

SECTION 106 PA APPENDICES

APPENDIX 1 CALTRANS PROFESSIONALLY QUALIFIED STAFF STANDARDS

As outlined in Stipulation III of this Agreement, all cultural resources studies carried out by Caltrans or its consultants must be conducted by or under the direct supervision of individuals who meet the Secretary of the Interior's Professional Qualifications Standards for the relevant field of study. The standards are designed to ensure program quality and satisfy federal mandates associated with compliance with Section 106 of the National Historic Preservation Act.

Caltrans meets these standards by certifying its cultural resources staff as Professionally Qualified Staff (PQS). In order to take full advantage of the provisions of this Agreement, Caltrans PQS must meet the standards in the appropriate field. Those not fully qualified as archaeological Principal Investigators (PI) or Principal Architectural Historians (PAH) may accomplish many important tasks with oversight, generally in the form of peer review or under direct supervision by qualified staff. The Chief of the Cultural Studies Office in the Headquarters Division of Environmental Analysis is responsible for certifying the qualifications of all Caltrans PQS. Minimum qualifications are listed below for cultural resources staff conducting various tasks.

ARCHAEOLOGICAL QUALIFICATIONS STANDARDS

Archaeological Crew Member

Qualified to participate in archaeological surveys and excavations under the direction of a qualified Lead Archaeological Surveyor or higher. Minimum qualifications:

- A minimum of six weeks of supervised field training (including at least three weeks each of excavation and field survey) in time blocks of at least one week duration (field school or equivalent)

and

- A minimum of two upper division college courses in archaeology.

Lead Archaeological Surveyor

Qualified to conduct and report archaeological surveys, and to prepare other compliance documents, with peer review provided by a qualified Prehistoric or Historical Archaeology PI to ensure document quality. Minimum qualifications:

- A bachelor's degree in anthropology with emphasis in archaeology or closely related discipline (such as history or earth sciences) and subsequent coursework in archaeology (a minimum of four upper division or graduate courses in archaeology required)

and

- At least six months of professional archaeological experience in California or Great Basin, including at least 12 weeks of California field survey experience

and

- Demonstrated ability to organize and conduct archaeological surveys, complete site record forms, and report on survey findings dealing with both prehistoric and historical archaeological resources.

Co-Principal Investigator—Prehistoric Archaeology

Qualified as a Construction Monitor, PI for Extended Phase I studies, Co-PI for Phase II and III excavations for work involving prehistoric archaeological resources, and to conduct consultant oversight and contract management, under the direction of a Prehistoric Archaeology PI. May author proposals, reports for Extended Phase I studies, and other compliance documents, with peer review from a Prehistoric Archaeology PI to ensure document quality. Minimum qualifications:

- Qualification as a Lead Archaeological Surveyor for Caltrans

and

- At least 12 months of professional experience or specialized training in prehistoric archaeology, including: 1) at least 10 weeks of California or Great Basin excavation experience under the supervision of a Prehistoric Archaeology PI; 2) at least four weeks of supervised laboratory experience on collections from prehistoric California or Great Basin sites; and 3) at least four weeks of excavation experience in a supervisory capacity on prehistoric California or Great Basin sites

and

- Demonstrated ability to carry archaeological research to completion, as evidenced by the timely completion of an excavation report or comparable study involving a prehistoric site or sites

and

- Understanding of the Section 106 process and familiarity with cultural resources policies, procedures, and goals, as demonstrated in reports and/or past performance.

Co-Principal Investigator—Historical Archaeology

Qualified as a Construction Monitor and as Co-PI for Extended Phase I, Phase II, and Phase III excavations involving historical archaeological resources, and to conduct consultant oversight and contract management, under the direction of a Historical Archaeology PI. May author reports that evaluate historical archaeological resources where no excavation is required to reach a conclusion about their eligibility and other compliance documents. That work must be peer reviewed by a Historical Archaeology PI to ensure document quality. Minimum qualifications:

- Qualification as a Lead Archaeological Surveyor for Caltrans

and

- At least 12 months of professional archaeological experience or specialized training dealing with historic-period resources including: 1) at least 10 weeks of excavation experience under the supervision of a Historical Archaeology PI; 2) at least four weeks of supervised laboratory experience on collections from historic sites; and 3) at least four weeks of excavation experience in a supervisory capacity on historic sites

and

- Demonstrated familiarity with California or Western U.S. history, documentary research, and oral history, as evidenced by upper division course work or a major research report or publication based on original research

and

- Demonstrated ability to carry archaeological research to completion, as evidenced by the timely completion of an evaluation or excavation report addressing a historic-period site or sites

and

- Understanding of the Section 106 process and familiarity with cultural resources policies, procedures, and goals, as demonstrated in reports and/or past performance.

Principal Investigator—Prehistoric Archaeology

Fully qualified under the Secretary of the Interior's standard for prehistoric archaeology to conduct all types of studies, including Extended Phase I, Phase II, and Phase III excavations, involving prehistoric archaeological resources and traditional cultural properties or cultural landscapes of a prehistoric or ethnographic nature. May author proposals, reports for Extended Phase I, II, and III studies, and other compliance documents, with peer review to ensure document quality. May conduct consultant oversight and contract management. Minimum qualifications:

- Graduate degree in anthropology, archaeology, or cultural resources management with an emphasis in prehistoric archaeology, as evidenced by appropriate coursework

and

- At least 16 months of professional archaeological experience involving prehistoric sites, including a minimum of one year of field experience, as follows: 1) at least 24 weeks of fieldwork under the supervision of a Prehistoric Archaeology PI, of which at least 12 weeks must be excavation work; 2) at least eight weeks of laboratory experience on collections from California or Great Basin sites supervised by a Prehistoric Archaeology PI; and 3) at least 20 weeks of field work in a supervisory capacity, of which at least eight weeks must be on California or Great Basin sites

and

- Demonstrated ability to carry out archaeological research to completion, as evidenced by the completion of a thesis, dissertation, or other comparable major study focusing on a prehistoric site or sites

and

- Ability to carry out the more complex and difficult aspects of the Section 106 process

and

- Understanding of Caltrans cultural resources policies, procedures and goals, as demonstrated in reports and/or past performance

and

- Familiarity with Caltrans cultural resources contracting policies and procedures.

Principal Investigator—Historical Archaeology

Fully qualified under the Secretary of the Interior's standard for historical archaeology to conduct all types of studies, including Extended Phase I, Phase II, and Phase III excavations, involving historical archaeological resources and historic-period traditional cultural properties or cultural landscapes. May author proposals, reports for Extended Phase I, II, and III studies, and other compliance documents, with peer review to ensure document quality. May conduct consultant oversight and contract management. Minimum qualifications:

- Graduate degree in anthropology, archaeology, cultural resources management, or a closely related field with an emphasis in historical archaeology, as evidenced by a minimum of 12 upper division semester units (or equivalent) in history and the theory and methods of historical archaeology, or equivalent knowledge as shown in a thesis or dissertation or major report evaluating historical archaeological properties

and

- At least 16 months of professional archaeological experience involving historical sites, including a minimum of one year of field experience, as follows: 1) at least 12 weeks of fieldwork under the supervision of a Historical Archaeology PI, of which at least 6 weeks must be excavation work; 2) at least 4 weeks of laboratory experience on collections from California sites, supervised by a Historical Archaeology PI; and 3) at least 20 weeks of field work in a supervisory capacity, of which at least eight weeks must be on California sites

and

- Demonstrated familiarity with California or Western U.S. history, documentary research, and oral history techniques, as evidenced by upper division course work or a major research report or publication based on original research

and

- Demonstrated ability to carry out archaeological research to completion, as evidenced by the completion of a thesis, dissertation, or other comparable major study focusing on a historic-period site or sites

and

- Ability to carry out the more complex and difficult aspects of the Section 106 process

and

- Understanding of Caltrans cultural resources policies, procedures, and goals, as demonstrated in reports and/or past performance

and

- Familiarity with Caltrans cultural resources contracting policies and procedures.

