

**FIRST AMENDED 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**

**WHEREAS**, the California Department of Transportation (Caltrans) currently controls and administers numerous buildings, bridges, facilities, roads, sites and structures, many of which are historical resources; and

**WHEREAS**, Caltrans has determined that its actions may affect state-owned historical resources; and

**WHEREAS**, Caltrans must comply with California Public Resources Code (PRC) Section 5024 et seq.; and

**WHEREAS**, in furtherance of the purposes and policies of the state's environmental protection laws, Caltrans is required by PRC 5024(a) and Governor's Executive Order W-26-92 (W-26-92), to formulate policies to preserve and maintain, when prudent and feasible, historical resources under its jurisdiction "in a spirit of stewardship and trusteeship for future generations," and is charged to the same end by its own departmental policies, and Caltrans is directed to consult with the California State Historic Preservation Officer (SHPO) in the development of these policies; and

**WHEREAS**, Caltrans, pursuant to W-26-92, has appointed the Division of Environmental Analysis Chief as the Caltrans Preservation Officer (CPO), whose responsibility is to ensure that state policies regarding the protection of its historical resources are carried out, and to direct the development and institution of feasible and prudent Caltrans policies and management plans to preserve and maintain its historical resources; and

**WHEREAS**, the CPO has delegated responsibility for compliance with PRC 5024 and W-26-92 to the Division of Environmental Analysis Cultural Studies Office Chief (CSO); and

**WHEREAS**, Caltrans has established policies and directives for the effective stewardship of state-owned historical resources, and proposes under this Memorandum of Understanding (MOU) to establish procedures for the adequate fulfillment of its stewardship responsibilities under PRC 5024 et seq. and W-26-92; and

**WHEREAS**, Caltrans maintains, and will continue to maintain, cultural resources units in Headquarters and in each of its districts that are staffed by professionally qualified cultural resources staff; and

**WHEREAS**, Caltrans is required under PRC 5024 to consult with the SHPO regarding its inventory of state-owned historical resources; and potential effects to state-owned historical resources in the Master List of Historical Resources (Master List) that are eligible for or listed in the National Register of Historic Places (NRHP) or eligible for or registered as California Historical Landmarks (CHL); and to notify the SHPO of potential effects to state-owned non-

structural historical resources that are eligible for listing in the NRHP or eligible for registration as a CHL; and

**WHEREAS**, the SHPO is authorized under PRC 5024, 5024.5 and 5024.6 to monitor the implementation of actions proposed by any state agency and to review any publicly funded projects undertaken by other governmental agencies that may affect state-owned historical resources; and

**WHEREAS**, Caltrans and the SHPO concur that this MOU is intended to promote Caltrans' stewardship of state-owned historical resources by reducing paperwork, increasing efficiency, providing for effective and timely coordination between Caltrans professionally qualified cultural resources and project management staff;

**WHEREAS**, the Memorandum of Understanding between the California Department of Transportation and the California State Historic Preservation Officer regarding compliance with Public Resources Code 5024 and Governor's Executive Order W-26-92 (2015; addended 2019) is superseded by this MOU;

**NOW, THEREFORE**, Caltrans and the SHPO agree that Caltrans shall carry out its responsibilities for stewardship of its state-owned historical resources under PRC 5024 et seq. and W-2-26-92 in accordance with the terms of this MOU.

## **STIPULATIONS**

### **I. APPLICABILITY**

A. This MOU shall apply to all projects, activities and permits that affect state-owned cultural resources.

B. Except as specified in the recitals above, this MOU does not negate or supersede any agreements between Caltrans and Indian Tribes in effect at the time the MOU is executed.

### **II. FEDERAL UNDERTAKINGS THAT INCLUDE STATE-OWNED HISTORICAL RESOURCES**

When a federal undertaking subject to Section 106 of the National Historic Preservation Act of 1966 (Section 106), as amended and its implementing regulations at 36 Code of Federal Regulations (CFR) Part 800, or a valid programmatic agreement (PA) that has been implemented pursuant to 36 CFR Part 800.14, includes state-owned historical resources within the undertaking's Area of Potential Effects, Caltrans may use the Section 106 PA<sup>1</sup> or other valid PA documentation to concurrently comply with PRC 5024. When the Section 106 or valid PA compliance requires consultation with the SHPO, Caltrans shall notify the SHPO that there are

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<sup>1</sup> The current Section 106 PA, Second 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.

state-owned cultural resources for which Caltrans is concurrently complying with PRC 5024. The SHPO shall use the information and documentation provided for the federal undertaking in its review and comments under PRC 5024.

### III. DEFINITIONS

For purposes of this MOU, the definitions provided in PRC 5020.1 (a), (b), (f), (h) through (l), (o) and (p) shall apply. In addition, the following definitions are provided for clarity:

**Historical Resources Compliance Report (HRCR):** the technical report that Caltrans uses to document compliance with state environmental law, including CEQA, PRC 5024 and W-26-92, for state projects and activities. The document constitutes the findings for these projects and activities, and serves as the documentation for consultation with the SHPO under PRC 5024.

**Indian Tribes:** The terms “Tribe,” “California Indian Tribe,” and “tribal” include all Federally Recognized Tribes and non-federally recognized tribes pursuant to the California Native American Heritage Commission’s “AB52” list.

**List of Adverse Effects:** This list, as cited in PRC 5024(b) and PRC 5024.5, includes alteration of the original or significant historical features or fabric, or the transfer, relocation, or demolition of a historical resource on the Master List.

**Master List of Historical Resources (Master List):** This list is maintained by the SHPO pursuant to PRC 5024 and includes state-owned historical resources:<sup>2</sup> that are listed in the NRHP; are registered as a CHL; and state-owned historical buildings, structures and objects that were officially determined eligible for inclusion in the NRHP pursuant to 36 CFR 38804.(c)(2), 36 CFR 60 or 36 CFR 63; or for eligible for registration as a CHL pursuant to PRC 5024(d) or 5020.4(a)(1). The Master List does not include archaeological sites or non-structural resources and sites that were officially determined eligible for inclusion in the NRHP or for registration as a CHL, nor does the Master List include any state-owned resources that are assumed eligible for the NRHP or as a CHL only for purposes of a project or activity.

