# Documentation in Support of Proposed Appendix A - Assigned Categories of Activities

The following discussion provides information to demonstrate that the activities described in proposed Appendix A typically are determined, after documented evaluation, to be categorical exclusions (CEs) in California. This information supports the California Department of Transportation's (Caltrans) proposal to include each of the specified activities in Appendix A of the MOU, which describes the activities for which Caltrans will make the determination whether categorical exclusion criteria are satisfied.

This document summarizes the seven activities proposed for inclusion in Appendix A. Following the description of each activity proposed for assignment, a brief statement of justification is provided, based on the experience of Caltrans and FHWA. The justification statement includes a summary of the number and types of Caltrans' State highway system (SHS) and Local Assistance projects that involved the proposed activity and that were approved as CEs between 2001 and 2005. Over the last five years a total of 335 SHS and 98 Local Assistance projects that would fit within the proposed categories were approved as Programmatic Categorical Exclusions (PCE), discussed below, or as CEs. Whether on the SHS or on the local roadway network (Local Assistance projects), CE projects follow the same standards and guidance, use the same CE form, require the same level of review and signature, and are subject to the same FHWA role and review and approval standards.

This document also summarizes the process that Caltrans currently uses in determining CE eligibility, as well as the process it will apply in carrying out its responsibilities under Stipulation I(B)(3) of the MOU.That provision would assign to Caltrans the Federal Highway Administration's (FHWA's) authority under the National Environmental Policy Act (NEPA) and 23 CFR 771.117(d) to determine whether projects meeting the descriptions listed in Appendix A satisfy CE criteria.

## Determining Eligibility for Categorical Exclusions

### *Current Process*

All Caltrans SHS and Local Assistance projects undergo preliminary environmental scoping to determine the level of NEPA documentation that will be required and the technical studies, if any, that will need to be prepared to support the NEPA classification of action. It is during this preliminary environmental scoping stage that Caltrans considers whether a project qualifies for a CE under the provisions of 23 CFR 771.117(c) or (d). The preliminary environmental scoping process is described in Chapter 5 ("Preliminary Environmental Scoping") of Caltrans' Standard Environmental Reference (http://www.dot.ca.gov/ser/vol1/sec2/ch5prescoping/chap5.htm) and is summarized below.

Once a project description is prepared, Caltrans' environmental project manager works with staff environmental technical specialists to consider whether the project meets the criteria for a CE and whether unusual circumstances exist as defined under 23 CFR 771.117(b). This consideration includes a number of reviews to determine whether the project site has the potential to contain sensitive environmental resources. The level of effort required for these reviews for any given project is determined by the project manager and environmental staff. These reviews include the following:

- review of relevant literature such as previous environmental documents on projects adjacent to or near the project site;
- review of aerial photographs and Caltrans photo log of the project site and vicinity;
- review of databases such as the California Department of Fish and Game's Natural Diversity Database;
- preliminary discussions with resources agencies, such as U. S. Fish and Wildlife Service, that have expertise regarding resources at the project site and/or have permitting authority; and
- visit to the project site (windshield survey or field visit), if needed (in some cases, review of aerial photographs is sufficient).

For Local Assistance projects, preliminary scoping typically occurs through a field review of the project site, with the local agency, the District Local Assistance Engineer (DLAE) or staff, a District environmental representative, and the FHWA representative participating. Based on the project scope and conditions identified in the field, the class of action (i.e., EIS, CE, or EA) and necessary environmental studies are determined during the field review. This process is described in Chapter 6 of the Local Assistance Procedures Manual (http://www.dot.ca.gov/hq/LocalPrograms/lam/prog_p/p06envrp.pdf).

The results of preliminary environmental scoping are documented in Caltrans' project initiation documents. Preliminary Environmental Analysis Reports (PEAR) are prepared for SHS projects and Preliminary Environmental Studies (PES) forms are completed for Local Assistance projects. Caltrans signs the PEAR. FHWA signs the PES form for Local Assistance projects, concurring in the class of action and necessary field studies.