ARCHITECTURAL HISTORIAN QUALIFICATIONS STANDARDS

Architectural Historian

Qualified to evaluate historic properties, other than archaeological resources. May prepare evaluation reports for all types of non-archaeological resources and other compliance documents, and conduct consultant oversight and contract management, with peer review by a Principal Architectural Historian to ensure document quality. Minimum qualifications:

- A graduate degree in architectural history, art history, architecture, or a closely related field, with a concentration in American architecture; or a graduate degree in American history, public history, historic preservation, American studies, or a closely related field; or a bachelor's degree in one of the above disciplines, plus 12 months of full-time related professional experience in research, writing, teaching, interpretation, or other related professional activity

and

- Demonstrated ability to apply the practices of architectural history in the identification, evaluation, and documentation of historic properties in California or the United States; or demonstrated familiarity with U.S. history, documentary research, and oral history techniques, as evidenced by upper division course work or a major research report or publication based on original research

and

- Demonstrated ability to carry historical research to completion, as evidenced by the timely completion of a major research report or publication based on original research

and

- Understanding of the Section 106 process and familiarity with cultural resources policies, procedures, and goals, as demonstrated in reports and/or past performance.

Principal Architectural Historian

Fully qualified under the Secretary of the Interior's standard for architectural historians. Able to conduct all types of studies involving historic-period resources, including traditional cultural properties and cultural landscapes, other than archaeological properties. May author evaluation reports and other compliance documents, with peer review to ensure document quality. May conduct consultant oversight and contract management. May determine applicability of Environmentally Sensitive Areas as described in Attachment 5. Minimum qualifications:

- A graduate degree in architectural history, art history, architecture, or a closely related field, with a concentration in American architecture; or a graduate degree in American history, public history, historic preservation, American studies, or a closely related field, and at least 24 months of full-time related professional experience in research, writing, teaching, interpretation, or other related professional activity; or a bachelor's degree in one of the above disciplines, plus 24 months of full-time related professional experience in research, writing, teaching, interpretation, or other related professional activity

and

- Demonstrated ability to apply the practices of history or architectural history in the identification, evaluation, and documentation of historic properties in California or the United States; or demonstrated familiarity with U.S. history, documentary research, and oral history techniques, as evidenced by upper division course work or a major research report or publication based on original research

and

- Demonstrated ability to carry historical research to completion, as evidenced by the timely completion of a thesis, dissertation, or other comparable major study consisting of the design and execution of a historical study concerning a historic-period property or properties

and

- Ability to carry out the more complex and difficult aspects of the Section 106 process

and

- Understanding of Caltrans cultural resources policies, procedures, and goals, as demonstrated in reports and/or past performance

and

- Familiarity with Caltrans cultural resources contracting policies and procedures.

APPENDIX 2 SCREENED UNDERTAKINGS

Screened undertakings are classes of undertakings that have the potential to affect historic properties, but following appropriate screening, may be determined exempt from further Section 106 review under this Agreement. Caltrans PQS may only determine the undertaking to be exempt if, after screening, they determine that the project has no potential to affect historic properties.

This Appendix applies only when the undertaking is limited exclusively to one or more of the activities listed below. If the Caltrans PQS determines that the undertaking has potential to affect historic properties, additional Section 106 review will be required following the steps outlined in Stipulation VIII of this Agreement.

The Caltrans PQS is responsible for screening individual undertakings that fall into one or more of the classes of screened undertakings listed below to determine if the individual undertaking requires further consideration, or if it may be determined exempt from further review under the terms of this Agreement, as prescribed by Stipulation VII. Only Caltrans PQS may determine that an undertaking is exempt from further review as a result of screening.

Except for minor maintenance on historic bridges and tunnels, the undertaking will not qualify as exempt from further review if there may be historic properties present that could be affected. An undertaking will not qualify as exempt from review if conditions must be imposed to ensure that potential historic properties would not be affected.

All features of the undertaking, including the identification of mandatory and/or designated storage, disposal, or borrow areas, depth of disturbance, and construction easements, must be identified prior to the screening process. If additional features are added to a screened undertaking, the undertaking must be rescreened.

THE SCREENING PROCESS

The screening process may include one or more of the following procedures. The process is not limited to the procedures below, nor are all these procedures required for all undertakings. Screening should be appropriate to the specific complexity, scale, scope, and location of the undertaking. Screening may include:

- Literature/records review to determine potential for involvement of historic properties.
- Contacting California Native American, as defined in California Public Resources Code § 21073, Tribes who are traditionally affiliated with the project area and inviting them to consult on the undertaking.
- Field review of project area.
- Reviewing detailed project plans.

- Contacting local historical societies, or other potential consulting parties who may have concerns.
- Reviewing aerial photographs, Caltrans photologs, historic maps, or as-built records.
- Reviewing right-of-way, assessment parcel, or ownership data.
- Reviewing character-defining features of historic bridges and tunnels.

Based on the outcome of the screening process, the Caltrans PQS may determine that individual undertakings are exempt from further review as there is no potential to affect historic properties.

The Caltrans PQS prepares a Screening Memo to the project planner for inclusion in the Caltrans District project file to document completion of the Section 106 process for applicable classes of screened undertakings and no further review will be necessary.

CLASSES OF SCREENED UNDERTAKINGS

1. Pavement reconstruction, resurfacing, shoulder backing, or placement of seal coats.
2. Minor widening of less than one-half-lane width, adding lanes in the median, or adding paved shoulders.
3. Channelization of intersections or addition of auxiliary lanes.
4. Establishment of chain control areas, park-and-ride lots, or maintenance pullouts.
5. Minor modification of interchanges, and realignments of on/off ramps.
6. Minor utility installation, maintenance, or relocation.
7. Installation of noise barriers or retaining walls.
8. Addition of bicycle lanes or pedestrian walkways.
9. Storm damage repairs, such as culvert clearing or repair, disposal or stockpile locations, shoulder reconstruction, or slide or debris removal.
10. Repair of the highway and its facilities.
11. Modification of existing features, such as slopes, ditches, curbs, sidewalks, driveways, dikes, or headwalls, within or adjacent to the right of way.
12. Minor operational improvements, such as culvert replacements and median or side-ditch paving.
13. Addition or replacement of devices, such as glare screens, median barriers, fencing, guardrails, safety barriers, energy attenuators, guide posts, markers, safety cables, ladders, lighting, hoists, or signs.
14. Installation, removal or replacement of roadway markings, such as painted stripes, raised pavement markers, thermoplastic tape, or raised bars, or installation of sensors in existing pavements.

15. Abandonment, removal, reconstruction, or alteration of railroad grade crossings or separations or grade crossing protection.
16. Minor alteration or widening of existing grade separations where the primary function and utility remain unaltered.
17. Additions or alterations to existing buildings, such as work on or in office or equipment buildings, maintenance stations, warehouses, roadside rests, vista points, minor transit facilities, weigh and inspection stations, toll facilities, or state-owned rentals.
18. Restoration or rehabilitation of deteriorated or damaged structures, facilities, or mechanical equipment to meet current standards of public health and safety.
19. Any work on Category 5 bridges, including rehabilitation or reconstruction. Does not include bridge replacement.
20. Modification of traffic control systems or devices utilizing existing infrastructure, including installation, removal, or modification of regulatory, warning, or informational signs or signals.
21. Installation of freeway surveillance or ramp metering equipment.
22. Replacement of existing highway signs.
23. Removal or control of outdoor advertising.
24. Projects that eliminate non-fixed hazards, such as removal of objects on roadway, traffic accident cleanup, hazardous waste removal, or fire control.
25. Establishment, replacement, or removal of landscaping, vegetation, or irrigation systems on state or local public property, including highway and local roads rights of way and building sites.
26. Construction or repair of fish screens or ladders, springs, waterholes, or stream channels (e.g., clearing of debris from streams, ditches, or culverts).
27. Right-of-way activities such as sliver takes, perfection, hardship acquisition, or acquisition of scenic or conservation easements.
28. Joint or multiple use permits with other agencies or encroachment permits.
29. Preliminary engineering tests, such as seismic, geologic, or hazardous materials testing that involve buildings or structures or require trenching or ground boring.
30. Minor maintenance on historic bridges and tunnels.

