# Chapter 300 – Exceptions to Policy

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Chapter 300

Exceptions to Policy

301 APPROVAL OF EXCEPTIONS BY HEADQUARTERS DIVISION OF DESIGN, CHIEF (Rev. 07/2018)

This Chapter is presented for the convenience of the applicant and public. The material is repeated from the Project Development and Procedures Manual (PDPM) and in the case of discrepancy the PDPM will take precedent.

The Division of Design, Chief, shall review and approve exceptions to Statewide policies and boldface design standards that govern encroachments and access to encroachments within the State highway right-of-way. The Division of Design, Chief, has delegated approval of underlined design standards to the District Directors.

The Division of Design, Chief, is responsible for establishing procedures and guidelines governing the preparation of specific requests for variances and exceptions and the information that must be included in a request. Standard practice is to process all applications from written requests submitted to the Division of Design, Chief. Prior approval is required if personal appearances by District personnel or the applicant are necessary. Encroachment proposals listed in Sections 302 and 303 are to be submitted with District recommendations signed by the District Division Chiefs of Project Development, Right of Way, Traffic Operations, and Maintenance. Requests submitted to the Division of Design, Chief, for consideration of exceptions shall include the items listed in Table 3.1.

When possible, encroachment exceptions on the same project should be submitted in one presentation to allow a correct decision. If it is not possible to submit one presentation, the transmittal letter should explain fully why the cases must be submitted separately. Address all correspondence to the attention of the Division of Design, Chief.

302 ENCROACHMENTS WITHIN ANY STATE HIGHWAY RIGHT-OF-WAY (Rev. 07/2018)

Requests for the following encroachments shall be submitted by Districts to the Division of Design, Chief:

1. Facilities that limit use of the right-of-way or increase the cost of future highway improvements.
2. High priority utilities and pressurized facilities that are not encased within the highway right-of-way.
3. Changes in facilities that alter the conditions under which the original encroachment was approved.
4. Placement of utility facilities within the median area of any State highway.
5. Existing utilities proposed to remain in an existing tunnel when that tunnel is part of a highway project.
6. Drainage diversions.
7. Groundwater disposals.
8. Privately owned longitudinal facilities.

303 ENCROACHMENTS WITHIN ACCESS-CONTROLLED RIGHT-OF-WAY (Rev. 07/2018)

The Division of Design, Chief is authorized by the Director, Caltrans to make determinations and rule on all matters regarding installation of encroachments on access-controlled right-of-way, as established pursuant to Streets and Highways Code section 250, et seq. Matters concerning encroachments on conventional highways are delegated to the Districts except as indicated under Section 302.

Requests for the following encroachments are submitted by Districts to the Division of Design, Chief:

1. Encroachments requiring maintenance within the access control lines of access-controlled right-of-way. This includes those installations created by rearrangement of existing facilities and those requested by utility owners or others under encroachment permit.

2. Longitudinal encroachments within the access control lines of access-controlled right-of-way and on bridges other than highway overcrossing structures. Included are those longitudinal encroachments created by rearrangement of existing facilities, and those requested by utility owners under encroachment permits, including fiber optics facilities.

3. Longitudinal encroachments within a conventional highway that is upgraded to an access-controlled right-of-way and remain within the access control lines, the utility facilities will normally be relocated outside the access control. When compelling reasons require such facilities to remain within the access control, the District must submit a request for exception to this policy, for each facility.

4. Encroachments requiring temporary or permanent access to or from through traffic lanes within access-controlled right-of-way.

5. Encroachments involving installation of locked gates in access-controlled right-of-way fences for other than Caltrans’ use or utility maintenance access (see PDPM Section 1, Article 5, “Locked Gate Accesses and Pedestrian Openings”).
6. Temporary use of access-controlled right-of-way by private individuals or developers for grading.

7. Utility facilities that cross access-controlled right-of-way should be as normal as possible to the access-controlled right-of-way centerline. Facilities that are skewed greater than thirty degrees (30°) from the normal must have approval as a longitudinal encroachment.

Table 3.1

<table>
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<th>Items to Be Included with Requests for Exceptions</th>
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<td><strong>Number of Copies</strong></td>
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<td>1. Normally, submit three copies of each request, with attachments.</td>
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<td>2. One additional copy shall be submitted if the encroachment involves a bridge or tunnel.</td>
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**General Information**

1. District, county, route, PM, project scope, cost, and schedule.
2. Accident history (if applicable).
3. If applicable, proof of prior or superior property rights, such as fee ownership, easements, Joint Use Agreements (JUA), or Consent to Common Use Agreements (CCUA). Prior rights must be confirmed by the District Utilities Coordinator.
4. Is the highway an eligible or officially designated Scenic highway? If so, submit a letter from the Local Agency stating that potential visual impacts from the proposed projects are acknowledged.

**Materials**

The following documents are required for a District to start the review process and consider the request. [All items should be included, and action may be delayed until such information is furnished. Fold all attachments to 8.5" x 11"].

1. A statement that the District considered a lease arrangement under Air Space Development.
2. An index map. This map should be a print of a small scale key map outlining the general alignment of the access-controlled right-of-way, crossroads, frontage roads, ramps, and the major geographic features.
3. A plan [50 to 200 scale, should be U.S. Customary Units (1 : 600 to 2400 universal scale)] showing a geographic outline of the following:
   - The pavement and shoulder edges of the access-controlled right-of-way or highway, crossroads, collector roads, and ramps. It also should show all adjacent roads or streets, including proposed or existing frontage roads to which the facilities may be reasonably moved.
   - Right-of-way and access denial lines.
• Present and proposed location of utilities, and physical features that affect the proposed location. (Use a dashed colored line to show existing facilities and a solid line in the same color for relocated position of the facility.)
• Trace of slope catch points.
• Fencing and location of locked gates where access is proposed.
• Location of existing drainage facilities.
• Other features, such as topography, where pertinent.
• The plan need not be a special drawing; copies of project drawings are suitable. Whenever feasible, the plan should be an 11-inch high strip map as long as necessary to show the entire encroachment. However, separate sheets will suffice.

