

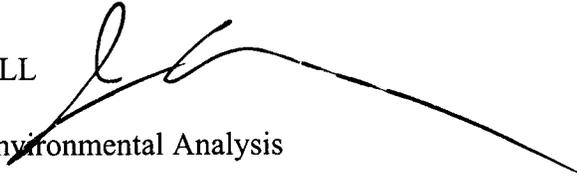
Memorandum

*Flex your power!
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To: DISTRICT DEPUTY DIRECTORS
Environmental

Date: November 14, 2008

From: JAY NORVELL
Chief
Division of Environmental Analysis



Subject: Interim Policy for Establishing Funding Assurance for Mitigation Requirements

Effective immediately, the following interim policy is to establish funding assurance for mitigation requirements. This interim policy defines the procedures that provide an assurance of adequate funding to implement mitigation and monitoring measures as required by consistency determinations under California Fish and Game Code section 2080.1 (Consistency Determination) or for incidental take permits under California Fish and Game Code section 2081 (Permit) or Streambed Alteration Agreements under California Fish and Game Code section 1602 (also referred to as Permit). This provides direction and guidance on how to communicate and document the Department's intent and assurance that the fiscal support to implement commitments made as part of our agreements with DFG are in fact available and programmed.

The attached guidance, "CALTRANS' programming and funding procedures" and the project specific procedures are to be followed when an application is submitted by CALTRANS for either a Consistency Determination or for a Permit. A template (Exhibit A) documents the intent to fully fund and execute the obligations agreed to in the Consistency Determination or Permit associated with the proposed project is also provided. Also attached are examples of letters that have been used to satisfy funding assurance purposes (Exhibit B).

We are currently working with DFG to develop a formal Memorandum of Understanding (MOU) between the two departments to formally recognize and adopt the process for providing assurances as described above. Until that MOU is complete, this interim policy shall guide funding assurance procedures.

Attachments

Guidance for Establishing Funding Assurance for Mitigation Requirements

I. BACKGROUND

When a proposed project will result in take of an endangered species, CALTRANS is required to obtain a Consistency Determination or a Permit from DFG pursuant to California Fish and Game Code sections 2080.1 and 2081. The Determination or Permit authorizes limited take as Caltrans constructs projects per its authority subject to the inclusive limitations and conditions including compensatory mitigation and monitoring to ensure anticipated take is not exceeded and actual take is fully mitigated. Streambed Alteration Agreements can also result in compensatory mitigation and monitoring requirements.

One of the requirements for obtaining either a Consistency Determination or a Permit is that the “applicant shall ensure adequate funding to implement the measures required . . ., and for monitoring compliance with, and effectiveness of, those measures”, per Fish and Game Code §2081(b)(4). In the past, DFG has requested that this requirement be met by the issuance of an irrevocable letter of credit, a pledged savings account, an escrow account or another form of security. CALTRANS has not been able to meet this requirement based on the belief that the specific forms of security requested would violate Article XVI of the California Constitution, section 6, and Government Code section 16305.3. Although no project has failed to go forward because of this issue, the lack of timely issuance of the Consistency Determination or Permit has resulted in higher support costs by both Departments and threatened project funding and construction schedules.

II. PURPOSE OF INTERIM POLICY

The purpose of this guidance and policy is to set forth the programming and funding procedures used by CALTRANS as demonstrative of its commitment and accountability for the funding of conditions set forth in either a Consistency Determination or Permit. As to each specific application for a Consistency Determination or Permit, CALTRANS will provide DFG, by memorandum, the following information: brief project description and Expenditure Authorization (EA) number, program funding source, and the estimated cost of the mitigation and monitoring associated with the Consistency Determination or Permit (the estimated costs do not include costs associated with avoidance or minimization efforts). Exhibit A is the template memorandum to be transmitted to DFG with each application for a Consistency Determination or Permit and Exhibit B includes example letters.