APPENDIX 3 AREA OF POTENTIAL EFFECTS DELINEATION

In accordance with the Stipulations VI.B.8 and VIII.A of this Agreement, Caltrans will establish the Area of Potential Effects (APE) for undertakings covered by this Agreement. The Caltrans PQS and project manager are jointly responsible for describing and establishing an APE and will sign any maps or plans that define or redefine an APE.

When the guidelines below are followed, specific consultation with the SHPO regarding APE and level of effort will typically not be necessary. Consultation with the SHPO may be needed for large and complex undertakings, when there are issues of access for inventory and evaluation, when there is potential for visual or indirect effects, when there are concerns over delineating whole properties, or when there is public controversy such as potential for litigation, concerns expressed by outside parties, or issues related to Native American consultation. Caltrans shall consider the results of consultation with Indian tribes regarding identification of properties when delineating the APE.

APE DEFINITION

As defined in 36 CFR § 800.16(d), an APE is “the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.” An APE therefore depends on an undertaking’s potential for effects. Effects to be considered may include, but are not limited to, physical damage or destruction of all or part of a property; physical alterations; moving or realigning a historic property; isolating a property from its setting; visual, audible, or atmospheric intrusions; shadow effects; vibrations; and change in access or use.

APE BOUNDARIES

An APE delineates the boundaries within which it can be reasonably expected that a proposed undertaking has the potential to affect historic properties, should any be present. It may be the right of way itself or an area either more or less than the right of way, depending on the scope and design of the undertaking.

An APE developed under this Agreement should include the entirety of current or future right of way that will be accessible and available for use during the implementation of the any undertaking activities; however, an APE may extend well beyond the right of way. It must include all construction easements, such as slope and drainage easements, stormwater detention basins, off-site biological mitigation sites requiring ground disturbance, and mandatory or designated borrow and disposal sites. It may include project-related activity areas such as utility relocations, access roads, equipment storage or staging areas, or conservation or scenic easements. Consideration should be given for other jurisdictional areas, such as the U.S.

Army Corps of Engineers (Corps) permit area. The Corps permit area consists of those areas comprising the waters of the United States that will be affected by the proposed work and structures and uplands directly affected as a result of authorizing the work or structure.

EFFECT TYPES

Direct effects can be physical, such as ground disturbance and vibration from construction activities, or non-physical, such as the introduction of new visual or audible elements. Non-physical effects may extend beyond the right of way to encompass visual, audible, or atmospheric intrusions. These must be considered carefully when delineating an APE boundary, particularly for potential audible and visual effects, taking into account proximity and use of adjoining properties, the surrounding topography, and other aspects of a property's setting.

Noise: When considering potential noise effects, there must be a reasonable basis for predicting an effect based on an increase over existing noise level. Noise effects should be considered when a project would result in a new through lane or a substantial change in vertical or horizontal alignment. Temporary noise effects from construction activity or traffic diversions should also be considered as a potential effect.

Visual: Highways on new alignments, multi-level structures, elevated roadways, or new vertical elements are considered to have potential for visual effects if they could be out of character with or intrude upon a historic property or isolate it from its setting. Projects for improvement or expansion of existing transportation facilities that will not substantially deviate from existing alignment or profile are not expected to involve visual impacts.

Indirect effects are those caused by the undertaking that are later in time or farther removed in distance but are still reasonably foreseeable. Examples of indirect effects may include erosion within an archaeological site resulting from changes in drainage patterns due to an undertaking, potential looting resulting from increased access, or destruction of a building due to changes in ownership or neglect. These types of effects must also be considered carefully when delineating an APE, taking into account reasonably foreseeable future changes in land use or access to properties near the undertaking.

PROJECT CHANGES AND APE REVISIONS

Whenever an undertaking is revised (e.g., design changes, utility relocation, or additional off-site mitigation areas), including during construction, Caltrans PQS will determine whether the changes require modifying the APE. If an APE needs to be modified, either increased or decreased in scope, Caltrans is responsible for informing any consulting parties and completing additional studies or effects assessments as appropriate, consistent with the Stipulations of this Agreement. The APE shall be revised commensurate with the nature and scope of the changed potential effects.

APPENDIX 4 PROPERTIES EXEMPT FROM EVALUATION

Section 106 regulations require a "reasonable and good faith effort" to identify historic properties (36 CFR § 800.4[b][1]). The procedures in this attachment enable Caltrans PQS to concentrate their efforts on properties that have the potential to be historic properties by identifying categories of properties that have no potential to be a historic property.

Properties should be evaluated only if Caltrans PQS or appropriately qualified consultants reasonably determine that the property has potential for historic significance. Evidence of such potential consists of associations with significant historic events or individuals (Criterion A or B); engineering, artistic, design, or aesthetic values (Criterion C); information value (Criterion D); the presence of tribal or community concerns; or inclusion as a potential contributing element within a larger property requiring evaluation, such as a historic district.

This appendix defines categories of properties that do not warrant evaluation pursuant to Stipulation VIII. C.1 of this Agreement. Exempted properties may be documented, if documentation is warranted, at a level commensurate with the nature of the property [e.g., Primary Record form, Location Map, Memo, or Caltrans Cultural Resources Database (CCRD)].

ARCHAEOLOGICAL PROPERTIES (PREHISTORIC AND HISTORICAL)

Only Caltrans PQS or consultants who meet the Caltrans Archaeological Qualification Standards (t Appendix 1) for Co-Principal Investigator and above are authorized to determine that the archaeological property types or features listed below may be exempted from evaluation. Professional judgment should be used as to the level of identification and recordation. This exemption process does not include archaeological sites or other cultural remains or features that may qualify as contributing elements of districts. Additional documentary research may be needed to determine whether the property meets the exemption criteria, particularly when looking for a specific association

Archaeological Property Types and Features Exempt from Evaluation:

- Isolated prehistoric finds consisting of fewer than three items per 100 square meters
- Isolated historic finds consisting of fewer than three artifacts per 100 square meters (e.g., several fragments from a single glass bottle are one artifact)
- Refuse scatters less than 50 years old (scatters containing no material that can be dated with certainty as older than 50 years old)
- Features less than 50 years old (those known to be less than 50 years old through map research, inscribed dates, etc.)
- Isolated refuse dumps and scatters over 50 years old that lack specific associations
- Isolated mining prospect pits

- Placer mining features with no associated structural remains or archaeological deposits
- Foundations and mapped locations of buildings or structures more than 50 years old with few or no associated artifacts or ecofacts, and with no potential for subsurface archaeological deposits

ARCHITECTURAL AND HISTORICAL PROPERTIES

Certain architectural and historical property types are exempt from evaluation; additional types may be exempt from evaluation after review by a qualified Architectural Historian.

Architectural and Historical Property Types Exempt from Evaluation:

Historical Property Types 1, 2, and 3 will not require evaluation, except as noted. Only Caltrans PQS or consultants who meet the Caltrans Professional Qualifications Standards (Appendix 1) for Architectural Historian and above or Lead Archaeological Surveyor and above are authorized to determine which architectural and historical properties fall under Property Types 1, 2, or 3 and are therefore exempt from evaluation.

