

APPENDIX 1-A

**FEDERAL COOPERATING AGENCY MEMORANDUM OF
UNDERSTANDING**

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MEMORANDUM OF UNDERSTANDING
FOR
THE CALIFORNIA STATEWIDE HIGH-SPEED TRAIN
PROGRAM ENVIRONMENTAL IMPACT REPORT / ENVIRONMENTAL IMPACT STATEMENT
BETWEEN
FEDERAL RAILROAD ADMINISTRATION
AND
FEDERAL HIGHWAY ADMINISTRATION
FEDERAL TRANSIT ADMINISTRATION
US ARMY CORPS OF ENGINEERS
US FISH AND WILDLIFE SERVICE
US ENVIRONMENTAL PROTECTION AGENCY

SUBJECT: Federal Agency MOU for the California High-speed Train Program EIR/EIS

I. REFERENCES

- National Environmental Policy Act
- National Environmental Policy Act implementing regulations of the Council on Environmental Quality
- Federal Railroad Administration's Environmental Procedures
- Council on Environmental Quality's 40 Questions, No. 14b.
- California Environmental Quality Act
- Memorandum of Understanding on the National Environmental Policy Act and Clean Water Act Section 404 Integration Process for Surface Transportation Projects dated December 1993
- Federal Freedom of Information Act
- Clean Water Act
- Rivers and Harbors Act
- Marine Protection, Research, and Sanctuaries Act
- Fish and Wildlife Coordination Act
- Endangered Species Act
- Clean Air Act
- Safe Drinking Water Act
- Pollution Prevention Act
- Executive Order 12898 on Environmental Justice
- Resource Conservation and Recovery Act
- Comprehensive Environmental Response, Compensation, and Liability Act

II. PURPOSE

The purposes of this Memorandum of Understanding (MOU) are:

- (a) To confirm the formal designation of the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), the US Army Corps of Engineers (Corps), the US Environmental Protection Agency (EPA), and the US Fish and Wildlife Service (FWS) as cooperating agencies to assist FRA in guiding the preparation of the Program Environmental Impact Report and Environmental Impact Statement (Program EIR/EIS) for the California Statewide High-Speed Train program,
- (b) To define each signatory's role, obligations, and responsibilities for participating in the preparation of the Program EIR/EIS,
- (c) To facilitate the preparation of a Program EIR/EIS that will enable each signatory to properly address potential program level environmental impacts for which they have expertise related to the alternatives under consideration, and
- (d) To provide a framework for cooperation and coordination among the signatories to facilitate completion of the National Environmental Policy Act (NEPA) process for the Program EIR/EIS, including issuance of any required findings, concurrences, or Records of Decision, and fulfill such environmental responsibilities as each signatory may have for the Program process.

III. PROBLEM

The FRA is the lead Federal agency for this project. It is ultimately responsible for preparing the Draft and Final Program EIR/EIS's and for assuring compliance with the requirements of NEPA in conjunction with the California High-Speed Rail Authority (CHSRA), which must assure compliance with the requirements of California Environmental Quality Act (CEQA). Although the FRA agrees to give full respect and recognition to the jurisdiction of the cooperating agencies, the FRA is responsible for considering impacts to the quality of the natural and human environment associated with the proposed project. FRA cannot delegate its core NEPA responsibilities to the cooperating agencies. In meeting these responsibilities, the FRA will be guided by FRA's Environmental Procedures (64 Fed Reg. 28545) and the NEPA implementing regulations of the Council on Environmental Quality (40 CFR 1500 et seq.) FRA will use the environmental analyses, proposals, and special expertise of the cooperating agencies to the maximum extent possible consistent with its responsibilities, and as the lead agency, will retain ultimate responsibility for the Program EIR/EIS's content [see 40 CFR, 1501.6(a)(2) and CEQ's 40 Questions, No. 14b] in conjunction with the CHSRA. This includes defining the issues, determining purpose and need of the project, selecting or approving alternatives and mitigation measures, reviewing and requiring modification of the Program EIR/EIS, responding to comments on the Draft Program EIR/EIS, and retaining responsibility for the conclusions of its environmental analysis.

