

# Successes **in** Stewardship

<http://www.environment.fhwa.dot.gov/strmlng/es4newsltrs.asp>

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## FHWA and Caltrans Complete First Year Under NEPA Pilot Program

The 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Section 6005(a), established the Surface Transportation Project Delivery Pilot Program (Pilot Program), codified as 23 United States Code (USC) §327. As described in the July 2007 issue of [Successes in Stewardship](#), the Pilot Program allows the Secretary of Transportation to assign, and the state to assume, the Secretary's responsibilities under the National Environmental Policy Act (NEPA) for one or more highway projects. On July 1, 2007, the California Department of Transportation (Caltrans) and the Federal Highway Administration (FHWA) entered into a Memorandum of Understanding (MOU) in which Caltrans assumed FHWA responsibilities for NEPA as well as for other Federal environmental laws for most highway projects in California. This issue of *Successes in Stewardship* looks back on the first year of Caltrans' participation in this first-of-its-kind NEPA Pilot Program.



*Caltrans Pilot Program logo: NEPA Delegation—"Where no state has gone before ..." (logo courtesy of Caltrans).*

### Caltrans Assumes NEPA Responsibilities

To comply with the Pilot Program, Caltrans must meet the requirements stated in the MOU and in their Application for Assumption that was submitted to FHWA and made available for public comment before being finalized by Caltrans. Both the MOU and the application describe the roles and responsibilities assumed under the Pilot Program and, in many cases, the processes and procedures for carrying them out. Under the Pilot Program, Caltrans has implemented several new processes for improving organizational effectiveness. One of these, an environmental document quality assurance process, is aimed at increasing consistency across the Districts. While implementation of the processes is still a work in progress, the intention is to help Caltrans create a more uniform statewide approach to meeting Pilot Program responsibilities. As with any new program implementation, there is a learning curve. Caltrans has been surprised by the amount of ongoing reporting and paperwork that are required and by the extra effort that it takes to manage and administer the program.

### Read More About Caltrans' Participation in the Pilot Program . . .

- [MOU between FHWA and the California Department of Transportation Concerning the State of California's participation in the Surface Transportation Project Delivery Pilot Program](#)
- [Caltrans's website on NEPA Delegation](#)
- [Surface Transportation Project Delivery Pilot Program—FHWA Audit of Caltrans, January 29–31, 2008](#)

Caltrans NEPA Delegation Manager Cindy Adams has seen an increase in staff ownership and accountability for environmental documents and decisions as leading to a feeling of empowerment and, ultimately, to better results. Caltrans considers its first year of the Pilot Program to have been a success and attributes this to the dedication and professionalism of environmental staff throughout the organization, especially those in the 12 Caltrans District Offices.

Although the project-development process has not changed dramatically, one change affects the relationship between Caltrans and the Federal resource and regulatory agencies. Under the Pilot Program, Caltrans now works directly with these agencies, which in turn allows its resource experts to work directly with their Federal-agency counterparts on resource-specific issues. The Pilot Program seems to help streamline the communication and coordination process between Caltrans and the Federal resource and permitting agencies. Caltrans has already seen a reduction in the consultation time required to ensure compliance under the Endangered Species Act.

### A New Role for FHWA

Under the Pilot Program, FHWA has learned to assume a new role and has faced its own learning curve. The role of the FHWA California Division has been minimized in the area of the NEPA process for projects that fall under the Pilot Program since Caltrans has assumed NEPA responsibilities as described in the MOU. Several projects are excluded from the Pilot Program, as noted in the MOU, and still require FHWA Division Office coordination and review. The FHWA Headquarters'

Office of Project Development and Environmental Review has the new responsibility of overseeing the Pilot Program, including assessing Caltrans' compliance with the MOU and other requirements, through an audit process.

SAFETEA-LU requires semiannual compliance audits during each of the first two years of state participation in the Pilot Program and annual audits in each subsequent year. These audits are designed to provide technical assistance while ensuring that all requirements under the MOU and the application are being met. FHWA has contracted with consultants with expertise in compliance auditing and training to help develop and implement the audit process and procedures for the Pilot Program. As part of this process, FHWA created an audit team to participate in the audits (see sidebar). The first FHWA-led audit, held in January 2008, involved a review of how procedures and tools in the areas of program management, training, records and documentation management, and legal sufficiency were being implemented and used at Caltrans Headquarters and the District level. Overall, FHWA found that Caltrans has made reasonable progress in implementing the startup phase of Pilot Program operations and is learning how to operate the program effectively. This audit report, which describes the team's findings, was published in the [Federal Register on September 23, 2008](#), following a 60-day comment period, which ended on August 1, 2008. The second audit, held in July 2008, involved visits to three Caltrans District Offices and a review of additional core areas, including performance measures and quality assurance/quality control. The full report for the July 2008 audit will be published in the Federal Register for comment in the upcoming months. Caltrans has found these audits to be beneficial and recognizes that they are a tool to assist in successfully implementing the Pilot Program.

### FHWA Audit Team

- FHWA Office of Project Development and Environmental Review
- FHWA Chief Counsel Office
- FHWA Alaska Division Office
- FHWA Resource Center Environmental Team
- USDOT's Volpe National Transportation Systems Center
- Federal Resource Agency Transportation Liaisons
  - Advisory Council on Historic Preservation
  - U.S. Forest Service

### Looking to the Future of the Pilot Program

Currently, California is the only state participating in the Pilot Program. Alaska continues to express interest but has not yet submitted an application to FHWA. The California legislature has extended the required waiver of sovereign immunity until January 1, 2012. Under SAFETEA-LU, the Pilot Program will terminate on August 10, 2011. Caltrans will operate under the Pilot Program through its entirety. The next transportation authorization bill is expected to include the Pilot Program in some form. The Caltrans experience has been a very positive one; the agency notes that there has been FHWA "collaboration from the very beginning," which is a major factor in the program's success. Caltrans views the Pilot Program as an important opportunity and encourages other states that are considering joining to do so, perhaps starting off with just a few projects. For Caltrans, however, taking the large-scale approach has helped in developing a strong program while minimizing any potential confusion to resource agencies and the public.

Together, FHWA and Caltrans have spent this first year setting the framework for a successful Pilot Program. They look forward to seeing the longer-term results and sharing the outcomes with other states.

### Contact Information

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### Look What's New!

- The Advisory Council on Historic Preservation is accepting nominations for exemplary heritage tourism and historic preservation programs and projects that meet 2009 Preserve America Presidential Award criteria. Nominations must be postmarked no later than **November 1, 2008**.

Additional information, as well as a downloadable (PDF) nomination form, instructions, and details about previous winners, can be found at their [website](#).

- 12th National Mitigation & Ecosystem Banking Conference:  
Call for presentations due October 15! The conference is on May 5-8, 2009, in Salt Lake City, Utah Visit the [conference website](#) for more information.