

**FEDERAL HIGHWAY ADMINISTRATION
CALIFORNIA DIVISION**

Monitoring Review on the Categorical Exclusion Assignment Program
(23 U.S.C. 326)

September 2008
(Revised October 2008)

**FINAL REPORT
S51796**



California poppy (*Eschscholzia californica*)
California State Flower



Prepared By:

The Federal Highway Administration
California Division

David Cohen, Environmental Program Coordinator
Dominic Hoang, Transportation Engineer, State Programs
Tammy Keeley, Realty Specialist, Local Programs

In Cooperation With:

Scott Williams, Caltrans Division of Environmental Analysis
Germaine Belanger, Caltrans Division of Local Assistance

APPROVAL



Sandra Garcia-Aline
Director, Local Programs Unit / Environmental Analysis

Date 10/8/08

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I. Executive Summary

Categorical Exclusions (CE) are a class of National Environmental Policy Act (NEPA) actions which, based on past experience with similar actions, do not involve individual or cumulatively significant environmental impacts. They are actions which do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic, or other resource; do not involve significant air, noise, or water quality impacts; do not have impacts on travel patterns; or do not otherwise, either individually or cumulatively, have any significant environmental impacts (23 CFR 771.117(a)).

The Federal Highway Administration (FHWA) defines CEs in 23 CFR 771.117, where they are divided into two groups, based on a transportation project's potential for environmental impacts:

The first group, listed in 23 CFR 771.117(c) (called the "c list"), consists of actions that almost never cause significant environmental impacts. For instance, activities which do not involve or lead directly to construction, approval of utility installations along or across a transportation facility, and construction of bicycle and pedestrian lanes, paths, and facilities are in the "c list."

The second group, listed in 23 CFR 771.117(d) (called the "d list"), are examples of actions that normally do not result in significant environmental impacts, but for which studies must still be prepared to document that a specific project will not result in a significant environmental impact.

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) Section 6004 allows the U.S. Department of Transportation (USDOT) to assign to the States the responsibility for determining whether or not a project is categorically excluded from the requirement to prepare an Environmental Assessment or an Environmental Impact Statement. The law, codified in 23 U.S.C. 326, also allows States to assume some, all, or none of the other Federal responsibilities, such as environmental review, consultation, project-level air quality determinations, or other environmental decisions. However, the U.S. Government's trust responsibility for conducting government-to-government consultations with Native American tribal governments is specifically retained the FHWA, and not assigned to the States. Decisions outside of the environmental phase of project development (e.g., right of way decisions for Federal land transfers, engineering decisions for modified access to the Interstate) are also not assigned to the California Department of Transportation (Caltrans), and these decisions are subject to the provisions of the 2007 Stewardship & Oversight Agreement between Caltrans and FHWA California Division.

The assignment of environmental decision-making for 6004 CEs to Caltrans is governed by a Memorandum of Understanding (MOU). The term of the MOU is for three years, after which time it can be renewed. The State's performance of the MOU provisions will

be monitored, and the performance will be considered when the MOU is renewed. The USDOT can terminate the entire MOU, terminate any individual responsibility assigned, or exclude a project from the MOU if there is evidence that the State is not meeting the responsibilities assumed in the MOU.

Caltrans assumed FHWA's authority and responsibilities for determining if a transportation project qualifies for a 6004 CE on June 7, 2007. For these categorically excluded projects, Caltrans also assumed FHWA's responsibilities for coordination and consultation under other Federal environmental protection laws, such as the Endangered Species Act, Clean Water Act, Clean Air Act, Section 4(f) of the US DOT Act, and the National Historic Preservation Act. In the implementation of CE Assignment, Caltrans' environmental review, reevaluation, consultation, and other related responsibilities for 6004 CEs assigned under the MOU are subject to the same existing and future procedural and substantive requirements as if the responsibilities were carried out by FHWA.

23 U.S.C. 326 also requires FHWA to conduct monitoring reviews of States to assure compliance with the stipulations of the MOU, as well as FHWA's regulations and policies in environmental analysis, including Caltrans' compliance with the requirements of Federal environmental protection laws, administered by Federal resource and regulatory agencies. The monitoring reviews are also intended to verify that States have the financial resources to carry out the requirements of the MOU. The FHWA California Division shall take into account Caltrans' performance when considering the renewal of the MOU.

The first CE Assignment monitoring review in California, and in the nation, was conducted in March and April 2008 by the FHWA California Division. First, the review team held a kick off meeting with Caltrans Headquarters, and inquired about the statewide resources dedicated to CE Assignment. Based on this information, and the review team's intention to visit with two Caltrans Districts, one in a predominantly rural, and another in a predominantly urban setting, two site visits were conducted in Caltrans Districts 3 (Marysville) and 8 (San Bernardino). The data and information collected in the pre-review activities and in the site visits was then analyzed by the review team to identify trends for areas of successful practices, as well as areas that need the FHWA's technical advice and assistance. The review team also used the interviews as a tool to examine any root causes of any observed issues. The root cause analysis enabled the review team to determine if the issues were isolated incidents, procedural implementation errors, or systematic in nature.

The review team observed Caltrans' successful practices in all the six performance areas of the MOU. These areas are compliance with governing Federal environmental protection laws, regulations, and the provisions of the MOU; processing projects assigned under the MOU: State identification, documentation, and review of effects; excluded projects; required State resources, qualifications, expertise, standards, and training; State quality control; MOU performance monitoring and quality assurance.

In addition, the review team found six areas in which FHWA California Division can provide technical advice and assistance to Caltrans.

The six technical advice and assistance findings include the consistent use of Endangered Species Act Section 7 terminology in the technical studies associated with CE determinations, the verification of fiscal constraint in the environmental phase, strengthening lines of communication between FHWA California Division and Caltrans for Caltrans to notify FHWA as training sessions are being delivered, improvements to the accuracy of the quarterly reports, the clear identification of the decision maker on the CE form, and the application of Section 4(f) to transportation enhancement projects.

The following six recommendations are included in this report to address the identified findings:

1. In the CE determinations, and in supporting technical studies, such as Biological Assessments, we recommend that Caltrans consistently use the Section 7 terminology explained in the U.S. Fish & Wildlife Service Consultation Handbook.
2. In the new filing system for CE determinations, we recommend that a new tab be established to document how transportation planning requirements, outlined in the FHWA's January 28, 2008 policy memorandum for fiscal constraint. We also recommend that the policy memorandum be published on-line in the Standard Environmental Reference.
3. We recommend the lines of communication be strengthened between Caltrans and the FHWA California Division for Caltrans to provide notice of training in more detail, and more frequently.
4. We recommend that Caltrans implement QA/QC activities to assure that the list of projects reported to the FHWA California Division on a quarterly basis is as accurate and comprehensive.
5. We recommend that the CE form be revised to include a section for the CE decision makers to print their full names, in addition to the signature and date blocks.
6. We recommend that Caltrans follow the FHWA Section 4(f) Policy Paper regarding the application of Section 4(f) especially when evaluating whether there is a Section 4(f) use. In particular, we recommend that Caltrans District 3 disseminate to its staff the FHWA's policy paper as it relates to the application of Section 4(f) to bikeways and transportation enhancement projects. We also recommend that Caltrans include in its project files all appropriate Section 4(f) documentation. Such documentation includes a determination whether Section 4(f) properties are present in the project area, whether the project might "use" a Section 4(f) property, and whether or not the provisions of Section 4(f) apply. This documentation could consist of an email or letter to the project file that would show evidence of compliance.

These recommendations and the associated findings are discussed in further detail in the report.

II. Overall Review Opinion

After the careful consideration of these findings, as well as the numerous successful practices, it is the review team's opinion that the implementation of CE Assignment in California has resulted in an overall outcome that is more efficient than the environmental outcomes prior to the assignment. It is also the review team's opinion that these monitoring reviews, as well as Caltrans' periodic self-assessments of performance reportable to the FHWA California Division on a periodic basis, will be essential for the FHWA to verify that these efficiencies will not affect the checks and balances needed to balance competing public interests between environmental protection and project delivery. In these monitoring reviews, it is essential for the FHWA California Division to assure that time and budget constraints and concerns associated with Federal-aid highway project sponsorship, those associated with Caltrans' "owner / operator" responsibilities, and those associated with Caltrans' institutional, and often political, relationships with local public agencies do not affect the objectivity of Caltrans' well-informed decision making in environmental analysis.

III. Purpose

Section 6004 (a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy of Users (SAFETEA-LU) allows State Department of Transportations to assume responsibility for determining whether certain designated activities are included within classes of action that are categorically excluded from requirements for environmental assessment or environmental impact statements. On June 7, 2007, a Memorandum of Understanding (MOU) was made and entered with FHWA California Division and Caltrans. Caltrans is the first State Department of Transportation to enter into an MOU with FHWA.

The review team evaluated whether Caltrans has provided the resources necessary to carry out its responsibilities under the MOU and 23 U. S. C. 326, the level of compliance with the provisions of the MOU, including compliance of NEPA and other environmental review and consultation authorities and responsibilities assigned under the MOU. The assigned authorities and responsibilities include both procedural and substantive compliance with Federal environmental protection laws.

