

Revision Key

Red: First revision (after initial consultation with signatories)

Blue: Second revision (after first comment period)

Green: Third revision (after second comment period)

Caltrans Section 106 Programmatic Agreement Summary of Proposed Edits up to September 20, 2023

PA MAIN BODY

TITLE

- **1/23/23** Edited to reflect that this will be the Second Amended PA
- **2/23/23** Added ACOE as one of the PA parties.

UNIVERSAL EDITS

- **1/23/23** Changed “Attachment” to “Appendix”
- **1/23/23** Removed specific references to the Standard Environmental Reference (SER)
- **2/23/23** “Assumption” [in re: eligibility] changed to “consideration.”

WHEREAS CLAUSES

- **1/23/23** Whereas added to reflect that ACOE designates Caltrans lead for 408 permits.
- **1/23/23** Whereas edited to reflect that the Second Amended PA will supersede the First Amended PA.
- **9/7/23** Whereas clauses edited to reflect number of federally recognized tribes, non-federally recognized tribes and other parties consulted.

STIPULATIONS

(Edits to the PA stipulations, other than the universal edits mentioned above)

Stipulation I, Applicability

- **9/7/23** Stipulation I.B deleted previously proposed language to allow for use of PA on tribal lands with written approval from tribes.
- **9/7/23** Stipulation I.D deleted previously proposed language in re: Indian Tribes may issue permits or otherwise provide assistance with an undertaking.
- **1/23/23** Stipulation I.F edited to reflect that ACOE designates Caltrans lead for 408 permits and that Caltrans will provide documentation (rather than summary notification) to the Corps.

Stipulation II, Definitions

- **1/23/23** Edited to only include definitions that are in the PA but not 36 CFR 800.16.
- **2/23/23** Revised definition of Emergency to reflect 36 CFR 800.12.
- **7/13/23** Revised definition of Cultural Site to include religious values and

- [2/23/23](#) Added definition for No Potential To Cause Effect,
- [7/13/23](#) Added definitions for Direct Effect, Indirect Effect, Cultural Resource, Built Environment Resource, and Archaeological Site.
- [9/7/23](#) Revised proposed definition of archaeological site.

Stipulation III, PQS

- [2/23/23](#) Added language to acknowledge that the PQS Standards in Appendix 1 satisfy the Secretary of the Interior (SOI) Standards.

Stipulation IV, Consultation with Indian Tribes

- [1/23/23](#) Added reference to new Appendix for Native American Consultation (Appendix 7)
- [7/13/23](#) Added “and historic properties” to recognition of tribal knowledge and expertise.

Stipulation V, Public involvement

- [1/23/23](#) Added provision that if public meetings conducted for NEPA are to be used for 106 consultation, this must be clearly advertised.

Stipulation VI, Delegation to Caltrans

- [1/23/23](#) Stipulation VI.B.6 added reference to 36 CFR 800.3(f), definition of consulting parties.

Stipulation VII, Screened Undertakings

- [7/13/23](#) Added language to clarify that screened undertakings may only be exempt from further review if there is no potential to affect historic properties.

Stipulation VIII, Identification and Evaluation of Historic Properties

- [7/13/23](#) Stipulation VIII.C.3 changed “archaeological property” to “archaeological site.”
- [7/13/23](#) Stipulation VIII.C.3 deleted reference to Criteria A, B, C in addition to or instead of Criterion D” and replaced that language with “its significance.”
- [7/13/23](#) Stipulation VIII.C.4 changed “assumption of eligibility” to “consideration of eligibility.”
- [1/23/23](#) Stipulation VIII.C.4 added provision that Caltrans will consult with tribes that may attach religious or cultural significance to historic properties being considered eligible.
- [7/13/23](#) Stipulation VIII.C.4 clarified that the consideration of eligibility is for the current undertaking only.

Stipulation IX, Findings of Effect

- [1/23/23](#) Changed “Findings” to “Finding” in title of this stipulation.

Stipulation X, Assessment of Effect

- [7/13/23](#) Stipulation X.A added “federally recognized” to clarify that it is federally recognized Indian tribes that may request government to government consultation.

