

Caltrans Emergency Projects Permitting Guidance and Frequently Asked Questions

1. What is an “Emergency” for Environmental Compliance Purposes?

California Environmental Quality Act (CEQA)

The California Environmental Quality Act (CEQA) defines an “emergency” as "a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. "Emergency" includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage."

The following emergency projects are exempt from the requirements of CEQA:

- Projects to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor pursuant to the California Emergency Services Act. This includes projects that will remove, destroy, or significantly alter an historical resource when that resource represents an imminent threat to the public of bodily harm or of damage to adjacent property or when the project has received a determination by the State Office of Historic Preservation pursuant to Section 5028 (b) of Public Resources Code.
- Emergency repairs to publicly or privately-owned service facilities necessary to maintain service essential to the public health, safety or welfare. Emergency repairs include those that require a reasonable amount of planning to address an anticipated emergency.
- Specific actions necessary to prevent or mitigate an emergency. This does not include long-term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short-term, but this exclusion does not apply (i) if the anticipated period of time to conduct an environmental review of such a long-term project would create a risk to public health, safety or welfare, or (ii) if activities (such as fire or catastrophic risk mitigation or modifications to improve facility integrity) are proposed for existing facilities in response to an emergency at a similar existing facility.
- Projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, provided that the project is within the existing Right-of-Way of that highway and is initiated within one year of the damage occurring. This exemption does not apply to highways designated as official state scenic highways, nor any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land

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subsidence, gradual earth movement, or landslide.

- Seismic work on highways and bridges pursuant to Section 180.2 of the Streets and Highways Code section 180 et seq.

[See Public Resources Code § 21080 et seq.](#) and CEQA Guidelines §§ 15269, 15300.2(d), and 15301(d).

Additionally, a CEQA exemption does not necessarily remove the Caltrans responsibility to comply with other state environmental laws. Please see Question #3 below for additional information regarding environmental documentation (environmental document or determination) for emergency projects.

National Environmental Policy Act (NEPA)

Federal regulations which govern the federal Emergency Relief Program can be found at 23 CFR 668. The federal Emergency Relief Program is intended to aid states in repairing road facilities which have suffered widespread serious damage resulting from a natural disaster over a wide area or serious damage from a catastrophic failure. A natural disaster is defined as a “sudden and unusual natural occurrence, including but not limited to intense rainfall, floods, hurricanes, tornadoes, tidal waves, landslides, volcanoes or earthquakes which cause serious damage.” Catastrophic failure is defined as “the sudden failure of a major element or segment of the highway system due to an external cause. The failure must not be primarily attributable to gradual and progressive deterioration or lack of proper maintenance. The closure of a facility because of imminent danger of collapse is not in itself a sudden failure.” However, such situations can be identified as urgent when discussing them with the resource agencies.

Emergencies can also include power service disruption, cyber-attacks, terrorist attacks, and civil unrest.

Activities eligible under the Emergency Relief Program are detailed at 23 CFR 668.109.

Most Emergency Relief projects and emergency repairs qualify as a categorical exclusion under 23 CFR 771.117(c)(9), which includes the repair, reconstruction, restoration, retrofitting, or replacement of eligible facilities if the work 1) occurs within the existing right-of-way; 2) conforms to the pre-existing design, function, and location as the original; and 3) is commenced within two years of the date of disaster. Although some repair actions qualify as categorical exclusions under NEPA, the exclusion does not apply to other regulations such as the Endangered Species Act, National Historic Preservation Act, or the Clean Air Act. See Question 3 below.

For more information, please see the Federal Highway Administration’s (FHWA’s)

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[“Successes in Stewardship, Back to the Basics: Environmental Compliance During Emergencies.”](#)

Additional Information:

- For Local Assistance projects, please see [Local Assistance Emergency Relief Program](#).
- For CEQA’s definition of “Emergency” please see [§ 21060.3](#).
- For current Emergency Declarations, please see [“Declarations”](#) listing.

Note: Other State and environmental laws may define emergency differently, it is important to consult those laws in addition to CEQA and NEPA.