Where the project will disturb original ground or the area has known sensitivity for species of concern or other human or natural environmental issues, it is routine to conduct field studies to determine if sensitive environmental resources are present. In these cases, technical studies or memoranda are prepared to document the outcome of the fieldwork and the presence or absence of sensitive environmental resources at the project site. Early coordination meetings are also sometimes held as an opportunity for the project designers, environmental project manager, and environmental technical specialists to discuss the potential occurrence of sensitive environmental resources at the project site. If environmental resources are identified as a result of field studies, appropriate resource agencies are consulted. A CE determination is made only after any necessary field studies and appropriate resource agency coordination are complete and it is determined that no unusual circumstance apply pursuant to 23 CFR 771.117(b).

***Process Changes under the Section 6004 Assignment***

Under the Section 6004 assignment, Caltrans will fulfill all of FHWA's current roles and responsibilities for CEs assigned under the 6004 MOU. Caltrans will use the same basic process as described above when it determines whether a project listed in Appendix A meets the provisions of 23 CFR 771.117(d). For SHS projects, the CE decision for all of the assigned categories will be approved by the Caltrans District Environmental Office Chief or Senior Environmental Planner supervising the staff that performed the work, and by the Caltrans project manager. The Caltrans Senior Environmental Planner and the Caltrans project manager will sign the CE. In no case will Caltrans categorically exclude a project that is found to have significant impacts on the environment, either individually or cumulatively, but that otherwise meets the

definition of a CE. When significant impacts are known or suspected an Environmental Assessment (EA) or Environmental Impact Statement (EIS), as appropriate, will be prepared.

This same process will also be undertaken for Local Assistance projects. Caltrans, rather than FHWA, will review and sign the Local Assistance PES form to concur in the class of action and necessary field studies. For Local Assistance projects, the local agency and/or its consultants will conduct the field studies and prepare the technical memoranda/studies for review and approval by Caltrans. The DLAE and the District Senior Environmental Planner will sign the Local Assistance CE once necessary field studies and coordination with resource agencies are complete.

**Experience-based Justification for Assignment of Appendix A Activities under this MOU**

Caltrans and FHWA have executed an administrative agreement called a Programmatic Categorical Exclusion Agreement that implements 23 CFR 771.117(a-d) (http://www.dot.ca.gov/ser/vol1/sec4/ch30ce/chap30ce.htm#ce_v_pce). This agreement recognizes several highway activities that meet the provisions of 23 CFR 771.117(d) and based on experience with these activities FHWA has programmatically approved those activities as CEs as long as stipulated conditions in the agreement are met. Caltrans prepares an annual PCE report for FHWA California Division, which identifies every SHS project that received environmental approval in the calendar year. Local Assistance prepares a similar report documenting completion of Local Assistance environmental determinations. The reports include a project description for each project and the form of environmental approval (PCE, CE, EA, EIS). PCE reports for the last five years were reviewed to identify recurring activities that were routinely determined to be CEs.[1] The number of times an EA or EIS was used for environmental approval for each of these activities was also noted. Activities that were routinely approved as CEs were considered for inclusion in Appendix A of this MOU.

Based on past experience with similar actions, as determined through the review of annual reports (Caltrans Annual State Highway Federal-Aid PCE Reports 2001-2005) for the last five years, without exception, none of the activities proposed for listing in Appendix A of this MOU typically involve significant environmental impacts. They are activities that normally do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic, or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns, or do not otherwise, either individually or cumulatively, have any significant environmental impacts (23 CFR 771.117(a)).

All activities proposed for assignment under Appendix A fit well within the range of activities that are routinely determined to be CEs and result in no significant impacts. The activities are generally of smaller scale and with smaller footprints than those actions currently listed as examples in 23 CFR 771.117 (d); any environmental impacts resulting from these proposed activities would also generally be of smaller scale than those of actions currently listed as examples in 23 CFR 771.117(d). Several of the activities proposed for addition are environmental stewardship activities; in other words, the entire purpose of the activity or project is to protect or improve the environment.

Notwithstanding the experience described above, individual projects which would otherwise meet the definition of the activity category and would normally be classified as a CE but could involve unusual circumstances, as defined under 23 CFR 771.117(b), would require appropriate

[1] Copies of these reports are available for inspection by contacting Caltrans or the FHWA.

environmental studies to determine if the CE classification is proper. This follows standard Caltrans practice.

Finally, each of the activities proposed for assignment in the MOU meets the FHWA Vital Few Environmental Goal of Stewardship and Streamlining (http://environment.fhwa.dot.gov/strmlng/es4vitalfew.asp). Environmental Stewardship helps demonstrate a commitment to protecting the natural and human environment while addressing the mobility and safety needs of the public. Environmental Streamlining seeks to improve project delivery without compromising environmental protection.

