# Chapter 100 – The Permit Function

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Chapter 100
The Permit Function

The California Department of Transportation (Caltrans) is the steward of the California State Highway System (SHS). The safety of the traveling public, highway workers and permittees is our primary concern. Caltrans also cooperates with other public agencies and with private parties to promote the safe use of our highways.

Caltrans issues encroachment permits to:

- Ensure the safety of the traveling public, highway workers and permittees,
- Protect, maintain, and enhance the quality of the State highway system during and after permitted work,
- Ensure that the proposed encroachment is compatible with the primary uses of the State highway system,
- Protect the State’s and public’s investment in the highway facility, and
- Ensure that temporary uses of State highway right-of-way for special events, filming, etc. are conducted safely and with minimum inconvenience to the traveling public.

Encroachment permits are issued under the authority of law. In processing permit applications, Caltrans draws upon the extensive experience of its workforce in advising permittees to use safe procedures and equipment.

101 WHAT IS AN ENCROACHMENT PERMIT?

An encroachment is defined in Section 660 of the California Streets and Highways Code as “[...]any tower, pole, pole line, pipe, pipeline, fence, billboard, stand or building, or any structure, object of any kind or character not particularly mentioned in the section, or special event, which is in, under, or over any portion of the [State] highway right-of-way. “Special event” means any street festival, sidewalk sale, community-sponsored activity, or community-approved activity.”

An encroachment permit issued by Caltrans (or issued by an authorized local agency in certain circumstances) is permissive authority for the permittee to enter State highway right-of-way to construct, alter, repair, improve facilities, or conduct specified activities. An encroachment permit is a contract between Caltrans and the permittee. Acceptance is acknowledged when any of the specified acts or work is performed under the conditions of the permit.
An encroachment permit is not a property right. It is permissive authority for the permittee or the permittee’s authorized agent to enter the State Highway right-of-way to construct, alter, repair, improve facilities, or conduct specified activities. The permittee is responsible for the encroachment and the condition thereof, and the permittee is bound by the General Provisions, Special Provisions, and any other terms and conditions under which the encroachment permit was issued as long as the encroachment remains in, under, or over the State Highway right-of-way.

A permittee cannot transfer or assign an encroachment permit to another party. An encroachment permit is not transferred to a new owner when the property or facility (e.g. utility) is sold. New property or utility owners must apply for and obtain their own encroachment permit as soon as possible after the sale. The new encroachment permit should be fee exempt and issued for notice and record purposes.

An encroachment permit must be obtained for all proposed activities for placement of encroachments within, under, or over the State highway right-of-way. Some examples of work requiring an encroachment permit are: utilities, excavations, encroachment renewals, advertisements (when allowed by statute), vegetation planting or trimming, surveys, mail boxes, driveways, installation or removal of tire chains for compensation, special events, and commercial filming activities.

Encroachment permits are not issued to allow building structures to extend into the State highway right-of-way, e.g., bay windows, cornices, and decorative features that extend beyond the surface of a building. To do so would grant exclusive use of public property to private entities without compensation. (Exception: see Advertising Displays, Section 501.3).

102 STATUTORY AUTHORITY

Authority for Caltrans to control encroachments within the State highway right-of-way is contained in the California Streets and Highways Code starting with Section 660.

103 WHO NEEDS AN ENCROACHMENT PERMIT?

Individuals, contractors, corporations, utilities, cities, counties, Native American Tribes, and other government agencies proposing to conduct any activity within, under, or over the State highway right-of-way need an encroachment permit.

All entities (other than Caltrans’ forces or under a State highway construction contract with Caltrans and operating within their contract limits, consultants under contract with Caltrans, local agency forces with a delegation of a maintenance agreement operating within their jurisdictional boundaries and within the scope of their maintenance responsibilities) must obtain an encroachment permit before conducting any activity within, under, or over the State highway right-of-way.
104 ENCROACHMENT PERMITS ISSUED BY CALTRANS

Only Caltrans has authority to approve and issue permits for activities within State highway right-of-way. However, Caltrans may delegate permit issuing authority to cities and counties for routine encroachments by agreement but retains sole authority over the State highway right-of-way even after delegation. Agreements must contain provisions for city or county-issued encroachment permits. (See Appendix B and section 500.4).

105 ROUTINE ENCROACHMENT PERMITS ISSUED BY CITIES OR COUNTIES

Cities or counties may issue routine State highway encroachment permits on specified State highway facilities located within their jurisdictional boundaries. Local agencies must be authorized by agreement with Caltrans to issue permits. (See Appendix B and section 500.4).

106 WORK EXEMPT FROM WRITTEN ENCROACHMENT PERMITS

Work within the State highway right-of-way is exempt from encroachment permits only when it is:

- A State highway construction contract
- A service contract that specifically exempts the contractor
- A delegation of a maintenance agreement
- Authorized by District Right of Way when the work is located in non-operating State highway right-of-way.
- Authorized by the California Vehicle Code and the associated activities do not affect highway operation and/or safety.

