

# Memorandum

**To:** DISTRICT DEPUTY DIRECTORS FOR  
ENVIRONMENTAL ANALYSIS AND  
LOCAL ASSISTANCE

**Date:** June 21, 2021

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**Subject: NEPA PROCESS IMPROVEMENT TEAM – ALTERNATIVE PROCESS GUIDANCE FOR  
NATURAL RESOURCE DOCUMENTATION**

The NEPA Process Improvement Team (Team) Steering Committee has approved a proposal by the Team to add two alternative processes to existing Caltrans' guidance for projects undergoing Federal Endangered Species Act (FESA) Section 7 Consultation (Consultation). These alternative processes are: 1) using the Natural Environmental Study (NES) or NES Minimal Impact for consultation, and 2) solely using a Biological Assessment (BA) to support all biological documentation on projects that require Consultation.

Use of these alternative processes are optional and intended to be additional tools in the biologist's tool belt. The Team has created written guidance and decision trees, which are attached to this memorandum, to guide biologists and supervisors in determining when these processes may be appropriate for use. The intent of these alternative processes is to streamline many Caltrans and Local Assistance projects that require Consultation. Caltrans anticipates time and resource savings, reduction of duplicate work, and increased communication with federal agency reviewers when following the written guidance.

Thank you for your continuing professionalism and diligence in delivering projects for Caltrans and our project delivery partners. If you have any questions regarding this memorandum, please contact Jennifer Gillies, Office Chief responsible for biological compliance, at (916) 599-5570, or Kelly Hobbs, Office Chief responsible for Local Assistance environmental compliance, at (916) 838-9085.

## Attachments

1. Alternate Process Guidance
2. Decision tree guidance for using the NES/NES(MI) for Consultation

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3. Decision tree guidance for solely using a BA to support all natural resources documentation on a project that requires Consultation
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Jennifer Gillies, Office Chief, Division of Environmental Analysis, Caltrans  
Kelly Hobbs, Office Chief, Division of Local Assistance, Caltrans  
Kelly Dunlap, NEPA Process Improvement Team Lead, Division of Environmental Analysis

## Alternative Process Guidance for Natural Resource Documentation

### Guidance for using the NES or NES(MI) for Federal Endangered Species Act (FESA) Section 7 Consultation (Consultation):

Under current Caltrans guidance when a project requires consultation, both a Natural Environment Study (NES) or NES Minimal Impact [NES(MI)] and a Biological Assessment (BA) are required. The current guidance remains standard process; however, this alternative guidance describes an additional method for projects determined to need Consultation. For some low risk projects, it may be appropriate to use an NES or NES(MI) in lieu of a BA for consultation. When determining whether a project would be appropriate for this process there are several key considerations. This guidance is intended for Caltrans internal use, in coordination with the Caltrans biologist, Senior Environmental Planner and/or Environmental Office Chief. The district protocol used to determine the level consultation needed for a project will continue to be used. Additionally, this process is not a requirement rather it is another available tool for Caltrans use on a project by project basis. Please use the guidance below and decision tree to help determine if this process may be appropriate for the project.

- Can the project be tied to a Programmatic Biological Opinion (PBO) or Habitat Conservation Plan (HCP)? If yes, it is likely a good candidate for this process; however, biologists should follow their existing district protocol as each PBO or HCP requires different levels of documentation to complete consultation.
- Does the NES analyze multiple build alternatives? If “yes” a BA must be prepared. Federal agency reviewers cannot draft a Letter of Concurrence (LOC) or Biological Opinion (BO) with multiple impact analyses.
- Will the project require formal or informal consultation? Most formal consultations will need a BA, and it is not recommended to use this alternative process for formal consultations. Exceptions may occur when there is only one species or multiple species with nearly identical avoidance and minimization measures (vernal pool species, some fish species, etc.).
- Does the project have a “may adversely affect” determination for Essential Fish Habitat (EFH)? If yes, a BA is typically needed; however, if it is a stand-alone EFH project (“No Effect” to all species) or only informal consultation is needed, it may still be a good candidate for this process. Note that there is boiler plate language in the BA (Chapter 5) required for EFH consultation that is not currently in the NES that would need to be added to the NES.
- Other unique circumstances include;
  - Agency familiarity with specific species and their impact analysis should be considered. If your district routinely receives LOC’s or BO’s for the same species that consistently have similar avoidance and minimization measures (AMM’s), these project’s will likely be good candidates for this