**Proposed Categories for Appendix A and Related Justifications**

The activities listed below are currently normally approved as CEs under 23 CFR 771.117(d). As described above, each project that fits one of these proposed categories is individually examined to ensure that the CE classification is appropriate and that unusual circumstances do not apply. The CE determination is made for each individual project, considering the project impacts on a case-by-case analysis. Appropriate field studies are undertaken for each project, technical studies or memoranda are prepared, and any necessary resource agency consultation is completed before the CE determination is made. If significant impacts are identified or suspected at the project site an EA or EIS, as appropriate, would be prepared.

The activities proposed for Appendix A are:

1. Construction, modification, or repair of storm water treatment devices (e.g., detention basins, bioswales, media filters, infiltration basins), protection measures such as slope stabilization, and other erosion control measures.

   *Justification:* This activity is not listed in either 23 CFR 771.117(c) or (d), but as evidenced by Caltrans' Annual State Highway Federal-Aid PCE Reports (2001-2005), projects involving this activity are regularly being approved through the use of a PCE and CE in Caltrans' and FHWA's current practice. Specifically, between 2001 and 2005, Caltrans or FHWA approved 108 projects that would be included in this category. Projects fitting this category support environmental stewardship goals. They are designed to provide water quality benefits, to meet obligations under the federal Clean Water Act, or to comply with permit conditions. Projects fitting this category are small in area – typically ranging from the size of a small swimming pool to under half an acre – and any environmental impacts that result are small in size as well. Sixty-nine projects exclusively entailed storm water treatment and/or erosion control such as construction and repair of storm drains, reconstruction/protection of existing and construction of new embankments, slope/soil stabilization including slope paving and regrading, planting of shrubs and groundcover to prevent soil erosion, other water quality improvements including sediment removal, creation of bioswales, and routine maintenance of retention basins. The remaining projects were storm water treatment and/or erosion control projects that were implemented in combination with another CE activity such as slope repair and replacement of ditches, protection of bridge abutments and slope repair, slope paving and landscaping, sediment and vegetation removal, regrading of slope and construction of drainage ditches, slope grading and fence installation, and replacement and retrofit of compost storm water filters and detention basins. There were no instances of projects fitting this definition where an EA or EIS was required.

Based on the initial CE determination, FHWA's annual PCE report evaluations, FHWA CE process reviews, and the absence of resource agency or public complaints regarding the CE determinations for these projects, none of these projects resulted in significant environmental effects.

2. Replacement, modification, or repair of culverts or other drainage facilities.

   *Justification:* This activity is not listed in either 23 CFR 771.117(c) or (d), but as evidenced by Caltrans' Annual State Highway Federal-Aid PCE Reports (2001-2005), projects involving these activities are regularly being approved through the use of a PCE and CE in Caltrans' current practice. Between 2001 and 2005, 102 projects were approved that would be included in this category. Projects fitting this category support safety, environmental streamlining, and environmental stewardship goals; many of the projects provide water quality benefits. These projects typically entail work such as culvert replacement, ditch liners, roadway drainage repair or maintenance, and replacement of drainage pipes at spot locations or short longitudinal stretches of roadside drainage systems. Impact areas are small and usually within the previously disturbed roadway prism; impacts are typically minor. Thirty projects were specifically for culvert or drainage replacement, modification, or repair such as stream and culvert replacement/rehabilitation, roadway drainage repair, upgrading of culverts at existing drainages, replacement of drainage pipes, creek channel stabilizer improvements, and routine maintenance in drainage channels. The remaining projects were culvert or drainage projects that were implemented in combination with another CE activity such as highway rehabilitation and drainage improvements, pavement rehabilitation and reconstruction of drainages, repair of slip outs and installation of underdrains, relocation of pedestrian push button posts and reconstruction of existing drainage channels, upgrading of guardrail and drainage structures, and placement of concrete culverts and widening of shoulders. There were no instances of projects fitting this definition where an EA or EIS was required.

   Based on the initial CE determination, FHWA's annual PCE report evaluations, FHWA CE process reviews, and the absence of resource agency or public complaints regarding the CE determinations for these projects, none of these projects resulted in significant environmental effects.