4. The Interstate number when Interstate projects are involved.
5. On access-controlled routes, a statement explaining federal participation in right-of-way purchase or construction cost.
6. Profiles, cross sections, and contour grading, if necessary to clarify design.
7. A list of all utility facilities located within the limits of a proposed highway project that involve longitudinal encroachments.
8. A full explanation of the route and method by which the permittee will gain ingress and egress to the encroaching facility.
9. A statement indicating if utility facilities must be relocated to permit construction, and if the utility might be allowed to remain in place during the initial construction but would require relocation for the ultimate construction.
10. A statement indicating if allowing a utility facility to remain within the right-of-way would present a serious safety problem or would cause highway maintenance problems.
11. The District's recommendation regarding disposition of a utility facility.
12. A full explanation of the available alternatives to the proposed encroachment, together with costs and potential consequences if the requested encroachment is not approved. If a discussion of alternatives is not submitted, the request may be returned as non-responsive.
13. Estimated savings to the State that would accrue by proceeding as proposed.
15. Concurrence by Structures Maintenance when structures are involved.
304 APPEAL OF PERMIT DENIAL

This section outlines the procedure for an applicant to appeal the denial of an encroachment permit application. The costs and allocation of the costs associated with the appeal are stated in section 304.3. This section is based on California Code of Regulations (CCR) Title 21, Division 2, Chapter 8, Article 2, sections 1413 through 1413.4, inclusive.

This section does not apply to a broadband facility permit applicant. See CCR Title 21, sections 1412.1 through 1412.9, inclusive, for broadband facility permit appeals.

This section does not apply to a Visibility Improvement Request. See Section 509.4 of this manual for Visibility Improvement Request appeals.

304.1 Appeal Process to the Department Director
a) If a District denies an encroachment permit application, an applicant may appeal to the Department Director, by submitting a written appeal package as set forth in section 304.2, within 60 days after the denial letter is served by the District. The written appeal package must be submitted to:

ENCROACHMENT PERMITS APPEAL
DIRECTOR, CALIFORNIA DEPARTMENT OF TRANSPORTATION
C/O HEADQUARTERS DIVISION OF TRAFFIC OPERATIONS
1120 N STREET, MS 36
SACRAMENTO, CA  95814

b) The applicant and the Department may mutually agree, in writing, to extend the time for the appeal process or any part of the appeal process.

304.2 Appeal Package
A written appeal package is deemed a complete submittal on the date the Department Director receives all items listed below:

a) An appeal letter to the Department Director specifically requesting an appeal of the denied encroachment permit application and containing a detailed explanation of why the Department should issue an encroachment permit for the proposed project or activity sought by the application; and

b) Denial letter issued by the District or a statement in the appeal letter that a denial letter was not issued by the District within 60 days after the District’s receipt of a complete encroachment permit application package; and

c) Applicant’s name, company or organization, mailing address, and telephone number, and the same information for any person or entity designated by the applicant to represent applicant in the appeal; and
d) Identification of all locations, including district, county, route, and post mile, at which the applicant and/or person or entity acting on behalf of the applicant proposes to encroach onto Department property as described in section 660 of the Streets and Highways Code or to perform any act or activity described in sections 670 or 670.1 of the Streets and Highways Code; and

e) Description of the proposed encroachment onto Department property as described in section 660 of the Streets and Highways Code and/or the proposed act or activity described in sections 670 or 670.1 of the Streets and Highways Code, which the applicant and/or person or entity acting on behalf of the applicant proposes to perform or conduct under the denied encroachment permit being appealed, including three (3) complete sets of plans and any applicable specifications, calculations, maps, and other supporting documents; and

f) A $2,000 deposit towards the applicant’s fifty percent (50%) share of the administrative costs of conducting the appeal. The deposit shall be made by check or money order made payable to the California Department of Transportation; and

g) Notice of whether the applicant requests to make a presentation to the Department Director or the Department Director’s designee.

304.3 Final Determination and Costs

The Department Director shall notify the applicant in writing of the final decision on the appeal within 60 days after receipt of the completed written appeal package as described in section 304.2. Once the final decision has been issued, the Department will determine the applicant’s fifty percent (50%) share of the administrative costs. If the applicant’s deposit is less than the applicant’s fifty percent (50%) share of the administrative costs, the Department will subtract the deposit amount and bill the applicant for the remainder of the applicant’s fifty percent (50%) share of the administrative costs. If the deposit is greater than the applicant’s fifty percent (50%) share of the administrative costs, the Department will refund to the applicant the excess remaining from the deposit.

Throughout sections 304 to 304.3 of this manual, “Administrative costs” means the estimated administrative costs to the Department on conducting an appeal related to a specific encroachment permit, based on the standard hourly rate for processing encroachment permits in effect on the date the encroachment permit appeal package described in Section 304.2 is submitted to the Department.

Throughout sections 304 to 304.3 of this manual, “60 days” means sixty calendar days, unless the sixtieth (60th) day lands on a holiday or weekend as defined in section 12a of the Code of Civil Procedure, in which case the computation of time shall be as provided in section 12a of the Code of Civil Procedure.