The signatories' goal is to prepare a Program EIR/EIS that contains all the information each signatory would require in order to fulfill their NEPA and/or regulatory responsibilities and to make independent decisions on their respective subject area designations and issues under their purview for this process. As such, the cooperating agencies are to participate in the NEPA process at the earliest appropriate time, make staff support available, exchange relevant information throughout the Program EIR/EIS process, submit independent recommendations, and assist FRA in developing responses to comments received on the Draft and Final Program EIR/EIS. The cooperating agencies will not be responsible for the actual preparation of any portion of the Program EIR/EIS or related technical reports; however, they will provide comments to FRA on their respective resource designations. Cooperating agencies will be kept apprised of the disposition of their comments.

IV. SCOPE

The FRA, the lead Federal agency, and the FHWA, the FTA, the Corps, the EPA, and the FWS, who have agreed to serve as the cooperating Federal agencies, have developed this MOU. The FAA has agreed to serve as a cooperating agency by letter in lieu of signing this MOU at this time. The purpose of this MOU is to clarify expectations for guiding the preparation and review of a combined, Tier 1, Program EIR/EIS that will describe and analyze the potential environmental effects of the proposed implementation of a Statewide California High-Speed Train System, the proposed action. This MOU describes these agencies' respective responsibilities regarding the preparation of a Program EIR/EIS pursuant to the requirements of the NEPA. The CAHSRA is the sponsor of the proposed action, and serves as joint lead agency with the FRA for preparation of the Program EIR/EIS and is responsible for compliance with the CEQA.

V. UNDERSTANDING

Under the policies, directives, plans, and operations of the FRA, and under NEPA [42 U.S.C. 4371 et seq.] the FRA, as lead Federal agency, has the responsibility to designate those subject areas to be treated in the Program EIR/EIS upon which each cooperating agency will focus its evaluation and review of environmental issues. These designations will be based upon the general legal jurisdiction and/or special expertise of the cooperating agency, and will not limit that agency's ability to comment on other environmental resources or aspects of the Program EIR/EIS.

Following the directives of NEPA, the signatories to this MOU shall cooperate fully and share information and technical expertise to evaluate the potential environmental effects of the proposed action and its alternatives. Each signatory shall give full recognition and respect to the authority, expertise, and responsibility of the others. Participation in this MOU does not imply endorsement of the proposed action, nor does it abridge the independent review of the Draft and Final Program EIR/EIS by the signatory agencies.

A. PROCEDURES

1. The principles of the Memorandum of Understanding on the National Environmental Policy Act and Clean Water Act Section 404 Integration Process for Surface Transportation Projects (NEPA/404 MOU) dated December 1993 shall be implemented to the fullest extent appropriate in the process of preparing the Program EIR/EIS, even though FRA is not a signatory to the MOU due to its limited project development responsibilities in the three affected states.
2. FRA will request concurrence consistent with the 1993 NEPA/404 MOU from the cooperating agencies with regulatory/resource responsibilities at key milestones in the Program EIR/EIS process. FRA agrees to provide relevant information consistent with the provisions of the December 1993 NEPA/404 MOU and this Program EIR/EIS (Tier 1) to these Cooperating Agencies in a timely and effective manner.
3. Cooperating Agencies with regulatory/resource responsibility under the December 1993 NEPA/404 MOU agree within forty-five (45) days of receipt of such information to concur or nonconcur on project purpose and need, section 404 basic and overall project purpose, project alternatives to be evaluated in the draft EIS, and selection of the preferred corridor and route most likely to yield the least environmentally damaging practicable alternative should the Program EIR/EIS (Tier 1) identify and select a preferred corridor and route for the project. Should the program advance, the Program EIR/EIS would be followed by detailed study in one or more second tier environmental assessments(s) (Tier 2), which may lead to additional EIR/EIS's, or other environmental documentation.

