilities, Caltrans is also actively involved in a number of programs for the conservation of listed species, consistent with the spirit of Section 7(a)(1) of the federal ESA.

Over the past 35 years, Caltrans has developed tools and procedures to meet NEPA and CEQA requirements and for working cooperatively with its federal and state agency partners and with Tribal Governments. Caltrans' extensive staff capabilities and well-developed environmental compliance program, together with the steps that Caltrans will take to expand and strengthen its program under the Pilot Program, are summarized in this application.

Under the Pilot Program, Caltrans will comply with all applicable federal environmental laws and FHWA environmental regulations, policies and guidance. The program will not change or weaken federal environmental protection standards. Under CEQA, Caltrans currently makes decisions on its transportation projects that protect and enhance the environment and will apply these same rigorous environmental protection standards to projects under the Pilot Program. To ensure the success of the Pilot Program, Caltrans will periodically conduct formal process reviews to gauge the effectiveness of its environmental procedures under the Pilot Program and to identify the need for any course corrections. In addition, FHWA will audit Caltrans twice a year for the first two years of the Pilot Program and once a year thereafter to ensure that Caltrans is meeting federal environmental requirements consistent with FHWA's goals of environmental stewardship and streamlining.

The Pilot Program will streamline California's environmental review process and project delivery time. Caltrans will be solely responsible and accountable for NEPA decisions on highway projects in the state and will no longer need its environmental decisions to be approved by FHWA. Thus, Caltrans will be empowered to make its own sound environmental decisions and will take full responsibility for them. Further, the Pilot Program assignment will clarify environmental decision-making responsibilities, minimizing confusion for the public and for resource agencies; foster closer working relationships between Caltrans, its agency partners, and the public; and allow decisions to be made closer to the communities in which projects are located. Finally, the Pilot Program is an opportunity to experiment with innovative environmental approaches in California, providing a beneficial example for environmental stewardship and streamlining practices nationwide.

This application contains the following components, as required by the following sections of 23 CFR 773:

- §773.106 (b)(1): Classes of highway projects for which Caltrans is requesting NEPA responsibility;
- §773.106 (b)(2): Federal environmental laws other than NEPA for which Caltrans is requesting responsibility;
- §773.106 (b)(3)(i): Existing organization and procedures;
- §773.106 (b)(3)(ii): Changes to be made for assumption of responsibilities;
- §773.106 (b)(3)(iii): Legal sufficiency;
- §773.106 (b)(3)(iv): Prior concurrence;

- §773.106 (b)(4)(i): Staff dedicated to additional functions;
- §773.106 (b)(4)(ii): Changes to the organizational structure;
- §773.106 (b)(4)(iii): Use of outside consultants for the Pilot Program;
- §773.106 (b)(5): Financial resources under the Pilot Program;
- §773.106 (b)(6): Certification for consent to exclusive federal court jurisdiction and waiver of immunity;
- §773.106 (b)(7): Certification that the State of California's public records act is comparable to the Federal Freedom of Information Act; and
- §773.106 (b)(8)(ii): Comments received on the Pilot Program application.

This application also contains the following five appendices:

- A. Projects For Which Caltrans is not Requesting NEPA Responsibility;
- B. Federal Environmental Laws Other than NEPA for Which Caltrans is Requesting Responsibility;
- C. Overview of Caltrans Standard Environmental Reference;
- D. Section 820.1 of the State of California Streets and Highways Code; and
- E. Copies of Comments Received on the Pilot Program Application during the 30-Day Comment Period and Responses Provided to the Commenters.

§773.106 (b)(1): Classes of Highway Projects for Which Caltrans is Requesting NEPA Responsibility

Caltrans is requesting to assume FHWA's responsibilities under NEPA for the following classes of projects upon execution of the Pilot Program MOU with FHWA:

- All Class I, or environmental impact statement (EIS) projects, both on the SHS and Local Assistance projects off the SHS, with the exception of the following projects; this list is subject to change until the Pilot Program MOU is signed (see Appendix A for more information on the projects listed below):
  - District 1: Eureka/Arcata Corridor Improvement
  - District 3: Interstate 5/Cosumnes River Boulevard Interchange
  - District 3: Placer Parkway Corridor Preservation
  - District 4: Caldecott Improvement Project on State Route 24
  - District 4: Doyle Drive
  - District 4: Marin – Sonoma Narrows
  - 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

  Included in the Class I (EIS) projects to be assumed under the Pilot Program are the following for which a draft EIS has already been issued or is expected to be issued to the public prior to execution of the Pilot Program MOU (This list may need to be adjusted in the Pilot Program MOU depending on the date that the MOU is signed.):
  - District 10: Los Banos Bypass (10-Mer-152-PM 6.0/24.8)
  - District 11: State Route 76 from Melrose to Mission (11-SD-76-PM 7.5/13.1)
- All Class II, or Categorically Excluded, projects that do not qualify for assumption of responsibilities under the Caltrans/FHWA MOU for Section 6004 of the SAFETEA-LU, both on the SHS and Local Assistance projects off the SHS, with the exception of the project identified below; this list is subject to change until the Pilot Program MOU is signed (see Appendix A of this application for more information on the project listed below). These categorically excluded projects are those that are not listed under 23 CRF 771.117(c) or (d), or that are not on the expanded "d" list of CE categories identified in Appendix A of the Caltrans/FHWA MOU for Section 6004:
  - District 4: BART Seismic Retrofit of the Aerial 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; this list is subject to change until the Pilot Program MOU is signed (see Appendix A for more information on the projects listed below):

- District 5: Highway 1 Congestion Management Study, Santa Cruz High Occupancy Vehicle Lanes
- District 8: Needles Highway Safety Realignment Project

Caltrans' request to assume FHWA's responsibilities for these classes of projects includes associated reevaluations and Tier 2 projects for which a Tier 1 determination has already been made.

Per the Final Rulemaking issued by FHWA for Pilot Program application, Caltrans acknowledges that projects meeting the following criteria will be excluded from the NEPA assignment:

- Transit projects funded, in whole or in part, by the Federal Transit Administration under Chapter 53 of Title 49 of the United States Code;
- High priority projects under Executive Order 13274 in California, specifically, the District 11 I-5 North Coast Corridor project in San Diego County and the District 8 Mid County Parkway Community and Environmental Transportation Acceptability Process (CETAP) project in Riverside County;
- Projects funded by the Federal Lands Highway Program unless Caltrans designs and constructs the project; and
- Projects involving international border crossings and projects that cross state boundaries.

Assumption of these responsibilities program wide will provide for the highest degree of consistency and efficiency in document review and agency coordination. It will also provide the most comprehensive test of the effectiveness of the Pilot Program and the greatest opportunity for streamlining benefits.

§773.106 (b)(2): Federal Environmental Laws Other than NEPA for Which Caltrans is Requesting Responsibility

Caltrans is requesting to assume all of FHWA's responsibilities for environmental review, interagency consultation, and other regulatory compliance-related actions pertaining to the review or approval of projects for which Caltrans is requesting assumption of responsibilities under NEPA. Caltrans is requesting to assume these responsibilities under all applicable federal environmental laws and Executive Orders, including, but not limited to the federal laws, regulations, and Executive Orders listed in Appendix A of 23 CFR 773 (also listed in Appendix B of the application). Caltrans is requesting immediate assumption of these responsibilities upon execution of the Pilot Program MOU with FHWA.

§773.106 (b)(3)(i): Existing Organization and Procedures

Organization

Caltrans is organized into twelve Districts responsible for delivering projects and operating and maintaining the SHS and a Headquarters that manages corporate affairs, including the development of statewide standards and policies (Figure 1). Headquarters includes the Division of Environmental Analysis (DEA) and the Division of Local Assistance (DLA). DEA (Figure 2) is responsible for statewide policies, procedures, standards, and guidance for all aspects of environmental analysis and compliance, including quality control/quality assurance procedures for environmental documents. DLA

(Figure 3) oversees all aspects of the state's Local Assistance Program, including environmental compliance, for allocation of federal and state funds to cities, counties, and regional agencies to improve their transportation infrastructure.

The Legal Division (Figure 4) also plays an important role in Caltrans' environmental compliance process. The Legal Division includes four offices, in Sacramento, San Francisco, Los Angeles, and San Diego. Each office has legal staff assigned to review all EISs and act as key advisors on complex projects. The Legal Division also includes an Assistant Chief Counsel for Environmental Law.

Headquarters' Organization

The DEA offices are responsible for the following (Figure 2):

- The Environmental Management Office develops environmental policies and procedures, including those for preparing and processing environmental documents; manages Caltrans' on-line guidance termed the Standard Environmental Reference (SER); and works on a variety of environmental stewardship and streamlining initiatives.
- The Office of Biological Studies and Technical Assistance provides leadership, guidance and expertise in biology, including Section 7 and Section 404 consultation, bioacoustics, fisheries, habitat and connectivity, wildlife, and mitigation.
- The Cultural and Community Studies Office develops cultural resource management and community impact assessment policy and procedures, and assists the Districts in analyzing the effects of transportation projects on the diverse range of California's cultural resources and on California communities and environmental justice populations.
- The Office of Interagency Relations and Staff Development manages agreements that provide staff to resource and regulatory agencies for expedited reviews, develops and delivers environmental training to staff statewide, and works on initiatives to streamline environmental and permit processes.
- Three environmental engineering offices – Environmental Engineering Processes, Storm Water Policy, and Environmental Engineering Storm Water and Noise Studies – develop policy and guidance for hazardous waste, noise and acoustics, and storm water, and undertake noise and storm water research, monitoring and characterization. In addition, air quality technical experts are situated in Caltrans' Division of Transportation Planning.

The DEA also has a temporary office to plan for and implement the Pilot Program, overseen by a NEPA Delegation Manager position.

The DEA is home to four Environmental Coordinators who act as high-level environmental liaisons between Districts and Headquarters; assist the Districts in resolving their most complex environmental issues; track trends and issues in environmental delivery; review EISs; and ensure District compliance with Caltrans and FHWA standards, requirements, and policies. The Environmental Coordinators spend a large percentage of their time in the Districts to which they are assigned. They are conduits for information exchange between the Districts and Headquarters on environmental issues; act as spokespersons for Headquarters while in the Districts and for the Districts when in Headquarters; and are liaisons to the other Headquarters functional coordinators (such as Design and Project Management) and to FHWA on project issues.

The DLA (Figure 3) provides support for the statewide Local Assistance program. DLA environmental staff augment the statewide environmental procedures and requirements used for SHS projects with guidance that addresses the specific needs of Local Assistance projects. DLA environmental staff also act

as liaisons with District Local Assistance staff to address complex project-specific environmental issues. They conduct environmental process reviews and provide training to local agencies and consultants to ensure that Local Assistance environmental documents follow statewide procedures and meet federal requirements. The DLA employs a senior environmental planner who serves a similar liaison role to the Districts as the DEA Environmental Coordinators. The DLA environmental planner coordinates with DEA and the four Environmental Coordinators to ensure that environmental documents prepared for Local Assistance projects meet the same requirements and standards as SHS projects. DLA also recently appointed a supervising environmental planner as statewide Local Assistance NEPA Delegation Coordinator to oversee implementation of the Pilot Program to ensure statewide consistency and quality on Local Assistance projects.

District Organization

Caltrans Districts are housed in regional centers throughout the state: Eureka (District 1), Redding (District 2), Marysville (District 3), Oakland (District 4), San Luis Obispo (District 5), Fresno (District 6), Los Angeles (District 7), San Bernardino (District 8), Bishop (District 9), Stockton (District 10), San Diego (District 11), and Orange County (District 12). With the exception of District 12, all districts include multiple counties (Figure 5 shows a map of the Caltrans districts.). The Northern and Central California Districts operate in a regional structure—North Region (Districts 1, 2, and 3) and Central Region (Districts 5, 6, 9, and 10)—where project delivery functions, including environmental analysis and environmental document preparation, are the responsibility of the Region under a shared resources concept.

Regions and Districts have a Deputy District Director for Environmental who reports either directly to the District Director (Figure 6) or to a Chief Deputy Director, and who is equivalent in authority to Deputies for Design, Project Management, Right of Way, Construction, and Maintenance. In District 12, the organizational structure differs slightly in that the Office Chief for Environmental Planning as well as the Office Chiefs for Design, Project Management and Construction, all report to a Deputy District Director for Project Delivery. However, as in all Districts, the office chiefs in District 12 have equivalent authority.

Each of the twelve Districts also has a Local Assistance Office that ensures that federally-funded projects on local roadways are delivered in accordance with federal and state requirements. Each District has a District Local Assistance Engineer and Local Assistance environmental coordinator responsible for reviewing and processing local agency federal-aid project NEPA documents and supporting technical reports. In most cases, the coordinators reside within the District Environmental Branch. However, in a few cases, the coordinator is located within the District Planning office, the District Maintenance and Permits office, or in the District Local Assistance office. In all cases, the coordinators rely on technical specialists from District and Region Environmental Branches and other specialized branches for review of environmental documents and technical reports. Also, five senior environmental planners have been recently appointed statewide to Local Assistance to assist Districts in implementing the Pilot Program.

In calendar year 2005, the Districts completed environmental approval for approximately 810 SHS and 375 Local Assistance projects.

Existing Environmental Staff

Caltrans currently has a staff of approximately 700 environmental professionals. Approximately 650 work in the District environmental branches, augmented by experts in areas such as hydraulics, geotechnical analysis, visual analysis, and storm water that may work elsewhere in the organization.

Headquarters has a total of approximately 75 environmental staff in the offices of DEA and in DLA. In addition, eight attorneys statewide are assigned to provide environmental legal support to the Districts, DEA, and DLA. Table 1 presents the number of staff that work on environmental documentation statewide by functional area, including those who work in the environmental branches and elsewhere within Caltrans. Some staff are dedicated to SHS or Local Assistance projects, but many work on both types of projects. Together, District and Headquarters environmental staff have the required expertise to meet the responsibilities to be assumed under the Pilot Program.

Table 1. Caltrans Staff, by Function, Responsible for Environmental Documentation[a]

Function	Number of Staff								
	North Region	District 4	Central Region	District 7	District 8	District 11	District 12	Head-quarters	Total
Environmental Supervisor[b]	15	25	28	7	7	8	4	18	117
Environmental Manager[c]	3	6	3	2	1	1	1	14	34
Total Environmental Managers									**151**
Environmental Assessment/Generalist	54	16	77	31	22	14	11	5[d]	225
Biology	34	21	27	4	14	5	3	2	110
Archaeology	18	10	25	2	6	3	2	7	73
Architectural History	3	5	5	3	3	0	0	3	22
Visual Analysis	13	6	5	4	10	8	2	6	54
Noise	3	6	5	8	3	3	7	4	39
Air	2	4	4	4	4	2	2	2	24
Hazardous Waste	11	11	23	20	3	3	4	4	79
Storm Water/Water Quality	9	20	11	7	7	15	9	23	101
Floodplains/Hydraulics	3	4	5	3	1	1	1	6	24
Geotechnical								11	11
Total Environmental Generalists and Specialists									**762**
Environmental Legal		1		1		1		5	8
Total Environmental Legal									**8**
TOTAL									**921**

[a] Includes staff responsible for SHS and Local Assistance projects. These staff include those that work on environmental documentation within Caltrans environmental branches, as well as other branches, such as design or maintenance.

[b] Environmental supervisors include senior technical specialists and first-line supervisors of environmental assessment and technical specialist staff.

[c] Environmental managers include the DEA Chief, who is the highest-ranking environmental official at Caltrans, Deputy District Directors for Environmental, managers with broad program responsibilities, and DEA Environmental Coordinators.

[d] Environmental assessment staff in Headquarters DEA are seniors.

Environmental assessment staff work for supervisors and managers with many years of experience and a broad background in environmental analysis or strong technical knowledge in one of the environmental specialty areas. Most Districts/Regions employ a full complement of technical experts. Where expertise is not available locally, Headquarters or another District may assist with expertise; the District may also choose to contract for expert services not available locally. When in the best interest of the state, the District may also contract for preparation of the entire environmental document.

Approach to Environmental Document Preparation

District environmental staff perform environmental impact analyses and prepare NEPA and CEQA documents for federally-funded SHS projects and for state-funded projects that require FHWA approval. Caltrans also oversees the preparation of NEPA documents for Local Assistance projects on local streets and roads, as well as for locally-sponsored projects on the SHS that require FHWA approval. As NEPA document preparers and in its oversight role for Local Assistance and locally-sponsored projects, Caltrans is responsible for ensuring that these projects meet federal environmental requirements.

District staff follow an interdisciplinary approach to environmental document preparation, maintaining expertise in a broad variety of environmental disciplines statewide. Environmental assessment staff—commonly referred to as "generalists" or "coordinators"—prepare environmental documents with input from staff with expertise in a variety of technical specialties such as archaeology, biology, noise, air quality, visual assessment, architectural history, and hazardous waste. The environmental coordinators work closely with the environmental technical specialists to ensure that the environmental documents comply with survey methodologies and protocols required by the resource and regulatory agencies such as the U.S. Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS), the U.S. Army Corps of Engineers (USACE), the Advisory Council on Historic Preservation (ACHP), and the State Historic Preservation Officer (SHPO). All SHS and Local Assistance environmental documents go through formal quality assurance/quality control (QA/QC) review before submittal to FHWA for formal NEPA approval (see Existing Quality Control Procedures section below). As noted earlier, EISs are also reviewed by Headquarters and by Legal before being submitted to FHWA.

Caltrans' SHS and Local Assistance projects use a formal Project Development Team (PDT) to ensure an interdisciplinary approach in the planning, development, and evaluation of all projects. For the purposes of NEPA, this group is the project interdisciplinary team. The PDT is led by the Caltrans Project Manager, who retains overall responsibility for all steps in the project development process from project initiation to project construction. Typically, the PDT comprises the various functional units at Caltrans, including environmental, design, traffic, surveys, right-of-way, construction, and maintenance. It may also include local and regional agencies, resource agencies, and community group representatives, as needed. The PDT meets regularly to assist in the development of all aspects of the project, including project alternatives, technical studies, schedules, environmental documentation, and mitigation measures.

Each PDT includes an environmental project coordinator who is responsible for preparing the environmental document with input from Caltrans' technical specialists. The environmental project coordinators, who have expertise in federal requirements and procedures, coordinate closely with Caltrans' technical specialists to ensure that the environmental documents comply with federal requirements and procedures, such as those related to the ESA, MSA, and NHPA consultations. Caltrans biologists have expertise in fish, wildlife, amphibian and avian species; botany; wetland sciences; endangered species survey protocols; and specialized habitats such as vernal pools. Caltrans' cultural resource specialists have expertise in archaeology, historic archaeology, architecture, history, and Native American issues. Caltrans specialists also have experience in highway construction methods, impact

assessment techniques, regulatory compliance, and environmental commitment monitoring and evaluation.

For Local Assistance projects, the District Local Assistance Engineer leads the PDT. The District Local Assistance Engineer informs the District environmental staff of the local agency project delivery schedules and of project issues requiring special attention and resolution. The District Local Assistance Engineer also informs local agencies of their responsibilities in the environmental compliance process, including scoping, preparation of the environmental document and technical reports, conformance with environmental document format and content requirements, and obtaining environmental permits.

The Environmental Management Board provides statewide leadership for Caltrans' environmental function. Its membership includes the District/Region Environmental Deputy Directors, the DEA Division Chief, Office Chiefs, Environmental Coordinators, the Legal Division, and a representative from DLA. The Board meets quarterly to address environmental technical, policy, and procedural issues of statewide concern, discuss trends in environmental analysis, support statewide consistency, and consider staffing and other resource issues. The Board meets less formally for monthly "hot topics" teleconferences to address issues of immediate concern.

Procedures and Tools

For over three decades, Caltrans has worked with FHWA to implement NEPA on SHS and local street and roadway projects in California that require FHWA approval. As the state highway agency, Caltrans routinely prepares NEPA documents under the guidance of FHWA for FHWA's independent evaluation and approval. Local agencies and their consultants also prepare NEPA documents for Local Assistance projects and for locally-sponsored projects on the SHS under the guidance and oversight of Caltrans. These documents are reviewed by Caltrans prior to their submission to FHWA. In addition, Caltrans has been assigned the authority to act on behalf of FHWA for specific programs, such as certain types of CEs and most federal historic preservation consultations.

Caltrans also has over 35 years of experience in implementing its own stringent environmental documentation process for SHS projects as the lead agency under CEQA. Under CEQA, Caltrans prepares and approves its own environmental documents. Like NEPA, CEQA is a broad "umbrella" law that requires similar multi-step procedures and substantive documentation, and encourages that these requirements be implemented consistently in an efficient and streamlined manner.

To implement NEPA and CEQA effectively, Caltrans has developed numerous tools and procedures for preparing environmental documents to ensure they meet quality standards and are consistent with federal and state requirements. Together with other federal agencies, Caltrans has also participated in the development of, and is a signatory to, a number of programmatic agreements and MOUs to streamline the environmental review and project delivery process. A few of these tools, exemplifying the breadth and depth of Caltrans' environmental compliance program, are highlighted below:

- Caltrans' **Standard Environmental Reference** is a single, standard reference on compliance with NEPA, CEQA, and related federal and state laws, executive orders, regulations, and policies. Developed by Caltrans DEA and Local Assistance in collaboration with FHWA, this on-line reference is intended for use by local agencies, Caltrans, and FHWA staff to support statewide consistency in both the SHS and Local Assistance environmental procedures and documents. The SER includes the tools and procedures listed below and is described in the following section.

- The required use of **annotated outlines for environmental documents and federal compliance documents** (such as biological assessments) ensures that these reports meet federal and state content requirements and contain standard formats to facilitate streamlined reviews.
- Caltrans implements a **QA/QC program** that requires that all environmental documents undergo a multi-level review process by technical specialists, peers, technical editors, and environmental supervisors to ensure that the documents comply with FHWA's NEPA regulations, policies, and standards.
- Caltrans' **EIS review procedures** require that Headquarters DEA and Caltrans Legal review all SHS and Local Assistance draft and final EISs prior to submittal of these reports to FHWA for formal NEPA approval. The Headquarters Environmental Coordinator manages the review and receives input from a full complement of Headquarters environmental technical experts.
- Caltrans requires that an **Environmental Commitment Record** (ECR) be completed for each project and placed in the project file. The ECR records each environmental mitigation, compensation, and enhancement commitment; specifies how each commitment will be met; identifies responsibility for the commitment; and documents the completion of each commitment. For Local Assistance projects, environmental commitments will now be tracked for each project based on recent updates to Local Assistance's computerized data base called Local Programs 2000.
- Since 1990, Caltrans and FHWA have implemented a **Programmatic Categorical Exclusion Agreement** that programmatically provides signature authority to Caltrans for CE projects that are consistent with the programmatic CE (PCE) agreement. FHWA review and approval are not required for projects that qualify as a PCE. In 2003, Caltrans and FHWA signed a new PCE agreement that expanded the criteria for projects eligible for programmatic approval.
- FHWA, the ACHP, the SHPO, and Caltrans, are signatories to the **Section 106 Programmatic Agreement** (PA) to streamline compliance under the National Historic Preservation Act. Under the provisions of the Section 106 PA, FHWA authorizes Caltrans to perform many of the Section 106 steps, yet retains direct involvement for those aspects of Section 106 that are more complex, relate to other FHWA statutory responsibilities such as 4(f), or involve financial decisions regarding the reasonableness of mitigation.
- Caltrans is also a signatory to the **NEPA/404 MOU** with FHWA, U.S. Environmental Protection Agency (EPA), USACE, USFWS, and NMFS. This MOU provides a consolidated process for NEPA and Section 404 of the Clean Water Act, thereby improving the overall quality of decisions made under these regulations, as well as providing for more timely decision-making.
- The **Guidance for Preparers of Cumulative Impact Analysis** and **Guidance for Growth-Related, Indirect Impact Analyses** were prepared by an interagency working group convened by Caltrans, FHWA, and EPA to provide transportation practitioners with a practical approach for conducting cumulative and indirect impact analyses, a process for thinking through the issues, and a consistent framework for reporting the results.
- Caltrans regularly acts on behalf of FHWA for certain aspects of **federal Endangered Species Act and Section 106 consultation.** As the designated non-federal representative for FHWA under the federal Endangered Species Act, Caltrans routinely conducts informal consultations with USFWS and NMFS and works collaboratively with FHWA on all aspects of the formal consultation process under Section 7 of the Endangered Species Act and the Essential Fish Habitat consultation process under the MSA. Under the Section 106 PA, Caltrans is currently delegated formal consultation with the SHPO on eligibility, Findings of No Historic Properties Affected, and Findings of No Adverse Effect With Standard Conditions. Caltrans has a long history of working cooperatively with these and other

federal agencies, as evidenced by a number of MOUs and MOAs developed over the years with these agencies.

- Caltrans implements a **public participation program** that encourages opportunities and provides guidance for interagency coordination and public involvement during scoping, public review of environmental documents, and environmental permitting. Chapters 3 ("Public Participation"), 5 ("Preliminary Scoping"), and 6 ("Formal Scoping") of the SER identify requirements for public review, hearings, notices; describe the public participation process during project development; and set forth factors, such as public controversy, that should be considered in developing project public involvement programs.

Overview of Caltrans' Standard Environmental Reference

The SER (http://www.dot.ca.gov/ser/index.htm) focuses on the statutory and regulatory requirements for the content of environmental documents and supporting technical studies, as well as on the procedures for processing these reports. The SER also provides tools for development of the documentation, including links to federal and state statutes and regulations, to other agencies' websites, and to other Caltrans manuals and handbooks. The information in the SER is used by Caltrans and local agency staff for NEPA compliance on federal-aid projects, as well as for special- and state-funded projects that require FHWA approval. The SER is also used for projects for which Caltrans is the CEQA lead agency. The SER is constantly being updated to reflect changes in environmental regulations, policies, and procedures.

The SER contains Caltrans' 4-volume Environmental Handbook for preparing and processing environmental documents. Volume 1 of the Environmental Handbook, "Guidance for Compliance", is a topic-based reference that forms the core of the SER content. This volume, intended to provide guidance to generalists responsible for preparing NEPA and CEQA documents, is generally organized to follow the flow of the project delivery process. Volumes 2, 3, and 4 each cover a different environmental topic: cultural resources, biological resources, and community impacts, respectively. These volumes focus on information that is needed by the environmental specialists who prepare technical reports in support of environmental documents.

The SER also contains the following:

- miscellaneous guidance that has been published by FHWA, Caltrans, and other agencies to help state and local agency staff understand specific issues and procedures related to NEPA and CEQA documentation and compliance;
- forms, templates, annotated report outlines, and graphics for the environmental documentation and review process;
- key policy memos that Caltrans and other agencies have published to help state and local agency staff understand key Caltrans and other policies related to state and federal environmental documentation and compliance;
- MOU/Memoranda of Agreement (MOA) that have been signed by Caltrans, FHWA, and other agencies to implement the environmental compliance process; and
- guidance on preparing environmental scoping reports.

Appendix C summarizes the contents of the SER in more detail.

Additional Guidance

Caltrans Headquarters Division of Environmental Analysis

Information on Headquarters' role in the environmental compliance process can be found on Headquarters DEA home page (http://www.dot.ca.gov/hq/env/index.htm). This home page, which can be accessed from the SER website, links to web pages on the Pilot Program, air quality, biological resources, community impact assessment, cultural resource studies, the Environmental Management Office, hazardous waste management, outreach and coordination with Native Americans, noise and vibration studies, and the storm water program.

Additional DEA guidance on Caltrans' Storm Water Management Plan (SWMP) can be found on Caltrans storm water web page (http://www.dot.ca.gov/hq/env/stormwater/index.htm). The SWMP describes Caltrans' storm water program and addresses storm water pollution control related to planning, design, construction, maintenance, and operation of transportation facilities; the National Pollution Discharge Elimination System (NPDES) permit under which Caltrans operates; and information on Caltrans' Best Management Practices (BMPs) Retrofit Pilot Program.

Other Guidance

In addition to the SER, there are a number of manuals and other forms of guidance on Caltrans web sites that include information on various aspects of environmental analysis. These manuals and guides are updated, as needed, to reflect the most current standards, requirements, and policies. A number of these items are listed below. In addition to the information available on Caltrans web sites, Caltrans environmental staff also have access to environmental guidance on Caltrans intranet.

