



Utilizing Categorical Exclusions to Successfully Navigate the NEPA Compliance Process

Moderator
Marie Campbell

Marie Campbell

President, Sapphos Environmental, Inc.

- NAEP Elected At-Large Board Member and NAEP Fellow
- California AEP Liaison to NAEP
- NAEP member since 1981
- NAEP President (2017-2019)
- Over 40 years' experience with environmental compliance pursuant to NEPA and CEQA
- CEs for FHWA, DOI, HUD, USFS, BIA, BOR, and BLM
- Environmental Compliance Manager for California High-Speed Rail Locally Generated Alternative
- Served as Acting Chief, Environmental Resources Branch, Los Angeles District, U.S. Army Corps of Engineers
- Firm received 2012 California Governor's Environmental and Economic Leadership Award and California Air Resources Board Climate Action Leader Award
- MA, University of California, Los Angeles, Geography
- BA, University of California, Los Angeles, Ecosystems



Presenters



Marie Campbell
Sapphos Environmental, Inc.
Welcome
NEPA Pre-Planning for CATEXs



Rory Baker
Sapphos Environmental, Inc.
Case Studies
Kinetic Exercise



Aimee Frapped
Sapphos Environmental, Inc.
Federal Action
Purpose and Need



Diana Dyste
Sapphos Environmental, Inc.
Cultural Resources
and Section 106 of NHPA

Learning Objective

Review the context for use Categorical Exclusions (CEs) considering Executive Order 14154, *Unleashing American Energy*, the Fiscal Responsibility Act of 2023, and CEQ CE Guidance [April 2026]:

- determining if a federal action is eligible for use of a CE to fulfill lead and cooperating agency responsibilities pursuant to NEPA
- practical advice for pre-NEPA planning,
- identification of stakeholders,
- substantial evidence,
- administrative record, and
- streamlining.

Agenda

Welcome and Purpose

Topic 1: NEPA Compliance

Topic 2: Case Studies

- **FHWA/Caltrans** (delegated Authority): Atwood Multipurpose Trail – Historic Resources
- **Bureau of Indian Affairs:** South Ridge Drive Gas Transmission Pipeline Relocation – Federally Recognized Tribe
- **U.S. Fish and Wildlife Service:** Section 10(a)(1) Incidental Take Permit for 500-MW Solar Energy Project with BESS – Endangered Species

Topic 3: Purpose & Need, Pre-planning, and Coordination

Topic 4: Extraordinary Circumstances and Cultural Resources

Kinetic Exercise

Questions and Answers



How do we get there?

Icebreaker

- Name
- Affiliation
- Title
- Number of Years of NEPA Experience
- How many Categorical Exclusions (CEs) have you worked on, and what Federal Agency was the Lead Agency?
- Have you encountered any barriers to using a CE?

Report Back

- What people do
- Affiliation
- Range of years of NEPA experience
- Group estimate of completed/in-progress CEs
- Any experienced barriers to use of a CE



Utilizing Categorical Exclusions to Successfully Navigate the NEPA Compliance Process



CATEGORICAL EXCLUSIONS
NEPA Compliance

NEPA Compliance

- NEPA CE Guidance
- CEQ CE Guidance
- Agency CE Guidance
- Substantial Evidence
- Administrative Record



*aka Directions for the path of
Least Resistance.*

NEPA CE Guidance

NEPA Section 109:

An agency may adopt a categorical exclusion [CE] listed in another agency's NEPA procedures for a category of proposed agency actions for which the categorical exclusion [CE] was established consistent with this paragraph.

NEPA CE Guidance

NEPA Section 106:

(a) THRESHOLD DETERMINATIONS.—An agency is not required to prepare an environmental document with respect to a proposed agency action if—

...

(2) the proposed agency action is excluded pursuant to one of the agency's categorical exclusions [CEs], another agency's categorical exclusions [CEs] consistent with section 109 of this Act, or another provision of law.

NEPA CE Guidance

NEPA Section 106:

(b) LEVELS OF REVIEW.—An agency is not required to prepare an environmental document with respect to a proposed agency action if—

...

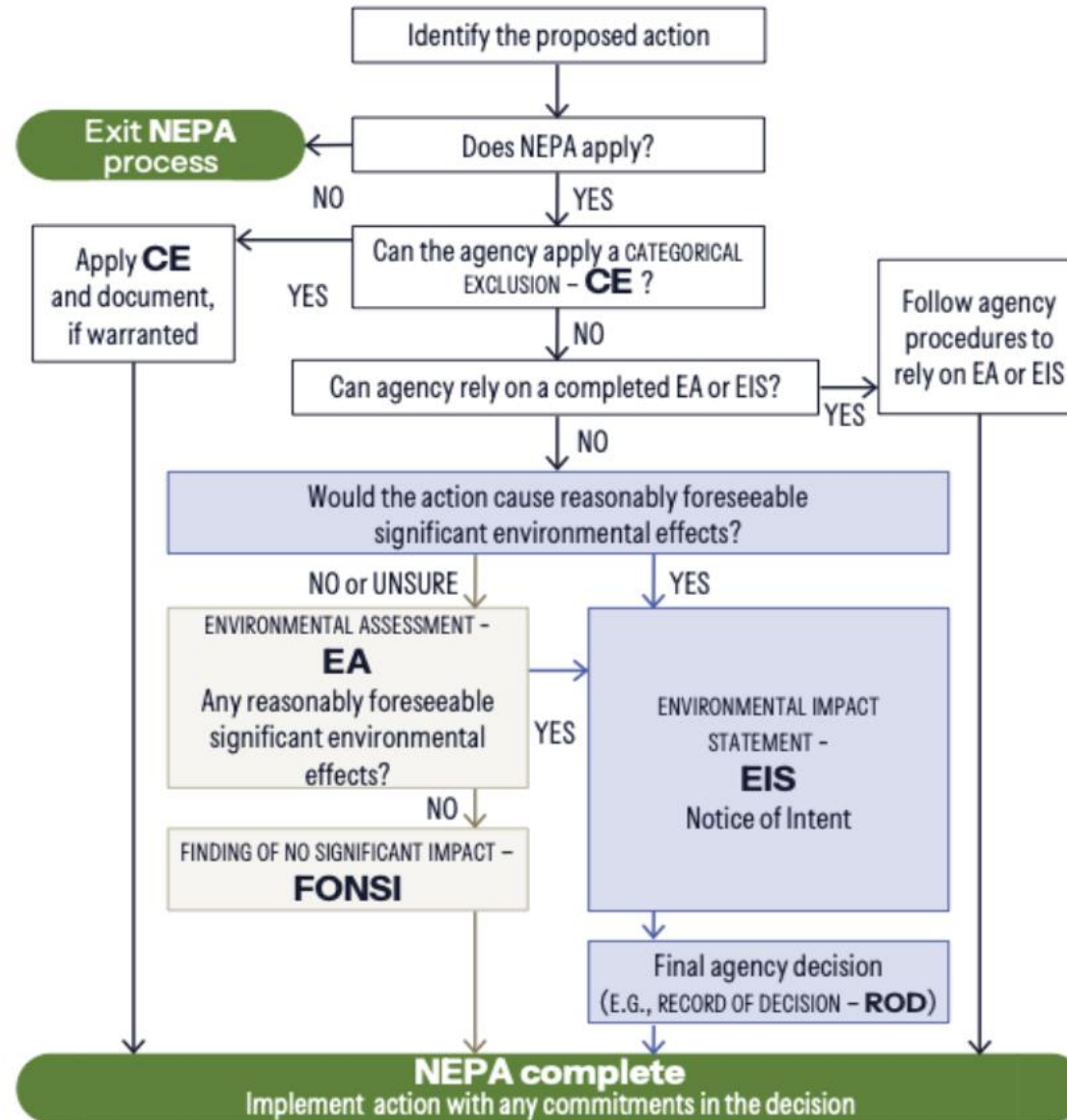
(2) ENVIRONMENTAL ASSESSMENT.—An agency shall prepare an environmental assessment with respect to a proposed agency action that does not have a reasonably foreseeable significant effect ... unless the agency finds that the proposed agency action is excluded pursuant to one of the agency's categorical exclusions [CEs], another agency's categorical exclusions [CEs] consistent with section 109 of this Act...

