

Exhibit 2.17: Excess Property Transfers and Route Relinquishments

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Exhibit 2.17: Excess Property Transfers and Route Relinquishments

Introduction

Caltrans must comply with California Public Resources Code (PRC) 5024 whenever it transfers title to Caltrans-owned parcels out of its ownership. Transferring title includes the sale, donation, or trade of an excess parcel and relinquishment of a state route.¹ Compliance must be complete before the transfer or relinquishment can be placed as agenda items for consideration by the California Transportation Commission (CTC).

The 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 (5024 MOU) streamlines procedures for compliance with PRC 5024, including provisions for excess property transfers and relinquishments.

If the property to be transferred or relinquished contains resources that are listed on or eligible for the National Register of Historic Places (NRHP) or registered as or eligible for registration as California Historical Landmarks (CHLs), conditions such as historical covenants may be imposed, as necessary, to avoid an adverse effect.

Most transfers and relinquishments are not subject to NEPA, Section 106 or CEQA. See the Standard Environmental Reference Volume 2 (SERv2) Chapter 2 sections 2.7.12.4 and 2.10.1 for more information.

This exhibit discusses the procedures Caltrans uses to identify, evaluate and provide appropriate protections for historical resources to be transferred or relinquished, in compliance with the 5024 MOU and, when applicable, CEQA. The level of effort required for identification, evaluation and protection of historical resources largely depends on who will be the new owner of the property as well as any reasonably foreseeable future plans for the property.

¹ See Right-of-Way Manual Section 16.05.02.00.

Definitions

Unless specifically indicated otherwise, the following descriptions and definitions of terms apply throughout to this exhibit.

Built environment resources: architectural buildings, structures and objects (either individual or in groups such as districts) constructed by humans and used for any human activity.

PQS: Caltrans cultural resources specialists who have been certified as meeting the Caltrans Professional Qualifications Standards as described in Attachment 1 of the 5024 MOU and the Section 106 Programmatic Agreement (106 PA).² Only Caltrans staff can become PQS. Non-PQS may perform certain tasks under the 5024 MOU or the 106 PA as long as their work is overseen by PQS.

Master List of Historical Resources (Master List): A list of state-owned historical resources that are on the NRHP or registered as CHLs, and state-owned buildings and structures that have been determined eligible for the NRHP or eligible for registration as a CHL. The Office of Historic Preservation (OHP) maintains the Master List pursuant to PRC 5024 and it is integrated into the OHP database. State-owned historical resources on the Master List have the OHP historical resource status code “4CM.” It is a “virtual” list in that it is neither printed nor published. While nonstructural resources that have been determined eligible for the NRHP or as a CHL are still subject to PRC 5024, they are not included on the Master List.

Non-structural resources: sites that do not contain buildings, structures and objects, natural environments (whether occurring naturally or designed landscapes such as parks and tree rows), and archaeological sites.

Qualified consultants: cultural resource professionals who are not PQS but meet the Caltrans Professional Qualifications Standards as described in Attachment 1 of the 5024 MOU and the 106 PA.

² 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.

Coordination with Right of Way

When transferring property out of Caltrans ownership, District Right-of-Way staff follow the guidance described in Chapter 16 of the Right of Way Manual, which includes completing environmental compliance. Excess Land staff within District Right of Way initiates environmental compliance procedures with District Environmental staff as soon as they know “property may become excess.” Environmental compliance needs to be complete before Caltrans can request the CTC’s approval to transfer the title to real property out of its ownership. Therefore, it is important that District Right of Way and Environmental staff closely coordinate their efforts throughout the process.

CEQA: Excess Properties and Route Relinquishment

When CEQA applies to a property transfer or route relinquishment, Caltrans follows the procedures in Chapter 2 Section 2.7 for CEQA compliance and uses the 5024 MOU procedures as guidance. This may include evaluating resources located within a parcel to be transferred to determine whether they are historical resources for the purposes of CEQA.

Caltrans-owned resources that PQS or qualified consultants determined are not eligible for listing in the NRHP or as CHLs may be designated as historic by local agencies under their own preservation ordinances. Caltrans treats these resources as historical resources for purposes of CEQA and follows the appropriate procedures.

CEQA findings are documented in a Historic Resources Evaluation Report (HRCR) and can be combined in the same HRCR as the PRC 5024 findings under part 7 “CEQA Considerations.” If CEQA is not applicable, checking the appropriate box in the HRCR part 7 is sufficient.

PRC 5024: Excess Properties and Route Relinquishments

Caltrans has PRC 5024 responsibility for transfers and relinquishments of Caltrans-owned property even when the project is exempt from CEQA consideration. As with any other type of project or activity that has the potential to affect Caltrans-owned historical resources, the process may involve identifying, evaluating and assessing effects to Caltrans-owned historical resources. Stipulation XVI of the 5024 MOU describes the procedures specific to transfers and relinquishments. PRC 5024

compliance must be completed before the transfer or relinquishment is accomplished.

Caltrans uses the Historical Resources Compliance Report (HRCR)³ to document PRC 5024 findings. Either PQS or qualified consultants may prepare the HRCR and any supporting documentation required, but PQS must approve the documentation; see Chapter 2 Section 2.12 for more information on the approval process.

For property transfers and route relinquishments where there are no Caltrans-owned historical resources present or the only resources present qualify as exempt from evaluation in accordance with 5024 MOU Attachment 4, compliance with PRC 5024 can be as simple as PQS or qualified consultant checking the appropriate boxes on the HRCR form, obtaining the appropriate approvals, and filing the HRCR in the district, with a copy to the Headquarters Cultural Studies Office (CSO) PRC 5024 Coordination Branch (PRC 5024 Branch) Chief. The majority of property transfers and relinquishments are handled this way.