- The **Local Assistance Procedures Manual** of the Division of Local Assistance is Caltrans' primary guidance to aid local agencies in scoping, designing, constructing, and maintaining federal-aid projects on local streets and roads (http://www.dot.ca.gov/hq/LocalPrograms/lam/lapm.htm). Chapter 6 of the Manual provides detailed guidance to Caltrans staff and local agencies on preparing environmental documents for local agency projects and also refers users to the SER (http://www.dot.ca.gov/hq/LocalPrograms/lam/prog_p/p06envrp.pdf).
- The **Project Development Procedures Manual** (PDPM) (http://www.dot.ca.gov/hq/oppd/pdpm/pdpmn.htm#pdpm) contains:
  - Functions of and procedures related to the PDT (http://www.dot.ca.gov/hq/oppd/pdpm/chap_pdf/chapt08.pdf)
  - Public hearing requirements (http://www.dot.ca.gov/hq/oppd/pdpm/chap_htm/chapt11/chapt11.htm);
  - Guidance on community involvement (http://www.dot.ca.gov/hq/oppd/pdpm/chap_htm/chapt22/chapt22.htm#c22); and
  - Visual assessment guidance (see also SER Chapter 27 in Appendix C) (http://www.dot.ca.gov/hq/oppd/pdpm/chap_htm/chapt29/chapt29.htm).
- In addition to the storm water guidance from DEA, Caltrans also maintains **storm water guidance** for:
  - construction (http://www.dot.ca.gov/hq/construc/stormwater/stormwater1.htm);
  - design (http://www.dot.ca.gov/hq/oppd/stormwtr/); and
  - maintenance (http://www.dot.ca.gov/hq/maint/manual/chc6(final).pdf).

- The **Highway Design Manual** contains:
  - floodplains guidance (see also in SER Chapter 17 in Appendix C) (http://www.dot.ca.gov/hq/oppd/hdm/pdf/chp0800.pdf) (Topic 802 for responsibilities, Topic 804 for floodplain encroachments)
  - storm water management (http://www.dot.ca.gov/hq/oppd/hdm/pdf/chp0890.pdf).
- The **Air Quality** web page (see also SER Chapter 11 in Appendix C) contains information on regional and project-level air quality issues, air quality analysis tools and procedures, and ongoing research studies related to transportation air quality (http://www.dot.ca.gov/hq/env/air/index.htm).

Quality Control Procedures

Caltrans currently implements environmental document QC procedures that require the following reviews of all NEPA documents for SHS and Local Assistance projects (these reviews are also implemented for CEQA documents):

- technical specialist review, by specialists responsible for the project technical studies, to ensure the accuracy of environmental technical information presented in the environmental document. These technical specialists also conduct peer review of technical studies within their area of expertise. In this capacity, biologists conduct peer reviews of biological resources reports, biological evaluations, biological assessments, and EFH assessments. Similarly, cultural resources specialists conduct peer reviews of Section 106 documents;
- peer review consisting of an independent review by environmental staff not otherwise involved in the project and who are at least an associate-level environmental planner;
- technical editing review of features such as grammar, syntax, style, format and graphics; and
- supervisor review to ensure that all necessary reviews have taken place and quality standards are met.

Each reviewer is required to sign an Environmental Document Quality Control Certification form to certify that the reviews have occurred. These procedures are documented in the SER (http://www.dot.ca.gov/ser/downloads/memos/district_edcp_11jul02.pdf). Caltrans also requires that all EISs be reviewed by Headquarters DEA and its Legal Division prior to being forwarded to FHWA; these procedures are also documented in the SER (http://www.dot.ca.gov/ser/downloads/memos/Revised_EISReviewMemo.pdf). After submitting DEA and legal comments to the District on the reviewed EIS, Headquarters conducts a final "readiness" review of the revised EIS to ensure that it is ready to be submitted to FHWA for approval.

Internal Monitoring and Process Reviews

Caltrans uses a number of tools to internally evaluate its performance and adherence to its environmental procedures. As described above, Caltrans provides extensive guidance and documented procedures for environmental compliance to its staff to ensure they prepare environmental documents that meet federal and state requirements and quality standards. Caltrans also implements a comprehensive environmental training program for its employees, as summarized in the Training section of this application. These tools strive to ensure Caltrans' staff compliance with its environmental compliance program.

Caltrans staff also regularly participate in FHWA-sponsored process reviews of Caltrans environmental compliance program. Recent process reviews have focused on wetlands mitigation, environmental commitment compliance, and noise impact and abatement analyses, to evaluate the effectiveness of approaches on these issues. Caltrans also conducts its own process reviews on aspects of its environmental compliance program on an as-needed basis. These process reviews have evaluated topics

such as the Caltrans environmental document QA/QC program and recurring FHWA comments on environmental documents. Since implementation of the Section 106 PA, Caltrans has also regularly monitored the effectiveness of this program through formal process reviews and reporting to the signatory agencies as required by the PA.

Caltrans also implements a formal process review program for Local Assistance projects to assess local agency compliance with federal-aid laws, regulations, and procedures. Under this program, process reviews are conducted to evaluate all aspects of the local agency federal-aid program, including environmental documentation and compliance. The process reviews result in specific recommendations to the local agencies to correct deficiencies and to improve procedures. Caltrans works with the local agencies to take appropriate actions to correct any identified deficiencies.

§773.106 (b)(3)(ii): Changes to be Made for Assumption of Responsibilities

Caltrans will implement the Pilot Program by expanding upon and strengthening its well-developed environmental procedures. The Pilot Program will enable Caltrans to expand its tradition of environmental stewardship by assigning Caltrans responsibility for making independent NEPA decisions on highway projects that protect and enhance California's environment and quality of life. The Pilot Program will also allow Caltrans to develop stronger proactive working relationships with its federal and state resource agency partners and to continue its commitment to work collaboratively with its resource agency partners to develop and implement innovative environmental mitigation. Caltrans' existing staff capabilities and mature environmental compliance program, together with the steps that will be taken to expand and strengthen its program and staff, will ensure the success of the Pilot Program.

This section briefly describes how Caltrans' existing environmental compliance program will be modified to implement its new Pilot Program responsibilities. This section also describes the procedures that Caltrans will implement to ensure that all NEPA documents meet quality standards, and that all NEPA decisions are sound, supportable, and made independently.

Organization and Procedures under the Pilot Program

To implement the Pilot Program, Caltrans will expand and strengthen procedures to ensure that the appropriate level of environmental analysis is conducted for all NEPA documents for projects on the SHS and on local streets and roads; these expanded procedures will also apply to locally-sponsored projects on the SHS and state-funded projects that require FHWA approval. Its procedures will ensure that adequate expertise is available in areas where assumption of responsibility has been requested.

To facilitate close coordination between Headquarters and the Districts under the Pilot Program, the DEA Environmental Coordinators will continue to act as Headquarters environmental liaisons with the Districts to ensure that the Districts are implementing state and federal standards, requirements, and policies. The Environmental Coordinators will also fulfill FHWA's current role by expanding their support to the Districts in providing federal policy guidance. In this role, the Environmental Coordinators will provide guidance and direction to the Districts on SHS and Local Assistance projects on those issues that are now addressed by the FHWA transportation engineers and environmental specialists. In order to provide this additional support to the Districts, the Environmental Coordinators' responsibilities in the quality control process will be expanded, as described in the following section. The equivalent of 11 staff personnel-years (PYs) have also been added to implement the Pilot Program for SHS projects. These additional

staff will perform a variety of responsibilities under the Pilot Program, including NEPA QC reviews, record keeping, and audit support.

Caltrans has also added the equivalent of 7 managerial-level personnel-years (PYs) in DEA (1 PY), DLA (1 PY), and in District Local Assistance (5 PYs). DEA has established a temporary NEPA Delegation Manager position to prepare for and implement the Pilot Program. For Local Assistance projects, a new supervising environmental planner position, the statewide Local Assistance NEPA Delegation Coordinator, has been added to Headquarters' DLA. This new Local Assistance position will work to improve linkages between environmental staff in DLA and DEA, working closely with the Headquarter Environmental Coordinators to address complex environmental issues that arise on Local Assistance projects. The Local Assistance NEPA Delegation Coordinator will also work toward improved communication between Headquarters and the Districts on Local Assistance projects.

The 5 new District Local Assistance senior-level PYs for Pilot Program coordination, together with the new DLA NEPA Delegation Coordinator, will be responsible for ensuring that local agency/consultant-prepared environmental documents are consistent with the Pilot Program and the SER. Each new District Local Assistance environmental coordinator has responsibility for two, or in the case of the North Region, three Districts and will work closely with the DLAEs under a shared resources concept.

Expanded Quality Control Procedures

Under the Pilot Program, Caltrans will expand its QC procedures by requiring the Districts to perform a new internal NEPA QC Review for SHS and Local Assistance projects, which specifically ensures environmental documents comply with FHWA's NEPA regulations, policies, and standards. Those staff members conducting this review will be required to undergo Caltrans/FHWA training that identifies the expectations associated with this role. The NEPA QC reviewers will also need to meet minimum qualifications that include experience preparing a complex environmental document or supervising a unit that reviews EISs and at least two years experience leading the development of or performing consultant oversight for transportation environmental documents in California.

Headquarters' role in environmental document review will also be expanded to include a NEPA Compliance Review of SHS and Local Assistance projects that fulfills the combined functions of the current DEA EIS review, "readiness" review, and FHWA NEPA review. The NEPA Compliance Review will be managed by one of the four DEA environmental coordinators assigned to specific Districts/Regions, and supported by Headquarters environmental technical experts. The DEA environmental coordinators will also review EIS Records of Decisions before they are signed by the District Directors.

Formal NEPA Compliance Review will be expanded to include not only EISs but also "complex EAs". Complex EAs are defined as those EAs that include multiple location alternatives, debate related to purpose and need, strong public controversy, issues of logical termini or independent utility, individual Section 4(f) determinations, complex Endangered Species Act issues, numerous cumulative impacts, or high mitigation costs. The District Environmental Deputy or designee, with concurrence from the DEA Environmental Coordinator, will determine those SHS projects that will be processed as complex EAs, due to their complex technical issues or controversial nature. For Local Assistance projects, complex EAs will be determined by the DLAE and a senior environmental planner with the concurrence of the DEA Environmental Coordinator.

For EISs and individual Section 4(f) determinations that are required to undergo legal sufficiency reviews, the NEPA Compliance Review will be undertaken concurrently with the legal sufficiency review, to be conducted by Caltrans Legal staff. Under these procedures, the legal sufficiency sign-off

must occur prior to the Environmental Coordinator's "readiness" approval, and the "readiness" approval must occur before the District Director (or designee, for EAs) formally signs the environmental document. Figures 7 and 8 present the new procedures for EISs and complex EAs for SHS and Local Assistance projects, respectively. Table 2 presents the signature authorities for these documents.

For routine EAs on SHS and Local Assistance projects, District environmental staff, trained for the specific function, will perform the combined NEPA QC and NEPA Compliance Reviews, and provide the "readiness" approval. The "readiness" approval must occur before the District Director or designee formally signs the environmental document. Caltrans Legal or Headquarters DEA will review routine EAs upon request of the Districts on a case-by-case basis. Figures 9 and 10 depict the new procedures for routine EAs for SHS and Local Assistance projects, respectively. Table 2 presents the signature authorities for these documents.

Under the Pilot Program, Caltrans will also expand its QC review of technical studies prepared under Section 7 of the ESA, the MSA. Guidance for the reviews of biological evaluations, biological assessments, EFH evaluations, and Section 106 documents will document the requirements for Caltrans biologists and cultural resource specialists. These expanded procedures will include the requirement that all Section 7 biological evaluations and assessments and EFH evaluations be peer reviewed by a biologist who is at least at the associate (journey person) level. Caltrans Headquarters DEA Cultural and Communities Studies Office will be required to review Section 106 adverse effect reports and Memoranda of Understanding before they are transmitted to the SHPO.

In anticipation of the Pilot Program, the Environmental Document Quality Control Review Certification form has also been expanded and improved. In addition to Caltrans' certifications, local agencies and their consultants will be required to implement QC and certify that the environmental documents they prepare have undergone Caltrans' required QC procedures. The new forms also require explicit certifications by Caltrans and local agencies/consultants of the following:

- Environmental document meets state and federal policies and guidance and the requirements of applicable federal laws, executive orders, and regulations.
- Environmental document is consistent with technical studies.
- Environmental document is internally consistent.
- Environmental document is consistent with the applicable SER annotated document outline.
- Environmental document has been reviewed by the PDT.
- Public review comments have been appropriately addressed for final environmental documents.

Table 2. Signature Authorities under the Pilot Program

	SHS Projects	Local Assistance Projects
Determining Class of Action		
CE[a]	SEP (or designee)	SEP (or designee)
Routine EA	DDD (or designee[c]) with concurrence of EC	DLAE and SEP with concurrence of EC
Complex EA	DDD (or designee[c]) with concurrence of EC	DLAE and SEP with concurrence of EC
EIS[b]	DDD (or designee[c]) with concurrence of EC	DLAE and SEP with concurrence of EC
CE Approvals		
CE is ready for signature	SEP (or designee)	SEP (or designee)
Sign CE Determination Form	SEP and PM	SEP and DLAE
Routine EA Approvals		
Title page is ready for signature	SEP	SEP
Sign title page	DD (or DDD or EOC[d])	DD (or DDD or EOC[d])
FONSI is ready for signature	SEP	SEP
Sign FONSI	DD (or DDD or EOC[d])	DD (or DDD or EOC[d])
Complex EA Approvals		
Title page is ready for signature	SEP and EC	SEP and EC
Sign title page	DD (or DDD or EOC[d])	DD (or DDD or EOC[d])
FONSI is ready for signature	SEP	SEP
Sign FONSI	DD (or DDD or EOC[d])	DD (or DDD or EOC[d])
EIS Approvals		
Title page is ready for signature	DDD and EC	DDD and EC
Sign title page	DD	DD
ROD is ready for signature	DDD and EC	DDD and EC
Sign ROD	DD	DD
Individual Section 4(f) Evaluation Approval[e]		
Sign title page	DDD	DDD
Reevaluation Approval		
Sign title page	SEP	SEP

Notes: AEP = Associate Environmental Planner
DD = District Director
DDD = Deputy District Director for Environmental or Region Division Chief for Environmental
DLAE = District Local Assistance Engineer
EC = Headquarters Division of Environmental Analysis Environmental Coordinator
EOC = Environmental Office Chief – a Supervising Environmental Planner managing an environmental assessment unit
PM = Project Manager
SEP = Senior Environmental Planner

[a] Per 23 CFR 771.117 and the SAFETEA-LU Section 6004 MOU

[b] Per criteria in 23 CFR 771.115.

[c] Designee must be a senior or above.

[d] If designated by the District Director.

[e] Signature authorities apply to stand alone evaluations.

Independent Environmental Decision-Making

As a CEQA lead agency, Caltrans has over three decades of experience in making sound environmental compliance decisions that are independent from project design decisions. Caltrans' organization also supports independent environmental decision-making. The approval for all environmental documents prepared under the Pilot Program will be independent from project design decisions. EISs and complex EAs will be independently reviewed by Headquarters DEA conducting the NEPA Compliance Review. EISs will also require the Legal Division's legal sufficiency review. Districts may not sign EISs and complex EAs until the Headquarters Environmental Coordinator provides "readiness" approval, and in the case of EISs, the Legal Division determines that the EIS is legally sufficient.

Routine EAs will be reviewed by a District peer reviewer that is otherwise not involved in the project. In addition, the NEPA QC and NEPA Compliance Reviews and readiness approval for EAs will be conducted in a District office managed by an Environmental Deputy or Chief that is parallel in authority, but independent from the Design Deputy, Project Management Deputy, and Construction Deputy. Therefore, all environmental document reviews will be conducted in offices independent from the offices responsible for project design and project management.

Defining the Class of Action

Under the Pilot Program, the class of action for Classes I (EIS) and III (EA), as defined by 23 CFR 771.115, will be determined on SHS projects by the Deputy District Director for Environmental or designee with concurrence from the DEA Environmental Coordinator. Class II (CE) determinations will be made by a District or Region senior environmental planner or supervisor. For Local Assistance projects, EIS and EA class of action determinations will be made by the DLAE and a District senior environmental planner with concurrence from the DEA Environmental Coordinator. CE determinations will be made by a District senior environmental planner (Table 2). For SHS projects, the class of action will continue to be documented in the Preliminary Environmental Assessment Report (PEAR). For Local Assistance projects, the class of action will continue to be documented on the Preliminary Environmental Studies (PES) form as described in Chapter 6 of the Local Programs Procedures Manual. See "Scoping Tools" in Appendix C of this application for a description of these reports.

Consultation and Coordination with Resource Agencies

Caltrans is currently actively engaged with its federal resource agency partners and with Tribal Governments in consultation and in the development of mitigation strategies. Under the Pilot Program, Caltrans is committed to continue working positively and collaboratively with its federal and state resource agency partners and with Tribal Governments on these efforts.

Under the Section 106 PA, Caltrans is currently delegated formal consultation with the State Historic Preservation Officer (SHPO) on eligibility, Findings of No Historic Properties Affected, and Findings of No Adverse Effect With Standard Conditions. Since 1994, Caltrans has been a signatory agency to the NEPA/404 MOU, working with the other signatory agencies to provide more timely decision-making. In addition, Caltrans is actively involved in coordinating with the U.S. Department of Interior, and, as appropriate, the U.S. Department of Agriculture and the U.S. Housing and Urban Development Department on Section 4(f) issues.

Caltrans is currently delegated informal consultation responsibilities with the USFWS and NMFS on biological issues and is also an active participant in all formal consultations under Section 7 of the ESA and under the MSA. Caltrans biologists currently prepare Section 7 biological evaluations and biological assessments and EFH evaluations under the MSA. They work collaboratively with USFWS and NMFS to develop mitigation strategies to ensure that projects will not jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. They also engage in

consultations with NMFS to ensure the protection of EFH to support long-term, sustainable commercial fisheries. Under the Marine Mammal Protection Act, Caltrans biologists obtain incidental harassment authorizations from NMFS.

Caltrans biologists, in coordination with NMFS, USFWS, and the California Department of Fish and Game, are also involved in a number of programs for the conservation of listed species. These programs include assessing and remediating blockages for fish passage, assessing habitat and wildlife connectivity, conducting advanced mitigation planning, developing collaborative invasive species strategies, and participating in species recovery planning. Caltrans also funds and participates in studies conducted as part of the Transportation Research Board (TRB) National Academy of Science – National Cooperative Highway Cooperative Research Program (NCHRP) on topics such as wildlife crossings, fisheries barotraumas, and invasive species.

Under the Pilot Program, Caltrans will look for opportunities to deepen its collaboration with NMFS and USFWS in conserving federally listed species, consistent with the spirit of Section 7(a)(1). These efforts will include such approaches as seeking opportunities to participate in programs for the conservation of listed species; implementing watershed/landscape-based approaches to habitat and wetlands mitigation; using Context Sensitive Solutions in design and construction; formulating ecosystem-based mitigation consistent with FHWA's Eco-Logical framework; and linking transportation planning and environmental analysis under NEPA, including encouraging the establishment of advance mitigation agreements during the transportation planning process and early coordination with regulatory and land management agencies under Section 6001 of SAFETEA-LU.

The Pilot Program will allow Caltrans to enter into direct agency-to-agency relationships with federal resource agencies for consultation and decision-making. These relationships will create opportunities for new engagement strategies to facilitate development of programmatic agreements and other proactive solutions to environmental consultation, stewardship, and mitigation needs.

Issue Identification and Conflict Resolution Procedures

Internal Process

Under the Pilot Program, Caltrans will implement a formal process to be used in rare cases when necessary to resolve internal conflicts regarding technical or procedural matters related to the environmental review process. An internal standing committee comprised of the following staff will implement this process:

- At least one District supervising environmental planner or above from a District not involved in the project;
- DEA Environmental Coordinator not involved in the project;
- Chief of the DEA Environmental Management Office, the NEPA Delegation Manager, or if the issue involves special expertise, other appropriate DEA office chief; and
- A representative from Caltrans Legal, to participate as a non-voting advisor to the committee.

The committee will review issue identification briefing materials or hear presentations of issues, and promptly recommend a course of action to the District. If the dispute cannot be resolved through the committee, the issue will go to the Chief of DEA for a final decision. This approach will ensure that the Districts have an opportunity to be part of the final decision-making process and, at the same time, provide additional support for statewide consistency and quality.

Process with External Agencies

Under the Pilot Program, Caltrans will assume FHWA's role in resolving conflicts with external agencies. In this role, Caltrans will continue to be diligent in resource agency engagement, particularly with cooperating agencies and those agencies designated as participating agencies, following the requirements and the spirit of SAFETEA-LU Section 6002. Where issues arise that create conflict between agencies, Caltrans will be committed to forthright conflict resolution. Because of Caltrans' experience, expertise, and level of involvement in consultations currently, its existing resources will be adequate to assume FHWA's responsibilities for resolving issues with external agencies.

Caltrans' long history of working cooperatively with its federal and state partners and with Tribal Governments is evidenced by the numerous MOUs and MOAs developed over the years to delegate certain responsibilities to Caltrans or to improve coordination between Caltrans and federal and state resource agencies (http://www.dot.ca.gov/ser/mou.htm). The MOUs highlighted below specify procedures for resolving conflicts with external agencies. These procedures were developed with FHWA as a partner; under the Pilot Program, Caltrans would assume the FHWA role if acceptable to the resource agencies involved.

- **National Environmental Policy Act and Clean Water Act Section 404 Integration Process for Federal Aid Surface Transportation Projects in California** ("NEPA/404 MOU Among the Federal Highway Administration, California Department of Transportation, U.S. Environmental Protection Agency, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, and the National Marine Fisheries Service") (http://www.dot.ca.gov/ser/downloads/MOUs/NEPA404/nepa404_2006_final_mou.pdf).

  The NEPA/404 MOU establishes a process for coordination among the agencies at specific checkpoints in the environmental process. Intrinsic to the process is agreement that all partners be given early notice of potential issues that may require dispute resolution. The three-tiered dispute resolution process uses a collaboratively-prepared briefing paper as a key component of issue resolution. If issues cannot be resolved at the first tier, signatory agencies may raise the issue to senior management. If issues are not resolved at that level, partners may use the formal dispute resolution system under DOT Order 5611.1A (October 10, 2003) http://www.environment.fhwa.dot.gov/strmlng/dot5611_order.asp.

- **FHWA/FWS/Caltrans Joint Memorandum for the Dispute Resolution Process, September 6, 2006** (http://www.dot.ca.gov/ser/downloads/guidance/Dispute_Resolution_Process.pdf)**:** The flow chart and elevation ladder identified in this memorandum are intended to expedite Section 7 consultation pursuant to the Endangered Species Act. The memorandum calls for a process, specific timeframes, and specific players when elevating disagreements from staff level to higher levels of management. Three tiers of elevation are identified; the highest level includes the Director of Caltrans and high-level managers in the Washington, D.C. offices of FHWA and USFWS.

- **Section 106 Programmatic Agreement** ("Programmatic Agreement Among Federal Highway Administration, the Advisory Council on Historic Preservation, the State Historic Preservation Officer, and the California Department of Transportation Regarding Compliance With Section 106 of the National Historic Preservation Act As It Pertains to the Administration of the Federal-Aid Highway Program in California", January 1, 2004): Stipulations VIII(C)(5)(b) and X(D) address disagreements over findings of eligibility and effect findings.

Where the issue needing resolution does not involve one of the regulatory processes described above, Caltrans will implement the Issue Identification and Resolution Process under Section 6002 of SAFETEA-LU, assuming FHWA's role. Section 6002 provides a formal process for resolving major issues that may delay or result in denial of a required approval or permit for a project. This process may

be invoked by the project sponsor or the Governor of the State and requires that the FHWA Division Administrator, heads of the lead agencies and affected participating agencies, and the project sponsor meet to resolve issues.

Record Keeping and Retention

Caltrans project files are kept following the requirements of the Caltrans Uniform Filing System (http://www.dot.ca.gov/hq/oppd/pdpm/chap_htm/chapt07/chapt07.htm). To support the needs of the Pilot Program, additional environmental record keeping tools are being developed that will ensure that files are complete and readily accessible to the Pilot Program audit team, thoroughly document and support NEPA decisions, and create the basis for a complete administrative record. Environmental project records are maintained within the environmental unit and will be retained for a period of time consistent with the requirements of the Pilot Program MOU with FHWA.

Expanded Internal Monitoring and Process Reviews

Under the Pilot Program, Caltrans will expand the ways in which it internally evaluates its performance by implementing a formal process review program for environmental compliance under the Pilot Program. Under this program, Caltrans will periodically conduct process reviews to determine the effectiveness of its environmental procedures under the Pilot Program and staff adherence to these procedures. This program will be used to assess the success of the program by identifying areas that are working well, as well as procedures requiring improvement; make specific recommendations to improve adherence to procedures; evaluate the need for course corrections; assess benefits derived from previous process review recommendations; and recheck any course corrections that have been implemented. The process reviews will be conducted using a variety of monitoring tools, including interviews with Caltrans staff and resource agencies, distribution of questionnaires, review of project files, and data tracking tools. During the first year of the Pilot Program, it is anticipated that process reviews will be undertaken to evaluate the effectiveness of the QA/QC environmental document review process, as well as the CE program and the appropriate use of CEs.

The Chief of DEA, currently Jay Norvell, will be responsible for overseeing implementation of the Pilot Program and ensuring its success and will report on the performance of the Pilot Program to FHWA. The DEA Chief is the highest-ranking environmental official at Caltrans. Caltrans' NEPA Delegation Manager, currently Cindy Adams, will be responsible for the day-to-day management of the Pilot Program and will serve as liaison to the FHWA Pilot Program audit team until a separate liaison can be named. Margaret Buss, statewide Local Assistance NEPA Delegation Coordinator, will work with the statewide NEPA Delegation Manager to ensure consistency between SHS and Local Assistance projects under the Pilot Program.

Performance Measures to Assess the Pilot Program

Caltrans will monitor a variety of performance measures as part of its new process review program to evaluate performance in assuming the Pilot Program responsibilities. These measures will include the following:

- Compliance with NEPA and other Federal environmental laws and regulations:
  - Maintain documented compliance with procedures and processes set forth in the MOU for the environmental responsibilities assumed under the Pilot Program.
  - Maintain documented compliance with requirements of all Federal environmental laws and regulations being assumed.
- Attainment of supportable NEPA decisions through maintenance of internal quality control and assurance measures and processes, including evidence of:

  - Legal sufficiency;
  - Compliance with the environmental document content standards and procedures, including those related to QA/QC; and
  - Documentation of project records for projects done under the Pilot Program.
- 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 for completion of environmental document approvals before and after assumption of responsibilities.
  - Compare time for completion of key interagency consultations formerly requiring FHWA participation (such as, Section 7 biological opinions and Section 106 MOAs) before and after implementation of the Pilot Program.

Training to be Provided to Implement the Pilot Program

Caltrans maintains a robust training program for its environmental staff who work on SHS and Local Assistance projects. Caltrans is committed to maintaining a quality training program for its employees. Training is modified over time as necessary to meet evolving staff needs. Caltrans' Environmental Staff Development Program provides training courses that support development of the knowledge, skills, and abilities of its environmental planners. Notable courses for environmental assessment staff that are most frequently offered are listed below. All training is offered on an as-needed basis.

- **The Environmental Academy** provides an overview of the Caltrans environmental process in the context of project development and introduces the interrelationships between environmental and other functions involved in project development. This course is offered to environmental generalists and specialists; the course audience also includes engineers, maintenance staff, and transportation planners. Environmental staff are encouraged to take this course within the first year of employment with Caltrans.
- **Environmental Analysis Intensive** is designed to address key issues in developing environmental documents such as purpose and need, determining significance, analyzing and addressing project changes, and effectively responding to comments. This course is offered to associate-level and above environmental assessment staff.
- **Design, Construction and Maintenance for Environmental Planners** covers interpretation of design plans and understanding common construction and maintenance equipment and techniques to improve analysis of impacts that may result from construction and maintenance activities. This course is designed for environmental generalists and specialists.

Other training of note includes:

- FHWA's Section 4(f) evaluation course, an in-depth primer on Section 4(f) that includes recent changes in 4(f) evaluation in response to SAFETEA-LU, was delivered to approximately 120 Caltrans environmental planners within the last year. Caltrans is also requesting that this course be offered to its staff again during the coming fiscal year.
- A course entitled "Cumulative Impact Analysis and Growth-Related, Indirect Impact Analysis" is under development and will be offered for the first time next fiscal year to ensure that NEPA and CEQA documents prepared by Caltrans include useful, legally adequate, and well-documented evaluations of cumulative and growth-related, indirect impacts.
- Training related to the PA for Section 106 Compliance, designed to explain the provisions of the PA and to certify Caltrans cultural resource staff for their duties under the PA. It is offered for new staff needing certification or as a refresher for more experienced practitioners.

Training and workshops are also provided on an as-needed basis to technical specialists. Examples of offerings include:

- Community Impacts Analysis Workshop
- Endangered Species Protection and Regulation
- Cultural Studies Workshop
- Traffic Noise Analysis Protocol
- Air Quality Analysis Workshop
- Wetlands Delineation
- Roadside Ecology Conference
- Annual Statewide Hazardous Waste Conference

In addition to Caltrans' in-house training program, Caltrans also sends its staff to environmental compliance courses offered by FHWA, National Highway Institute, local universities, and private vendors, on an as-available and as-needed basis.

Caltrans is also augmenting its current training program in support of the Pilot Program. As called for the in the Pilot Program MOU, Caltrans will coordinate with FHWA and other federal agencies, as deemed appropriate, within 90 days after execution of the MOU to confirm that Caltrans' expanded training program adequately addresses all areas of environmental responsibility that Caltrans is assuming or to develop a Pilot Program training plan.

