

**AMENDMENT TO THE FOURTH RENEWED MEMORANDUM OF UNDERSTANDING**

**Between the  
Federal Highway Administration, California Division  
and the  
California Department of Transportation  
State Assumption of Responsibility for Categorical Exclusions**

THIS AMENDMENT to the FOURTH RENEWED MEMORANDUM OF UNDERSTANDING (“MOU”) made and entered into by and between the FEDERAL HIGHWAY ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION (“FHWA”) and the STATE of California, acting by and through its DEPARTMENT OF TRANSPORTATION (“State”), hereby provides as follows:

WITNESSETH:

**Whereas**, Section 326 of amended Chapter 3 of Title 23, United States Code (23 U.S.C. § 326) allows the Secretary of the United States Department of Transportation (DOT Secretary), to assign, and a State to assume, responsibility for determining whether certain designated activities are included within classes of action that are categorically excluded from requirements for environmental assessments or environmental impact statements pursuant to regulations promulgated by the Council on Environmental Quality under part 1500 of title 40, Code of Federal Regulations (CFR) (as in effect on October 1, 2003); and

**Whereas**, the California Division Administrator, acting by and through FHWA and the Director of Caltrans on May 31, 2016, entered into an MOU under 23 U.S.C. 326; and

**Whereas**, Stipulation VIII(A) of the MOU states that the MOU may be amended at any time upon mutual agreement by both the FHWA and Caltrans; and

**Whereas**, FHWA and Caltrans now seek to amend the MOU dated May 31, 2016.

Now, therefore, FHWA and Caltrans agree to amend the May 31, 2016, MOU as follows, leaving all other areas unchanged.

- I. Stipulation IV.G.5 is modified to say the following:
  5. The State agrees to consult with the FHWA and DOJ prior to filing any dispositive motion in any litigation arising out of or relating to the State’s discharge of any responsibility under this MOU. Caltrans will notify the FHWA’s California Division Office and DOJ prior to settling any action, or potential action, and shall provide the FHWA and DOJ with a reasonable amount of time (at least 10 calendar days) to review and comment on the proposed settlement. Caltrans will not execute any settlement agreement until FHWA and DOJ have provided comments on the proposed settlement, indicated that they will

not provide comments on the proposed settlement, or the review period has expired, whichever occurs first.

II. Stipulation IV.G.9 is modified to say the following:

9. Within 7 calendar days of receipt by Caltrans, Caltrans will provide notice to FHWA's Division Office and DOJ of any court decision on the merits, judgment, and notice of appeal arising out of or relating to the responsibilities Caltrans has assumed under this MOU. Caltrans shall notify FHWA's Division Office and DOJ within five (5) days of filing a notice of appeal of a court decision. Caltrans shall confer with FHWA and DOJ regarding the appeal at least forty-five (45) days before filing an appeal brief in the case.

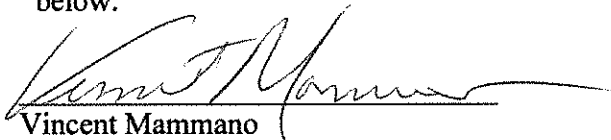
III. Stipulations V.B.1-2 are modified to state the following:

1. The State's consent to Federal court jurisdiction and waiver of sovereign immunity currently sunsets on January 1, 2017. Affirmative action by the State of California will be necessary to extend the State's consent and waiver. If California does not consent to Federal court jurisdiction and waive sovereign immunity, then Caltrans' participation in the Program will be suspended on January 1, 2017, for a period of up to 90 calendar days. If adequate certification is not provided within this time period, then this MOU and California's participation in the Program shall be terminated.
  - a. During the period of suspension, the State will not make any NEPA decisions or implement any of the environmental review responsibilities assigned under Parts I and II of this MOU. Pursuant to Section 1318(d) of the Moving Ahead for Progress in the 21st Century Act (P.L. 112-141; 126 Stat. 405) and 23 CFR 771.117(g), the State and FHWA may enter into a programmatic agreement to allow the State to make NEPA CE determinations on FHWA's behalf during this time.
  - b. If the necessary actions are taken to authorize a new consent to Federal court jurisdiction and waiver of sovereign immunity during the period of suspension, then California's participation in the Program will resume on the day the FHWA acknowledges receipt of adequate certification provided by the State as required by 23 U.S.C. 326(c)(4).
2. The FHWA and the State shall have a plan to transition the responsibilities that State has assumed back to FHWA in the event that the State's participation in the program is terminated. This plan shall be developed to minimize disruption to projects, confusion to the public, and burdens on other affected Federal, State, and local agencies. The plan shall be approved by both FHWA and Caltrans.

IV. Stipulation VI.D. is amended to state the following:

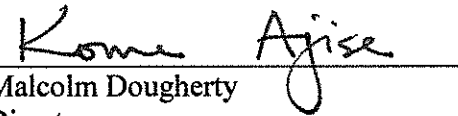
- D. The State and the FHWA shall consider comments provided by the respondents to the public notices before finalizing the MOU, or any proposed amendment or renewal agreement. Upon completion of the decision-making process, the FHWA and the State shall make the final MOU and any amendments available for public inspection. The FHWA and the State may rely on the State's website to meet this requirement.

Execution of this MOU amendment and implementation of its terms by the State formally evidences that the parties have reviewed this MOU amendment and determined that it complies with the laws, regulations and policies applicable to the FHWA and the State. Accordingly, this MOU is approved and is effective upon the date of the last signature below.

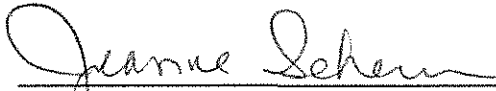


Vincent Mammano  
Division Administrator  
Federal Highway Administration-California Division

Date: Dec 30, 2016

for   
Malcolm Dougherty  
Director  
California Department of Transportation

Date: Dec 30, 2016



Jeanne Scherer  
Chief Counsel  
California Department of Transportation

Date: December 30, 2016