THE NEPA PROCESS

NATIONAL ENVIRONMENTAL POLICY ACT, *as amended through July 22, 2025*



NEPA CE Guidance



This flowchart is a supplemental tool providing a visual overview of the NEPA process. For more details, visit [NEPA.gov](https://www.nepa.gov)

JANUARY 2026

CEQ CE Guidance

April 9, 2026, CEQ Memo: Establishing, Revising, Adopting, and Applying Categorical Exclusions Under the National Environmental Policy Act

Highlights

Purpose: Help agencies efficiently comply with NEPA

New tools: Categorical Exclusion Explorer (<https://ce.permitting.innovation.gov>) and CE Works

Old Tools: EPA list of Categorical Exclusions predates Update of Agency Guidance documents, verify CE has not been rescinded
<https://ceq.doe.gov/nepa-practice/categorical-exclusions.html>

Background:

- Fiscal Responsibility Act of 2023 Amended NEPA to codify the use of CEs
- Encourages use of CEs

CEQ CE Guidance

April 9, 2026, CEQ Memo: Establishing, Revising, Adopting, and Applying Categorical Exclusions Under the National Environmental Policy Act

Highlights

Agency Requirements:

- Establish new CEs for actions that normally lack significant environmental impacts
- Adopt applicable existing CEs from other agencies
- Periodic (7-year) review of CEs
- Consult with CEQ prior to proposing, revising, or eliminating any CE

Agency CE Guidance—FHWA

23 CFR § 771.117(c) FHWA categorical exclusions

(c) The following actions meet the criteria for CEs and normally do not require any further NEPA approvals by the FHWA:

1. Activities that do not involve or lead directly to construction
2. Approval of utility installations along or across a transportation facility.
3. **Construction of bicycle and pedestrian lanes, paths, and facilities.**
4. Activities included in the State's highway safety plan.
5. Transfer of Federal lands pursuant to [23 U.S.C. 107\(d\)](#) and/or [23 U.S.C. 317](#) when the land transfer is in support of an action not otherwise subject to FHWA review under NEPA.

Agency CE Guidance—BIA

43 CFR § 46.205 DOI-BIA CE

- A. **Operation, Maintenance, and Replacement of Existing Facilities**
- B. Transfer of Existing Federal Facilities to Other Entities
- C. Human Resources Programs
- D. Administrative Actions and Other Activities Relating to Trust Resources
- E. Self-Determination and Self-Governance
- F. Rights-of-Way
- G. Minerals—4 Allowable Actions
- H. Forestry – 13 Allowable Actions
- I. Land Conversion and Other Transfers
- J. Reservation Proclamation
- K. Waste Management
- L. **Roads and Transportation**
- M. Other

Agency CE Guidance—USFWS

43 CFR § 46.210 USFWS Categorical Exclusions (DM Part 516 Chapter 8: Managing the NEPA Process) Resource Management:

- Research, inventory, and information collection
- Operations, maintenance, and management of facilities
- Minor construction
- Prescribed burning
- Fire management
- Reintroduction and supplementation for native and formerly native species
- Changes in public access
- Conservation of fish and wildlife species
- Conservation plans with no or minor effect

Agency CE Guidance

Extraordinary Circumstances

CEQ NEPA Implementing Regulations § 1508.1 Definitions.

Extraordinary circumstances means factors or circumstances that indicate a normally categorically excluded action may have a significant effect. Examples of extraordinary circumstances include potential substantial effects on sensitive environmental resources; ~~potential substantial disproportionate and adverse effects on communities with environmental justice concerns;~~ ~~potential substantial effects associated with climate change;~~ and potential substantial effects on historic properties or cultural resources.

RESCINDED

Agency CE Guidance

Extraordinary or Unusual Circumstances

- Involves “take” of a species afforded protection under the federal Endangered Species Act
- Reduces or adversely affects a Water of the United States, a Wilderness Area, Wild or Scenic River, Prime or Unique Farmlands, Marine Sanctuaries, or some other sensitive natural resources with statutory protection
- Substantial Adverse Effects on Resources Listed on or Eligible for Listing on the *National Register of Historic Places*, or tribal or cultural resources
- Human health impacts: air quality, noise, adverse effects of hazards or hazardous materials on people or property



Substantial Evidence

Substantial evidence in NEPA documents refers to **relevant, credible information, data, and expert opinions** that a reasonable person would accept as adequate to support an agency's conclusions regarding environmental impacts. It is a standard of proof that requires more than a mere "scintilla" of evidence, but it is less rigorous than a "preponderance of the evidence" standard.



gather the necessary data.

Administrative Record

An Administrative Record (AR) under NEPA is the comprehensive body of documents (written and electronic) that a federal agency relied upon or considered when making a final decision on a project. It acts as a legal record documenting the decision-making process, including all relevant reports, studies, and public comments.



Document the journey.

Utilizing Categorical Exclusions to Successfully Navigate the NEPA Compliance Process



CATEGORICAL EXCLUSION
CASE STUDIES

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Sapphos Environmental, Inc.

- California AEP, Los Angeles Chapter Board
- 6+ years experience with environmental compliance and documentation
- Project Manager for CEQA/NEPA projects
- Categorical Exclusions for FHWA
- BS, California State University, Los Angeles, Environmental Geoscience



Categorical Exclusions Case Studies

- **FHWA/Caltrans** (delegated Authority): Atwood Multipurpose Trail
- **Bureau of Indian Affairs:** South Ridge Drive Gas Transmission Pipeline Relocation
- **U.S. Fish and Wildlife Service:** Section 10(a)(1) Incidental Take Permit for 500-MW Solar Energy Project with BESS



Case Study #1: Atwood Multipurpose Trail

- **Location:** City of Placentia, California
- **Project Sponsor:** City of Placentia
- **Project:** 1.0-mile City multipurpose trail (pedestrian/bikeway) along county flood control channel ROW, designed to expand local bikeway network and recreational facilities
- **NEPA Lead Agency:** FHWA/Caltrans
 - 23 USC 326 CE Assignment MOU assigns Caltrans the authority and responsibility for CE determination
- **Categorical Exclusion:** 23 CFR 771.117(c)(3)
Construction of bicycle and pedestrian lanes, paths, and facilities