Under the Pilot Program, Caltrans is committed to provide all of its biologists with ESA and EFH assessment training to ensure they have a fundamental understanding of the requirements of these regulations and to ensure consistency between District biologists in the findings they make under these laws. Caltrans will coordinate with the USFWS and NMFS in augmenting its training program in support of its expanded responsibilities under the ESA and MSA.

In support of the Pilot Program, Caltrans recently presented the first of two three-day workshops to approximately 120 of its environmental staff that will be most involved in implementing its new environmental responsibilities. Attendees included District and Headquarters environmental managers

and staff. Training topics included revised environmental document review procedures, new QA/QC protocols, recordkeeping requirements, performance metrics, and processing Local Assistance documents under the Pilot Program, among other things. The workshop was also used as an opportunity to train staff on other important emerging issues, such as PM 2.5 requirements and approaches, air toxics information in environmental documents, linking planning and NEPA, and the recently revised NEPA/404 MOU. A similar workshop was held in March for an additional 120 environmental staff who did not attend the first workshop. DLA is updating existing training for Local Assistance engineers, such as the Local Assistance Academy, to include information on the Pilot Program. DLA will also host a statewide meeting for DLAEs and District Local Assistance environmental staff, including the new Local Assistance NEPA delegation coordinators, to further discuss procedures under the Pilot Program that will ensure that Local Assistance environmental documents meet federal policies, standards, and requirements. In addition, DLA will provide training to local agencies and their consultants on changes to existing procedures under the Pilot Program, including the environmental document quality control procedures and record keeping requirements. Finally, additional training to build awareness of Pilot Program issues for project managers and project design engineers is currently in the planning stages.

Caltrans Headquarters and district environmental staff, designated as Pilot Program audit liaisons, completed FHWA Audits training on January 30 and 31, 2007.

Caltrans Legal Division, in conjunction with DEA, presented a two-day legal environmental workshop to thirty of its attorneys in fall of 2006. The workshop included an overview of NEPA and CEQA and building the administrative record, and provided up-to-date information on key topics such as the Endangered Species Act, Section 106, Section 4(f), the Clean Water Act, storm water, air, and noise issues. In addition, Caltrans attorneys performing legal sufficiency reviews attended legal sufficiency training offered by FHWA Legal staff in April 2007.

Caltrans and the California Division of FHWA are also partnering in the development of NEPA compliance review training for staff that will be specifically performing NEPA environmental document QC reviews. This training is scheduled to be delivered in July 2007. Training on CEs, as well as CEQA categorical exemptions, is also under development and will highlight new CE protocols under the Pilot Program and the SAFETEA-LU Section 6004 CE assumption of responsibilities. This course, to be delivered next fiscal year, will be provided to District environmental assessment staff.

§773.106 (b)(3)(iii): Legal Sufficiency

Eight attorney PYs are currently dedicated to Caltrans' environmental program for EIS review and for ongoing support and involvement in project-related environmental issues. Caltrans and FHWA Legal staff have a well-developed ongoing working relationship and periodically meet to discuss environmental legal issues of concern. Caltrans Legal staff currently reviews all EISs for legal sufficiency before they are submitted to FHWA for formal legal sufficiency review. Under the Pilot Program, the Caltrans Legal review will become the formal legal sufficiency review both for EISs and Section 4(f) evaluations. Those Caltrans attorneys who will be performing formal legal sufficiency reviews under the Pilot Program will attend legal sufficiency training offered by FHWA Legal staff. Caltrans will retain sufficient legal staff to adequately meet the needs of the Pilot Program.

§773.106 (b)(3)(iv): Prior Concurrence

For selected projects, "prior concurrence" pursuant to 23 CFR 771.125(c), will be obtained before proceeding with key approvals under NEPA. This approval from Caltrans' Chief of DEA, advised by the Deputy Chief Counsel for Environmental, will ensure that the project and document in question are acceptable from a policy and program perspective. Prior concurrence may apply to Caltrans approvals of draft and final EISs; on rare occasions prior concurrence may apply to FONSIs. Projects that require prior concurrence will be decided on a case-by-case basis, based on input from the Districts and the Headquarters Environmental Coordinators, and may include projects that meet one or more of the following criteria:

- impacts of unusual magnitude,
- high level of controversy,
- major unresolved issues,
- emerging or national policy issues,
- issues for which the Districts or Headquarters seek policy assistance.

For projects that have underlying issues related to emerging or national policies such as climate change, mobile source air toxics, and constructive use under Section 4(f) of the U.S. Department of Transportation Act, Caltrans will coordinate with FHWA on the underlying policy issues.

Prior concurrence will apply to projects as determined by the Chief of DEA. Projects may also be recommended for prior concurrence by the Districts/Regions.

§773.106 (b)(4)(i): Staff Dedicated to Additional Functions

Caltrans currently has over 700 employees who are responsible for environmental compliance and approximately 22,000 total employees. Because its existing capabilities are extensive in terms of the number of employees and the breadth and depth of their environmental expertise, Caltrans has identified the following additional staff resource requirements to implement the Pilot Program (also described in the section on "Organization and Procedures under the Pilot Program"):

- 11 additional PYs for SHS projects; and
- 6 additional PYs for Local Assistance projects.

As noted earlier, a temporary NEPA Delegation Manager position has also been created in DEA to support implementation of the Pilot Program (position is not included in the PYs above), and DLA has appointed a parallel position of statewide NEPA Delegation Coordinator (Local Assistance position is included in the PYs above).

The 11 SHS PYs for the initial year of the Pilot Program are a nominal addition to the 10,638 PYs available in the current fiscal year (July 2006 through July 2007) for Caltrans' Capital Outlay Support (COS) function; these PYs were redirected from elsewhere in the COS budget. The additional workload is expected to be relatively small in the first year since the Pilot Program will not begin until late in the state fiscal year. In subsequent years, it is expected that 20 or fewer total SHS PYs will be needed to implement the Pilot Program. These resources will be identified through the District workplan process, as

are the resources for all of Caltrans' project development work. The COS budget is zero-based annually and is developed by adding together all the resources necessary for the project-specific work planned to be accomplished in the given fiscal year. The six additional Local Assistance PYs have been provided by the state Department of Finance and financed through contributions by local partners.

The additional SHS and Local Assistance staff will be used to augment Caltrans' large existing environmental staff for accommodating a variety of responsibilities required under the Pilot Program, including NEPA QC reviews, audit preparation, and record-keeping support. Caltrans will maintain sufficient staff to adequately meet the additional needs of the Pilot Program.

Since Caltrans Legal staff currently conduct legal sufficiency reviews of all EISs, Caltrans expects to be able to handle its new legal obligations under the Pilot Program with existing Legal staff. If, however, it is determined that additional staff are necessary for Federal court litigation, at most two additional Caltrans attorneys may be necessary. Should the need for legal sufficiency review PYs be identified in the future, they would be requested through the annual COS workplan process.

§773.106 (b)(4)(ii): Changes to the Organizational Structure

DEA has added a temporary office to plan for and implement the Pilot Program. This office is responsible for developing the Pilot Program application, identifying and implementing policy and procedure changes for the Pilot Program, outreach to state and federal resource agency partners regarding assumption of responsibilities, audit support, and Pilot Program reporting. In addition, as noted earlier, DLA has added a NEPA Delegation Coordinator to plan for and implement the Pilot Program for Local Assistance projects. No other changes to Caltrans' organizational structure are contemplated to implement the Pilot Program.

§773.106 (b)(4)(iii): Use of Outside Consultants for the Pilot Program

There will be no change in Caltrans' general approach to using consultants as a result of the Pilot Program. Consultant contracts comply with Federal Acquisition Regulation cost principles and procedures. For Local Assistance projects, local agencies would continue to be required to comply with the consultant selection requirements specified in Chapter 10 of the Local Assistance Procedures Manual (http://dot.ca.gov/hq/LocalPrograms/lam/prog_p/p10consul.pdf).

Currently, consultant services comprise approximately 10% of the annual COS workload. The magnitude of consultant services used to augment Caltans' project development staff varies from year to year, based on legislative authority and project delivery needs. This allows Caltrans' work force to remain stable, with consultants used to manage workload fluctuations. Most districts maintain "on-call" environmental contracts to allow for consultant assistance on an as-needed basis. Environmental consultants are used in a variety of ways, including undertaking specific technical studies, implementing aspects of QC review, and preparing project environmental documents. Consultant-prepared reports are reviewed by Caltrans environmental staff following Caltrans requirements for document review and approval. Consultants will not be used for Pilot Program NEPA QC review or NEPA compliance review.

§773.106 (b)(5): Financial Resources under the Pilot Program

There will be no new costs to Caltrans for the initial year of the Pilot Program. The additional 11 SHS PYs will be redirected from elsewhere in the COS program; the cost of the additional six Local Assistance PYs ($750,000) will be reimbursed by local/regional government. In future years, it is estimated that up to 20 PYs total would be necessary for Pilot Program work on SHS projects. These PYs may be redirected from elsewhere in the COS program. If, instead, these are new PYs, the annual cost of these PYs is estimated at $2.5 million, including the costs of salary, benefits and other indirect costs. These costs are expected to be sufficient to cover all additional environmental staff activities, including new NEPA QC reviews, audit preparation, and expanded record-keeping responsibilities for the Pilot Program.

As noted above, if it is determined that additional staff are necessary for Federal court litigation, at most two additional Caltrans attorneys may be necessary. The annual cost of two additional attorneys would be approximately $365,000. FHWA records indicate that attorney's fees have not been frequently awarded for NEPA cases in California. Over the last ten years, FHWA has paid just under $272,000 in attorneys' fees in California.

Pilot Program costs to Caltrans are not expected to exceed $3 million annually. In relation, the annual COS budget is $1.5 billion. Caltrans commits to making adequate financial resources available to carry out its responsibilities under the Pilot Program.

The source of the funding for the Pilot Program is the annual COS budget and contributions from local partners. The COS budget covers costs for activities necessary to develop and deliver projects, including the resources for environmental compliance. It is developed from a zero base each fiscal year. The resources necessary to complete all planned tasks for each project are combined, first by Districts/Regions and then statewide. Pilot Program responsibilities will be part of the necessary activities for each project and the resources needed for this work will be identified in each project work plan. As estimated through the work plan process, COS resources for each fiscal year are funded through the annual state budget process.

§773.106 (b)(6): Certification for Consent to Exclusive Federal Court Jurisdiction and Waiver of Immunity

As Chief Counsel for the California Department of Transportation, I, Bruce A. Behrens, under the authority of Street and Highways Code Section 138, certify that Caltrans has the authority under the Street and Highways Code to assume the responsibilities of the Secretary of the United States Department of Transportation being requested in this application. I also certify that the State of California consents to Federal Court jurisdiction with regard to the compliance, discharge, or enforcement of the responsibilities assumed by Caltrans pursuant to Section 326 of, and subsection (a) of Section 327 of, Title 23 of the United States Code and explicitly waives California's Eleventh Amendment immunity from citizens' suits brought in Federal court with regard to any such Caltrans-assumed responsibilities pursuant to Sec 5 of Assembly Bill (AB) 1039, signed by Governor Schwarzenegger on May 19, 2006, codified at Street and Highways Code Section 820.1, and effective on November 7, 2006 with the California voters' approval of the "Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006" at the general election on that date. Street and Highways Code Section 820.1 remains in effect until January 1, 2009 unless a later enacted statute deletes or extends this date. The text of AB 1039 is provided in Appendix D.

Signed: _____ Date: 16 May 2007

Bruce A. Behrens, Chief Counsel
California Department of Transportation

§773.106 (b)(7): Certification that the State of California's Public Records Act is Comparable to the Federal Freedom of Information Act

As Chief Counsel for the California Department of Transportation, I, Bruce A. Behrens, under the authority of Street and Highways Code Section 138, certify that the State of California enacted the California Public Records Acts (Government Code Section 6250 et seq.), the State functional equivalent to the Federal Freedom of Information Act (FOIA). This act includes provisions for review of any decision regarding the public availability of a document by a court of competent jurisdiction.

The California Public Records Act applies to all public agencies in the state. It was modeled upon the FOIA. California courts look to the legislative history and judicial construction of FOIA as aids in interpreting the California Public Records Act.

While the Act is quite extensive, this excerpt from Government Code Section 6253 provides a convenient summary of its objectives:

> 6253. (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.
>
> (b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

The California Public Records Act extends to public records stored in a computer (Government Code Section 6254.9[d]) and to public records requests made by a district attorney (Government Code Section 6263). The Act specifies those public records exempt from disclosure. These include, but are not limited to, records related to personnel matters, to litigation, the location of archaeological sites, and trade secrets.

Section 6258 authorizes a member of the public to go to court to obtain a requested record when a public agency has allegedly failed to comply with the Act.

> 6258. Any person may institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this chapter. The times for responsive pleadings and for hearings in these proceedings shall be set by the judge of the court with the object of securing a decision as to these matters at the earliest possible time.

A district attorney may similarly petition for judicial relief (Government Code Section 6264). As part of its proceedings, the court is empowered to review the record in question and to order the record to be made public, if justified. (Government Code Section 6259)

Signed:  Date: 18 May 2007

Bruce A. Behrens, Chief Counsel
California Department of Transportation

§773.106 (b)(8)(ii): Comments Received on the Pilot Program Application

Public Notification Procedures

A public notice for request of comments on the Pilot Program application was published on March 14, 2007 in a major newspaper of general circulation in each of the twelve Caltrans Districts. These newspapers include the following:

- District 1: Times Standard
- District 2: The Redding Searchlight
- District 3: The Sacramento Bee
- District 4: The San Francisco Chronicle and The San Jose Mercury News
- District 5: San Luis Obispo Tribune
- District 6: The Fresno Bee
- District 7: The LA Times
- District 8: San Bernardino Sun
- District 9: The Inyo Register
- District 10: Modesto Bee
- District 11: San Diego Union-Tribune
- District 12: Orange County Register

This notice provided a 30-day comment period, ending on April 16, 2007, in which commenters are invited to comment on any aspect of the application via email, facsimile, or mail. The name, address, phone number, and email address of the Caltrans NEPA Delegation Manager was also provided on the notice for those wishing to ask questions or obtain additional information.

This notice and the application were also sent to each of the County Clerk offices in the State for posting.

Caltrans also distributed the application with a letter requesting comments to its standard environmental document public distribution list. This distribution list includes Federal and State resource agencies; regulatory and land management agencies; all federally-recognized tribes in California, all Metropolitan Planning Organizations, Councils of Government, and Regional Transportation Planning Agencies; local transportation agencies; California legislators; environmental interest groups; and any organization or individual that expressed interest in the waiver of sovereign immunity legislation.

Summary of Comments Received and of Changes Made to the Application in Response to Comments

Table 3 identifies the agencies, groups, and individuals that commented on the draft application and the date of each comment. This table also summarizes the comments and the changes made to the application in response to these comments. Appendix E contains copies of all comments received and the responses that Caltrans provided to each of the commenters.

Table 3. Summary of Comments Received on the Pilot Program Application[a]

Date of Comment Letter	Commenter	Summary of Comments	Summary of Changes Made to the Application in Response to Comments Received[b]
March 13, 2007	Ivar Stromberg	Requests a copy of the application.	No changes to application required. Copy of application forwarded to the commenter on March 16, 2007.
March 16, 2007	Dave Singleton, Program Analyst, Native American Heritage Commission	States assumption that the Pilot Program would also apply to CEQA. Identifies recommended actions for analysis of project impacts to historical resources under CEQA	No changes to application required.
March 20, 2007	Charlotte Baker, Tribal Chairperson, Bridgeport Indian Colony	Supports Pilot Program	No changes to application required.
March 22, 2007	Erica Helms, Soboba Cultural Resources Department	No comments specific to Pilot Program	No changes to application required.
March 29, 2007	Jose Luis Moscovich, Moderator, Self-Help Counties Coalition	Supports Pilot Program and the streamlining benefits it will provide	No changes to application required.
April 3, 2007	L. DeCaro	Opposes Pilot Program application based on objections to the Ortega widening project and its CEQA environmental analysis	No changes to application required.
April 5, 2007	Laurie Tippin, Forest Supervisor, United States Department of Agriculture	No position on the Pilot Program	No changes to application required. No response required.
April 9, 2007	Robert K. McCleary, Executive Director, Contra Costa Transportation Authority	Supports Pilot Program and the streamlining benefits it will provide	No changes to application required.
April 9, 2007	Carol Inge, Chief Planning Officer, Los Angeles County Metropolitan Transportation Authority (Metro)	Supports Pilot Program and the streamlining benefits it will provide. Requests that Caltrans coordinate with Metro in determining list of projects to be excluded from Caltrans' assumption of federal responsibilities	Relevant sections of the application have been revised to clarify that the list of projects to be excluded from Caltrans' assumption of federal responsibilities may be modified before the MOU is signed. These sections include the section entitled "Classes of Highway Projects for Which Caltrans is Requesting NEPA Responsibility", and Appendix A. (The application has also been revised to include one additional excluded project in District 5.)

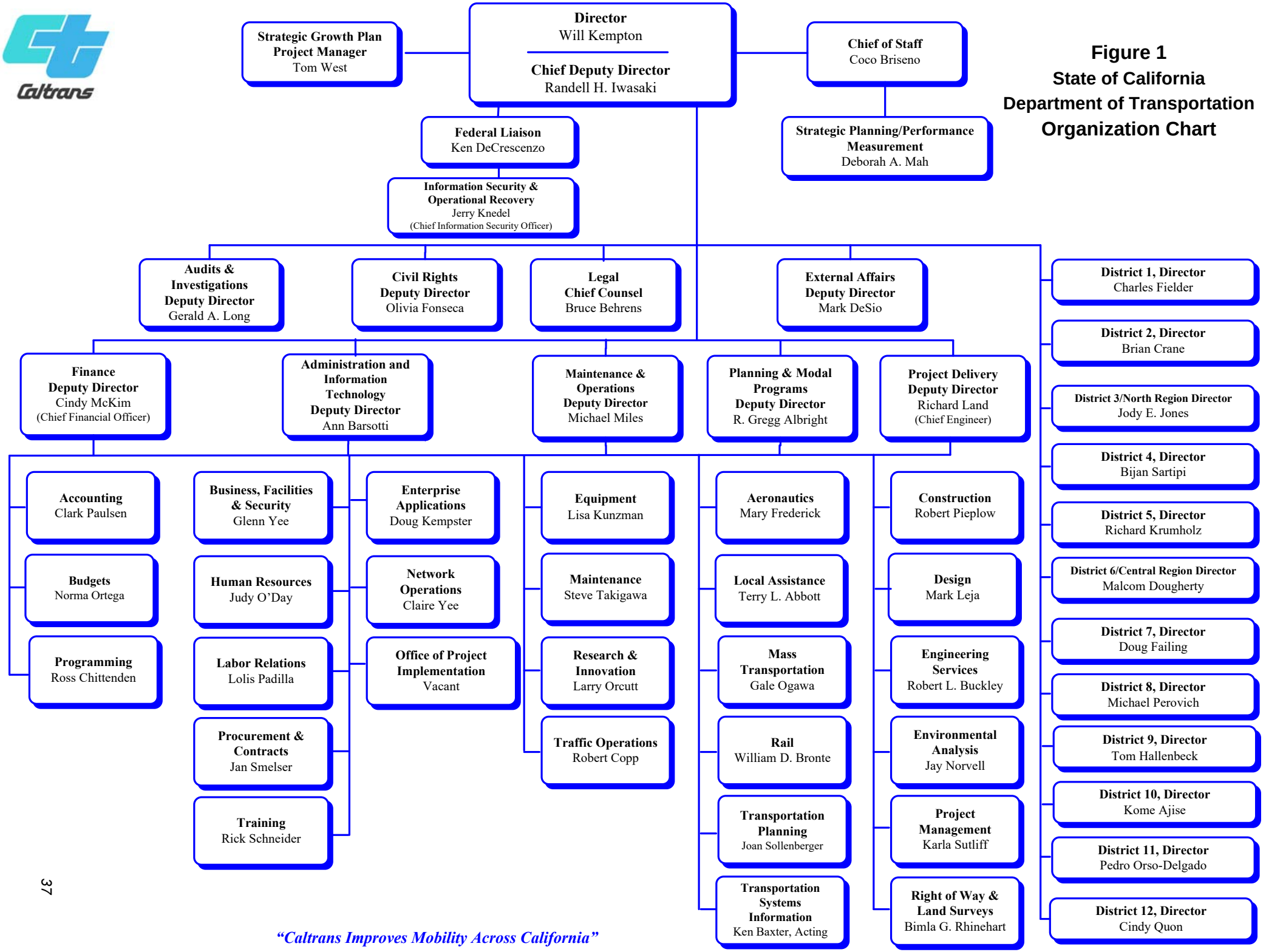
Date of Comment Letter	Commenter	Summary of Comments	Summary of Changes Made to the Application in Response to Comments Received[b]
April 12, 2007	Patrick DeChellis, Deputy Director, Los Angeles County Department of Public Works	Supports Pilot Program and the streamlining benefits it will provide.	No changes to application required.
April 12, 2007	Al Steer, Compliance and Enforcement Division Manager, North Coast Unified Air Quality Management District	Supports Pilot Program	No changes to application required.
April 16, 2007	Kia Mortazavi, Executive Director of Development, Orange County Transportation Authority	Requests clarification of the number of new NEPA delegation SHS and Local Assistance person years provided to Districts 7 and 12, and the sources of funds used to pay for these positions	No changes to application required.
		Requests clarification of new signature authorities under the Pilot Program	No changes to application required.
		Recommends that quality control reviews of environmental documents occur concurrently	No changes to application required.
		Requests assurance that OCTA will have the opportunity to provide input to Caltrans on the list of projects to be excluded from delegation	Relevant sections of the application have been revised to clarify that the list of projects to be excluded from Caltrans' assumption of federal responsibilities may be modified before the MOU is signed.
April 16, 2007	Thomas W. Fitzwater, Environmental Resources Planning Manager, Santa Clara Valley Transportation Authority	Requests clarification of how the new Pilot Program procedures will apply to locally-sponsored projects on the State Highway System	No changes to application required.
		Suggests that staffing levels may not be adequate to ensure timely NEPA review; requests data on the number of CEs, EAs, and EISs processed by Caltrans in recent years to substantiate whether proposed staffing levels under the Pilot Program are adequate	No changes to application required.
		Recommends that local agencies be represented on Caltrans internal standing committee to resolve conflicts on issues related to the environmental review process.	No changes to application required.
		Requests clarification for conditions in which FHWA will become involved in resolving conflicts related to the environmental review process	No changes to application required.
		Recommends that local agencies be provided the opportunity to provide input during Caltrans internal process reviews	No changes to application required.

Date of Comment Letter	Commenter	Summary of Comments	Summary of Changes Made to the Application in Response to Comments Received[b]
		Requests clarification on whether training will be provided to local agencies on expanded and revised procedures under the Pilot Program.	The application section entitled, "Training to be Provided to Implement the Pilot Program", has been augmented to briefly describe the training that will be provided to local agencies.
		Requests clarification on how local agencies were assessed to fund new Local Assistance positions	No changes to application required.
April 16, 2007	Rodney R. McInnis, Regional Administrator, Southwest Region, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS)	Recommends that FHWA evaluate the effects of the Pilot Program assignment on ESA species, designated critical habitat, EFH, and marine mammals and, as appropriate, initiate consultation with NMFS	No changes to application required.
		States that application does not address how Caltrans will implement a program for the conservation of listed species	The application's "Executive Summary" and "Consultation and Coordination with Resource Agencies" sections have been augmented to clarify Caltrans' commitment to conserve listed species.
		States that the application does not provide details on the priorities and goals applied by Caltrans in project design and on whether Caltrans will accord at least equal if not greater consideration for the protection of listed species pursuant to *TVA v. Hill*	The section of the application entitled, "Approach to Environmental Document Preparation" has been augmented to clarify how Caltrans' project development teams work to ensure that compliance documents meet federal regulations and policies.
		Notes an error in a legal citation related to the Magnuson-Stevens Fishery Conservation and Management Act's (MSA) Essential Fish Habitat (EFH) provisions	The codification for the EFH provision of the MSA has been added to Appendix B of the application.
		Questions whether Caltrans has adequate experience with implementing the federal ESA and EFH consultation requirements	The "Executive Summary" and the "Procedures and Tools" sections of the application have been augmented to describe Caltrans' extensive experience in working collaboratively with FHWA on the Section 7 formal consultation process and on EFH consultation. The section of the application entitled, "Training to be Provided to Implement the Pilot Program", has been augmented to note that Caltrans will coordinate with the NMFS and the USFWS to augment its training program in support of its expanded responsibilities under the ESA and MSA.
		Notes that Caltrans SER requires updating	No changes to application required.

Date of Comment Letter	Commenter	Summary of Comments	Summary of Changes Made to the Application in Response to Comments Received[b]
		Addresses Caltrans' quality control procedures for ESA and EFH documents	The section of the application entitled "Expanded Quality Control Procedures" has been augmented to describe QC requirements for biological technical studies.
		Requests additional information on the FHWA Pilot Program audits.	No changes to application required.
		Addresses Caltrans' legal liability under the Pilot Program and the sunset clause included in Caltrans' waiver of sovereign immunity	No changes to application required.
April 16, 2007	Nova Blazej, Manager, Environmental Review Office, United States Environmental Protection Agency	Requests clarification on the chain of command in the external dispute resolution process and the criteria that will be used for FHWA involvement in this process	No changes to application required.
		Requests clarification as to how Caltrans will implement existing and future FHWA and U.S. Department of Transportation guidance, initiatives, and interagency agreements	No changes to application required.
		Requests details on how decisions will be made by Caltrans and FHWA for potential reassumption of projects	No changes to application required.
		Requests clarification of examples of national emerging policy issues that Caltrans would coordinate with FHWA	Examples added to the section of the application entitled "§773.106 (b)(3)(iv): Prior Concurrence."
		Requests clarification of how Caltrans and FHWA will coordinate on projects that cross state boundaries	The section of the application entitled, "§773.106 (b)(1): Classes of Highway Projects for Which Caltrans is Requesting NEPA Responsibility", has been revised to clarify that Caltrans will not be assuming responsibility for interstate projects.
		Requests clarification related to those Executive Orders for which Caltrans is requesting responsibility and recommends that Caltrans request responsibility for Executive Order 13423.	No changes to application required.
		Requests that Section 9 of the Rivers and Harbors Act and Section 6(f) of the Land and Water Conservation Fund be added to the list of regulations for which Caltrans is requesting responsibility	No changes to application required.
		Requests that the transition process for Pilot Program expiration be described.	No changes to application required.

[a] See Appendix A for a copy of all comment letters.
[b] See Appendix A for a copy of all response letters.