3. Projects undertaken to assure the creation, maintenance, restoration, enhancement, or protection of habitat for fish, plants, or wildlife (e.g., revegetation of disturbed areas with native plant species; stream or river bank revegetation; construction of new, or maintenance of existing fish passage conveyances or structures; restoration or creation of wetlands).

   *Justification:* This activity is not listed in 23 CFR 771.117(d), but as evidenced by Caltrans' Annual State Highway Federal-Aid PCE Reports (2001-2005), 35projects were approved in this category between 2001 and 2005. Projects in this category support environmental stewardship goals. These projects are explicitly designed to protect or improve the environment, providing ecosystem and/or sensitive species benefits. Twenty-one projects exclusively entailed environmental stewardship activities, such as vegetation clearance from existing creeks/channels, native plant revegetation, oak woodland compensation, restoration of creek flows, seawall restoration, and fish passage conveyances. The remaining projects were environmental stewardship projects that were implemented in combination with another CE activity such as sediment removal and

creek/channel clearing, landscaping for scenic beautification and native plant revegetation, wetland and other habitat creation to compensate for habitat removal from construction of transportation projects. There were no instances of projects fitting this definition for which an EA or EIS was required.

Based on the initial CE determination, FHWA's annual PCE report evaluations, FHWA CE process reviews, and the absence of resource agency or public complaints regarding the CE determinations for these projects, none of these projects resulted in significant environmental effects.

Additionally, this type of activity is generally defined as a categorical exemption under the California Environmental Quality Act (CEQA), which evidences its broad acceptance as an exempt category within the state (State CEQA Guidelines 15333 and 15301(i)).

4. 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).

   *Justification:* This activity is not listed in 23 CFR 771.117(d), but as evidenced by Caltrans' Annual State Highway Federal-Aid PCE Reports (2001-2005), 61 projects were approved in this category between 2001 and 2005. These projects support safety, mobility, and environmental streamlining goals, sometimes in combination with environmental stewardship goals. Forty-six projects entailed routine repair of storm-damaged facilities to their original conditions without expanding capacity, such as removal of slide material, repair of slope failures, reestablishment of failed retaining walls, and repair of storm damage slip outs. The remaining projects were routine storm damage repair projects that were implemented in combination with another CE activity such as repair slip outs and install underdrains, construction of retaining walls, re-establishment of pavement and retaining walls, restoration of rockslope and roadway repair, widening of off-ramps and installation of retaining walls, rehabilitation of bridge structures including installing retaining walls, and reconstruction of roadways with retaining walls. There were no instances of projects fitting this definition where an EA or EIS was required.

   Unlike categorically excluded action (c)(9), "Emergency repairs under 23 U.S.C. 125", the proposed category is intended to cover repair from storm damage that may not be a declared emergency as well as those activities necessary to permanently repair a storm-damaged facility to operational conditions that meet current design, public health, and safety standards without expanding capacity. CE category (c)(9) limits repair to that necessary to reopen the facility.

   Based on the initial CE determination, FHWA's annual PCE report evaluations, FHWA CE process reviews, and the absence of resource agency or public complaints regarding the CE determinations for these projects, none of these projects resulted in significant environmental effects.

   Additionally, this type of activity is generally defined as a CEQA statutory exemption (State CEQA Guidelines 15269(d)), which evidences its broad acceptance as an exempt category within the state.

5. Routine seismic retrofit of facilities to meet current seismic standards and public health and safety standards without expansion of capacity.

   *Justification:* This activity is not listed in 23 CFR 771.117(d), but as evidenced by Caltrans' Annual State Highway Federal-Aid PCE Reports (2001-2005), 89 projects were approved in this category. The large majority of projects were for routine seismic retrofit of facilities, most often bridges. A few projects were routine seismic retrofit work combined with another CE activity such as replacement /retrofit of storm water filters and detention basins, and roadway retrofit and soundwall construction. Seismic retrofit projects strengthen structures to meet current seismic standards. These projects generally include routine but necessary reinforcements to individual structures designed so that the structure will withstand future seismic activity. The work is usually confined to a small area, which has typically been disturbed by original project construction. These projects typically entail small-scale environmental impacts. While the Caltrans seismic retrofit program is essentially complete, many structures on local roadways still require seismic retrofit, and future seismic events could result in the identification of additional seismic retrofit needs.