Case Study #1: Atwood Multipurpose Trail

Format of Categorical Exclusion

1. Caltrans Preliminary Environmental Study (PES)

- Designed to provide the early coordination needed to determine required technical studies, level of analysis, and NEPA Class of Action (CE, EA or EIS)
- Local agency answers 36 questions for 14 environmental issue areas to provide early screening
 - Provided attachments with supporting evidence (including analysis [10 pages], USFWS species list, Geotracker results, FEMA Flood Maps, etc.)
- Caltrans reviews the PES form and provides a preliminary CE determination, indicating which (if any) technical studies are required

Case Study #1: Atwood Multipurpose Trail

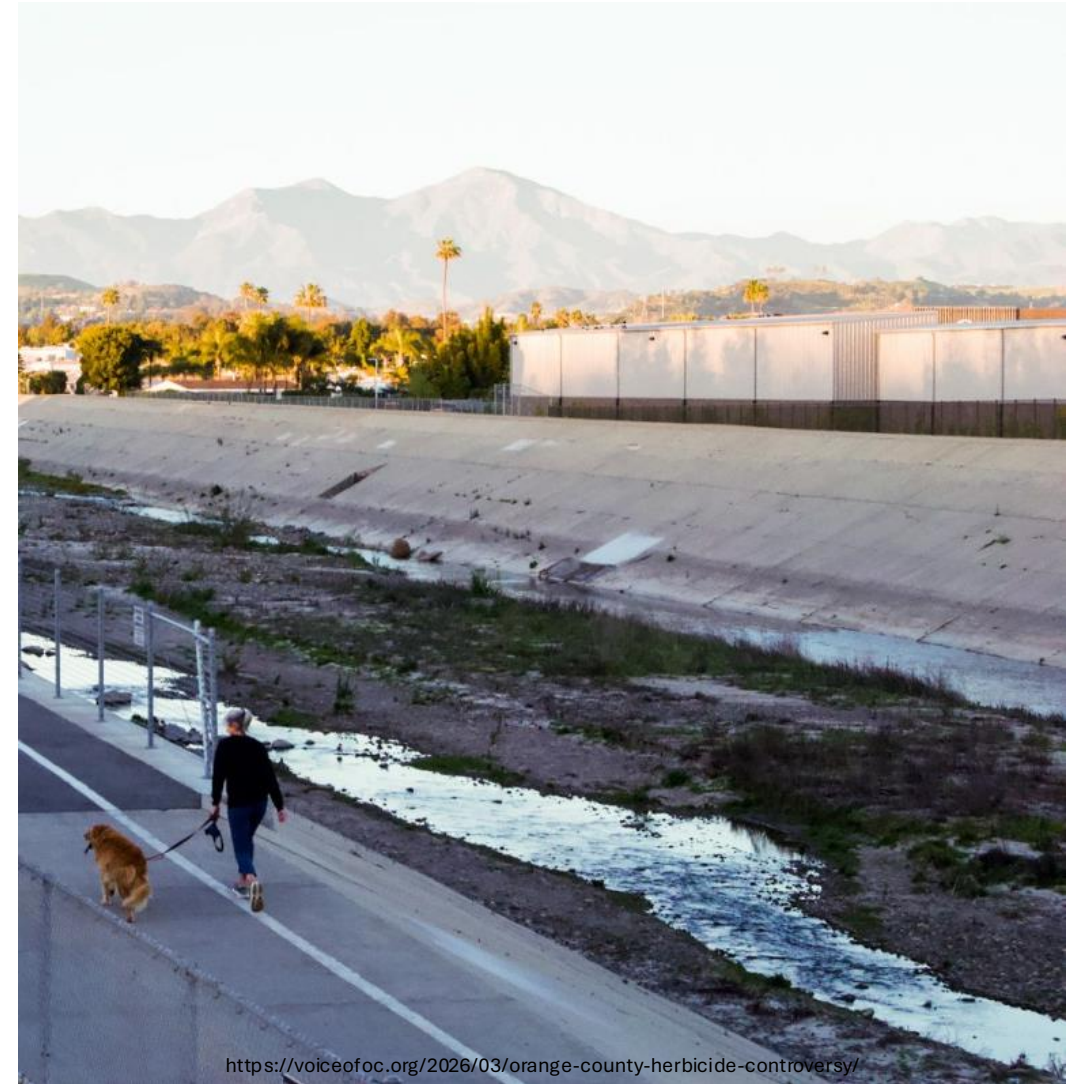
Format of Categorical Exclusion (cont.)

2. Technical Studies

- Natural Environmental Study – Minimal Impacts
- Historic Properties Survey Report
- Initial Site Assessment (Phase I ESA)
- Air Quality and GHG Impact Assessment (Letter Report)

3. CE Checklist (6 pages)

- Completion of PES process ensures review of unusual circumstances



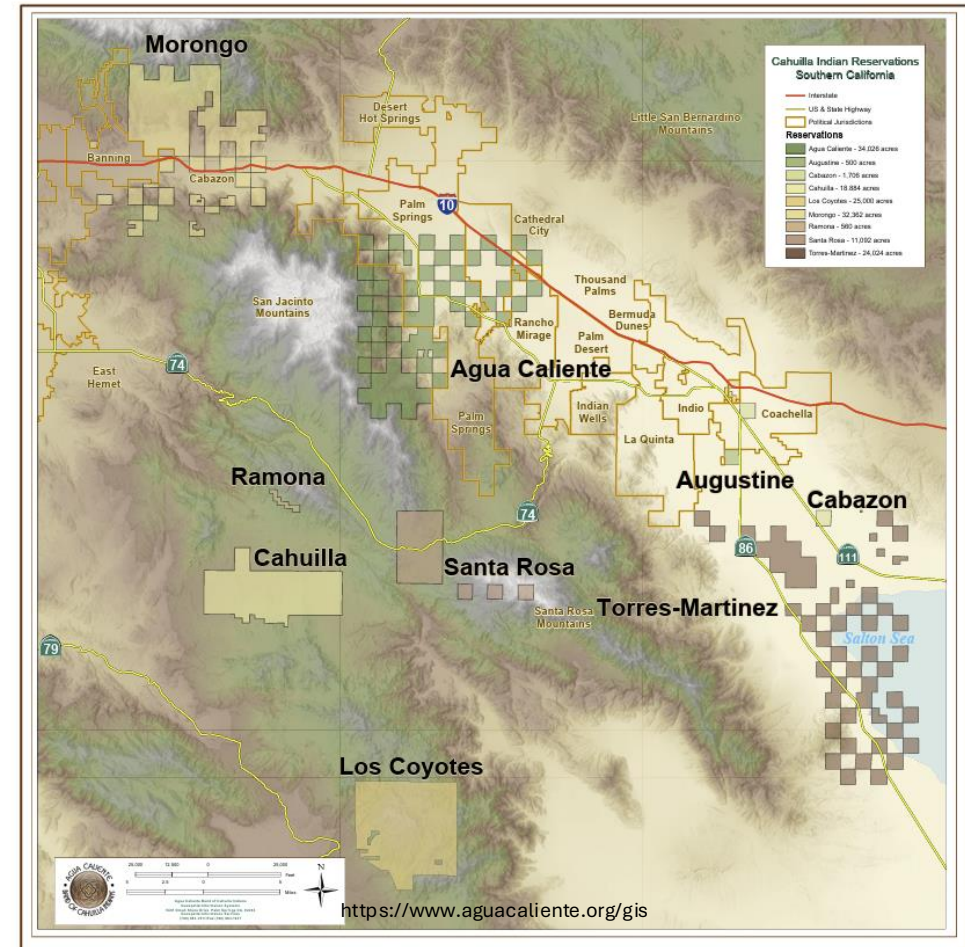
Case Study #1: Atwood Multipurpose Trail

