

# Exhibit 2.2: Concordances

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**Table 1: Section 106 Regulations and the Section 106 Programmatic Agreement**

This table depicts the streamlined procedures afforded by the 106 PA<sup>i</sup>, which incorporates NEPA Assignment pursuant to 23 USC 326 and 327.

\* PQS = Professionally Qualified Staff are Caltrans employees who meet specific education and experience requirements as described in 106 PA Attachment 1.

36 CFR 800	Section 106 Regulation	106 PA
800.1	Requires federal agency to take into account effect of its undertakings on historic properties and afford the Advisory Council on Historic Preservation (ACHP) an opportunity to comment	Caltrans is federal Agency official, as assigned by FHWA
800.2(a)	Federal Agency is legally responsible for Section 106 compliance	Caltrans is legally responsible
800.2(a)(1)	All actions taken by employees or contractors who meet the Secretary of the Interior's Professional Qualifications Standards	No change; see Stipulation III and Attachment 1
800.2(a)(3)	Agency official responsible for ensuring documents prepared by non-federal agencies meet applicable standards and guidelines	Caltrans PQS* assigned responsibility for quality assurance; see Stipulation III and XVIII
800.2(c)(2)(i)	Agency official consults with THPO when on tribal lands.	106 PA does not apply on tribal lands
800.2(c)(5)	Individuals and organizations with a demonstrated interest in the undertaking may participate as consulting parties	No change
800.2(d)(1-2)	Agency official solicits public comment and involvement	Caltrans Districts delegated responsibility; see Stipulation V and VI

<sup>i</sup> Programmatic Agreement Among the Federal Highway Administration, the Advisory Council on Historic Preservation, the California State Historic Preservation Officer, and the California Department of Transportation Regarding Compliance with Section 106 of the National Historic Preservation Act as it Pertains to the Administration of the Federal-Aid Highway Program in California, effective January 1, 2014.

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800.3(a) 800.3(a)(1)	Agency official determines whether proposed action is an undertaking and if so, whether it has the potential to affect historic properties.	Caltrans PQS determine whether Screened undertakings are exempted from further review under Section 106; see Stipulation VII and Attachment 2
800.3(e)	Agency official solicits public comment and involvement	Caltrans Districts solicit public comment and involvement; see Stipulation V and VI
800.3(f)	Individuals and organizations with a demonstrated interest in the undertaking may participate as consulting parties	No change
800.4(a)(1-4) 800.4(b)	Agency official determines and documents the APE and identifies historic properties within that APE	Caltrans PQS determine the APE with Project Manager; see Stipulation VIII.A and B and Attachment 3
800.4(b)(2)	Agency official may use phased approach to identification and evaluation when alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted	Caltrans CSO approves phasing; see Stipulation XII
800.4(c)(1-2)	Agency official evaluates historic significance of properties within the APE using National Register criteria	Caltrans PQS make determinations. Caltrans may exempt certain property types from evaluation; see Stipulation VIII.C(1) and Attachment 4  Caltrans District may consider archaeological properties as eligible for the National Register without evaluation when the properties for purposes of the project only are protected through the establishment of ESAs; see Stipulation VIII.C(3). Upon CSO approval, Caltrans District may consider properties eligible for the National Register without evaluation for purposes of the project only; see Stipulation VIII.C(4)
800.4(d)	Agency official determines whether historic properties may be affected	Caltrans PQS determine whether historic properties may be affected see Stipulation IX
800.5(a)(1)	Agency official applies the Criteria of Adverse Effect	Caltrans PQS applies criteria; see Stipulation X.A
800.5(a)(2)(iii)	Removal of archaeological data is an adverse effect, even if conducted in accordance with the Secretary's of the Interior's standards. See preamble to 36 CFR part 800 Section IV, "Description of Meaning and Intent of Specific Sections," published in the <i>Federal Register</i> , volume 65, No. 239, Tuesday, December 12, 2000, Rules and Regulations, page 77720	Data recovery remains an adverse effect. When project effects are limited to archaeological properties listed in or eligible for the NRHP under Criterion D only, Caltrans District submits data recovery plan to CSO, SHPO and consulting parties; see Stipulation X.C and Attachment 6