Under Section 6004, Caltrans assumed the authority and responsibility for approving CEs on the "c" list, and those CEs listed as examples on the "d" list (23 CFR 771(c) and 23 CFR 771.117(d)). In addition, for the CE Assignment Program in California, Caltrans added seven other categories of activities as assignable under the provisions of the Section 6004 MOU (i.e., the Appendix A list). All activities proposed for assignment under Appendix A of the 23 U.S.C. 326 MOU fit well within the range of activities that are routinely determined to be CEs and result in no significant impacts. The activities are generally of smaller scale and with smaller footprints than those actions currently listed

as examples in 23 CFR 771.117 (d); any environmental impacts resulting from these proposed activities would also generally be of smaller scale than those of actions currently listed as examples in 23 CFR 771.117(d). Several of the activities proposed for addition are environmental stewardship activities; in other words, the entire purpose of the activity or project is to protect or improve the environment.

IV. Objectives

The process review evaluated the performance and success of the 23 U.S.C. 326 MOU. The six performance measures focused on were quality, timesavings, and the overall environmental outcome of the MOU. The following six-performance measures were utilized in this process review to evaluate quality.

1. CE decisions are appropriately and timely documented
2. CE decisions are factually and legally supported at the time the decision is made.
3. CE decision-making procedures comply with NEPA, 23, CFR 771.117, and the MOU.
4. Caltrans has met the staffing and quality control requirement of MOU.
5. Caltrans has complied with other Federal and State legal requirements.
6. Caltrans has complied with recordkeeping requirement.

This process review also captured the timeliness measures of the CE Assignment to evaluate if there was a reduction in time required in processing assigned CEs, measured by type (“c” list “d” list examples, and other “d” list).

The overall purpose of this process review was to be ready to respond to future inquiries from Congress and the public relative to whether CE Assignment Program in California has resulted in an overall environmental outcome that is better than, worse than, or the same as the environmental outcomes prior to the assignment.

V. Scope and Approach

The scope of this process review was to evaluate Caltrans's activities and performance in the CE Assignment Program according to provisions of the MOU.

The following steps were taken in data collection and analysis:

- Reviewed the level of evaluation effort by CE type - i.e., “c” list, “d” list, and Appendix A list
- Gathered program-level data on Caltrans' performance of other obligations specified in the MOU on the effectiveness of Caltrans's control process for the assigned responsibilities and Caltrans' satisfaction of other environmental review process responsibilities.

- Reviewed quarterly reports of CE projects submitted by the State as required by the MOU.
- Interviewed staff to confirm that the CE analysis, preparation, and decision-making structure operate in accordance with the MOU.
- Provided staff a questionnaire to determine whether the State is meeting resource adequacy requirement.
- Reviewed CE documentation and the performance of other assigned environmental responsibilities on randomly selected projects.
- Interviewed staff preparers, reviewers, and decision-makers for projects that are classified as "d" list CEs under MOU Stipulation I (B) (3).
- Reviewed agency and public complaints or indications of concern about the decision-making process under the MOU, as well as State actions in response to those communications.
- Coordinated within the FHWA to identify any staff concerns/problems about CE decisions or other aspects of MOU performance.
- Selected CE projects to assess whether the type/scope of impacts from the project are consistent with Caltrans' project CE review and documentation and with any other assigned environmental determinations made for the project by the State.
- Reviewed State's gross data on CEs, EISs, and EA projects during the periods in question, to look for unexpected trends/anomalies.
- Determined how well the State met the quality and time measures.

The evaluation of projects considered was based on information gathering from District 3 and District 8, including bridge and roadway projects and projects on and off the State highway system. All 84 projects from the quarterly report provided by Caltrans were reviewed by desktop reviews. In addition, 10 of 84 projects were randomly selected for full evaluation conducted at the site field visits. The questionnaires were circulated to environmental program representatives to Caltrans' capital program and the local assistance program to determine whether Caltrans is meeting the resource adequacy requirement of the MOU.

Interviews were conducted at each of the site visits, which were conducted on March 30, 2008 in Caltrans District 8, San Bernardino, CA, and on April 8, 2008 in District 3, Marysville, CA. Each district visit began with an opening meeting explaining purpose and scope of the review, and a detailed explanation of the thought process behind the selection of the interview questions. The review team interviewed the representatives from the capital program and local assistance. The review team also conducted the

reviews of technical studies associated with the 10 projects selected for “full evaluation.” For these projects, the team analyzed how the technical studies and the documented outcomes of consultations with Federal resource agencies supported the CE determination. A close out meeting with Caltrans district staff concluded each field visit.

VI. Data Analysis

The review team decided to review all Section 6004 Categorical Exclusion (CE) projects completed by Districts 3 and 8 in the first two quarters of the CE assignment. There were 74 projects in the two quarterly reports (June – December 2007) provided by Caltrans. There were 41 District 3 projects; 22 state projects and 19 local assistance projects. There were 33 District 8 projects; 24 state projects and 9 local assistance projects.

Caltrans also provided the review team hard copies of the CE determination forms and checklists for the projects completed in the first two quarters. There were 85 projects; one was excluded for further review, because it was a Section 6005 CE. Of the 84 projects, 23 are c-list activities, 53 are d-list activities, and 8 are Appendix A activities. There are 40 District 3 projects; 24 are state projects and 16 are local assistance projects. There are 44 District 8 projects; 30 are state projects and 14 are local assistance projects. These numbers are compiled in Table 1 below.

Table 1. Prior to the site visits, the monitoring review team asked Caltrans Districts 3 and 8 to provide to the FHWA California Division the CE forms for all the Section 6004 CE determinations made in the first two quarters. These numbers represent the numbers of the actual CEs examined by the team. These numbers are not consistent with the numbers in the quarterly reports, due to the observed inaccuracies in the quarterly reporting system.

		Activities			Total
		23 CFR 771.117 (c) List	23 CFR 771.117 (d) List	23 U.S.C. 326 MOU Appendix A	
District 3	State	4	14	6	24
	Local	7	9	0	16
District 8	State	6	22	2	30
	Local	6	8	0	14
Total		23	53	8	84

Before the district visits, the review team reviewed all 84 projects’ CE determination forms and checklists to see if the CE determinations were proper, documentation was adequate, and supporting studies were done and documented. A project review worksheet was used in facilitating this task.

Five projects in each district were chosen from these 84 projects for secondary reviews. These ten projects consist of four state projects and six local assistance projects. During

the site visits, the review team examined these ten project files to see if the technical studies or supporting documentation as stated on the provided in the “CE NEPA Delegation Checklist” were on files; and based on the results of technical studies, if evidence and the results of consultations with resource agencies were on files. Table 2 illustrates the distribution of the 10 projects across the two Caltrans districts, and across “capital” and local assistance programs.

Table 2. The selected projects which were subject to secondary reviews. For these projects, the review team also examined the technical studies (e.g., air quality studies, natural environment studies, biological assessments, community impact studies, historic property survey reports, traffic noise abatement studies, Section 4(f) *de minimis* findings) to verify how the information in the technical studies and the feedback from Federal resource agencies support the CE determination.

		Activities			Total
		23 CFR 771.117 (c) List	23 CFR 771.117 (d) List	23 U.S.C. 326 MOU Appendix A	
District 3	State	0	1	1	2
	Local	2	1	0	3
District 8	State	0	2	0	2
	Local	1	1	1	3
Total		3	5	2	10

Data Quality Management Notes and Reconciliation

District 3

A. State Projects

1. Three projects that were signed between June and October 2007 were not in the 2007 Quarterly Reports. They were: 3E040, 3E080, and 2E990.
2. One CE had an inconsistent Expenditure Authorization number, which is used for tracking in the quarterly reports: 4C130K on CE vs. 1E130 in the 2007 Quarterly Report.

B. Local Assistance Projects

1. Two CEs that we reviewed were not in the 2007 Quarterly Reports. CML 5002(109) was signed in October 2007, and SPTZ 5918 (005) in July 2007 (aka 0L1314L).

2. One CE, signed in July 2007, is in the Quarterly Report, was not provided for review. It is CML 5182(032).
3. One CE was prepared for the rehabilitation of 12 bridges, but the Federal Aid Project Numbers were not consistent with what they were in the 2007 Quarterly Reports. The timeframe from the CE approval to the last bridge going to construction was also unclear in the CE form. Anecdotally, the district staff told the review team that “these may take more than 10 years.”

District 8

A. State Projects

1. Five CEs that we reviewed were not in the 2007 Quarterly Reports, as Caltrans signed them in January 2008. They were: 0K300, 0L080, 0L0900, 37530, and 38950.
2. Two CEs that we reviewed were signed in December 2007, but not in the 2007 Quarterly Reports.
3. One CE, 48260, was in the 2007 Quarterly Report, but was not provided for review.
4. One CE, 0K010, was signed in November 2007, but was not included in the 2007 first Quarterly Report.

B. Local Assistance Projects

1. One project, RPSTPLE 5414(006), was not in the 2007 Quarterly Report. The CE was signed in November 2007.
2. Four CEs that we reviewed were not in the 2007 Quarterly Reports as they were signed in early 2008. They are: RSTPLE 5414 (006), STPL 5459(019), RPSTPLE 5282(027), and PNRSL 5104(033).