- **1/23/23** Stipulation X.B.1 edited to include a new standard condition for vegetation removal projects. (The new stipulation is X.B.1.b; therefore the original Stipulation X.B.1.b would become X.B.1.c and the original Stipulation X.B.1.c would become Stipulation X.B.1.d).
- **1/23/23** Stipulation X.B.1.b minor edits to add language from Attachment 5 to clarify that this stipulation only applies when work is limited to rehab, maintenance, repair, alteration etc. *to the historic property.*
- **1/23/23** Stipulation X.B.3- propose language clarifying what triggers public objection notification.
- **7/13/23** Stipulation X.C.2 deleted in its entirety the provision that Caltrans Districts may send adverse effect findings involving historic properties listed or eligible under Criterion D only to SHPO directly.
- **7/13/23** Stipulation X.C.3.a (now X.C.2.a) for adverse effects to NHLs, added that Caltrans notifies the SOI through the NPS Regional NHL Program per 36 CFR 800.10(c).

Stipulation XI, Resolution of Adverse Effects

- **7/13/23** Stipulation XI.B deleted reference to data recovery and Appendix 6 in its entirety.

Stipulation XIII, Native American Human Remains and Related Cultural Items

- **7/13/23** Replaced references to archaeological excavation with “identification and evaluation.”

Stipulation XIV, Curation

- **Stipulation XIV.A, Collections on Federal Land**
 - **1/23/23** edited to say “Caltrans” rather than “Caltrans District.”
 - **1/23/23** edited to delete text and include reference to 36 CFR Part 79.
 - **1/23/23** edited to include provisions in a license or permit, in addition to an agreement document.
 - **1/23/23** Added provision that prior to applying for a federal license or permit from a Federal Land Manager for work on an archaeological property that may result in the generation of a new collection, Caltrans will consult with tribes as appropriate and communication the results to the Federal Land Manager.
 - **1/23/23** Added provision regarding CSO notification for curation agreements or any other agreement regarding final disposition of a collection.
- **Stipulation XIV.B, Collections on Non-Federal Land**
 - **1/23/23** Added provision that prior to conducting work that may result in the generation of a new collection from an archaeological property on non-federal public or privately-owned land, Caltrans shall consult with the landowner and tribes as appropriate regarding collection protocols and the ultimate disposition of the collection.
 - **1/23/23** Other, minor edits regarding collections on non-federal lands.
 - **1/23/23** Added provision regarding CSO notification for curation agreements or any other agreement regarding final disposition of a collection

- [7/13/23](#) Added language that Caltrans shall make a reasonable and good faith effort to reach agreement with interested parties regarding collection protocols and the ultimate disposition of collections.

Stipulation XVI, Emergency Situations

- [1/23/23](#) Added language that CSO, SHPO and FHWA (if applicable) should be notified as soon as feasible.
- [1/23/23](#) Added provision for blanket notifications in cases of large-scale emergencies
- [2/23/23](#) Added ACHP as a party that must be notified of emergencies with potential to affect historic properties and for requests for extensions of time beyond 30 days.
- [7/13/23](#) Added language that if an NHL may be affected, Caltrans shall notify the SOI through the NPS Regional NHL Program.

Stipulation XX

- [1/23/23](#) Reorganized to have individual stipulations for these Administrative provisions, formerly included under Stipulation XX as XX.A through XX.J
- [1/23/23](#) Stipulation XX becomes “Resolving Objections.”

Stipulation XXII, Exclusionary Provision

- [1/23/23](#) Stipulation XXII,B,1 (formerly XX.C.2.a) minor edit- changed “cultural resources” to “historic properties.”

Stipulation XXIX, Effective Date of This Agreement

- [1/23/23](#) (formerly XX.J) edited to reflect that the new PA will take effect January 1, 2024.

SIGNATORY PARTIES

- [1/23/23](#) Updated to reflect names of current signatories.

APPENDICES

Appendix 1, PQS

- No edits

Appendix 2, Screened Undertakings

- [7/13/23](#) Added clarification that PQS may only determine an undertaking to be exempt if, after screening, they determine that the project has no potential to affect historic properties.
- [7/13/23](#) Edited the Screening Process to clarify that Caltrans contacts California Native American Tribes traditionally affiliated with the project area and invites them to consult on the undertaking.
- [7/13/23](#) Edited Class 6 to include minor utility maintenance.
- [1/23/23](#) Minor edit to Class 19 add clarification that “any work” on a Category 5 bridge does not include bridge replacement.
- [7/13/23](#) Edited Class 27 to include sliver takes and perfection of the right of way.

