State of California
DEPARTMENT OF TRANSPORTATION

Business, Transportation and Housing Agency

Memorandum

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To: ENVIRONMENTAL DEPUTY DIRECTORS

Date: March 18, 2011

From: JAY NORVELL
Division Chief
Environmental Analysis

Subject: Tracking Federal Endangered Species Act Consultations and Automatic Elevation Procedures

Starting March 31, 2011, in line with the Standard Tracking Exchange Vehicle for Environmental (STEVE) implementation, the following tracking procedures and automatic elevation process shall be implemented to ensure consultation timeliness between Caltrans and the U.S. Fish and Wildlife Service (Service)1. Steps for data input into STEVE, ensuring a complete biological assessment (BA), timely initiation, and automatic elevation procedures are expected to be utilized and are outlined in the attached document.

This memo will help implement the Dispute Resolution Process Flowchart and Elevation Ladder that was established in November 2006 as well as the Department's Stewardship Agreement with FHWA which focuses on oversight of the program and management of responsibilities, one of which is the assumption of federal responsibilities under Section 7 of the Endangered Species Act.

In order to improve oversight and timeliness of the Section 7 Consultation process an automatic elevation process may be initiated by Division of Environmental Analysis (DEA) and the Region 8 Field Office (RO). This automatic elevation process is dependent on specific conditions and is triggered by review of tracking information of the formal consultation process in both STEVE and the Services' tracking system. DEA and RO may initiate automatic elevations when:

- 60 days have elapsed from the date the initiation request for consultation was received and there is no 30-day insufficiency letter and no indication that the Service has formally started the consultation; or
- 135 days + a 30 day grace period have passed from the date formal consultation was started where no Biological Opinion has been completed.

The active use of the STEVE will help document and track consultation with the Service(s) and will help us manage oversight to improve timeliness and resolve disagreements to help streamline project delivery. If you have any questions related to this subject, please feel free to contact Gregg Erickson at 916-654-6296.

Cc: Gregg Erickson, Chief, Biological and Technical Assistance Office
Attachment

1 Requirements for STEVE tracking procedures also apply to consultations with National Marine Fisheries, however, an automatic elevation procedure has not currently been formally developed.

Tracking Federal Endangered Species Act Consultations and Automatic Elevation

The following outlines procedures associated with the March 18th, 2011 Memorandum "Tracking Federal Endangered Species Act Consultations and Automatic Elevation Procedures." It includes steps for data input into STEVE, ensuring a completed biological assessment (BA), timely intitiation, and automatic elevation procedures.

STEVE Tracking Requirements for Section 7 Endangered Species Act Consultation

The Standard Tracking Exchange Vehicle for Environmental (STEVE) tool will be essential in tracking consultation timelines and identifying the need for automatic elevations with the Service(s). The Districts should ensure they are using the STEVE and filling out all pertinent fields for tracking consultations with the Service(s). These fields include but are not limited to:

- Permit or Action
- Target Submittal Date and Submittal Date
- Additional Submittal Dates
- Application Deemed Complete
- Initiation Date
- Fish and Wildlife Service or National Marine Fisheries[1] File No.

Ensuring a Complete Biological Assessment and Timely Initiation

Expectations are that Field Offices and Districts will work together during informal consultation to collaboratively define the necessary scope, timing and depth of detail for the BA and other information to be used to complete Section 7 consultation. The District may request informal consultation from the Field Office during the scoping phase to determine the range of studies and documentation necessary.

During informal consultation, the Field Office will provide a courtesy review[2] of BAs when requested at least 30 days prior to initiation of formal consultation. In this review, the Field Office will:

- determine whether or not the BA is complete and contains the recommended contents pursuant to 50 CFR 402.14(c);
- provide additional information recommendations to ensure effective and timely preparation of a biological opinion; and
- provide feedback on effects determinations as appropriate.

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[1] Requirements for STEVE tracking procedures also apply to consultations with National Marine Fisheries, however, and automatic elevation procedure has not currently been formally developed.

[2] A request for additional information beyond the "completeness" criteria or minor disagreements on effects analysis should not preclude the initiation of formal consultation. However, where substantial issues are anticipated to delay consultation, early dispute resolution is an option to preclude later disagreements. Note: this early feedback will not influence jeopardy/non-jeopardy determinations, but rather is intended to facilitate the effective preparations of the information necessary for such decisions.

Elevation Process and Trigger Points

The Field Office will notify the District in writing within 30 days if there is concurrence with the findings of the BA (acknowledgement email or letter), or notification as to whether the proposed action can be appended to a Programmatic BO. The Field Office may also identify additional information beyond the basic six requirements that will facilitate effective and efficient analysis and decisions in the Biological Opinion. The District Office will respond to any information requests associated with the start of consultations within 30 days.

Elevations may be initiated by the Field Office or the District, or by default. A review of STEVE and TAILS will be conducted periodically to evaluate the need for elevations. In each case, the Field Office and District will prepare briefings as per the September 6, 2006 Elevation Agreement and the May 4, 2009 Regional Office memo "Guidance for the Joint Issue Memo for the Caltrans Dispute Resolution Process for Section 7 Consultations".

The Field Office or District should elevate unresolved disagreements in a timely manner on the scope, content or timing of the BA's based upon:

- Findings of the BA courtesy review during informal consultation;
- Findings or Information Requests identified in a 30-Day Letter; or
- Lack of a 30-day letter or acknowledgement email or letter that formal consultation has started; or disagreement on the initiation date of formal consultation.

The Division of Environmental Analysis (DEA) and the Regional Office (RO) may automatically initiate an elevation when 60 days have elapsed from the date the initiation request for consultation was received and if there is no indication a request of additional information has been made by the Field Office (30-day insufficiency letter) or that there is no indication that the Field Office has formally started the consultation. Additionally, DEA and RO will automatically initiate elevation when 135 days + 30 day grace period has passed from the date formal consultation was started and the Biological Opinion is not completed. Recognize that these automatic elevations do not preclude the Districts and Field Offices from requesting an elevation; the responsibility to resolve issues during the consultation process still remains with the Districts and Field Offices. In instances where there are interagency agreements for enhanced services, procedures outlined in the agreements related to disputes should also be followed.

The automatic elevations will be reviewed by DEA and the RO in the context of the regulations, policies, standard practices and other implementation factors such as technical feasibility or availability of information. The purpose will be to define the information necessary for a complete biological assessment to begin consultation and agree upon what additional information is to be provided in order to assist in the completion of the Biological Opinion. Decisions may be case specific or set precedent and will focus on the submittal in a manner that will not be pre-decisional for the jeopardy and/or adverse modification analysis contained in the Biological Opinion.

Resolution may include an agreement on any information to be provided and when; an official start date of formal consultation; and policy clarification as needed. Again, these clarifications

and standardizations are being requested in order to collaboratively support the development of an effective and efficient Biological Opinion consistent with the purpose and need of the project and the needs of the species.