VII. Findings

A. Successful Practices

1. Compliance with Governing Federal Environmental Protection Laws, Regulations, and the Provisions of the Memorandum of Understanding

Based on the review team’s analysis of the information provided by Caltrans Headquarters Division of Environmental Analysis, the Division of Local Assistance, and the environmental planning offices in Caltrans Districts 3 and 8, the information obtained

through the interviews at the site visits with Districts 3 and 8, and the review team's spot check of 10 CE determinations in each district, we are satisfied that, in the Districts 3 and 8, the 6004 CE determinations are being made in accordance with 23 CFR 771.117(a) and (b), and the succeeding regulations. We also determined that the environmental planning activities to support the CE determinations demonstrate compliance with the environmental protection laws and interagency coordination requirements under NEPA's regulatory umbrella (Stipulation II in the MOU).

In addition, the review team observed that the statewide CE form provides the structured forum to document compliance with applicable State and local laws, and the environmental planners in the two Districts have accurately completed these sections of the form in all the projects review by the team.

The review team also observed that both Caltrans Headquarters and the two districts are making proactive efforts to work with appropriate Federal agencies concerning the laws, guidance, and policies relating to any Federal laws that such other agencies administer. These efforts include periodic meetings with the Federal resource and regulatory agencies, establishing outreach programs to explain NEPA-related SAFETEA-LU provisions to these agencies, involving Federal resource and regulatory agencies in linking planning and NEPA dialogues, and other efforts to sustain institutional relationships. Local public agency representative are typically invited to these meetings, as well.

2. Processing Projects Assigned under the MOU: State Identification, Documentation, and Review of Effects

At the statewide level, the review team is satisfied that the 6004 CE checklist and the 6004 project-level air quality determination checklist provide powerful tools for Caltrans environmental planners to review the environmental effects of proposed projects. For (d) list and Appendix A list CEs, we also observed that the process includes the review of the documentation by a competent reviewer who is not the preparer of the CE documentation. This reviewer is typically a Senior Environmental Planner, who certifies that the project meets CE criteria, and approves the CE determination.

The review team also appreciates the organization of the filing system, newly created by Caltrans for this program. This filing system provides a "one-stop-shop" for all technical studies and documentation of internal and interagency dialogues that support the CE determination. In particular, the team was impressed by the Red Book adopted by the North Region. The Red Book is a compilation of all environmental commitments and permit conditions associated with the project, and it is an excellent reference document for the resident engineer during construction. The Red Book is also an excellent resource for long-term mitigation monitoring and reporting even after the project is open to traffic.

In addition, we are satisfied that the standard CE determination form provides full public disclosure that the CE determinations are being made by Caltrans under the CE Assignment Program (23 U.S.C. 326).

3. Excluded Projects: Determination and Documentation

The review team determined that the statewide CE form provides guidance to environmental planners to distinguish between 6004 and 6005 CEs, and provides the forum for appropriate documentation. 6004 CEs are assigned to Caltrans through the CE Assignment Program (23 U.S.C. 326), and 6005 CEs are assigned to Caltrans through the NEPA Assignment Pilot Program (23 U.S.C. 327). 6005 CEs are beyond the scope of this monitoring review.

We are satisfied that the environmental planners in the two Districts have the knowledge and the tools to apply this knowledge in making this distinction, as well as in considering “unusual circumstances” in making the CE determinations.

4. Required State Resources, Qualifications, Expertise, Standards, and Training

We are satisfied that Caltrans has adequate organizational and staff capability, and expertise to effectively carry out the responsibilities assigned under the MOU. We observed that the environmental planners use appropriate technical and managerial expertise to perform the assigned functions. In particular, we commend Caltrans Districts 3 and 8 for the lines of communication established between the environmental planning and environmental engineering functions.

We are also satisfied that the two districts have devoted adequate staff and financial resources to carry out the assigned responsibilities, although it was very hard (and in our opinion, not necessary) for the review team to distinguish among the resources devoted to the 6004, 6005, and CEQA compliance programs.

In Districts 3 and 8, our review verified that all actions that involve the identification, evaluation, analysis, recording, treatment, monitoring, or disposition of historic properties, or that involve the reporting or documentation of actions in the form of reports, forms, or other records, are being carried out by staff who meet the Secretary of Interior’s Professional Qualifications Standards (48 FR 44738-44739).

We are also impressed by District 8’s training and outreach program, called “SAFETEA-LU and U,” intended to familiarize local public agencies with NEPA Assignment.

5. State Quality Control

We are satisfied that Caltrans is regularly carrying out quality control activities to ensure that CE determinations are made in accordance with applicable law and the MOU. These activities include peer reviews, training including the establishment of forums for peer exchange, and the establishment of statewide quality control procedures in the Standard Environmental Reference.

6. MOU Performance Monitoring and Quality Assurance

We are satisfied that Caltrans is submitting timely quarterly reports of CE determinations. Caltrans both delivers the list to the FHWA by electronic mail, and makes it available to the public on the internet.

Caltrans maintains electronic and paper project records and general administrative records pertaining to its MOU responsibilities. In this review, Caltrans was able to provide all requested records and supporting documents to the FHWA.

We are also satisfied that Caltrans has processes and procedures to make records available to the public, in ways that are consistent with 5 U.S.C. 552 (the Freedom of Information Act, as amended in 2002) and NEPA. However, the review team was told that Caltrans typically receives these requests through the California Public Records of Act (California Government Code Sections 6250-6270).

B. Technical Advice and Assistance

1. Consistent Use of Section 7 Terminology

We observed some confusion between the terms used in CEQA compliance and the terms that should be used in Endangered Species Act Section 7 consultations with the U.S. Fish & Wildlife Service and NOAA Fisheries Service. For example, some of the informal consultation letters mentioned that the project will have “a less than significant affect on the listed species,” rather than making a “not likely to adversely affect” finding, and seeking concurrence.

In another instance, Caltrans made a “no affect” finding for a project, and then mentioned that the project is “covered” in a Programmatic Biological Opinion, and no further Section 7 consultation is needed.

Recommendation

In keeping the administrative record for Section 7 consultations, and in preparing Biological Assessments that support the consultations, we recommend that Caltrans use Section 7 terminology explained in the U.S. FWS Section 7 Consultation Handbook. This Handbook is intended for Federal agencies to use as a reference in Section 7 consultations, and it is published on-line at <http://www.fws.gov/endangered/consultations/s7hndbk/s7hndbk.htm>.

2. Transportation Planning Requirements and Their Relationship to NEPA Decisions (FHWA Policy Memorandum Dated January 28, 2008)

The review team observed only local assistance projects in District 8 were able to provide documentation of fiscal constraint (i.e., FSTIP printout) in the project files kept by environmental staff. In all other cases, the environmental planners assumed that the

projects were listed in a Regional Transportation Plan (in a Metropolitan Area), or in a Statewide Long Range Transportation Plan (for projects in a rural area).

Response and Recommendation

The FHWA's recent policy memorandum explains planning, programming, and air quality conformity requirements that need to be satisfied prior to making a CE determination. The review team shared copies of this memorandum with environmental planners in both districts.

We recommend that a new tab be established in the new filing system for the documentation to meet these requirements. We also recommend that the FHWA's January 28, 2008 policy memorandum be published in the Standard Environmental Reference.

3. Notices of Training (23 U.S.C. 326 MOU Stipulation IV.E.3)

While Caltrans provided to the FHWA a training plan for the NEPA Assignment Pilot Program (SAFETEA-LU Section 6005), and the review team confirmed that the two districts were delivering the planned training sessions, no notices of training were provided to the FHWA California Division for the purpose of the CE Assignment Program. The review team learned that both Districts 3 and 8 conducted multiple training sessions for the successful implementation of the CE Assignment program with no notice to the FHWA. We have also learned that both Districts went above and beyond the planned sessions in training Caltrans staff, local agencies, and environmental consultants.

Recommendation

Lines of communication should be established among Caltrans districts, Caltrans headquarters, FHWA California Division, and FHWA Headquarters to meet this requirement. For the purpose of the CE Assignment Program, the FHWA California Division is interested in learning how Caltrans assesses training needs, how training sessions are developed to meet these needs, and how and when they are delivered.

These notices may also help harmonize efforts between the FHWA California Division and Caltrans to maximize the benefits of planned training sessions. For example, the FHWA California Division routinely invites the FHWA Resource Center to Sacramento for delivering training sessions, and seats are reserved for Caltrans employees to attend these sessions. Reciprocal arrangements can be made through which environmental specialists in the FHWA California Division may be able to attend some of the sessions delivered by Caltrans.

These notices can be sent to FHWA California Division to satisfy the requirements of the Section 6004 and Section 6005 MOUs at the same time.

**4. Accurate Quarterly Reporting of Projects
(23 U.S.C. 326 MOU Stipulation IV.F.1)**

During data analysis, the review team noticed that there were numerous inconsistencies between the information in the first two quarterly reports, and the actual CEs reviewed by the team in Districts 3 and 8. These inconsistencies are discussed in detail in the data analysis section of the report.

Recommendation:

We recommend that Caltrans implement QA/QC activities to assure that the data reported to FHWA on a quarterly basis is consistent with the actual CE determinations made by Caltrans Districts. Data quality and accuracy in the quarterly reports is important to FHWA for both "full disclosure" reasons, and for the statistical purposes of the monitoring reviews.