When the property transfer or relinquishment involves Caltrans-owned historical resources that are not exempt, including resources that are potential contributing elements to a historic district listed or determined eligible for the NRHP/CHL, the resources must be evaluated and cultural resources technical studies prepared to support Caltrans' findings and conclusions. These studies are appended to the HRCR. How the HRCR is processed under the 5024 MOU depends on whether the Caltrans-owned resources are on the Master List of Historical Resources (Master List) or not on the Master List.

The Master List includes NRHP/CHL/eligible buildings and structures; it does not include archaeological sites or non-structural resources and sites unless they are actually listed on the NRHP or are registered as a CHL, or state-owned resources assumed eligible for the NRHP or as a CHL for purposes of a project or activity only.

³ For Section 106 undertakings that include evaluations of Caltrans-owned historical resources or the transfer/relinquishment of Caltrans-owned historical resources as a protective or mitigation measure, Caltrans uses the Section 106 process and documentation to concurrently comply with PRC 5024.

Caltrans assesses effects to Caltrans-owned historical resources that are determined eligible regardless of Master List status and ensures their protection from adverse effects or mitigates unavoidable adverse effects, as appropriate.

Future Owner and Future Use

When historical resources are present or likely to be present, the time required to complete cultural resources studies for property transfers and relinquishment will largely depend on whom the property will be transferred to and any known future plans for the property, as these circumstances determine how the project is processed under the 5024 MOU and whether conditions imposed to avoid adverse effects or measures proposed to mitigate adverse effects are adequate. In rare cases where the transfer involves a Caltrans-owned building or structure listed on the NRHP, PRC 5027 may apply if the property will be subject to demolition, destruction or significant alteration and is being transferred to another public agency (see below). District Right-of-Way staff should provide information regarding the future owner and future plans for the property, if known, as soon as possible in order to ensure that sufficient time for environmental compliance is factored into the project planning process.

Identification and Evaluation of Caltrans-Owned Resources

Under the PRC 5024 MOU, Caltrans makes a good faith effort to identify Caltrans-owned historical resources that will be affected by the property transfer or relinquishment project. Resources may qualify as exempt from evaluation under Stipulation VIII.C.1 and Attachment 4 of the 5024 MOU. When resources are present that do not qualify as exempt, PQS or qualified consultants evaluated them using the NRHP and CHL criteria pursuant to Stipulation VIII.C.2 of the 5024 MOU. Eligibility determinations, whether eligible or not-eligible, are included in the HRCR for consultation with SHPO pursuant to 5024 MOU Stipulation VIII.C.6.

Archaeological Sites

Prior to transfer or relinquishment PQS or qualified consultants follow the standard procedures outlined in Chapter 5 to identify NRHP listed/eligible or CHL registered/eligible Caltrans-owned archaeological sites. For archaeological sites that were not previously evaluated, report in the HRCR what is known about any sites on the excess parcel, based on the pre-field research and field review. If possible,

Caltrans needs to conclude, based on all available information, whether the site(s) on the excess property potentially meets NRHP or CHL criteria, or whether it can be assumed NRHP/CHL eligible for purposes of the transfer project. At a minimum, the site(s) need to be recorded on a DPR 523A Primary Record.

SHPO recognizes that the cost of evaluating previously unevaluated archaeological sites can be very expensive and exceed what would be a reasonable and good faith effort to evaluate them, whether to conduct test excavations to determine NRHP/CHL eligibility needs to be considered on a case-by-case basis and will depend on what is already known about the resource through conducting background research and initial surveys; see Chapter 4 sections 4.5 and 4.6. Information about the resource would include tribal consultation on cultural values. Similarly, the conditions for transferring archaeological sites may vary on a case-by-case basis, and might include measures to ensure future evaluations to confirm NRHP or CHL eligibility.

Non-structural resources

If not previously evaluated and not exempt from evaluation, PQS and qualified consultants follow the standard procedures outlined in Chapter 2 and Chapter 7 to identify and evaluate Caltrans-owned landscapes, tree rows and other non-structural resources. Non-structural resources will not be placed on the Master List, even if Caltrans determines them to be eligible.

Built environment resources

If not previously evaluated and not exempt from evaluation, PQS and qualified consultants follow the standard procedures outlined in Chapter 2 and Chapter 7 to identify and evaluate Caltrans-owned buildings and structures (e.g., bridges, equipment yards, maintenance stations, roads and highways). For route relinquishments, the roads themselves could be historical resources. If Caltrans determines a built-environment resource to be eligible, Caltrans requests that SHPO place the resource on the Master List pursuant to PRC 5024(d).

Assessing Effects to Caltrans-Owned Resources

The level of effect to Caltrans-owned resources as a result of a property transfer or relinquishment can vary widely based on who the new owner will be. Transferring a historical resource out of state ownership, where it is subject to consideration under

PRC 5024 and other state laws, is a potential adverse effect, for example, while transfer to another state agency or a federal agency could have no effect at all. Other state agencies have the same responsibility to comply with PRC 5024 as Caltrans. Federal agencies have responsibilities under Sections 106 and 110 of the National Historic Preservation Act (NHPA) equivalent to Caltrans' responsibilities under PRC 5024 to protect and preserve NRHP listed and eligible properties.

It may be possible to impose conditions to avoid adverse effects. Future plans for the property, if known, need to be taken into consideration in determining whether the conditions are reasonable and can be enforced. When an adverse effect cannot be avoided, Caltrans proposes measures to mitigate the effect.