- process. Alternatively, if it's an unfamiliar species impact analysis, it may be more appropriate to draft a BA which allows for further in-depth effects analysis. Even if the project will undergo informal consultation, always coordinate with your federal agency reviewer prior to initiating consultation.
- Quality of NES is important. If the NES is prepared by inexperienced consultants or Caltrans biologists, it may not be adequate to use for consultation. Caltrans should be submitting clear and concise documents used for consultation to the federal agency reviewers as a courtesy. This is one of the main reasons a BA is submitted rather than an NES or NES(MI). When using an NES or NES(MI) be sure to clearly distinguish; Federal and State species AMM's, mitigation, impact analyses, and any other potential overlapping state and federal information. This will help the federal reviewer incorporate the appropriate information into the LOC or BO. Be aware that any information provided in the NES may be incorporated in the LOC or BO.
  - Overall risk level of the project should be considered. This efficiency may not be appropriate for higher risk projects. Projects requiring formal consultation, affecting multiple species, and/or involve multiple Federal agencies are typically higher risk.
- Important note: Regardless of whether this efficiency will be employed on your project, it is good practice to always coordinate with the U.S. Fish and Wildlife Service (USFWS), or National Marine Fisheries Service (NMFS) agency reviewer/ liaison prior to initiating consultation. That early coordination is critical to employ this method. Additionally, if using the NES or NES(MI) for consultation, specifying in the transmittal letter where in the NES or NES(MI) the relevant USFWS and/or NMFS can be found will help guide the federal agency reviewer to the information they need.

**Alternative Documentation Process for Section 7 Consultations Continued - Solely using a BA to support all natural resources documentation on a project (Primarily Local Assistance but may have application for select Caltrans on-system projects).**

Under current Caltrans guidance when a project requires consultation, both a Natural Environment Study (NES) or NES Minimal Impact [NES(MI)] and a Biological Assessment (BA) are required. The current guidance remains standard process; however, this alternative guidance describes an additional method for projects determined to need consultation. When looking to streamline the biological documentation when consultation is required, this is another alternative process available to the District that could also save both Caltrans and local agencies significant time and resources by not having to prepare an NES or NES(MI).

In most cases using the NES / NES(MI) for Section 7 consultation as described in the section above will be more appropriate than bypassing the NES / NES(MI) and going straight to a BA. This is because an NES / NES(MI) captures all Federal and State environmental laws pertaining to natural resources, where a BA merely captures Federal laws pertaining to the Federal Endangered Species Act (FESA).

However, in some applications bypassing an NES NES(MI) may be appropriate. For local assistance (projects off the state highway system), the Local Agency as California Environmental Quality Act (CEQA) lead retains all state and local responsibilities. Because of this, Caltrans may not need an NES or NES(MI) to support their NEPA approval but would still need a BA to complete section 7 consultation. Caltrans retains CEQA lead and state responsibilities for on-system projects which is typically documented in an NES or NES(MI) and why this alternative is generally not a recommended tool for on-system projects. However, there may be instances such as emergency Directors Orders that need consultation or other unique circumstances which may make the use of a BA-only appropriate.

