

DEPARTMENT OF TRANSPORTATION

DIVISION OF ENVIRONMENTAL ANALYSIS

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*Serious drought.
Help save water!*

December 22, 2016

California City and County
Environmental Transportation Partners

Dear Partner:

On January 1, 2017, California Streets and Highways Code Section 820.1 will sunset and Caltrans must stop performing federal responsibilities for environmental decisions and approvals under the National Environmental Policy Act (NEPA) on highway projects in California, funded by the Federal Highway Administration (FHWA).

Since 2007, Caltrans has performed these duties under the program known as NEPA Assignment, pursuant to two Memoranda of Understanding (MOU) signed by the FHWA. The 23 USC 326 MOU allows Caltrans to approve 326 Categorical Exclusions (CEs); the 23 USC 327 MOU allows Caltrans to approve Environmental Assessments (EA), Environmental Impact Statements (EIS), and Categorical Exclusions that cannot be approved as 326 CEs.

As a condition of each MOU, the FHWA requires California to consent to the jurisdiction of federal courts for actions taken by Caltrans under NEPA Assignment. To accomplish this, the Legislature added Section 820.1 to the Streets and Highways Code, waiving California's immunity under the Eleventh Amendment to the U.S. Constitution. The Legislature included a sunset clause to delete Section 820.1 on January 1, 2017.

On December 5, 2016, the Legislature convened the 2017-2018 Regular Session, and Assembly Bill (AB) 28 (Frazier) was introduced. AB 28 would add back Section 820.1 to the Streets and Highways Code, with provisions to waive immunity and consent to the jurisdiction of federal courts, but with no sunset clause. The Legislature will consider AB 28 when they reconvene in January. In the meantime, on January 1, Caltrans' NEPA Assignment authority will be suspended for up to 90 days. If by that time, the waiver of immunity is back in place, the suspension will lift automatically and Caltrans will again perform NEPA Assignment responsibilities.

During the suspension period, the FHWA will handle federal NEPA responsibilities. The FHWA is no longer adequately staffed for these duties, so project delay will likely result. Critical NEPA duties that Caltrans will **not** be able to perform include:

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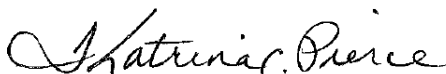
- signing Draft Environmental Documents, Findings of No Significant Impacts, Final Environmental Documents, and Records of Decision;
- approving federally required environmental reevaluations for EISs that were signed three years prior or reevaluations for a project with a substantial change;
- submitting Biological Assessments for formal consultation pursuant to Section 7 of the Endangered Species Act; and
- approving 327 and some 326 CEs.

In order to minimize the impact to 326 Categorical Exclusion (CE) approvals, the FHWA and Caltrans have entered into a Programmatic CE (PCE) Agreement that will allow Caltrans to approve some 326 CEs. The PCE will be effective on January 1, 2017 and will be canceled when the waiver is back in place and the suspension lifts. The PCE is attached for your review and distribution. Please note, not all projects that were approved under the 326 MOU will be approved under the PCE, since the approvals are based on a project's environmental impacts, which must be considered on a case by case basis.

During the suspension period, Caltrans Districts will work through their respective Environmental Coordinators, who report to the Chief, Division of Environmental Analysis (DEA). The DEA NEPA Assignment team will also work with the Environmental Coordinators to monitor and minimize the extent of any project delays. The FHWA will coordinate directly with the DEA NEPA Assignment team.

Please consult with your respective Caltrans Districts, who have received direction through a memorandum similar to this informational letter. If you have questions, or need assistance, please contact Tammy Massengale, NEPA Assignment Program Manager at (916) 653-5157.

Sincerely,



KATRINA C. PIERCE
Chief, Division of Environmental Analysis

- c: Malcolm Dougherty, Director
Kome Ajise, Chief Deputy Director
Karla Sutliff, Chief Engineer
Deputy District Directors, Environmental
Coordinators, Division of Environmental Analysis
Office Chiefs, Division of Environmental Analysis
Rihui Zhang, Division Chief, Local Assistance
Germaine Belanger, NEPA Office Chief, Local Assistance
Tashia Clemons, Director, Program Development, FHWA

Attachment: Programmatic Categorical Exclusion Agreement