No State-Owned Historical Resources Affected

A finding of No State-Owned Historical Resources Affected pursuant to Stipulation IX.A of the 5024 MOU and PRC 5024(f) and PRC 5024.5 is appropriate for property transfer and relinquishment projects if one or more of the following applies:

- There are no Caltrans-owned cultural resources within the Project Area Limits (PAL)
- The only resources within the PAL qualified as exempt from evaluation under 5024 MOU Stipulation VI.A and Attachment 4.
- The only resources in the PAL were determined not eligible for the NRHP or for registration as CHLs.

The property is to be transferred or relinquished to another state agency or a federal agency.

Processing a Finding of No State-Owned Historical Resources Affected

Caltrans documents the finding in the HRCR and notes the name and/or location of the resource(s) as well as the name of the agency to whom it will be transferred or relinquished, when applicable. The District retains a copy of the HRCR, provides a copy to CSO, and notifies any interested parties of the finding, as appropriate, unless they have indicated that they do not wish to receive such documentation. A copy of the HRCR is included as an attachment to the Caltrans transmittal letter transferring the property to the recipient state or federal agency (See below).

Finding of No Adverse Effect – Standard Conditions- CLG

A Finding of No Adverse Effect with Standard Conditions- CLG in accordance with Stipulation X.B.1.c of the 5024 MOU is appropriate when the transfer or relinquishment project involves a Caltrans-owned resource that has been designated by a Certified Local Government (CLG)⁴ under its preservation ordinance or is a contributing element of a district designated under a CLG ordinance. As 5024 MOU Stipulation XVI.B.1 states, a Caltrans owned resource may be transferred or relinquished to a local agency or private owner without any other protective measures so long as the ordinance provides protection of the resource’s character-defining features. The designation must be in place prior to Caltrans transferring or relinquishing the resource.

Processing A Finding of No Adverse Effect with Standard Conditions-CLG

Caltrans documents the finding in an HRCR and includes a brief statement describing the local agency’s preservation ordinance, e.g. official name, legal citation in the local code. For example:

"Caltrans has determined that the transfer of the [name of resource] to [name] would result in a FNAE-SC: CLG pursuant to 5024 MOU Stipulations X.B.1.c because the resource is designated as historic by [local agency name], a Certified Local Government, under its preservation ordinance. The resource would continue to be protected by all applicable sections of this ordinance. Therefore, historical covenants or other conditions are not necessary. [Name of Caltrans PQS], who meets the Professionally Qualified Staff Standards in PRC 5024 Memorandum of Understanding Attachment 1 as a(n) [Indicate applicable Principal PQS level], has reviewed this proposed transfer and determined that the [local agency name] preservation ordinance provides appropriate protection for this historical resource."

A copy of the resolution is attached to the HRCR along with documentation describing the historical resource (e.g., Historical Resources Evaluation Report, DPR

⁴ A CLG is a general-purpose political subdivision with land-use authority, such as a city or county that has a historic preservation ordinance and commission, a system for identifying historic properties, enforceable legislation to designate and protect historic properties, and a public participation process. The National Park Service certifies the local government as meeting its CLG requirements and the SHPO oversees the CLGs to ensure they continue to meet these requirements.

523 forms and/or Character-Defining Features form). The District notifies any interested parties of the finding unless they have indicated that they do not wish to receive such documentation and sends the HRCR to CSO for approval. CSO has 15 calendar days to object to the finding, after which PRC 5024 review is complete. See below and Chapter 2 Section 2.10.4 for post-transfer/relinquishment procedures.

Finding of No Adverse Effect (Without Standard Conditions)

Transferring or relinquishing a Caltrans-owned historical resource to a local agency that is not a CLG or to a private or unknown owner has the potential to be an adverse effect. Local governments that are not CLGs do not have preservation responsibilities that are comparable to state agency responsibilities under PRC 5024, even under CEQA, nor are all local government activities that have potential for adverse effects considered projects under CEQA, such as ministerial activities that are statutorily exempt from CEQA (e.g., issuing demolition permits when the ordinance does not require appropriate board review). Private owners are under no obligation to comply with state or local cultural resources laws unless their actions involve public funding, permits or licenses that would trigger environmental review.

Reasonably foreseeable plans for the property should also be considered, if known, in assessing whether protective measures will adequately protect the historical resource.

A Finding of No Adverse Effect pursuant to Stipulation X.B.2 of the 5024 MOU is appropriate for transfers or relinquishments of a historical resource to non-CLG local governments, private parties or unknown owners when an adverse effect can be avoided through protective measures.

Protective measures may include:

1. Designation of the historical resource under a preservation ordinance.
2. Resolution from the local government committing it to recognize the resource as historic and designate it under a preservation ordinance.
3. Transferring the historical resource with a historical covenant/conservation easement.

CLG preservation ordinances have provisions to protect locally-designated historical resources, and require that private owners seek approval prior to making any changes or alterations that have the potential to adversely affect designated historical resources. Therefore, the local government's preservation ordinance must have provisions that are substantially equivalent to the requirements for CLGs, such as:

- a local eligibility criteria / designation process;
- design review guidelines;
- Preservation Commission and staff who meet professional historic preservation qualifications;
- use of the Secretary of the Interior's Standards for the Treatment of Historic Properties (SOIS)⁵;
- use of the California Historical Building Code (CHBC) on code-related issues;
- public participation process; and
- enforceable penalties for non-compliance.

When a Caltrans-owned historical resources is transferred or relinquished to a local government with a CLG-comparable preservation ordinance or to a private party or unknown owner subject to that preservation ordinance, the following protective measures are applicable:

- If the resource is already designated under the preservation ordinance, attach a copy of the designation to the HRCR.
- If the resource is not already designated, Caltrans or the prospective new owner can nominate it under the preservation ordinance prior to the transfer or relinquishment. Attach a copy of the designation to the HRCR.
- If designation of the resource cannot be accomplished prior to the transfer or relinquishment, Caltrans can obtain a resolution from the local government committing it to recognize the resource as historic and designate it under its preservation ordinance. Attach a copy of the

⁵ *Secretary of the Interior's Standards for Treatment of Historic Properties (SOIS)*. Caltrans uses the 1995 version by Weeks and Grimmer.

resolution to the HRCR. PQS must follow up with District Right of Way to ensure that the resolution is adopted.

