

EXHIBIT 2.8: Finding of No Adverse Effect Format and Content Guide

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EXHIBIT 2.8: Finding of No Adverse Effect Format and Content Guide

Introduction

In accordance with Section 106 PA (106 PA¹) Stipulation XVIII, the Finding of No Adverse Effect report must be consistent with the documentation standards set forth in 36 CFR 800.11 and the 106 PA attachments. For state-only project that involve Caltrans-owned historical resources, in accordance with PRC 5024 MOU (5024 MOU²) Stipulation XVII, the Finding of No Adverse Effect report must be consistent with SERv2 and the 5024 MOU attachments. Pursuant to 5024 MOU Stipulation III, Section 106 projects that involve Caltrans-owned historical resources may use the Section 106 documentation to satisfy Caltrans' PRC 5024 compliance.

There are two types of No Adverse Effect findings under the 106 PA and the 5024 MOU: a Finding of No Adverse Effect with Standard Conditions (FNAE-SC) and a Finding of No Adverse Effect without Standard Conditions (FNAE). The FNAE-SC is approved by CSO and typically documented in the HPSR/HRCR with supporting documentation (ESA Action Plan, SOIS Action Plan, as appropriate). This format and content guide addresses the FNAE.

Finding of No Adverse Effect

When standard conditions are not applicable, but Caltrans finds the project will otherwise not have an adverse effect on historic properties with or without (non-standard) conditions, the District prepares FNAE-No SC documentation and sends it to CSO for review.

For state-only projects that involve Caltrans-owned resources not on the Master List of Historical Resources (Master List)³, CSO approves the finding. For all federal projects and state-only projects that involve Caltrans-owned historical resources on the Master List, CSO forwards

¹ First Amended 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.

² 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.

³ The Master List is a list of state-owned historical resources that are listed on or determined eligible for inclusion in the National Register of Historic Places or for registration as California Historical Landmarks.

the documentation to SHPO and requests concurrence. The District sends notification of the finding to any consulting parties and interested members of the public, as appropriate.

Finding of No Adverse Effect (FNAE) Format and Content

PQS or qualified consultants prepare the FNAE document according to the following outline:

Title Page

The title page contains the following information:

- Brief descriptive title with type of study, name and general location of project (e.g., “Finding of No Adverse Effect for Curve Correction on Route 989 between Forestview Drive and Limekiln Road”).
- County, route, and postmile or local street or road name.
- EA/E-FIS⁴ project number and phase (For Local Assistance projects, use the Federal-Aid project number).
- Project contract number (if prepared by consultants).
- Name, title, and signature of the Caltrans Professionally Qualified Staff (PQS) or consultant PQS-equivalent who prepared the report. Also state the preparer’s PQS or PQS-equivalent level and address or location.
- Name, title and signature of the PQS who reviewed the report for approval, along with the reviewer’s location/address and PQS level (if different than preparer).
- Name, title, location and signature of the Caltrans District Environmental Branch Chief (DEBC) for whom the document was prepared. The DEBC’s signature on the title page indicates approval and acceptance of the document.
- Date (month/year) FNAE was prepared (appears at bottom of page).

Introduction

- Summarize the project 106 PA/5024 MOU compliance activities to date. Include the date(s) of any previous SHPO consultation and briefly describe the historic properties and their National Register of Historic Places (NRHP) status. For Caltrans-owned properties, note whether they are or are not on the Master List of Historical Resources.
- Name the properties that will not be adversely affected, as well as any that are present but will not be affected.

⁴ Enterprise Resource Planning Financial Infrastructure, a 10-digit number, followed by a phase number of one or more digits.

- For federal projects, state that Caltrans, in applying the Criteria of Adverse Effect, proposes that an FNAE is appropriate and is seeking the SHPO's concurrence in the finding, pursuant to 36 CFR 800.5(c) and 106 PA Stipulation X.B.2.
- For state-only projects that involve Caltrans-owned historical resources on the Master List, state that Caltrans, in applying the List of Adverse Effects proposes that an FNAE is appropriate and is seeking the SHPO's concurrence in the finding, pursuant to 5024 MOU Stipulation X.B.2.c.
- For state-only projects that involve Caltrans-owned historical resources not on the Master List, state that Caltrans, in applying the List of Adverse Effects proposes that an FNAE is appropriate and is seeking CSO's approval in the finding, pursuant to 5024 MOU Stipulation X.B.2.a.

Description of the Project

- Identify the project by district, county, route, and postmile limits, and indicate distance to the nearest town or other landmark. Identify the APE/PAL, and refer to attached maps, photographs, and drawings, as necessary.
- Describe the project concisely but with sufficient detail to ensure that a reviewer unfamiliar with the project or project area has a clear understanding of the extent of potential effects.
- Discuss all pertinent project-related activities and alternatives.

Public Participation

- Summarize efforts to involve the public in the Section 106 process as well as any comments received to date. For state-only project that involve Caltrans-owned historical resources, describe consultation with interested parties.
- Identify any additional consulting parties, such as other federal and state agencies, Native Americans, or local governments, and summarize consultation efforts and results to date.
- As applicable, describe the ongoing environmental process, including environmental compliance events such as public hearings.
- As applicable, emphasize cultural resources issues discussed at public meetings, and if concerns have been raised, discuss steps taken to ensure public concerns are incorporated into the Section 106/PRC 5024 compliance process.

Description of Historic Properties

Provide a brief description of the steps taken to identify historic properties or Caltrans-owned historical resources, as applicable. Discuss any comments received from the public or consulting parties that aided in the identification process.