Property Type 1: Minor, ubiquitous, or fragmentary infrastructure elements

Note: The following list does not apply to properties 50 years old or older that could be potentially important, nor does it apply to properties that may contribute to the significance of larger historic properties such as districts or cultural landscapes.

Water Conveyance and Control Features:

- natural bodies of water providing a water source, conveyance, or drainage
- modified natural waterways
- concrete-lined canals less than 50 years old and fragments of abandoned canals.
- roadside drainage ditches and secondary agricultural ditches
- small drainage tunnels
- flood storage basins
- reservoirs and artificial ponds
- levees and weirs
- gates, valves, pumps, and other flow control devices
- pipelines and associated control devices
- water supply and waste disposal systems

Recent Transportation or Pedestrian Facilities:

- railroad grades converted to other uses, such as roads, levees, or bike paths
- light rail systems, including shelters, benches, and platforms

- bus shelters and benches
- airstrips and helicopter landing pads
- vista points and rest stops
- toll booths
- truck scales and inspection stations
- city streets, alleys, and park strips
- sidewalks, curbs, berms, and gutters
- bike paths, off-road vehicle trails, equestrian trails, and hiking trails
- parking lots and driveways

Highway and Roadside Features:

- isolated segments of bypassed or abandoned roads
- retaining walls
- curbs, gutters, and walkways
- highway fencing, soundwalls, guard rails, and barriers
- drains and culverts, excluding culverts assigned a Caltrans bridge number
- cattle crossing guards
- roadside, median, and interchange landscaping and associated irrigation systems
- street furniture and decorations
- signs and reflectors
- parking meters
- street lighting and controls
- traffic lights and controls
- highway operation control, maintenance, and monitoring equipment
- telecommunications services, including towers, poles, dishes, antennas, boxes, lines, cables, transformers, and transmission facilities
- utility services, including towers, poles, boxes, pipes, lines, cables, and transformers
- oil and gas pipelines and associated control devices

Adjacent Features:

- fences, walls, gates, and gateposts
- isolated rock walls and stone fences

- telephone booths, call boxes, mailboxes, and newspaper receptacles
- fire hydrants and alarms
- markers, monuments, signs, and billboards
- fragments of bypassed or demolished bridges
- temporary roadside structures, such as seasonal vendors' stands
- pastures, fields, crops, and orchards
- corrals, animal pens, and dog runs
- open space, including parks and recreational facilities
- building and structure ruins and foundations less than 50 years old.

Movable or Minor Objects:

- movable vehicles
- stationary vehicles less than 50 years old or moved within the last 50 years
- agricultural, industrial and commercial equipment and machinery
- sculpture, statuary, and decorative elements less than 50 years old or moved within the last 50 years.
- isolated mobile homes not within a mobile home park.

Property Type 2: Buildings, structures, objects, districts, and sites less than 30 years old

Properties less than 30 years old may be exempted from evaluation. If the age of a property is not readily discernible the date of construction may be confirmed by checking assessor's records or other sources, such as USGS quadrangle maps or building permits, or by consulting a qualified Architectural Historian.

Property Type 3: Buildings, structures, objects, districts, and sites so altered as to appear less than 30 years old

Substantially altered properties that appear to be contemporary structures may be exempted from evaluation. A qualified Architectural Historian should review altered properties if they are listed in a local survey of historical properties, or if the extent of alterations or the age of a property is not readily discernible.

Architectural and Historical Property Types Exempt from Evaluation after Review by Qualified Architectural Historians:

Historical Property Types 4, 5, 6, and 7, described below, may be exempted from evaluation after review by one of the following qualified professionals: Caltrans Architectural Historians or Principal Architectural Historians, or Caltrans consultants who have been certified as meeting Caltrans architectural historian professional standards.

Property Type 4: Buildings, structures, objects, districts, and sites 30 to 50 years old

Properties between 30 and 50 years old may be exempted from further evaluation. Consideration will be given to properties that may have achieved exceptional significance within the last 50 years, in accordance with National Register Bulletin 22.

Property Type 5: Buildings, structures, and objects moved within the past 50 years

Properties which have been moved are not usually eligible for the National Register, with the exceptions noted in “Criteria Consideration B: Moved Properties” of National Register Bulletin 15. Therefore, properties that were moved within the past 50 years may be exempted from evaluation. Properties moved more than 50 years ago shall be formally evaluated, unless they also qualify as property types exempted from evaluation (e.g., a building moved before its period of significance, but which has since lost integrity through alterations). Caltrans qualified Architectural Historians have discretion to identify and evaluate properties moved less than 50 years ago when there is demonstrable evidence to indicate that such identification and evaluation are warranted.

Property Type 6: Altered buildings, structures, objects, districts, and sites that appear to be more than 30 years old

Properties more than 30 years old that have been substantially altered may be exempted from evaluation. Such properties may include roads and highways with associated features other than bridges, and railroads with associated features other than buildings or bridges. However, altered properties should be documented if they are listed in a local survey of historical properties or if eligibility conclusions might be controversial.

Property Type 7: Post-World War II builders’ houses and housing tracts

Builders’ houses or tract houses (not including unique, architect-designed houses) and housing tracts constructed after World War II may be exempted from evaluation when sufficient historical research and reconnaissance survey have been conducted to determine that:

1. The tract as a whole has no demonstrable potential to meet any of the National Register criteria as a historic district, and
2. No portion of the tract has demonstrable potential to meet any of the National Register criteria as a historic district, and
3. The individual houses have no demonstrable potential to meet any of the National Register criteria.

Consideration of potential significance should be based on Tract Housing in California, 1945-1973: A Context for National Register Evaluation (Caltrans 2011).

APPENDIX 5 FINDINGS OF NO ADVERSE EFFECT WITH STANDARD CONDITIONS

This appendix identifies three standard conditions that can be used to make a finding of “No Adverse Effect with Standard Conditions” in accordance with Stipulation X.B.1(a-c). Caltrans may propose that additional standard conditions be included by revision of this attachment in accordance with Stipulation X.B.1(d).

ENVIRONMENTALLY SENSITIVE AREAS AS A STANDARD CONDITION

Environmentally Sensitive Areas (ESA) are locations of archaeological sites, cultural sites or built-environment properties within the APE that are to be protected through avoidance of Program activities. ESAs typically use fencing, flagging, signing, or monitoring to protect properties from direct physical damage by project activities.

Vegetation Management ESAs (VMESA) are locations of certain sites within the APE that are protected from adverse effects by restrictions on vegetation management actions, but do not require complete avoidance as with standard ESAs. Vegetation Management ESAs may only be used when an undertaking’s activities are limited to vegetation management in support of fire prevention. Consideration of eligibility in conjunction with VMESAs require CSO approval, pursuant to Stipulation VIII.C.4. Vegetation Management ESAs cannot be used to protect archaeological sites with delicate or easily breakable surface artifacts, such as historic-era can deposits. Activity within a VMESA must be limited to foot traffic and hand clearing of vegetation above ground level. Activities that may cause ground disturbance, such as tree dragging, root removal, or vehicle/equipment access, are not permitted within a VMESA.

Caltrans PQS in the appropriate discipline (or local agency with Caltrans PQS oversight) will develop and provide ESA and/or VMESA information to Project Development, Construction, and Maintenance Division personnel to protect properties during project activities through implementation of an ESA Action Plan. Project Development shall include ESA information in construction plans, contract provisions, the Environmental Commitment Record (ECR) and the Pending File of the project’s Resident Engineer (RE). During construction, the project RE shall ensure that contractors comply with the ESA requirements in the contract provisions. The Caltrans District Environmental Branch shall monitor construction and maintain contact with the RE on ESA compliance. For Local Assistance projects, Caltrans PQS shall ensure the local agency monitor their construction contractor to ensure compliance with all ESA requirements.

