

# Memorandum

To: DEPUTY DISTRICT DIRECTORS, ENVIRONMENTAL  
DEPUTY DIVISION CHIEF, TRAFFIC OPERATIONS  
OFFICE CHIEF, OFFICE OF ENCROACHMENTS AND OUTDOOR ADVERTISING  
PERMITS

Date: July 21, 2026

From: JEREMY KETCHUM   
Chief  
Division of Environmental Analysis

SUBJECT: **PROGRAMMATIC CATEGORICAL EXCLUSION FOR APPROVAL OF CERTAIN RIGHT OF WAY USE AGREEMENT ACTIVITIES (INCLUDING ENCROACHMENT PERMITS)**

The approval of right-of-way use agreements (including airspace leases, encroachment permits, and certain consent letters and joint-use maintenance agreements) for *non-highway uses* on Federal-aid highway right-of-way is a Federal Highway Administration (FHWA) approval that is subject to the National Environmental Policy Act (NEPA), even when the approval of the right-of-way use agreement has been delegated to the California Department of Transportation (Caltrans) through the Stewardship and Oversight Agreement. Similarly, utility installations along or across a transportation facility are also subject to NEPA and must include the appropriate documentation for NEPA compliance (note, the majority of utility installations will not qualify for this Programmatic Categorical Exclusion [PCE]).

The requirement for NEPA for non-highway uses is based on Title 23 Code of Federal Regulations (CFR) Section 1.23(b) which states, in part, that "all real property, including air space, within the right-of-way boundaries of a project shall be devoted exclusively to public highway purposes" and 23 CFR 710.403(b) which states that a party that is the direct recipient of Title 23 funds (such as Caltrans) must:

...ensure that all real property interests within the approved ROW [right-of-way] limits or other project limits of a facility that has been funded under title 23 are devoted exclusively to the purposes of that facility **and the facility is preserved free of all other public or private alternative uses**, unless such non-highway alternative uses are permitted by Federal law (including regulations) or the FHWA. An alternative use, whether temporary under §710.405 or permanent as provided in §710.409, must be in the public interest, consistent with the continued operation,

maintenance, and safety of the facility, and such use must not impair the highway or interfere with the free and safe flow of traffic (see also 23 CFR 1.23).

The approval of non-highway uses of Federal-aid right-of-way or new utility installations can be subsumed within the process of developing and approving a Federal-aid highway project and would be considered in the project's NEPA documentation. However, many non-highway uses of Federal-aid highway right-of-way and utility installations are approved as "stand-alone" projects through the encroachment permit or similar process and therefore require documentation of NEPA compliance prior to the issuance of the right-of-way use agreement.

Additionally, non-highway uses of the Interstate are not delegated to Caltrans through the Stewardship and Oversight Agreement and Caltrans must obtain FHWA approval in those circumstances and include a copy of the California Environmental Quality Act (CEQA) and NEPA determination or document.

In order to streamline the NEPA compliance and subsequent approval of simple right-of-way use agreement activities (including encroachment permits) which have no federal funding and no other federal approval required, the Division of Environmental Analysis has developed the attached PCE to provide NEPA compliance for those types of activities for which Caltrans has determined based on past experience with similar actions, do not involve significant environmental impacts and which are listed in the [Caltrans Right of Way Manual Exhibit 15-EX-17, FHWA/Caltrans Approval Matrix-Right of Way Use Agreement](#) (Approval Matrix). Additionally, the actions covered by this PCE are the types of actions that would not involve unusual circumstances as outlined in 23 CFR 771.117(b).

The activities described in the attached "Programmatic CE Eligible Activities" are those that as a general rule do not require a project-specific NEPA analysis and will be covered by the [Biological Compliance Programmatic No-Effect Memo for Caltrans and Local Assistance Projects](#) dated August 17, 2021, and have been determined by Caltrans cultural Professionally Qualified Staff (PQS) to have "No Potential to Cause Effect" as defined in Stipulation II of the Caltrans Programmatic Agreement for Section 106 of the National Historic Preservation Act (PA) and 36 CFR 800.3(a)(1). These activities have also been determined to have no potential to affect state-owned cultural resources, pursuant to Stipulation I of the Public Resources Code (PRC) 5024 MOU. Right-of-way use

agreements composed entirely of activities identified in the attached "Programmatic CE Eligible Activities" list with no known potential to affect cultural resources or historic properties shall not be subject to further Section 106 or PRC 5024 review. Any application that does not consist entirely of activities identified in the attached "Programmatic CE Eligible Activities" list or has a known potential to affect cultural resources or historic properties shall be subject to Section 106 and PRC 5024 review by Caltrans Professionally Qualified Staff certified as required under the 106 PA and PRC 5024 MOU.

Activities not listed in the attached "Programmatic CE Eligible Activities" list must be reviewed by District Environmental Staff and a project-level categorical exclusion or environmental document will be prepared as appropriate. Project or activity types not listed in the Approval Matrix may be able to be approved under this PCE if, after examination by District Environmental Staff, it is clear that the project will have no direct or indirect physical change in the environment. In these instances, a memo to file, from District Environmental Staff, indicating that the project was screened for compliance with this PCE should be included in the project file.

This PCE is meant to expedite approval of activities that clearly will not cause significant environmental impacts. The PCE does not replace good judgment, nor does it eliminate necessary communication with District Environmental Staff, especially if there are any questions about the applicability. Furthermore, it does not override District Environmental input provided based on location-specific concerns or exceptions to the PCE.