800.5(a)(3)	Agency official may use a phased approach in applying criteria of adverse effect when alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted	Caltrans CSO approves phasing; see Stipulation XII
800.5(b)	<p>Agency official proposes a finding of No Adverse Effect; consults with SHPO and other consulting parties. If SHPO and other parties agree with finding, project may proceed</p> <p>Under 800.5(a)(2)(ii), if a property is restored, rehabilitated or otherwise changed pursuant to the Secretary of the Interior's Standards, the project is not considered to have an adverse effect</p> <p>See preamble to 36 CFR 800 Section IV, "Description of Meaning and Intent of Specific Sections," published in the <i>Federal Register</i>, volume 65, No. 239, Tuesday, December 12, 2000, Rules and Regulations, page 77720</p>	<p>Caltrans Districts may impose Standard Conditions to avoid adverse effects (FNAE-SCs) for certain maintenance, repair and rehabilitation projects through use of the Secretary of the Interior's Standards for the Treatment of Historic Properties (FNAE-SC-SOIS), or when properties can be protected by an ESA (FNAE-SC-ESA)</p> <p>Caltrans Districts submit documentation of finding to CSO and other consulting parties; if CSO does not object within 15-days of receipt the project is not subject to further review; see Stipulation X.B.1 and Attachment 5</p> <p>For FNAE findings without Standard Conditions, Caltrans Districts submit the findings to CSO; CSO consults with SHPO; see Stipulation X.B.2 and Attachment 5</p>
800.5(c)(2)(i) 800.5(d)(2)	If within 30 days SHPO or any consulting party disagrees with agency official's No Adverse Effect finding, agency official either consults to resolve the disagreement or requests ACHP to review the finding	Essentially no change; see Stipulation X.D
800.6(a) 800.6(b)(1)	Agency official consults with SHPO to resolve adverse effects	Caltrans CSO, with assistance from Caltrans Districts, consults with SHPO to resolve adverse effects; see Stipulation XI
800.6(b)(2) 800.6(c)	When ACHP participates in resolution of adverse effects, the federal agency consults with SHPO, ACHP, and consulting parties; if all parties agree on resolution, a MOA is executed	Essentially no change. If CSO, SHPO, and Caltrans districts cannot resolve adverse effects, ACHP is invited to participate; see Stipulation XI.E
800.7 800.7(a)	Failure to resolve adverse effects; termination of consultation	No change; see Stipulation XI.E
800.7(c)(4)	ACHP comments on disagreements between the Agency official and consulting parties regarding assessment of effects	Essentially no change; see Stipulation X.D

800.11	Documentation standards	Caltrans PQS approve all documentation that supports findings and determinations made under the 106 PA and will be consistent with 36 CFR 800.11; see Stipulation XVIII
800.11(c)(1 and 3)	The Agency official solicits public comment and involvement	Caltrans PQS solicits public involvement; see Stipulation V and VI
800.13(b) 800.13(b)(3) 800.13(c)	Planning for post-review discoveries; Agency official takes action to avoid adverse effects to property(ies), notifies SHPO, consulting parties and ACHP within 48 hours of discovery, can assume property(ies) to be eligible for the National Register	Caltrans District complies with 36 CFR 800.13(b)(3) and 800.13(c); notifies CSO, SHPO, and other consulting parties within 48 hours; requests response from notified parties within 72 hours; takes any comments into account, and may carry out appropriate action; see Stipulation XV

## Table 2: Section 106 Programmatic Agreement and PRC 5024 Memorandum of Understanding

The table below depicts the concordance between the 106 PA procedures and the 5024 MOUii.

PROVISION	106 PA	PRC 5024 MOU
Policy	Not Applicable	Stipulation I. Caltrans ensures that to the extent prudent and feasible, Caltrans-owned historical resources will be preserved, rehabilitated and maintained per EO W-26-92 and PRC 5024
Applicability	Stipulation I. Applies to Federal-aid Highway program funded projects.	Stipulation II. Applies when Caltrans-owned cultural resources may be affected.
Federal Undertakings that Include Caltrans-owned Resources	Not Applicable	Stipulation III. Caltrans may use Section 106 compliance document to concurrently comply with PRC 5024.
Definitions	Stipulation II	Stipulation IV
PQS	Stipulation III and Attachment 1	Stipulation V and Attachment 1
Delegation to Caltrans	Stipulation VI. Caltrans is legally responsible for ensuring that the terms of the 106 PA are carried out	Stipulation VI. Caltrans is responsible for ensuring that the terms of the 5024 MOU are carried out.

ii 2015 Memorandum of Understanding between the California Department of Transportation and the California State Historic Preservation Officer Regarding Compliance with Public Resources Code Section 5024 and Governor’s Executive Order W-26-92, addended 2019.