Thus, this interim guidance and policy, along with the project specific memorandum, will provide DFG the assurance of adequate funding necessary for the timely issuance of either a Consistency Determination or a Permit.

III. CALTRANS PROJECT PROGRAMMING AND FUNDING

Each capital project begins by CALTRANS preparing a Project Initiation Document (PID) that contains a project scope, a capital and support cost estimate for each alternative, and a project work plan. The cost estimate includes the anticipated costs of environmental studies, mitigation, and monitoring. Once the project is programmed, the California Transportation Commission (CTC) allocates project environmental analysis and preliminary project design funds based upon the project scope and cost estimates in the PID that include anticipated mitigation and monitoring costs. As the project develops and is further evaluated during the Environmental Document Phase and PS&E, commitments to avoid, minimize, mitigate and monitor are made in consultation with DFG and documented in the Consistency Determination or Permit. These commitments are then to be carried out as part of construction of the project. As the project moves through the development process, the PDT should communicate and measure the obligations and cost estimate to make sure the appropriate funding is allocated/programmed for mitigation activities.

If programming and/or funding adjustments are necessary during the life of a project, the project change control process must be followed. A request for change is reviewed by CALTRANS Headquarters Management and the Environmental Division Chief for consistency with environmental commitments. If the proposed change request includes changing environmental commitments, it must be documented with the consultation and concurrence of the applicable resource agencies, and, if necessary, additional environmental studies and documentation.

In addition to the above outlined CALTRANS project development process, on non-delegated projects, the Federal Highway Administration (FHWA) reviews, approves and periodically audits CALTRANS environmental and fiscal commitments. Any failure to meet these obligations may result in the loss of federal funds.

CALTRANS' project development process, along with the programming allocations of the CTC and the oversight role of FHWA, ensures that projects are constructed in their entirety, including environmental mitigation, and that the projects are adequately funded for those purposes.

IV. IMPLEMENTATION OF INTERIM Guidance and POLICY

CALTRANS will provide DFG the following information (See exhibit A & B) for each project that requires a Consistency Determination or Permit: brief project description and Expenditure Authorization (EA) number, program funding source, and the estimated cost of the mitigation and monitoring associated with the Consistency Determination or Permit (the estimated costs do not include costs associated with avoidance or minimization).

A formal Memorandum of Understanding (MOU) between the two departments to formally recognize and adopt the process for providing assurances as described above is

under development. Until that MOU is complete, this interim guidance and policy shall guide funding assurance procedures.

Exhibit A

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE DIRECTOR

1120 N STREET

P. O. BOX 942873

SACRAMENTO, CA 94273-0001

PHONE (916) 654-5266

FAX (916) 654-6608

TTY 711

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Date

Address

Dear :

**Subject: Funding assurance for the (Insert Project Name Here) Proposed
Compensatory Mitigation**

The State of California, Department of Transportation (Caltrans) is providing this memo to the California Department of Fish and Game (DFG) to provide assurance that sufficient funds have been budgeted for the Streambed Alteration Agreement/Incidental Take Permit (2080.1 and 2081 CFGC) proposed compensatory mitigation associated with the construction of the Insert Project Name.

Caltrans acknowledges its obligation to comply with requirements of the Streambed Alteration Agreement/Incidental Take Permit which will be issued pursuant to Fish and Game Code section 1602/2080.1/2081 by the DFG.. As set forth therein, in order to mitigate for impacts to describe resource(s) that may be associated with the construction of the project name, Caltrans proposes to provide funding, up to insert dollar amount, to implement describe mitigation.

The _____ Project is programmed in the identify funding source/program in fiscal year XX/XX. For SHOPP projects, include the following: The SHOPP was prepared in accordance with Government Code Section 14526.5, Streets and Highways Code Section 164.6 and the strategies outlined in the Caltrans Policy for management of the SHOPP. The 2008 SHOPP is a four-year program of projects for Fiscal Years 2008/09 through 2011/12.