2. Are Directors Order Projects Always an Emergency Project?

NO. It is essential to note that the definition of emergency for environmental compliance and Federal-aid emergency relief differs from the definition used for emergency contracting purposes. Caltrans’ policy on Director’s Orders, Deputy Directive 26-R-2 of July 2009, states that Caltrans “may implement exceptions to the formal bidding, advertising, and award requirements of the State Contract Act by using Director’s Orders to authorize contracts or Day Labor for emergency projects.” Deputy Directive 26-R-2 affirms that the use of a Director’s Order does not waive environmental, permit, and right-of-way requirements. California Public Contract Code, § 10122(a), which authorizes Director’s Orders for emergency contracting, includes “threat of failure” as an emergency. For Federal-aid assistance and under most environmental laws, threat of failure does not qualify as an emergency. This means that environmental approval and permitting will still be needed for some Director’s Order projects.

3. Can Work Begin in Response to an Emergency Before an Environmental Document is Prepared and Permits/Approvals are Obtained?

YES. State and local transportation agencies are empowered to begin emergency repairs (a.k.a. emergency openings [EO]) immediately. Emergency repairs (emergency opening work) are repairs made during and immediately following a disaster to restore essential travel, to minimize the extent of damage, to protect the remaining facilities, and to ensure public safety where there is an imminent danger.

Environmental staff from both Caltrans and other applicable resource agencies should be invited to, and should attend, the initial field review of the emergency repair site. Environmental staff should work with maintenance and construction crews to implement avoidance and minimization measures whenever and wherever possible; however, restoring travel service is the number one priority during an

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emergency. When possible, take photos of the work area prior to, during, and post construction. These photos can be useful during consultation and coordination with resources agencies and should be retained in the project file.

As soon as possible and concurrent with the repair, the environmental document and any needed permits and approvals are prepared and/or obtained. Informal consultation and further environmental studies may need to be initiated with applicable resource agencies, such as the U.S. Fish and Wildlife Service, NOAA Fisheries/National Marine Fisheries Service, U.S. Army Corps of Engineers, State and Regional Water Quality Control Boards, U.S. Coast Guard, California Coastal Commission, U.S. Department of Interior/National Park Service, Advisory Council on Historic Preservation, and State Historic Preservation Officer to obtain agreement on expedited environmental processes to address the requirements of other state and federal environmental laws. See Question #4 below for additional guidance. Permanent repairs (a.k.a. permanent restoration) and betterments will need to wait for environmental compliance (normal Federal-aid NEPA procedures).

Note: The fact that the Governor and/or the District Director have declared an “emergency” does not guarantee that the damaged facilities will be eligible for FHWA Emergency Relief funding. Compliance with NEPA will be required for emergency projects seeking federal reimbursement and compliance with other federal laws may be required even when NEPA is not required.

For a detailed discussion of FHWA’s emergency relief funding, including definitions and discussion on the distinction between “emergency repairs” and “permanent repairs,” see the FHWA [Emergency Relief Manual](#) (2013). The FHWA CA Division also has a list of [frequently asked questions and other guidance](#).

Note: For both emergency repairs and permanent repairs, the Categorical Exclusion/Categorical Exemption form found on the [Forms and Templates](#) page of the SER is to be used.

4. What Type of Environmental Determination/Document is Needed for Emergency Repairs (Emergency Openings) under CEQA and NEPA?

CEQA Regulations

Projects which require specific actions necessary to prevent or mitigate an emergency may qualify for an exemption under CEQA (CEQA Guidelines 15269). An emergency exemption under CEQA does not necessarily remove Caltrans’ responsibility to comply with other state laws nor does it have any bearing on compliance with federal laws. Informal consultation and further environmental studies may need to be initiated with applicable resource agencies, such as the U.S. Fish

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and Wildlife Service, U.S. Army Corps of Engineers, U.S. Coast Guard, State and Regional Water Boards, California Coastal Commission, park officials, U.S. Department of Interior/National Park Service, Advisory Council on Historic Preservation, and State Historic Preservation Officer to obtain agreement on expedited environmental processes to address the requirements of other federal and state environmental laws.

A Class I Categorical Exemption (CEQA Guidelines 15301(c)) may be used for emergency projects IF: 1) repairs or minor alterations involve negligible or no expansion of an existing use of the facility; and 2) the project does NOT meet the criteria for an “exception” to the categorical exemptions (CEQA Guidelines § 15300.2).

