

therefore, the level of safety will not be adversely affected by this exemption.

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Final Federal Agency Actions on Proposed Highway in North Carolina

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Limitation on Claims for Judicial Review of Actions by Army Corps of Engineers (USACE), DoD and Other Federal Agencies.

**SUMMARY:** This notice announces actions taken by the USACE and other Federal agencies that are final within the meaning of 23 U.S.C. 139(I)(1). The actions relate to a proposed highway project, the Triangle Parkway, which begins at NC 540 in Wake County and ends at I-40 in Durham County, North Carolina. The Triangle Parkway is also known as State Transportation Improvement Program Project U-4763B. Those actions grant licenses, permits, and approvals for the project.

**DATES:** By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(I)(1). A claim seeking judicial review of the Federal agency actions that are covered by this notice will be barred unless the claim is filed on or before August 17, 2009. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

**FOR FURTHER INFORMATION CONTACT:** Mr. George Hoops, P.E., Major Projects Engineer, Federal Highway Administration, 310 New Bern Avenue, Suite 410, Raleigh, North Carolina, 27601-1418, Telephone: (919) 747-7022; *e-mail:* [george.hoops@fhwa.dot.gov](mailto:george.hoops@fhwa.dot.gov). (Regular business hours are 8 a.m. to 5 p.m.). Ms. Jennifer Harris, P.E., Staff Engineer, North Carolina Turnpike Authority, 5400 Glenwood Avenue, Suite 400, Raleigh, North Carolina, 27612, Telephone: (919) 571-3004; *e-mail:* [jennifer.harris@ncturnpike.org](mailto:jennifer.harris@ncturnpike.org). (Regular business hours are 8 a.m. to 5 p.m.). Mr. Eric Alsmeyer, Project Manager, U.S. Army Corps of Engineers, Raleigh Regulatory Field Office, 3331 Heritage Trade Drive, Suite 105, Wake Forest, North Carolina 27587, Telephone: (919) 554-4884, extension 23; *e-mail:* [Eric.C.Alsmeyer@usace.army.mil](mailto:Eric.C.Alsmeyer@usace.army.mil).

(Regular business hours are 8 a.m. to 5 p.m.).

**SUPPLEMENTARY INFORMATION:** On August 6, 2008, the FHWA published a "Notice of Final Federal Agency Actions on Proposed Highway in Wake and Durham Counties, North Carolina" in the *Federal Register* in Volume 73, Number 152 for the following highway project: The Triangle Parkway, a 3.4-mile long, multi-lane, fully access-controlled, new location roadway. The project is also known as State Transportation Improvement Program (STIP) Project U-4763B. The project would run generally in a north-south direction, roughly parallel to NC 55, Davis Drive, and NC 54. On the south, the project begins at NC 540 in Wake County; on the north, it ends at I-40 in Durham County. The purpose of the project is to improve commuter mobility, accessibility, and connectivity to Research Triangle Park employment center and to reduce congestion on existing north-south routes that serve the Triangle Region, primarily NC 55 and NC 54. The project is known as Federal-Aid Project Number NHS-54(7). The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) for the project, approved on February 20, 2008, and the FHWA Finding of No Significant Impact (FONSI) issued on July 29, 2008, approving the Triangle Parkway project, and in other documents in the FHWA administrative record. Notice is hereby given that, subsequent to the earlier FHWA notice, the USACE has taken final agency actions within the meaning of 23 U.S.C. § 139(I)(1) by issuing permits and approvals for the highway project. The actions by the USACE, related final actions by other Federal agencies, and the laws under which such actions were taken, are described in the USACE decisions and its administrative record for the project, referenced as Department of the Army Permit Number 2007-02903. That information is available by contacting the USACE at the address provided above.

Information about the project also is available from the FHWA and the North Carolina Turnpike Authority at the addresses provided above. The FHWA EA and FONSI and the USACE decision can be viewed at the North Carolina Turnpike Authority offices and can be downloaded from the NCTA's project Web site at [http://www.ncturnpike.org/projects/Triangle\\_Parkway/documents.asp](http://www.ncturnpike.org/projects/Triangle_Parkway/documents.asp). This notice applies to all USACE and other Federal agency final actions taken after the issuance

date of the FHWA *Federal Register* notice described above. The laws under which actions were taken may include, but are not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321-4351]; Federal-Aid Highway Act [23 U.S.C. 109].
2. *Air:* Clean Air Act [42 U.S.C. 7401-7671(q)].
3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].
4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531-1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Anadromous Fish Conservation Act [16 U.S.C. 757(a)-757(g)], Fish and Wildlife Coordination Act [16 U.S.C. 661-667(d)], Migratory Bird Treaty Act [16 U.S.C. 703-712], Magnuson-Stevenson Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 *et seq.*].
5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)-11]; Archeological and Historic Preservation Act [16 U.S.C. 469-469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001-3013].
6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)-2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201-4209].
7. *Wetlands and Water Resources:* Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601-4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)-300(j)(6)]; Wild and Scenic Rivers Act [16 U.S.C. 1271-1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; TEA-21 Wetlands Mitigation [23 U.S.C. 103(b)(6)(m), 133(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001-4128].
8. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) [42 U.S.C. 9601-9675]; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA) [42 U.S.C. 6901-6992(k)].
9. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and

Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**Authority:** 23 U.S.C. 139(f)(1).