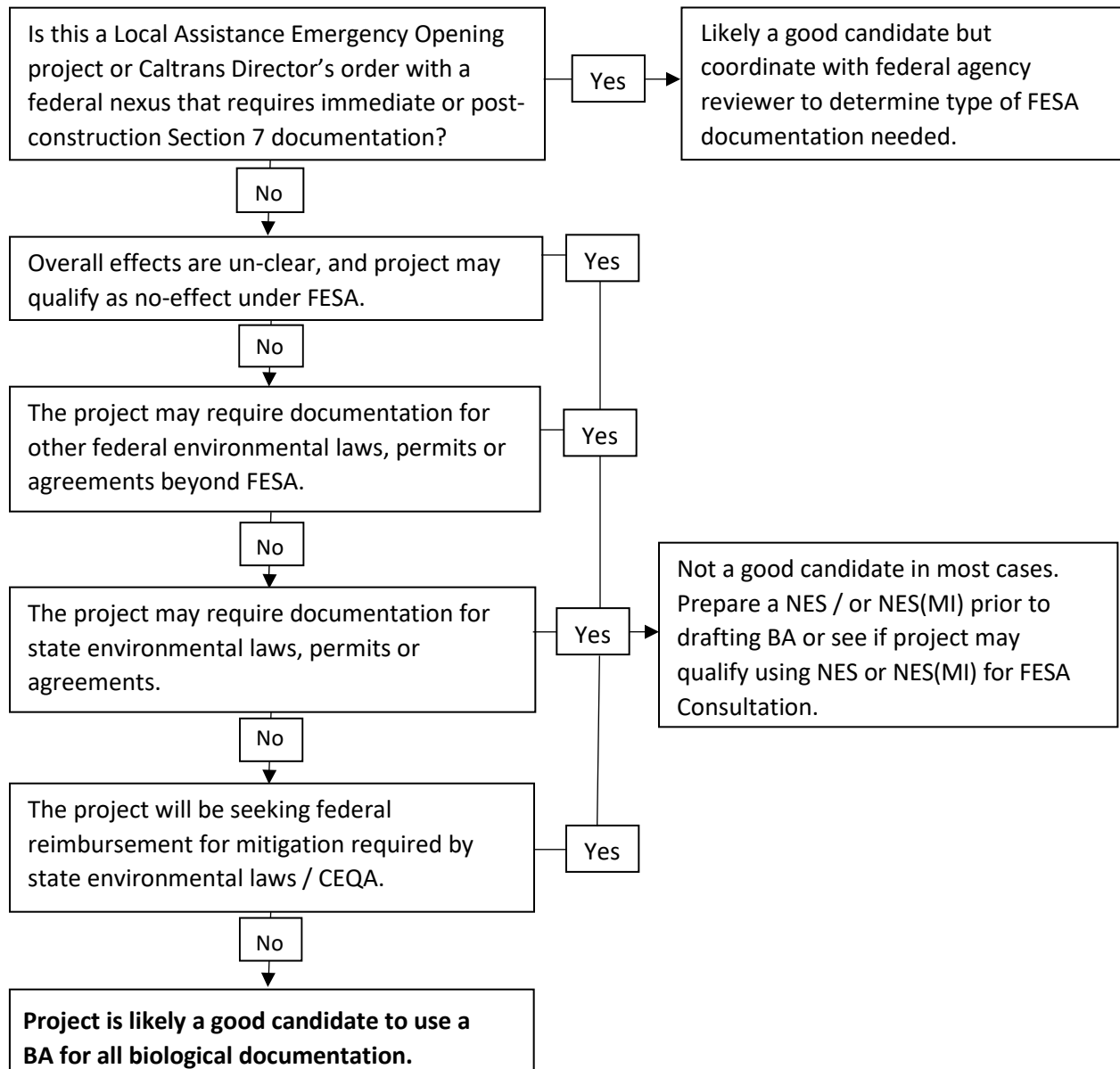
When determining whether a project would be appropriate for this process there are several key considerations similar to using the NES or NES(MI) for consultation. Please use the guidance below and decision tree to help determine if this alternative may be appropriate for your project.