Below are examples of how transfers are treated differently, based on the presence or absence of a local agency preservation ordinance:

CITY A is not a CLG but **has an existing preservation ordinance** that includes

- local eligibility criteria / designation process;
- design review guidelines;
- Preservation Commission and staff who meet professional historic preservation qualifications;
- use of the Secretary of the Interior's Standards for the Treatment of Historic Properties (SOIS);
- use of the California Historical Building Code (CHBC) on code-related issues;
- public participation process; and
- enforceable penalties for non-compliance.

Protective measures for transferring a state-owned historic building, bridge or archaeological site to City A or recipients other than state or federal agencies might include:

- Attaching a copy of the ordinance to the FNAE, if the resource is already designated.
- Nominate the historical resource under the ordinance prior to transfer if not already designated.
- Obtain a resolution from the city that commits the city to recognize the resource as historic and designate it under City A's preservation ordinance.
- Transfer the historical resource with a historical covenant/conservation easement.

Finding of No Adverse Effect is likely under 5024 MOU Stipulations X.B.2 and XVI.C.2

CITY B is not a CLG and **does not have a preservation ordinance**.

Protective measures for transferring a **NRHP/CHL listed or eligible archaeological site** to City B might include:

- Transferring the site with a permanent conservation easement.
- Obtaining a city resolution committing the city to recognize the site as a historical resource, preserve and maintain it in accordance with the SOIS and the CHBC, consider it a historical resource under CEQA, and consider it as a historic property for Section 106 purposes.
- If a potentially significant site has been identified, (e.g. considered NRHP/CHL eligible for purposes of the transfer), obtaining a commitment from City B that prior to any ground-disturbing activity, a qualified archaeologist will conduct an appropriate level survey to determine whether the site might be NRHP or CRHP eligible, and if it is, City B will commit to using appropriate measures to protect the site, as outlined in CEQA PRC 21083.2.

Protective measures for transferring **for a NRHP/CHL listed or eligible structure** to City B or recipients other than state or federal agencies might include:

- Obtaining a city resolution committing the city to recognize the structure as a historical resource, preserve and maintain it in accordance with the SOIS, require the city to use the CHBC for code-related issues, consider it a historical resource under CEQA, and consider it as a historic property for Section 106 purposes.
- Transferring the structure with a historical covenant/conservation easement.

Finding of No Adverse Effect or Finding of Adverse Effect with Mitigation are possible under 5024 MOU Stipulations X.B.2 or X.C and XVI.D.

If the historical resource will not be designated under the local government's preservation ordinance or the local government does not have a CLG-comparable preservation ordinance, the following measures may be appropriate:

Protective Agreements

If the property to be transferred is listed on or determined eligible for the NRHP or is registered/eligible as a CHL, or is a historical resource for the purposes of CEQA, PQS would coordinate with other Caltrans divisions (e.g., Right of Way, Legal) to obtain a city resolution committing the local government to recognize the resource as a historical resource, preserve and maintain it in accordance with the SOIS and the CHBC for code-related issues, consider it a historical resource under CEQA, and consider it as a historic property for Section 106 purposes.

If a potentially significant archaeological site has been identified that Caltrans is considering NRHP/CHL eligible for purposes of the transfer, the resolution would include a commitment that prior to any ground-disturbing activity, a qualified archaeologist will conduct an appropriate level survey to determine whether the site might be eligible for the NRHP or is a historical resource under CEQA, and if so, the municipality will commit to using appropriate measures to protect the site, as outlined in CEQA PRC 21083.2.

If the resource is a NRHP/CHL eligible building or structure, the resolution would include a commitment requiring that alterations, additions and demolitions be reviewed by qualified persons who meet the Secretary of the Interior's Professional Qualification Standards.

Attach a copy of the resolution to the HRCR. District PQS must follow up with District Right of Way to ensure that the resolution has been adopted.

Historical Covenant or Conservation Easement

Historical covenants or conservation easements are legally binding agreements between Caltrans and a new owner that place limitations in a deed. They are most often used when a resource is being transferred or relinquished to a private or unknown future owner, but may also be appropriate for a transfer or relinquishment to a local government in the absence of another preservation agreement (e.g., a preservation ordinance or resolution).

The historical covenant or conservation easement ensures that all future owners will recognize the property as a historical resource and will preserve and maintain its important historical qualities in accordance with the SOIS. For built-environment properties, it ensures that future owners will request use of the CHBC for code-related issues from the local building official and will require that alterations, additions and demolitions be reviewed by qualified persons who meet the Secretary of the Interior's Professional Qualification Standards.

In order to meet these conditions, Caltrans seeks a nonprofit group, organization or agency (also known as an assignee or covenantee) to "hold" the covenant or easement and monitor it by reviewing proposed alterations. The holder should have a board of directors and staff or consultants with practical knowledge of the SOIS and the capability of carrying out responsibilities under the covenant or easement in perpetuity. Caltrans formally delegates its historic preservation responsibilities to the holder in an Assignment and Assumption Agreement (AAA). Because the holder of the covenant or easement will incur costs to carry out its responsibilities, Caltrans should expect to pay a service fee or endowment, the amount of which is negotiated between Caltrans and the holder.

PQS would coordinate with other Caltrans divisions (e.g., Right of Way and Legal) to develop the covenant or easement in consultation with the new owner, if known, and the organization or agency that will hold the covenant or easement. SHPO reviews the draft covenant or easement if the subject property is on the Master List; CSO performs the review if the historical resource is not on the Master List (see Processing below). PQS may contact the PRC 5024 Branch Chief for example conservation easement/historical covenant language.