   In one instance, a seismic retrofit project with unusual circumstances was approved with an EA/FONSI. This project involved a historic bridge designed by the engineer that designed the Golden Gate Bridge.

   Seismic retrofit projects support safety, mobility, and environmental streamlining goals. They are cost effective projects intended to prevent significantly more costly repair or replacement resulting from seismic activity. In addition, seismic retrofit of historic structures reduces the potential for damage or destruction to historic bridges and other historic properties during seismic events.

   Based on the initial CE determination, FHWA's annual PCE report evaluations, FHWA CE process reviews, and the absence of resource agency or public complaints regarding the CE determinations for these projects, none of these projects resulted in significant environmental effects.

   Additionally, this type of activity is generally defined as a CEQA statutory exemption (State CEQA Guidelines 15269 (b) and (d)) and as a CEQA categorical exemption (State CEQA Guidelines 15301 (d)).

6. Airspace leases that are subject to Subpart D, Part 710, Title 23, Code of Federal Regulations.

   *Justification:* Airspace leases are not listed in either 23 CFR 771.117(c) or (d), but as evidenced by Caltrans' Annual State Highway Federal-Aid PCE Reports (2001-2005), 10 projects were approved in this category. There were no instances of projects fitting this definition where an EA or EIS was required.

   Under Federal regulations appearing in Title 23, Part 710, airspace is that area located above or below the highway's established grade line, beneath an elevated highway structure, or adjacent to the roadway, and located within the approved right-of-way boundary. It includes the land and related rights held by the State or local public agency and available for such uses, subject to limitations under State law and procedures. Actions to lease such property for non-highway uses are permissible if those uses can

occur without interference with the construction, operation, maintenance, and foreseeable future expansion of the transportation corridor, and without endangering the traveling public. The FHWA must approve such leases if the affected property is part of the National Highway System, or if any Federal funds were used for the acquisition, design, construction, or maintenance of the highway facility.

Airspace leases authorize public or private entities to use these sites. Airspace sites are leased to maximize the use of property acquired for transportation purposes by allowing a dual use that increases the local tax base, replaces commercial services removed by a highway project, promotes area employment, provides an asset for the State of California, or eliminates maintenance expenses of vacant sites. Airspace leases provide economic benefits to the State and/or the locale. Typical airspace leases in California may involve surface rights under a viaduct structure, space above travel lanes, space within a loop of an interchange, and areas in cut or fill slopes. Examples of typical airspace lease uses in California are wireless telecommunications facilities, parking lots, and storage facilities.

Airspace lease activities in California are generally of small scale and are inherently unlikely to have large environmental impacts. Airspace sites typically are on previously disturbed ground. Further, the leases typically involve activities that do not require further disturbance of the site. While airspace uses of a larger scale or with different impacts sometimes occur, the review process for these projects (which is described in the introductory paragraph to this justification section) ensures that each project's impacts on the human and natural environment are examined to verify that the CE classification is appropriate and that unusual circumstances do not apply.

Based on the initial CE determination, FHWA's annual PCE report evaluations, FHWA CE process reviews, and the absence of resource agency or public complaints regarding the CE determinations for these projects, none of these projects resulted in significant environmental effects.

7. Drilling of test bores/soil sampling to provide data needed for environmental analysis and review, or for project permitting.

   *Justification:* Drilling of test bores/soil sampling is not listed in either CFR 771.117(c) or (d), but as evidenced by Caltrans' Annual State Highway Federal-Aid PCE Reports (2001-2005), 28 projects were approved in this category. These activities were related to geotechnical studies and investigations of structural foundations, culverts, and other drainages for Federal Aid highway projects in California. These are small scale activities which serve to provide information for preliminary design, permitting, or for environmental analysis. There were no instances of projects fitting this definition where an EA or EIS was required.

   Geotechnical and foundation studies generally occur during preliminary design as part of fundamental data gathering to determine whether potential alternatives or structure types are reasonable and feasible, prior to overall project environmental approval. These studies are minor in scale and require drilling test bores or taking soil samples with very small footprints. Environmental impacts that may result are small and temporary.

   Based on the initial CE determination, FHWA's annual PCE report evaluations, FHWA CE process reviews, and the absence of resource agency or public complaints regarding

the CE determinations for these projects, none of these projects resulted in significant environmental effects.