In certain instances, the placement of an encroachment may be authorized before issuing a written permit, e.g., verbal permission granted under emergency conditions. An application for a permit must be submitted as follow-up after the emergency condition ceases. Work that can be completed under regular conditions is not considered emergency work. Law enforcement agencies may not be required to obtain encroachment permits for specified enforcement activities performed during the course of duty (See section 517.4).

107 OFFICE LOCATIONS AND HOURS

Caltrans issues encroachment permits through twelve District Encroachment Permits Offices. Applicants should direct inquiries and permit applications to the appropriate District Encroachment Permits Office having jurisdictional authority over the proposed encroachment site. Addresses and contact information can be found at:

https://dot.ca.gov/programs/traffic-operations/ep/district-contacts
All applications for commercial filming permits must be submitted through the California Film Commission. Additional information can be found at:

http://film.ca.gov/

California Government Code Section 11020 requires all State Agencies to be open for the transaction of business from 8:00 a.m. to 5:00 p.m. except weekends and holidays. Staggered lunch hours must be used to provide continuous service throughout the day.

### 108 OVERVIEW OF THE ENCROACHMENT PERMIT PROCESS

The encroachment permit process is summarized in Figure 1.1. Permitted activities range from single-family residential driveway connections to multi-million dollar construction projects. Applications for various permit categories have different review and approval processes, but in all cases the District Permit Engineer must follow appropriate policies and procedures.

An application for an encroachment permit must be on a current “Standard Encroachment Permit Application” (form TR-0100) and signed by the owner or an authorized representative whose authority is validated by a letter or contract. In situations where a long-term lessee is developing land, e.g., a hotel, the permit to construct access may be issued to the lessee. When short-term leases exist, the property owner must be the applicant. The application forms and related documents can be found at:

https://dot.ca.gov/programs/traffic-operations/ep

#### 108.1 Oversight Projects vs Encroachment Permit Projects

As the steward of the public’s investment in the State highway system (SHS), Caltrans reviews projects-funded-by-others using two main review processes to evaluate a project’s impact on the SHS; Oversight Project (OP) and Encroachment Permit (EP).

The District Permit Engineer, in consultation with other functional units will determine which review process will be used based on complexity and construction costs within the existing or future State Highway right-of-way:

1) Projects over $1 million will use the OP process.
2) Projects under $1 million and complex will use the OP process.
3) Projects under $1 million and non-complex will use the EP process.
4) Routine utility or drainage projects, will use the EP process.

A project is considered complex if it is ineligible for a combined PSR-PR. Other factors that can contribute to the complexity of a project are included in Chapter 12, Section 4 of the Project Development Procedures Manual.

https://dot.ca.gov/programs/design/project-development-procedures-manual-pdpm

In addition, the project may be considered complex if the encroachment activity:
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1) Creates 5,000 square feet or more of new non-highway impervious surface (Order, Provisions E.2.d.2.a), or
2) Creates 1 acre or more of new highway impervious surface (Order, Provisions E.2.d.2.a), or
3) Is within, or partially within an Environmentally Sensitive Area (ESA) or may discharge to an ESA, or
4) Requires a Storm Water Data Report (SWDR).

To assist in the determination, the District Permit Engineer can arrange a pre submittal conference to obtain input from the District Encroachment Permits Office, Program/Project Management, Design, and Traffic Operations. Inclusion of other functional units depends on project scope and features. Meeting outcomes and basis for decisions should include the same items above and may include items such as: cost estimate verification; availability of reimbursement funding; Right of Way processes; increase in State tort liability; Structure Design involvement; and Electrical unit review.

If the construction cost increases above $1,000,000, the encroachment permit application is then denied and the project must be reviewed and approved using the Oversight Project process.

**Oversight Projects** – These projects are generally complex and are financed with a sales tax measure, locally funded non-sales tax, or private funds. **Project Development has responsibility for these projects including workplan development, plan review, obtaining encroachment permits and executing cooperative or highway improvement agreements.** For more information on the Oversight Project process, see the Project Development Procedures Manual and Deputy Directive DD-23-R1 and Section 500.10 “Oversight Projects” of this Manual.

An “Encroachment Permit Administrative Route Slip” (form TR-0154) is used by the Project Manager to request from the District Permit Engineer the issuance of an encroachment permit. The TR-0154 certifies that the project has been reviewed and approved and does not require any further coordination. Encroachment permit staff charges expended effort to the Oversight Project’s Project Code and not to an Encroachment Permits Project Code.

**Encroachment Permit Projects** – These projects are 100% funded, designed, and constructed by a local agency, transportation agency, Sales-tax measure sponsor, or a private entity. Projects are non-complex and construction cost within the existing or future State right-of-way is under $1 million. The project scope is defined, funding secured, and plans are complete. Some types of encroachment permits require cooperative agreements or highway improvement agreements.