Terms commonly used in the documents sometimes can be confusing. In the covenant, Caltrans is initially identified as Caltrans but thereafter referred to as the DEPARTMENT/GRANTOR; the new owner is the GRANTEE; the historical resource is the PROPERTY; and the organization that has agreed to hold the covenant or easement and monitor it is referred to as the ASSIGNEE.

Similarly in the AAA, Caltrans is the DEPARTMENT/ASSIGNOR; the new owner is the GRANTEE; the property is the PROPERTY; and the organization that has agreed to hold the covenant or easement and monitor is the ASSIGNEE.

Those who sign the covenant or easement include:

- New owner(s)
- District Environmental Division Chief (or environmental staff legally delegated to sign for District Director)
- District Right-of-Way (ROW) Chief (or ROW staff legally delegated to sign for District Director)
- Caltrans District attorney (who approves the document as to form and procedure)
- Official with the organization that will become the covenant holder (Assignee), signs as acknowledging the covenant
- Notary(ies) Public (who need to notarize every signature on the covenant)

The same signatures are needed on the AAA, but the order is slightly different. On the AAA, Assignee is the first signature because the organization is taking on the responsibilities of the AAA, and the new owners sign last as acknowledging the document).

In addition to provisions for historic preservation, all conservation easements/historical covenants and AAA documents contain standard legal stipulations as paraphrased below.

Covenant Whereas Clauses and Now Therefore Clauses

- Acknowledgment that the new owner of the parcel also will become the owner of the historical resource that it is included in or determined to be eligible for inclusion on the National Register of Historic Places and is listed in the California Register of Historical Resources, along with the physical address of the property and its legal property description.
- Acknowledgement that the historic property possesses significant historical value and characteristics that are of great importance to new owner and to the people of county in which the property is located, and the people of the State of California.
- Acknowledgment that the new owner and Caltrans intend to preserve and protect the historical resource's historical values and Character Defining Features (CDFs) in perpetuity.

“Now, Therefore” clause: This clause states that the new owner: voluntarily enters into the covenant with Caltrans; the owner (and all future owners) assures Caltrans that the historical resource’s historical values and CDFs will be preserved, protected, enhanced and retained; and that the new owner acknowledges the receipt and sufficiency of the fact that the new owner (and all future owners) will carry out the permission and restrictions contained in the stipulations that follow.

Covenant Stipulations

- The new owner and all succeeding owners maintain and preserve all the historical resource’s CDFs. These architectural features may be listed and described in the stipulation or included as an attachment to the covenant. The list should clearly distinguish between the exterior features and the interior features to be protected. Most of the CDFs to be protected will be exterior features. There likely will be few or no interior CDFs for contributing properties to districts, but there may be more for individually listed or eligible properties. As a general rule of thumb CDFs to be protected are the “Most significant” and “Significant.” See Exhibit 7.1.
- New and future owners, in order to preserve and enhance those CDFs that make the property National Register eligible and California Register listed shall use the recommended approaches set forth in The Secretary of the Interior’s Standards for the Treatment of Historic Properties, found at 36 Code of Federal Regulations, Part 68 (and any amendments or modifications to them) to preserve and maintain the historical resource.
- New and future owners shall not undertake any type of construction, alteration, remodeling, relocation or demolition of the property that would affect its CDFs without the express prior written permission by a “fully authorized representative” of Caltrans or the organization holding the covenant (the Assignee).
- New and future owners shall permit Caltrans and/or its assignee, to inspect the property for the purpose of determining whether the obligations and duties set forth in the covenant are being observed: at time of sale or transfer, at time of any application for any building permit, or at any time Caltrans and/or its assignee chooses.

- In the event of the covenant is violated, Caltrans or its Assignee will give prior notice (typically 30 days) to the new or future owners stating that in addition to any remedy provided by law, Caltrans or its Assignee, may initiate legal action or proceedings to enjoin the violation and require the remediation of any changes made to the features, spaces or spatial relationships characterizing the historic aspects of the historical resource.
- The covenant shall run with the property and be binding upon Caltrans and its successor Assignee(s)—in case the organization originally agreeing to monitor the covenant cannot or will not continue that responsibility— and the new and future owners. Also, a statement needs to be included here that the new/future owners shall always include this covenant (either verbatim or by express reference) in any deed or other legal instrument “by which fee simple title or any other lesser estate in the Property or any part thereof is transferred or otherwise passes,” and that the new deed or other legal instrument shall be recorded in the County Recorder’s Office of the county in which the historical resource is located. This stipulation also includes a statement that if the new/future owners fail to comply with this provision, it does not “impair the validity of this covenant or limit its enforceability in any way.” Any of the future owners in interest or assigns, by accepting a deed, lease or other document that conveys an interest in the historical resource are deemed to have consented to, reaffirmed and agreed to be bound by all of the terms, covenants, restrictions and conditions of the covenant.
- Caltrans’s or its Assignee’s failure to exercise any right or remedy granted under the covenant “shall not have the effect of waiving or limiting the exercise of any other right or remedy or the use of such right of remedy at any other time.”
- The new owner, for itself and on behalf of future owners agrees and acknowledges that neither Caltrans or its Assignee is responsible for any damage or liability occurring by reason of anything done or omitted to be done by Caltrans or its successors, under or in connection with their obligations, duties or responsibilities set forth in the covenant.