Lessons Learned / Key Takeaways

- Understand which federal agencies have designated authority to the state
 - May become more common with current federal administration
 - Use the appropriate guidance documents
- Early coordination between local sponsor and NEPA Lead Agency
 - Early communication and early screening of issue areas
 - What substantial evidence does Lead Agency require to verify CE eligibility?
- Anticipate technical studies or other supporting evidence
 - Research guidance for NEPA Lead Agency
 - What technical studies may be required?

Case Study #2: Southridge Drive Gas Transmission Pipeline Replacement

- **Location:** Agua Caliente Indian Reservation in Riverside County, California
- **Project Sponsor:** Southern California Gas Company
- **Project:** Construction, operation and maintenance of a 2,000-foot natural gas pipeline along Southridge Drive to service residential areas on the Agua Caliente Indian Reservation
- **NEPA Lead Agency:** Bureau of Indian Affairs (BIA) - Palm Springs Agency



Case Study #2: Southridge Drive Gas Transmission Pipeline Replacement

- **Categorical Exclusion:**
 - *DM Part 516 Chapter 10.5.L(1), Roads and Transportation:*
Approval of utility installations along or across a transportation facility located in whole within the limits of the roadway right-of-way.



Case Study #2: Southridge Drive Gas Transmission Pipeline Replacement

Format of Categorical Exclusion

- Originally prepared Environmental Assessment (EA) and Mitigated Finding of No Significant Impact (Mitigated FONSI)
 - Cultural Resources Survey Report
 - Archaeological Resources Protection Act (ARPA) clearance
 - USFWS correspondence



Case Study #2: Southridge Drive Gas Transmission Pipeline Replacement

Format of Categorical Exclusion (cont.)

- Final format BIA CE Checklist (2 pages)
- 12 questions evaluating extraordinary circumstances

Lessons Learned / Key Takeaways

- Review all potential options for streamlining with a CE at the beginning of the project
- EA-level supporting evidence may be necessary to demonstrate that a project qualifies for a CE



Case Study #3: Section 10(a)(1) Incidental Take Permit for 500-MW Solar Energy Project with BESS

- **Location:** Kern County, California
- **Project Sponsor:** Pelicans Jaw Hybrid Solar, LLC.
- **Project:** Incidental Take Permit (ITP) for the construction, operation, maintenance, and decommissioning of a 500-MW photovoltaic solar project (approx. 3,261 acres) that would improve the ability of 5 endangered species to survive in the wild.



<https://www.renewableenergyworld.com/solar/utility-scale/10-large-solar-projects-in-development-for-2024/>

Case Study #3: Section 10(a)(1) Incidental Take Permit for 500-MW Solar Energy Project with BESS

- **Project:** Habitat Conservation Plan (HCP):
 - Private property put under permanent conservation easement that offsets the development of the solar property
 - Dedicated to management of 5 endangered species (SJKF, BNLL, BUOW, WESP, or KEMA)
 - Wildlife exclusionary fencing that allows kit foxes onto property but not coyotes



Case Study #3: Section 10(a)(1) Incidental Take Permit for 500-MW Solar Energy Project with BESS

- **NEPA Lead Agency:** USFWS
- **Format of CE:** Screening Form for Low-Effect ITP Determination and NEPA Environmental Action Determination (28 pages)
 - Description of HCP and ITP
 - Description of species and habitat
 - Goals/objectives for covered species
 - Avoidance and minimization measures
 - Monitoring
 - Analysis of extraordinary circumstances (43 CFR 46.215)
- **Categorical Exclusion:** *DM Part 516 Chapter 8: 10(a)(1) low-effect ITP that, individually or cumulatively, have a minor or negligible effect on the species covered in the HCP*

Case Study #3: Section 10(a)(1) Incidental Take Permit for 500-MW Solar Energy Project with BESS

Lessons Learned / Key Takeaways

- Eligible for CE because of finding that the ability of the 5 endangered species to survive in the wild would be better *with* approval of the 10(A)(1) permit than without.
- Underused opportunity for CEs
 - One of few times that USFWS issued HCP of this magnitude using a CE



<https://www.eastbaytimes.com/2024/10/15/rare-burrowing-owl-named-as-candidate-for-state-endangered-species-list/>



Topic 3

Purpose & Need, Pre-planning, and Coordination

Aimee Frappied

Aimee Frappied **Director, Environmental Services** **Sapphos Environmental, Inc.**

- NAEP, Education Committee
- California AEP, Los Angeles Chapter Board
- NAEP member since 2022
- 11 years of experience with project management, environmental compliance, and NEPA documentation
- Federal Agency Experience (and Delegated Authority):
 - FHWA (Caltrans): CE for Trails, Carbon Reduction Program
 - HUD: CE for Trails and Sports Complex
 - US Forest Service: CE for Trails Rehabilitation Project
 - USFWS: CE for HCP
- MS, California State University, Fullerton, Environmental Studies
- BS, Oregon State University, Environmental Economics and Policy



Purpose & Need, Pre-Planning, and Coordination

- Purpose and Need
- Case Law
- Practical suggestions for pre-planning and coordination
- Case Studies – Purpose & Need
 - Case Study #1: Atwood Multipurpose Trail
 - Case Study #2: Southridge Drive Gas Transmission Pipeline Replacement
 - Case Study #3: Section 10(a)(1) Incidental Take Permit for 500-MW Solar Energy Project with BESS



It's the "Road Map" for the Journey.

Purpose and Need

Section 107 (d) of NEPA

(d) STATEMENT OF PURPOSE AND NEED.

—Each environmental document shall include a statement of purpose and need that briefly summarizes the underlying purpose and need for the proposed agency action.

Purpose and Need

NEPA Guidance - Categorical Exclusion (CE) Guidance

Council on Environmental Quality (CEQ), Establishing, Revising, Adopting, and Applying Categorical Exclusions Under the National Environmental Policy Act (2026)



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

April 9, 2026

MEMORANDUM FOR HEADS OF FEDERAL DEPARTMENTS AND AGENCIES

FROM: Katherine R. Scarlett, Chairman
KATHERINE SCARLETT Digitally signed by KATHERINE SCARLETT
Date: 2026.04.09 08:03:46 -04'00'

SUBJECT: Establishing, Revising, Adopting, and Applying Categorical Exclusions Under the National Environmental Policy Act

I. Purpose and Overview

The Council on Environmental Quality (CEQ) is issuing this guidance for Federal departments and agencies on how to establish, revise, adopt, and apply categorical exclusions in accordance with the National Environmental Policy Act (NEPA).¹ CEQ issues this guidance pursuant to Congress's direction that agencies develop their methods and procedures for implementing NEPA in consultation with CEQ.² This guidance replaces guidance on the same subject published November 23, 2010,³ which is hereby rescinded.⁴

This guidance does not have the force and effect of law and is not meant to create legal rights or obligations with respect to any public party.