Issued on: February 10, 2009.

**George Hoops,**

*FHWA Major Projects Engineer, Raleigh, North Carolina.*

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**DEPARTMENT OF TRANSPORTATION**

**Federal Highway Administration**

[FHWA Docket No. FHWA-2008-0053]

**Surface Transportation Project Delivery Pilot Program; Caltrans Audit Report**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Final report.

**SUMMARY:** Section 6005 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) established the Surface Transportation Project Delivery Pilot Program, codified at 23 U.S.C. 327. To ensure compliance by each State participating in the Pilot Program, 23 U.S.C. 327(g) mandates semiannual audits during each of the first 2 years of State participation. This final report presents the findings from the second FHWA audit of the California Department of Transportation (Caltrans) under the pilot program.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ruth Rentch, Office of Project Development and Environmental Review, (202)-366-2034, [Ruth.Rentch@dot.gov](mailto:Ruth.Rentch@dot.gov), or Mr. Michael Harkins, Office of the Chief Counsel, (202) 366-4928, [Michael.Harkins@dot.gov](mailto:Michael.Harkins@dot.gov), Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

An electronic copy of this notice may be downloaded from the Office of the Federal Register's home page at <http://www.archives.gov> and the Government Printing Office's Web site at <http://www.access.gpo.gov>.

**Background**

Section 6005 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (codified at 23 U.S.C. 327) established a pilot program to allow up to five States to assume the Secretary of Transportation's responsibilities for environmental review, consultation, or other actions under any Federal environmental law pertaining to the review or approval of highway projects. In order to be selected for the pilot program, a State must submit an application to the Secretary.

On June 29, 2007, Caltrans and FHWA entered into a Memorandum of Understanding (MOU) that established the assignments to and assumptions of responsibility to Caltrans. Under the MOU, Caltrans assumed the majority of FHWA's responsibilities under the National Environmental Policy Act, as well as the FHWA's responsibilities under other Federal environmental laws for most highway projects in California.

To ensure compliance by each State participating in the Pilot Program, 23 U.S.C. 327(g) requires the Secretary to conduct semiannual audits during each of the first 2 years of State participation; and annual audits during each subsequent year of State participation. The results of each audit must be presented in the form of an audit report and be made available for public comment. The FHWA solicited comments on the second audit report in a **Federal Register** Notice published on December 8, 2008, at 73 FR 74560. The FHWA received one anonymous comment questioning any time or money saved from participation in the pilot program. This notice provides the final draft of the second FHWA audit report for Caltrans under the pilot program.

**Authority:** Section 6005 of Public Law 109-59; 23 U.S.C. 315 and 327.

Issued on: February 10, 2009.

**Jeffrey F. Paniati,**

*Acting Deputy Federal Highway Administrator.*

**Surface Transportation Project Delivery Pilot Program Federal Highway Administration Audit of California Department of Transportation July 28-August 1, 2008**

**Background**

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU, Pub. L. 109-59) section 6005(a) established the Surface Transportation Project Delivery Pilot Program (Pilot Program), codified at title 23, United States Code (U.S.C.), section 327. The Pilot Program allows the Secretary to assign, and the State to assume, the Secretary of Transportation's (Secretary) responsibilities under the National Environmental Policy Act (NEPA) for one or more highway projects. Upon assigning NEPA responsibilities, the Secretary may further assign to the State all or part of the Secretary's responsibilities for environmental review, consultation, or other action required under any Federal environmental law pertaining to the review of a specific highway project. When a State assumes the Secretary's responsibilities under this program, the State becomes solely responsible and liable for carrying out the responsibilities it has assumed, in lieu of the Federal Highway Administration (FHWA).

To ensure compliance by each State participating in the Pilot Program, 23 U.S.C. 327(g) mandates that FHWA, on behalf of the Secretary, conduct semiannual audits during each of the first 2 years of State participation; and annual audits during each subsequent year of State participation. The focus of the FHWA audits is to assess a pilot State's compliance with the required Memorandum of Understanding (MOU)<sup>1</sup> and applicable Federal laws and policies, to collect information needed to evaluate the success of the Pilot Program, to evaluate pilot State progress toward achieving its performance measures, and to collect information needed for the Secretary's annual report to Congress on the administration of the Pilot Program. Additionally, 23 U.S.C. 327(g) requires FHWA to present the results of each audit in the form of an audit report. This audit report must be made available for public comment, and FHWA must

<sup>1</sup> Caltrans MOU between FHWA and Caltrans available at: [http://environment.fhwa.dot.gov/strmlng/safe\\_cdot\\_pilot.asp](http://environment.fhwa.dot.gov/strmlng/safe_cdot_pilot.asp).