**Project Area Limits (PAL):** the area, or areas, within which a state project or activity may cause changes in the character or use of historical resources, should any be present. When a project or activity subject to compliance with PRC 5024 is concurrently a federal undertaking subject to Section 106, the Area of Potential Effects shall be considered a PAL.

**Secretary of the Interior’s Standards and Guidelines for Archeology and Historic Preservation:** As defined in the California Code of Regulations (CCR) Title 14, Chapter 11.5, Appendix A, these standards and guidelines are part of the *Secretary of the Interior Standards and Guidelines for Historic Preservation Projects* (36 CFR 67), with accompanying interpretive guidelines. The standards and guidelines for archaeology and historic preservation contain “technical advice

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<sup>2</sup> State-owned historical resources include buildings, structures, archaeological sites, objects, historic districts, as well as other non-structural sites, such as tree rows, landscapes.

about archeological and historic preservation activities and methods” (CCR Title 14, Chapter 11.5, Appendix A).

**Emergency:** A sudden or unexpected event after which an immediate undertaking is necessary to (1) protect the life, safety, or health of the public; (2) minimize the extent of damage to the highway system and facilities; (3) protect remaining highway facilities; or (4) restore essential traffic.

**State-owned Cultural Resource:** any tangible or observable evidence of past human activity under Caltrans’ jurisdiction, *regardless of historical significance*, found in direct association with a geographic location, including tangible properties possessing intangible traditional cultural values.

**State-owned Historical Resource:** any building, structure, landscape, archaeological site, area or other non-structural resource under Caltrans’ jurisdiction that is eligible for or listed in the National Register of Historic Places, or is registered in or eligible for registration in as a California Historical Landmark that are under Caltrans’ jurisdiction.

**Direct Effect:** An effect that comes from the undertaking at the same time and place with no intervening cause. Direct effects can be physical, such as ground disturbance, or non-physical, such as the introduction of new visual or audible elements.

**Indirect Effect:** Effects caused by the undertaking that are later in time or farther removed in distance but are still reasonably foreseeable.

**Built Environment Resource:** Intact buildings, structures, objects and associated features, non-archaeological sites, and districts composed of these resources.

**Site:** The location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself possesses historic, cultural, or archaeological value regardless of the value of any existing structure.

**Archaeological Site:** A site that is primarily composed of surface and/or subsurface archaeological deposits, features, or other material remains.

**Cultural Site:** A site with historic or cultural and religious value independent of or in addition to other constituents. A cultural site is not dependent on the presence of archaeological materials or anthropogenic alteration of the landscape.

#### IV. CONSULTATION WITH INDIAN TRIBES

- A. Caltrans and the SHPO recognize the unique knowledge and expertise Indian Tribes may possess regarding their ancestral lands and historic properties and will consider that knowledge in making determinations and findings.
- B. Caltrans shall consult with Indian Tribes in accordance with Appendix 6 to this MOU.
  - 1. Caltrans Districts shall consult with the representatives designated or identified by the tribal government and shall commence consultation early in the project planning process in order

to identify and discuss relevant preservation issues, resolve concerns about the confidentiality of information on historic properties, and allow adequate time for consideration of such concerns.

2. Caltrans Districts have the responsibility to ensure that consultation continues with Indian Tribes throughout the PRC 5024 process prescribed by this MOU whenever such tribes express a concern about an undertaking or about historic properties that may be affected by an undertaking.

## **V. PROFESSIONAL QUALIFICATION STANDARDS**

All actions prescribed by this MOU that involve the identification, evaluation, analysis, recordation, treatment, monitoring, or disposition of state-owned historical resources, or that involve the reporting or documentation of such actions in the form of reports, forms, or other records, shall be carried out by or subject to the approval of Caltrans staff who meet the Professional Qualifications Standards in the appropriate discipline as set forth in Appendix 1 to this MOU, which satisfy the Secretary of the Interior's (SOI) Professional Qualifications Standards for the relevant field of study. Hereinafter, such Caltrans staff shall be referred to as Professionally Qualified Staff (PQS). However, nothing in this stipulation may be interpreted to preclude Caltrans or any agent or contractor thereof from using the services of persons who do not meet the standards, as long as their activities are overseen by Caltrans PQS in the appropriate discipline.

## **VI. DELEGATION OF CALTRANS ACTIONS UNDER THIS MOU**

### **A. Responsibility**

Consistent with the requirements of PRC 5024 and W-26-92, Caltrans remains legally responsible for ensuring that the terms of this MOU are carried out and for all findings and determinations made pursuant to this MOU.

### **B. Actions under PRC 5024(a), (b) and (e) and W-26-92**

CSO, with the assistance of the Caltrans Districts and in consultation with the SHPO and the State Historical Building Safety Board (SHBSB) as appropriate, shall carry out the following actions:

Develop and institute feasible and prudent policies and a management plan to preserve and maintain state-owned historical resources under Caltrans jurisdiction. In consultation with the SHPO, periodically review and revise as appropriate Caltrans historical resources management plans and policies.

1. For purposes of developing management plans and policies, state-owned historical resources are those defined in Section IV.J this MOU and those that are listed or determined eligible for listing in the California Register of Historical Resources.

2. Annually update the Caltrans inventory of state-owned historical resources under Caltrans jurisdiction.
  3. Provide an annual report to the SHPO on Caltrans progress in completing inventories, management plans, and policies, in accordance with Stipulation XIX.E.2 below.
- C. Actions under PRC 5024(b), PRC 5024(f), and PRC 5024.5.