Purpose and Need

NEPA Process – CE Guidance

- NEPA is intended to be a series of building blocks leading to informed decision-making.
 - *When an agency makes a determination, consistent with section 111(1) of NEPA, that a category of actions normally does not significantly affect the quality of the human environment, the agency may establish a categorical exclusion in accordance with its NEPA implementing procedures and include it within its publicly available list of categorical exclusions*.*

CEQ Establishing, Revising, Adopting, and Applying Categorical Exclusions Under the National Environmental Policy Act

Purpose and Need

NEPA Process – CE Guidance

For CE, no *Purpose and Need* mandate exist, however... the CEQ's revised guidance on CE in accordance with NEPA requires that a CE must document that the action qualifies under an exclusion:

- Agencies should establish categorical exclusions to cover such categories of actions, adopt other agencies' categorical exclusions where appropriate, and in all instances consider whether a categorical exclusion applies to a particular proposed action before beginning to develop an EA or EIS for that proposed action.
- The CE must document that the action qualifies for an exclusion and does not involve “extraordinary circumstances” that would trigger an Environmental Assessment (EA) or Environmental Impact Statement (EIS).

Purpose and Need

NEPA Process – CE Guidance

- *When an agency makes a determination, **consistent with section 111(1) of NEPA**, that a category of actions normally does not significantly affect the quality of the human environment, the agency may **establish** a categorical exclusion in accordance with its NEPA implementing procedures and include it within its publicly available list of categorical exclusions.*

****Agencies should not establish CEs for categories of actions that do not meet the statutory definition of “major Federal action” under Section 111(10) of NEPA because such actions are not subject to NEPA as a threshold matter.**

Purpose and Need

NEPA Process – CE Guidance

- The text of a categorical exclusion should be **unambiguous and written in plain language** allowing agency staff, project sponsors, and the public to clearly understand the category of actions it covers.
- The categorical exclusion should **clearly describe any limitations upon its use or scope**, such as limitations on the size of the covered actions or geographic area in which the covered actions occur.
- When establishing a categorical exclusion, **agencies should explain if, when, and how** they will document the application of the categorical exclusion to a particular action.

<https://ceq.doe.gov/docs/ceq-regulations-and-guidance/Categorical-Exclusion-Guidance-2026.pdf>

Practical Suggestions for Pre-Planning and Coordination

Define the action for CE

- Is the action a “major Federal action”?
- What are all the elements of the action?
 - Is the action segmented (part of a larger action)?
 - Are there connected actions that need to be considered?
- What are the limitations (e.g., size, geographic area) of the action?
- Does the project have rational start and end points (logical termini)?

No segmentation of a larger action
- Does the project have independent utility? (Does it make sense to construct and operate it on its own?)
- Is mitigation (avoidance) part of the action?

Practical Suggestions for Pre-Planning and Coordination

Define the action for CE (cont.)

- 1) Does the agency have a CE that covers the proposed action?
 - Can the agency adopt another agency's CE?
 - Does the agency have existing NEPA coverage?

Note: The CEQ CE Guidance and some agency NEPA procedures allow for the use of more than one CE to cover an action. If multiple CEs used, then user must consider whether the aggregate impacts of the constituent parts could give rise to an extraordinary circumstance or result in reasonably foreseeable significant effects.

Practical Suggestions for Pre-Planning and Coordination

Types of Existing CE Coverage:

- Does the agency have a CE that covers the action?
- Can the agency adopt another agency's CE?
- Does the agency have existing NEPA coverage (EA with FONSI)?

CEQ recently launched technology tools to streamline the process of applying CEs. The tools include the **Categorical Exclusion Explorer, an online searchable database of existing CEs across Federal agencies, along with its pilot program, **CE Works**, a technology platform that digitizes the process of completing a CE.

<https://ce.permitting.innovation.gov/>

Purpose and Need – Examples in Practice

EPA Guidance

What is the basic concern or deficiency with the existing situation and why is this a problem?

How does purpose and need relate to the agency's mission and what facts support the need?

Why is this problem occurring here, and why is it important? If it is occurring somewhere else too, why is it being addressed only here?

Where does “here” end and why?

U.S. Environmental Protection Agency, 2005, pp. 71-72

Example: Safe Routes to Schools

What - Accidents involving collisions with children and parents walking and cycling to school within ½ mile of the school

How - The Federal Highway Administration (FHWA) Safe Routes to School (SRTS) program improves safety and encourages walking/biking to school for primary/middle school students

Why - There are no dedicated sidewalks, bike lanes, or controlled intersections between residential areas located within ½ mile of the school

Where - ½ mile is the proposed improvement area, as the school provides bus services to residents located more than ½ mile from the school

Purpose and Need – Examples in Practice

Purpose *and* Need should be expressed separately (ex. *Safe Route to Schools*)

- Need - what is the problem?
(Ex. Reduce collisions between vehicles and pedestrians)
- Purpose - fixes the need?
(Ex. Create a safe path for children and parents to walk or ride a bike to school)



Need: Reduce Collisions



Purpose: Safe Route to School

★ ★ ★ Identify the Need, then prepare the Purpose

Case Law

- **Courts generally defer to agency statements of purpose and need and uphold them when reasonable.** See, e.g., *Citizens for Smart Growth v. Secretary of Dept. of Transp.*, 669 F.3d 1203, 1212 (11th Cir. 2012) (citing *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir.1991)) (“[A]gencies must look hard at the factors relevant to the definition of purpose” and “should take into account the needs and goals of the parties...”)

Practical Suggestions

- Look to the “proven” logic for need from past projects (e.g., in highway projects, does demand outpace capacity?).
- Is there a legal or regulatory “driver” underpinning the need?
- Need should include specific and quantitative (where possible) information and data.
- Need should drive the Purpose.
- Use Need to support logical termini, and independent utility

FHWA Case Study: Atwood Multipurpose Trail

Purpose and Need

Purpose: The action would connect the various parts of the City internally and externally to the surrounding region by providing innovative nonmotorized and sustainable transit modes that meet the needs of all users. The action would provide connectivity, safety, and recreation opportunities while reducing congestion, improving air quality, meeting community needs, separation from vehicular circulation, and achieving City-wide mobility goals.

Need: This area of the City of Placentia lacked safe connectivity and connection opportunities for pedestrian and non-motorized mobility.



Bureau of Indian Affairs Case Study: Southridge Drive Gas Transmission Pipeline Replacement

Purpose and Need

Purpose: The action is to respond to SoCalGas' application for a land transfer located on the Agua Caliente Indian Reservation and a right-of-way in order that SoCalGas may construct, operate, and maintain a 2,000-foot underground pipeline. The underground pipeline would replace an existing pipeline west of the Reservation in the City of Palm Springs, Riverside County, California.

Need: The existing natural gas pipeline west of the Reservation has an abnormal operating condition that requires replacement. The need for the proposed pipe replacement comes from the reliance of the residences both within and outside the Reservation on natural gas.