Figure 1
State of California
Department of Transportation
Organization Chart



"Caltrans Improves Mobility Across California"

January 2007

Figure 2
Division of Environmental Analysis

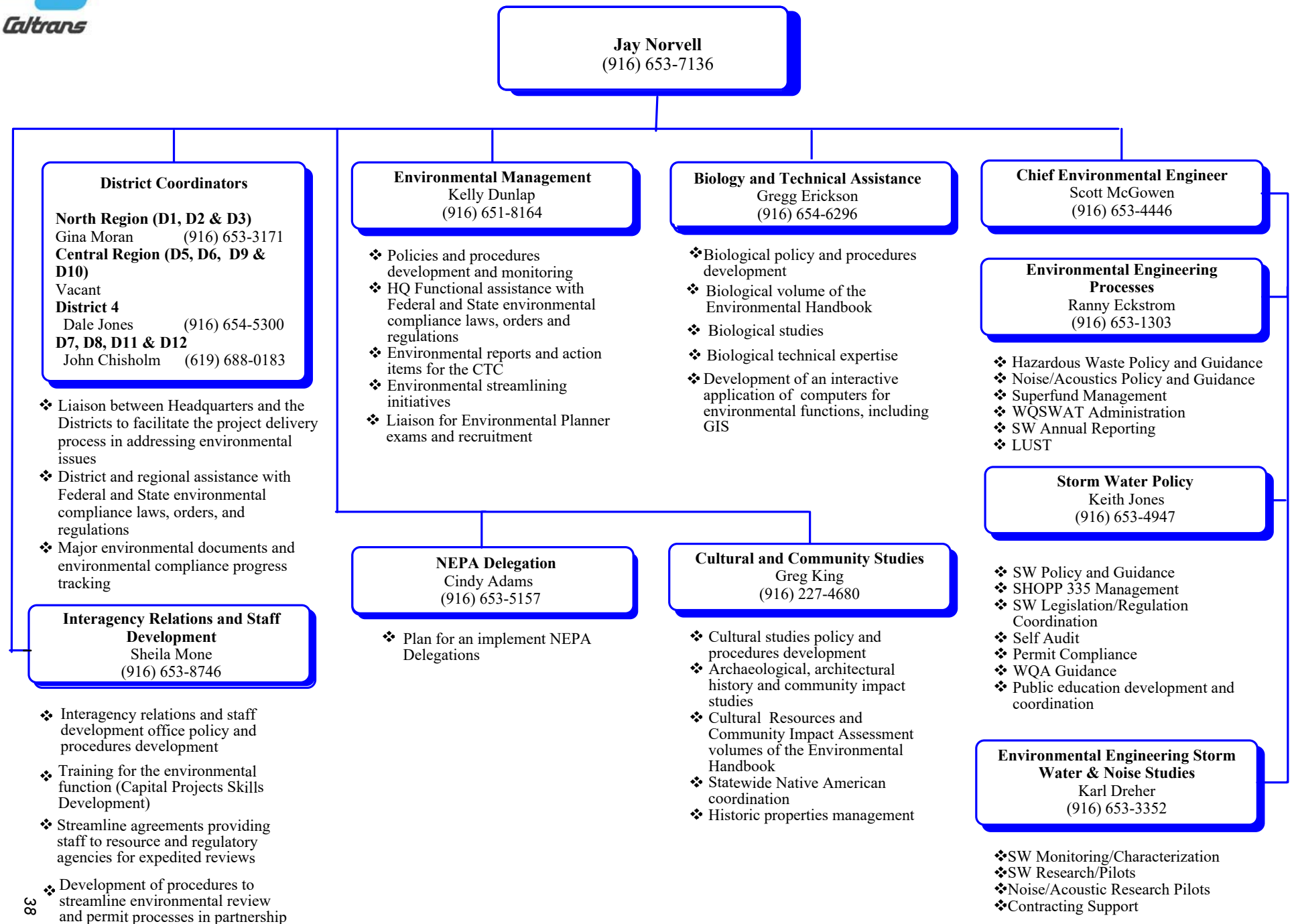
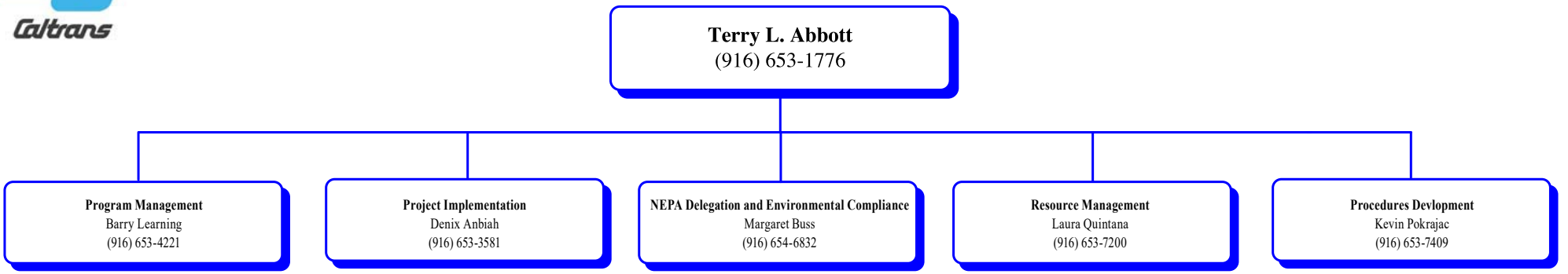


Figure 3
Division of Local Assistance



❖Project coordination, eligibility, tracking, reporting policy & guidelines for all programs
- o STIP
- o Statewide bike
- o Emergency Relief (ER)
- o Transportation Enhancements (TE)
- o Intelligent administered systems (ITS)

❖Local Assistance programs
- o Bicycle Transportation Account (BTA)
- o Environmental Enhancement Mitigation (EEM)
- o Highway Safety Improvement (HSIP)
- o High Risk Rural Road (HRRR)
- o Safe Routes to School (SR2S)
- o Highway Bridge (HBP)

❖Earmarks
- o High Priority (HPP)
- o Demonstration (DEMI)
- o Transportation Improvements (TI)
- o Projects of National & Regional Significance (PNRS)
- o Transportation Congestion (TCSP)
- o National Corridor (NCII)
- o Surface Transportation
- o Inteligent Transportation Systems (ITS)

❖Discretionary
- o Innovative Bridge
- o Interstate Maintenance
- o Public Lands Highways / Forest Highway

❖ Implementation for District 1-12
❖ Preparation and execution of funding agreements with Local agencies and FHWA for Local assistance projects
❖ LP2000 System Management
❖ Authorization for local agencies for federally funded local assistance projects processing
❖ Request for allocations, time extensions and fund transfers for local assistance STIP projects processing
❖ Interpretation and implementation of policy and procedures for the local assistance implementation process
❖ Exceptions to the local assistance implementation process

❖ Plan for and implement NEPA Delegation for Local Assistance program statewide
❖ Environmental Liaison between HQ and District Local Assistance Environmental and Engineering staff
❖ Environmental policy and procedure development and training for statewide Local Assistance program

❖ Local Assistance Subvention Resources and funds monitoring and reporting
❖ Business plan and performance measures
❖ Resource management
❖ Administrative support
❖ CTC coordinator
❖ Implementation of local project management techniques for local assistance projects and project closeout
❖ Fund Estimate
❖ Project Delivery and Monitoring Management – Includes Federal Inactive Projects

❖ Cooperative Work Agreements (CWA's)
- o Local Assistance Program Federal Funds Management and Reporting

❖ Report coordinator for: RSTP and CMAQ leave balances, AB1012 "Use it or Lose It
❖ RSTP/CMAQ program management

❖ Local Programs Training Program including Cooperative Training Assistance Program (CTAP) and Local Technical Assistance Program (LTAP)
❖ General procedural improvements with local assistance, districts and FHWA
❖ Civil Rights and Labor Compliance: DBE, EEO, Title VI and ADA program management and compliance
❖ Small business liaison
❖ Procedures and guidelines for administering local assistance projects and programs
❖ Process review function for local assistance
❖ Proposed State and Federal legislation review
❖ Environmental Liaison & Procedures for Standard Environmental Reference
❖ Title VI Interdisciplinary Team
❖ Forms PLUS
❖ Publications for Local Assistance - CD ROM
❖ Communications Plan -LPP preparation & distribution
❖ Legislation Coordination

Figure 4
Legal Division

Bruce Behrens
(916) 654-2630

Sacramento	Thomas C. Fellenz	(916) 654-2630
Los Angeles	Linda Cohen Harrel	(213) 955-5000
San Diego	Jeffrey R. Benowitz	(619) 654-2412
San Francisco	David E. Gossage	(415) 904-5700

- Public Liability Law:
  - General tort legal assistance
  - Tort litigation
  - Motor vehicle liability litigation
  - Board of Control-potential tort claims
  - Damage recovery/admiralty/OSHA
  - Small Claims
- Real Property Law:
  - General property management assistance
  - Eminent domain litigation
  - Inverse condemnation litigation
  - Unlawful detainer/rent collection
  - General right-of-way assistance
  - Outdoor advertising
  - Airspace leasing
  - Encroachment permits
- Transportation Law:
  - General transportation law assistance
  - Aeronautics
  - Rail
  - New Technology
  - Transportation permits
  - Maintenance
  - Mass Transportation
- Contract Law:
  - General contract law assistance
  - Office engineer assistance
  - Contract claims review
  - Construction labor compliance
  - Stop notices
  - Contract litigation/arbitration civil rights/DBE
- Environmental Law:
  - General environmental assistance
  - Environmental litigation
  - Hazardous waste
  - Environmental document review
  - Stormwater permits compliance
- Miscellaneous Legal Services:
  - Law development/legislation
  - Business, Transportation and Housing Agency
  - California Transportation Commission
  - Work for others

Litigation Support
Charles H. Nalley Jr.
(916) 654-2630

- Functional statewide responsibility for investigators
- Public Records Act response
- Coordination of statewide testing, training & assessing equipment for litigation support
- Liaison with Department of Motor Vehicles
- Potential claims

Administration and Support
Martin F. Cromwell
(916) 654-2630

- Budget, personnel, facilities, equipment
- Expert witness contracts
- Board of Control liaison
- Claims offices
- Law libraries
- Legal support staff

Figure 5
Caltrans Districts and District Offices

Issued by: Department of Transportation
Division of Transportation System Information
Produced by: Office of GIS, Mapping Services Branch
October 12, 2006

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
1120 N STREET
P.O. Box 942874
SACRAMENTO, CA. 94274-0001
PHONE: (916) 654-2852
CALNET: 8-464-2852

DISTRICT 1
1656 UNION STREET
P.O. BOX 3700
EUREKA, CA. 95502-3700
PHONE: (707) 445-6600
CALNET: 8-538-6600

DISTRICT 2
1657 RIVERSIDE DRIVE
P.O. BOX 496073
REDDING, CA. 96049-6073
PHONE: (530) 225-3426
CALNET: 8-442-3426

DISTRICT 3
703 B STREET
P.O. BOX 911
MARYSVILLE, CA. 95901
PHONE: (530) 741-4211
CALNET: 8-457-4211

DISTRICT 4
111 GRAND AVENUE
P.O. BOX 23660
OAKLAND, CA. 94623-0660
PHONE: (510) 286-4444
CALNET: 8-541-4444

DISTRICT 5
50 HIGUERA STREET
SAN LUIS OBISPO,
CA. 93401-5415
PHONE: (805) 549-3111
CALNET: 8-629-3111

DISTRICT 6
1352 WEST OLIVE AVENUE
P.O. BOX 12616
FRESNO, CA. 93278-2616
PHONE: (559) 488-4020
CALNET: 8-422-4020

DISTRICT 7
120 SOUTH SPRING STREET
LOS ANGELES, CA. 90012
PHONE: (213) 897-3656
CALNET: 8-647-3656

DISTRICT 8
464 WEST FOURTH STREET, 6TH FLR
SAN BERNARDINO, CA. 92401-0064
PHONE: (909) 383-4561
CALNET: 8-670-4561

DISTRICT 9
500 SOUTH MAIN STREET
BISHOP, CA. 93514
PHONE: (760) 872-0601
CALNET: 8-627-0601

DISTRICT 10
1976 EAST CHARTER WAY
P.O. BOX 2048
STOCKTON, CA. 95201
PHONE: (209) 948-7543
CALNET: 8-423-7543

DISTRICT 11
4050 Taylor St.
SAN DIEGO, CA. 92110
PHONE: (619) 688-6699
CALNET: 8-688-6699

DISTRICT 12
3347 MICHELSON DRIVE SUITE 100
IRVINE, CA.
Mail: 3337 Michelson Drive
CN 3380
Irvine, CA. 92612-8894
PHONE: (949) 724-2000
CALNET: 8-655-2000

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Create by: Bernardo Jaime

Figure 6
Typical District/Region Organization Chart

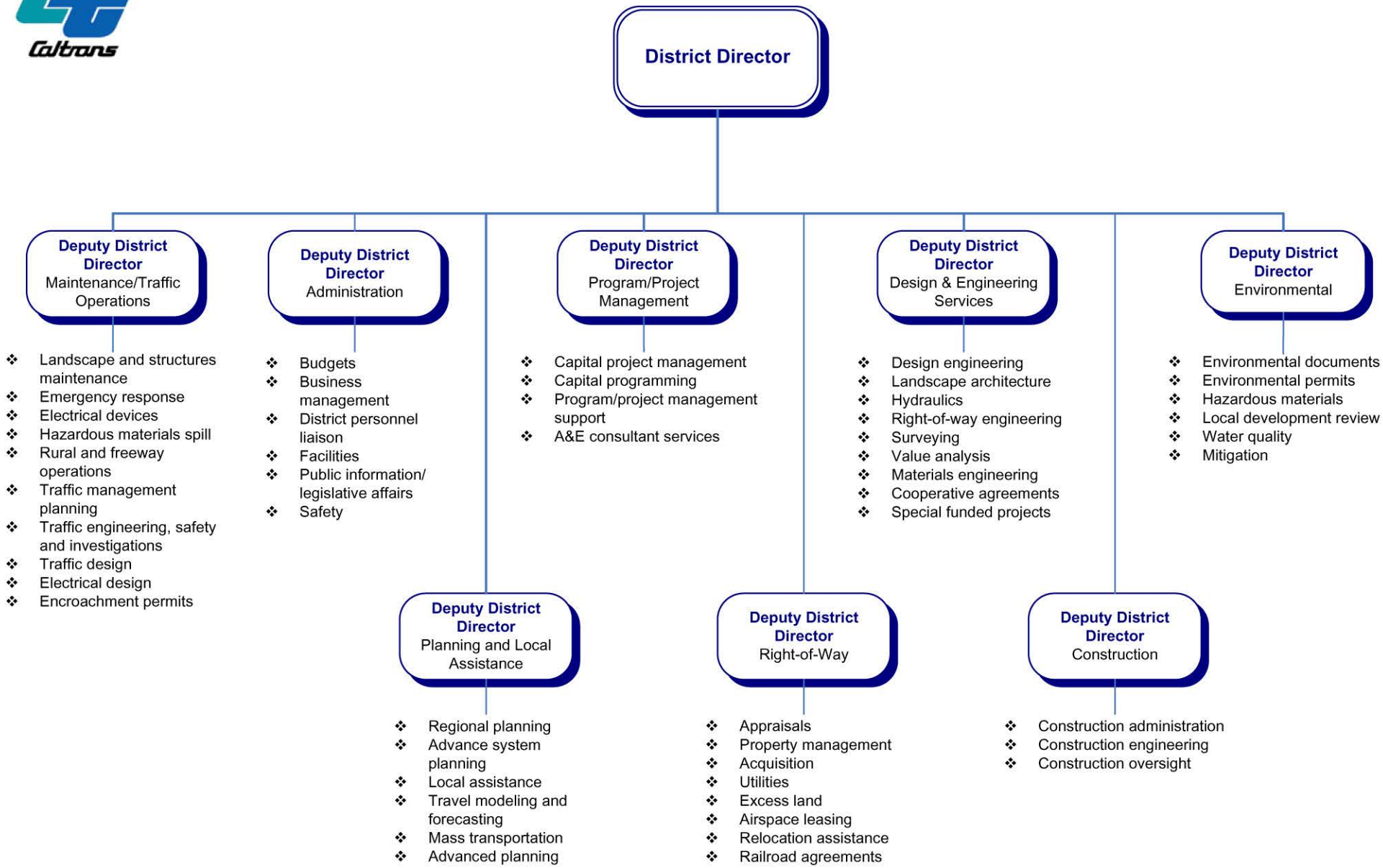
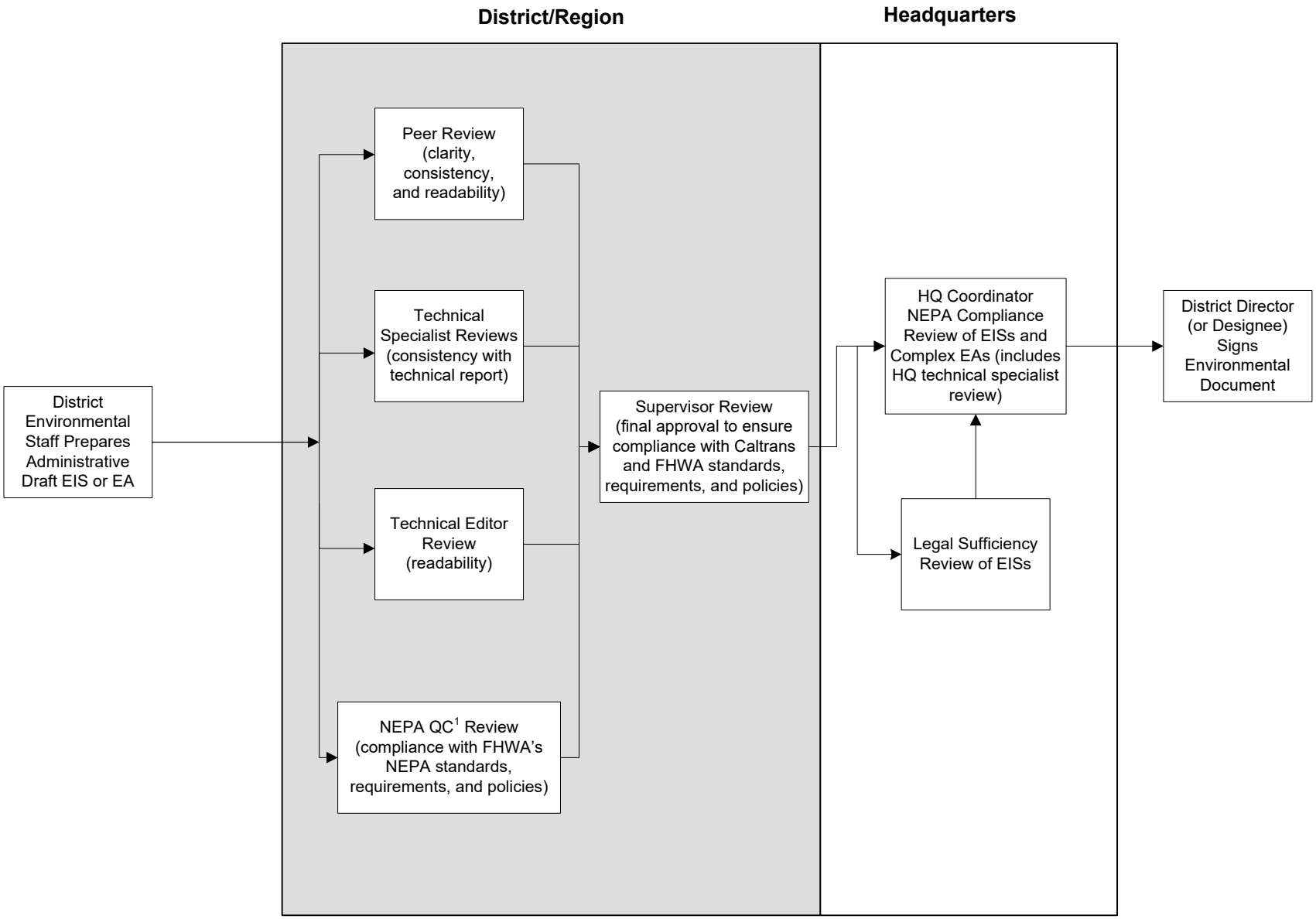
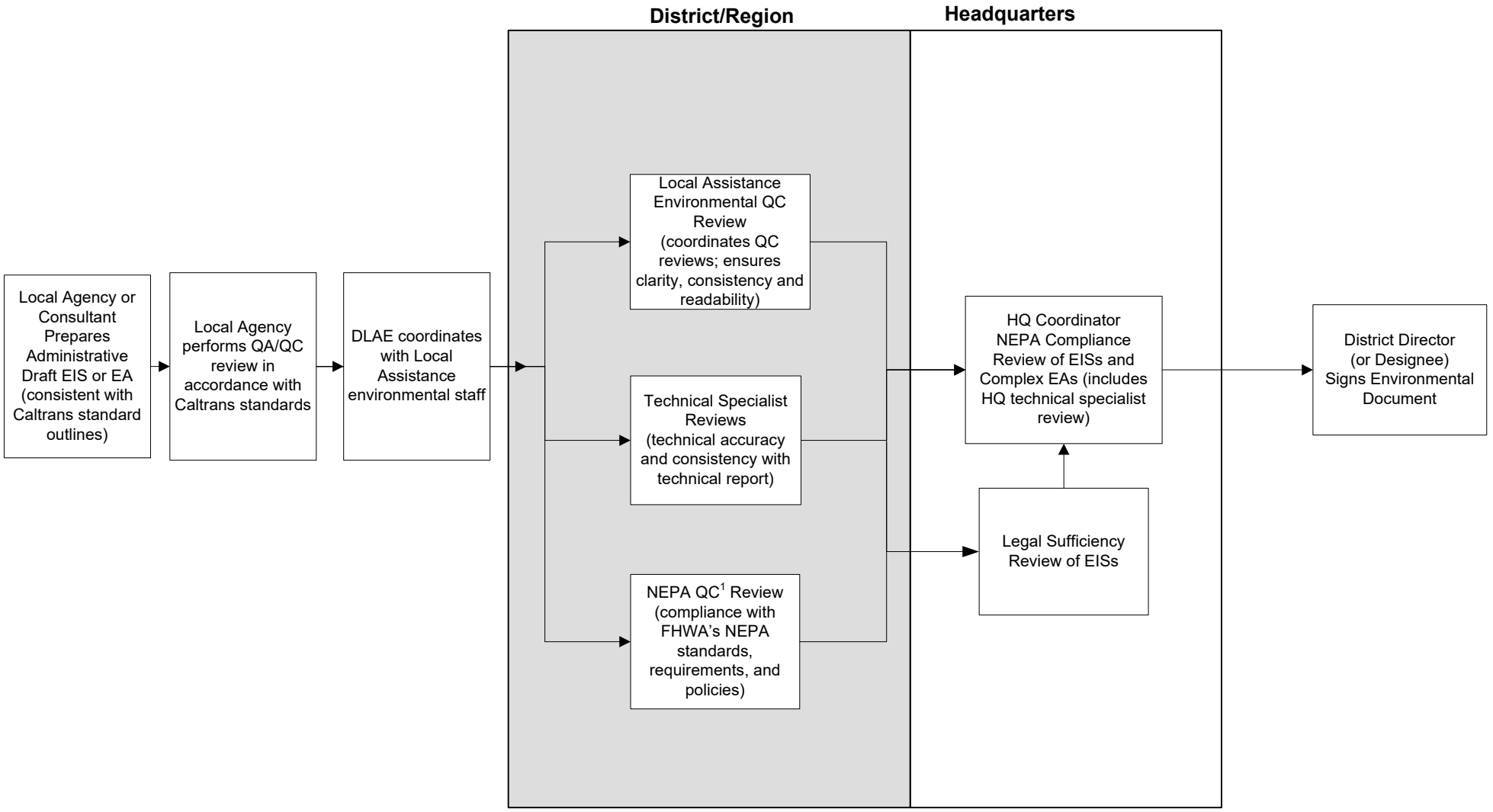


Figure 7
Caltrans' New Procedures for NEPA Quality Control Review of EISs and Complex EAs for SHS Projects



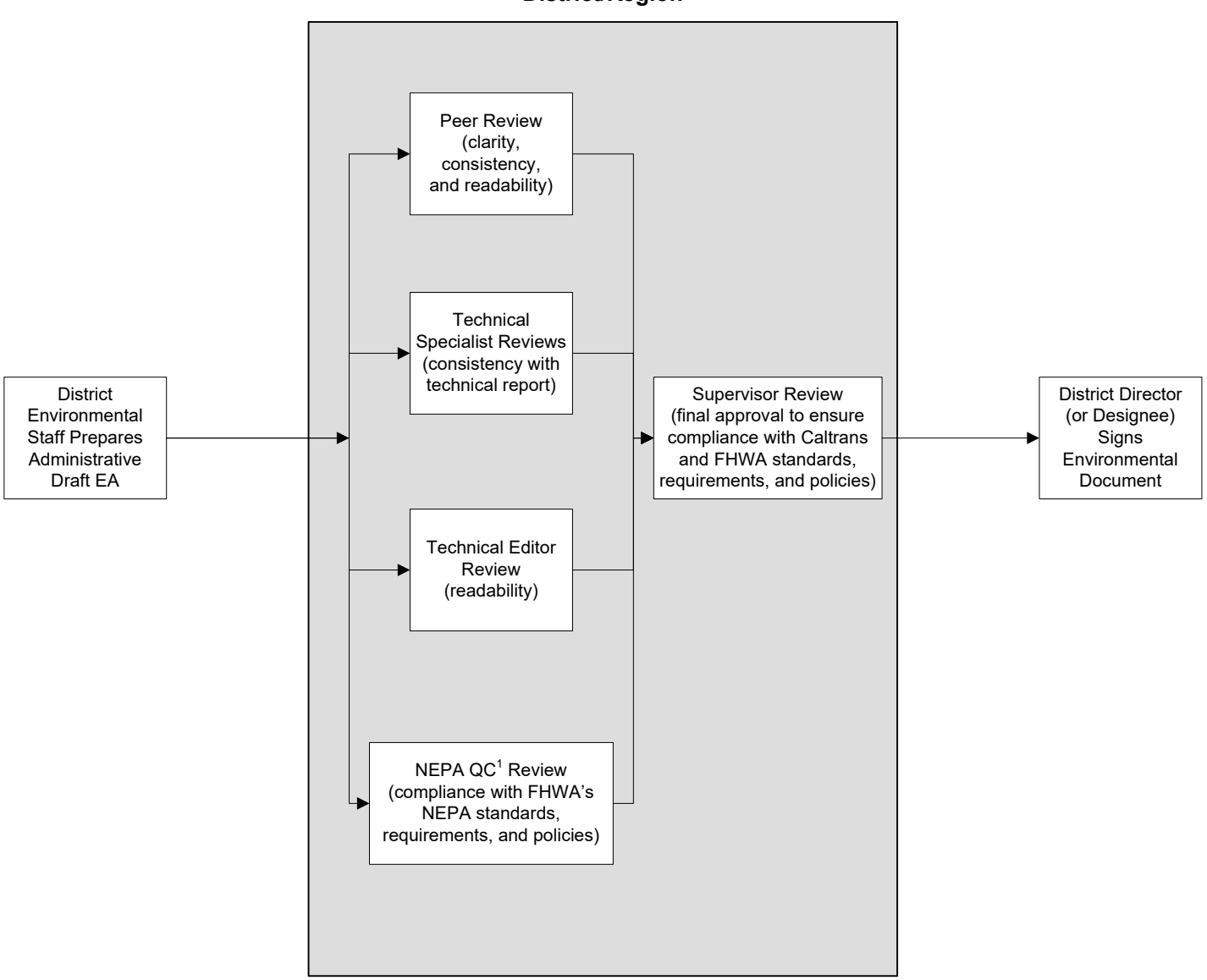
[1] Minimum qualifications of the NEPA QC reviewer include experience leading development of EISs/complex EAs or as a supervisor of a unit that reviews and approves EISs/ complex EAs. Reviewer must also complete the NEPA compliance review training.

Figure 8
Caltrans' New Procedures for NEPA Quality Control Review of EISs and Complex EAs for Local Assistance Projects



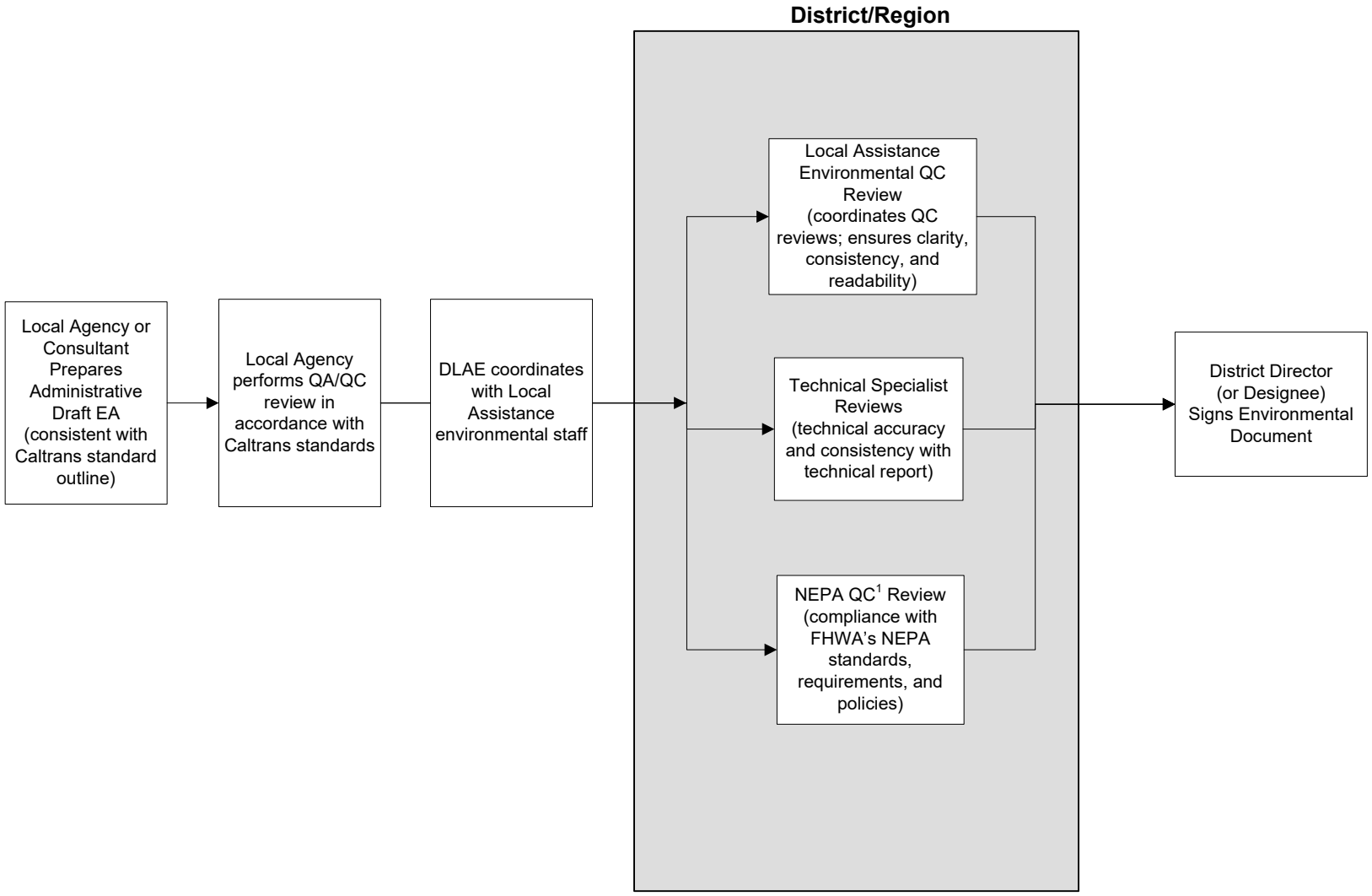
[1] Minimum qualifications of the NEPA QC reviewer include experience leading development of EISs/complex EAs or as a supervisor of a unit that reviews and approves EISs/complex EAs. Reviewer must also complete the NEPA compliance review training.