- Is this a Local Assistance Emergency Opening (EO) or Caltrans Directors Order (DO)? This may be a good option to consider for EO projects or Caltrans DO's with a federal nexus where consultation is still required concurrently or post-construction. Using a NES or NES(MI) for consultation may also be a viable alternative on emergency projects; however, this will often depend on the level of consultation required. As described in the alternative NES/NES(MI) guidance above, formal consultations are generally not appropriate to use the NES/NES(MI) for consultation. Always coordinate closely with your USFWS/NMFS agency reviewer/liaison to see what type of documentation is most appropriate for emergency projects.

- Overall effects are unclear, and project may qualify as a No-effect under FESA. If a Caltrans Biologist is unsure if the project will require consultation at all, an NES/NES(MI) will be appropriate.
- The project may trigger other federal environmental laws, permits or agreements beyond FESA. The BA is not intended to document other federal environmental laws such as the Clean Water Act, Executive Order on Wetlands, Migratory Bird Treaty Act, Section 10 rivers and Harbors Act, Wild and Scenic Rivers Act, Coastal Zone Management Act, Federal Permits or agreements with other federal agencies beyond USFWS and NMFS. If the project triggers any of these laws, permits or agreements, it must be documented accordingly. If this information cannot be documented in the BA or other technical study an NES/NESMI will be needed.
- Natural resources documentation is needed to support State environmental laws. The level of state documentation required on a Caltrans NEPA project differs between Caltrans on-system projects and local assistance off-system projects. For local assistance off-system projects Caltrans does not retain CEQA lead and therefore natural resources documentation is primarily focused on federal environmental requirements only. Alternatively, Caltrans on-system projects retain CEQA lead and therefore are more likely to need supporting natural resources documentation for both state and federal environmental requirements. State environmental laws that may be triggered on a project include: CEQA, California Endangered Species Act (CESA), Native Plant Protection Act, California Wild and Scenic Rivers, CA Fish and Game Code, CA Desert Native Plant Act, etc. For Caltrans on-system projects, if these state laws are triggered an NES or NES(MI) should be prepared. For off-system local assistance projects if these state laws are triggered it would not preclude a project from solely using a BA; however, if the state laws have federal overlap such as CESA dually listed species or overlapping state and federal permit requirements (Section 1600, Section 404), this should be taken into consideration and an NES/NES(MI) may be needed. Additionally, for local assistance off-system projects, although Caltrans does not have CEQA responsibilities, the local agency's CEQA environmental document (ED) should be taken into consideration when solely using a BA for all biological documentation. Local agencies may rely on the NES/NES(MI) to support their higher level CEQA EDs; however, this is ultimately at the local agency's discretion.
- The project will be seeking federal reimbursement for mitigation required by state environmental laws/CEQA. The Federal Highway Administration (FHWA), requires that the project must be looked at as a whole. In some instances, if the Caltrans/local agency anticipate federal reimbursement for state required mitigation that cannot be documented in the Preliminary Environmental Assessment Report, Preliminary Environmental Study, BA, or other means, then an NES/NES(MI) should be prepared. A BA typically does not capture state mitigation. An exception may include consistency determination BAs for dually listed species.

**Decision Tree Guidance for solely using a BA to support all natural resources documentation on a project that requires FESA Section 7 Consultation.**

Please note that a NES or NES(MI) can always be prepared when any FESA Section 7 Consultation is required. The intent of this guidance is to assist Caltrans in determining when a project may be a good candidate for foregoing a NES or NES(MI) and solely preparing a BA to support all natural resources documentation on a project. When answering "Yes" to any of the questions below, a NES or NES(MI) should be prepared in most cases. Please refer to the detailed alternative process guidance in conjunction with this decision tree for more information.



## Decision tree guidance for using the NES / NES(MI) for FESA Section 7 Consultation

Please note that a BA can always be prepared when any FESA Section 7 Consultation is required. The intent of this guidance is to assist Caltrans in determining when a project may be a good candidate for foregoing a BA and using a NES or NES(MI) as a FESA Section 7 Consultation document. When answering "Yes" to any of the questions below, it's typically more appropriate to prepare a BA or use existing district protocol. Please refer to the alternative process guidance in conjunction with this decision tree.