Archaeological sites that can be protected from any effects by ESA’s may be considered eligible for the purposes of the undertaking without subsurface excavation and/or surface collection in accordance with Stipulation VIII.C.3. Cultural sites that can be protected by ESA’s, as well as archaeological and cultural sites that can be protected from adverse effects by VMESAs, may be considered eligible for the purposes of the undertaking in accordance with Stipulation VIII.C.4.

ESAs as a Standard Condition may be applied to sites with cultural values that may be associated with non-material components (e.g. cultural site with significance under Criterion A)

only where the ESA or VMESA protects those values from all adverse effects. That determination must be made by a Principal Investigator in the applicable discipline (Prehistoric or Historical Archaeology), and as appropriate, after consultation with Indian tribes that may attach religious or cultural values to the property, or other consulting parties.

Built-environment properties, regardless of ESA protection, must be evaluated for National Register eligibility unless approved in consultation with CSO pursuant to Stipulation VIII.C.4. As ESA's are designed to protect properties from direct physical effects, they may only be applied to built-environment properties when a PQS Principal Architectural Historian determines that the undertaking will not cause non-physical effects to the built-environment property. If that potential exists, the Caltrans District shall proceed in accordance with Stipulation X.B.2.

The delineation of an ESA or VMESA may be used to determine a finding of "No Adverse Effect with Standard Conditions" in accordance with Stipulation X.B.1(a) or X.B.1(b), provided that all of the following conditions are met and have been approved by the appropriate Caltrans PQS:

- A. Adequate information is available to accurately delineate the property boundary in relation to the anticipated project impacts and to identify contributing features of the property. This information may be obtained from literature review, surface survey, subsurface testing, historical research, and/or consultation with Indian tribes.
- B. The scope and design of the undertaking are sufficiently developed and detailed to ensure that the property will be protected from all adverse effects.
- C. All protection measures are defined (e.g., signing, staking, fencing, monitoring provisions) and included in the final construction plans, contract provisions, Environmental Commitment Record (ECR) and RE's Pending File. For Local Assistance projects, Caltrans PQS shall ensure the local agency complies with all ESA requirements.
- D. A clear chain of command is established identifying specific tasks, responsibilities and contact information for each Caltrans or local agency staff, consultant or other party in the chain.
- E. An ESA Action Plan is developed to ensure that provisions for protection are carried out and will be documented in accordance with Stipulation XVIII. This ESA Action Plan shall be attached to the "No Adverse Effect with Standard Conditions- ESA" finding.

Delineation of an ESA or VMESA may also be used as an element of protection for a historic property when specifically provided for by a condition in a finding of "No Adverse Effect" pursuant to Stipulation X.B.2, or as part of resolution of adverse effects when specifically provided for in an MOA developed pursuant to Stipulation XI, Resolution of Adverse Effects.

Caltrans District PQS shall report all ESA/VMESA violations to CSO within 48 hours. Caltrans Districts shall report violations where properties are impacted in accordance with Stipulation XV.B. Post-Review Discoveries.

SECRETARY OF THE INTERIOR'S STANDARDS FOR THE TREATMENT OF HISTORIC PROPERTIES AS A STANDARD CONDITION

Use of the Secretary of the Interior's Standards for the Treatment of Historic Properties (SOIS) to avoid adverse effects may be considered a standard condition when an undertaking's activities are limited to the stabilization, maintenance, repair, rehabilitation, or alteration of historic properties and these activities are completed in a manner consistent with the SOIS, the applicable SOIS guidelines, National Park Service Preservation Briefs, and applicable Caltrans guidance.

Because the SOIS are used mainly to avoid adverse effects to historic built-environment properties, they must be reviewed and approved by a Caltrans Principal Architectural Historian. Although rarely used for archaeological and cultural sites that are listed on or eligible for listing on the National Register of Historic Places (NRHP), use of the SOIS may be applied only when deemed appropriate by a Principal Investigator in Prehistoric or Historical Archaeology.

Application of the SOIS may be used to determine a finding of "No Adverse Effect with Standard Conditions" in accordance with Stipulation X.B.1(c), provided that all of the following conditions are met and have been approved by the Caltrans PQS Principal Architectural Historian:

- A. Adequate information is available to identify the character-defining features of the historic property and accurately determine the scope of construction activities and their impacts on the property. Information on the historic property's character defining or essential physical features may be obtained from the NRHP nomination form for a listed property, the NRHP determination of eligibility documentation, including the property's DPR 523 form(s), or character defining features summary form, if one has been prepared.
- B. The scope and design of the undertaking are sufficiently developed and detailed to ensure that the proposed work can meet the SOIS, and an analysis of the proposed work and how it meets the specific SOIS is reviewed and approved by a Caltrans PQS Principal Architectural Historian.
- C. All appropriate protection and avoidance measures are defined, including whether any materials testing is necessary, in sufficient detail in the plans and specifications provided, or to be provided for PQS review, and this information included in the final construction plans, contract provisions, Environmental Commitment Record and RE's Pending File. For Local Assistance projects, Caltrans PQS shall ensure the local agency complies with all ESA requirements.
- D. A clear chain of command is established identifying specific tasks, responsibilities and contact information for each Caltrans or local agency staff, consultant or other party in the chain.
- E. A SOIS Action Plan is developed to ensure that provisions for protection are carried out and will be documented in accordance with Stipulation XVIII. This SOIS Action Plan shall be attached to the "No Adverse Effect with Standard Conditions– SOIS" finding.

During construction, the project RE shall ensure that contractors comply with the SOIS Action Plan guidelines in the contract provisions. The Caltrans District Environmental Branch shall monitor construction and maintain contact with the RE on the SOIS Action Plan compliance. For Local Assistance projects, Caltrans PQS shall ensure the local agency complies with all SOIS Action Plan requirements.

APPENDIX 6
CALTRANS LOCAL BRIDGE SEISMIC SAFETY RETROFIT PROGRAM

In accordance with Stipulation XVII, Caltrans shall comply with the following provisions for undertakings under the Caltrans Local Bridge Seismic Safety Retrofit Program (Seismic Retrofit Program). Caltrans shall follow applicable stipulations in this Agreement to determine the seismic retrofit project's potential to affect historic properties.

APPLICABILITY

Activities covered under the Seismic Retrofit Program include seismic retrofit work that is funded wholly or in part with monies from FHWA and that involve either the structural modification of an existing bridge structure or the replacement of a bridge structure by a newly constructed structure and any associated activities within the APE of an undertaking.

UNDERTAKINGS NOT REQUIRING SHPO OR ACHP REVIEW

The Caltrans District may approve the undertaking without further review by SHPO when the Caltrans District PQS determines that an undertaking under the Seismic Retrofit Program meets the below criteria. The Caltrans District PQS will document these determinations in writing and retain them in the files. CSO will include a record of such determinations in annual reports to SHPO pursuant to Stipulation XXVI.B.