Figure 9
Caltrans' New Procedures for NEPA Quality Control Review of Routine EAs for SHS Projects



[1] Minimum qualifications of the NEPA QC reviewer include experience leading development of EISs/complex EAs or as a supervisor of a unit that reviews and approves EISs/ complex EAs. Reviewer must also complete the NEPA compliance review training.

Figure 10
Caltrans' New Procedures for NEPA Quality Control Review of Routine EAs for Local Assistance Projects



[1] Minimum qualifications of the NEPA QC reviewer include experience leading development of EISs/complex EAs or as a supervisor of a unit that reviews and approves EISs/complex EAs. Reviewer must also complete the NEPA compliance review training.

Appendix A. Projects for which Caltrans is not Requesting NEPA Responsibility

With the exception of those ongoing projects to be identified in the Pilot Program MOU, Caltrans is requesting to assume FHWA's responsibilities under NEPA for all Class I (EIS) projects, all Class II (CE) projects not assigned under Section 6004, and all Class III (EA) projects, both on the SHS and Local Assistance projects off the SHS. Caltrans is requesting to continue its existing partnership with FHWA on these projects because FHWA has had an active role in the environmental review process for these complex projects and/or because these projects are in the final phases of environmental review.

A list of 13 ongoing projects is identified below for exclusion from assumption under the Pilot Program. This list is subject to change until the Pilot Program MOU is signed. These 13 projects, together with their current environmental document status, are identified below:

- **District 1: Eureka/Arcata Route 101 Corridor Improvement (01-Hum-101-PM 79.9/86.3):** The administrative draft EIR/EIS for this project is currently undergoing Caltrans' internal QA/QC review process. The draft EIR/EIS is expected to be published for public review in April 2007.
- **District 3: Interstate 5/Cosumnes River Boulevard Interchange (03-Sac-5-PM 14.3/15.5):** Approval of the final EIS is expected in June 2007.
- **District 3: Placer Parkway Corridor Preservation: (03-Sut/Pla-PCTPA-28066590):** The administrative draft EIS/program EIR is currently undergoing Caltrans internal QA/QC review process and is expected to the issued for public review in June 2007.
- **District 4: Caldecott Improvement Project on State Route 24 (04-Ala-24-PM 5.3/6.2 and 04-CC-24-PM 0.0/1.3):** A Finding of No Significant Impact (FONSI) is expected in August 2007.
- **District 4: Doyle Drive (04-SF-101-PM 8.0/9.8 and 04-SF1-PM 6.8/7.1):** A final EIS is expected to be released in April 2007 with a Record of Decision expected in July 2007.
- **District 4: Marin-Sonoma Narrows (04-Mrn-101-PM 18.3/27.7 and 04-Son-101-PM 0.0/7.7):** The administrative draft EIR/EIS is currently undergoing Caltrans internal QA/QC review process.
- **District 4: BART Seismic Retrofit of Aerial Structures and Stations Along the Fremont, Concord, Richmond, and Daly City Lines (Local Assistance STPLZ6000[025]):** Final technical studies are expected to be completed within the next few months. FHWA expects to sign the CE in July 2007.
- **District 5: Highway 1 Congestion Management Study, Santa Cruz High Occupancy Vehicle Lanes (05-SC-1-PM 10.5/16.8):** A draft environmental assessment is currently being prepared. The proposed project has garnered attention from a large number of residents, organizations, and agencies. A FONSI is expected to be signed in 2010.
- **District 7: I-5 Widening - Orange County Line to Route 605 (07-LA-5-PM 0.0/6.3 and 07-Ora-5-PM 42.2/44.4):** The draft EIR/EIS public review period ended in early January 2007.
- **District 8: Big Bear Lake Bridge Replacement (08-SBd-18-PM 71.1/71.9):** Preparation of the final EIR/EIS is currently underway.
- **District 8: Needles Highway Safety Realignment Project (Federal Project Number STPL-594-[085] Local Assistance):** The Fort Mojave Indian Tribe (FMIT), because of its sovereign status, has requested that FHWA has oversight over this project, much of which is within tribal boundaries. The

tribe has specifically indicated that it does not want oversight involvement with Caltrans. Preparation of the EA and technical studies has recently begun. The Finding of No Significant Impact is expected by 2010.

- **District 12: Southern Orange County Transportation Infrastructure Improvement Program (SOCTIIP) (12-Ora-241-111021.210):** The administrative final EIS is currently undergoing Caltrans QA/QC review process.
- **District 12: Orange County Gateway (12-Ora-0-PLCN/09-IA-080IL):** The administrative draft EIR/EIS is undergoing FHWA review.

Appendix B. Federal Environmental Laws Other than NEPA for Which Caltrans is Requesting Responsibility

Caltrans is requesting to assume all of FHWA's responsibilities for environmental review, interagency consultation, and other environmental-related actions pertaining to the review or approval of projects assumed under the Pilot Program under all applicable federal environmental laws and Executive Orders, including, but not limited to, those listed below. Caltrans will be responsible for complying with the requirements of any applicable federal environmental law regardless of its inclusion on this list (this list is derived from Appendix A of 23 CFR 773):

Air Quality

- Clean Air Act (CAA), 42 U.S.C. 7401–7671q. *Any determinations that do not involve conformity*.

Noise

- Compliance with the noise regulations in 23 CFR 772

Wildlife

- Section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1531–1544, and Section 1536
- Marine Mammal Protection Act, 16 U.S.C. 1361
- Anadromous Fish Conservation Act, 16 U.S.C. 757a–757g
- Fish and Wildlife Coordination Act, 16 U.S.C. 661–667d
- Migratory Bird Treaty Act, 16 U.S.C. 703–712
- Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 et seq., with Essential Fish Habitat requirements at 1855(b)(1)(B)

Historic and Cultural Resources

- Section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470(f) et seq.[1]
- 23 U.S.C. 138 and Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303 and implementing regulations at 23 CFR Part 774
- Archeological Resources Protection Act of 1977, 16 U.S.C. 470(aa)–11
- Archeological and Historic Preservation Act of 1966, as amended, 16 U.S.C. 469–469(c)
- Native American Grave Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001–3013[1]

Social and Economic Impacts

- American Indian Religious Freedom Act, 42 U.S.C. 1996[1]
- Farmland Protection Policy Act (FPPA), 7 U.S.C. 4201–4209

Water Resources and Wetlands

- Clean Water Act, 33 U.S.C. 1251–1377
  - Section 404
  - Section 401
  - Section 319
- Coastal Barrier Resources Act, 16 U.S.C. 3501–3510
- Coastal Zone Management Act, 16 U.S.C. 1451–1465
- Safe Drinking Water Act (SDWA), 42 U.S.C. 300f–300j–6
- Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. 401–406
- Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287
- Emergency Wetlands Resources Act, 16 U.S.C. 3921, 3931
- TEA-21 Wetlands Mitigation, 23 U.S.C. 103(b)(6)(m), 133 (b)(11)
- Flood Disaster Protection Act, 42 U.S.C. 4001–4128

Parklands

- Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303
- Land and Water Conservation Fund (LWCF) Act, 16 U.S.C. 4601-4

Hazardous Materials

- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675
- Superfund Amendments and Reauthorization Act of 1986 (SARA)
- Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992k

Executive Orders Relating to Highway Projects

- E.O. 11990, Protection of Wetlands
- E.O. 11988, Floodplain Management
- E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations
- E.O. 13112, Invasive Species

Note:

1. Under these laws and Executive Orders, FHWA will retain responsibility for conducting formal government-to-government consultations with Federally recognized Indian tribes. Caltrans will continue to handle routine consultations with the tribes and understands that a tribe has the right to direct consultation with FHWA upon request. Caltrans may also assist FHWA with formal consultations, with the consent of a tribe, but FHWA remains responsible that this consultation occurs. FHWA's retention of formal consultation responsibilities under NAGPRA will not limit Caltrans' existing activities under this law.

Appendix C. Overview of Caltrans Standard Environmental Reference

The SER (http://www.dot.ca.gov/ser/index.htm) contains Caltrans' 4-volume Environmental Handbook for preparing and processing environmental documents; miscellaneous guidance that has been published by FHWA, Caltrans, and other agencies on environmental compliance; forms, document templates, and graphics used for environmental documentation; policy memos that relate to the environmental process; and MOU/MOA that have been signed to implement the environmental compliance process.

Volume 1 of the Environmental Handbook, "Guidance for Compliance", is a topic-based reference that forms the core of the SER content. This volume, intended to provide guidance to generalists responsible for preparing NEPA and CEQA documents, is generally organized to follow the flow of the project delivery process, as described below:

1. Discussion of regulatory requirements;
2. Early coordination among interested parties;
3. Preliminary assessments of environmental concerns and constraints;
4. Formal scoping;
5. Preparation of the appropriate technical studies to identify impacts and propose mitigation;
6. Selection and preparation of the appropriate environmental document; and
7. Implementation and monitoring of mitigation measures and environmental commitments.

Volumes 2, 3, and 4 each cover a different environmental topic: cultural resources, biological resources, and community impacts, respectively. These volumes focus on information that is needed by the environmental specialists who prepare technical sections of environmental documents.

Many of the tools provided on the SER are available in Word and/or PDF format for easy downloading and printing.

Each major section of the SER is summarized in more detail below. Links to selected sections of the SER are also provided.

Volume 1: Guidance for Compliance

Volume 1 (http://www.dot.ca.gov/ser/vol1/vol1.htm) contains 43 chapters (a few of which are still being prepared) that cover federal and state environmental regulations, the project planning and development process, an overview of each environmental topic, the different types of documents that can be prepared under NEPA and CEQA, the review and approval process for environmental documents, and project development activities after environmental document approval. Each chapter provides links to statute, regulation, and other Caltrans and other agency guidance, as appropriate. A brief description of each chapter is provided below:

- **Chapter 1: Federal Requirements** introduces NEPA and other federal environmental laws, executive orders, and regulations applicable to transportation project (http://www.dot.ca.gov/ser/vol1/sec1/ch1fedlaw/chap1.htm).

- **Chapter 2: State Requirements** introduces the CEQA and other California environmental laws and regulations (http://www.dot.ca.gov/ser/vol1/sec1/ch2statelaw/chap2.htm).
- **Chapter 3: Public Participation s**ets forth the requirements for the public participation process during project development and discusses government-to-government relations between the federal government and recognized Native American Tribal governments (http://www.dot.ca.gov/ser/vol1/sec1/ch3public/chap3.htm).
- **Chapter 4: Environmental Considerations during Transportation Planning** provides a brief overview of the transportation planning and project initiation processes that occur prior to the Project Approval and Environmental Document phase (http://www.dot.ca.gov/ser/vol1/sec2/ch4transplanning/chap4.htm).
- **Chapter 5: Preliminary Environmental Scoping** describes the preliminary environmental scoping documents used at project programming to identify the efforts needed to prepare environmental technical studies and environmental documents (http://www.dot.ca.gov/ser/vol1/sec2/ch5prescoping/chap5.htm).
- **Chapter 6: Formal Scoping Process** describes the requirements and process to engage other agencies and interested parties to formally provide their views on the range and breadth of issues to be addressed in the environmental document (http://www.dot.ca.gov/ser/vol1/sec2/ch6scoping/chap6.htm).
- **Chapters 7 through 28** each cover a different environmental topic. Each chapter focuses on the regulatory framework and procedures for analyzing the topic, interagency coordination, requirements for preparing the associated technical study and section in the environmental document, and important considerations in the project delivery process. For those topics that are covered in more detail in Volumes 2 through 6, links are provided to appropriate sections in those volumes.

  The topics include the following (Some of the chapters have been merged, and therefore, fewer than 21 topics are listed below.):

  - Topography, geology, soils, and seismic (in preparation);
  - Paleontology (http://www.dot.ca.gov/ser/vol1/sec3/physical/Ch08Paleo/chap08paleo.htm);
  - Hydrology and water quality (in preparation);
  - Hazardous waste (http://www.dot.ca.gov/ser/vol1/sec3/physical/ch10haz/chap10.htm);
  - Air quality (http://www.dot.ca.gov/ser/vol1/sec3/physical/ch11air/chap11.htm);
  - Noise (http://www.dot.ca.gov/ser/vol1/sec3/physical/ch12noise/chap12noise.htm);
  - Energy (http://www.dot.ca.gov/ser/vol1/sec3/physical/ch13energy/chap13.htm);
  - Biological resources (http://www.dot.ca.gov/ser/vol1/sec3/natural/Ch14Bio/ch14bio.htm);
  - Wetlands and other waters of the United States (http://www.dot.ca.gov/ser/vol1/sec3/natural/ch15wetland/ch15wet.htm);
  - Floodplains (http://www.dot.ca.gov/ser/vol1/sec3/special/ch17flood/chap17.htm);
  - Coastal zone (http://www.dot.ca.gov/ser/vol1/sec3/special/ch18coastal/chap18.htm);
  - Wild and Scenic Rivers (http://www.dot.ca.gov/ser/vol1/sec3/special/ch19wsrivers/chap19.htm);
  - Sections 4(f) and 6(f) (http://www.dot.ca.gov/ser/vol1/sec3/special/ch204f/chap20.htm);

  - Land use (http://www.dot.ca.gov/ser/vol1/sec3/community/ch22landuse/chap22.htm);
  - Farmlands (http://www.dot.ca.gov/ser/vol1/sec3/community/ch23farm/chap23farm.htm);
  - Community impacts (http://www.dot.ca.gov/ser/vol1/sec3/community/ch24cia/chap24cia.htm);
  - Environmental justice (http://www.dot.ca.gov/ser/vol1/sec3/community/ch25ej/chap25ej.htm);
  - Traffic (in preparation);
  - Visual and aesthetics (http://www.dot.ca.gov/ser/vol1/sec3/community/ch27via/chap27via.htm); and
  - Cultural resources (http://www.dot.ca.gov/ser/vol1/sec3/cultural/ch28arch/chap28.htm).

- **Chapter 30: Categorical Exclusions** discusses the criteria that a proposed action must meet to be categorically excluded from the requirement to prepare a NEPA document and the preparation and processing of the CE documentation for SHS and Local Assistance projects (http://www.dot.ca.gov/ser/vol1/sec4/ch30ce/chap30ce.htm).
- **Chapter 31: Environmental Assessment/Finding of No Significant Impact** discusses the preparation and processing of a NEPA EA and FONSI (http://www.dot.ca.gov/ser/vol1/sec4/ch31ea/chap31ea.htm).
- **Chapter 32: Environmental Impact Statements** discusses the preparation and processing of a NEPA Notice of Intent, draft and final EIS, and Record of Decision (http://www.dot.ca.gov/ser/vol1/sec4/ch32eis/chap32eis.htm).
- **Chapter 33: Re-Evaluations** discusses the different types or reevaluations and their processing requirements (http://www.dot.ca.gov/ser/vol1/sec4/ch33reeval/chap33.htm).
- **Chapter 34: Exemptions to CEQA** discusses the criteria that a project must meet to be exempt from the CEQA and the preparation and processing of the categorical exemptions for Caltrans' projects (http://www.dot.ca.gov/ser/vol1/sec5/ch34ce/chap34.htm).
- **Chapter 35: Initial Study and Negative Declaration** discusses the preparation and processing of a CEQA Initial Study, Negative Declaration, and Mitigated Negative Declaration (http://www.dot.ca.gov/ser/vol1/sec5/ch35nd/chap35.htm).
- **Chapter 36: Environmental Impact Report** discusses the preparation and processing of a CEQA EIR. This chapter also discusses the preparation and processing of notices and decision documents related to an EIR and preparation and processing of a supplemental EIR, subsequent EIR, and an addendum to an EIR (http://www.dot.ca.gov/ser/vol1/sec5/ch36eir/chap36.htm).
- **Chapter 37 (merged with Chapter 38): Preparing Joint NEPA/CEQA Documents** provides direction on the preparation of documentation designed to meet the requirements of both NEPA and CEQA. Content and procedural similarities and differences between the two laws are highlighted (http://www.dot.ca.gov/ser/vol1/sec6/ch37joint/chap37.htm).
- **Chapter 39: Incorporating Environmental Commitments into Design** describes required actions so that appropriate environmental commitments will be included in the design of both Caltrans' and local agency projects on the SHS (http://www.dot.ca.gov/ser/vol1/sec5/ch39impc/chap39.htm).

Volume 2: Cultural Resources

Volume 2 (http://www.dot.ca.gov/ser/vol2/vol2.htm) contains a comprehensive description of the procedures for identifying cultural resources, methods for evaluating eligibility of cultural resources for the National Register of Historic Places, and assessing environmental impacts on eligible properties, and of the requirements for preparing and processing cultural resource documents. Key areas covered in Volume 2 include Caltrans' policies and procedures regarding cultural resources; compliance with federal and state historic preservation laws and regulations; consultation with SHPO and the ACHP; and the requirements of the Section 106 PA between the FHWA, ACHP, SHPO, and Caltrans. Policies, procedures, and guidance on consultation with Native American tribes and Native American interested parties are also provided including involving Native Americans in cultural resources studies and developing relationships with tribes, groups, and individuals to effectively address their concerns on Caltrans projects and activities.

Volume 3: Biological Resources

This 5-chapter volume (http://www.dot.ca.gov/ser/vol3/vol3.htm) presents Caltrans' policies and procedures regarding biological resources; details procedures and activities required by law, regulation, and executive order pertaining to biological resources; sets forth guidelines for the preparation of Natural Environment Studies that provide the supporting technical documentation for the biological resources section of the environmental document; describes the documentation required under the federal and state Endangered Species Acts; discusses formal and informal consultation procedures; and outlines the requirements for mitigating impacts on sensitive biological resources. This volume also provides an overview of the NEPA/404 MOU.

Volume 4: Community Impact Assessment

This volume (http://www.dot.ca.gov/ser/vol4/envhb4.pdf) constitutes Caltrans' handbook for preparing technical studies that document impacts on communities and neighborhoods, including social impacts, economic and public service impacts, land use, and growth. The handbook provides guidance on the process for gathering needed information, methodological approaches for assessing impacts, the content and organization of the assessment, and ways to reduce or avoid impacts on communities.

Other Guidance

This section of the SER (http://www.dot.ca.gov/ser/guidance.htm) contains various guidance documents and memoranda that Caltrans has published to help state and local agency staff understand specific issues and procedures related to NEPA and CEQA documentation and compliance. Key guidance includes:

- **Guidance for Preparers of Cumulative Impact Analysis and Guidance for Preparers of Growth-related, Indirect Impact Analyses:** These guidance documents were prepared by an interagency working group convened by Caltrans, FHWA, and EPA to provide transportation practitioners with a practical approach for conducting cumulative and indirect impact analyses, a process for thinking through the issues, and a consistent framework for reporting the results.
- **Guidance for Consultants - Procedures for Completing the Natural Environmental Study and Related Biological Reports:** Caltrans developed these guidelines in 1997 for use by consultants retained by Caltrans to perform biological studies as part of the environmental process.
- **Purpose and Need Report:** This report examines ways to improve the process of preparing well-defined purpose and need statements for transportation projects.

Forms and Templates

This section of the SER (http://www.dot.ca.gov/ser/forms.htm) contains forms, templates, annotated report outlines, and graphics for the environmental documentation and review process. Examples of these forms and templates include:

- **Annotated outlines for IS/EAs, EIR/EAs, and EIR/EISs:** Caltrans requires that these FHWA-approved outlines be followed for SHS projects and Local Assistance projects to achieve standard formats and content expectations for these documents.
- **Annotated outlines for biological assessments, biological evaluations, and Natural Environment Studies:** Use of these outlines is required for SHS and Local Assistance projects to achieve standard formats for these reports, thereby expediting their reviews.
- **Environmental Document Quality Control Certification Sheet:** This form is required to document performance of in-house reviews of all environmental documents as required by Caltrans QA/QC procedures.
- **FHWA Environmental Document Review Checklists:** These checklists assist document preparers in meeting FHWA California Division environmental document content requirements and document the location of key discussions in the environmental document.
- **NEPA Categorical Exclusion and CEQA Categorical Exemption Forms.**

Policy Memos

This section (http://www.dot.ca.gov/ser/memos.htm) contains key policy memos that Caltrans and other agencies have published to help state and local agency staff understand key Caltrans and other policies related to state and federal environmental documentation and compliance. Policy memos appearing in this section include:

- **Revised EIS Review Procedures:** This memo documents the process and timing for required Headquarters review of all EISs;
- **District Environmental Document Quality Control Plans:** This memo details Caltrans' requirements for development of District environmental document QA/QC plans;
- **Environmental Commitments Record:** This memo reinforces the requirement that each Caltrans District develop a mechanism to record environmental mitigation commitments, determine how the commitments will be met, and document completion of the commitments; and
- **Environmental Certification:** This memo requires the use of the Environmental Certification Form to document that environmental commitments have been properly incorporated into PS&E and construction contracts.

MOUs/MOAs

This section of the SER (http://www.dot.ca.gov/ser/mou.htm) contains copies of statewide programmatic agreements and MOUs that have been signed by Caltrans, FHWA, and other agencies to establish procedures related to environmental compliance. Included in this section are the following:

- Programmatic Categorical Exclusions;
- Various programmatic biological opinions published by the USFWS and NMFS for transportation projects; and
- Guidance related to implementing the NEPA/404 MOU.

Scoping Tools

This section contains guidance for preparing Preliminary Environmental Assessment Reports (PEAR) that are included in Caltrans programming documents for SHS projects (http://www.dot.ca.gov/ser/pear.htm). The PEAR is used for initial environmental evaluations on SHS projects, including estimates of the scope, schedule, and costs associated with completing environmental compliance. Guidance is also provided for completing the Preliminary Environmental Studies (PES) form (http://www.dot.ca.gov/ser/pes/pes.htm) for Local Assistance projects. Similar to the PEAR, the PES is used by local agencies to determine the class of action and technical studies that need to be prepared for their federal-aid projects.

Appendix D. Section 820.1 of the State of California Streets and Highways Code

Section 820.1 has been added to the Streets and Highways Code, effective on November 7, 2006 with the California voters' approval of the "Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006" at the general election on that date. This section reads as follows (references to "the department" are to Caltrans):

> 820.1. (a) The State of California consents to the jurisdiction of the federal courts with regard to the compliance, discharge, or enforcement of the responsibilities assumed by the department pursuant to Section 326 of, and subsection (a) of Section 327 of, Title 23 of the United States Code.
>
> (b) In any action brought pursuant to the federal laws described in subdivision (a), no immunity from suit may be asserted by the department pursuant to the Eleventh Amendment to the United States Constitution, and any immunity is hereby waived.
>
> (c) The department shall not delegate any of its responsibilities assumed pursuant to the federal laws described in subdivision (a) to any political subdivision of the state or its instrumentalities.
>
> (d) The department shall, no later than January 1, 2008, submit a report to the Legislature that includes the following:
>
> (1) A comparative analysis of the environmental review process under the National Environmental Policy Act (Chapter 55 (commencing with Section 4321) of Title 42 of the United States Code) for the 30 projects, excluding those projects categorically excluded from environmental review, undertaken immediately preceding the enactment of this section that involved the Federal Highway Administration and the environmental review process for all projects undertaken following the enactment of this section that did not involve the Federal Highway Administration. This analysis should address the following:
>
> (A) For each project included in the analysis, the environmental review process under the National Environmental Policy Act, including which state and federal agencies reviewed the environmental documents and the amount of time the documents were reviewed by each agency, shall be described.
>
> (B) The points in the environmental review process under the National Environmental Policy Act when project delays occurred and the nature of the delays.
>
> (C) The time saved in the environmental review process for projects undertaken following the enactment of this section in comparison to the review process for projects undertaken prior to the enactment of this section. The points in the review process when time was saved.
>
> (D) The circumstances when the Federal Highway Administration hindered and facilitated project delivery.
>
> (2) All financial costs incurred by the department to assume the responsibilities pursuant to Section 326 of, and subsection (a) of Section 327 of, Title 23 of the United States Code, including, but not limited to, the following:
>
> (A) Personnel to conduct and review environmental documents and to manage litigation.
>
> (B) Administrative costs.
>
> (C) Litigation.
>
> (3) An explanation of all litigation initiated against the department for the responsibilities assumed pursuant to Section 326 of, and subsection (a) of Section 327 of, Title 23 of the United States Code.
>
> (4) A comparison of all costs and benefits of assuming these responsibilities.
>
> (e) This section shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends that date. The state shall remain liable for any decisions made or responsibilities assumed and exercised, prior to the repeal of this

section under this subdivision, pursuant to applicable federal statutes of limitation for filing citizens' suits in federal court.

(f) Nothing in this section affects the obligation of the department to comply with state and federal law.

Appendix E. Copies of Comments Received on the Pilot Program Application during the 30-Day Comment Period and Responses Provided to the Commenters

Caltrans

PUBLIC NOTICE

Request for Comments on

State of California, Department of Transportation (Caltrans) Application for Assumption of Federal Highway Administration (FHWA) Environmental Responsibilities Pursuant to the Surface Transportation Project Delivery Pilot Program, 23 CFR 773

Caltrans intends to participate in FHWA's Surface Transportation Project Delivery Pilot Program pursuant to 23 CFR 773. Caltrans is applying to assume all of FHWA's responsibilities under the National Environmental Policy Act for projects on California's State Highway System and for federal-aid local streets and roads projects. Caltrans is also applying to assume all of FHWA's responsibilities for environmental review and consultation pertaining to the review or approval of projects under the Pilot Program. This request for assignment includes certain projects for which FHWA has issued a draft environmental impact statement, as described in the draft application. The request for assignment excludes certain categories of projects as defined by regulation and specific individual projects, as listed in the draft application. This proposed assumption of responsibilities would not remove or change any federal environmental laws, regulations, or policies.

The public is invited to comment on any aspect of the draft application. The draft application may be obtained at http://www.dot.ca.gov/hq/env/nepa_pilot/index.htm, at your local County Clerk's office, or by contacting the State contact listed below.

Comments must be received by **April 16, 2007** and may be submitted by any of the following methods:

- Email: NEPA_delegation@dot.ca.gov
- Fax: (916) 737-3030, Attn: NEPA Delegation Manager
- Mail: Cindy Adams, California Department of Transportation, Division of Environmental Analysis, MS#27, P.O. Box 942874, Sacramento, CA, 94274-0001

For more information, contact:

Cindy Adams, NEPA Delegation Manager, California Department of Transportation, Division of Environmental Analysis, MS#27, P.O. Box 942874, Sacramento, CA, 94274-0001; NEPA_delegation@dot.ca.gov; (916) 653-5157

UT29257-3/14/07

Mr. Ivar Stromberg
611 Stratford Dr.
Encinitas, CA 92024

03/13/07

Ms. C. Adams
NEPA DEL Manager
CALTRANS
Sacramento, Ca.

Greetings,

Per enclosed, please send me a copy of the NEPA draft application.

Sincerely,

I. Stromberg

Sent 3/22/07

NATIVE AMERICAN HERITAGE COMMISSION
915 CAPITOL MALL, ROOM 364
SACRAMENTO, CA 95814
(916) 653-6251
Fax (916) 657-5390
Web Site www.nahc.ca.gov
e-mail: ds_nahc@pacbell.net

March 16, 2007

Ms. Cindy Adams, NEPA Delegation Manager
California Department of Transportation
P.O. Box 94274, MS #27
Sacramento, CA 94274-0001

Re: Comments Concerning California Department of Transportation **Application for Assumption of the Federal Highway Administration Responsibilities Pursuant to the Surface Transportation Project Delivery Pilot Program, 23 CFR 773, California**

Dear Ms. Adams:

Thank you for the opportunity to comment on the above-referenced application. The Native American Heritage Commission (NAHC) is the state's Responsible Agency for Native American Cultural Resources. The NAHC is aware that the federal requirements for measures to protect Native American archaeological resources and require Tribal Consultation generally exceed those required by the State of California. An exception is the requirement to consult with non-Federally recognized Native American Tribes; however, Section 106 of the National Historic Preservation Act require consultation with "interested' Native American groups or individuals regarding proposed federal projects, prior to construction activity. The NAHC is aware of the following federal laws and regulations requiring Tribal Consultation and measures to protect Native American archaeological resources: American Indian Religious Freedom Act; Antiquities Act of 1906; Archaeological Resources Protection Act; National Historic Preservation Act (NPHA); Native American Graves Protection & Repatriation Act (NAGPRA) of 1990; Executive Order 12898 (environmental justice), and Executive Order 13175 (consultation and coordination with Tribal government).

