

Caltrans PRC 5024 MOU Summary of Proposed Edits Up To September 20, 2023

Revision Key

Red: First revision (after initial consultation with signatories)

Blue: Second revision (after first comment period)

Green: Third revision (after second comment period)

Proposed edits to the Section 106 PA are also being proposed in the MOU, as applicable, and adapted as necessary to reflect PRC 5024/state law language, to keep the two processes as consistent as possible. Final revisions to the 106 PA will be incorporated into the final revised MOU, as applicable.

MOU MAIN BODY

Universal Edits

- **1/23/23** Changed Attachment to Appendix
- **1/23/23** For consistency throughout, changed “the CSO” “CSO” and “SHPO” to “the SHPO,” where appropriate.
- **1/23/23** Removed specific references to the Standard Environmental Reference (SER).
- **2/23/23** Changed “assumption” [in re: eligibility] to “consideration.”

Table of Contents

- **1/23/23** Deleted

Title

- **1/23/23** Edited to reflect that this will be the First Amended MOU

Whereas Clauses

- **1/23/23** Whereas added to reflect that the 2015 MOU will be superseded by the First Amended MOU.

Stipulations

- **Stipulation I, Policy.**
 - **1/23/23** Proposed deleting as this is basically saying Caltrans will follow the law, and the wording itself is already included in the Whereas clauses.
- **Stipulation II, Applicability**
 - **1/23/23** becomes Stipulation I. No changes to the text.
- **Stipulation III, Federal Undertakings That Include State-Owned Historical Resources**
 - **1/23/23** Becomes Stipulation II
 - **9/7/23** footnote reference to the 106 PA- changed title to “Second Amended.”
 - **9/7/23** Edited to clarify that documentation prepared under Section 106 (36 CFR Part 800) or a valid Section 106 Programmatic Agreement (PA) may be used to concurrently

comply with PRC 5024 and that Caltrans notifies the SHPO of concurrent PRC 5024 compliance when the 36 CFR Part 800 or the PA process requires consultation with the SHPO.

- **Stipulation IV, Definitions**

- Becomes Stipulation III
- **1/23/23** Deleted definition of CLG as the definition is already included in PRC 5020(b)
- **1/23/23** Delete definition of the Standard Environmental Reference (SER).
- **1/23/23** Minor edit to definition of HRCR to reflect that an HRCR is not a technical study.
- **1/23/23** Deleted definition of Secretary of the Interior's Standards.
- **1/23/23** Added definitions for Emergency.
- **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 IV**

- **1/23/23** New Stipulation for consultation with Indian Tribes, per the 106 PA. Did not add a lot of text, however, as the government-to-government situation does not apply.
- **1/23/23** Added reference to new Appendix for Native American Consultation (Appendix 6)
- **7/13/23** Added "and historic properties" to recognition of tribal knowledge and expertise.

- **Stipulation V, PQS**

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

- **Stipulation VII, Screened Projects and Activities**

- **7/13/23** Added language to clarify that screened projects may only be exempt from further review if there is no potential to affect state-owned historical resources.

- **Stipulation VIII, Identification and Evaluation**

- **1/23/23** Stipulation VIII.C.3: minor type corrected.
- **7/13/23** Stipulation VIII.C.3 changed "archaeological resources" to "archaeological sites."
- **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.

- [9/7/23](#) Stipulation VIII.C.4 clarified that the consideration of eligibility is for the current project only.
- **Stipulation IX, Findings of Effect**
 - [1/23/23](#) Changed title to Finding of Effect, as per the 106 PA.
- **Stipulation X, Assessment of Effects**
 - [1/23/23](#) Stipulation X.B corrected reference to Stipulation X.V (not X.IV)
 - [1/23/23](#) Stipulation X.B.1 edited to include a new standard condition for vegetation removal projects, as this change is also being proposed to the 106 PA. (The new stipulation is X.B.1.b; therefore the original Stipulation X.B.1.b is edited to X.B.1.c; the original Stipulation X.B.1.c is edited to be Stipulation X.B.1.d; and the original Stipulation X.B.1.d is edited to be Stipulation X.B.1.e)
 - [1/23/23](#) Stipulation X.B.1.b minor edits to add language from Appendix 5 to clarify that this stipulation only applies when work is limited to rehab, maintenance, repair, alteration etc. *to the state-owned historical resource.*
 - [2/23/23](#) Stipulation X.B.1 edited to include a new standard condition for transfers or relinquishments of state-owned archaeological historical resources to Indian Tribes.
 - [9/7/23](#) Stipulation X.B.1 further edited to add provisions that transfers of historic resources to Indian Tribes as a standard condition only applies if there is a conservation easement or will be held in trust by the federal government.
 - [1/23/23](#) Stipulation X.B.2 minor typo corrected to say Stipulation X.B.1 (not IX.1)
 - 9/13/23 Stipulation X.C.1: Deleted the FAE-SMM provision in its entirety.
 - [1/23/23](#) Stipulation X.C.2.a.ii changed “District” to “Caltrans District” for consistency with elsewhere in the MOU.
- **Stipulation XI**
 - [1/23/23](#) Propose moving Transfers & Relinquishments (currently Stipulation XVI) to here so that it is closer to the Finding of Effect stipulations for clarity and re-ordering will also mean several subsequent stipulations will better mirror the equivalent references in the 106 PA. (See below for proposed edits to the text of the Transfers & Relinquishments stipulation).
- **Stipulation XI, Phased Approach**
 - [1/23/23](#) would be renumbered Stipulation XII.
- **Stipulation XII , Native American Human Remains**
 - [1/23/23](#) would be renumbered Stipulation XIII.
 - [7/13/23](#) Replaced references to archaeological excavation with “identification and evaluation.”
- **Stipulation XIII, Curation**
 - [1/23/23](#) would be renumbered Stipulation XIV.