- a) If a written concurrence or non-concurrence as described in (b) above is not received within agreed-upon timeframes, the project proponent and other signatory agencies may move the Program EIR/EIS forward based on the presumption that the non-response means that the agency has no significant objections. To be considered valid, statements of non-concurrence will be accompanied by a substantive explanation of the basis for dissent. Agencies agree not to revisit previous agreements or key milestones unless there is significant new information or significant changes to the project, the environment, or laws and regulations.
 - b) If a resource/regulatory agency issues a written statement of non-concurrence, the signatories will attempt to reach agreement according to section V. [C.] (3.) within (20) days. If concurrence is not obtained by the end of that time, the Program EIR/EIS will be advanced incorporating the statement of non-concurrence.
4. As appropriate and to enhance the effectiveness of this MOU, the FRA will work with the cooperating agencies to ensure timely and efficient access to the expertise, data, information, analyses, and comments received.
 5. Each signatory will identify a designated Point of Contact (POC) for coordination and consistency on this highly visible project. Due to the complexity of the project, the agencies realize that this is a long-term commitment of resources and will make every effort to maintain the same POC through the duration of the NEPA process. If reassignment of the POC becomes necessary, the agency will notify the MOU signatories of the change. In such cases, previous positions recorded in the administrative record will not be revisited, unless there is significant new information or significant changes to the project, the environment, or laws and regulations.
 6. The signatories will ensure appropriate coordination, communication, project updates and status reviews occur, as needed, to keep each other current on the progress of the Program EIR/EIS.
 7. In coordination with the CHSRA, which serves as lead agency for CEQA compliance, the FRA will appropriately incorporate the comments, analyses, recommendations, and /or data submitted by the cooperating agencies in the Draft and Final Program EIR/EIS, and will utilize a systematic, interdisciplinary approach that will ensure the integrated use of the submitted material [40 CFR §1501.6(a)(2) and 1502.6].
 8. The FRA will promptly inform the cooperating agencies of all schedule changes that would affect an agency's ability to provide timely input for a document review. Adequate time, typically a 30-day goal, will be given for agency reviews, and every effort will be made to provide documents two weeks in advance of meetings.
 9. The cooperating agencies will keep confidential and protect from public disclosure any and all documents related to the Draft and Final Program EIR/EIS's that they receive prior to determination by the FRA of their suitability for public review or release under the provisions of the Federal Freedom of Information Act (FOIA), in accord with the FOIA implementing regulations of the lead or cooperating agencies.
 10. The agencies agree not to employ the services of any representative or party having a financial interest in the outcome of the proposed project. The cooperating agencies will take all necessary steps to ensure that no conflict of interest exists with its consultants, counsel, or representatives employed in this undertaking. [40 CFR §1506.5(c)] If disclosure statements are obtained as a result of contractor or other selection regarding this action, copies of the disclosure statements will be forwarded to the FRA for inclusion in the Administrative Record.