State of California laws and regulations, we assume would also apply to the above-referenced *Application.* The California Environmental Quality Act (CEQA) requires that any project that causes a substantial adverse change in the significance of an historical resource, that includes archaeological resources, is a 'significant effect' requiring the preparation of an Environmental Impact Report (EIR) per CEQA guidelines § 15064.5(b)(c). Similar requirements are mandated by the National Environmental Policy Act (NEPA) and Section 106 of the National Historic Preservation Act, the Indian Religious Freedom Act. In order to comply with this provision, the lead agency is required to assess whether the project will have an adverse impact on these resources within the 'area of potential effect (APE)', and if so, to mitigate that effect. To adequately assess the project-related impacts on historical resources, the Commission recommends the following action:

√ Contact the appropriate California Historic Resources Information Center (CHRIS). Contact information for the Information Center nearest you is available from the State Office of Historic Preservation (916/653-7278)/ http://www.ohp.parks.ca.gov/1068/files/IC%20Roster.pdf The record search will determine:

- If a part or the entire APE has been previously surveyed for cultural resources.
- If any known cultural resources have already been recorded in or adjacent to the APE.
- If the probability is low, moderate, or high that cultural resources are located in the APE.
- If a survey is required to determine whether previously unrecorded cultural resources are present.

√ If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.

- The final report containing site forms, site significance, and mitigation measurers should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum, and not be made available for pubic disclosure.
- The final written report should be submitted within 3 months after work has been completed to the appropriate regional archaeological Information Center.

√ Contact the Native American Heritage Commission (NAHC) for: A Sacred Lands File (SLF) search of the project area and information on tribal contacts in the project vicinity that may have additional cultural resource information. Your contractor URS has done this already. The NAHC advises the use of Native American Monitors to ensure proper identification and care given cultural resources that may be discovered. The NAHC recommends that contact be made with Native American Contacts to get their input on potential project impact (APE). The Department of Transportation has been provided lists by the NAHC and it will be provided additional lists of native American Contacts upon request. This is also recommended by the National Environmental Policy Act (NEPA) and federal Executive Order 13175 (Government-to-Government Tribal Consultation and coordination) concerning individual projects, the NAHC offers the following comments:

√ Lack of surface evidence of archeological resources does not preclude their subsurface existence.

- Lead agencies should include in their mitigation plan provisions for the identification and evaluation of accidentally discovered archeological resources, per California Environmental Quality Act (CEQA) §15064.5 (f). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American, with knowledge in cultural resources, should monitor all ground-disturbing activities.
- Lead agencies should include in their mitigation plan provisions for the disposition of recovered artifacts, in consultation with culturally affiliated Native Americans.

√ Lead agencies should include provisions for discovery of Native American human remains or unmarked cemeteries in their mitigation plans.

- CEQA Guidelines, Section 15064.5(d) requires the lead agency to work with the Native Americans identified by this Commission if the initial Study identifies the presence or likely presence of Native American human remains within the APE. CEQA Guidelines provide for agreements with Native American, identified by the NAHC, to assure the appropriate and dignified treatment of Native American human remains and any associated grave liens. The federal Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 also offers guidance and required measures/procedures in such instances.

√ California Health and Safety Code §7050.5, California Public Resources Code §5097.98 and Sec. §15064.5 (d) of the CEQA Guidelines mandate procedures to be followed in the event of an accidental discovery of any human remains in a location other than a dedicated cemetery.

√ Lead agencies should consider avoidance, as defined in § 15370 of the CEQA Guidelines, when significant cultural resources are discovered during the course of project planning.

We wish the Department of Transportation well in taking on this additional responsibility, very important (to Native American tribes and communities. Please feel free to contact me at (916) 653-6251 if you have any questions.

Sincerely,

Dave Singleton, Program Analyst

Cc: State Clearinghouse

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TTY 711

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May 7, 2007

Mr. Dave Singleton
Program Analyst
Native American Heritage Commission
915 Capitol Mall, Room 364
Sacramento, CA 95814

Subject: Comment letter, dated March 16 2007, on California Department of Transportation (Caltrans) Application for Assumption of Federal Highway Administration (FHWA) Environmental Responsibilities Pursuant to the Surface Transportation Project Delivery Pilot Program, 23 CFR 773

Dear Mr. Singleton:

Thank you for your letter regarding the Caltrans' application for assumption of FHWA responsibilities under the Surface Transportation Project Delivery Pilot Program. Caltrans will consider all comments received during the draft application review period in finalizing its application to FHWA.

We would like to clarify that the application is for Caltrans to be assigned FHWA's responsibilities for federal environmental laws, such as NEPA and Section 106 of the National Historic Preservation Act, and that those specific federal responsibilities are not subject to state law and regulation. However, Caltrans, as a state agency, will continue to be responsible for compliance with the California Environmental Quality Act and Public Resources Code 5097 and to follow existing procedures for complying with state law and regulation, as you outline in your letter. Pursuant to Section 106 of the National Historic Preservation Act, it is Caltrans policy to consult with federally recognized tribes and California Indian traditional cultural leaders, non-federally recognized groups, and individuals on all proposed Caltrans projects that may potentially affect historic properties or cultural resources of interest to Native Americans. Additionally, under Public Resources Code Section 5097, Caltrans works with the Native American Heritage Commission in its efforts to protect sacred sites, ensure Native Californians access to sacred sites, and provide for the respectful treatment of human remains and associated grave artifacts. Caltrans begins its consultation with Native Americans early in the project development process, and continues it throughout the life of the project.

Although Caltrans will assume FHWA's role in complying with Section 106 of the National Historic Preservation Act and the other federal laws you list that require tribal consultation, FHWA will retain its responsibility for government-to-government relationships with federally recognized Indian tribes. Caltrans will continue to handle regular project consultations with the tribes but understands that a tribe has the right to consult with FHWA directly. Caltrans' consultation with the Native American Heritage Commission will not change under the Pilot Program. Furthermore, Caltrans' procedures for determining whether projects have an adverse effect on historic resources, including those procedures outlined in your letter, will not change under the Pilot Program.

We appreciate your taking the time to review and comment on the application. We will continue to provide regular updates on the progress of our Pilot Program application and Memorandum of Understanding with FHWA at our website at http://www.dot.ca.gov/hq/env/nepa_pilot/index.htm. If you have any questions, you may also contact me at cindy_adams@dot.ca.gov or by mail at:

Cindy Adams
NEPA Delegation Manager
California Department of Transportation
Division of Environmental Analysis, Mail Station 27
P.O. Box 942874
Sacramento, CA 94274-0001

Sincerely,

CINDY ADAMS
NEPA Delegation Manager

Bridgeport Indian Colony
P.O. Box 37
Bridgeport, CA 93517

(760) 932-7083 Fax: (760) 932-7846 e-mail: bicgovadm@yahoo.com

March 20, 2007

California Department of Transportation
Attn: Cindy Adams, NEPA Delegation Manager
Division of Environmental Analysis, MS#27
P.O. Box 942874
Sacramento, CA 94274-0001

RE: Request for Comment on Application for Assumption of Federal Highway Administration (FHWA) Environmental Responsibilities Pursuant to the Surface Transportation Project Delivery Pilot Program, 23 CFR 773

Dear Ms. Adams:

The Bridgeport Indian Colony realizes the importance of this pilot program and is in full support.

The program outlines strategic measures that will be taken to protect cultural and burial sites that are vitally important. I appreciate also that endangered species are addressed and will be a part of this program.

I look forward to receiving progress reports as this program develops.

Please call me at (760) 932-7083 if I can be of further assistance.

Sincerely,

Charlotte Baker

Charlotte Baker
Tribal Chairperson

Cc: Cultural program

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May 7, 2007

Ms. Charlotte Baker
Tribal Chairperson
Bridgeport Indian Colony
P.O. Box 37
Bridgeport, CA 93517

Subject: Comment letter, dated March 20, 2007, on California Department of Transportation's (Caltrans) Application for Assumption of Federal Highway Administration (FHWA) Environmental Responsibilities Pursuant to the Surface Transportation Project Delivery Pilot Program, 23 CFR 773

Dear Ms. Baker:

Thank you for your letter of support regarding Caltrans' application for assumption of FHWA responsibilities under the Surface Transportation Project Delivery Pilot Program. Caltrans will consider all comments received during the draft application review period in finalizing its application to FHWA.

We will also continue to provide regular updates on the progress of our Pilot Program application and our Memorandum of Understanding with FHWA at our website at http://www.dot.ca.gov/hq/env/nepa_pilot/index.htm. If you have any questions, you may also contact me at cindy_adams@dot.ca.gov or by mail at:

Cindy Adams
NEPA Delegation Manager
California Department of Transportation
Division of Environmental Analysis, Mail Station 27
P.O. Box 942874
Sacramento, CA 94274-0001

Sincerely,

CINDY ADAMS
NEPA Delegation Manager

Mission:

Educate and communicate the rich heritage of Soboba peoples; Lead and assist individuals, organizations and communities in understanding the needs and concerns of Native American monitoring of traditional sites; Advocate Native American participation in state agencies and boards; Advocate legislation and enforcement of laws affecting Native American peoples and protecting historical and archaeological resources.

March 22, 2007

Attn: Cindy Adams
California Department of Transportation
P.O. Box 942874
Sacramento, Ca 94274-001

Re: Comments Caltrans FHWA Environmental Responsibilities Pursuant to the Surface Transportation Project Delivery

The Soboba Band of Luiseño Indians appreciates your observance of Tribal Cultural Resources and their preservation in your project. The information provided on said project(s) has been assessed through our Cultural Resource Department, where it was concluded that although this site is outside the existing reservation, the project area does fall within the bounds of our Tribal Traditional Use Areas.

At this time the Soboba Band of Luiseño Indians is requesting further consultation and any and all reports or documentation regarding cultural resources on said project. This will allow the tribe an opportunity to correctly assess the project in its entirety. If you have any questions or concerns please do not hesitate to contact me at the following number 951-487-8268.

[SPECIAL NOTE (for projects other than cell towers): *If* this project is associated with a city or county specific plan or general plan action it is subject to the provisions of SB18-Tradtional Tribal Cultural Places (law became effective January 1, 2005) and will require the city or county to participate in **formal, government-to-government** consultation with the Tribe. If the city or county are your client, you may wish to make them aware of this requirement. By law, they are required to contact the Tribe.]

Sincerely,

Erica Helms
Soboba Cultural Resource Department
Cell (951) 663-8333
Phone (951) 487-8268
ehelms@soboba-nsn.gov

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May 7, 2007

Ms. Erica Helms
Soboba Cultural Resources Department
ehelms@soboba-nsn.gov

Subject: Comment letter, dated March 22, 2007, on California Department of Transportation (Caltrans) Application for Assumption of Federal Highway Administration (FHWA) Environmental Responsibilities Pursuant to the Surface Transportation Project Delivery Pilot Program, 23 CFR 773

Dear Ms. Helms:

Thank you for your comment letter regarding Caltrans' application for assumption of FHWA responsibilities under the Surface Transportation Project Delivery Pilot Program. Caltrans will consider all comments received during the draft application review period in finalizing its application to FHWA.

We will also continue to provide regular updates on the progress of our Pilot Program application and Memorandum of Understanding with FHWA at our website at http://www.dot.ca.gov/hq/env/nepa_pilot/index.htm. If you have any questions, you may also contact me at cindy_adams@dot.ca.gov or by mail at:

Cindy Adams
NEPA Delegation Manager
California Department of Transportation
Division of Environmental Analysis, Mail Station 27
P.O. Box 942874
Sacramento, CA 94274-0001

Sincerely,

CINDY ADAMS
NEPA Delegation Manager

SELF-HELP COUNTIES COALITION

March 29, 2007

Cindy Adams
NEPA Delegation Manager, Caltrans
Division of Environmental Analysis, MS 27
PO Box 942874,
Sacramento, CA 94274-0001

Dear Ms. Adams:

I am writing on behalf of the Self-Help Counties Coalition, the organization of local agencies delivering voter-approved transportation improvement programs, to express our strong support for Caltrans' Application for Assumption of Federal Highway Administration Environment Responsibilities Pursuant to the Surface Transportation Project Delivery Pilot Program, 23 CFR 773. We believe Caltrans' assumption of these duties will ultimately speed delivery of transportation projects by 120-180 days without weakening environmental protection.

Local transportation sales tax measure projects often require the FHWA to approve environmental documentation. Current law requires Caltrans to act as a middleman between FHWA and local jurisdictions. This pilot program removes a layer of bureaucracy. Caltrans will be required, as a condition of the pilot, to comply with federal laws, regulations, and FHWA guidance documents and policy directives as if it were the FHWA. Caltrans has been successfully preparing NEPA and other federal environmental documents on behalf of the FHWA for more than 35 years and would continue to uphold the stringent environmental standards and protections already in place. In fact, California could be sued in federal court, ensuring no diminution of accountability.

The voters in our counties have approved our local transportation sales tax measures, even though they require super-majority votes, because they understand the urgency of delivering those projects, which improve the safety of the traveling public and ensure the continued economic vitality of our communities and the state. This bill will project those precious local tax dollars by speeding delivery and avoiding escalation costs caused by delays. As sales tax authorities, we promise our local voters to deliver projects on time and within budget. This bill will help us keep those promises.

If you have any questions regarding the Coalition's position on this pilot program please do not hesitate to contact Sarah West, the Coalition's Executive Director, at (916) 489-1629, or me at (415) 522-4803.

Sincerely,

José Luis Moscovich
Executive Director - San Francisco Transportation Authority
Moderator - Self-Help Counties Coalition

581 La Sierra Drive, Sacramento, CA 95864 • (916) 489-1629 • (916) 482-4604 fax • www.selfhelpcounties.org

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May 7, 2007

Mr. Jose Luis Moscovich
Self-Help Counties Coalition
581 La Sierra Drive
Sacramento, CA 95864

Subject: Comment letter, dated March 29 2007, on California Department of Transportation's (Caltrans) Application for Assumption of Federal Highway Administration (FHWA) Environmental Responsibilities Pursuant to the Surface Transportation Project Delivery Pilot Program, 23 CFR 773

Dear Mr. Moscovich:

Thank you for your letter of support regarding Caltrans' application for assumption of FHWA responsibilities under the Surface Transportation Project Delivery Pilot Program. Caltrans will consider all comments received during the draft application review period in finalizing its application to FHWA. As you note in your letter, the Pilot Program will simplify and expedite the federal environmental review process for transportation projects while ensuring the same level of protection for environmental resources.

We will continue to provide regular updates on the progress of our Pilot Program application and Memorandum of Understanding with FHWA at our website at http://www.dot.ca.gov/hq/env/nepa_pilot/index.htm. If you have any questions, you may also contact me at cindy_adams@dot.ca.gov or by mail at:

Cindy Adams
NEPA Delegation Manager
California Department of Transportation
Division of Environmental Analysis, Mail Station 27
P.O. Box 942874
Sacramento, CA 94274-0001

Sincerely,

CINDY ADAMS
NEPA Delegation Manager

"justice4l"
<justice4l@cox.net>
04/03/2007 12:33 PM

To <NEPA_delegation@dot.ca.gov>
cc
bcc
Subject objection to NEPA

I wish to voice my objection to Caltrans NEPA application. Caltrans has not provided for answers to numerous legal challenges to the lower Ortega widening project. We have been given incorrect information and the design is inadequate and non responsive in addressing the need for an EIR instead of a negative mitigated declaration.

I wish to be included on any information regarding this process. I would like to address the fact that numerous items that would require an EIR have been ignored by Caltrans and a negative mitigated declaration has been pursued. The numerous problems with a negative dec cannot be ignored. Therefore, for Caltrans to have the full jurisdiction on any environmental documentation is contrary to what is in the best interests of the citizenry.

The following is a brief statement of just a few of the problems with the 74 widening:

- No sound study for reflective sound
- Calle Entradero to Via Cordova is already geometric of 4 lane and no document (per PRA) was responsive to stating when widening was changed from Via Cordova to the current Calle Entradero
- Caltrans required SJC to obtain a letter of support from Hunt Club and approval of removal of sidewalk and agreement to use horse trails as multi-purpose. This was never done! Hunt Club will be suing as a result of this. Hunt Club adamantly opposes the widening, as do the majority of the town. The document stating impending legal action with Caltrans/ city of San Juan was sent via email weeks ago to Caltrans and I have yet to receive a response.
- Historic homes on Ortega
- Removal of existing sidewalk and ingress/egress for existing horse trail is contrary to municipal code and ADA. No safe sidewalk access for children walking to new high school
- scenic highway.. views would be obstructed with soundwall
- parallel sound barriers inadequate distance per the TNAP which could result in increased DB levels
- sound wall recipients are already in a shadow zone, sound walls would be ineffective
- Impossible access for gated community for ingress/egress of community resulting in stacking onto Ortega
- slope gradient exceeds the OCFA code (current max is 15%), proposed widening increases gradient to 23%
- soundwall survey invalid because environmental documents were not available
- public comment was not taken into account. Numerous legal challenges regarding public input documented, yet concurrence was based solely on

"council & planning commission"
This represents a portion of objections. I welcome Caltrans to contact me. I have compiled an 80 page booklet submitted to our city council with documentation supporting the arguments against widening project.

I also request I be given the contact to directly object to the FHWA regarding this application.

Regards,

L. DeCaro
(949) 240-2606

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May 7, 2007

Ms. L. DeCaro
Justice4l@cox.net

Subject: Comment letter, dated April 3, 2007, on California Department of Transportation's (Caltrans) Application for Assumption of Federal Highway Administration (FHWA) Environmental Responsibilities Pursuant to the Surface Transportation Project Delivery Pilot Program, 23 CFR 773

Dear Ms. DeCaro:

Thank you for your letter regarding Caltrans' application for assumption of FHWA responsibilities under the Surface Transportation Project Delivery Pilot Program. Caltrans will consider all comments received during the draft application review period in finalizing its application to FHWA.

Caltrans is applying to assume FHWA's responsibilities under the National Environmental Policy Act. The Pilot Program will not affect how Caltrans implements the California Environmental Quality Act (CEQA).

Regarding your specific comments on the Ortega widening project, you will have the opportunity to formally comment on this project's environmental document during the project's public review period. Caltrans District staff working on this project will respond to your comments at that time. District staff also plan to hold a public open house on this project during the public review period. Community involvement is an integral part of the Caltrans project development process. Caltrans' project development philosophy is to consider environmental, economic, and social effects in making project decisions that are in the best overall public interest. This commitment will remain strong under the Pilot Program.

We will continue to provide regular updates on the progress of our Pilot Program application and our Memorandum of Understanding with FHWA at our website at http://www.dot.ca.gov/hq/env/nepa_pilot/index.htm. If you have any questions, you may also contact me at cindy_adams@dot.ca.gov or by mail at:

Cindy Adams
NEPA Delegation Manager
California Department of Transportation
Division of Environmental Analysis, Mail Station 27
P.O. Box 942874
Sacramento, CA 94274-0001

Sincerely,

CINDY ADAMS
NEPA Delegation Manager

USDA United States Department of Agriculture | Forest Service | Lassen National Forest

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Susanville, CA 96130
(530) 257-2151 Voice
(530) 252-6624 TDD
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File Code: 1900/7700
Date: April 5, 2007

Cindy Adams
NEPA Delegation Manager
California Department of Transportation, Division of
Environmental Analysis
MS# 27, P.O. Box 942874
Sacramento, CA 94274-0001

Reference: Public Notice: Request for Comments on the *State of California, Department of Transportation (Caltrans) Application for assumption of Federal Highway Administration (FHWA) Environmental Responsibilities Pursuant to the Surface Transportation Project Delivery Pilot Program, 23 CFR 773*

Dear Ms. Adams:

Thank you for your letter dated March 14, 2007. The Lassen NF has no positions on your proposal.

As a federal agency, we look forward to continue to work with Caltrans as a Cooperating Agency. We have developed a close working relationship with Caltrans District 2. Any questions you have, please contact Forest Engineer Jack Walton at the above phone number.

Sincerely,

Laurie Tippin

LAURIE TIPPIN
Forest Supervisor

cc: Jack Walton

CONTRA COSTA TRANSPORTATION AUTHORITY

COMMISSIONERS:

Charlie Abrams, Chair

Dave Hudson, Vice Chair

Janet Abelson

Susan Bonilla

Donald P. Freitas

Federal Glover

Brad Nix

Julie Pierce

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Robert K. McCleary
Executive Director

3478 Buskirk Ave.
Suite 100

Pleasant Hill
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9 April 2007

Ms. Cindy Adams
NEPA Delegation Manager
California Department of Transportation
Division of Environmental Analysis, MS 27
P.O. Box 942874
Sacramento, CA 94274-0001

Dear Ms. Adams:

On behalf of the Contra Costa Transportation Authority, I am writing to strongly support the California Department of Transportation's "Application for Assumption of Federal Highway Administration Environmental Responsibilities Pursuant to the Surface Transportation Project Delivery Pilot Program, 23 CFR 773." It is our firm belief that the proposed delegation will facilitate faster project delivery without sacrificing environmental protections; and has the potential to improve communications and deliberations regarding mitigations between the federal resources agencies and Caltrans.

We have established integrated project delivery teams comprised of Caltrans, Authority, and local agency staff members working together to facilitate timely delivery through a continuing focus on project scope, mitigations, documentation, community relations and costs. We have two prime examples underway: the Caldecott Tunnel fourth bore project on Route 24; and the widening of Route 4 to eight lanes in the Pittsburg-Antioch area. We believe the delegation of NEPA responsibilities to Caltrans would further enhance those working teams, and also offers a potential opportunity to better integrate representatives from Fish and Wildlife Services, the Army Corps, and other agencies charged with protection of natural resources into the project development process. Such integration could identify key areas of environmental concern, and probable mitigation requirements, early on in the process, and make sure that they are kept in focus throughout the project development process.

It has been estimated that, for major capital projects, 120 to 180 days might be saved in the environmental review process by this delegation of responsibilities. That would be a significant savings from the 48 months that it has typically taken us to gain the required approvals and complete the federal environmental process for some of our projects, historically. For example, if delegation led to more timely preparation and completion of the biological opinion for a project, it might actually save even more than six months.

Consequently, we strongly support the proposed delegation of FHWA's NEPA responsibilities to Caltrans. Please feel free to contact me if you have any questions.
Sincerely,

Robert K. McCleary
Executive Director

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May 7, 2007

Mr. Robert K. McCleary
Contra Costa Transportation Authority
3478 Buskirk Avenue, Suite 100
Pleasant Hill, CA 94523

Subject: Comment letter, dated April 9, 2007, on California Department of Transportation's (Caltrans) Application for Assumption of Federal Highway Administration (FHWA) Environmental Responsibilities Pursuant to the Surface Transportation Project Delivery Pilot Program, 23 CFR 773

Dear Mr. McCleary:

Thank you for your letter of support regarding Caltrans' application for assumption of FHWA responsibilities under the Surface Transportation Project Delivery Pilot Program. Caltrans will consider all comments received during the draft application review period in finalizing its application to FHWA. As you note in your letter, the Pilot Program will simplify and expedite the federal environmental review process for transportation projects while ensuring the same level of protection for environmental resources. The Pilot Program will also enable Caltrans to enter into direct agency-to-agency relationships with its federal and state resource agency partners, thereby creating opportunities for new engagement strategies toward the development of mitigation strategies.

We will continue to provide regular updates on the progress of our Pilot Program application and Memorandum of Understanding with FHWA at our website at http://www.dot.ca.gov/hq/env/nepa_pilot/index.htm. If you have any questions, you may also contact me at cindy_adams@dot.ca.gov or by mail at:

Cindy Adams
NEPA Delegation Manager
California Department of Transportation
Division of Environmental Analysis, Mail Station 27
P.O. Box 942874
Sacramento, CA 94274-0001

Sincerely,

CINDY ADAMS
NEPA Delegation Manager

Los Angeles County
Metropolitan Transportation Authority

One Gateway Plaza
Los Angeles, CA 90012-2952

213.922.2000 Tel
metro.net

Metro

April 9, 2007

Ms. Cindy Adams
NEPA Delegation Manager
California Department of Transportation
Division of Environmental Analysis
Environmental Management Office, MS 27
P.O. Box 942874
Sacramento, CA 94274-0001

SUBJECT: Public Notice Response to California Department of Transportation (Caltrans) Application to the Surface Transportation Project Delivery Pilot Program, 23 CFR 773

Dear Ms. Adams:

Metro received Caltrans' letter of Public Notice regarding its intention to participate in FHWA's Surface Transportation Project Delivery Pilot Program (Pilot Program) pursuant to Section 6005 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). Metro acknowledges that through the application submission, Caltrans is applying to assume all of FHWA's responsibility under the National Environmental Policy Act (NEPA) for the State Highway System and local street and road projects in California. In addition, Metro understands that Caltrans is also applying to assume responsibility for environmental reviews and consultations for projects.

Metro fully supports Caltrans' application to participate in the Pilot Program. We feel that by delegating the above mentioned responsibilities to Caltrans, the intent of the program to streamline environmental review and project delivery timeframes will benefit Los Angeles County.

We understand that should FHWA approve Caltrans' application, that delegation authority would begin later this summer. We further understand that Caltrans, at its discretion, could request FHWA involvement on a project specific basis. Caltrans should consult with Metro when considering these project specific requests in Los Angeles County. Metro looks forward to working with Caltrans to streamline project approval and delivery without jeopardizing the NEPA process. We are optimistic that once Caltrans delegation guidelines are approved that the end result will be a simplified and efficient process.

Should you have any questions or need additional information please contact me at (213) 922-3056. We look forward to continuing our cooperative working relationship with Caltrans.

Sincerely,

Carol Inge

Carol Inge
Chief Planning Officer

cc. Doug Failing, Caltrans-District 07
Ron Kosinski, Caltrans-District 07

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May 7, 2007

Ms. Carol Inge
Chief Planning Officer
Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza
Los Angeles, CA 90012-2952

Subject: Comment letter, dated April 9, 2007, on California Department of Transportation's (Caltrans) Application for Assumption of Federal Highway Administration (FHWA) Environmental Responsibilities Pursuant to the Surface Transportation Project Delivery Pilot Program, 23 CFR 773

Dear Ms. Inge:

Thank you for your letter of support regarding Caltrans' application for assumption of FHWA responsibilities under the Surface Transportation Project Delivery Pilot Program. Caltrans will consider all comments received during the draft application review period in finalizing its application to FHWA. As you note in your letter, the Pilot Program will simplify and expedite the federal environmental review process for transportation projects while ensuring the same level of protection for environmental resources.

The draft application lists those projects that Caltrans is requesting be excluded from the Pilot Program. FHWA has had an active role in the environmental review process for these complex projects, and many of these projects are in the final phases of environmental review. The only excluded project in Los Angeles County at this time is the I-5 Widening, Orange County Line to Route 605, project in District 7 (07-LA-5-PM 0.0/6.3 and 07-Ora-5-PM 42.2/44.4).

We will continue to provide regular updates on the progress of our Pilot Program application and our Memorandum of Understanding with FHWA at our website at http://www.dot.ca.gov/hq/env/nepa_pilot/index.htm. If you have any questions, you may also contact me at cindy_adams@dot.ca.gov or by mail at:

Cindy Adams
NEPA Delegation Manager
California Department of Transportation
Division of Environmental Analysis, Mail Station 27
P.O. Box 942874
Sacramento, CA 94274-0001

Sincerely,

CINDY ADAMS
NEPA Delegation Manager

"DeChellis, Patrick" <pdechellis@dpw.lacounty.gov>

04/12/2007 05:33 PM

To <NEPA_delegation@dot.ca.gov>

cc "El-Rabaa, Maged" <MElRabaa@dpw.lacounty.gov>, <dbaker@counties.org>, <margaret_buss@dot.ca.gov>, "Shari Afshari" <SAFSHARI@ladpw.org>, "Paul Maselbas"

bcc

Subject FW: Draft Application for Assumption of FHWA Responsibilities pursuant to the Surface Transportation Project Delivery Pilot Program - available for public review

We have reviewed Caltrans Draft Application for Assumption of Responsibilities pursuant to the Surface Transportation Project Delivery Pilot Program. We have no comments and we support the action. The action will not change any existing procedures and will not cause additional requirements on local agencies.