**5. Name, Title, Signature, Date
(23 U.S.C. 326 MOU Stipulation IV.B.4)**

It was difficult to read the signatures on some of the CE forms reviewed by the team. The CE form has a signature block, but does not have a place for printing the decision maker's full name.

Recommendation

We recommend that the statewide CE form be revised to include a section for the CE decision makers to print out their full names, and then sign and date the document.

6. Application of Section 4(f) to Transportation Enhancement Projects in District 3

The team reviewed how Section 4(f) was applied to a locally-sponsored bikeway project which begins in a city park and travels along designated-open space area in District 3. The review team found that the local project sponsor's consultant and Caltrans District 3 discussed the application of Section 4(f) to this project in an e-mail dated November 9, 2007. In this e-mail, a reference was made to a 2001 letter by the FHWA California Division, which advised Caltrans that "the potential Section 4(f) use by the bikeway of existing or proposed parkland is exempt under TEA-21 for the use of Transportation Enhancement Activity (TEA) funding which is proposed for the project."

Based on this e-mail, the review team learned that District 3 decided not to prepare any Section 4(f) documentation for the project.

Recommendation:

Unlike what is mentioned in the November 9, 2007 e-mail and in the FHWA California Division's 2001 letter to Caltrans District 3, TEA-21 did not create any specific

programmatic exemption from the application of Section 4(f) for projects in the transportation enhancement program.

We recommend that Caltrans follow the FHWA Section 4(f) Policy Paper regarding the application of Section 4(f) especially when evaluating whether there is a Section 4(f) use. We agree that a bikeway constructed in a city park, in a case where the bikeway remains under the park agency's jurisdiction, would not be a 4(f) use since the parkland is not permanently incorporated into a transportation facility. This concept was not mentioned in the project file, which also did not include any letters of concurrence from the local park officials with jurisdiction.

We recommend that Caltrans District 3 disseminate FHWA's policy paper on applying Section 4(f) to bikeways and transportation enhancement projects as widely and as quickly as possible. The application of Section 4(f) to transportation enhancements is also discussed in the FHWA's new Section 4(f) regulations in 23 CFR 774.13 (f) and (g).

Caltrans must include in its project files all appropriate Section 4(f) documentation. Such documentation includes a determination whether Section 4(f) properties are present in the project area, whether the project might "use" a Section 4(f) property, and whether or not the provisions of Section 4(f) apply. This documentation could consist of an email or letter to the project file that would show evidence of compliance.

C. Other Observations

1. The review team was satisfied that Caltrans' lines of communication with the FHWA California Division for projects retained by the FHWA, and for any right-of-way and engineering decisions associated with the project, were not affected by CE Assignment. In particular, the review team examined the interface between the 6004 CEs and federal land transfers, and the 6004 CEs, and the FHWA California Division's decision making process for new or modified access to the Interstate system (23 U.S.C. 111).
2. The review team learned that there are currently 59 Caltrans environmental planners authorized to make 6004 CE determinations. This is a stark contrast with about 10 environmental specialists and project development engineers that used to make CE determinations in the FHWA California Division, prior to CE Assignment. Therefore, the review team and Caltrans anticipate that the increase in the number of people authorized to make CE determinations have resulted in faster decisions. Caltrans reported to the review team that the mean time savings in 6004 CE determination was 28 days, and the median time savings was 7 days, on a statewide basis. The time savings were attributable to the six fold increase in the number of decision makers, and the time savings associated with Caltrans' ability to directly consult and coordinate with Federal resource agencies.
3. The CE determinations associated with the Recreational Trails Program, administered by the California Department of Parks & Recreation, are being made by the FHWA California Division, and they are not assigned to Caltrans. In the Recreational Trails Program, the FHWA California Division has a direct relationship with California

Department of Parks & Recreation, which has not expressed interest in SAFETEA-LU Sections 6003 or 6004.

4. Caltrans have not received any public complaints regarding the CE Assignment Program, and they have multiple forums to dialogue with Federal resource agencies at both the program and project levels. These forums include coordination meetings with the U.S. Environmental Protection Agency, joint training sessions with the NOAA Fisheries Service, and well-established dispute resolution processes. Caltrans also funds multiple positions dedicated to Caltrans projects in the Federal resource agencies.

5. The review team coordinated with FHWA California Division staff regarding any concerns about CE decisions and other aspects of MOU performance. The staff had expressed some concern about the interface between the assigned CE determinations and the FHWA's right-of-way and engineering decisions, based on the California Division's Stewardship & Oversight Agreement. These concerns are now fully addressed, and the Stewardship & Oversight Agreement explains in detail how the CE Assignment Program fits into the FHWA California Division's stewardship and oversight functions in project and program delivery.

6. In Caltrans Districts 3 and 8, the review team did not notice any unexpected trend or anomalies in the gross data on CEs, EAs, and EISs.

7. The FHWA California Division and Caltrans had jointly conducted a CE/PCE process review in FY2007 to establish a baseline for this year's review. For the action items identified in the implementation plan of the FY2007 review, the review team is satisfied that Caltrans has successfully addressed them.

VIII. Implementation Plan

Caltrans should address the identified findings and recommendations in this report in the upcoming MOU performance summary report due to the FHWA California Division by December 7, 2008 (MOU Stipulation IV.F.2). The FHWA California Division and Caltrans have agreed to consider the upcoming performance summary report as the forum for formalizing the implementation plan for this monitoring review, as well as the forum for documenting Caltrans' self-assessment of activities and performance in the CE Assignment Program. Caltrans' response to the FHWA California Division's recommendations in this report should include specific milestones, schedules, and deliverables, which will memorialize Caltrans' commitment to address the observed deficiencies. Caltrans' proposed milestones, schedules, and deliverables should also specify any possible distinctions between the issues relevant to "capital" projects (i.e., on the State Highway System) versus those relevant to local assistance projects (i.e., off the State Highway System).

IX. Conclusion and Looking Ahead

The review team sincerely appreciates the open and honest dialogue with Caltrans staff throughout the monitoring review. In the interviews conducted with Caltrans District 3 and 8 staff, the review team received thoughtful and insightful answers to all questions. These questions were provided to the Districts in advance, and then discussed in further detail in the interviews. We thank District 3 and 8 staff for their candor, insightful answers, and hospitality.

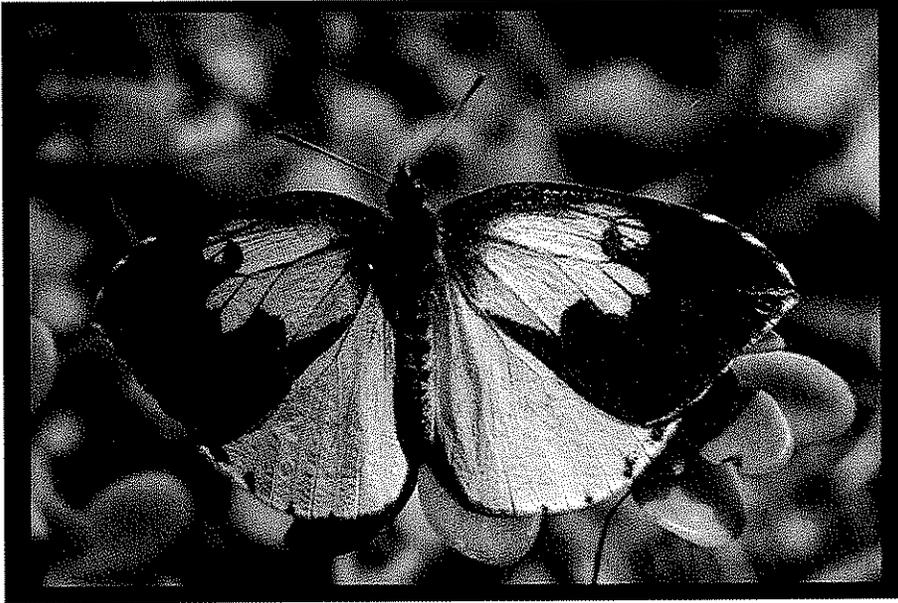
As CE Assignment is a pioneering program for both FHWA and Caltrans, it is expected that a learning curve is required for both agencies. It is the opinion of the review that Caltrans has made significant progress in implementing the start-up phase of the CE Assignment Program, and that Caltrans is learning how to operate this new program effectively.

During the on-site reviews, Caltrans staff and management indicated ongoing interest in obtaining constructive feedback on successes and areas for improvement. By addressing the findings in this report, Caltrans will help move the program towards success.

It is the review team's opinion that the implementation of CE Assignment in California has resulted in an overall outcome that is more efficient than the environmental outcomes in all six performance areas compared to those prior to the inception of the CE Assignment Program in California. It is also the review team's opinion that these monitoring reviews, as well as Caltrans' periodic self-assessments of performance reportable to the FHWA California Division, will be essential for the FHWA California Division to verify that these efficiencies will not affect the checks and balances needed to balance competing public interests between environmental protection and project delivery. In these monitoring reviews, it is essential for the FHWA California Division to verify that time and budget constraints and concerns associated with Federal-aid highway project sponsorship, those associated with Caltrans' "owner / operator" responsibilities, and those associated with Caltrans' institutional, and often political, relationships with local project sponsors do not affect the objectivity of Caltrans' decision making in environmental analysis.

We anticipate that the FHWA California Division will begin to conduct the next CE Assignment monitoring review in Summer 2009.