U.S. Fish and Wildlife Service Case Study: Section 10(a)(1) Incidental Take Permit for 500-MW Solar Energy Project with BESS

Purpose & Need

Purpose: The action would meet the Governor's agenda for conversion from fossil fuels to renewable sources of electricity in California. The action would construct, operate, and maintain the 500 MW solar field and battery energy storage system (BESS) that sustains and improves the ability of SJKF, BNLL, BUOW, WESP, and KEMA to survive and recover in the wild

Need: The action would generate up to 500 MW of electricity through solar power on approximately 3,260 acres, and existing overhead transmission line will connect the action to the Arco Substation in Kings County, California, to supply the area with a consistent renewable energy source. The HCP implementation, accounting for the minimization and mitigation measures proposed in the HCP, would result in net benefit for regional wildlife.



Utilizing Categorical Exclusions to Successfully Navigate the NEPA Compliance Process



CATEGORICAL EXCLUSIONS

Extraordinary Circumstances and Cultural Resources

Diana Dyste Manager, Cultural Resources Sapphos Environmental, Inc.

- NAEP member
- Member of American Cultural Resources Association (ACRA), Society of California Archaeology (SCA), American Anthropological Association (AAA)
- Secretary of the Interior's Professional Qualification Standards for Archaeology and History
- 27 years of experience with environmental compliance pursuant to NEPA, CEQA, and Section 106 Compliance
- Archaeology and Built Environment PQS for California High-Speed Rail Locally Generated Alternative; delegated AB 52 lead for Native American consultation
- CATEXs for Caltrans, FEMA, USFS, WAPA, FHWA, utilities, various federally-funded projects in cities, counties, and water district municipalities throughout CA
- GS-9 at USFS for 8 years before entering contract archaeology. Has worked on CRM projects and with tribes across the state of CA.
- Wenner-Gren Foundation Grantee; NSF PFFI awardee; UC-DIGSSS and Chicano Studies Institute multiple year awardee
- PhD in progress at University of California, Santa Barbara (UCSB) in Archaeology, Ethnography, and Gender Studies
- MA, UCSB with MA CRM Certificate Program at California State University, Northridge
- BA, UCSB



Extraordinary Circumstances and Cultural Resources

- Cultural Resources to be Considered when Evaluating Extraordinary Circumstances
- Common Uses of CEs where there are Known or Expected Cultural Resources
- CEs, Extraordinary Circumstances, and Historic Properties
- Case Study: NEPA Pre-Planning for FHWA Atwood Multipurpose Trail



*Navigating cultural resources
when using CATExs*

Cultural resources to be considered when evaluating extraordinary circumstances

Used appropriately, CEs can support NEPA and NHPA environmental stewardship goals, by meaningful engagement of appropriate stakeholders, and documenting the quality and transparency of agency environmental review and decision-making

Cultural resources to be considered when evaluating extraordinary circumstances

- Even if a proposed undertaking otherwise fits a CE, it does not qualify if there are factors that could cause substantial adverse effects to the environment.
- A CE is applicable only when adverse effects on cultural resources that are **eligible for listing or listed** in the National Register of Historic Places (NRHP) are **avoidable** or **can be reduced to a less than adverse level** through project design or a Memorandum of Agreement/ Memorandum of Understanding.



Common Uses of CEs where there are Known or Expected Cultural Resources

1. Administrative or Planning Actions

- Studies (data collection or mapping), surveys, planning documents

2. Minor rehabilitation, repair, or maintenance

- Routine maintenance to existing structures or infrastructure
- Making safety improvements (adding guardrails or installing signage)
- In-kind repair of a historical resource (e.g., building) using same materials/design

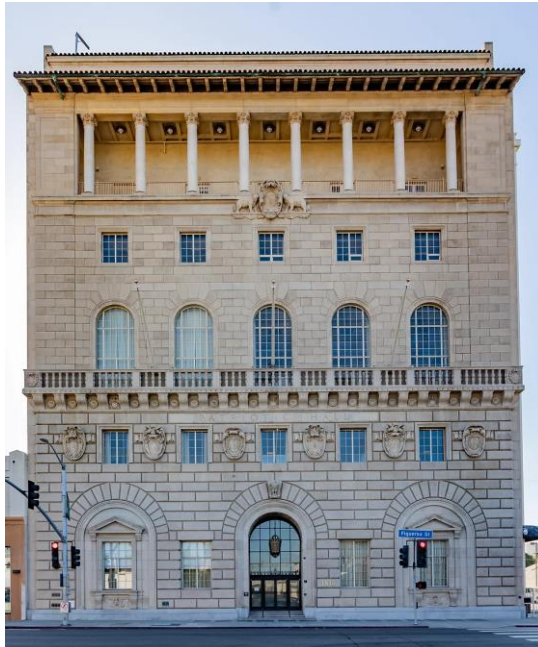
- Can include archaeological and built environment surveys themselves
- To remain a CE, maintenance or repairs must remain consistent with Secretary of the Interior's Standards



Vasquez Rocks Natural Area and Nature Center

Common Uses of CEs where there are Known or Expected Cultural Resources

3. Activities within previously disturbed areas
- Work occurring within an existing right-of-way
 - Previously graded or developed land



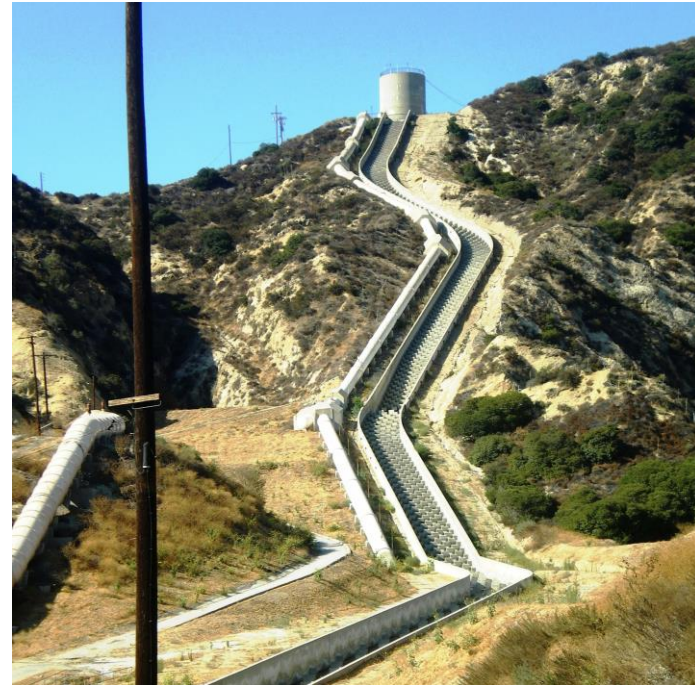
Bob Hope Patriotic Hall

- Requires review by a Secretary of the Interior qualified professional archaeologist and architectural historian
- Prior impacts to a resource, esp. archaeological resource, must still be identified and mitigated
- The potential to alter historic character, impact character-defining features, or diminish the historic property integrity (e.g., through vibration that causes weakened foundation or worsens condition of murals) must be avoided or mitigated