The pilot program will streamline California environmental review process and project delivery time. Under the program, Caltrans will be solely responsible and accountable for NEPA decisions on highway projects in the State and will no longer need its environmental decisions to be approved by FHWA. The pilot program assignment will also clarify environmental-making responsibilities, minimizing confusion for the public and resource agencies, and foster closer working relationships between Caltrans, its agency partners, and the public. Caltrans contends that its environmental policies are derived from NEPA, and that it has been carrying out its environmental practices pursuant to CEQA, which is drafted on the basis of NEPA guidelines. Caltrans also contends that it is uniquely qualified to assume the requested responsibilities based on its three decades of experience in working with FHWA in implementing NEPA, and on its position as the lead agency under CEQA for highway projects in California. Under the pilot program, Caltrans assures it will comply with applicable laws and FHWA regulations, policies, and guidelines. Caltrans also plans to implement several expanded quality control procedures to accommodate the proposed action.

If you have any questions about these comments, please contact me at the above e-mail address or by phone at (626) 458-4004.

Patrick DeChellis
Deputy Director
Los Angeles County
Department of Public Works

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May 7, 2007

Mr. Patrick DeChellis
Los Angeles County Department of Public Works
pdechellis@dpw.lacounty.gov

Subject: Comment letter, dated April 12, 2007, on California Department of Transportation's (Caltrans) Application for Assumption of Federal Highway Administration (FHWA) Environmental Responsibilities Pursuant to the Surface Transportation Project Delivery Pilot Program, 23 CFR 773

Dear Mr DeChellis:

Thank you for your letter of support regarding Caltrans' application for assumption of FHWA responsibilities under the Surface Transportation Project Delivery Pilot Program. Caltrans will consider all comments received during the draft application review period in finalizing its application to FHWA. As you note in your letter, the Pilot Program will simplify and expedite the federal environmental review process for transportation projects while ensuring the same level of protection for environmental resources.

As noted in your letter, under the Pilot Program, Caltrans will expand its quality control procedures by requiring Caltrans' Districts to perform a new internal quality control review of all Local Assistance and State Highway System environmental documents prepared under the National Environmental Policy Act (NEPA). This new review will ensure that these documents comply with FHWA's NEPA regulations, policies, and standards. Local agencies and their consultants will also be required to perform quality control reviews before sending environmental documents to Caltrans for review; this will include signing an "Environmental Document Quality Control Review Certification" form. The certifications that local agencies and consultants will be required to make are described in the "Expanded Quality Control Procedures" section of the draft application. Use of this new form will formalize the quality control process that Caltrans currently employs on Local Assistance environmental documents.

We will continue to provide regular updates on the progress of our Pilot Program application and our Memorandum of Understanding with FHWA at our website at http://www.dot.ca.gov/hq/env/nepa_pilot/index.htm. If you have any questions, you may also contact me at cindy_adams@dot.ca.gov or by mail at:

Cindy Adams
NEPA Delegation Manager
California Department of Transportation
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Sacramento, CA 94274-0001

Sincerely,

CINDY ADAMS
NEPA Delegation Manager

North Coast Unified Air Quality Management District
2300 Myrtle Avenue, Eureka, CA 95501
(707) 443-3093 FAX (707) 443-3099
http://www.ncuaqmd.org

April 12, 2007

Ms. Cindy Adams
Department of Transportation
Division of Environmental Analysis MS 27
P.O. Box 942874
Sacramento, CA 94274-0001

RE: FHWA's Pilot Program (Public Notice letter dated 3-14-2007)

Dear Ms. Adams:

This District is in full support of a Caltrans assumption of all NEPA projects as described in the aforementioned letter. Caltrans Districts one and two have worked closely with this Air District to create solid lines of communication and protocols for timely notification of upcoming projects. Allowing Caltrans to assume these projects allows this District to capitalize on the solid working relationships that currently exist between our two agencies.

Please do not hesitate to contact me if you have any questions concerning this issue.

Sincerely,

Al Steer
Compliance & Enforcement Division Manager

Attachments: None

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May 7, 2007

Mr. Al Steer
Compliance and Enforcement Division Manager
North Coast Unified Air Quality Management District
2300 Myrtle Avenue
Eureka, CA 95501

Subject: Comment letter, dated April 12, 2007, on California Department of Transportation's (Caltrans) Application for Assumption of Federal Highway Administration (FHWA) Environmental Responsibilities Pursuant to the Surface Transportation Project Delivery Pilot Program, 23 CFR 773

Dear Mr. Steer:

Thank you for your letter of support regarding Caltrans' application for assumption of FHWA responsibilities under the Surface Transportation Project Delivery Pilot Program. Caltrans will consider all comments received during the draft application review period in finalizing its application to FHWA. We commend the solid working relationships that the North Coast Unified Air Quality Management District has established with our District staff.

We will continue to provide regular updates on the progress of our Pilot Program application and Memorandum of Understanding with FHWA at our website at http://www.dot.ca.gov/hq/env/nepa_pilot/index.htm. If you have any questions, you may also contact me at cindy_adams@dot.ca.gov or by mail at:

Cindy Adams
NEPA Delegation Manager
California Department of Transportation
Division of Environmental Analysis, Mail Station 27
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Sacramento, CA 94274-0001

Sincerely,

CINDY ADAMS
NEPA Delegation Manager

OCTA

AFFILIATED AGENCIES

Orange County Transit District

Local Transportation Authority

Service Authority for Freeway Emergencies

Consolidated Transportation Service Agency

Congestion Management Agency

Service Authority for Abandoned Vehicles

April 16, 2007

Ms. Cindy Adams
NEPA Delegation Manager
Department of Transportation
1120 N Street
Sacramento, CA 94287

Subject: Comments on Caltrans' Participation in the NEPA Delegation Pilot Program

Dear Ms. Adams:

Thank you for providing the Orange County Transportation Authority (OCTA) the opportunity to provide comments on Caltrans' participation in the Federal Highway Administration (FHWA) Surface Transportation Project Delivery Pilot Program pursuant to 23 CFR 773 (National Environmental Policy Act [NEPA] Delegation Pilot Program).

As Orange County's Transportation Commission, we are charged with implementing the county's transportation plans and funding transportation projects to improve mobility within the county. OCTA supports Caltrans' decision to participate in the NEPA Delegation Pilot Program, and we believe this will facilitate the NEPA approval process for our Renewed Measure M (1/2 cent sales tax measure) Transportation Investment Plan freeway projects and other local projects. OCTA would like to offer our assistance to continue working collaboratively with District 12 and Headquarters staff to facilitate this effort.

After review of the NEPA Delegation Application package, OCTA would like to offer the following comments:

1. Pg. 24: the second to the last bullet states "11 additional PYs for SHS projects..." Please clarify if the Environmental staff charged with the NEPA Delegation responsibility for District 12 has been assigned/hired.

2. Pg. 24: the last bullet states "6 additional PYs for Local Assistance projects." Please clarify the NEPA delegation staff's respective responsibilities assigned to Districts 7 and 12.

3. Please provide clarification if District 12's NEPA Delegation staff has the authority to approve all NEPA documents or only up to a certain category (e.g., Categorical Exclusions and Environmental Assessments). If the District 12 NEPA Delegation staff does not have approval authority on certain category of NEPA documentation, please clarify who has this responsibility.

4. In order to effectively implement the NEPA Pilot Program, OCTA recommends that the CEQA/NEPA reviews be performed simultaneously between the various reviewers (e.g., NEPA, CEQA, and Legal Sufficiency reviews).

5. On page 26, it states "There will be no new costs to Caltrans for the initial year of the Pilot Program. The additional 11 SHS PYs will be redirected elsewhere in the Capital Outlay Support (COS) program; the cost of the additional six Local Assistance PYs ($750,000) will be reimbursed by local/regional government." OCTA has been informed by Caltrans District 12 that the inverse is the case for the funding of these positions. In other words, OCTA would help fund a portion of the staff allocation for the SHS projects, and the six PYs would be redirected from elsewhere in the COS program. Please clarify.

6. District 12's staff brought to OCTA's attention that the NEPA delegation pilot program could prohibit the implementation of the design at-risk process. As such, OCTA would not be able to support this provision in the program since many of the Corridor Management Improvement Account (CMIA) and Renewed Measure M ½ cent sales tax freeway projects are anticipated to be on path to initiate design at-risk. Further discussion with Caltrans headquarters (Ms. Cindy Adams) revealed that an exemption list is being developed and local agencies would be able to augment it until the Memorandum of Understanding (MOU) is signed between Caltrans and FHWA in approximately three months. OCTA would like to be given assurance that it would be able to augment the exemption list.

7. Given the Renewed Measure M ½ cent sales tax was reauthorized by the voters in Orange County in November 2006 and many of the freeway projects are in its infancy stage in the project development process, OCTA would also like to request that the exemption list be augmented in the future so that these projects could be included.

Thank you again for providing OCTA the opportunity to comment on Caltrans' participation in the NEPA Delegation Pilot Program. Pease feel free to call me at (714) 560-5741, if you have any questions or would like to discuss this matter further.

Sincerely,

Kia Mortazavi
Executive Director of Development

cc: Jim Beil, Caltrans
Kurt Brotcke, OCTA

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May 7, 2007

Mr. Kia Mortazavi
Executive Director of Development
Orange County Transportation Authority
550 South Main Street
Orange, CA 92863-1584

Subject: Comment letter, dated April 16, 2007, on California Department of Transportation's (Caltrans) Application for Assumption of Federal Highway Administration (FHWA) Environmental Responsibilities Pursuant to the Surface Transportation Project Delivery Pilot Program, 23 CFR 773

Dear Mr. Mortazavi:

Thank you for your letter of support regarding Caltrans' application for assumption of FHWA responsibilities under the Surface Transportation Project Delivery Pilot Program. Caltrans is committed to continue working closely with its local agency partners under the Pilot Program to ensure that locally-prepared environmental documents comply with federal environmental laws, while at the same time, simplifying and streamlining the environmental review process. Responses to each of your comments are provided below.

1. Of the 11 additional person years (PYs) that were allocated statewide for State Highway System projects, a total of 0.75 PY was allocated to District 12. District 12 has not yet hired new staff for the 0.75 PY allocated for NEPA delegation, but anticipates hiring new staff next fiscal year. The Caltrans Districts will also have an annual opportunity to augment staff resources for these new responsibilities through the work plan process.

2. The senior Local Assistance NEPA Delegation Coordinator who has been assigned to serve Districts 7 and 12 will be responsible for handling the additional tasks that the Pilot Program requires, such as additional environmental document quality control reviews and new recordkeeping and reporting requirements for internal process reviews and FHWA audits. This position may also provide other technical support. This position was created so that existing Districts 7 and12 environmental staff are not be diverted from Local Assistance project delivery work to handle the additional tasks required by NEPA delegation.

3. The approval authorities under the Pilot Program are identified in Table 2 of the application. Final signature on all documents will be provided by the Districts. "Routine EAs" and Categorical Exclusions will be signed by District staff based on the signature authorities identified in Table 2. "Complex environmental assessments (EAs)" and environmental impact statements (EISs) will be reviewed by a Caltrans Headquarters Division of Environmental Analysis (DEA) Environmental Coordinator and Legal staff to ensure these documents comply with NEPA prior to the District Director, Deputy District Director, or Environmental Office Chief signature. "Complex EAs" are defined in the "Expanded Quality Control Procedures" section of the application; the District has discretion about which EAs are complex enough to benefit from additional review for NEPA compliance. Current practice requires reviews of EISs by a DEA Environmental Coordinator and Legal staff prior to the document being sent to FHWA for review and signature. Under NEPA delegation, the FHWA review will be eliminated, and the DEA Environmental Coordinator and Legal staff will provide the NEPA compliance review prior to the District's final signature.

4. Some of the quality control reviews of NEPA documents may occur concurrently, and some will occur sequentially, depending on the nature of the review. Figures 7 through 10 of the application help to illustrate the sequence of these reviews. For Local Assistance projects, local agencies or their consultants will be expected to perform adequate quality control reviews before sending environmental documents to Caltrans for review. For projects under the capital program, the District peer, technical specialist, technical editor, and NEPA Quality Control reviews may occur concurrently. However, the District review of complex EAs and EISs must occur before the Headquarters DEA and Legal reviews occur since the DEA reviews are taking the place of FHWA's reviews; these two reviews can occur simultaneously as long as the Legal sign off occurs before the Environmental Coordinator sign off. Caltrans does not review the CEQA portion of joint documents for which a local agency is acting as the CEQA lead.

5. The explanation in the application is correct. The costs of the six new limited-term (2 years) Local Assistance positions were funded by contributions from 13 council of governments and regional transportation planning agencies. The California Department of Finance gave Caltrans the authority to create the positions in Local Assistance, but no state funding was made available. If the Pilot Program is extended beyond the 2 years or made permanent, Caltrans will seek state funding for these positions.

   Caltrans' capital program, which includes locally-sponsored projects on the SHS, is using its work plans to identify any additional PYs that may be needed under the Pilot Program for capital projects. It was estimated that implementation of the Pilot Program would require about 11 PYs statewide at first, with the possibility that as many as 20 PYs would be needed statewide as the program develops. Some of the needed PYs may be provided via redirection. Thus, District 12's PY

allocation for capital projects is dependent on whether its work plans identify the need for additional PYs for NEPA delegation tasks and whether or not the District provides for those PYs. This allocation is unrelated to OCTA's contribution to the Local Assistance positions.

6. OCTA will have the opportunity to provide input to Caltrans on the list of projects to be excluded from delegation before the Pilot Program Memorandum of Understanding (MOU) is signed by FHWA and Caltrans. The current list of excluded projects is identified in Appendix A of the application. Appendix A and the section of the application, entitled "Classes of Highway Projects for Which Caltrans is Requesting NEPA Responsibility" have been revised to clarify that this list may be modified before the MOU is signed.

7. The Pilot Program MOU will provide that the MOU may be amended at any time upon mutual agreement by both FHWA and Caltrans. Therefore, amendments could be made to the MOU to augment the list of projects excluded from delegation.

We will continue to provide regular updates on the progress of our Pilot Program application and our Memorandum of Understanding with FHWA at our website at http://www.dot.ca.gov/hq/env/nepa_pilot/index.htm. If you have any questions, you may also contact me at cindy_adams@dot.ca.gov or by mail at:

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California Department of Transportation
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Sacramento, CA 94274-0001

Sincerely,

Cindy Adams

CINDY ADAMS
NEPA Delegation Manager

SANTA CLARA
Valley Transportation Authority

April 16, 2007

Cindy Adams, NEPA Delegation Manager
California Department of Transportation
Division of Environmental Analysis, MS#27
P.O. Box 942874
Sacramento, CA 94274-0001

Subject: Caltrans' Application for the Assumption of FHWA Environmental Responsibilities

Dear Ms. Adams:

The Santa Clara Valley Transportation Authority (VTA) appreciates the opportunity to comment on the California Department of Transportation's (Caltrans) application for the assumption of Federal Highway Administration (FHWA) environmental responsibilities. As a multimodal transportation agency with responsibility for transit, highway, and other transportation improvements in Santa Clara County, VTA is involved in preparing both federal and state environmental documents as a local agency and on behalf of Caltrans. As a result, VTA is very interested in efforts to streamline the process for federal environmental review.

VTA offers the following comments on Caltrans' application dated March 2007 for the assumption of FHWA's environmental responsibilities:

1. As a local sponsor of projects on the State Highway System, VTA often prepares federal and state environmental documents on behalf of Caltrans in order to advance project delivery. This application should describe how these procedures will apply to federal environmental documents prepared by a local agency for Caltrans.

2. According to the application, Caltrans' Department of Environmental Analysis (DEA) and Legal currently review Draft and Final Environmental Impact Statements (EIS) prior to submittal to FHWA. Under the pilot program, DEA staff will also review all complex Environmental Assessments (EAs) and some routine EAs (p. 16). In addition, DEA will be involved in determining the class of action for all projects (p. 17).

   In order to address these expanded responsibilities, Caltrans is initially proposing to add 13 new DEA staff and 5 new District Local Assistance staff. District Local Assistance staff will generally have responsibility for two districts (p. 15).

   VTA is concerned that these staffing levels will not be adequate to ensure timely review. It is recommended that the application include data on the recent number of Categorical Exclusions (CE), EAs, and EISs that are processed annually in order to

substantiate whether proposed staffing levels are adequate.

3. Since a major objective of Caltrans' assumption of FHWA's environmental responsibilities is to streamline the process, VTA recommends that Caltrans' application should include specific timelines or goals for environmental decisions by which the program would be measured on an annual basis. It is VTA's expectation that timelines will be shorter than the current process.

4. VTA is concerned about the process for resolving conflicts on technical or procedural matters for local agency projects. Based on the application, it appears that an internal Caltrans committee would resolve conflicts. VTA strongly recommends that a local agency be represented on this committee to minimize inherent conflicts of interest. In addition, conditions for FHWA involvement in resolving conflicts should also be included (p. 19).

5. Regarding monitoring and process reviews of the pilot program, VTA recommends that local agencies be provided the opportunity to comment, especially if questionnaires are distributed (p. 20).

6. In the section on training (p. 22), the application indicates that Caltrans will be augmenting its current training program for its staff in support of the pilot program, including revised environmental document review procedures, new QA/QC protocols, recordkeeping requirements, etc. It is not clear from this section whether training will also be provided to local agencies. Given that these new requirements will also apply to local agencies, VTA requests that the section on training be expanded to include training for local agency staff.

7. In the application, it is noted that the costs for new District Local Assistance staff will be passed on to the local agencies. The application should describe how these costs will be assessed.

VTA looks forward to receiving responses to our comments on Caltrans' application for assumption of FHWA environmental responsibilities. If you have any questions regarding VTA's comments, please contact me at (408) 321-5789 or Tom.Fitzwaer@vta.org.

Sincerely,

Thomas W. Fitzwater
Environmental Resources Planning Manager

cc: C. Gonot, VTA Chief Development Officer
J. Ristow, VTA Deputy Director, Programming & Project Development

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May 7, 2007

Mr. Thomas W. Fitzwater
Environmental Resources Planning Manager
Santa Clara Valley Transportation Authority
3331 North First Street
San Jose, CA 95134-1906

Subject: Comment letter, dated April 16, 2007, on California Department of Transportation's (Caltrans) Application for Assumption of Federal Highway Administration (FHWA) Environmental Responsibilities Pursuant to the Surface Transportation Project Delivery Pilot Program, 23 CFR 773

Dear Mr. Fitzwater:

Thank you for your letter regarding Caltrans' application for assumption of FHWA responsibilities under the Surface Transportation Project Delivery Pilot Program. Caltrans is committed to continue working closely with its local agency partners under the Pilot Program to ensure that locally prepared environmental documents comply with federal environmental laws, while at the same time simplifying and streamlining the environmental review process. Responses to each of your comments are provided below.

1. The application notes that Caltrans' expanded procedures under the Pilot Program will not only apply to State Highway System (SHS) and Local Assistance projects, but also to "locally-sponsored projects on the SHS" (first paragraph under the section entitled, "Organization and Procedures under the Pilot Program"). Therefore, the expanded procedures described in the application, including the quality control procedures for environmental documents, conflict resolution procedures, and record keeping and retention protocols will be applied to locally-sponsored projects in the same manner as they are applied to Caltrans'-sponsored SHS projects and Local Assistance projects. The signature authorities shown in the "SHS Projects" column of Table 2 of the application ("Signature Authorities under the Pilot Program") also apply to locally sponsored projects on the SHS.

2. Caltrans District environmental staff currently conducts quality control reviews of all environmental documents prepared by local agencies for locally sponsored SHS and federal-aid local roadway projects. Under the Pilot Program, Caltrans staff responsibilities will increase incrementally as District environmental staff performs one additional environmental document quality control review step, described in the application as the NEPA Quality Control review. In addition to this expanded quality control responsibility, District staff will also have new record keeping and reporting requirements under the Pilot Program. The 11 additional person years (PYs) for SHS projects and the 5 additional PYs (the reference to 6 additional PYs in the application

includes the new Local Assistance NEPA Delegation Coordinator at Caltrans Headquarters) for Local Assistance projects are expected to be adequate to handle these new responsibilities. These additional 16 PYs will comprise new District environmental staff resources. Caltrans districts will also have an annual opportunity to augment staff resources for these new responsibilities through the work plan process.

The responsibilities of the four Caltrans Headquarters staff in the Division of Environmental Analysis (DEA) will also incrementally increase as they will not only be reviewing environmental impact statements (EIS), but also complex environmental assessments (EA). As can be seen from the information in Table 1 attached to this letter, Caltrans processes relatively few EISs and EAs. Therefore, the four existing DEA Environmental Coordinators are expected to be able to handle these additional responsibilities.

3. During the initial months of the Pilot Program, Caltrans anticipates that there may be a nominal savings in the time required to achieve approvals of environmental documents due to routine start-up issues. Over time, it is anticipated that the Pilot Program will result in more substantial time savings. Caltrans estimates that for categorical exclusions, two or more weeks may be saved per project. For more complex approvals, such as environmental assessments and environmental impact statements, the time savings will be more substantial, on the order of two months or more.

4. In the event that the internal conflict resolution process (described in the "Issue Identification and Conflict Resolution Procedures, Internal Process' section of the application) is invoked, local agencies may communicate their concerns, issues, and other input to the internal standing committee. However, as described in the application, the committee will be responsible for recommending a course of action to the appropriate District or to open the conflict resolution process to the Chief of the Division of Environmental Analysis, if needed.

FHWA may not provide any project-level assistance to Caltrans under the Pilot Program, including acting as an intermediary should a disagreement arise with a local agency. The Pilot Program Memorandum of Understanding (MOU) will outline a process whereby FHWA may attend meetings between Caltrans and other federal agencies in specifically-defined extraordinary circumstances (such as when the issue concerns emerging national policy). However, FHWA will not become involved in resolving project-related disputes between Caltrans and local agencies.

Section 6002 of SAFETEA-LU provides a formal resolution process for projects requiring an EIS that may be initiated by a project sponsor or the Governor of the State for issues that may delay a project or prevent an agency from granting a permit or other approval that is needed for a project. This process and other more informal conflict resolution procedures are described in the Section 6002 guidance that can be found at http://www.fhwa.dot.gov/hep/section6002/2.htm#Toc148770619.

5. Under the Pilot Program, process reviews will include locally sponsored projects on the SHS; these projects will be reviewed to determine the effectiveness of their environmental procedures and staff adherence to these procedures. As described in the "Expanded Internal Monitoring and Process Reviews" section of the application, a variety of monitoring tools will be used during reviews of SHS projects, including interviews, questionnaires, and review of project files. Local agency staff may be interviewed during these reviews. Caltrans will also continue to conduct process reviews of Local Assistance projects under the Pilot Program, as described in the "Internal Monitoring and Process Reviews' section of the application. As part of the Local Assistance process reviews,

local agencies representatives are typically informally surveyed, and local agency project files are reviewed.

6. District Local Assistance staff will provide training to local agencies and their consultants on expanded environmental procedures under the Pilot Program. This training will include guidance on topics such as record keeping requirements, the use of annotated outlines, the environmental document quality control procedures that local agencies will be required to conduct, and the role of the new Local Assistance NEPA delegation coordinators. It is likely that two or more training sessions will be provided in each District so that as many cities and counties as possible can be reached. The section in the application entitled "Training to be Provided to Implement the Pilot Program" has been augmented to briefly describe this training.

7. The costs of the six new limited-term (two years) Local Assistance positions were paid for by contributions from 13 council of governments and regional transportation planning agencies. The California Department of Finance gave Caltrans the authority to create the positions in Local Assistance, but no state funding was made available. If the Pilot Program is extended beyond the 2 years or made permanent, Caltrans will seek state funding for these positions.

We will continue to provide regular updates on the progress of our Pilot Program application and our Memorandum of Understanding with FHWA at our website at http://www.dot.ca.gov/hq/env/nepa_pilot/index.htm. If you have any questions, you may also contact me at cindy_adams@dot.ca.gov or by mail at:

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Sacramento, CA 94274-0001

Sincerely,

CINDY ADAMS
NEPA Delegation Manager

Enclosure

Table 1. Environmental Document/Determination Types by District

	2003						2004						2005					
	PCE/CE		EA		EIS		PCE/CE		EA		EIS		PCE/CE		EA		EIS	
	SHS	LA	SHS	LA	SHS	LA	SHS	LA	SHS	LA	SHS	LA	SHS	LA	SHS	LA	SHS	LA
North Region (Districts 1, 2, and 3)	23	37	8	0	1	0	58	65	3	1	0	0	116	52	10	1	0	0
District 4	101	84	5	0	0	0	45	13	3	1	1	0	63	35	5	0	0	0
Central Region[a]	131		6		1	0	115		7		0	0	158		6	0	0	0
District 5	NA	32	NA	0	NA	0	NA	38	NA		NA	0	NA	24	NA	0	NA	0
District 6	NA	60	NA	0	NA	0	NA	34	NA	1	NA	0	NA	96	NA	2	NA	0
District 9	NA	4	NA	0	NA	0	NA	0	NA		NA	0	NA	5	NA	0	NA	0
District 10	NA	53	NA	1	NA	0	NA	51	NA		NA	0	NA	23	NA	0	NA	0
District 7	156	94	0	0	0	0	167	76	3		0	0	224	93	1	0	0	0
District 8	51	5	0	0	0	0	75	11	2		0	0	69	23	0	0	0	0
District 11	49	16	2	0	1	0	115	13	1		1	0	102	15	1	0	0	0
District 12	49	30	1	1	1	0	26	17	0		0	0	43	9	1	0	0	0
Total Statewide	**560**	**415**	**22**	**2**	**4**	**0**	**601**	**318**	**19**	**3**	**2**	**0**	**775**	**375**	**24**	**3**	**0**	**0**

Notes:
a. Central Region includes Districts 5, 6, 9, and 10
NA = Not available since State Highway System project data is reported by region only and not by Districts.

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802- 4213

APR 16 2007

Ms. Cindy Adams
NEPA Delegation Manager
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Mr. David Cohen
Environmental Protection Specialist
Federal Highway Administration, California Division
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Sacramento, California 95814

Dear Ms. Adams and Mr. Cohen,

NOAA's National Marine Fisheries Service, Southwest Region (NMFS) has reviewed the March 2007 draft *State of California Department of Transportation Application for Assumption of Federal Highway Administration Responsibilities Pursuant to the Surface Transportation Project Delivery Pilot Program, 23 CFR 773* and selected supporting documents to evaluate California Department of Transportation's (Caltrans) proposal to assume federal responsibilities for National Environmental Policy Act and various other environmental protection statutes. In particular, NMFS is concerned over potential effects resulting from Caltrans assumption of responsibilities for the federal Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA), Anadromous Fish Conservation Act, Fish and Wildlife Coordination Act, and the Essential Fish Habitat (EFH) provisions of the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

Assumption of federal responsibilities and liability for implementing these various statutes is a serious consideration and Caltrans has spent considerable effort in preparing the draft applications and meeting with resource agencies including NMFS. Prior to acceptance of the application from Caltrans and allowing for the immediate assumption of federal responsibilities, NMFS recommends that Federal Highway Administration (FHWA) evaluate the effects of this discretionary federal action on ESA-listed species, designated critical habitat, EFH, and marine mammals and, as appropriate, initiate consultation with NMFS.

Our general and specific comments on the draft application are as follows:

1. Caltrans is requesting assumption of FHWA's responsibilities under section 7 of the ESA. These responsibilities extend beyond the prohibition against jeopardizing a listed species or destroying or adversely modifying their critical habitat. For example, section 7(a)(1) of the ESA requires that federal agencies implement a program for the conservation of listed species. The Caltrans application does not speak to this requirement or provide information on any program that will be implemented to conserve listed species. In addition, NMFS is concerned that by passing the responsibility of section 7(a)(1) to Caltrans important conservation opportunities afforded by the scope of FHWA's authorities will be lost to the detriment of listed species in California.

2. The draft application does not provide detail on the priorities and goals embraced by Caltrans or Caltrans Project Design Teams. For example, the Courts have been clear since *TVA v. Hill* that threatened and endangered species are accorded at least equal if not greater consideration under the law than other federal agency or action purposes and priorities. NMFS is concerned that a state agency unused to making decisions where they are expected (as a federal agency) "to afford first priority to the declared national policy of saving endangered species" (*TVA v. Hill*, 437 U.S. 153, 185 (1978)) will not provide the same level of consideration and protection to listed species and critical habitat as would occur if FHWA retained responsibility for ESA consultations.

3. Appendix B lists the various federal environmental laws other than NEPA for which Caltrans is assuming authority. The MSA is identified, but the codification number is incorrect. It should be rewritten as 16 U.S.C. § 1855 (b). Specifically, it requires federal agencies to consult with the Secretary of Commerce, through NMFS, with respect to "any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any essential fish habitat identified under this Act." The regulations at 50 C.F.R. 600.920 set forth the EFH consultation process where NMFS can provide EFH conservation recommendations to the Corps on actions that would adversely affect such habitat pursuant to section 305(b)(4)(A) of the MSA.

4. Although Caltrans has much experience with environmental documentation for NEPA and CEQA, and as an applicant for federal permits that have undergone ESA section 7 consultation, they have limited experience with implementing ESA section 7 or EFH consultation requirements. NMFS experience with Caltrans indicates that Caltrans' current skills and understanding of ESA section 7 and EFH provisions of MSA, and related regulations, may not be sufficient to fully assume FHWA's responsibilities. The application to assume those responsibilities should better identify the specific measures that will be taken to acquire the necessary knowledge and skills to implement ESA section 7 and EFH consultations.