Caltrans Districts shall ensure that the following steps are carried out with respect to projects and activities covered by this MOU. Each Caltrans District Director, or where Caltrans may deem it appropriate, the Caltrans Director, shall be responsible for ensuring that PQS in the appropriate discipline carry out the following actions:

1. Determine under PRC 5024 whether the project or activity is a type of activity that has the potential to affect state-owned historical resources.
2. Request expedited consultation, as appropriate.
3. Determine the project or activity's PAL, identify and evaluate properties within the PAL in order to determine their eligibility for the NRHP and/or as a CHL, and determine whether state-owned historical resources may be affected by the project or activity.
4. Apply the list of adverse effects to make a determination as to whether there is an adverse effect to a state-owned historical resource on the Master List.
5. Make a finding of "No State-owned Historical Resources Affected" when there are either no state-owned historical resources in the PAL, or the project or activity will have no effect on such resources.
6. Propose a finding of "No Adverse Effect with Standard Conditions" where imposing one or more of the standard conditions set forth in Stipulation X.B.1 will avoid adverse effects.
7. Propose a finding of "No Adverse Effect" with conditions other than the standard conditions" set forth in Stipulation X.B.1 that will avoid adverse effects.
8. Propose a finding of "No Adverse Effect" when the proposed project or activity will avoid adverse effects absent conditions.
9. Propose a finding of "Adverse Effect."

## **VII. SCREENED PROJECTS AND ACTIVITIES EXEMPT FROM FURTHER REVIEW**

In consultation with the SHPO, Caltrans has identified classes of projects and activities that will be addressed in accordance with Appendix 2 to this MOU. The projects and activities classified in Appendix 2 as Screened Projects and Activities will require no further review under this MOU when the requirements of Appendix 2 have been satisfactorily completed and it is determined

that there is no potential to affect state-owned historical resources and no feature of the project or activity necessitates further review pursuant to this MOU.

## **VIII. IDENTIFICATION AND EVALUATION OF STATE-OWNED HISTORICAL RESOURCES**

### **A. Project Area Limits**

Caltrans PQS shall determine and document the PAL for projects and activities covered by this MOU in accordance with Appendix 3 to this MOU. Nothing in this paragraph or in Appendix 3 shall preclude Caltrans from consulting with the SHPO on determining and documenting a PAL. Caltrans may establish a study area for use in conducting identification activities until a PAL can formally be delineated.

### **B. Identification**

Caltrans shall identify state-owned historical resources that may be located within a project or activity's PAL. Identification of state-owned historical resources shall be consistent with the policies and standards in the Caltrans Standard Environmental Reference (SER) Volume 2, and should be consistent with the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation*, SHPO guidance, National Register Bulletins and any other guidance, methodologies, agreements, or protocols that the signatories agree should be used to identify state-owned historical resources. Nothing in this paragraph precludes seeking consistency with any other pertinent guidance such as that provided by Indian Tribes or other state agencies. Caltrans Districts shall make a reasonable and good faith effort to identify and consult with any affected Indian Tribes to assist in identifying state-owned cultural resources to which they may attach religious and cultural significance that may be located within a project or activity's PAL or study area.

### **C. Evaluation**

1. Cultural Resources Exempt from Evaluation: Appendix 4 to this MOU lists the cultural resources that the signatories agree shall be exempt from evaluation provided the Caltrans PQS in the appropriate discipline determines all terms and conditions in Appendix 4 are satisfactorily met. However, in accordance with PRC 5024(b), state-owned resources identified as Property Types 3 through 7 in Appendix 4 to this MOU must be inventoried by recording the resource and its exempted resource type in the Caltrans Cultural Resources Database (CCRD), as well as identifying the resource and exempted resource type in the State-Owned Historical Resources Findings section of the HRCR. All other identified state-owned cultural resources shall be evaluated in accordance with Stipulation VIII.C.2.

2. **Evaluating Identified Cultural Resources:** Caltrans shall evaluate the historic significance of identified state-owned cultural resources using the NRHP<sup>3</sup> and CHL<sup>4</sup> eligibility criteria and following the guidance outlined in Stipulation VIII.B above. During the evaluation process, Caltrans Districts shall make a reasonable and good faith effort to identify and consult with any interested party as outlined in the SER Volume 2.
3. **Special Consideration for Certain Archaeological Resources:** If archaeological resources within a project or activity's PAL are protected from any potential effects by establishment and effective enforcement of an Environmentally Sensitive Area (ESA), as described in Appendix 5 to this MOU, the signatories agree that Caltrans may consider such archaeological resources to be NRHP and/or CHL eligible for the purposes of that project or activity. Caltrans may, as appropriate, consult with Indian Tribes that may attach religious or cultural significance to the state-owned historical resource to determine its significance. This consideration of NRHP and CHL eligibility without formal evaluation shall not extend to other projects or activities whose PAL includes the resource, unless through consultation Caltrans and the SHPO agree otherwise.
4. **Eligibility Considerations:** Subject to CSO approval, Caltrans Districts may consider state-owned cultural resources NRHP and/or CHL eligible for the purposes of a project or activity only when special circumstances preclude their complete evaluation, such as large resource size, or limited potential for effects. Caltrans shall consult with Indian tribes that may attach religious or cultural significance to the state-owned historical resource to determine the appropriate criteria for the consideration. This consideration of NRHP and/or CHL eligibility without formal evaluation shall not extend to other projects whose PAL includes the resource, unless through consultation Caltrans and the SHPO agree otherwise.
5. **Previously Evaluated Cultural Resources:** When previously evaluated state-owned cultural resources are identified within a project or activity's PAL, Caltrans PQS shall review those previous evaluations to determine whether they are still valid or re-evaluate as appropriate. Caltrans Districts may, as appropriate, consult with Indian Tribes and other interested parties during the review and re-evaluation process when cultural resources to which those tribes may attach religious or cultural significance are involved. The passage of time, changing perceptions of significance, eligibility under previously unconsidered NRHP criteria, new information, incomplete or erroneous prior evaluation, and errors of fact warrant such review and may require Caltrans to re-evaluate the cultural resources.
6. **Consulting the SHPO:** The Caltrans District shall submit the documentation such as the HRCR containing the conclusions of NRHP and/or CHL eligibility and supporting documentation to the SHPO for comment, with concurrent submittal to CSO.