- A. Will affect only Category 5 bridges or the types of properties that are exempt from evaluation as described in Appendix 4 to this Agreement; or
- B. Will be limited exclusively to those activities listed below limited only to the bridge itself:
 - 1. **Shear Blocks/Catcher blocks:** The addition of concrete extensions to existing abutments and bents to prevent the bridge superstructure from moving laterally (Shear Blocks), or to prevent the superstructure from slipping off the abutment in the case of longitudinal movement (Catcher Blocks). [Reference: National Highway Institute "Seismic Design of Highway Bridges -- Training Course," Figures 6.3-8, 6.3-9b.]
 - 2. **CIDH pilings:** The addition of concrete pilings, cast in holes drilled through existing abutments in order to strengthen bridge footings. [Reference: Caltrans Plan Sheet "Abutment Longitudinal Anchorage Details, Bridge No. 53-1854, 07-LA-90, P.M. 2.67."]
 - 3. **Fiber wrapping:** The wrapping of existing columns in fiberglass, which is then painted to match existing concrete.
 - 4. **Base isolation with no ground disturbance:** The replacement of existing rocker bearings with an elastomeric shock-absorbing system (base isolators) at the bearing points between the superstructure and substructure of bridges. [Reference: National Highway Institute "Seismic Design of Highway Bridges -- Training Course," Figure 6.3-9]

5. **Pre-stressing bent caps:** The addition of pre-stressing reinforcement to existing concrete bent caps.
6. **Restrainer systems:** The addition of pipe seat extensions or cable restrainers to prevent lateral or longitudinal movement of the bridge superstructure off the substructure. [Reference: National Highway Institute “Seismic Design of Highway Bridges -- Training Course,” Figures 6.3-9b, 6.3-30, 6.3-31, and Caltrans Plan Sheet “Part Plans ‘C’ and ‘D’, Exposition OH - Earthquake Upgrade, Bridge No. 53-704K, 07-LA-405, P.M. 29,85.”]]
7. **Steel Jacketing:** The placement of steel jackets around existing concrete columns, when the work conforms to the *Secretary of the Interior’s Standards for the Treatment of Historic Properties (SOIS Standards)* and has been approved by a Caltrans PQS Principal Architectural Historian as meeting these standards. [Reference: National Highway Institute “Seismic Design of Highway Bridges -- Training Course,” Figure 6.3-27, Caltrans Plan Sheets “Earthquake Upgrading, Bent Retrofit Details No. 6, Bridge No. 33-303H, 04-ALA-24/680/980,” “Earthquake Retrofit Phase II, Southbound Connector Overcrossing, Bent Details, Bridge No. 35-219, 04-SM-280, P.M. 20.9,” and “Earthquake Upgrading, Confinement Plate Details No. 1, 04-ALA-24/580/980.”]]
8. **Column Replacement:** In-kind replacement of existing column elements of bridges, when the work conforms to the *SOIS Standards* and has been reviewed by a Caltrans PQS Principal Architectural Historian as meeting these standards.
9. **Steel bracing:** The addition of steel cross-bracing between columns in multi-column bents.

DETERMINATION OF ELIGIBILITY: EXPEDITED RESOLUTION WITH SHPO

For properties not previously evaluated or that have been reevaluated, the Caltrans District will forward its written determination of eligibility and supporting documentation concurrently to CSO, FHWA where FHWA’s responsibilities have not been assigned to and assumed by Caltrans, and SHPO for review, pursuant to Stipulation VIII.C.6, and VIII.C.6.a and b. except that if SHPO objects to the determination of eligibility within 30 days of receipt of adequate documentation, the Caltrans District and CSO or FHWA as applicable, and any consulting party ties shall consult further with SHPO to reach agreement. If agreement cannot be reached within 15 days after receipt of the objection, CSO, or FHWA as applicable, shall obtain a final determination of eligibility from the Keeper pursuant to 36 CFR Part 63. The Keeper’s decision shall be final.

FINDING OF NO ADVERSE EFFECT

- A. The Caltrans District shall submit a finding of “No Adverse Effect with Standard Conditions” to CSO for review pursuant to Stipulation X.B.1.
- B. The Caltrans District shall submit a finding of “No Adverse Effect” pursuant to Stipulation X.B.2.
- C. If SHPO objects within 30 days following receipt of the finding, CSO will notify the Caltrans District and any consulting parties and consult further with SHPO, as necessary, for a period

not to exceed 15 days to determine whether there are feasible alternatives that may avoid adverse effects to the affected historic property. If the parties agree that it is feasible to modify the undertaking to avoid adverse effects, the Caltrans District shall ensure that the undertaking is modified appropriately and may request that CSO approve the modified undertaking without further review. If CSO or SHPO cannot agree that an adverse effect can be avoided, CSO shall initiate consultation pursuant to Stipulation X.D.

FINDING OF ADVERSE EFFECT-EXPEDITED DISAGREEMENT RESOLUTION

If the Caltrans District determines that the Seismic Retrofit Program undertaking will adversely affect a historic property or if an objection to a finding of “No Adverse Effect” cannot be resolved within 15 days, the Caltrans District will proceed in accordance with Stipulation X.C. If disagreements arise, the Caltrans District will proceed in accordance with Stipulation X.D, except consultation response times shall be 15 days instead of 30 days.

RESOLUTION OF ADVERSE EFFECT-STANDARD MITIGATION MEASURES

CSO, or FHWA where FHWA’s responsibilities have not been assigned to and assumed by Caltrans, is required to use Stipulation XI if one or more of the following apply:

1. SHPO objects to the use of Standard Mitigations Measures identified below to resolve adverse effects.
2. SHPO withdraws from consultation.
3. The undertaking has known public opposition.
4. The undertaking’s APE includes archaeological properties that will be adversely affected.
5. The undertaking will adversely affect a National Historic Landmark (NHL), in which case, Caltrans shall also notify the Secretary of the Interior through the National Park Service Regional NHL Program, per 36 CFR § 800.10(c).

If CSO, or FHWA as applicable, elects to enter into consultation as set forth Stipulation XI, or is required to as described in 1 through 5 above, CSO will submit to SHPO documentation supporting the finding of “Adverse Effect” and enter the consultation process set forth in Stipulation XI.

The Caltrans District, in consultation with CSO, SHPO and other consulting parties, may implement the Standard Mitigation Measures (SMMs) listed below to take into account the adverse effects of an undertaking on any NRHP eligible or listed bridge, building, structure, or object. Where the SMMs do not apply or other properties are adversely affected, the Caltrans District shall follow Stipulation XI. When the finding of “Adverse Effects” submittal includes appropriate provisions for completion of SMMs and no other non-standard mitigation measures are included, a Memorandum of Agreement (MOA) will not be required. Where SMMs provisions are not included, CSO and SHPO will consult to establish time frames for their completion and will prepare a MOA.

A. Recordation

Caltrans and SHPO may mutually agree to waive the recordation requirement if the affected historic property will be retrofitted in substantial conformance to *SOIS Standards*.

A recordation plan will not be required if the Caltrans District records the historic property using the Caltrans SER guidance for recording heritage resources. The Caltrans District shall keep the original archivally-safe documentation and provide electronic copies on CD/DVD to SHPO, the Caltrans Headquarters Transportation Library and History Center, the California History Room of the California State Library, and the appropriate local historical society or local repository as determined by the Caltrans District.

Otherwise, the Caltrans District will complete the following:

1. The Caltrans District shall ensure that historic properties are recorded prior to their demolition or alteration according to a recordation plan developed in consultation with SHPO and Caltrans. At a minimum, this recordation plan will establish recordation methods and standards and designate the appropriate archives for the deposit of this material.
2. The recordation plan shall consist of: i) large format archival photographs, prepared in accordance with the most current versions of *Photographic Specifications*, *Historic American Buildings Survey*, *Historic American Engineering Record* (National Park Service); and ii) written historical documentation, including photocopies of original plans and drawings when available and not deemed to be confidential information, prepared in accordance with the standards set forth in the most current versions of *Historic American Buildings Survey: Guidelines for Preparing Written Historical and Descriptive Data* (National Park Service) or *Historic American Engineering Record: Guidelines for Preparing Written Historical and Descriptive Data* (National Park Service). The Caltrans District shall keep the original archivally-safe documentation and provide electronic copies on CD/DVD to SHPO, the Caltrans Headquarters Transportation Library and History Center, the California History Room of the California State Library, and the appropriate local historical society or local repository as determined by the Caltrans District.