Common Uses of CEs where there are Known or Expected Cultural Resources

4. Installation of small-scale facilities

- Can include utility lines, poles, or small equipment (meter boxes)
 - Causes minor ground disturbance in fill or previously disturbed soil
- Not advisable if in a moderate to high sensitivity area for buried archaeological resources, when nearby burials have been identified in the area



Los Angeles Aqueduct

Common Uses of CEs where there are Known or Expected Cultural Resources

5. Temporary uses or short-term actions

- Temporary staging areas, short-duration events or access where ground disturbance will not occur or is minimal (limited grading or imported fill)

- Archaeological survey is still needed to rule out presence of resources at the ground level
- Known resources would need mitigation to reduce impacts to a less than adverse level



USFS Trail Clearing

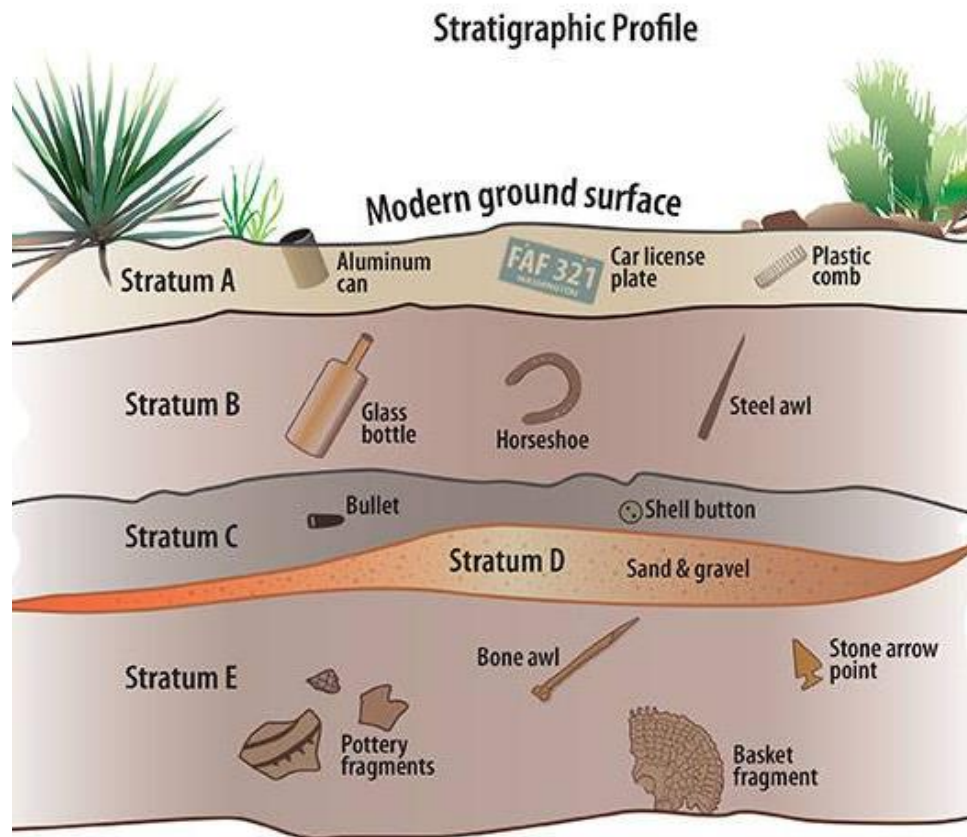
CEs, Extraordinary Circumstances, & Historic Properties

- If technical studies demonstrate there is no potential to affect historic properties, NHPA Section 106 ends.
- Even if a proposed undertaking otherwise fits a CE, it does not qualify if there are factors that could cause significant impacts to the environment.
- A CE is applicable only when adverse effects on cultural resources that are eligible or listed in the National Register of Historic Places (NRHP) are **avoidable** or **can be reduced to a less than adverse level** through project design or a MOA/MOU.



Caltrans Road Maintenance

CEs, Extraordinary Circumstances, & Historic Properties



Vertical APE (Stratigraphic profile courtesy of Crow Canyon Archaeological Center)

Lessons Learned:

- It is a big deal for a federal agency to say there are no adverse effects. They want to know you covered all the bases. Be sure to:
 - Conduct a thorough records search
 - Complete public outreach and consult historical societies
 - Document that the agency completed Native American consultation
 - Complete field surveys if directed to do so by an agency
 - Ensure all resources identified have been assessed for NRHP eligibility by an SOI-qualified technical expert
 - Document that the vertical APE has been considered fully and assessed for sensitivity to harbor cultural deposits or burials.

Case Study: NEPA Pre-Planning for FHWA/Caltrans Atwood Multipurpose Trail



*Historic Image of Atwood taken in early 1900s,
Atwood Historic Project*

- A small neighborhood in the City of Placentia in Orange County
- Historical settlement by Mexican American communities
- Undertaking would construct a 1-mile multipurpose trail for community enhancement by connecting two trails for improved commute and recreation
- City of Placentia is lead agency for California Environmental Quality Act
- Caltrans is lead agency for NEPA and NHPA Section 106

Case Study: NEPA Pre-Planning for FHWA/Caltrans Atwood Multiuse Trail

Step One: Identify Cultural Resources

National Register of
Historic Places (NRHP)

California Points of
Historical Interest

California Register of
Historical Resources
(CRHR)

California Historical
Resources Information
System (CHRIS)

- Is area entirely surveyed already?
- Are there known resources?

National Historic
Landmark (NHL)

Other Sources consulted:
City of Placentia Main
Library

Case Study: NEPA Pre-Planning for FHWA/Caltrans Atwood Multipurpose Trail

Atwood Trail Results

5 previous studies
within the APE
accounting for less
than 20% of the APE

No cultural
resources identified
within that 20%

Case Study: NEPA Pre-Planning for FHWA/Caltrans Atwood Multipurpose Trail

Step Two: Confirm Presence/Absence and Eligibility Status of Cultural Resources



- **Archaeological and Built Environment Surveys to determine presence/absence**
- **Conduct archival research for built environment resources**
- Site recording - Use required state or federal forms
- Assessment of resource significance and integrity per NHPA Section 106 (36 CFR Section 60.4) Criteria A-D to determine resource eligibility for NRHP
- If NRHP-ineligible with SHPO concurrence, CE is appropriate

Case Study: NEPA Pre-Planning for FHWA/Caltrans Atwood Multipurpose Trail

Step Two Results

- Records search found no resources
- Archaeological field survey confirmed absence of resources at ground level
- Potential for buried resources: Low
 - Note: Ground disturbance was defined in APE as maximum 12 inches below the ground surface.
- Native American areas of interest: None
- **Built environment survey: Identified 1 resource**

Case Study: NEPA Pre-Planning for FHWA/Caltrans Atwood Multipurpose Trail

FHWA Programmatic Agreement



Atwood Flood Control Channel, Atwood, CA

- Built environment field survey identified 1 potential resource: Atwood Flood Control Channel
- Evaluation by an SOI-qualified architectural historian recommended the resource as ineligible for NRHP
- Caltrans agreed and determined resource ineligible
- Caltrans obtained SHPO concurrence with decision

Case Study: NEPA Pre-Planning for FHWA/Caltrans Atwood Multipurpose Trail

Technical Studies Found:

No Potential Adverse Effects to Historic Properties

CE is appropriate

Case Study: NEPA Pre-Planning for FHWA/Caltrans Atwood Multipurpose Trail

Step 3: What if there is potential for adverse effects...?