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<sup>3</sup> PRC 5020.1(l) and PRC 5024.1(c)

<sup>4</sup> PRC 5020.1(i) and 5021



- a. If the SHPO has not responded to Caltrans within 30 calendar days after receipt, Caltrans may either extend the review period in consultation with the SHPO or proceed to the next step prescribed by this MOU, based upon Caltrans' conclusion of NRHP and/or CHL eligibility. Confirmation of date of receipt as the basis for determining the start of the 30-day review period may be obtained through the SHPO database, a mail delivery receipt, or written or documented oral communication from the SHPO. If the 30-day period expires without SHPO comment or agreement to extend the review period, the Caltrans District may proceed to the next step prescribed by this MOU upon notification to the SHPO and CSO via e-mail or other written communication.
  - b. Disagreements regarding the NRHP and/or CHL eligibility of cultural resources shall be governed by PRC 5024, except in the event that the SHPO disagrees, the Caltrans District shall promptly notify CSO. CSO and the Caltrans District shall consult with the SHPO to resolve the disagreement within 30 days. If the disagreement is resolved, the agreed upon finding shall stand and Caltrans shall proceed to the next step in accordance with those requirements prescribed by this MOU. If the disagreement is not resolved, the SHPO's determination shall be final and binding for purposes of PRC 5024 and 5024.5 only.
7. Notifying Indian Tribes and interested parties: When a Caltrans District has been in consultation with an Indian Tribe or interested parties on the NRHP and CHL eligibility of a property, the Caltrans District shall notify and provide documentation to the Indian Tribe or interested parties of Caltrans' eligibility conclusion concurrent with submittal to the SHPO, unless the Indian Tribe or interested parties have indicated they do not wish to receive such documentation.

## **IX. FINDING OF EFFECT**

- A. Finding of No State-Owned Historical Resources Affected Pursuant to PRC 5024(f) and PRC 5024.5
1. Where Caltrans has consulted with Indian Tribes or interested parties concerning the NRHP or CHL eligibility of state-owned historical resources, Caltrans shall consult with those Indian Tribes or other interested parties on the potential effects of the project or activity. Caltrans shall take their views into account in making its findings.
  2. If the Caltrans District finds either that no state-owned historical resources are present, or that state-owned historical resources are present but the project or activity will have no effect on them, the Caltrans District shall document the finding in the HRCR and retain a copy in the District file in accordance with Stipulation XVII. The Caltrans District, as appropriate, shall notify any interested parties cited in Stipulation IX.A.1 of the finding and make documentation available to them unless they have indicated that they do not wish to receive such documentation. Following satisfactory completion of these steps, no further review pursuant to this MOU is required.

B. Finding of State-Owned Historical Resources Affected Pursuant to PRC 5024(f) and PRC 5024.5

If the Caltrans District finds there are state-owned historical resources that will be affected by the project or activity, the Caltrans District shall comply with Stipulation X.

**X. ASSESSMENT OF EFFECTS PURSUANT TO PRC 5024(F) AND PRC 5024.5**

A. Assessment of Effects

The Caltrans District shall assess whether a project or activity may adversely affect a state-owned historical resource by using the list of adverse effects defined in Stipulation IV.D, will propose findings pursuant to Stipulations X.A, X.B, and X.C. The Caltrans District shall take into account the views provided by any Indian Tribe and other interested parties or the public.

B. Finding of No Adverse Effect

Pursuant to PRC 5024(f) and PRC 5024.5 Caltrans and the SHPO agree that in order to avoid adverse effects to state-owned historical resources, the Caltrans District may propose a finding of “No Adverse Effect with Standard Conditions” (FNAE-SC) when the appropriate standard conditions are imposed in accordance with Appendix 5 to this MOU and the finding is documented in the HRCR. The Caltrans District may propose a finding of “No Adverse Effect” (FNAE) if: none of the project or activity’s anticipated effects constitute an adverse effect identified in the list of adverse effects defined in Stipulation IV.D; non-standard conditions are imposed to avoid adverse effects; or the Caltrans District has developed a plan for managing any post-review discoveries that includes decision thresholds and procedures that would be implemented in accordance with Stipulation XV.

**1. Finding of No Adverse Effect with Standard Conditions (FNAE-SC)**

The Caltrans District shall submit the HRCR containing its proposed finding and supporting documentation to CSO for review. The Caltrans District shall concurrently provide documented notification of the proposed finding to any Indian Tribe or other interested parties that have expressed views regarding potential effects to state-owned historical resources. If within 15 calendar days of receipt CSO does not object to the proposed FNAE-SC finding, the project or activity shall not be subject to further review under this MOU. CSO shall provide summary notification to the SHPO of all FNAE-SC findings in accordance with Stipulation XIX.E.2.

- a. Environmentally Sensitive Areas (ESAs): An FNAE-SC-ESA is appropriate when a project or activity’s effects to state-owned historical resources, or properties considered to be eligible pursuant to Stipulation VIII.C.3 or 4, will be avoided by designation and enforcement of ESAs as described in Appendix 5 to this MOU. Caltrans will consult with Indian Tribes that attach religious or cultural significance to the property or other interested parties, if any, to determine whether an ESA will adequately protect those

values without other conditions or mitigation. The results of that consultation will determine whether a FNAE-SC-ESA applies.