B. Marketing Plan

If the proposed undertaking requires the demolition or replacement of a NRHP eligible or listed bridge, building, structure, or object, the Caltrans District shall consult with CSO and SHPO, and if appropriate, the property owner for a period not to exceed ten (10) days to determine if that property can be relocated and a marketing plan implemented. If the parties determine that a marketing plan is feasible, CSO, the Caltrans District and SHPO will review the advertising schedule to ensure that notice is provided in appropriate publications and that the property is offered for no less than forty-five (45) days after its initial advertisement. CSO, in consultation with the Caltrans District and SHPO, shall evaluate all relocation and reuse offers prior to acceptance. If no acceptable offers are received that conform to the requirements for rehabilitation and maintenance as set forth in *SOIS Standards* and relevant SOIS guidance, the historic property, or portions of it, may be transferred without preservation covenants or

restrictions, or the Caltrans District may authorize its demolition following recordation and salvage, if appropriate. The Caltrans District shall document this determination in its files and provide CSO and SHPO with written notification.

C. Salvage

If the property will be demolished, the Caltrans District will consult with CSO and SHPO to determine whether the property contains significant architectural features that could be reused, displayed, interpreted, or curated. If such features exist, the Caltrans District in consultation with CSO and SHPO, and the property owner will develop measures to ensure that the selected features are removed in a manner that minimizes damage and are delivered to an appropriate party for curation and reuse.

D. National Register Reevaluation

Within ninety (90) days after relocation of a property that is eligible or listed in the NRHP, the Caltrans District shall consult with SHPO regarding the property's continued eligibility. For properties listed in the NRHP or determined eligible by the Keeper of the NRHP, the Caltrans District shall include the Keeper in the consultation. In the case of demolition of a property that is listed in the NRHP, the Caltrans District shall concurrently notify CSO and the SHPO to initiate the process for removal of the property from the NRHP as outlined in 36 CFR § 60.15.

APPENDIX 7 NATIVE AMERICAN CONSULTATION

Native American Tribes have special status in 36 CFR 800 consultation due to their unique relationship to archaeological properties, sacred/ceremonial areas, and traditional cultural places and landscapes. Further, tribes possess unique expertise regarding the nature, significance, and potential for effects to these properties. Incorporating this information into the Section 106 process is vital to successful project outcomes. This appendix provides guidance on meeting the Native American consultation requirements under this Agreement and 36 CFR 800 during project delivery; however, it is strongly recommended to conduct early coordination and regular engagement with tribal governments during planning phases outside of the project delivery process to facilitate effective and meaningful 36 CFR 800 consultation during projects.

Caltrans policy is to conduct 36 CFR 800 consultation with all California Native American Tribes, as defined in California Public Resources Code § 21073, who have expressed interest or concern on an undertaking. As stated in Stipulation IV, Caltrans recognizes the government-to-government relationship between the federal government and federally recognized Indian tribes, as defined at 36 CFR § 800.16(m), and shall conduct 36 CFR Part 800 consultation in a sensitive manner respectful of tribal sovereignty. Caltrans considers non-federally recognized California Native American Tribes who have expressed concern about the effects of an undertaking to have a demonstrated interest and to be additional consulting parties, in accordance with 36 CFR 800.2(c)(5). In the event of a project-specific objection to this policy by a federally recognized Indian tribe, Caltrans shall follow ACHP guidance on working with non-federally recognized tribes and consult with the SHPO/THPO, Indian tribe(s), additional consulting parties, and other agencies responsible for Section 106 on the undertaking to seek an acceptable outcome.

Caltrans' consultation efforts must provide California Native American Tribes a reasonable opportunity to identify their concerns about important resources, advise on the identification and evaluation of cultural resources (including those of traditional religious and cultural importance), articulate their views on the project's effects to such resources, and participate in the resolution of adverse effects. Caltrans' policy is to act in a manner that facilitates effective and timely consultation with tribes.

The consultation requirements set forth in this Agreement are triggered when an undertaking is programmed and funded. Within Caltrans this milestone is termed *Begin Environmental* and marks the point at which cultural resource investigations are authorized to begin for the specific undertaking. As it is Caltrans' policy to conduct early and effective Native American consultation, Caltrans PQS are expected to initiate project-specific outreach to tribal governments and their cultural or environmental leaders regarding their potential concerns pursuant to this Agreement as soon as the need is identified after initiation of the Begin Environmental milestone. For locally sponsored projects, Local agencies should initiate

outreach and consultation, in coordination with Caltrans, upon identifying Section 106 requirements for the project.

PROJECT SCREENING

Native American consultation is not required under this Agreement when an undertaking has been screened in accordance with Stipulation VII and Appendix 2 and determined to be exempt from further review. However, Caltrans PQS *may* choose to conduct consultation with California Native American Tribes as part of the screening process.

BASIC STEPS OF CONSULTATION

Caltrans PQS are responsible for seeking, discussing, and considering the views of California Native American Tribes, and seeking agreement with them on how historic properties should be identified, considered, and managed. Consultation is built upon the exchange of ideas, not simply providing notification or information [36 CFR 800. 16(f)]. Caltrans' consultation efforts should clearly identify the purpose of the communication and the requested information and provide a clear timeframe for responses. Caltrans PQS should be prepared to use the information and address the concerns received during consultation, and document how Caltrans' decision-making process incorporated that information. Recognizing the time and resource limitations that many tribes and tribal organizations experience, project-level communications should enable tribes to quickly identify pertinent cultural resource concerns or other topics relevant to the discussion.

1. Identify Potential Tribal Consulting Parties

Although federally recognized Indian tribes hold a special role under the National Historic Preservation Act, Caltrans conducts 36 CFR 800 consultation with all California Native American Tribes, regardless of their federal recognition status. Caltrans relies on the list of California Native American Tribes, maintained by the California Native American Heritage Commission (NAHC), to identify federally- and non-federally recognized, culturally affiliated tribal governments with whom Caltrans must consult concerning potential effects to tribal heritage resources.

Upon the initiation of the Begin Environmental milestone, submit a Native American contact list and Sacred Lands File (SLF) search request to the NAHC to obtain current tribal government contact information. This step may also be necessary for renewed tribal consultation efforts on existing projects due to the passage of time. In the event of delayed NAHC responses or other extenuating circumstances, Caltrans PQS may utilize a recent NAHC contact list obtained for a previous project in the vicinity of the current undertaking; however, the PQS should still submit a new NAHC request in the interest of maintaining current information, and to ensure that all Native American contacts are included in the consultation efforts. Caltrans will not refuse consultation due to an error or omission of a California Native American Tribe from the NAHC contact list on an undertaking in their ancestral territory.

Tribal organizations or persons who are *not* on the NAHC's tribal contact list may participate in the environmental review process as members of the public and may provide input and comments as part of the public review and comment periods associated with the project. As indicated in Stipulation V of this Agreement, certain individuals and organizations with a demonstrated interest in the undertaking may also participate as consulting parties due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties. In such cases, in consultation with the SHPO and the FHWA, Caltrans may identify other consulting parties, not listed on the NAHC's tribal contact list if they have a demonstrated interest in a project or a cultural resource.

2. Initiate Consultation

Send initial outreach letters to the contacts provided by the NAHC. These letters constitute the official initiation of 36 CFR 800 consultation under this Agreement. The letters may be transmitted in digital form via email or sent physically through certified mail. As part of developing relationships with local tribal governments, District PQS are encouraged to maintain a working knowledge of tribal representatives' preferred methods of contact.