NEPA and FHWA Regulations

Repair projects under the Emergency Relief (ER) program must comply with the requirements of NEPA. Emergency repairs to restore essential travel, minimize the extent of damage, or protect remaining facilities are normally classified as Categorical Exclusions under 23 CFR 771.117(c)(9). **Under the 23 USC 327 NEPA Assignment Memorandum of Understanding (MOU) and the 23 USC 326 CE Assignment MOU, for emergency repairs (a.k.a. emergency openings), the FHWA damage assessment form (DAF) NO LONGER serves as the Categorical Exclusion.** It is necessary to complete a [Categorical Exclusion/Categorical Exemption form](#) for emergency openings either simultaneously or within a reasonable time after the DAF. However, if protected or otherwise sensitive or high-value resources may be affected, advance coordination with the appropriate local, state, and federal resource agencies should be considered to avoid or minimize project delays or shutdowns.

The 23 USC 326 CE Assignment MOU Appendix A (Activity 4) added a Categorical Exclusion for “routine repair of facilities due to storm damage, including permanent repair to return the facility to operational condition that meets current standards of design and public health and safety without expanding capacity (e.g., slide repairs, construction or repair of retaining walls).”

Note: Improvements for fish passage or resilience may be a part of bringing the facility up to current design standards to maintain compliance with [SB857](#). Projects meeting these criteria also require completion of a [Categorical Exclusion/Categorical Exemption form](#)

For FHWA’s definition of “resilience” please see “[FHWA Order 5520, Transportation System Preparedness and Resilience](#).”

On occasion, an emergency relief project that includes a betterment, whether or not

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the betterment is eligible for emergency relief funding, may require further NEPA review. Although, on the surface, a project may appear to qualify for a Categorical Exclusion, certain betterments may need either an Environmental Assessment (EA) to determine whether or not the project will cause significant environmental impacts, or an Environmental Impact Statement (EIS) if significant impacts are predicted.

See the following for additional information:

- [Chapter 5 of the FHWA Emergency Relief Manual](#)
- [FHWA Emergency Guidance on 'Fixing America's Surface Transportation \(FAST\) Act](#)
- [FHWA Emergency Relief Program and Resilience](#)
- [FHWA Order 5520, Transportation System Preparedness and Resilience](#)

5. What if the Emergency Repair Area Contains Cultural Resources, or Sensitive Species or Habitat? Do Emergency Repairs (Emergency Openings) Require Permits and Approvals from Applicable Resource Agencies Prior to Work?

If the emergency repairs (emergency openings) will require work in an area with cultural resources, or sensitive species or habitat, work may commence without obtaining permits and approvals from the applicable resource agencies. However, consultation and coordination must begin either simultaneously with the emergency repair (emergency opening) work or as soon as practicable after the emergency opening is under control. Please see full discussion below.

U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) – Federal Endangered Species Act (FESA)

There is no exemption from consultation but there is a process for emergencies. According to Title 50 Code of Federal Regulations (CFR) Parts 402.05 (a) and (b):

- a) Where emergency circumstances mandate the need to consult in an expedited manner, consultations may be conducted informally through alternative procedures that the Director of U.S. Fish and Wildlife determines to be consistent with the requirements of sections 7(a)-(d) of the Act. This provision applies to situations involving acts of God, disasters, casualties, national defense or security emergencies, etc.
- b) Formal consultations shall be initiated as soon as practicable after the emergency is under control. The Federal Agency shall submit information on the nature of the emergency action(s), the justification for the expedited consultation, and the impacts to endangered or threatened species and their habitats. The service will evaluate such information and issue a biological opinion including the information and recommendations given during the

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emergency consultation.

Contact the U.S. Fish and Wildlife Service or National Marine Fisheries Service as soon as possible (usually within 48 hours) by telephone or email followed by written correspondence. Once the emergency is under control, formal consultation will be initiated if necessary.

For additional information, see the [U.S. Fish and Wildlife/NOAA Fisheries Endangered Species Consultation Handbook](#).

Section 1432, Article 7 of the [FAST Act](#) creates new exemptions from the requirements of the Migratory Bird Treaty Act, Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.) and the [Fish and Wildlife Coordination Act](#) (16 U.S.C. 661 et seq.).

This exemption only applies when the reconstruction of a damaged transportation facility is exempted first as a result of a FESA exemption process triggered by Section 1432(b)(5) of the FAST Act.

California Department of Fish and Wildlife (CDFW) – California Endangered Species Act (CESA)

There is no exemption from consultation or take prohibitions under CESA, nor does the Fish and Game Code specify a process for emergencies. However, emergency coordination with the California Department of Fish and Wildlife (CDFW) may be conducted informally and concurrently while responding to the emergency action.

Contact CDFW as soon as possible (usually within 48 hours) by telephone and/or email followed by written correspondence. Caltrans should submit information on the nature of the emergency action(s), the justification for the expedited consultation, and the impacts to endangered or threatened species and their habitats. Once the emergency is under control, formal consultation will be initiated if necessary.