- b. Vegetation Management ESA (VMESA): A finding of NAE-SC-VMESA is appropriate when an undertaking's work is limited to vegetation management actions in support of fire prevention and adverse effects to historic properties, or properties considered to be eligible pursuant to Stipulation VIII.C.4, will be avoided by designation and enforcement of VMESAs as described in Appendix 5 to this Agreement. Caltrans will consult with Indian Tribes that attach religious or cultural significance to the property or other interested parties, if any, to determine whether a VMESA will adequately protect those values without other conditions or mitigation. The results of that consultation will determine whether a NAE-SC-VMESA applies.
- c. Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (1995), Weeks and Grimmer (SOIS)<sup>5</sup>: An FNAE-SC-SOIS is appropriate when a project or activity's work is limited to the rehabilitation, maintenance, repair, stabilization or alteration of the state-owned historical resource(s) and is completed in a manner consistent with the SOIS, as described in Appendix 5 to this MOU.
- d. Designation of a state-owned historical resource under a Certified Local Government ordinance (FNAE-SC-CLG Designation) for the transfer or relinquishment of a state-owned historical resource: A FNAE-SC-CLG Designation is appropriate and the effects of the action may be considered not adverse when Caltrans transfers or relinquishes to a local agency or private owner, a state-owned historical resource that has been designated by a CLG under its preservation ordinance—whether the resource is individually designated or is a contributing element of a district—and that ordinance provides protection of the resource's character-defining features. When Caltrans nominates its state-owned historical resource for local designation under a CLG preservation ordinance, such designation must be completed prior to Caltrans transferring or relinquishing that resource.
- e. Transfer or relinquishment of state-owned historical resources to Indian Tribes (FNAE-SC-CNAT): A FNAE-SC-CNAT is appropriate and the effects of the action may be considered not adverse when Caltrans transfers or relinquishes a state-owned archaeological historical resource to an Indian Tribe when the protection of the state-owned historical resource is provided for in a conservation easement held by an accredited land trust or when the resource is part of a property to be transferred or relinquished will be held in trust by the federal government. A draft conservation

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<sup>5</sup> CEQA Guidelines at PRC 15064.5(b)(3)

agreement or fee-to-trust application submitted to the Bureau of Indian Affairs must be completed prior to Caltrans transferring or relinquishing the resource.

- f. Additional Standard Conditions: CSO may propose the adoption of additional standard conditions that have proven effective in avoiding adverse effects to state-owned historical resources. CSO shall provide documentation supporting the proven effectiveness to the SHPO for review. Appendix 5 may be revised to include any new standard condition in accordance with Stipulation XIX.C.2.

## 2. Finding of No Adverse Effect (FNAE)

- a. **State-owned historical resources not on the Master List.** When Caltrans proposes a finding of No Adverse Effect (FNAE) other than an FNAE-SC specified in Stipulation X.B.1, the Caltrans District shall submit the HRCR containing its proposed finding and supporting documentation to CSO for review. If within 15 calendar days of receipt CSO does not object to the proposed FNAE, the project or activity shall not be subject to further review under this MOU. CSO shall provide summary notification to the SHPO of these findings in accordance with Stipulation XIX.E.2.
- b. When there are disagreements between the Caltrans District and CSO regarding an FNAE, CSO shall promptly notify the SHPO to resolve the disagreement within 30 days. If the disagreement is resolved, the agreed upon finding shall stand and Caltrans shall proceed to the next step in accordance with those requirements prescribed by this MOU. If the disagreement is not resolved, the finding shall be considered adverse and Caltrans shall the procedure set forth in Stipulation X.C.
- c. State-owned historical resources on the Master List. When Caltrans proposes a FNAE other than an FNAE-SC specified in Stipulation X.B.1, the Caltrans District shall submit the HRCR containing its proposed finding and supporting documentation to CSO for review. If within 15 calendar days of receipt CSO does not object to the proposed FNAE, CSO shall consult with the SHPO pursuant to PRC 5024.5.
- d. If within 30-calendar days of receipt, the SHPO does not object to the “No Adverse Effect” finding, the project or activity shall not be subject to further review under this MOU. CSO and the SHPO may agree to extend the 30-day time frame for SHPO review. Confirmation of date of receipt as the basis for determining the start of the 30-day review period may be obtained through the SHPO database, a mail delivery receipt, or written or documented oral communication from the SHPO. If the 30-day period expires without SHPO comment or agreement to extend the review period, Caltrans may move forward upon notification to the SHPO via e-mail or other written communication, and the project or activity shall not be subject to further review under this MOU. Disagreements or objections to a finding of “No Adverse Effect” will be addressed in accordance with Stipulation X.F.

3. Re-assessment of Effects: If the project or activity will not be implemented as proposed in relation to any state-owned historical resource, Caltrans will re-open consultation under Stipulation X of this MOU.

C. Finding of Adverse Effect and Proposed Mitigation Measures

Pursuant to PRC 5024(f) and PRC 5024.5, Caltrans and the SHPO agree that when adverse effects to state-owned historical resources cannot be avoided, the Caltrans District may propose a finding of “Adverse Effect” (FAE).

1. **State-owned historical resources not on the Master List.** Where adverse effects to a state-owned historical resource cannot be avoided pursuant to Stipulation X.B, the Caltrans District shall propose to CSO a finding of “Adverse Effect” (FAE) and shall take into account the views of Indian Tribes and other interested parties, as appropriate. The Caltrans District shall submit to CSO the HRCR containing its FAE and documentation supporting the proposed finding in accordance with Stipulation XVII.
  - a. Upon receipt CSO shall have 30 calendar days to review the FAE. If within 30 calendar days of receipt CSO does not object to the proposed FAE, the project or activity shall not be subject to further review under this MOU. CSO shall provide summary notification to the SHPO of these findings in accordance with Stipulation XIX.E.2.
  - b. If CSO has not responded to the Caltrans District within 30-calendar days after receipt, the District may either extend the review period in consultation with CSO or move forward with the project or activity. Documentation of date of receipt as the basis for determining the start of the 30-day review period may be obtained through a mail delivery receipt or other documented communication from CSO. If the 30-day period expires without CSO comment or agreement to extend the review period, the District may move forward upon notification to CSO via e-mail or other written communication, and the project or activity shall not be subject to further review under this MOU.
2. **State-owned Historical Resources on the Master List.** Where adverse effects to a state-owned historical resource on the Master List cannot be avoided pursuant to Stipulation X.B, the Caltrans District shall propose to CSO a finding of “Adverse Effect” (FAE) and shall take into account the views of Indian Tribes and other interested parties, as appropriate. The Caltrans District shall submit to CSO the HRCR containing its FAE and documentation supporting the proposed finding in accordance with Stipulation XVII.
  - a. Upon CSO’s agreement with the finding, CSO shall forward the FAE and supporting documentation to the SHPO. The Caltrans District shall provide notice of the finding to Indian Tribes or other interested parties, as appropriate, and shall assist CSO with the mitigation of adverse effects.
  - b. The SHPO shall have 30 days to review the FAE. If the SHPO has not responded to Caltrans within 30-calendar days after receipt, Caltrans may either extend the review