Describe each affected historic property, including

- Date of NRHP listing; date of Keeper of the National Register (Keeper) determination of NRHP eligibility, stating that it was a Keeper determination; date of SHPO concurrence with a determination of eligibility, stating that it was a consensus determination; or state that an eligibility consensus determination with SHPO is pending, as applicable.
- NRHP Criteria under which the property is listed or eligible, including a brief reason why and the level(s) and period(s) of significance. For Caltrans-owned properties, include the same information for California Historical Landmark (CHL) criteria.
- Identify any properties that are Caltrans-owned.
- Brief NRHP boundary description
- For built-environment properties, description of important physical features or character-defining features (CDFs). If a CDF Summary Form is used, it can simply be referenced here and attached to the FNAE-No SC document. See Exhibit 6.1.
- Photographs, particularly views depicting elements of the property subject to direct or indirect effects.
- Photo simulations depicting before and after conditions, if available

Application of the Criteria of Adverse Effect

- For each historic property, discuss the application of the Criteria of Adverse Effect (36 CFR 800.5(a)(1)). State the specific criteria that apply and describe in detail why the effect is not adverse.
- For state-only projects that involve Caltrans-owned historical resources, discuss the application of the List of Adverse Effects (5024 MOU Stipulation IV.D), State the specific effects that apply and describe in detail why it is not adverse.
- Describe the physical effects of the project on each property, as well as any indirect effects, such as increased noise or introduction of visual elements out of character with the property.
- Provide sufficient detail to allow a reviewer not familiar with the project or the project area to understand the extent of any direct or indirect effects on each historic property (see Exhibit 2.15 for additional guidance).

Discussion of No Adverse Effect and Conditions Proposed

- State justification for why the project as designed would result in no adverse effect (e.g., sliver takes of non-contributing elements that do not diminish the characteristics that make the property NRHP eligible).

- Discuss in detail any conditions proposed to avoid adverse effects, distinguishing between engineering conditions (e.g., modifications to the undertaking itself) and conditions that are directly related to the property.
- ESAs and use of the SOIS may be proposed as conditions for a FNAE when they will avoid an adverse effect but the terms of a standard condition FNAE are not applicable (e.g., because the project involves working within the boundary of an archaeological site but outside areas that contribute to the site’s eligibility; the project will replace historic materials in kind, but is a construction project, not a repair, rehabilitation, etc.).⁵
- If an ESA is proposed, an ESA Action Plan that discusses specific protection and enforcement measures for each property, as described in Exhibit 2.11, is included as an attachment.
- If use of the SOIS is proposed, an SOIS Action Plan that discusses the measures, as described in Exhibit 2.12, for each historic property is included as an attachment.
- For state-only projects that involve the transfer/relinquishment of a Caltrans-owned historical resource to a local agency, private or unknown owner, include the protective covenant or documentation of other restrictions being imposed on the property.

Responsible Parties

Identify appropriate Caltrans staff, agency staff, consultants or others responsible for ensuring that any proposed conditions are carried out and their area of responsibility. A clear chain of command should be established, with specific tasks and contact information identified for each responsible party (e.g., PQS Principal Architectural Historian, Environmental Construction Liaison, Resident Engineer). Identify the parties by Position/Title to ensure continuity of accountability in the event of personnel change on a project. All parties must be aware of and acknowledge their responsibilities. See the sample Action Plan Tables in Exhibit 2.11 and Exhibit 2.12.

Conclusions

Briefly summarize the contents of the document that resulted in the FNAE. If warranted, include a table that summarizes effects and conditions proposed for each historic property and alternative (see Table 1 below).

⁵ For federal undertakings where the 106 PA is not applicable (e.g. it will occur on or affect lands held in trust by Indian tribes), ESAs or use of the SOIS may still be established to avoid adverse effects, using Attachment 5 of the 106 PA as guidance.

Table 1. Example Table for Finding of No Adverse Effect Document

Property	Effect Finding (Alt. 1)	Avoidance / Minimal Impact
CA-ABC-1234	Not Adverse	ESA – see ESA Action Plan
Jones House	Not Adverse – ROW take of non-contributing element	N/A
City Park	Not Adverse – ROW take of non-contributing element	N/A

Property	Effect Finding (Alt. 2)	Avoidance / Minimal Impact
CA-ABC-1234	Not Adverse	ESA – see ESA Action Plan
Jones House	Not Adverse – new soundwall	New soundwall is at the rear of the house within the ROW and the design for all soundwalls in the APE are compatible with the surrounding environment including the Jones House
City Park	Not Adverse – ROW take of non-contributing element	N/A

Attachments

Include the following attachments:

- Project Vicinity Map
- Project Location Map
- Project APE/PAL Map (detail location of the historic property, including the historic property boundaries, in relation to the project and depict project effects on the property)
- Correspondence with the SHPO, Native Americans, and any other consulting parties, or the public (e.g., local government agency)
- Exhibits pertaining to the historic properties discussed (e.g., photographs, construction drawings, photo simulations)
- ESA/SOIS Action Plan and/or Action Plan Table, as applicable.
- Protective covenant or documentation of other restrictions on the property, as applicable.

Caltrans Peer Review and Approval

PQS certified at the Principal Investigator Prehistoric Archaeology or Historical Archaeology, or Principal Architectural Historian levels are authorized to conduct peer reviews of FNAE documentation and review FNAEs for approval. The peer reviewer should be someone other than the author. Once the document has been approved by an appropriately qualified PQS, the DEBC signs and dates the FNAE to signify final approval. Chapter 2 Section 2.12 contains more information about the peer review and approval process. See Exhibit 1.6 for PQS level and expertise required for peer review in the various cultural resource specialty areas and Exhibit

2.14 Table C for PQS levels needed for other document reviews and approval. Caltrans peer review standards are found in Exhibit 2.13.