- Caltrans understands and acknowledges that, as set forth in the Assignment and Assumption Agreement, it has permanently assigned, transferred, and released all of its obligations, responsibilities, and any liabilities stipulated in the covenant to (Include the name of organization that will be the Assignee monitoring the covenant.), its successors and assigns. Also, add a statement that the Assignee has agreed to and will assume and perform, comply with and discharge, each and every obligation, covenant, representation, warranty, duty and liability of Caltrans.
- The covenant shall be recorded in the County Recorder's Office of the county in which the historical resource is located after all parties to the covenant have executed (signed) the document.
- If any of the provisions of the covenant are invalidated by judgment or court order, it does not affect any of the other provisions, which shall remain in full force and effect.
- When the new owners executes (signs) the covenant, it constitutes conclusive evidence that the new owner has read and understood the contents of the covenant and agrees to be bound by its provisions, conditions, restrictions, and assignment, and to perform the obligations as they are stipulated in the covenant.
- The new owner(s) acknowledge that as buyers of the property they also have entered into a Right to Purchase Agreement (RTPA), which is incorporated by reference, pursuant to Government Code 54235, etc. seq. The RTPA places certain additional restrictions on the use of the property including, but not limited to, the requirement that new owner obtains written approval from Caltrans prior to commencing any substantial repairs to the property. The new owner acknowledges and agrees that the provisions of both the RTPA and this Covenant apply to the property with regard to the CDFs. Also, in the event that the RTPA and the covenant conflict, the more restrictive provision of the two agreements shall apply in order to give the greatest protection to the historical resource.

- Definitions and examples for the following terms as set forth in 36 CFR 68.2 Definitions and the National Parks Service National Register Bulletins are included as a stipulation: “preserve, preserving, and/or preservation;” “rehabilitate, rehabilitating, and/or “rehabilitation;” and “integrity.” These are included as three sub-paragraphs for the: 1) preservation definitions; 2) rehabilitation definitions; and 3) integrity definition.

AAA Whereas and Now Therefore Clauses

- Acknowledgment that the new owner will become the owner of the historical resource that it is included in or determined to be eligible for inclusion on the NRHP and is listed in the California Register of Historical Resources, along with the physical address of the property and its legal property description.
- Acknowledgment that the new owner and Caltrans are parties to a Historical Covenant and Notice of Restrictions Agreement (including the Agreement #XXXX and date it was signed) and is incorporated by reference and that the new owner has agreed to do or refrain from doing certain things to the historical resource in order to assure its preservation, protection, and enhancements of its CDFs. It also includes a statement that under the covenant, Caltrans as the covenant holder has taken on certain duties, rights and obligations relative to the historical resource.
- Acknowledgement that Caltrans has assigned all of its duties, rights and obligations under the covenant to its Assignee (the organization agreeing hold the covenant for Caltrans), and that the Assignee desires to assume these responsibilities under the covenant.
- Acknowledgement that Caltrans intends to pay a one-time service fee or endowment of the agreed upon dollar amount (this can vary) to the Assignee for the Assignee assuming in perpetuity all of Caltrans’s duties, rights and obligations under the covenant.
- “NOW, THEREFORE” clause: This clause states that in consideration of the foregoing recitals, which are specifically incorporated into this agreement [typically by now its abbreviation, AAA is used], and other good and

valuable consideration, receipt of which Caltrans acknowledges and the ASSIGNEE agrees to carry out the stipulations that follow:

Assignment and Assumption Agreement Stipulations

- Caltrans assigns and delegates all of its obligations, responsibilities, and duties in and to the covenant to its assignee and the assignee assumes and agrees to perform and carry out all the obligations and other responsibilities of Caltrans under the covenant.
- As the buyers of the property the new owner [who is named here] have also entered into a Right to Purchase Agreement (RTPA) [including the date], which is incorporated by this reference, and places certain additional restrictions on the use of the property, including, but not limited to, the requirement that Buyer shall not add any substantial improvements to the property without Caltrans or its Assignee's the prior express written consent. The stipulation also states that the new owner acknowledges and agrees that the provisions of both the RTPA and the covenant apply to the property and that in the event that the RTPA and the covenant conflict, the more restrictive provision of the two agreements shall apply in order to give the greatest protection to the property. The stipulation also states that Caltrans and its Assignee agree that Caltrans has retained all of the rights, duties and obligations described and set forth in that RTPA.
- There is a stipulation that reiterates that as a condition of the Assignee accepting the AAA and of its obligations, the Assignee, in perpetuity, will perform or observe all of the covenant's obligations. It also reiterates that Caltrans will pay the Assignee a one-time service fee of the agreed upon dollar amount (this amount can vary. While the earlier Whereas clause states Caltrans's intention to pay the see, this stipulation obligates Caltrans to pay it).
- In the event that the Assignee is unable to satisfy its obligations, duties and responsibilities that the AAA and the covenant require, the Assignee will notify Caltrans in writing within a preset time frame (typically 30 calendar days) of its inability to satisfy the terms of the AAA and the covenant. The Assignee, with Caltrans's prior written approval, may then assign its interest in the AAA and covenant and transfer the remainder of the service fee and its accrued interest to its Assignee, along with all the Assignee conditions, obligations and duties that

are in AAA and the covenant. The stipulation should include that Caltrans reserves the right to approve of the new Assignee and the current Assignee acknowledges this fact. Caltrans will give preference to a qualified agency or organization that has a board of directors, and staff or consultants with practical knowledge of the approaches in the SOIS.

Include a stipulation that neither Caltrans nor any of its officers or employees are responsible for any injury, damage or liability done or omitted to be done by the Assignee or future Assignees in connection with any work, authority or jurisdiction that were delegated to the current or future Assignee under the AAA. Also include a statement that Caltrans reserves the right to represent itself in any litigation in which Caltrans's interests are at stake.