period in consultation with the SHPO or move forward with the project or activity. Documentation of date of receipt as the basis for determining the start of the 30-day review period may be obtained through the SHPO database, a mail delivery receipt, or other documented communication from the SHPO. If the 30-day period expires without SHPO comment or agreement to extend the review period, Caltrans may move forward upon notification to the SHPO via e-mail or other written communication, and the project or activity shall not be subject to further review under this MOU.

D. Concurrent Documentation and Consultation:

The determination of eligibility, assessment of effect and consultation on mitigating adverse effects may be combined into one HRCR. However, while CSO and SHPO review times may be concurrent, SHPO review times for eligibility, as outlined in Stipulation VIII.C.6, and findings of effect and proposed mitigation measures, as outlined in Stipulations X.B.2 and X.C, run sequentially.

E. Public Interest or Controversy

When the effects to state-owned historical resources are highly controversial or there is substantial public interest in the project or activity's effects on these resources, CSO shall forward the finding of no adverse effect or adverse effect with proposed mitigation to the SHPO for notification under PRC 5024(f) or for concurrence under PRC 5024.5, as applicable and request the SHPO's comments. The SHPO shall have 30 days to review the finding. If the SHPO has not responded to Caltrans within 30-calendar days after receipt, Caltrans may either extend the review period in consultation with the SHPO or move forward with the project or activity. Documentation of date of receipt as the basis for determining the start of the 30-day review period may be obtained through the SHPO database, a mail delivery receipt, or other documented communication from the SHPO. If the 30-day period expires without SHPO comment or agreement to extend the review period, Caltrans may move forward upon notification to the SHPO via e-mail or other written communication, and the project or activity shall not be subject to further review under this MOU.

F. Resolving Disagreements Regarding Findings of Effects

When disagreements that may arise within the review periods established under the terms of Stipulation X, CSO shall consult with the SHPO for no more than 30-calendar days to resolve the disagreement. For state-owned historical resources on the Master List, if at any time during this consultation period, the SHPO determines that the disagreement cannot be resolved through such consultation, the SHPO, pursuant to PRC 5024.5(d) shall request the Office of Planning and Research to mediate the disagreement.

**XI. TRANSFERS AND RELINQUISHMENTS OF STATE-OWNED RESOURCES**

A. No State-owned Historical Resources Affected

The Caltrans District shall complete an HRCR with a finding of No State-owned Historical Resources Affected and implement the procedures set forth in Stipulation IX.A when:

1. Excess parcel(s) to be transferred or routes to be relinquished contain the following within the parcel boundaries or right of way limits (ROW) include:
2. Absence of any cultural resources
3. State-owned cultural resources that are exempt from review pursuant to Stipulation VIII.B.1 and Appendix 4 of this MOU
4. State-owned cultural resources that were previously determined not eligible for listing in the NRHP or for registration as a CHL
5. State-owned historical resources will be transferred to federal agencies or to other state agencies.
6. The HRCR shall note the absence of cultural resources, the resource type(s) that are exempt from review, and/or a list of the resources that are not eligible; or, for state-owned historical resources being transferred to a federal or state agency, the location and/or name of the historical resource(s) and the name of the federal or state agency to which the historical resource(s) will be transferred. 4. The Caltrans District shall retain the HRCR in its file, and provide a copy to CSO.

B. State-owned Historical Resources Transferred to Indian Tribes

For transfers and relinquishment of state-owned archaeological historical resources to Indian Tribes, the Caltrans District shall complete an HRCR with a finding of “No Adverse Effect with Standard Conditions- Indian Tribes”

C. State-owned Locally Designated Historical Resources Transferred to Local Agencies or Private Owners

1. When a state-owned historical resource to be transferred or relinquished has been designated by a CLG under its historic preservation ordinance or is a contributing element of a district designated under a CLG ordinance, the Caltrans District shall complete an HRCR with a finding of “No Adverse Effect with Standard Conditions-CLG designation” and implement the procedures set forth in Stipulation X.B.1.c, and the guidance set forth in the SER Volume 2.
2. When a state-owned historical resource to be transferred or relinquished has been designated by a local agency other than a CLG under its preservation ordinance or is a contributing element of a locally-designated historic district, the Caltrans District may complete an HRCR with a finding of “No Adverse Effect” and implement the procedures set forth in Stipulation X.B.2, and the guidance set forth in the SER Volume 2.

D. State-owned Historical Resources Transferred to Local Agencies, Private Owners, or Owners Not Yet Identified

When state-owned historical resources that are not locally designated as described in Stipulation XI.B are transferred or relinquished to local agencies, private owners, or the future owners are not yet identified, the Caltrans District shall assess the effect in accordance with the procedure set forth in Stipulation X.

E. Upon completion of transfer or relinquishment of a state-owned historical resource, the Caltrans District or CSO as appropriate shall send the SHPO a notification letter with an updated DPR 523A Primary Record, or its successor form, reflecting the new ownership status.

F. If the transfer or relinquishment of any state-owned historical resource is not implemented as proposed, Caltrans will re-open consultation under Stipulation X of this MOU.

G. State-owned Historical Resources Listed in the NRHP Transferred with Intent to Demolish, Destroy or Significantly Alter the Resource.