Appendix A: Project Review Worksheet



Dog face butterfly (*Zerene eurydice*)
California State Insect
(From California State Library, www.library.ca.gov)

CE ASSIGNMENT PROCESS REVIEW: PROJECT REVIEW WORKSHEET

Project Name	
District County	Project Type: State AAA Local
Project or EA #	
Document Type <u>6004 CE</u>	Date approved
Project Description	

DETERMINATION (23 CFR 771)

(c) list (d) list Added Category

Does the activity clearly fit into the stated category? Y N

Please describe the details of the activity

- No unusual circumstances
- No significant environmental impacts
- No substantial controversy on environmental grounds
- No significant impact on properties protected by §4(f) or §106 of National Historic Preservation Act
- No inconsistencies with any Federal, State, or local law, requirement or determination
- Proper Conformity Determination Project exempt from conformity
- Inappropriate determination
(reason)

DOCUMENTATION

- Adequate summary of project and impacts Inadequate summary of project and impacts
- Appropriate technical studies Missing required technical studies
- Inadequate documentation
(reason)

APPROVALS

- Appropriate Caltrans signature
(name if legible)
- Inappropriate approval
(reason)

IMPLEMENTATION

- Consistent cost/scope/design updated) Inconsistent cost/scope/design (not updated)
- Consistent with planning documents Inconsistent with planning documents
- Environmental commitments incorporated Environmental commitments not incorporated

RE-EVALUATIONS

- Project under construction Construction completed
- No re-evaluation necessary Consultation/Re-evaluation not completed
- Documented re-evaluation/consultations (dates)

RECORDKEEPING

- File organized, efficient, readily available Project file kept at least 3 years (so far)
- Project file complete Missing documents
- Signed CE form
- PES PEAR PSR PSSR PR PS&E Field Review
- Biology NES /BA / BE memo to file concurrence / BO
- Cultural resources HPSR / FOE memo to file concurrence / MOA
- Haz Mat ISA / PSI memo to file resolved
- Air Quality technical study memo to file conformity determination
- 4f *de minimis* programmatic individual
- Other _____ technical study memo to file concurrence
- Other _____ technical study memo to file concurrence
- Agency comment letters
- Environmental commitments record Documentation of re-evaluation
- Proof of programming in RTP Proof of programming in FSTIP
- Evidence of change in project scope Evidence of down-scoping (from EIS or EA)
- Public involvement documentation and/or public comments

LENGTH OF ENVIRONMENTAL PHASE

- Project Initiation Date Provided Date: _____
- Source: _____
- Time to Process: _____

Appendix B: Pre-Review Questions and Responses from Caltrans Districts 3 (Marysville) and 8 (San Bernardino)



Perhaps the most unusual state symbol is the state prehistoric artifact, the chipped stone bear. Discovered at an archaeological dig site in San Diego County in 1985, this small stone object measures about 2 1/2 by 1 1/2 inches and resembles a walking bear. The California Legislature named the chipped stone bear a state symbol in 1991 making California the first state to designate an official State Prehistoric Artifact (From California State Library, www.library.ca.gov)

**CE ASSIGNMENT PROGRAM REVIEW QUESTIONNAIRE
District 3**

1. How do you use the Standard Environmental Reference or checklists to facilitate the determination of level of analysis?

Capital – The following methods are used to facilitate the determination of level of analysis:

- Decision trees
- SER guidance, especially chapters 30 and 38
- CE checklist

Local Assistance – The level of analysis is dependent upon up-to-date information regarding Departmental policy and procedures and environmental laws and regulations. This information is provided on line in the SER, in particular, Chapter 30.

2. Who determines whether a project meets the requirements for a CE? How do they make that determination?

Capital – An Environmental Branch Chief (Senior Environmental Planner) or Office Chief (Supervisory Environmental Planner) in conjunction with the Project Delivery Team. They make the decision based on an analysis of the project components and the potential for significant environmental impacts.

Local Assistance – Project Manager, DLAE/Local Agency (if applicable), Senior Environmental Planner/Designee. Review of project description, use of CE checklist to determine whether project meets the criteria of a CE (23 CFR 771) and complies with other federal requirements.

3. Who has the authority to sign CEs?

Capital – A Caltrans Senior Environmental Planner and the Project Manager sign the CE.

Local Assistance – Senior Environmental Planner and the DLAE.

4. Does guidance exist on how to process CE projects? Please specify.

Capital – Yes. SER (Chapters 1, 30 and 38).

Local Assistance – Yes. SER (Chapters 30 and 38), Chapter 6 for local agencies, FHWA Technical Advisory T6640.8.

5. What are the procedures for processing CE projects?

Capital – The following procedures are followed when processing a CE:

- Appropriate level of environmental analysis is completed, including technical specialties.
- Documentation (including CE checklist) is completed.
- Documentation is placed in the file.
- The CE form is completed as appropriate, either Section 6004 or 6005.
- The Senior Environmental Planner and Project Manager sign the CE form.
- The signed CE is filed in the project folder.
- A copy of the CE, along with the Environmental Commitments Record, is provided to the RE in the Redbook.

Local Assistance – After completion and approval of the PES and required technical studies (if applicable), SEP/designee completes the CE form and checklist, sends to DLAE and Local Agency for review, approval and signature. The form is then sent to the Local Agency and filed in project files.

6. For projects individually listed in the applicable plan and program, how do you ensure that CE projects are on the RTP/FSTIP, have consistent scope, and cost estimates?

Capital – We assure the project is on the RTP/FSTIP by working with the Project Manager and Transportation Planning staff.

Local Assistance – The DLAE/designee confirms the project is on the RTP/FSTIP, and has consistent scope and cost estimates.

7. What is the process used to address air quality conformity requirements?

Capital – The air quality conformity process is found in Chapter 38 (a checklist for making the determination) of the SER. For CE projects, the project file must show that either:

- a. The project area is not subject to conformity; or
- b. The project is exempt from conformity; or
- c. The project meets the requirements for a conformity determination.

Local Assistance – Answer questions on the PES; determine if project is in non-attainment or maintenance area, exempt from project level conformity (listed on Table 2), exempt from regional conformity (listed on Table 3).

8. What are the procedures for ensuring that environmental commitments are incorporated in PS&E packages on CE projects?

Capital – The Coordinator (Environmental Planner or Associate Environmental Planner) reviews and comments on the draft PS&E package. After all functional comments are incorporated; the coordinator reviews the final PS&E package.

2

The coordinator uses the CE, regulatory agency permits and the Environmental Commitments Record to facilitate the reviews. If all of the environmental commitments are included in the final PS&E package, the Senior Environmental Planner signs the Environmental Certification.

Local Assistance – Local Agency certifies that environmental commitments are incorporated into the PS&E. Local Agency sends copies of permits to DLAE and Environmental.

9. How long do you keep your project files, particularly CE documents and associated technical studies?

Capital – Three years after project construction.

Local Assistance – Three years after the project has been built, unless there is long-term mitigation/monitoring.

10. Who keeps the files? Where are they kept?

Capital – Project files are produced by the Coordinator and filed in the file storage area.

Local Assistance – Environmental Coordinator for Local Assistance. Environmental files are kept in the Environmental branch. Project files are kept at Local Assistance offices.

11. Has there been any cost or time savings resulting from the CE Assignment Program?

Capital – The CE Assignment Program has resulted in a savings of time (and postage) for sending documents to FHWA and to federal resource agencies for review and approval.

Local Assistance – There has been a timesaving by not having to send documents to FHWA for review and approval and ability to consult directly with the resource agencies.

12. How do you track and document these savings?

Capital – Tracking of the time being taken on all of our NEPA deliverables has been done via a spreadsheet maintained by our project coordinators. In addition, proper charging practices are stressed to our staff. Staff has been directed to charge to a Special Designation, 6DELE, when working on NEPA delegation activities that are not project direct. For project direct work, our staff charge to newly created Work Breakdown Structure activities.

Local Assistance – Project review, notes, LP2000 database.

13. How many staff and with what expertise is available in your unit to fulfill your responsibilities on CE projects?

Capital – Our Environmental units are multi functional. Each Senior has coordinators, biologists and archaeologists. Some of the units also have Construction Liaisons, Architectural Historians, noise specialists and air quality specialists. In addition, we have a unit that has Hazardous Waste and Storm Water/Water Quality specialists. Currently, there are 87 environmental employees in Sacramento and Marysville.

Local Assistance – Two coordinators, one biologist, one archaeologist, one architectural historian, assistance from hazardous waste specialists, assistance from Senior Environmental Planner for quality control, problem resolution, processes and procedure requirements.

14. Are there specific issues within the CE Assignment Program that you see as problematic?

Capital – As we take on this additional workload, the staff need to be resourced for this work. There is a possibility that we may not be notified quickly regarding changes to federal laws.

Local Assistance – No problems other than not having staff to review Local Assistance PS&Es for mitigation commitments compliance and not having a system set up to check whether permit commitments were satisfied.

15. In your experience, can you give any examples of what has worked well with the CE Assignment Program and what needs improvement?

Capital – The following are examples of what has worked well with the CE Assignment Program:

- Provides some autonomy in our decision-making and reduces coordination needed with FHWA.
- Timesavings in processing the CEs for final signature.
- Improved our filing system.
- Improved our knowledge of NEPA compliance.
- The CE process is more formalized.
- Cost savings in time for processing CEs.