- **Stipulation XIV, Discoveries Without Planning**
 - 1/23/23 would be renumbered Stipulation XV.
 - 1/23/23 Edited to rename this stipulation “Post-Review Discoveries” to mirror the 106 PA and reduce confusion as the stipulation discusses discoveries with planning as well as without planning.
- **Stipulation XV, Emergency Situations**
 - 1/23/23 would be renumbered XVI, same as the 106 PA.
 - 1/23/23 Added a provision for large-scale emergency notifications as per the 106 PA
 - 1/23/23 Added language that CSO, SHPO and FHWA (if applicable) should be notified as soon as feasible.

- **Stipulation XVI, Transfers & Relinquishments**

- 1/23/23 As noted above, propose moving this stipulation up so it would be Stipulation XI.
- 1/23/23 Also propose edits to the text of the stipulation that alter how it is organized to make the information clearer to Caltrans PQS, to eliminate redundant provisions, and to correct typos present in the 2015 MOU.
- 2/23/23 Added a provision to make transfers to Native American tribes No Adverse Effect with Standard Conditions similar to the existing FNAE-SC for CLGs. This proposed edit is in keeping with the Governor’s [EO N-82-20](#) as well as his [Statement of Administration Policy on Tribal Ancestral Lands](#), which states:

“it is the policy of this administration to encourage every State agency, department, board and commission (collectively, “entities”) subject to my executive control to seek opportunities to support California tribes’ co-management of and access to natural lands that are within a California tribe’s ancestral land and under the ownership or control of the State of California, and to work cooperatively with California tribes that are interested in acquiring natural lands in excess of State needs.”

- **Stipulation XIX, Administrative Stipulations**
 - 1/23/23 Reorganized so each has its own Stipulation as per the 106 PA. Unless otherwise specified, no changes to text other than minor universal edits.
 - 9/7/23 Stipulation XIX.C, Amendment (Now Stipulation XXI) edited to require consultation and signatory concurrence for amendments to appendices and agreement proper.
 - 1/23/23 Stipulation XIX.G, Duration (Now Stipulation XXV) edited to propose a 10 year duration for the new MOU and that Caltrans will initiate renewal efforts no later than 18 months before expiration, to reflect the 106 PA. The original MOU had a 5 year duration because it was a new agreement document and untested. Given that the MOU has been in effect at present for nearly 8 years without any major issues regarding its implementation, and the amount of staff time involved in renewing the MOU, and it is Caltrans’ opinion that a 10 year duration is appropriate. We would also like it to mirror the 106 PA duration so that outreach efforts for renewing both agreements can occur concurrently.

- [1/23/23](#) Note that if the 5 year duration is retained, the original MOU has a typo in this stipulation referring to “this ten-year period” that will need to be corrected.
- [1/23/23](#) Stipulation XIX.H (Now Stipulation XL) edited to reflect that the new MOU will take effect January 1, 2024.
- **Signatory and Concurring Parties:** updated to current names. Will further update if necessary, at time signatures are required.

APPENDICES

Appendix 1, PQS

- [1/23/23](#) No edits.

Appendix 2, Screened Undertakings

- [7/13/23](#) Added clarification that PQS may only determine a project to be exempt if, after screening, they determine that the project has no potential to affect state-owned historical resources.
- [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 project.
- [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 addition of screened class 31 to cover installation of single lane roundabouts within the existing roadway.

Appendix 3, Project Area Limits

- [1/23/23](#) Minor edit to delete spelling out of Memorandum of Understanding, as it has already been abbreviated in the Main Body as MOU.
- [1/23/23](#) Under Study Areas, specified “state-owned land” rather than “land” as the MOU only applies to state-owned resources.
- [2/23/23](#) Revised language to guide the development of single PAL and removed language referring to different PALs for built environment and archaeological properties.
- [2/23/23](#) Removed language guiding the delineation of boundaries by effect type within overall PAL.
- [1/23/23](#) Added language clarifying that an PAL should include the entirety of accessible right of way in the vicinity of a project.
- [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 Resources

- [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

- Edited to add a standard condition for vegetation management projects, reflecting proposed language in the MOU Main Body, Stipulation X.B.1.
- [2/23/23](#) Edited to add a standard condition for transfers or relinquishments to California Native American Tribes, reflecting proposed language in the MOU Main Body.
- [9/7/23](#) Further edited proposed provision to reflect the MOU main body stipulation.
- [1/23/23](#) Edited to reflect proposed edits to the 106 PA regarding “indirect effects” so that it refers to non-physical effects.
- 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 state-owned historical resource.**
- [1/23/23](#) Added clarification that ESAs “as a standard condition” may be applied.
- 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.”
- [7/13/23](#) For Vegetation Management ESAs, deleted “archaeological or cultural” so that it now reads “sites within the PAL.”
- [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.
- [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, Standard Mitigation Measures

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

Appendix 7

- [1/23/23](#) New Appendix to reflect similar appendix to 106 PA.
- [1/23/23](#) Renumbered Appendix 6.
- [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 state-owned archaeological resources, sacred/ceremonial areas, and traditional cultural places and landscapes, and that incorporating this information into the PRC 5024 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 PRC 5024 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