Consultation with Tribes	Stipulation IV	Throughout the process
Participation of other parties	Stipulation V	Throughout the process
Delegation of actions	Stipulation VI	Same
Screened Undertakings	Stipulation VII and Attachment 2	Same. Screened Projects/Activities not undertakings
APE	Stipulation VIII.A and Attachment 3. PQS determine and document the APE	Stipulation VIII.A and Attachment 3 PQS determine and document the Project Area Limits (PAL)
Identification	Stipulation VIII.B. PQS determines reasonable level of effort	Same
Exempt Properties	Stipulation VIII.C.1 and Attachment 4. PQS determine whether properties may be exempt from evaluation	Stipulation VIII.C.1 and Attachment 4. PQS determine whether Caltrans-owned resources may be exempt from evaluation
Evaluation	Stipulation VIII.C.2. PQS evaluate identified properties using NRHP criteria. Districts consult with SHPO; SHPO has 30 days to comment	Stipulation VIII.C.2. PQS evaluate identified Caltrans-owned resources using NRHP and California Historical Landmark (CHL) criteria. Districts consult with SHPO; SHPO has 30 days to comment
Special Consideration for Certain Archaeological Properties	Stipulation VIII.C.3 and Attachment 5. If archaeological properties are protected from any potential effects by an ESA, PQS may consider such properties NRHP eligible	Stipulation VIII.C.3 and Attachment 5. If Caltrans-owned archaeological resources are protected from any potential effects by an ESA, PQS may consider such properties NRHP and/or CHL eligible
Assumption of Eligibility	Stipulation VIII.C.4. Subject to CSO approval, PQS may consider properties NRHP eligible for purposes of an undertaking only	Stipulation VIII.C.4. Subject to CSO approval, PQS may consider Caltrans-owned cultural resources NRHP and/or CHL eligible for purposes of a project only
Findings of Effect	Stipulation IX. No Historic Properties Affected: notify Tribes or other consulting parties when in consultation on eligibility; otherwise document and retail in District files	Stipulation IX. No State-owned Historical Resources Affected: notify Tribes or other consulting parties when in consultation on eligibility; otherwise document and retail in District files
Assessment of Effects	Stipulation X. Apply 36 CFR 800.5 criteria	Stipulation X. Apply List of Adverse Effects at 5024.5(a)

FNAE w/ SC	Stipulation X.B.1. District to CSO; CSO has 15 days to object	Stipulation X. B.1. Additional standard condition for transfers/relinquishments of CLG designated resources
FNAE	Stipulation X.B.1. District to CSO; CSO to SHPO; 30 days at SHPO	Stipulation X.B.1. NOT on the Master List = District to CSO, CSO has 15 days to object. No SHPO consultation.  On Master List = District to CSO, CSO to SHPO. SHPO has 30 days to object
FAE – Standard Mitigation Measures (SMM)	Not Applicable	Stipulation X.C.1 and Attachment 6. For archaeological sites NOT on the Master List. District to CSO, CSO has 30 days to object. No SHPO consultation
FAE for Archaeological properties eligible for listing exclusively under NRHP Criterion D only	Stipulation X.C.2. District to SHPO and CSO concurrently. SHPO and CSO have 30 days to object	Not Applicable
FAE	Stipulation X.C.1. District to CSO; CSO to SHPO; SHPO has 30 days to object. Follow Attachment 6 for archaeological sites	Stipulation X.C.2. NOT on the Master List = District to CSO, CSO has 30 days to object. No SHPO consultation. On Master List = District to CSO, CSO to SHPO. SHPO has 30 days to object. Proposed mitigation included with FAE
Resolving Disagreements Regarding Findings of Effect	Stipulation X.D. CSO consults with SHPO and/or Tribe and/or other consulting party for no more than 30 days. If CSO determines disagreement cannot be resolved through such consultation, CSO requests ACHP to review disagreement and CSO's proposed resolution	Stipulation X.F. CSO consults with SHPO for no more than 30 days. For Caltrans-owned resources on the Master List, if the SHPO determines the disagreement cannot be resolved through such consultation, SHPO requests the Office of Planning and Research (OPR) to mediate the disagreement
Resolution of Adverse Effect	Stipulation XI. MOA with SHPO	Not applicable. Adverse effects are mitigated, not resolved. There is no MOA. See FAE.
Phasing	Stipulation XII. Subject to CSO approval	Stipulation XI. Subject to CSO approval
Native American Remains and Curation	Stipulation XIII and XIV. Caltrans policy is to curate	Stipulation XII and XIII. Caltrans policy is to curate
Post Review Discoveries	Stipulation XV. District notifies parties, consults on measures	Stipulation XIV. District notifies parties, consults on measures



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Emergencies	Stipulation XVI. District notifies parties, consults on measures	Stipulation XV. District notifies parties, consults on measures
Property Transfers / Relinquishments	Not Applicable	Stipulation XVI. For all transfers or relinquishments, District notifies SHPO of ownership change when transfer is complete
Documentation	Stipulation XVIII. All documentation consistent with 36 CFR 800.11, PA attachments and SERv2; shall be peer reviewed by PQS. Local agency or consultant-prepared documents must be approved by PQS	Stipulation XVII. All documentation consistent with MOU attachments and SERv2; shall be peer reviewed by PQS. Local agency or consultant-prepared documents must be approved by PQS
Training	CSO certifies. New staff take PA/MOU PQS training	Stipulation XVIII. CSO certifies. New staff take PA/MOU PQS training
Local Bridge Seismic Retrofit	Stipulation XVII and Attachment 7. Supersedes Seismic Retrofit PA	Not Applicable
Resolving Disagreements	Eligibility: Keeper of NRHP Effects: ACHP mediates Overall Program: ACHP involved	Eligibility: SHPO has final say Effects: OPR mediates Overall Program: SHPO may terminate MOU
Admin	Stipulation XX. Exclusion Provision, Annual Reporting, Termination, etc.	Stipulation XIX. Exclusion Provision, Annual Reporting, Termination, etc.