For more detail see Fish and Game Code [Section 2080](#) (take prohibition) and [Section 2081\(b\)](#) (take authorization).

California Department of Fish and Wildlife (CDFW) – Fish and Game Code Section 1600 Lake and Streambed Alteration Agreement

Immediate emergency repairs (emergency openings) are exempt from consultation requirements set forth in [Section 1600 of the Fish and Game Code](#) and are subject to the same conditions listed above under CEQA. However, CDFW must be notified within 14 days of the start of work. Concurrent with the emergency repairs, coordination with the CDFW is necessary in the same manner outlined above for FESA.

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United States Army Corps of Engineer (USACE) and State/Regional Water Quality Control Boards (Water Boards) - Section 401 and 404 Clean Water Act (CWA)

For qualifying emergency projects that require Clean Water Act authorization for dredge, fill or excavation activities within waters of the United States there is a streamlined permitting process through the U.S. Army Corps of Engineers Regional General Permit (RGP) process and an accompanying Water Board General Certification.

The Los Angeles District of the Army Corp of Engineers has reauthorized [Regional General Permit #63](#) for repair and protection activities in emergency situations and [RGP 63 procedures](#).

The San Francisco District of the Army Corps of Engineers has reauthorized [Regional General Permit #5](#) to authorize discharges of dredged or fill material into Waters of the United States, including wetlands, and/or work on structures in Navigable Waters of the United States.

The Sacramento District of the Army Corps of Engineers has reauthorized [Regional General Permit #8](#) for emergency repair and protection activities.

The State Water Resources Control Board has issued [General Orders](#) to streamline the application process for CWA section 401 Water Quality Certification of emergency actions under the Army Corps of Engineers regional general permits.

Nationwide Permit #3 (2017)

If the project does not qualify for RGP authorization, this nationwide permit (NWP) covers the repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure, or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. This NWP authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage.

Note that there are several conditions to this NWP and the USACE reissues NWPs periodically. To view the most recent version of all conditions, consult your applicable USACE District. Additionally, if a project requires a NWP 3, an individual 401 water

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quality certification (WQC) will be necessary.

See the full text of [NWP 3 and conditions](#).

For Discharges that qualify for maintenance exemption from Clean Water Act Permitting

33 CFR Part 323.4(a)(2) Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures.

Maintenance does not include any modification that changes the character, scope, or size of the original fill design. Emergency reconstruction must occur within a reasonable period of time after damage occurs in order to qualify for this exemption. Note: this maintenance exemption is for federal jurisdiction only. State authorization would still be required, as waters of the U.S. are a subset of waters of the State.

Discharges requiring Water Board authorization only – Porter Cologne Water Quality Control Act

Water Boards (State Water Board or the appropriate Regional Board) are required to be notified of emergency activities included in the maintenance exemption or involving discharges to waters of the state when there is no federal jurisdiction. The Water Board shall prescribe waste discharge requirements, as necessary, to protect water quality and beneficial uses. Section 13269(c) authorizes the waiver of the standard application process for waste discharge requirements in certain emergency situations. Regional Boards may also have adopted waivers that further define emergency activities that qualify for this exception and may set forth more specific requirements for conducting these emergency activities. Consult the [Regional Water Board](#) where the project is located for appropriate project permitting under the Porter Cologne Water Quality Control Act.

Coastal Zone Requirements

The California Coastal Commission (CCC) plans and regulates the use of land and water within the coastal zone. The coastal zone is an area with variable inland widths (from several thousand feet and up to five miles wide) and extending 3 miles seaward into the ocean. Local Coastal Programs (LCP) are planning documents, similar to a general plan and zoning ordinance, used by local governments to guide development in the coastal zone. A local government is granted permitting authority within its portion of the coastal zone after a LCP for the area has been reviewed and approved by the Commission.

Emergency repairs to an existing highway or other Caltrans facility located within the jurisdiction of the Coastal Commission should follow the steps outlined below. The

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definition of emergency under the Coastal Act can be found under Section 13009 of the Commission's administrative regulations and parallels the two elements for an emergency identified in the beginning of this guidance document. If the emergency is located in an area of a city or county with a certified LCP and is not located within an area of the Commission's original or retained jurisdiction the emergency project will be subject to the policies, provisions and definitions of the certified LCP. If the emergency is within the boundaries of the certified LCP, Caltrans will work with the local jurisdiction for Coastal Development Permit (CDP) compliance. For emergencies located both within an area of a certified LCP and also within the Commission's original or retained jurisdiction a consolidated permit may be required. Contact one of the Commission's Caltrans liaisons for guidance on the certification status and boundaries of LCPs and emergency permit processing. Applications for permits, including emergency permits, that will need to be processed by the Commission can be found on the [Commissions' webpage](#).