Qualified consultants may physically send or email consultation correspondence and conduct project level coordination; however, **the initial outreach letters, as well as all subsequent official consultation letters, must be on Caltrans or a local agency project proponent's letterhead and signed by a Caltrans or local agency representative. The initial outreach letter must also include the following:**

- A statement indicating that the requirements for Section 106 review for the undertaking are being done in accordance with Caltrans' Section 106 Programmatic Agreement;
- A statement identifying Caltrans as the Section 106 lead for the undertaking;
 - If the undertaking is an oversight or Local Assistance project, the statement should also identify the project proponent.
- A brief project scope and description;
- A description of known cultural resources and/or areas of sensitivity in the Study Area or Area of Potential Effects (APE) that may be of interest to the tribe, including the results of a SLF search when being sent to the culturally affiliated tribes provided by the NAHC;
- A request for comments and concerns and a response period (usually 30 days); and
- A project vicinity and Study Area or APE map.

At a minimum, District PQS must make at least one attempt to follow-up on the initial outreach if no response is received from the tribal contact. It is preferable that the follow-up be done via a different medium than the initial outreach, such as a phone call or email. Depending on the

nature of the project, its potential to affect historic properties, and known interest or concerns of tribes in the vicinity of the project, additional follow-up attempts may be necessary.

3. Conduct Ongoing Consultation

Caltrans PQS have the responsibility to continue consultation with tribes throughout the life of a project whenever they express interest in or concern about an undertaking or about cultural properties that may be affected by an undertaking.

Minimally, consultation should occur in the following circumstances:

- When identifying historic properties or making any consideration of eligibility, evaluation, or finding of effect that involves historic properties to which a tribe may ascribe religious or cultural significance;
- When developing conditions on a finding of effect, avoidance and minimization measures, or resolution of adverse effects that involves historic properties to which a tribe may ascribe religious or cultural significance;
- Changes to a project's APE that may result in effects to new cultural resources or new effects to resources within the original APE;
- Event of post-review discovery, ESA breach, or unanticipated effect to cultural resources or sensitive areas within or adjacent to the APE that may be of significance to the tribe;
- When a project has been cancelled, completed, shelved, or unshelved from the project delivery process.

Topics of consultation may include, but are not limited to, the following:

- Tribally preferred methods of communication and notification protocols for effective consultation;
- Tribal monitoring;
- Appropriate methods for identification and evaluation of historic properties of significance to tribes, including the integration of tribal traditional knowledge or other forms of tribal expertise into PA processes and documentation;
- Tribal assessments of effects on historic properties;
- Tribally preferred methods and measures to avoid, minimize, and resolve adverse effects to historic properties;
- Appropriate methods and formats documenting the results of consultation. This may include consultation on the types of information tribes feel is appropriate for inclusion in Section 106 documentation or the development of tribally recommended technical documents;

- Appropriate methods of handling and storing cultural resources and final disposition of collections;
- Site security;

This consultation should be initiated in writing in the same manner as the initial outreach letters. The letters should indicate any relevant changes and new occurrences since your last consultation and clearly indicate the purpose of the consultation. Any documents associated with the consultation should be provided either physically, through email, or through easily accessible links.

SECTION 106 VERSUS GOVERNMENT-TO-GOVERNMENT CONSULTATION

For all federal-aid transportation projects, the FHWA (and the Army Corps of Engineers, when applicable) retain their own government-to-government consultation responsibilities with federally recognized Indian tribes outside the project-specific Section 106 process. As stipulated in this Agreement, nothing shall limit the ability of tribes to consult directly with any of the other parties to the Agreement (FHWA, Army Corps of Engineers, ACHP, SHPO) when they have a concern about an undertaking or about historic properties that may be affected by an undertaking. If a tribal request for government-to-government consultation with FHWA (or the Army Corps of Engineers, if applicable) comes to Caltrans, Caltrans is responsible for informing that signatory party immediately. Caltrans may participate in such federal government-to-government consultations, if requested; otherwise, Caltrans remains responsible for carrying out the remainder of responsibilities under this Agreement that are not the subject of federal government-to-government consultations.

LOCAL ASSISTANCE AND OVERSIGHT PROJECTS

Pursuant to the 326 and 327 NEPA Assignment MOUs, Caltrans serves in a federal agency oversight role for all locally sponsored projects when federal-aid highway funding for the undertaking is administered through the Department. Caltrans is ultimately responsible for ensuring compliance with Section 106 for those undertakings. This includes ensuring adequate and good faith 36 CFR 800 consultation between Caltrans, the local agency, and any interested California Native American Tribes.

As the primary party responsible for project design and implementation of an undertaking, the local agency is best suited for conducting project-specific consultation with tribes, especially when consulting on avoidance and minimization measures or other conditions that may lessen an undertaking's impact on historic properties. However, as Caltrans is ultimately responsible for compliance with Section 106, the Caltrans PQS assigned to the project must agree to allowing the local agency to conduct 36 CFR 800 consultation on behalf of Caltrans. In such cases Caltrans PQS must be informed of all consultation, may still provide direction and guidance to local agencies as needed or requested, and may still take part in consultation in a decision-making capacity.

Caltrans PQS may at any time, at their discretion, decide to take responsibility for conducting 36 CFR 800 consultation on local assistance projects. In such cases, Caltrans' decisions and determinations under this Agreement are binding and must be implemented by the local agency.

Regardless of the responsible parties, all official 36 CFR 800 consultation for local assistance projects must follow the format and guidelines provided in the *Initiate Consultation* section above. Districts are advised to assist and support local agencies in understanding their Section 106 responsibilities under this Agreement, establishing positive and effective working relationships with local tribal partners, and seeking opportunities to include local agency representatives in tribal engagement efforts to foster tribal diplomacy and collaboration at the local agency level.

DOCUMENTATION OF CONSULTATION

Under this Agreement, Caltrans is required to ensure that California Native American Tribes have a reasonable opportunity to identify concerns about historic properties of religious or cultural significance to them, advise on the identification and evaluation of those historic properties, articulate their views on the undertaking's effects on such properties, and participate in any resolution of adverse effects. Further, Caltrans is required to take into account and consider these views in its decision-making processes under this Agreement. Caltrans must thoroughly document its consultation efforts to demonstrate a good faith attempt at fulfilling these responsibilities.

Upon submittal to the SHPO or THPO, report packages documenting and requesting concurrence on determinations of eligibility and findings of effect must include, as a standalone attachment, a detailed chronological log (in table form) of communications with tribal consulting parties that have occurred for the undertaking. A sample consultation log is available as Exhibit 3.5 in the SER Volume 2. Consultation logs should at a minimum capture the names, dates, roles/titles, communication methods, and subjects discussed as part of consultation. The log should be accompanied by copies of all written correspondence among consulting parties, arranged in chronological order to the best extent possible.

In addition to a consultation log, cultural resource technical reports and compliance documents that involve historic properties of religious or cultural significance to a California Native American Tribe must include a narrative summary of relevant consultation. The narrative must include the following:

- Concise chronological accounting of the consultation process;
- Any tribal concerns raised and comments or information provided in relation to the subject of the report, including information regarding the nature of historic properties of concern, further identification needs, known tribal significance of a property, tribal recommendations on methods for further evaluation or significance determinations, tribal recommendations on conditions for protection and/or avoidance of impacts to

properties, tribal comments on effects of the project on historic properties, and tribal recommendations for resolving adverse effects to historic properties;

- How Caltrans took those comments, information, and concerns into account in its decision-making process;
- Any relevant conclusions resulting from the consultation.

Caltrans PQS are responsible for ensuring the consultation log, copies of correspondence, and narrative consultation discussions are complete and free of discrepancies. It is important to confirm a mutual understanding of comments and concerns with consulting parties to avoid later conflicts. Caltrans PQS must provide a reasonable opportunity for tribal review and comment on project documentation that includes historic properties of religious or cultural significance to the tribe.