It is too early in the program to see any areas for improvement.

Local Assistance – The CE checklist is very helpful. Not having to send the form to FHWA for approval has saved time. We have improved our filing system and accountability making information easier to find. Has helped promote continuity between the Capital side and the Local Assistance side.

CE ASSIGNMENT PROGRAM REVIEW QUESTIONNAIRE

District # 8 (State Highway System Projects)

1. How do you use the Standard Environmental Reference or checklists to facilitate the determination of level of analysis?

The Department's Standard Environmental Reference (SER) has been designed to provide a single, standard reference on compliance with the National Environmental Policy Act (NEPA) and related federal laws, executive orders, regulations, and policies. The reference is intended for statewide use by local agencies, Department, and Federal Highway Administration (FHWA) staff.

The SER provides statutory and regulatory requirements for environmental documents and technical studies, as well as procedures for processing environmental documentation for both local assistance and Caltrans projects. The SER sets forth document content and format, as required by law or regulation, and recommended format, if not specified by law or regulation. Reports and documents prepared for projects on the state highway system are required to adhere to the content and recommended formats contained in the SER. The SER also provides a number of tools for the development of documentation--including links to additional information.

Chapter 30 in Volume 1 of the SER specifically discusses the criteria that a proposed action must meet to be categorically excluded from the National Environmental Policy Act (NEPA) and the preparation and processing of the Categorical Exclusion (CE) documentation for Caltrans and Local Assistance projects. Chapters 8 through 28 in Volume 1 provide guidance on Federal and State statutes as well as recommended procedures and document formats--as applicable, for topics which might need to be studied in conjunction with a proposed project. Chapter 38 in Volume 1 provides an extensive overview of NEPA Delegation.

The SER is continuously updated. It is considered to be-- and used as--a primary reference source for reviewing or determining potential NEPA compliance requirements for all three class of action determinations, including Class II (Categorical Exclusions). District 8 staff in the Division of Environmental Planning regularly utilize the SER in conjunction with completing tasks for projects to which they are assigned.

A Categorical Exclusion Checklist has been developed to aid in making CE determinations. The CE Checklist became available in conjunction with the implementation of the

Section 6004 MOU on June 7, 2007. It was specifically revised when the Section 6005 MOU was implemented (on July 1, 2007) to reflect the Department's decision to discontinue the use of the Programmatic Categorical Exclusion (PCE) Agreement between FHWA and the Department during NEPA Delegation.

The CE Checklist, which can be accessed/downloaded from the SER, includes:

- All designated CE actions
- CE "unusual circumstances" from 23 CFR 771.117(b)
- Other Federal environmental laws, regulations, and Executive Orders that need to be considered in reaching the CE determination
- Anticipated permits for the project
- Air quality conformity documentation information.

A CE Checklist is completed in conjunction with the preparation of the 6004 CE Determination Form, providing concise documentation that the proposed project is eligible to receive this class of action determination. A copy of the completed CE Checklist is kept in the project file.

2. Who determines whether a project meets the requirements for a CE? How do they make that determination?

The Section 6004 MOU assigns to the Department, the authority and responsibility for CE determination under the 23 CFR 771.117 (c) list and 23 CFR 771.117(d) list, plus those activities specifically listed in Appendix A - Assigned Categories of Activities of the MOU. As stated in Chapter 30, Volume 1 of the SER, "For State highway system (SHS) projects, the CE decision for all of the assigned categories will be approved by the Department's District Environmental Office Chief or Senior Environmental Planner supervising the staff that performed the work, and by the Department's Project Manager.

Approval of a 6004 CE for a proposed project is provided following completion of Technical Studies and any other necessary documentation, confirming that the scope of work falls within a 6004 CE category and that there are no unusual circumstances. A copy of the approved Technical Studies and/or other applicable documentation is provided to the Senior Environmental Planner along with the prepared CE Form and CE Continuation Sheet(s), the completed CE Checklist, and the initial Environmental Commitments Record. The completed CE Checklist provides an efficient summary that all applicable documentation requirements have been addressed.

The Senior Environmental Planner signs the prepared 6004 CE form when they are satisfied with the contents of the "CE package." The Department's project manager assigned to the SHS project also signs the prepared 6004 CE form.

3. Who has the authority to sign CEs?

The Senior Environmental Planner or her/his designee determines if the CE/CE form is ready for signature. Signature authority for the CE/CE form cannot be delegated below the Senior Environmental Planner classification.

The above was standing practice in District 8, even prior to the CE Assignment Program. In conjunction with implementation of the Section 6004 MOU, CE signature authority was specifically addressed in the June 7, 2007 "Interim Policy-Assignment of Responsibility for Categorical Exclusion Determinations," issued by Jay Norvell, Chief, Division of Environmental Analysis. Information regarding CE signature authority is also included in Chapter 30, "Categorical Exclusions," and Chapter 38, "NEPA Delegation," in Volume 1 of the SER.

4. Does guidance exist on how to process CE projects? Please specify.

Yes. Chapters 30 and 38 in Volume 1 of the SER provide general guidance for processing projects determined to be eligible to receive a 6004 CE. The CE Checklist is also a useful reference.

5. What are the procedures for processing CE projects?

The procedures for processing a proposed project on the SHS in District 8 begins with the submittal of an environmental document request to the Division of Environmental Planning's Environmental Project Management (EPM) Unit. The EPM Unit distributes hard copies of the request (and the initial information regarding the proposed project), to the Environmental Planner (Generalist) Unit, the Bio Studies Unit, the Cultural Studies Unit and the Environmental Engineering Unit.

Based on a review of the information provided with the environmental document request, the Functional Units determine what Technical Studies and/or other documentation needs to be completed. If additional information is needed it is provided. Contingent upon the results of any Technical Studies or other documentation completed, projects with scopes of work that correspond with a category on the 23 CFR 771.117 (c) list, (d) list, or the newly added "Appendix A- Assigned Categories of the 6004 MOU," are anticipated to be determined eligible for a 6004 CE.

These projects are typically simple, limited in scope of work (pavement rehabilitation for example), and likely proposed by a District Division such as Maintenance or Traffic Operations. As a result, there are usually few or no Project Development Team meetings.

If a SHS project is proposed by a local agency, it is processed through the Division's Environmental Oversight Unit. The project sponsor would be responsible for all required technical studies being prepared, with Caltrans performing review(s) and approval (or concurrence) that the studies were complete and satisfactory.

The EP Generalist assigned to the project prepares a "CE package" for the Senior Environmental Planner, after:

- all Technical Studies and any other necessary compliance documentation has been prepared and approved by the appropriate Functional Unit (including outcomes with resource agencies—if needed during PA&ED), and
- a current "near final" version of the design Project Approval document (some type of Project Report) has been reviewed for content consistency, and
- the RTP/FSTIP has been checked (if it was established at the beginning of the environmental document process that the proposed project was individually listed)

The "CE package" includes:

- a copy of each Technical Study or other compliance documentation prepared (i.e. an ISA Checklist or Section 106 Screened Undertaking Memo)
- the 6004 CE Form—completed except for the signatures and the determination
- CE Continuation Sheet(s)—as needed
- a completed CE Checklist
- a copy of the current RTP/FSTIP if the project is individually listed
- applicable documentation from the District Environmental Engineering Office Chief providing the AQ Conformity Determination for the project

The Senior Environmental Planner reviews the package and decides whether the prepared CE form is ready for signature approval.

6. For projects individually listed in the applicable plan and program, how do you ensure that CE projects are on the RTP/FSTIP, have consistent scope, and cost estimates?

For proposed projects individually listed in an applicable plan and program, the responsibility for ensuring that

those projects are in the current RTP/FSTIP (with current scope and cost information) belongs to the project sponsor. This is true regardless of what the class of action determination is for a project (even if it is a 6004 CE).

The Project Manager assigned to the project is responsible for ensuring the information for an individually listed project in the RTP/FSTIP is current.

If the project is individually listed, the RTP/FSTIP would be checked during preparation of the 6004 CE.

7. What is the process used to address air quality conformity requirements?

Under the Section 6004 MOU, both regional and project-level air quality conformity determinations for individual projects have been assigned to the Department. In District 8 these determinations are made by an Environmental Engineering Unit Office Chief.

The Environmental Engineering Unit receives a copy of the environmental document request package and determines if any air quality analysis is necessary. If analysis is determined to be necessary the Environmental Engineering Unit reviews and provides the approval of the air quality analysis.

In conjunction with a 6004 CE being prepared and submitted to the Senior Environmental Planner for approval, the completed CE Checklist includes applicable summary information regarding AQ conformity requirements for the project.

8. What are the procedures for ensuring that environmental commitments are incorporated in PS&E packages on CE projects?

When PS&E packages are distributed for review (whether 35%, 65%, 95% or 100%), the initial ECR prepared in conjunction with approval of the 6004 CE is a primary reference for confirming that environmental commitments have either already been addressed or are being appropriately planned for during the construction phase.

Every Functional Unit involved with the documentation prepared in support of the 6004 CE approved for the project is expected to receive a copy of the PS&E package, and provide results of their review. If the PS&E design efforts warrant revisions or additions to the ECR, then the EP Generalist is responsible for performing this update.