The San Francisco Bay Conservation and Development Commission (BCDC) protects and enhances San Francisco Bay (all areas that are subject to tidal action, including sloughs, from the south end of the Bay to the Golden Gate to the Sacramento River) and encourages the Bay's responsible and productive use. Emergency projects within the jurisdiction of the BCDC may begin prior to obtaining a coastal permit as long as the work begins within one year of the damage and BCDC must be notified within one working day after the commencement of the emergency repair.

See [Public Resources Code § 30600\(e\)](#) and [Public Resources Code § 21080.33](#).

Cultural Resources Requirements

Section 106 of the National Historic Preservation Act (NHPA)

36 CFR 800.12 defines "Emergency," as operations which respond to a disaster or emergency declared by the President, a tribal government, or the Governor of a State or which respond to other immediate threats to life or property. Emergency projects are covered by the [Section 106 Programmatic Agreement](#) (PA), as are any Federal-aid Highway projects in which FHWA (or Caltrans, as assigned by FHWA) is the lead agency (excluding those that are on or affecting tribal land).

For emergency projects that will (or have the potential to) affect historic properties, additional Section 106 review is required in accordance with [36 CFR 800.12](#). The emergency provisions in Stipulation XVI of the PA are only applicable if the project work will begin within 30 days after an emergency or disaster is formally declared by the appropriate authority (the President, tribal government, or state governor). Caltrans may request an extension of the period of applicability from the State Historic Preservation Officer (SHPO), not the Council, prior to the 30-day period

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ending.

At the earliest opportunity, Caltrans District Professionally Qualified Staff (PQS) notifies the SHPO, FHWA where responsibilities have not been assumed, Caltrans Cultural Studies Office (CSO), and any Indian tribes that might attach religious or cultural significance to the affected property. Notification shall include, to the extent such information is available: description of the nature and extent of the property or properties, assessment of NRHP eligibility of any properties, the type and extent of any damage to the property, the proposed action, any prudent and feasible treatment measures that would take any effects into account, and a request for comments. These parties are given up to 7 days to comment.

The Caltrans District shall provide the SHPO, CSO, and any additional consulting parties, including the Corps District if a DA Permit is required, a narrative report documenting the actions taken in accordance with this expedited consultation process within six (6) months following the initiation of expedited consultation.

If an emergency project does not meet the 36 CFR 800.12 definition of “Emergency,” regular procedures for identification, evaluation, and assessment of effects to historic properties pursuant to Stipulations VII-XI of the PA will be followed.

California Environmental Quality Act (CEQA)

Most projects undertaken to demolish or replace property or facilities damaged as a result of a disaster for which a state of emergency has been formally declared by the Governor are statutorily exempt from CEQA (subdivision (b)(3), Section 21080). Notwithstanding that exemption, actions in the aftermath of a disaster that might adversely affect historical resources are subject to state laws governing consideration of historical resources.

Public Resources Code 5024.5

Public Resources Code (PRC) 5024.5 stipulates that no state agency shall alter, transfer, relocate, or demolish a state-owned historical resource without providing the SHPO with a summary of the action and the opportunity to review and comment on the proposed action. This requirement applies even when the action is statutorily exempt from CEQA.

Emergency projects are covered by the PRC 5024 Memorandum of Agreement (MOU), as are any projects, activities, and permits that affect state-owned cultural resources. The emergency provisions in Stipulation XV of the MOU are only applicable if the project work will begin within 30 days after an emergency or disaster is formally declared by the appropriate authority (the President, tribal government or state governor). As with the Section 106 PA, Caltrans may request an extension of the period of applicability from the SHPO prior to the 30 calendar days.

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At the earliest opportunity, the Caltrans District PQS notifies the SHPO, CSO, and any Indian tribes that might attach religious or cultural significance to the affected resource(s). Notification shall include, to the extent such information is available: description of the nature and extent of the property or properties, assessment of National Register of Historic Places (NRHP) and California Historical Landmark eligibility of any cultural resource(s), the type and extent of any damage to the resource(s), what emergency actions were taken, the proposed action, any prudent and feasible treatment measures that would take any effects into account, and a request for comments. The parties are given up to 7 days to comment.