If the work is routine utility or drainage work, the encroachment permit process is followed.

**Only Encroachment Permit projects should be administered entirely by the District Encroachment Permits Office.**
The State representative responsible for overseeing the project construction will be provided by the Construction Unit if construction cost exceeds $300,000. Projects with construction costs of $300,000 or less, may be overseen by either the Construction Unit or the Permits Unit (see PDPM Chapter 2, Section 5).

108.2 Maintenance Work Performed by Volunteers
The Adopt-A-Highway (AAH) Program allows participants to perform litter removal, seedling tree and shrub planting, wildflower planting, graffiti removal, Mission Bell placement, and vegetation control within the State highway right-of-way. Encroachment permits issued for AAH projects are exempt from permit fees and are issued for a five-year term. For additional information see Section 500.1 and the Adopt-A-Highway Program’s website at:

https://dot.ca.gov/programs/maintenance/adopt-a-highway

Program participants may include: individuals, businesses, corporations, and organizations. Excluded from participation are entities that advocate, violence, violation of the law, or discrimination based upon race, religion, color, national origin ancestry, physical handicap, medical condition, marital status, age, or sex. Also excluded from participation are individuals, businesses, or organizations involved in the distribution, display, advertisement, or promotion of pornography, including those web sites that provide pornographic materials.

Applications for an AAH project are received and processed by the District AAH Coordinators. The AAH Coordinators respond to all program questions and conduct all technical reviews. The minimum age requirement for AA participation is sixteen years old. An encroachment permit is usually issued by the District Permit Engineer with the recommendation of the AAH Coordinator. At the discretion of the District Permit Engineer, permit issuance may be delegated to the AAH Coordinator. Records associated with the project are microfilmed, and the project is closed-out when the permit expires.

Renewal of an expiring AAH permit normally is accomplished by issuing a new permit rather than extending the existing permit.

A “Consent Letter” (form TR-0131) may be issued by the Maintenance Area Superintendent for one-day highway litter removal, vegetation control, and landscape maintenance within the State highway right-of-way fronting upon an owner's property. The Deputy District Director-Maintenance may approve multiple dates at his or her discretion (maximum of three consecutive days).
“Overview of the permitting process for simple* Encroachment Permit Application Packages (EPAP)”

1. EPAP must be screened by Permit Engineer for completeness.
   - If EPAP is incomplete, return EPAP to applicant and explain why.
   - If EPAP is complete, proceed.

2. Is EPAP complete?
   - Yes, notify applicant of EPAP being conditionally accepted.
   - No, return EPAP to applicant.

3. Can the review be done in-house?
   - Yes, perform review.
   - No, circulate EPAP to appropriate reviewing units.

4. Reviewing units send comments to Permit Engineer within 8 days.
   - Issue permit.
   - Denial of permit.

5. Does the applicant respond within the allotted 10 days?
   - Yes, issue permit.
   - No, applicant must resubmit within 60 days to the Department's Director as detailed in Chapter 300 of EP Manual.

6. Applicant must resubmit within 60 days to the Department's Director as detailed in Chapter 300 of EP Manual.
   - Issue permit.
   - Denial of permit.

California Streets and Highways Code, section 671.5 (a), requires the department to either approve or deny an encroachment permit application submitted within 60 calendar days of receiving a completed application as determined by the department. It also stipulates that an encroachment permit application is complete when all other statutory requirements, including (CEQA), have been complied with. The term statutory requirement includes all federal and California statutes.

*The Office of Encroachment Permits has established functions to ensure compliance with the 60 calendar day statutory requirement. These functions include:
1. Preliminary meetings,
2. The Encroachment Permits Management System database,
3. A response time goal of 30-calendar days or less for most EPAPs.

HQ Office of Encroachment Permits (Rev. 05/2019)
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CALTRANS PROJECT PROCESSES

< $1,000,000 ENCROACHMENT PROJECTS

Applicant Requests Design Assistance

Conduct Meeting with Applicant

Complex? NO

Application Package Submitted

Provide needed Requirements & assistance to Applicant

Application Package reviewed at counter & accepted

YES

Standard Submittal

EXCEPTION PROCESS / HQ REVIEW

Exception Review

HQ Review

District / Office Review Process

Revisions / Additional Info Needed

Yes

Approved

NO

Denial Letter sent

Revisions Requested

NO

Applicant submits revisions

YES

Applicant is notified of their Appeal Rights, in the Denial Letter

Issue Permit

NO

$1,000,000 < PROJECTS < $3,000,000 PROJECTS FUNDED BY OTHERS

Encroachment Project as defined in PDPM

NO

Encroachment Process

Project Cost < $1,000,000

YES

Issue Permit

Enhanced PEER (streamline process)

Project Cost > $3,000,000

NO

Normal Project Development Process

NO

YES

REVISIT 60 DAY CLOCK

CALTRANS RESPONSIBILITY

APPLICANTS RESPONSIBILITY

REV. 02/19