Memorandum

US Department
of Transportation
Federal Highway
Administration

U.S. Department
of the Interior
Fish and Wildlife Service

Subject: **INFORMATION:** Endangered Species Act Legal Analysis

Date: February 18, 2005

In Reply Refer to:
HEPE-20

From: Cynthia J. Burbank Cindy Burbank
Associate Administrator for Planning,
Environment and Realty
Federal Highway Administration

Elizabeth Stevens Elizabeth H Stevens
Assistant Director, Endangered Species
Fish and Wildlife Service

To: Division Administrators
Directors of Field Services
Federal Lands Highway Division Engineers
Assistant Regional Directors, Ecological
Services, Regions 1-7, CNO

Attached is a revised Federal Highway Administration (FHWA) legal opinion regarding the timing and information requirements of the Endangered Species Act's (ESA) Section 7 Interagency consultation process. This opinion was originally prepared and sent to the FHWA Division Administrators in February of 2004. Since that time Fish and Wildlife Service (USFWS) and FHWA staff and legal counsel have worked together to clarify regulatory and statutory requirements, update legal citations, and encourage timely and effective collaboration to ensure timely ESA compliance. This work is reflected in the revised opinion.

This legal opinion complements FHWA's extensive national effort to promote partnerships between transportation and environmental interests through a variety of activities which include conducting "Linking Transportation Planning and NEPA" workshops and funding transportation related activities of USFWS biologists to increase our collective efforts to protect our natural resources and decrease conflicts.

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If there are outstanding issues related to effective Section 7 consultations in your State or region, we encourage you meet with your Federal and State counterparts to review the findings of the consultation process with the appropriate managers. Issues that cannot be readily resolved should be elevated to the appropriate Regional, and Washington Offices as necessary. For questions or other clarification, USFWS representatives may contact Rick Sayers at (703) 358- 2106 or Michael Horton at (703) 358-2371 in the Branch of Consultations and Habitat Conservation Planning; FHWA representatives may contact either Shari Schaftlein in the Office of Project Development and Environmental Review at (202) 366-5570, Fred Bank in the Office of Natural and Human Environment at (202) 366-5004, or Lance Hanf in the Office of Chief Counsel at 415-744-8272.

Attachment