Within six months following the initiation of expedited consultation, the Caltrans District shall provide the SHPO, CSO, and any additional interested parties, a narrative report documenting the actions taken in accordance with this expedited consultation process.

If an emergency project does not meet the definition of an “Emergency” set forth in Stipulation XV of the MOU, regular procedures for identification, evaluation, and assessment of effects to state-owned cultural resources pursuant to Stipulations VII-X of the MOU should be followed.

Public Resources Code Section 5028

This section provides that no structure listed in the NRHP, the California Register, or a local register that has been damaged as a result of a natural disaster is to be demolished, destroyed, or significantly altered (except for alterations to preserve or enhance historic value) unless: (1) the structure represents “an imminent threat to the public of bodily harm or of damage to adjacent property,” or (2) the action is approved by the SHPO. That section further establishes the procedure for review of proposed actions by the SHPO. In the wake of an earthquake, flood, fire, or other natural disaster, the local agency may only demolish or destroy those structures that are an “imminent threat.” In all other cases, the local agency must notify and consult with SHPO immediately if there are damaged historical resources that may require demolition, destruction, or significant alterations.

Wild and Scenic Rivers

Section 1432, Article 7 of the [FAST Act](#) states, “Any reconstruction that is exempt under paragraph (5) (Federal Endangered Species Act) shall also be exempt from requirements under the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.). This is only in the case of a Presidentially Declared Disaster.

While the federal Act may provide for a specific emergency exemption, the state Wild and Scenic Rivers Act does not have specific exemptions for emergency projects. Contact the appropriate federal river-managing agency: Bureau of Land Management, U.S. Forest Service or the National Park Service, and the California

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Natural Resources Agency (for California Wild and Scenic Rivers).

Executive Order (E.O.) on Floodplain Management

Section 8 of E.O. 11988 states: “Nothing in this order shall apply to assistance provided for emergency work essential to save lives and protect property and public health and safety, performed pursuant to sections 305 and 306 of the Disaster Relief Act of 1974 (42 USC 5145 and 5146).”

6. Will Mitigation be Required for Impacts Due to the Emergency Repair (Emergency Opening) Work?

Resource agencies may require Caltrans to mitigate for impacts caused by the emergency repair (emergency opening) work. This does not mean that Caltrans cannot complete the repair work immediately, but instead means that Caltrans staff should contact resource agencies (e.g., SHPO, USFWS, NMFS, and CDFW) as soon as is practicable when cultural resources or sensitive species are present, so that documentation and impact assessments can inform appropriate mitigation requirements (see question #2 discussion for immediate actions to support this requirement). There is no emergency exemption for incidental take authorization requirements under FESA or CESA; minimization and full mitigation is still required.

7. Are Mitigation Costs Reimbursable?

Eligibility determinations for environmental mitigation measures can follow a general rule-of-thumb: if the mitigation measure is related to an emergency relief-eligible betterment, the mitigation measure is also eligible. For example, if a roadway grade raise to protect a facility from future flooding has been economically justified for emergency relief funding, then a mitigation feature associated with the grade raise, such as possible wetland restoration or fish passage adjustment, would qualify for emergency relief funding. Conversely, if a “betterment” is not justified for emergency relief funding, then any added mitigation features related to the betterment would likewise not be eligible for emergency relief funding but instead, should be funded from regular apportioned Federal-aid highway funds. See [FHWA Emergency Relief Manual, Chapter 2](#) for additional information.

8. What Happens after the Immediate Emergency Repair (Emergency Opening) Work is Complete?

Once the immediate emergency work is complete, all environmental processes and approvals revert to the standard requirements. Permanent repairs, especially betterments or work in new locations, must go through the standard environmental processes in compliance with all the applicable laws, regulations, and executive orders. For example, after receiving an emergency CDP and completing the work

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authorized by the emergency permit, the Coastal Commission's regulations require a follow-up application for a regular CDP. This follow-up CDP is required to either permanently authorize the development performed under the emergency permit or, if that development cannot ultimately be found consistent with the resource protection policies of the Coastal Act, a new and final development that can. The follow-up CDP will require analysis of impacts to coastal resources because of the development as well as measures to avoid, minimize, and/or mitigate impacts to resources.

For additional guidance, see [FHWA Emergency Relief Manual](#).