

# NEPA Assignment 327 MOU Renewal

# Overview

- 327 Memorandum of Understanding (MOU) Background
- Renewal schedule
- Project Delivery and Time Savings

## 327 MOU Background

- The Surface Transportation Project Delivery Program (23 U.S.C. 327) allows the Secretary of Transportation to assign and a state to assume its responsibilities under NEPA and other environmental laws for highway projects.
- Caltrans has been the NEPA lead agency for over 12 years assuming FHWA's responsibilities.
- MOU is renewable every 5 years.
- Last renewal: December 23, 2016

# Federal Court Jurisdiction

- **Waiver of Sovereign Immunity:** Caltrans waived its 11th Amendment right to sovereign immunity against actions brought in federal court.
- California assumes sole legal responsibility and liability under federal law for its actions and decisions under NEPA Assignment.
- Caltrans must defend projects in federal court.
- AB 252 eliminates sunset clause (California Streets and Highways Code Section 820.1)

# Schedule

- Provided FHWA (CA Division) DEA's 327 Work Plan/Schedule
  - August 2019
- Submitted Letter of Intent to FHWA (DC) signed by Director
  - December 2019
- Obtaining District MOU Comments (Dist. Environ. Deputy Directors)
  - January 2020
- Submit Draft MOU Renewal Package to FHWA (DC) signed by Director
  - June 2020

# Schedule

- FHWA (DC) comments on Draft MOU
  - July 2020
- Outreach to External Partners Summer 2020
  - Tribal listening session
  - Transportation Partners (i.e. MPO's, CALCOG, SHCC)

# Schedule

- Caltrans' approval of Final Draft MOU by Director
  - December 2020
- Submittal of Final MOU Package
  - September 2021: Publication in Federal Register
  - October 2021: 30-day comment period closes
- Final MOU Approval (FHWA DC)
  - December 2021

# Project Delivery

326 CEs	327 CEs	Draft EAs	FONSIs	Draft EISs	Final EISs	RODs	Total
13,074	210	261	230	22	19	16	13,832

*Data: July 1, 2007 through September 30, 2019 for Capital and Local Assistance programs.*



# Time Savings

NEPA Environmental Approval Milestones	Pre-NEPA Assignment Median Months (# of approvals)	NEPA Assignment Median Months (# of approvals)	Time Savings Median Months
BES-to Draft EA Approval	42.3 (31)	30.8 (261)	11.5
BES-FONSI	54.1 (31)	39.9 (230)	14.2
NOI-Draft EIS Approval	69.9 (8)	44.4 (22)	25.5
NOI-Final EIS Approval	193.9 (5)	69.9 (19)	124.0
Submittal of FESA Section 7 BA-USFWS/NMFS Biological Opinion	11.0 (25)	6.0 (162)	5.0

***Data: July 1, 2007 through September 30, 2019 for Capital and Local Assistance programs.***

# MOU Feedback

- Areas of Concern
- Ideas and Suggestions