- Include a stipulation that the AAA shall be governed by and construed in accordance with the laws of the State of California. Time is of the essence of this AAA. This AAA shall be binding upon and shall inure to the benefit of the parties and their successors and assigns. This AAA constitutes the entire agreement of the parties hereto on the matters covered. The invalidity or unenforceability of any provision(s) of this AAA shall not render any other provision(s) invalid or unenforceable.
- Include a stipulation that the AAA may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute but one agreement.
- Include a stipulation that the AAA shall be deemed effective upon the last of the dates that Caltrans and the Assignee sign, and provide that.

Both the easement/covenant and the AAA are filed with the applicable county recorder's office. District PQS must follow up with District Right of Way to ensure that the conservation easement/historical covenant has been executed and that both documents have been recorded.

Processing a Finding of No Adverse Effect (without Standard Conditions)

Caltrans documents a Finding of No Adverse Effect (without Standard Conditions) in an HRCR. The PQS or qualified consultant includes a brief description of the recipient

local agency's preservation ordinance (e.g. official name, legal citation in the local code), resolution, or draft historical covenant/conservation easement. For example:

"Caltrans has determined that the transfer of the [name of NRHP eligible/listed CHL registered/eligible property] to [local agency name] would result in a Finding of No Adverse Effect because the resource will be protected by [choose applicable instrument; delete those that do not apply] a historical covenant, conservation easement, resolution adopted by [name of recipient local agency]. The resource would continue to be protected by [choose applicable instrument; delete those that do not apply] historical covenant, conservation easement, resolution. [Name of Caltrans PQS], who meets the Professionally Qualified Staff Standards in PRC 5024 Memorandum of Understanding Attachment 1 as a(n) [Indicate applicable Principal PQS level] and has the appropriate education and experience, has reviewed this proposed transfer and determined that the [choose applicable instrument] historical covenant, conservation easement, resolution provides appropriate protection for this historical resource."

A copy of the ordinance/resolution/covenant/easement is attached to the HRCR along with documentation describing the historical resource (e.g., Historical Resources Evaluation Report, DPR 523 forms and/or Character-Defining Features form). The District notifies any interested parties of the finding unless they have indicated that they do not wish to receive such documentation, and sends the HRCR to CSO.

If the transfer or relinquishment involves Caltrans-owned historical resources not on the Master List, CSO has 15 calendar days to object to the finding, after which PRC 5024 review is complete.

If the project involves Caltrans-owned historical resources that are on the Master List, CSO forwards the documentation to SHPO for consultation under Stipulation X.B.2.c of the 5024 MOU. The SHPO has 30 calendar days to comment. If SHPO concurs, PRC 5024 review is complete. See below and Chapter 2 Section 2.10.4 for post-transfer/relinquishment procedures.

Finding of Adverse Effect

When an adverse effect cannot be avoided (e.g., Caltrans is unable to obtain historical covenants or other protective agreements, or protective measures would not be sufficient to protect the resource due to known or reasonably foreseeable future use of the property), Caltrans makes a finding of Adverse Effect in accordance with Stipulation X.C of the 5024 MOU and proposes measures to mitigate the adverse effect.

Finding of Adverse Effect- Standard Mitigation Measures for Archaeological Sites

Under Stipulation X.C.1 of the 5024 MOU, a Data Recovery Plan (DRP) may be proposed as a standard mitigation measure when the historical resource adversely affected is a Caltrans-owned archaeological site that is not on the Master List. The DRP must incorporate at a minimum all the bullet points outlined in 5024 MOU Attachment 6, including consultation with Indian tribes that may ascribe religious or cultural significance to the affected historical resource, or with other interested parties to determine whether and how the mitigation will adequately address the effects to these other values, as well as the appropriate methods for incorporating what is learned about the resource's significance into public outreach and education.

Other Mitigation Measures

Caltrans can propose other mitigation measures for archaeological sites when data recovery is not warranted or if standard mitigation measures do not apply.

Examples of mitigation measures for built-environment properties are described in Chapter 7 Section 7.12; the measures that would be most applicable for transfers and relinquishments are heritage documentation (HABS/HAER recordation) and those that incorporate public interpretation and outreach.

Processing the Finding of Effect

The finding of Adverse Effect is documented in an HRCR. Describe Caltrans' efforts to avoid the adverse effect and why they failed. Include a brief statement describing the proposed mitigation. For example:

"Caltrans has determined that the transfer of the [name of the historical resource] to [local agency name] would result in a Finding of Adverse Effect and that the adverse effect will be satisfactorily mitigated through the mitigation measures included as attachments to this HRCR. [Name of Caltrans PQS], who meets the Professionally Qualified Staff Standards in PRC 5024 Memorandum of Understanding Attachment 1 as a(n) [Indicate applicable Principal PQS level] and has the appropriate education and experience, has reviewed this proposed transfer and determined that the mitigation measures described in [name of Data Recovery Plan or HRCR attachment] provides appropriate mitigation for this historical resource.

The draft mitigation measures are included in the HRCR as attachments, in addition to the document describing the historical resource(s) to be transferred or relinquished (e.g., Historical Resources Evaluation Report, DPR 523 forms and/or Character-Defining Features form). The District notifies any interested parties of the finding unless they have indicated that they do not wish to receive such documentation, and sends the HRCR to CSO.

If the transfer or relinquishment involves Caltrans-owned historical resources not on the Master List, CSO has 30 calendar days to object to the finding, after which PRC 5024 review is complete.

If the project involves resources that are on the Master List, CSO forwards the documentation to SHPO for consultation under Stipulation X.C.2.b of the 5024 MOU. The SHPO has 30 days to review the finding. Caltrans should anticipate additional time for comment and consultation on proposed mitigation measures. Once the SHPO consultation is concluded and there is no objection, PRC 5024 review is complete. See below and Chapter 2 Section 2.10.4 for post-transfer/relinquishment procedures.