B. DESIGNATIONS

1. All signatories recognize that the Program EIR/EIS involves a conceptual level of detail, rather than the project level of detail typical for a Tier 2 analysis, and does not involve the issuance of permits or approvals for a specific project or projects.
2. All signatories recognize that, in this Program EIR/EIS, the agencies will be seeking to define the general framework and information needs for future decision making, e.g., on specific projects and permits, which would be treated in a Tier 2 environmental analysis or analyses and may be addressed in a future MOU concerning environmental review, NEPA/404 and/or cooperating agencies for purposes of NEPA compliance.
3. Based on each cooperating agency's special expertise and/or its general jurisdiction by law, the FRA, pursuant to its lead agency responsibilities [CEQ 1501.6 (b)(3)], makes the following requests:
 - a) FHWA: That FHWA focus its efforts on those issues and subject areas to be treated in the Draft and Final Program EIR/EIS's pertaining or related to highway planning, including input to the definition of the Modal Alternative, roadway travel demand, accident/safety impacts/benefits and potential effects of the Project on the Interstate Highways and their rights-of-way in California. The FHWA will also provide its expertise with respect to program level 4(f) evaluation.
 - b) FTA: That FTA focus its efforts on those issues and subject areas to be treated in the Draft and Final Program EIR/EIS's pertaining or related to commuter rail and multi-modal station planning, transit travel demand, feeder transit services, and potential effects of the Project on commuter rail and transit systems in California.
 - c) FAA: That FAA focus its efforts on those issues and subject areas to be treated in the Draft and Final Program EIR/EIS's pertaining or related to airport planning, aviation travel demand, input to the definition of the Modal Alternative and potential effects of the Project on airports and the aviation system in California.
 - d) Corps: That Corps focus its efforts on those issues and subject areas to be treated in the Draft and Final Program EIR/EIS's pertaining or related to compliance with the applicable requirements of Section 404 of the Clean Water Act, as amended, Section 10 of the Rivers and Harbors Act and Section 103 of the Marine Protection, Research, and Sanctuaries Act.
 - e) FWS: That FWS focus its efforts on those issues and subject areas to be treated in the Draft and Final Program EIR/EIS's pertaining or related to compliance with the applicable requirements of the Fish and Wildlife Coordination Act and the Endangered Species Act.
 - f) EPA: That EPA focus its efforts on those issues and subject areas to be treated in the Draft and Final Program EIR/EIS's pertaining or related to compliance with the applicable requirements of the Clean Air Act, as amended, Section 404 of the Clean Water Act, as amended, the Safe Drinking Water Act, the Pollution Prevention Act, and Executive Order 12898 on Environmental Justice. To the extent that the future projects may disturb areas contaminated with hazardous wastes or hazardous substances, EPA will review and comment on those issues in accordance with the Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation, and Liability Act. This participation does not

abridge the independent review of the Draft and Final Program EIR/EIS pursuant to NEPA Section 309 of the Clean Air Act (CEQ's 40 Questions, No. 15).

C. ADMINISTRATION

1. Nothing in this MOU will be construed as affecting the authority of any signatory beyond those agreements contained within this MOU.
2. This MOU does not obligate the FRA to provide funding for cooperating agency involvement in this or the NEPA/404 MOU efforts, nor does it require the signatory agencies to obligate or expend funds in excess of available appropriations.
3. If a disagreement should develop between FRA and a cooperating agency or agencies, the POC's of the involved agencies will expeditiously attempt to resolve the disagreement through reaching a consensus of those agencies. If timely amicable resolution is not achieved at the POC level, the matter shall be promptly referred to mid-level management of these agencies for their participation in the resolution process. In the event that mid-level managers are unable to reach a satisfactory solution, the matter will be referred to the persons whose signatures appear in Section VI of this MOU who will be asked by the FRA to convene a meeting or a conference call to reach a satisfactory resolution.
4. This MOU shall be terminated when the FRA issues a Record of Decision on the Program EIR/EIS or for reasons of good cause upon 30 days prior written notice from FRA. A theoretical example of good cause would be the withdrawal of the proposed action by the CAHSRA as the program sponsor.
5. Any signatory may request re-negotiation or modification of this MOU at any time. All signatories will consider the proposed changes, and upon mutual agreement, adopt the proposed changes. The signatory that proposed the change shall provide copies of the adopted revised MOU to the other signatories.
6. This MOU shall be incorporated into or referenced in the Draft and Final Program EIR/EIS's for public review so that each signatory's respective roles may be understood.

VI. EFFECTIVE DATE: July 18, 2003

VII. AGREEMENT TO PARTICIPATE IN THIS MOU

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Allan Rutter
Administrator
Federal Railroad Administration

July 18, 2003
Date

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Robert L. Davis,
Brigadier General, U.S. Army, Commanding
U.S. Army Corps of Engineers

11 May, 2003
Date

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Gary N. Hamby
Division Administrator
Federal Highway Administration
California Division

April 4, 2003
Date

Steve Thompson
Manager
California/Nevada Operations Office
U.S. Fish and Wildlife Service
Region 1

Date

|S|

Leslie T. Rogers
Regional Administrator
Federal Transit Administration
Region IX

April 11, 2003
Date

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Wayne Nasti
Regional Administrator
U. S. Environmental Protection Agency
Region IX

April 9, 2003
Date