Describe the status of authorized or obligated funds for the project

Caltrans looks forward to working with DFG to further plan, design and implement the measures necessary in order to satisfy Caltrans mitigation obligations and thereby mitigate our impacts to sensitive resources that may be associated with the construction of the Project Name. (this may not apply to all projects, especially, if it works out w/ CWF)

This letter is intended to formally acknowledge our legal obligation to comply

"Caltrans improves mobility across California"

Addressee

Date

Page

with the proposed mitigation described above. Caltrans kindly request that DFG provide written acknowledgement that this letter meets the required funding assurance obligations and provide the Consistency Determination/Streambed Alteration Agreement/Incidental Take Permit in a timely manner.

Sincerely,

CURRENT DIRECTOR

Director

c: (These names appear on the original letter and all copies of the original letter.)

bc: (These names do not appear on the original but only on copies of the original.)

Author's name/typist's initials (only show on file copies)

Exhibit B

Memorandum

*Flex your power!
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To: Scott Wilson, Senior Environmental Scientist
California Department of Fish & Game
P.O. Box 47
Yountville, CA 94599

Date: June 26, 2006

File: 1-MEN-1-PM 69.4/70.1
Ten Mile River Bridge
01 - 385701

Original signed by

From: CHARLES C. FIELDER
District Director

Subject: Funding assurance for the CESA consultation for the Ten Mile River Bridge Seismic Project

The State of California, Department of Transportation (Caltrans) is providing this memo to the California Department of Fish and Game (DFG) to provide assurance that sufficient funds have been budgeted as well as allocated to mitigate for the take of the State listed endangered coho salmon that may be associated with the construction of the Ten Mile River Bridge Seismic Project in Mendocino County. In fact, Four Hundred Thousand Dollars (\$400,000) has been set aside under a separate expenditure authorization number in the State Highway Account for a separate mitigation project to meet our mitigation obligations described herein.

Caltrans acknowledges its legal obligation to mitigate for take of the State listed endangered coho salmon that may result from construction of the Ten Mile River Bridge Seismic Project. As required by the June 9, 2006, National Marine Fisheries Service's (NMFS) biological opinion No: 151422SWR2004SR8263:GRS, in order to fulfill DFG's mitigation requirements under the California Endangered Species Act, Caltrans proposes to provide funding, up to Four Hundred Thousand Dollars (\$400,000), to facilitate a fish passage project at one of the following three locations on route 1 in Mendocino County:

- Dunn Creek at Post Mile 92.83
- An unnamed tributary to Cottaneva Creek at Post Mile 89.20
- An unnamed tributary to Cottaneva Creek at Post Mile 88.71

In addition to placing the Four Hundred Thousand Dollars (\$400,000) under a separate expenditure authorization account number, Caltrans has also programmed a mitigation project to facilitate fish passage at one of the above-noted locations on Route 1 in Mendocino County. The mitigation project has been programmed in Fiscal Year 2009/10 in the 2006 State Highway Operation and Protection Program (SHOPP). The SHOPP was prepared in accordance with Government Code Section 14526.5, Streets and Highways Code Section 164.6 and the strategies outlined in the Caltrans Policy for management of the SHOPP. The 2006 SHOPP is a four-year program of projects for Fiscal Years 2006/07 through 2009/10 and is being updated to include the mitigation project.

Caltrans remains committed to fulfill our legal obligations and thereby satisfy the requirements of DFG's Consistency Determination. Furthermore, Caltrans looks forward to working with DFG to select one of three locations described above on Route 1 in Mendocino County to implement a mitigation project which will facilitate fish passages that will satisfy our obligation to mitigate for the take of the State listed endangered coho salmon that may be associated with the construction of the Ten Mile River Bridge Seismic Project. Furthermore, should the funding which has been allocated for this obligation become unavailable due to circumstances beyond Caltrans' control, Caltrans will consult with DFG and continue to seek funding within our statutory authority.