In conjunction with the 100% PS&E package review, an Environmental Certification Form may be completed, unless the 100% package review results in comments. In that case,

a follow-up review or reviews would be performed until there were no comments.

If the project required permits from Resource Agencies, confirmation would have to be provided by the Division's Biological Studies Unit that the permits had been issued and that any stipulated pre-construction measures by the Resource Agencies had been incorporated into the PS&E package.

The Senior Environment Planner signs the Environmental Certification Form in conjunction with confirming that all applicable environmental documentation and requirements (including ECRs) have been appropriately satisfied.

NOTE: The Environmental Certification form includes the following language, specifically intended to further assure that Environmental Commitments are addressed:

Changes to this PS&E submittal shall be discussed with the signature authority and may require an updated environmental certification.

This project may be advertised for contract award. If the project has not been advertised within twelve months of the date of Environmental Certification, this Environmental Certification expires and a new certification or update is required.

9. How long do you keep your project files, particularly CE documents and associated technical studies?

Prior to implementation of the Section 6004 and Section 6005 MOUs, the District's general practice was to keep a project file until at least 3 years after the project was constructed (which corresponds to the period of time specified for retention of records in the "State Performance Requirements IV.F.3." part of the 6004 MOU.

The 6005 MOU stipulates that the Department retain all project files and general administrative files pertaining to the Pilot Program for a period of at least three (3) years after the termination of participation in the Pilot Program. As further specified in the 6005 MOU, the District is committed to the following retention periods:

- Environment Correspondence Files: Environment correspondence files include correspondence between the FHWA and Caltrans relative to the interpretation, administration, and execution of environmental aspects of

the Federal-aid highway program. Caltrans is required to maintain environmental correspondence files for a period of three (3) years after the resolution of the particular issue for which the file is created. After 3 years, Caltrans shall transmit environmental correspondence files to the FHWA to be stored at the Federal Records Center. When environmental correspondence files are eight (8) years old, the FHWA will transfer the files to the National Archives for permanent storage.

- Environmental Impact Statements and/or Section 4(f) Statements- FHWA: Files containing reviews and approval of EISs and Section 4(f) statements for which Caltrans, in assuming the FHWA's responsibilities, is the lead agency shall be maintained by Caltrans for a period of eight (8) years after approval of the final statement. After 8 years, Caltrans shall transmit its EIS and/or section 4(f) files to the FHWA to be stored at the Federal Records Center. After a period of thirteen (13) years from the date of approval of the final statement, EIS and/or section 4(f) files will be destroyed.
- Environmental Impact Statements - Other Agencies: Files containing reviews and comments furnished by Caltrans to other Federal agencies following reviews of an EIS for which another Federal agency is the lead agency shall be maintained by Caltrans for a period of five (5) years. After 5 years, Caltrans may destroy these files when no longer needed.
- Fish and Wildlife Coordination: Files containing correspondence with the fish and wildlife resource agencies early in project development may be destroyed by Caltrans when no longer needed.
- Noise Barriers: Files containing correspondence, publications, presentations, installation reports for wall barriers, and design of different types of wall barriers by private industry shall be maintained by Caltrans for a period of three (3) years after the end of the Federal fiscal year in which the particular file is closed.

10. Who keeps the files? Where are they kept?

The Environmental Planner (Generalist) assigned to the project is responsible for the complete Environmental Planning project file. Most often, the project files for active projects reside in the workstation cubicle of the Environmental Planner (Generalist) assigned to the project. Once the PA&ED phase has been completed, the location of the project file will depend on the PS&E schedule and the

availability of space for file storage in the Environmental Planner Generalist's workstation.

The district has established a centralized archive area for SHS CE files. These archived CE files are organized through a file log system established by the District's Environmental Project Management (EPM) Unit.

Specialist Functional Units (i.e. Biology, Cultural Studies, and Environmental Engineering) are responsible for their files, including archiving arrangements. The archived files of specialist Functional Units remain the responsibility of the Functional Unit.

11. Has there been any cost or time savings resulting from the CE Assignment Program?

There is no specific data available with respect to SHS projects, that would enable a quantifiable answer to be provided to this question. Generally though, it is expected that there will be some time savings possible as a result of the increased standardization and widespread accessibility of documentation requirements, established with implementation of the 6004 MOU. Some cost savings may well also be realized as a result of the corresponding efficiencies.

12. How do you track and document these savings?

There is no dedicated tracking system in place at the district level at present. District 8 has developed and maintained a comprehensive Environmental Database for SHS projects over a number of years, however this database does not currently include program features to perform any kind of cost or time savings analysis.

13. How many staff and with what expertise is available in your unit to fulfill your responsibilities on CE projects?

The District has three Functional Units focusing on overall delivery of SHS projects. They are staffed with Environmental Planner (Generalists) and are each led by a Senior Environmental Planner. Currently there are a total of 12 Environmental Planner Generalists across these three units.

14. Are there specific issues within the CE Assignment Program that you see as problematic?

There were some general challenges associated with the CE Assignment Program at the outset, in terms of District staff becoming familiar and practiced with the specific

documentation requirements. These challenges were not problematic, and at this point staff are becoming comfortable with the requirements.

15. In your experience, can you give any examples of what has worked well with the CE Assignment Program and what needs improvement?

Overall, the CE Assignment Program provides clear and consistent expectations that can be shared with other Divisions within the District and also with external project sponsors, both preceding and throughout the development (phases) of a proposed project.

The updates and brand new content added to the SER--especially the content explaining how to satisfy the documentation requirements related to NEPA Delegation in general (and the CE Assignment Program in particular), has helped to make the benefits of this program tangible and accessible. In turn, this has resulted in more accurate scoping, schedules, clearer determination justifications, and fewer disagreements. The CE Checklist has been a very useful tool.

In terms of improvements, updating the Project Development Procedures Manual (PDPM) to fully reflect all of the facets of the 6004 and 6005 MOUs (as well as the 2007 Stewardship Agreement) would be helpful in terms of ensuring consistent use of this information by Divisions within the District besides Environmental Planning--such as Design and Project Management. Updating the PDPM would also be helpful for external project sponsors (local cities, etc.), since the PDPM is available on the world wide web.

CE ASSIGNMENT PROGRAM REVIEW QUESTIONNAIRE

District #: 8 (Local Assistance Projects)

1. How do you use the Standard Environmental Reference or checklists to facilitate the determination of level of analysis?

The Department's Standard Environmental Reference (SER) has been designed to provide a single, standard reference on compliance with the National Environmental Policy Act (NEPA) and related federal laws, executive orders, regulations, and policies. The reference is intended for statewide use by local agencies, Department, and FHWA staff.

The SER provides statutory and regulatory requirements for environmental documents and technical studies, as well as procedures for processing environmental documentation for both local assistance and Caltrans projects. The SER sets forth document content and format, as required by law or regulation, and recommended format, if not specified by law or regulation. Reports and documents prepared for projects on the state highway system are required to adhere to the content and recommended formats contained in the SER. The SER also provides a number of tools for the development of documentation--including links to additional information.

For Local Assistance projects the Preliminary Environmental Scoping (PES) form is the scoping tool that is used to determine the type of environmental document and supporting technical studies. The SER is used for additional guidance in regards to environmental resources that may be associated with the proposed projects. It also provides in-depth information on all environmental topics relevant to environmental project approval. Caltrans local assistance staff uses the SER in association with the PES form to determine the potential impacts for each project. In addition the Categorical Exemption/Categorical Exclusion Checklist to determine the level of CEs for all CE level projects (6004, 6005).

A Categorical Exclusion Checklist has been developed to aid in making CE determinations. The CE Checklist became available in conjunction with the implementation of the Section 6004 MOU on June 7, 2007. It was specifically revised when the Section 6005 MOU was implemented to reflect the Department's decision to discontinue the use of the Programmatic Categorical Exclusion Agreement between FHWA and the Department during NEPA Delegation.

Chapter 30 in Volume 1 of the SER specifically discusses the criteria that a proposed action must meet to be categorically excluded from the National Environmental Policy Act (NEPA) and the preparation and processing of the Categorical Exclusion (CE) documentation for Caltrans and Local Assistance projects. Chapters 8 through 28 in Volume 1 provide guidance on Federal and State statutes as well as recommended procedures and document formats—as applicable,

for topics which might need to be studied in conjunction with a proposed project. Chapter 38 in Volume 1 provides an extensive overview of NEPA Delegation.

2. Who determines whether a project meets the requirements for a CE? How do they make that determination?

The Section 6004 MOU assigns to the Department, the authority and responsibility for CE determination under the 23 CFR 771.117 (c) list and 23 CFR 771.117(d) list, plus those activities specifically listed in Appendix A - Assigned Categories of Activities of the MOU. As stated in Chapter 30, Volume 1 of the SER, "For State highway system (SHS) projects, the CE decision for all of the assigned categories will be approved by the Department's District Environmental Office Chief or Senior Environmental Planner supervising the staff that performed the work, and by the Department's Project Manager.

For Local Assistance projects the Preliminary Environmental Scoping (PES) form is used by the Local Agency to determine the type of environmental document and supporting technical studies. However, it is the responsibility of the Caltrans Environmental Planning staff and District Local Assistance Engineer (Per the 6004 MOU) using the information provided and field reviews as needed to make the Class of Action Determination (in the form of the PES) and Caltrans is in charge of the final determination for the proposed local agency project.