In order to comply with PRC 5027, which requires State Legislature approval prior to transferring a state-owned NRHP-listed building or structure to any public agency when demolition, destruction or significant alteration is planned, except as specified in the statute, CSO shall notify the SHPO of this requirement when seeking comments on the potential effects of the transfer.

**XII. PHASED APPROACH TO IDENTIFICATION, EVALUATION, AND FINDINGS OF EFFECT**

A. Subject to CSO approval, the Caltrans District may approve the phasing of identification, evaluation, and application of the list of adverse effects defined in Stipulation IV.D for projects or activities covered by this MOU. As specific aspects or locations of an alternative are refined or access gained, the Caltrans District shall proceed with the identification and evaluation of state-owned historical resources and with application of the list of adverse effects in accordance with applicable provisions of this MOU.

B. CSO may approve phasing, evaluation of a potential state-owned historical resource, and/or effects determination until after a CEQA decision document is signed but prior to implementation of the project or activity if: 1) the Caltrans District has established that a “No State-owned Historical Resources Affected” or “No Adverse Effect” finding is likely based on documentation of identification and evaluation efforts within the accessible portion(s) of the PAL and background research on the inaccessible portion(s); 2) the Caltrans District includes in the documentation a plan for completion of identification and evaluation that includes a schedule and provisions for notification or consultation with CSO and the SHPO and adequate performance measures to ensure that any potential effects to the potential state-owned historical resource is adequately mitigated. Consultation with the SHPO on this finding shall follow the process established in Stipulation X.B.2.



### **XIII. NATIVE AMERICAN HUMAN REMAINS AND RELATED CULTURAL ITEMS**

If human remains or associated items are encountered within the Caltrans Right-of-Way or on property under Caltrans jurisdiction during identification, evaluation or during construction activities, Caltrans shall follow California Health and Safety Code Section 7050.5 and PRC 5097.98. The Caltrans District shall consult with the most likely descendant(s), as identified by the California Native American Heritage Commission (NAHC), on the sensitive and dignified treatment and disposition of Native American human remains and associated items.

### **XIV. CURATION**

Prior to conducting work that may result in the generation of a new collection from a cultural site on Caltrans land, Caltrans shall consult with any Indian tribes that may ascribe religious or cultural significance to that resource regarding collection protocols and the ultimate disposition of the collection. Caltrans shall make a reasonable and good faith effort to reach agreement with interested parties regarding collection protocols and the ultimate disposition of collections.

- A. If the decision has been made to curate, Caltrans shall ensure that cultural materials and records resulting from excavations or surface collections are curated in accordance with the Secretary of the Interior's Standards for Archaeological Documentation and the California Guidelines for the Curation of Archaeological Collections (1993), or as outlined in an agreement document based on consultation pertaining to the undertaking covered by this MOU.
- B. The Caltrans District shall ensure that CSO is notified of the curation agreement or any other agreement regarding the final disposition of the collection. The Caltrans District shall immediately notify CSO upon transfer of the collection to the recipient.
- C. Native American human remains and associated items shall not be curated but addressed in consultation with the most likely descendent(s) designated by California's NAHC pursuant to California Public Resources Code section 5097.98. Sacred objects and objects of cultural patrimony, as defined by CalNAGPRA and NAGPRA, shall not be curated but addressed in consultation with Indian Tribes.

### **XV. POST-REVIEW DISCOVERIES**

#### **A. Planning for Subsequent Discoveries**

When Caltrans' identification efforts in accordance with Stipulation VIII.B indicate that state-owned historical resources are likely to be discovered during implementation of a project or activity, the Caltrans District shall include in any finding of No Adverse Effect or HRCR and in the Environmental Commitment Record a plan for treatment of such historical resources, should they be discovered. The Caltrans District shall notify any Indian Tribe that may attach religious or cultural significance to potentially affected properties, or any other interested party that may have a demonstrated interest in potentially affected cultural resources, and take their

concerns into account in developing, modifying, and implementing the plan. The plan will be implemented as originally proposed, or modified as necessary as a result of the occurrences and the nature and extent of the properties discovered.

**B. Discoveries Without Prior Planning**

1. If a plan for subsequent discoveries is not in place and a project or activity affects a previously unidentified state-owned cultural resource or affects a known state-owned historical resource in an unanticipated manner, the Caltrans District shall promptly stop construction activity in the vicinity of the property and implement all reasonable measures needed to avoid, minimize, or mitigate further harm to the resource.
2. Within 48 hours of the discovery, the Caltrans District shall assess the discovery and, if determined to be potentially eligible, provide initial notification to CSO and the SHPO, and may, as appropriate, notify any Indian Tribe that might attach religious or cultural significance to the affected property, or any other interested party that may have a demonstrated interest in potentially affected properties. Notification shall include, to the extent such information is available: description of the nature and extent of the cultural resource(s), assessment of NRHP and CHL eligibility of any properties, the type and extent of any damage to the resource(s), the proposed action, any prudent and feasible treatment measures that would take any effects into account, and a request for comments. Caltrans, at its discretion, may furnish this information through correspondence, hard copy, electronic media, telephone, or meetings, taking into account the capabilities of the interested parties and must document this process for the administrative record. Caltrans may assume eligibility, for purposes of the project or activity, of any potentially affected cultural resource(s) and proceed with the provisions of this sub-part.
3. Should any of the notified parties respond with comments within 72 hours of the initial notification of the discovery or indicate that they wish to be involved in resolving the situation; the Caltrans District shall take into account their comments or continue consultation with any commenting parties. Caltrans shall provide any remaining information specified in subpart 2, above, as it becomes available. The Caltrans District shall determine the time frame for any further consultation, taking into account the qualities of the property, consequences of construction delays, and comments by interested parties. Following the conclusion of any further consultation, Caltrans shall take all comments received into account and may carry out actions to resolve any effects. Failure of any notified party to respond within 72 hours of the notification shall not preclude Caltrans from proceeding with their proposed actions.