Public Interest or Controversy

When effects to state-owned historical resources—including transfers and relinquishments—are highly controversial or there is substantial public interest in the effects to the resources, SHPO is given the opportunity to comment on Caltrans' finding even if the resources involved are not on the Master List. The District sends

the Finding of No Adverse Effect or Finding of Adverse Effect with proposed mitigation measures to CSO; CSO forwards the documentation to SHPO.

The HRCR and the transmittal letter to CSO and SHPO must clearly describe the nature of the disagreement or objection regarding the proposed transfer or relinquishment, the type of Caltrans finding, and note that Caltrans is requesting SHPO's comments pursuant to 5024 MOU Stipulation X.E. Attachments should include any correspondence, communications, articles, or documents or other media relating to the public interest or controversy.

Disagreements and Objections

For Caltrans-owned historical resources that are not on the Master List, if CSO objects to a Finding of No Adverse Effect or a Finding of Adverse Effect and the issue(s) cannot be resolved, CSO must consult with SHPO under 5024 MOU Stipulation X.F for no more than 30 calendar days to come to an agreement. The SHPO's comments here are advisory.

For state-owned historical resources that are on the Master List, if CSO or SHPO disagrees or objects to Finding of No Adverse Effect or a Finding of Adverse Effect and the issue(s) cannot be resolved, CSO likewise consults with SHPO under 5024 MOU Stipulation X.F for no more than 30 calendar days to come to an agreement. If the SHPO determines that a disagreement regarding measures to mitigate an adverse effect cannot be resolved, pursuant to PRC 5024.5(d) the SHPO must request that the Office of Planning and Research (OPR) mediate the disagreement. OPR's decision is final and binding.

The HRCR and the transmittal letter to CSO and to SHPO must clearly describe the nature of the public interest or controversy regarding the proposed transfer or relinquishment, the type of Caltrans finding, and cite that Caltrans is requesting SHPO's comments pursuant to 5024 MOU Stipulation X.F. Attachments should include any correspondence, communications, articles, or documents or other media relating to the public interest or controversy.

PRC 5027: Legislative Approval for NRHP Listed State-Owned Resources

If a property transfer involves a Caltrans-owned building or structure that is listed on the NRHP being transferred to another public entity and would result in the demolition, destruction or significant alteration of the building or structure, legislative approval for the transfer in accordance with [PRC 5027](#) is required.

Because few Caltrans-owned buildings or structures are actually listed in the NRHP, this situation is rare. When PRC 5027 is applicable, however, Caltrans would want to consult with the SHPO early in the planning process to avoid project delays, as PRC 5024 compliance must be complete before the legislation is passed.

Allow enough time during the compliance process to determine whether there is an alternative to demolition, destruction or alteration, as well as to identify mitigation measures that are to be included in the legislation, should avoidance be determined imprudent or unfeasible.

Property Transfer Documents and Letters

After environmental compliance is complete, Caltrans prepares a transfer transmittal letter to the new owner. PQS should coordinate with District Right-of-Way staff to ensure that documents and the transmittal letters contain the appropriate language to address the historic nature of the NRHP/CHL listed or eligible resources on the property, including any environmental commitments made in compliance with PRC 5024. The letter and protection documents (e.g., historical covenants with AAA, conservation easements or city resolutions) identify by name(s) any NRHP listed/eligible or CHL registered/eligible resources on the property. Likewise, in the interest of full disclosure, Caltrans identifies in the letter whether the property contains any historical resources under CEQA, such as locally designated, California Register listed/eligible resources, or potentially NRHP-eligible archaeological sites. The letter also summarizes the protections that are conditions of the transfer and that are explained more fully in the transfer documents themselves; these will vary depending on who will be the new owner(s). A copy of the HRCR is attached to the transfer transmittal letter.

As with any legal document, staff should seek Caltrans legal counsel on the wording and legality of the transfer documents.

Federal Agencies

In addition to identifying the historical resources on the property, the transfer transmittal letter to the federal agency also states that because the resources on the property are NRHP listed or eligible, any actions or projects affecting them are subject to Section 106 and Section 110 of the NHPA and that for this reason, no other protections are necessary.

State Agencies

In addition to identifying the historical resources on the property, the transfer transmittal letter to the state agency also states that because the resources on the property are NRHP listed or eligible or are CHL-register or eligible, any actions or projects affecting them continue to be subject to PRC 5024, and as applicable, CEQA, and that for this reason, no other protections are necessary.

Local Agencies

In addition to identifying the historical resources on the property, the transfer transmittal letter to the local agency also includes a summary of the protective measures and commitments that are conditions of the transfer. Depending on the type of transfer and whether the local agency has a preservation ordinance with protections similar to PRC 5024 (e.g., use of the SOIS for the Treatment of Historic Properties, application of the CHBC), the summary would identify provisions in a city or county resolution, in a cooperative agreement between Caltrans and the agency, official adoption in the local ordinance, conservation easement, or historical covenant.

Private Owners

In addition to identifying the historical resources on the property, the transfer transmittal letter to the private owner – with a copy to the local jurisdiction and the local historical society or historic preservation organization, as applicable– also summarizes the provisions of the historical covenant and AAA, conservation easement, or other measures that are conditions of the transfer.

Post Transfer: Completing PRC 5024 Compliance

Caltrans provides follow-up notification to SHPO when Caltrans has completed the transfer of ownership of NRHP listed or eligible or CHL registered or eligible resources. The finalized protection documents that go to SHPO are copies of the

officially recorded covenants/AAA or conservation easements with the Office of the County Recorder's stamp, or officially adopted resolutions with the local government officials' signatures, and a DPR 523 form updated with the new owner's information. See Chapter 2 Section 2.10.4 for additional information.