- [9/7/23](#) Deleted previously proposed added screened class 31 to cover installation of single lane roundabouts within the existing roadway

Appendix 3, APE

- [2/23/23](#) Revised language to guide the development of single APE and removed language referring to different APEs for built environment and archaeological properties.
- [2/23/23](#) Removed language guiding the delineation of boundaries by effect type within overall APE.
- [1/23/23](#) Added language clarifying that an APE should include the entirety of accessible right of way in the vicinity of an undertaking.
- [1/23/23](#) Edited to clarify use of Study Areas.
- [7/13/23](#) Added “vibration from construction” as an example of a direct effect.
- [7/13/23](#) Under Visual added “or new vertical elements.”
- [7/13/23](#) Under Project Changes added “completing additional studies or effects assessments, as appropriate” in re: Caltrans’ responsibilities.

Appendix 4, Exempt Properties

- [1/23/23](#) Added language to specify that for archaeological sites, additional documentary research may be needed to determine whether the property meets the exemption criteria, particularly when looking for a specific association.
- [1/23/23](#) Caltrans believes the existing language for Property Type 7 is adequate to include 1970s and 1980s postwar housing tracts as they become more than 50 years old.

Appendix 5, Standard Conditions

- [1/23/23](#) Edited to add a standard condition for vegetation management projects.
- [1/23/23](#) Edited to reflect the ACHP language regarding “indirect effects” so that it refers to non-physical effects.
- [1/23/23](#) Mirroring X.B.1, minor edits to clarify that the SOIS as a standard condition applies only when work is limited to rehab, maintenance, repair, alteration etc. *to the historic property.*
- [7/13/23](#) For Vegetation Management ESAs, deleted “archaeological or cultural” so that it now reads “sites within the APE.”
- [7/13/23](#) Changed historic era can “scatters” to “deposits.”
- [7/13/23](#) Deleted language in re: archaeological and cultural sites may have values other than informational potential under Criterion D.
- [1/23/23](#) Added clarification that ESAs “as a standard condition” may be applied.
- [7/13/23](#) Deleted language “that may qualify them as eligible under Criteria A, B or C in addition to or instead of Criterion D” and added “that may be associated with non-material components (e.g. cultural site with significance under Criterion A.”

Appendix 6, Data Recovery Plans

- [7/13/23](#) Deleted in its entirety.

Appendix 7, Seismic Retrofit Program

- [7/13/23](#) Renumbered as Appendix 6.
- [7/13/23](#) Added under Resolution of Adverse Effect- Standard Mitigation Measures that for NHLs, Caltrans shall also notify the SOI through the NPS Regional NHL Program, per 36 CFR 800.10(c).
- [9/7/23](#) Deleted reference to SER Volume 2 and substituted language “in accordance with Caltrans guidance for heritage documentation.”

Appendix 8, Native American Consultation

- [1/23/23](#) Brand new appendix detailing policies and procedures for Native American Consultation.
- [7/13/23](#) Renumbered as Appendix 7.
- [9/7/23](#) Revised proposed language further clarifying federally recognized tribes and non-federally recognized tribes’ roles in the PA .
- [7/13/23](#) Added language in first paragraph recognizing the importance of the unique expertise tribes possess regarding the nature, significance and potential for effect to archaeological properties, sacred/ceremonial areas, and traditional cultural places and landscapes, and that incorporating this information into the Section 106 process is vital to successful project outcomes.
- [7/13/23](#) Added that for locally sponsored projects, local agencies should initiate outreach and consultation, in coordination with Caltrans, upon identifying Section 106 requirements for the project.
- [7/13/23](#) Made edits to what should be included in the narrative summary of relevant consultation.
- [7/13/23](#) Added a provision that Caltrans must confirm a mutual understanding of comments and concerns and provide a reasonable opportunity for tribal review and comment on project documentation that includes historic properties of religious or cultural significance to the tribe.
- Under Ongoing Consultation:
 - [7/13/23](#) changed “project delivery process” to “life of a project.”
 - [7/13/23](#) deleted “attempts as such” to now read “Minimally, consultation should occur...”
 - [7/13/23](#) added “identifying potential historic properties” to the first bulleted item.
 - [7/13/23](#) Added new bulleted item to include examples of topics of consultation.