State of California
DEPARTMENT OF TRANSPORTATION

Business, Transportation and Housing Agency

Memorandum

Flex your power!
Be energy efficient!

To: DISTRICT DEPUTY DIRECTORS, Environmental
DISTRICT ENVIRONMENTAL BRANCH CHIEFS

Date: March 21, 2012

From: GINA MORAN Gina Moran
Chief
Environmental Management Office
Division of Environmental Analysis

Subject: Mandatory Filing of Notices of Exemption for Projects Subject to the California Environmental Quality Act

The purpose of this memorandum is to provide direction on the filing of Notices of Exemption (NOE) when the Department is the California Environmental Quality Act (CEQA) lead agency for projects on the State Highway System and the Department determines that a project is exempt from CEQA.

Effective immediately, when the District/Region Senior Environmental Planner determines that a project is exempt from CEQA and has signed the Categorical Exemption/Categorical Exclusion form, the District/Region Environmental Office shall file a Notice of Exemption with the Governor's Office of Planning and Research, State Clearinghouse. The NOE shall be filed only after the project has been approved (CEQA Guidelines Section 15062). Typically, "project approval" means that the Project Report or equivalent is approved by the District Director or designee. For more information on the various types of project approval documents, please refer to the Project Development Procedures Manual Chapter 12.

Background:
Pursuant to the CEQA Guidelines Section 15062, when a public agency decides that a project is exempt from CEQA and the public agency approves or determines to carry out the project, the agency may, but is not required to, file an NOE. Previous Departmental guidance recommended filing a NOE under certain circumstances in order to establish a 35-day statute of limitations on legal challenges to the finding and project decision. When an NOE is not filed, a 180-day statute of limitations (for challenges brought forward on the basis of CEQA) will apply. However, in the absence of public notice that a project has been approved, the 180-day statute of limitations may be interpreted as beginning on the date that construction begins, which may delay construction if the determination is challenged under CEQA.

Please be advised that filing the NOE does not prohibit advancing a project to construction; it merely establishes the start of the CEQA statute of limitations.

When the Department is the CEQA lead agency, filing the NOE with the county clerk in the county (or counties) where the project is located remains optional. Please be advised that California Government Code Section 26857 states that "No fee shall be charged by the clerk for service rendered to any municipality or county in the state, or to the state or national government, nor for any service relating thereto."

Should you have any questions regarding this memorandum please contact Gina Moran, Chief, Environmental Management Office (EMO) at (916) 651-8164 or via e-mail at gina_moran@dot.ca.gov.

c: Jay Norvell, Chief, Division of Environmental Analysis
Terry Abbott, Chief, Division of Design
Robert Copp, Chief, Division of Traffic Operations
Shirley Choate, Acting Chief, Division of Transportation Planning
Karla Sutliff, Chief, Division of Project Management
Division of Environmental Analysis Office Chiefs and Coordinators