The Ten Mile River Bridge Seismic Project is of great importance to Caltrans and we kindly request that DFG provide written acknowledgement that this memo meets the required funding assurance obligation.

c: Alan Escarda, Project Manager
Lena Ashley, Chief, North Region Environmental Services - North

DEPARTMENT OF TRANSPORTATION

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OAKLAND, CA 94612
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July 6, 2006

Robert W. Floerke, Regional Manager
Department of Fish and Game, Central Coastal Region
P. O. Box 47
Yountville, CA 94599

Subject: Funding assurance for the Russian River Bridge Replacement at Geyserville

The State of California, Department of Transportation (Caltrans) is providing this memo to the California Department of Fish and Game (DFG) to provide assurance that sufficient funds have been budgeted to mitigate for impacts to sensitive fisheries resources that may be associated with the construction of the Russian River Bridge at Geyserville and thereby satisfy the requirements of the Streambed Alteration Agreement, issued by the DFG on March 14, 2006, amended on May 24, 2006 and amended again on June 30, 2006, specifically Condition #5 of the Streambed Alteration Agreement Amendment #2, issued June 30, 2006.

Caltrans acknowledges its obligation to comply with requirements of the Streambed Alteration Agreement which was issued pursuant to Fish and Game Code section 1602 by the DFG on March 14, 2006, amended on May 24, 2006 and amended again on June 30, 2006. As set forth therein, in order to mitigate for impacts to sensitive fisheries resources that may be associated with the construction of the Russian River Bridge at Geyserville, Caltrans proposes to provide funding, up to Two Million and Five Hundred Thousand Dollars (\$2,500,000), to implement fisheries enhancement projects in the Russian River Basin.

The Russian River Bridge Project is programmed in the 2006 State Highway Operation and Protection Program (SHOPP) in fiscal year 06/07. The SHOPP was prepared in accordance with Government Code Section 14526.5, Streets and Highways Code Section 164.6 and the strategies outlined in the Caltrans Policy for management of the SHOPP. The 2006 SHOPP is a four-year program of projects for Fiscal Years 2006/07 through 2009/10. The Russian River Bridge Project will be funded with Emergency Relief Funds.

Mr. Robert W. Floerke
July 7, 2006
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Caltrans has submitted a Damage Assessment Form to Federal Highway Administration for Emergency Relief Funds for the Russian River Bridge Replacement Project. Of the Emergency Relief Funds requested, Two Million and Five Hundred Thousand Dollars (\$2,500,000.00) was included to mitigate for impacts to sensitive fisheries resources that may be associated with the construction of the Russian River Bridge project.

On February 17, 2006, Caltrans received the Federal Highway Administration's authorization to proceed which thereby obligates and commits Federal funds to the Russian River Bridge Project. Therefore, up to Two Million and Five Hundred Thousand Dollars (\$2,500,000.00) will be committed to mitigate for impacts to sensitive fisheries resources that may be associated with the construction of the Russian River Bridge at Geyserville as required by the Streambed Alteration Agreement issued by the DFG on March 14, 2006, amended May 24, 2006 and amended again June 30, 2006.

Caltrans looks forward to working with DFG to select the the fisheries enhancement projects that will be planned, designed and implemented in order to satisfy Caltrans mitigation obligations and thereby mitigate our impacts to sensitive fisheries resources that may be associated with the construction of the Russian River Bridge. Due to statutory requirements and other constitutional limitations, the Department is unable to issue a check in the amount of Two Million and Five Hundred Thousand Dollars (\$2,500,000.00) directly to DFG by July 14, 2006. However, the Department does look forward to entering into an agreement with DFG to define the role of each agency in implementing the fisheries enhancement projects to satisfy Caltrans' mitigation obligations.

Caltrans acknowledge our legal obligation to comply with California Fish and Game Code section 1600 et. seq.

Caltrans kindly request that DFG provide written acknowledgement that this letter meets the required funding assurance obligations required pursuant to the Streambed Alteration Agreement issued by the DFG on March 14, 2006, amended May 24, 2006 and amended again June 30, 2006, specifically Condition 5 of that second amendment.