NMFS has encountered several instances across the state where improper application or misunderstanding of the intent and requirements of the ESA and other statutes lead to delays in project implementation or harm to species and habitats. For example, a recent

Caltrans' biological assessment made a determination of "no effect" on listed salmonid species in regard to a highway reconstruction and culvert replacement. Although Caltrans concluded that its action would have "no effect" on listed salmonid species, the document describes a "may affect" scenario where erosion would lead to sedimentation of habitat (which was also critical habitat) that supports listed salmon. In addition, water would be temporarily diverted, reducing the quantity and quality of water that supports listed salmon 600 feet downstream from the action. Caltrans relied upon the application of undisclosed best management practices to support their determination of "no effect." Instead, this action "may affect" the species and critical habitat, but the application of best management practices may have reduced the effects to insignificant or discountable, two indicators of an action that is "not likely to adversely affect" a listed species. The lead federal agency utilized the Caltrans assessment for the action but requested consultation on the basis of the federal agency's "may affect" determination.

Caltrans has also experienced difficulty meeting their mitigation obligations. For example, the compensatory mitigation that was required as a result of impacts associated with the seismic retrofitting of the Coronado bridge in San Diego suffered from various problems. Specifically, the actual impacts were poorly documented and the implementation of the mitigation was unnecessarily delayed. NMFS is concerned that improper guidance or training of Caltrans staff will cause these types of errors to continue.

5. Caltrans' application focuses on compliance with NEPA, and appears to make a thorough case for assuming responsibilities directly connected to NEPA. However, Caltrans gives little attention to describing its past experience with ESA section 7 or EFH (besides disclosing that they routinely participate), nor does it explain how its ESA section 7 and EFH determinations will be developed. An examination of the various resources provided through the Standard Environmental Reference (SER) for ESA section 7 consultation and EFH consultation reveals that some good information is available for staff reference, but the information also requires updating and correction in some areas and further guidance given on the method of making effect determinations and the use of the best available scientific and commercial information. In addition, no information appears to be available for MMPA compliance analysis. NMFS offers our assistance in the development of the Caltrans' training program in order to promote effective and efficient ESA, MMPA, and EFH consultations.

6. Quality control procedures do not address the standard of review at each control point, particularly in regard to ESA section 7 and EFH documents such as biological assessments, letters requesting initiation of consultation, and EFH assessments. Without more instruction about procedures and standards of ESA and EFH documents, NMFS is concerned the broad range of possible interpretation will lead to confusion, delays, and poor implementation of these statutory responsibilities.

7. Details are not provided about the proposed FHWA bi-annual audit of Caltrans to ensure they are meeting federal environmental requirements consistent with FHWA's stewardship goals. NMFS requests further information regarding these audits and the

applied standards and suggests that the resource agencies participate in and comment on the results of audits of this kind.

8. Caltrans has committed to assume legal liability for their assumption of responsibilities under the Pilot Program. NMFS is unaware of discussions that may have occurred with the Department of Justice regarding this arrangement and future implementation should lawsuits arise. However, the draft application appears to indicate that Caltrans believes that cases will be infrequent and judgments and fees arising from those cases minimal. NMFS cautions Caltrans to reconsider this determination in light of the controversy and increased scrutiny that this Pilot Program may cause, the additional lawsuits incurred as a result of accepting ESA responsibilities, and the potentially significant costs associated with that litigation. Finally, the current language added to the Streets and Highways Code indicates that the State's consent to federal court jurisdiction is only valid until January 1, 2009. However, the Pilot Program application appears to be for a longer (undefined) period. If the State's consent is not renewed, will the Pilot Program end?

Thank you for the opportunity to comment on the draft application. If you have any questions concerning these comments, please contact Ms. Penny Ruvelas at (562) 980-4197 or penny.ruvelas@noaa.gov or Mr. Bryant Chesney at (562) 980-4037 or bryant.chesney@noaa.gov .

Sincerely,

Rodney R. McInnis
Regional Administrator

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May 18, 2007

Mr. Rodney R. McInnis
Regional Administrator
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National Oceanic and Atmospheric Administration
National Marine Fisheries Service, Southwest Region
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Subject: Comment letter, dated April 16 2007, on California Department of Transportation's (Caltrans) Application for Assumption of Federal Highway Administration (FHWA) Environmental Responsibilities Pursuant to the Surface Transportation Project Delivery Pilot Program, 23 CFR 773

Dear Mr. McInnis:

Thank you for your letter regarding Caltrans' application for assumption of FHWA responsibilities under the Surface Transportation Project Delivery Pilot Program. Based on your letter, and a subsequent meeting between Caltrans, FHWA and members of your staff, our understanding is that the National Marine Fisheries Service (NMFS) is concerned Caltrans' application has not adequately described its qualifications and experience to assume responsibilities under the federal Endangered Species Act (ESA), Fish and Wildlife Coordination Act, and the Essential Fish Habitat (EFH) provisions of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). We have revised relevant sections of the draft application to address your concerns and to more specifically describe Caltrans' experience in complying with these regulations. Responses to each of your questions and concerns are provided below.

Please be assured that the FHWA plans to continue working with federal environmental resource agencies, including NMFS, regarding Caltrans' official application to participate in the Pilot Program. However, after carefully considering the issue, FHWA has informed us that it has no plans to initiate formal Section 7 consultation for implementation of the Pilot Program.

Responses to NMFS Specific Comment

Comment 1 states that Caltrans' draft application does not address how the Department will implement a program for the conservation of listed species.

Under the Pilot Program, and in collaboration with NMFS and the U.S. Fish and Wildlife Service (USFWS), Caltrans will continue to promote the purposes of the ESA by implementing programs for the conservation of federally listed endangered and threatened species pursuant to Section 7(a)(1). Caltrans' ongoing efforts to conserve listed species are derived, in part, from California's ESA, codified at California Fish and Game Code Section 2055, requiring all state agencies, boards, and commissions seek to conserve endangered species and threatened species and use their authority in furtherance of the purposes of the California ESA. Caltrans, in coordination with NMFS, USFWS, and the California Department of Fish and Game (CDFG) is working on a range of efforts including identifying, assessing, and remediating blockages for fish passage; assessing habitat and wildlife connectivity; conducting advanced mitigation planning; developing collaborative invasive species strategies; participating in species recovery planning; maintaining membership on the California Biodiversity Council; and partnering with CDFG on Section 6 research under the federal ESA. Caltrans also funds and participates in studies conducted as part of the Transportation Research Board (TRB) National Academy of Science – National Cooperative Highway Cooperative Research Program (NCHRP) on topics such as wildlife crossings, fisheries barotraumas, and invasive species.

Under the Pilot Program, Caltrans will look for opportunities to deepen our collaboration with NMFS and USFWS in conserving federally listed species, consistent with the spirit of Section 7(a)(1). These efforts will include such approaches as seeking opportunities to participate in programs for the conservation of listed species; implementing watershed/landscape-based approaches to habitat and wetlands mitigation; using Context Sensitive Solutions in design and construction; formulating ecosystem-based mitigation consistent with FHWA's Eco-Logical framework; and linking transportation planning and environmental analysis under NEPA, including encouraging the establishment of advance mitigation agreements during the transportation planning process and early coordination with regulatory and land management agencies under Section 6001 of SAFETEA-LU.

The application has been augmented to reflect Caltrans' commitment to the conservation of listed species and the ways in which Caltrans will work with NMFS and USFWS to further the goals of FHWA's programs for protecting endangered species.

Comment 2 states the draft application does not provide details on the priorities and goals applied by Caltrans in project design and on whether Caltrans will accord at least equal if not greater consideration for the protection of threatened and endangered species pursuant to *TVA v. Hill* than other federal agency or action purposes and priorities.

In its project development process, Caltrans evaluates alternative courses of action and makes project decisions in the best overall public interest based on a balanced consideration of the need for safe and efficient transportation, the social, economic, and environmental impacts of the proposed project, and project costs. Where balancing competing environmental impacts to species of concern with other environmental impacts, Caltrans consults with its federal and state resource agency partners and complies with all federal and

state environmental requirements in reaching project decisions that protect and enhance the environment.

Under the Pilot Program, Caltrans and its project development teams will be required to provide the same level of consideration and protection to listed species and critical habitat as does FHWA. Caltrans will follow all published FHWA requirements and policies related to the saving of endangered species, as evidenced by Congress in its passage of the ESA, and reiterated by the Court in *TVA v. Hill*. Specifically, pursuant to Section 7(a)(2) of the ESA, Caltrans will ensure that the actions that it authorizes, funds, or carries out will not jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat.

In furtherance of the commitment, Caltrans project development teams include biologists who have technical knowledge related to project-specific biological resource issues and environmental project coordinators who have experience with ESA consultation and federal policies. Caltrans biologists have expertise in fish, wildlife, amphibian and avian species; botany; wetland sciences; endangered species survey protocols; and specialized habitats such as vernal pools. Statewide, Caltrans staff includes eight fisheries biologists who work closely with NMFS and FHWA on endangered fish species and EFH issues. Caltrans biologists also have experience in highway construction methods, impact assessment techniques, regulatory compliance, and environmental commitment monitoring and evaluation. As necessary on a project-by-project basis, Caltrans retains species-specific experts through contracts with the California State University system, the University of California, and consulting firms. Project coordinators work closely with the biologists and the designers to review progress during project development to ensure that all compliance documents are consistent with federal regulations, policies, and standards, including the ESA.

The application has been revised to clarify the role and knowledge and experience base of Caltrans biologists as part of the project development team, in preparing biological assessments and EFH evaluations, working with environmental coordinators to ensure that environmental documents and compliance reports meet federal requirements and standards, conducting informal consultations, and actively participating in formal consultations.

Comment 3 notes an error in a legal citation to the MSA's EFH provisions.

The codification for the EFH provisions of the MSA has been added to Appendix B of the draft application.

Comment 4 questions whether Caltrans has adequate experience with implementing ESA and EFH consultation requirements.

As the designated non-federal representative for FHWA, Caltrans has extensive experience with ESA and EFH consultations. Caltrans staff regularly conducts informal consultations

and prepares biological assessments and EFH evaluations, as needed. These assessments are used to initiate formal consultations under Section 7 of the ESA and address EFH conservation recommendations. During formal Section 7 consultations, Caltrans routinely works collaboratively with FHWA on all aspects of compliance under the ESA and the MSA. Under the Marine Mammal Protection Act, Caltrans biologists obtain incidental harassment authorizations from NMFS when required.

Adequate training of its biologists is a high priority for Caltrans. Over 30 Caltrans biologists recently attended ESA training provided by FHWA. In 2003, over 50 Caltrans biologists and generalists attended training on EFH consultation. Under the Pilot Program, Caltrans is committed to provide all of its biologists with ESA and EFH assessment training to ensure they have a fundamental understanding of the requirements of these regulations and to ensure consistency between District biologists in the findings they make under these laws. Toward this end, Caltrans will work closely with NMFS staff in augmenting its current training program to support its expanded responsibilities for ESA and EFH consultations. Furthermore, the Pilot Program Memorandum of Understanding (MOU) will require Caltrans to coordinate with FHWA, and other federal agencies as deemed appropriate, within 90 days after execution of the MOU to confirm that Caltrans' expanded training program adequately addresses all areas of environmental responsibility being assumed by Caltrans and to develop a training plan, if required.

Occasionally, differences in professional opinion have occurred on specific projects, as noted in the NMFS letter. Caltrans is committed to providing the needed staff training, to conducting the necessary quality control reviews of its biological evaluations and assessments, and to working closely with NMFS and USFWS to ensure consistent "no effect" and "may affect" determinations are made based on the best available scientific and commercially information. Caltrans will also ensure that its guidance in the Standard Environmental Reference (SER) and its training programs reinforce the requirement that each project adequately document the need for implementing environmental mitigation commitments; the manner in which commitments will be implemented; incorporation of commitments into Plans, Specifications, and Estimates (PS&E) and construction contracts; and completion of commitments.

The application has been augmented to describe Caltrans' extensive experience with ESA and EFH consultations and its commitment to coordinate with NMFS and the USFWS in augmenting its training program in support of its expanded responsibilities under the ESA and MSA.

Comment 5 notes that the SER requires updating.

Caltrans is in the process of updating the SER in preparation for the Pilot Program and to ensure consistency with federal regulations, policies, and standards. The update will include refinement and expansion of Volume 3, "Biological Resources", and Chapter 14, "Biological Resources," of Volume 1. Caltrans has not prepared guidance for the SER on the Marine

Mammal Protection Act (MMPA) in part because NMFS direct assistance has been excellent. The Department will seek NMFS' input in updating its guidance on ESA and MSA compliance and in adding a section to the SER on the MMPA.

See also the response to #4 on the description of Caltrans' experience with ESA and EFH consultations.

Comment 6 addresses Caltrans' quality control procedures for ESA and EFH documents.

Under the Pilot Program, Caltrans will require that all ESA- and EFH-related reports be reviewed by a biologist who is at least at the associate (journey person) level, to ensure that the reports meet federal regulations and policies and Caltrans quality control standards. Caltrans will issue guidance on its quality control procedures for ESA and EFH compliance documents incorporating written FHWA standards, procedures, and guidance to ensure their consistent application. Caltrans will coordinate with NMFS and USFWS to determine if these agencies have quality control procedures guidance that can be used in development of its own procedures.

The application has been revised to state that a formal quality control review of all ESA and EFH documents will be undertaken under the Pilot Program.

Comment 7 requests additional information on the FWHA Pilot Program audits.

FHWA will conduct audits of Caltrans' performance under the Pilot Program. The purposes of these audits will be to ensure Caltrans' compliance with the Pilot Program MOU and applicable federal laws and policies, to evaluate Caltrans' progress toward achieving the performance measures to be identified in the MOU, and to collect information needed to evaluate the success of the Pilot Program and for the Secretary of Transportation's annual report to Congress. Caltrans will be evaluated against a number of performance measures during these audits, including maintenance of documented compliance with the requirements of all federal laws and regulations being assumed; communications with federal resource agencies; and timely completion of key interagency consultations formerly requiring FHWA participation, including Section 7 formal consultations.

The MOU will include a provision that enables FHWA to invite other federal resource and regulatory agencies, as deemed appropriate, to participate in the audit either as part of the FHWA audit team, or as an advisor, commenter, or in some other capacity as deemed appropriate by FHWA. The audit reports will be available for comment for 30 days.

In addition to the FHWA audits, the Pilot Program MOU will require that Caltrans, at least every six months, perform self-assessments of its quality control/quality assurance process (after 2 years, the self-assessments can be conducted annually). The purpose of these self-assessments will be to determine whether its quality control/quality assurance process is working as intended; to identify any weaknesses in the process; and to take corrective action,

as needed. In collecting the information for these self-assessments, Caltrans will monitor its progress toward meeting the performance measures specified in the MOU. These self-assessments will be conducted using a variety of tools, which may include interviews with resources agencies.

Comment 8 addresses Caltrans' legal liability under the Pilot Program and the sunset clause included in Caltrans' waiver of immunity.

After close consultation with the FHWA, based on the FHWA's litigation history under NEPA and under the ESA, Caltrans legal staff determined the risk of additional litigation, from assumption of these environmental responsibilities, was not significant enough to outweigh the potential benefits from the Pilot Program. Careful adherence to federal laws, regulations, and FHWA's policies and guidance documents should substantially reduce the risk of citizens' suits brought in federal court. With regard to your comment concerning any past discussions with the U.S. Department of Justice (USDOJ), we note that the statute establishing the Pilot Program declares that any "State that assumes responsibility under [the Pilot Program] shall be solely responsible and solely liable for carrying out ...the responsibilities assumed...." (23 USC 327{e)). Accordingly, the USDOJ would not be involved in future litigation as a matter of course.

Under the provisions of the 23 USC 327, the Pilot Program will terminate on August 10, 2011. However, Caltrans' waiver of sovereign immunity, codified at Street and Highways Code Section 820.1, is valid only until January 1, 2009. Caltrans staff plans to work with the State Legislature to extend the waiver to August 2011. Congress could choose to extend the program past 2011 in future legislation.

We will continue to provide regular updates on the progress of our Pilot Program application and our MOU with FHWA at our website at http://www.dot.ca.gov/hq/env/nepa_pilot/index.htm. If you have any questions, you may also contact me at cindy_adams@dot.ca.gov or at 916-653-5157.

We look forward to working more closely with our NMFS colleagues under the Pilot Program.

Sincerely,

Cindy Adams

CINDY ADAMS
NEPA Delegation Manager

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April 16, 2007

Cindy Adams, NEPA Delegation Manager
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Subject: US EPA Comments on Draft Application for State of California Department of Transportation (Caltrans) Assumption of Federal Highway Administration (FHWA) Responsibilities Pursuant to the Surface Transportation Project Delivery Pilot Program, 23 CFR 773 (NEPA delegation from FHWA to Caltrans)

Dear Ms. Adams:

The United States Environmental Protection Agency (EPA) has reviewed the Draft Application referenced above. EPA previously provided comments on the Pilot Program for delegation of National Environmental Policy Act (NEPA) Authority from FHWA to Caltrans when the Notice of Proposed Rulemaking was published in the Federal Register on April 5, 2006.

EPA is particularly interested in the pilot program because of our unique role under the NEPA process, which provides for EPA to review environmental documents and provide a formal public rating of the project pursuant to NEPA, Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act. Also, in accordance with a Memorandum of Agreement between EPA and CEQ, EPA carries out the operational duties associated with the administrative aspects of the EIS filing process. The Office of Federal Activities in EPA has been designated the official recipient in EPA of all EISs prepared by federal agencies.

In addition to comments on the draft application, EPA has provided comments below for your consideration when developing the future Memorandum of Understanding (MOU) that FWHA and Caltrans will sign for the Pilot Program. We appreciate Caltrans meeting with us to discuss the pilot program and look forward to continuing discussions related to the delegation of NEPA authority from FHWA to Caltrans.

Recommendations for the Memorandum of Understanding

Decision-making Process and Dispute Resolution

In particular, EPA emphasizes the importance of a clear decision-making process, within Caltrans, for all projects that will be included in the pilot program. Shared understanding among all resource and regulatory agencies of the dispute resolution and decision-making "chain of command" will be critical to quickly addressing complex environmental issues that accompany many of California's transportation projects. In addition, Caltrans and FHWA should agree on, and document now, what criteria must be met in order for FHWA to be engaged in conflict resolution.

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We appreciate Caltrans recognition of this as an area of concern during our recent Mare Island Meeting on April 4, 2007, and we continue to request that the decision-making and dispute resolution process be clearly articulated either in the MOU or through another effort.

National and Regional Guidance, Initiatives, and Agreements

EPA recommends that Caltrans clarify how the agency will now implement the measures contained within multiple FHWA and US DOT Guidance, Initiatives, and Interagency Agreements, as well as future Guidance, Initiatives, and Interagency Agreements that will be signed during the timeframe of the pilot project. For example, will Caltrans implement future measures that will be identified in National Guidance that is from or applicable to FHWA over the next few years? EPA highlights the following guidance as important for Caltrans to integrate into each program and project that is included in the pilot program.

- *Eco-Logical - An Ecosystem Approach to Developing Infrastructure Projects, 2006* – This guidance puts forth the conceptual groundwork for integrating plans across agency boundaries, and endorses ecosystem-based mitigation - an innovative method of mitigating infrastructure impacts that cannot be avoided. http://www.environment.fhwa.dot.gov/ecological/eco_index.asp

- *Program Guidance on Linking the Transportation Planning and NEPA Processes, 2005* - This guidance is intended for use by State Departments of Transportation (State DOTs), metropolitan planning organizations (MPOs), and transit agencies to clarify the circumstances under which transportation planning level choices and analyses can be adopted or incorporated into the process required by NEPA. http://www.environment.fhwa.dot.gov/strmlng/linkingtrans.asp

Comments on the Draft Application

- Reassumption of Projects by FHWA –The application should include details of how the coordination would occur if a project is identified for assumption (initiated either by FHWA or Caltrans) what is considered in the decision-making, and how FHWA will be kept informed of upcoming projects to make potential reassumption decisions.

- Prior Concurrence - Currently, certain controversial and complex projects are submitted to FHWA HQ for Prior Concurrence. The application should identify specific working examples of national, emerging, and policy issues that would be coordinated with FHWA and describe the coordination process with FHWA, including specific FWHA offices and level of staff to involve.

- Projects crossing state boundaries – The Application should describe how Caltrans and FHWA will coordinate on projects that cross state boundaries or have major influences across stateliness.

- Page 34: EPA recommends that the Draft Application be revised to include clarification related to Executive Orders. Although Page 34 identifies several Executive Orders relating to highway projects specifically, there are other Executive Orders, and there will be more in the future, that identify specific measures, commitments, and activities for US DOT that have the potential to be incorporated during the NEPA process. The Application should

specifically state that Caltrans will integrate relevant measures identified in Executive Orders when possible. EPA also recommends adding "Executive Order 13423 - Strengthening Federal Environmental, Energy, and Transportation Management" as an Executive Order relating to Highway Projects.

- Appendix B: Appendix B (list of environmental laws) does not include Section 9 of the Rivers and Harbors Act, which regulates construction and maintenance of bridges over navigable waterways, and Section 6(f) of Land and Water Conservation Fund Act, which requires conversion of lands or facilities acquired with Land and Water Conservation Act funds to be coordinated with the Department of Interior. EPA recommends that the Application clarify Caltrans role regarding these laws.

- The Application should describe the transition process once the authority to assume FHWA environmental responsibility expires (currently January 1, 2009).

We appreciate the opportunity to review the Draft Application and look forward to reviewing the MOU that will be completed as the next step in the delegation process. We continue to be available to provide feedback on the process and look forward to our continued coordination on the delegation of NEPA as well as with the multiple projects and programmatic issues that our agencies are working on together. Please send the completed application, as well as the MOU, when they are both available for review to the address above (mailcode: CED-2). If you have any questions, please contact Connell Dunning at 415-947-4161 or dunning.connell@epa.gov.

Sincerely,

Connell Dunning

For Nova Blazej, Manager
Environmental Review Office

cc: Steve Thompson, US Fish and Wildlife Service
Wade Eakle, Army Corps of Engineers
Rod McInnis, National Marine Fisheries Service

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Flex your power!
Be energy efficient!

May 18, 2007

Ms. Nova Blazej
Manager of Environmental Review Office
United States Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105-3901

Subject: Comment letter, dated April 16, 2007, on California Department of Transportation's (Caltrans) Application for Assumption of Federal Highway Administration (FHWA) Environmental Responsibilities Pursuant to the Surface Transportation Project Delivery Pilot Program, 23 CFR 773

Dear Ms. Blazej:

Thank you for your letter regarding Caltrans' application for assumption of FHWA responsibilities under the Surface Transportation Project Delivery Pilot Program. We appreciate the U.S. Environmental Protection Agency's (EPA's) interest in the Pilot Program and your meeting with us to discuss the agency's questions and concerns. Responses to each of the comments contained in your letter are provided below.

Decision-making Process and Dispute Resolution

Caltrans shares EPA's interest in a clear decision-making process. We agree that a common understanding among all involved agencies of the dispute resolution and decision-making chain of command is essential to quickly resolving issues as they arise. Caltrans intends to rely on the dispute resolutions processes described in the section of the application entitled, "Issue Identification and Conflict Resolution Procedures, Process with External Agencies", to deal with disputes under the Pilot Program. Caltrans will share its internal District and Headquarters roles and responsibilities for dispute resolution with EPA and other federal resource agencies as they become more fully developed.

It is our understanding that FHWA will not intervene or otherwise be involved in any specific issues related to projects or responsibilities assigned to Caltrans under the Pilot Program. However, FHWA may attend meetings between Caltrans and other Federal agencies and submit comments to Caltrans and the Federal agency under limited extraordinary circumstances, as follows:

- FHWA reasonably believes that Caltrans is not in compliance with the MOU;

- FHWA determines that an issue between Caltrans and another federal agency concerns emerging national policy issues under development by the U.S. Department of Transportation.
- Upon request by either Caltrans or another federal agency and with agreement by FHWA.

Federal agencies may also raise concerns to FHWA regarding Caltrans' compliance with the Pilot Program MOU. FHWA will review those concerns and, if appropriate, will notify Caltrans of the potential compliance issue and work with Caltrans and the Federal agency to resolve the issue. If needed, FHWA can take appropriate actions to ensure compliance with the MOU.

National and Regional Guidance, Initiatives, and Agreements

Under the Pilot Program, Caltrans will be required to comply with the same environmental procedural and substantive requirements that apply to FHWA. This provision includes compliance with existing environmental requirements, guidance, and policies (including the guidance mentioned in your letter), as well as new ones adopted during the Pilot Program. These requirements include all federal laws, executive orders, U.S. Department of Transportation (USDOT) Orders, FHWA Orders, and official guidance and policy issued by the USDOT or USDOT Orders. Caltrans is committed to furthering FHWA's national environmental goals and initiatives including those for environmental stewardship and streamlining, context sensitive solutions, ecosystem approaches to project development, linking planning and NEPA, to at least the same degree as does the California Division of FHWA. Caltrans will continue to work in partnership with the California Division of FHWA on these important national goals and initiatives.

Specific Comments on the Draft Application

Reassumption of Projects by FHWA

The Pilot Program MOU will provide a process that can be initiated by either FHWA or Caltrans for the reassumption of all or part of FHWA's responsibilities that have been assumed by Caltrans on a project under the Pilot Program. The factors that would be considered by FHWA for reassumption of responsibilities include Caltrans' non-compliance with the Pilot Program MOU, significant or unique national policy interests associated with a specific project for which Caltrans' assumption would not be appropriate, or issues related to a government-to-government consultation that Caltrans cannot satisfactorily resolve. Caltrans may consider requesting that additional projects be excluded from assumption if it is determined that FHWA's initial or continued involvement in a project is essential. Factors that would be considered in these decisions include FHWA's previous involvement with a project and significant or unique national policy issues associated with a project. These projects would be identified by Caltrans and presented to FHWA following the process for state-initiated reassumptions that will be identified in the Pilot Program MOU.

Prior Concurrence

Projects identified for prior concurrence would require approval from Caltrans Division Chief of Environmental Analysis before proceeding with key NEPA approvals. On prior concurrence projects, the application states that Caltrans will coordinate with FHWA on underlying policy issues related to emerging or national policies. Examples of such policies include climate change, mobile source air toxics analysis, and constructive use under Section 4(f) of the U.S. Department of Transportation Act. Caltrans will coordinate with FHWA's California Division technical staff and managers, and with FHWA Headquarters' managers through the California Division, as appropriate to the issue.

Projects Crossing State Boundaries

The section of the application entitled, "§773.106 (b)(1): Classes of Highway Projects for Which Caltrans is Requesting NEPA Responsibility", has been revised to clarify that Caltrans will not be assuming responsibility for interstate projects.

Executive Orders for Which Caltrans is Requesting Responsibility

The section of the application entitled, "§773.106 (b)(2): Federal Environmental Laws Other than NEPA for Which Caltrans is Requesting Responsibility" and Appendix B have been clarified to state that Caltrans is requesting to assume *all* of FHWA's responsibilities for environmental review, interagency consultation, and other regulatory compliance-related actions pertaining to the review or approval of projects for which Caltrans is requesting assumption of responsibilities under NEPA and other federal environmental laws. These sections of the application have also been revised to clarify that the list of environmental laws and executive orders contained in the application may not be all-inclusive.

Appendix B

The list of federal environmental laws and executive orders identified in Appendix B of the application was taken from the Final Rule for the Pilot Program application. Section 9 of the Rivers and Harbors Act was not included in the Final Rule since FHWA determined that it relates to engineering, not environmental decisions. The Land and Water Conservation Fund Act, 16. U.S.C. 4601-4 is listed in Appendix B under "Parklands".

Transition Process

The Pilot Program MOU will provide a transition process to prepare for termination of the Pilot Program. This process requires that FHWA and Caltrans prepare a plan to transition the responsibilities Caltrans has assumed back to FHWA so as to minimize disruption to any assumed projects; minimize confusion to the public; minimize burdens to other affected federal, state, and local agencies; and to ensure that Caltrans will be able to

complete all environmental approvals by Pilot Program termination date, to the maximum extent possible. The MOU will specify those dates by which the plan must be developed and approved. Under the provisions of the 23 USC 327, the Pilot Program will terminate on August 10, 2011. However, Caltrans' waiver of sovereign immunity, codified at Street and Highways Code Section 820.1, is valid only until January 1, 2009. Caltrans staff plans to work with the State Legislature to extend the waiver to August 2011. Congress could choose to extend the program past 2011 in future legislation.

We will continue to provide regular updates on the progress of our Pilot Program application and our Memorandum of Understanding with FHWA at our website at http://www.dot.ca.gov/hq/env/nepa_pilot/index.htm.

We look forward to working more closely with our EPA colleagues under the Pilot Program.

Sincerely,

CINDY ADAMS
NEPA Delegation Manager