The PES, CE Checklist and SER are used for additional guidance in regards to environmental resources that may be associated with the proposed projects. Caltrans local assistance staff uses the SER in association with the PES form and CE Checklist to determine the potential impacts for each project.

3. Who has the authority to sign CEs?

As specifically stipulated in the June 7, 2007 "Interim Policy—Assignment of Responsibility for Categorical Exclusion Determinations, issued by Jay Norvell, Chief, Division of Environmental Analysis,

"The Senior Environmental Planner or her/his designee determines if the CE/CE form is ready for signature." Signature authority for the CE/CE form cannot be delegated below the Senior Environmental Planner classification.

The above stipulation is also found in Chapter 30, "Categorical Exclusions," and Chapter 38, "NEPA Delegation," in Volume 1 of the SER.

For Local Assistance projects the Senior Environmental Planner (or higher classification) and the District Local Assistance Engineer are the only ones that have the authority to sign CEs. Chapter 6 of the Local Assistance Procedure Manual (LAPM) identifies the actual procedure for obtaining approval and a signature.

4. Does guidance exist on how to process CE projects? Please specify.

For Local Assistance projects the Local Assistance Procedures Manual (Chapter 6) has flowcharts and a matching step-by-step procedure to complete a Section 6004 CE. The following resources are used:

- Local Assistance Procedure Manual Chapter 6
- Categorical Exemption/Categorical Exclusion Checklist
- Chapter 30 - Categorical Exclusions of the Standard Environmental Reference (<http://www.dot.ca.gov/ser/vol1/sec4/ch30ce/chap30ce.htm>)
- Chapter 38 NEPA Delegation

5. What are the procedures for processing CE projects?

For Local Assistance projects the Preliminary Environmental Scoping (PES) form is a scoping tool used by the Local Agency to determine the type of environmental document and supporting technical studies. However, Caltrans Environmental Planning staff and District Local Assistance Engineer must concur with their findings and are in charge of the final determination for their proposed project. The PES form is submitted to Caltrans and the Caltrans environmental planners and functional units within the District review the PES for consistency and either provide comments or provide their concurrence. Comments or concurrence are submitted to the Generalist and the Generalist provides the feedback to the DLAE and the Local Agency. A Section 106 exemption is provided as appropriate. This cycle will occur until the PES Form is adequate, at which point the PES will be approved. Upon approval of the PES, the Local Agency proceeds by preparing and submitting the required technical documentation that has been identified in the PES form.

For a CE with tech studies: Once tech studies have been determined then local agency is responsible for obtaining a consultant and starting the tech studies. When tech studies have been completed by the local agency they are submitted to Caltrans for review and approval. Once tech studies have been approved and all appropriate coordination has been completed a CE, CE Checklist and the Air Quality Conformity determination per the 6004 MOU is prepared by the Caltrans Environmental Planner and is signed and approved by the Senior EP and DLAE.

A CE Checklist is completed in conjunction with the preparation of the 6004 Categorical Exclusion Determination Form, providing concise documentation for the basis of determining a proposed project is eligible to receive this class of action determination. Completing the CE Checklist also provides an opportunity to confirm that all applicable documentation requirements have been satisfied. A copy of the completed CE Checklist is kept in the project file.

Please see additional information found in Chapter 6 of the Local Assistance procedures manual.

6. For projects individually listed in the applicable plan and program, how do you ensure that CE projects are on the RTP/FSTIP, have consistent scope, and cost estimates?

For Local Assistance projects the Preliminary Environmental Scoping (PES) form is used by the Local Agency to determine the type of environmental document and supporting technical studies. One of the requirements of the PES form is to attach to the submittal a copy of the RTIP or FSTIP for the proposed project (Please See Chapter 6 of the LAPM and PES Instructions page). When a PES Form is submitted to the DLAE, prior to any Environmental review, it is reviewed by the DLAE to ensure the detailed project description and FSTIP description on the PES Form is consistent with the actual FSTIP and/or RTIP. If it is not, it is returned to the Local Agency and does not move forward for an Environmental review.

It should be made clear that Caltrans local assistance will not review any project that isn't included in a corresponding RTP/FSTIP. This requirement is not new and Caltrans has been notifying the agencies of this ongoing requirement.

Additional the PES form requests information on the scope and cost estimates for the proposed projects. It should also be mentioned that scope of the project is compared to the FSTIP at the initial phase and it is reviewed again (second time) prior to approval of the PES form to make sure the scope is still consistent with the FSTIP.

Upon signature of the CE, the DLAE again checks the FSTIP/RTIP to ensure consistency.

7. What is the process used to address air quality conformity requirements?

Under the Section 6004 MOU, both regional and project-level air quality conformity determinations for individual projects have been assigned to the Department.

For Local Assistance projects the Preliminary Environmental Scoping (PES) form is used by the Local Agency to determine the type of environmental document and supporting technical studies. Additionally the PES form is used to determine what additional AQ requirements (i.e. AQR) are needed. A CE Air Quality Checklist is also used during the PES form review by Caltrans staff. Depending on the outcome of the PES form review additional coordination with the TCWG and FHWA may be needed (i.e. Section 6005). If the project has been identified as a Section 6004 CE Caltrans makes the determination on air quality conformity using the CE Air Quality checklist found on the SER site.

8. What are the procedures for ensuring that environmental commitments are incorporated in PS&E packages on CE projects?

It is required of Caltrans to follow the project through completion to ensure that all environmental commitments are met. We use a form letter informing the local agencies on completion of the CE that we require copies of all environmental permits and the ECR to ensure commitments are met.

Local Agencies must send copies of 1) environmental documents, 2) technical reports, 3) summary lists of environmental commitments to be incorporated into PS&E, and 4) permits to Caltrans' DLAE for files to facilitate audits and process reviews. The requirement to have environmental commitments and permits is not new (Local Assistance Procedures Manual Chapters 6, 12, 15, 17), but providing copy to DLAE is now mandated because of the need to provide rapid response to FHWA in process reviews and audits and because FHWA nationally is placing new emphasis on ensuring these commitments are carried out (Terry Abbot letter 9/21/07).

9. How long do you keep your project files, particularly CE documents and associated technical studies?

Prior to implementation of the Section 6004 and Section 6005 MOUs, the District's general practice was to keep a project file until at least 3 years after the project was constructed (which corresponds to the period of time specified for retention of records in the "State Performance Requirements IV.F.3." part of the 6004 MOU.

However, most projects files are kept longer than that until well after project completion. Project files are kept for a minimum of 3 years past project completion.

10. Who keeps the files? Where are they kept?

Both the Senior Environmental Planner, Environmental Planner, and District local assistance engineer keeps project files. Usually the assigned planner and local assistance engineer keep the files.

The files are kept within the cubicles of the assigned staff members. Additionally an extra storage space is centrally located in the environmental planning local assistance unit that is used for the retention of project files.

11. Has there been any cost or time savings resulting from the CE Assignment Program?

Currently in Local Assistance we are seeing time savings. Time savings are occurring within Caltrans. The Environmental Planner (generalists) is required to use the Uniform Filing System for all projects. This has provided us time savings because we are now able to provide prompt answers internally and externally. Also time savings has been seen as all local agencies are now mandated to follow all Caltrans guidance, such as the SER, CE Checklist, AQ Checklist and Local Assistance Procedures

Manual that have been updated per NEPA Delegation. With the use of the Caltrans guidance that has been developed a cost savings and time savings has occurred, as further documentation is required that insures that we examine all environmental resources in avoiding inaccurate 6004 determinations.

12. How do you track and document these savings?

The Environmental Planning Local Assistance Unit along with the Division of Local Assistance and Caltrans HQ use LP2000 and prepare quarterly reports that identify the length of time that was required to process CEs.

13. How many staff and with what expertise is available in your unit to fulfill your responsibilities on CE projects?

District 8 has an Environmental Planning local assistance unit that works directly with the District Local Assistance Engineer. Environmental Local Assistance presently maintains 3 P.Y.s for Environmental Planners providing support plus one Senior E.P. The Department of Environmental Planning provides assistance for reviewing all specialist reports. Currently the Environmental planning unit has a 3 dedicated staff that only deal with local assistance. The Staff is composed of 1 Senior Environmental Planner and 2 Associate Environmental Planner that process the PES submittals and CE projects. Depending on the project technical reports are prepared and submitted to Caltrans and the Associate Environmental Planner directs the report to the appropriate functional unit. Additionally a split staff in environmental engineering exists to address the issues of hazardous waste and air quality conformity for local assistance projects.

14. Are there specific issues within the CE Assignment Program that you see as problematic?

At this time no specific issues have been problematic. The majority of the issues come from informing the local agencies with the requirements of NEPA and the Section 6004 MOU and air quality conformity requirements. We are taking action by providing numerous training opportunities and assistance from staff in directing specific individuals to the SER, PDPM and LAPM.

15. In your experience, can you give any examples of what has worked well with the CE Assignment Program and what needs improvement?

The CE checklist and Air Quality Checklist have been beneficial in streamlining the information that the environmental planners use to make the correct determination. Also those two checklists have also helped the local agencies become more aware of what is required and helped project determination. Additional guidance for Air Quality would be beneficial.