Additionally, because the issuance of an encroachment permit is a discretionary action under CEQA, the majority of encroachment permits, including those covered by this PCE, will require review by District Environmental staff for CEQA compliance. For additional guidance on the applicability of both NEPA and CEQA to encroachment permits, including utilities, please see [Environmental Requirements for Encroachment Permits](#).

DEPUTY DISTRICT DIRECTOR, ENVIRONMENTAL et al.

July 21, 2026

Page 4

If you have any additional questions, please do not hesitate to contact Chris Kuzak, Office Chief, Environmental Management Office, Division of Environmental Analysis.

Attachment

1. Approved NEPA Programmatic Categorical Exclusion (PCE) Determination Form for Certain Right-of-Way Use Agreements (Including Encroachment Permits)
2. Programmatic CE Eligible Activities



**NEPA PROGRAMMATIC CATEGORICAL EXCLUSION (PCE)  
DETERMINATION FORM FOR CERTAIN RIGHT-OF-WAY USE AGREEMENTS  
(INCLUDING ENCROACHMENT PERMITS) (06/2026)**

**Project Description**

The Federal Highway Administration (FHWA) requires that non-highway alternative uses of the Federal-aid Highway system be approved by the FHWA, which constitutes a federal action and is thus subject to NEPA. Under NEPA Assignment (23 USC 326), Caltrans has assumed responsibility for the determination of categorical exclusions for certain actions including, but not limited to, right-of-way use agreements, encroachment permits, and consent letters that are subject to subpart D of 23 CFR 710. This PCE covers activities consistent with the July 21, 2026 memo entitled "Programmatic Categorical Exclusion for approval of certain Right of Way Use Agreement activities (including encroachment permits)."

**Caltrans NEPA Determination**

Caltrans has determined that this project has no significant impacts on the environment as defined by NEPA, and that there are no unusual circumstances as described in 23 CFR 771.117(b). See [SER Chapter 30](#) for unusual circumstances. As such, the project is categorically excluded from the requirements to prepare an EA or EIS under NEPA and is included under the following:

☒ **23 USC 326:** Caltrans has been assigned, and hereby certifies that it has carried out the responsibility to make this determination pursuant to 23 USC 326 and the Memorandum of Understanding dated April 18, 2022, executed between FHWA and Caltrans. Caltrans has determined that the project is a Categorical Exclusion under:

☒ **Activity 6 listed in Appendix A of the MOU between FHWA and Caltrans**

**Chief, Division of Environmental Analysis**

**Jeremy Ketchum**

Print Name

Signature

**07/21/2026**

Date

## Programmatic CE Eligible Activities

The list below are eligible activities under the *Programmatic Categorical Exclusion (PCE) for Approval of Certain Right of Way Use Agreement Activities (Including Encroachment Permits)*.

**NOTE:** To qualify under the PCE, activities **may not** involve construction, vegetation removal (including grasses, shrubs, and trees), trenching, excavation, or the permanent alteration of structures and/or landscaping that are more than 50 years old, etc.

1. Temporary traffic control
2. Parking in *new or renewed leases of existing* airspace parcels (garages, passenger vehicle lots, oversized vehicles/boat lots, and commercial transportation lots)
3. Parks (*new or renewed airspace leases of existing* standalone parks, dog parks, skate parks, sports parks, parklets, pocket parks (behind sound walls/retaining walls and right-of-way fence), and community gardens)
4. Plottage to adjacent businesses (*new or renewed airspace leases only for* storage, parking, and landscaping)
5. Commercial Use (*new or renewed airspace leases of existing* retail, office, motel, restaurants, seasonal uses including pumpkin/Christmas tree lots, farmer's market, antique market, impound lots, mini storage/self storage, open storage, oil and gas wells and solar/wind power *utilizing existing infrastructure*)
6. Public Agency/Nonprofit (*new or renewed airspace leases of existing* daycares, visitor center, donation trailers, temporary shelter programs/feeding programs/secure vehicle lot program (SLVP) for people experiencing homelessness, encampment social services for people experiencing homelessness [few hours access] (consent letter), emergency shelters, VA outpatient clinic) *utilizing existing facilities*
7. Good Neighbor Uses – Not in Operational Highway right-of-way (painting/maintenance of adjacent buildings [*that do not involve the alterations of structures/and or landscaping that are more than 50 years old*])
8. Utilities - Non-operational right-of-way - *new or renewed airspace leases of existing* sewer pump station *utilizing existing infrastructure*
9. Filming permits, chain installers, Adopt-a-Highway
10. Discretionary Fixed Objects - *modifications or replacements only, no new installations* (non-transportation related data collectors, law enforcement surveillance devices/cameras, *new or renewed airspace lease on existing* energy generation components, historical monuments, plaques, markers, or placards, Blue Star Memorial Highways, roadside memorials, mail and

newspaper delivery boxes [prohibited on Interstate], newspaper vending machines [prohibited on Interstate], fences [*fence type modifications or replacement, not new installations*], banners and decorations [prohibited on Interstate], on and off premises advertising displays [prohibited on Interstate, U.S., and State Routes], fire hydrant markers [prohibited on Interstate], safe telephones/call boxes [*modifications or replacements only, no new installations*], arcades, awnings, and marquees *that do involve the alteration of structures and/or landscaping that are more than 50 years old* [prohibited on Interstate])

11. Litter and roadside cleanup *that does not involve vegetation* (including grasses, shrubs, and trees)
12. Charitable solicitations [prohibited on Interstate]
13. Special events *that do not involve the alteration of structures or landscaping regardless of age*