If there are

- NRHP eligible resources
- Areas with moderate to high sensitivity for buried cultural resources
- Places of special importance to tribes

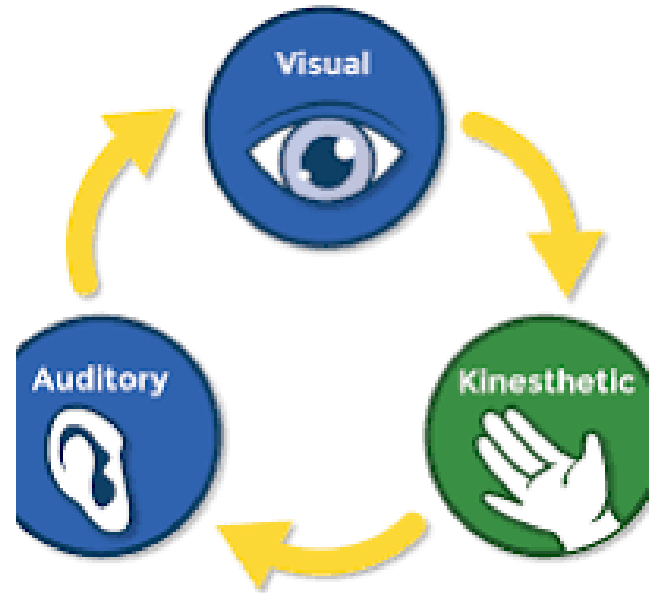
Determine if there is potential for effects that would diminish the integrity of a NRHP eligible historic property

- Complete technical studies and Native American consultation if there are resources identified
- Prepare resource evaluations to determine eligibility for listing in NRHP

Coordinate with federal agency and design engineers to

- Avoid
- Reduce impacts to a less than significant level
- Implement an MOA

Utilizing Categorical Exclusions to Successfully Navigate the NEPA Compliance Process



CATEGORICAL EXCLUSIONS

Kinesthetic Exercise

Exercise – Grade Separation Project

- **Project Sponsor:** Los Angeles County Metropolitan Transportation Authority
- **NEPA Lead Agency:** Federal Railroad Administration (FRA)
- **Project Description**
 - Remove at-grade rail crossing
 - Extend road
 - Construct new bridge over a wash
 - Connect to an existing bridge
 - New traffic signals and signal modifications
 - Associated work for grade separation



Exercise – Grade Separation Project

Categorical Exclusion:

23 CFR § 771.116(c)(17) includes

- Construction of bridges or grade separation projects predominantly within existing ROW that do not involve extensive in-water construction activities
- Construction of roadway overpasses to replace at-grade crossings

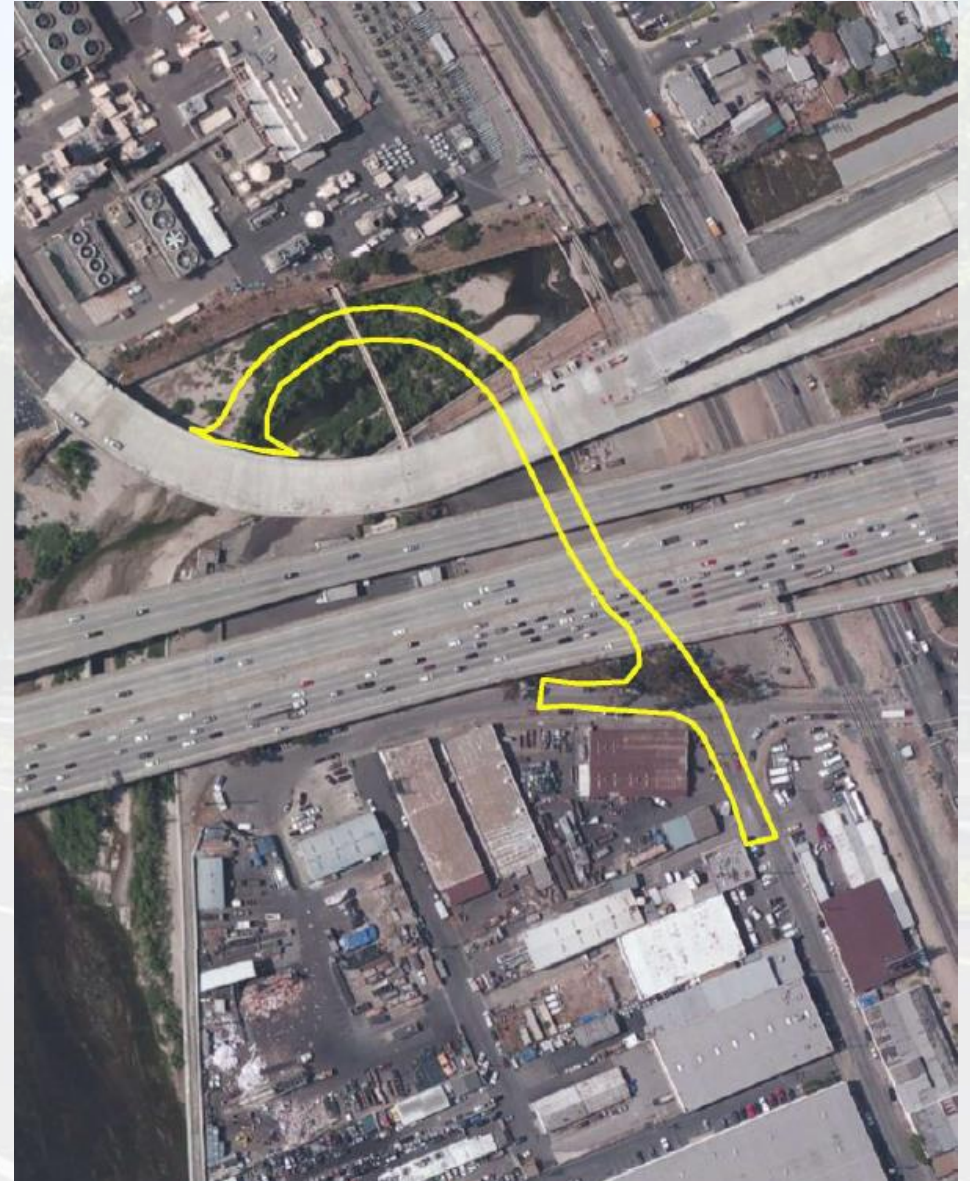


Exercise – Grade Separation Project

Using the following criteria, discuss how you might demonstrate a project's eligibility for an FRA Categorical Exclusion. What are examples of substantial evidence that you would need to provide?

23 CFR § 771.116(a): CEs are actions that:

- 1. Do not induce significant impacts to planned growth or land use for the area;*
- 2. Do not require the relocation of significant numbers of people;*
- 3. Do not have a significant impact on any natural, cultural, recreational, historic, or other resource;*
- 4. Do not involve significant air, noise, or water quality impacts;*
- 5. Do not have significant impacts on travel patterns; or*
- 6. Do not otherwise have any significant environmental impacts.*



Thank you!

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