**XVI. EMERGENCY SITUATIONS**

An emergency is a situation of clear and imminent danger that threatens the loss of or damage to life, health, property, or essential public services. This stipulation applies only to projects and activities that will be implemented within 30-calendar days after the disaster or emergency has

been formally declared. The President, California Governor, Caltrans Director or District Director may declare an emergency situation exists. Caltrans may request an extension of the period of applicability from the SHPO prior to the 30 calendar days. Caltrans shall follow Stipulations VII through X for all projects and activities to be initiated more than 30 calendar days following declaration of an emergency unless the SHPO approves an extension.

A. The Caltrans District PQS shall determine whether the emergency project or activity has the potential to affect state-owned historical resources. If state-owned historical resources are likely to be affected by the emergency project or activity, the Caltrans District shall notify CSO, the SHPO, and may, as appropriate, notify any Indian Tribes that might attach religious or cultural significance to the affected resources, or any other interested party that may have a demonstrated interest in potentially affected resources, and afford them an opportunity to comment within seven calendar days of the notification. Notification shall include, to the extent such information is available: description of the nature and extent of the property or properties, assessment of NRHP and CHL eligibility of any cultural resource(s), the type and extent of any damage to the resource(s), what emergency actions were taken, the proposed action, any prudent and feasible treatment measures that would take any effects into account, and a request for comments. If the Caltrans District determines that circumstances do not permit seven days for comment, the Caltrans District shall notify the parties and invite any comments within the time available.

B. Large-Scale Emergency Procedures. When a disaster or emergency situation exists across multiple Caltrans Districts, counties, or local agency jurisdictions, CSO may at its discretion provide a blanket emergency procedures notification to the SHPO for work that will begin within 30 days of the formal emergency declaration. The blanket notification will reference the applicable emergency declaration and identify the affected counties and Caltrans Districts. CSO may request an extension of the period of applicability from the SHPO prior to the 30 days. CSO, in consultation with the SHPO, may establish alternate methods of SHPO notification for individual emergency undertakings covered under the blanket notification.

1. Unless determined otherwise through consultation with the SHPO, the Caltrans District responsible for individual emergency undertakings under the blanket notification shall inform CSO, the SHPO, and any Indian Tribes that might attach religious or cultural significance to affected state-owned resources and afford them an opportunity to comment within seven calendar days of the notification. Notification shall include, to the extent such information is available: description of the nature and extent of the property or properties, assessment of NRHP and CHL eligibility of any state-owned resources, the type and extent of any damage to the resources, the proposed action, any prudent and feasible treatment measures that would take any effects into account, and a request for comments. If the Caltrans District determines that circumstances do not permit seven days for comment, the Caltrans District shall notify the parties and invite any comments within the time available.

C. Within six months following the initiation of expedited consultation, the Caltrans District shall provide the SHPO, CSO, and any additional interested parties, a narrative report documenting the actions taken in accordance with this expedited consultation process.

## **XVII. DOCUMENTATION**

A. All documentation that supports findings and determinations made under this MOU shall be consistent with the SER Volume 2 and its subsequent revisions or edits, consistent with the appendices to this MOU, and shall be peer-reviewed by Caltrans PQS in the appropriate discipline.

B. Documentation prepared by local agencies or their consultants in support of such findings shall be submitted to the Caltrans District for review and approval by Caltrans PQS in the appropriate discipline. The Caltrans District shall transmit all documentation cited herein to CSO, and/or the SHPO as stipulated by this MOU. The Caltrans District shall not transmit to CSO, the SHPO, and/or any interested party any documentation that has not been reviewed and approved by Caltrans PQS in the appropriate discipline.

C. All documentation prepared under this MOU shall be kept on file at Caltrans District offices and made available to interested parties and the public as stipulated by this MOU, consistent with applicable confidentiality requirements.

D. Findings of eligibility, assessing effects and mitigating adverse effects and relevant supporting documentation may be combined into one HRCR, as appropriate, or may be documented in separate HRCRs as project information and timing allows.

## **XVIII. TRAINING REQUIREMENTS**

Prior to implementing activities under this MOU, Caltrans personnel responsible for making, reviewing, or approving findings and determinations made under this MOU shall be certified as Professionally Qualified Staff (PQS) in the appropriate discipline and shall receive appropriate training as determined by CSO and the SHPO.

## **XIX. RESOLVING OBJECTIONS**

Should the SHPO object in writing to Caltrans at any time regarding the manner in which the terms of this MOU are carried out, to any action carried out or proposed with respect to implementation of this MOU, or to any documentation prepared in accordance with and subject to the terms of this MOU, Caltrans and the SHPO shall consult to resolve the objection. The consultation period shall be determined by mutual agreement of Caltrans and the SHPO. If resolution is reached within this time frame, Caltrans will proceed in accordance with the terms of the resolution. If resolution is not reached within this time frame the SHPO may proceed in accordance with Stipulation XIX.D, below, and propose termination of this MOU.

**XX. EXCLUSIONARY PROVISION**

A. Probation

1. The CPO may place an individual Caltrans District, Division, Office or Branch on probation at the request of the CSO Chief in consultation with the SHPO. Probation means loss of specific authority delegated under the MOU, as determined by the CSO Chief in consultation with the SHPO. Probation may result from a pattern of compliance deficiencies identified during CSO and OHP project review or an MOU review or annual report, or failing to maintain the PQS necessary to implement the provisions of the MOU. Examples of deficient compliance actions that may be cause for probation include, but are not limited to, inappropriate PAL delineation, inappropriate application of the screening process, inappropriate application of the exempt from evaluation process, insufficient identification efforts resulting in post-review discovery, and ESA violations and inadequate consultation efforts.
2. The CPO shall provide written notice of probationary action to the administrative unit losing authority and the SHPO. The CPO, in consultation with the CSO Chief, the SHPO, and appropriate level Caltrans District representative (Director, Deputy, Office Chief or Branch Chief), will develop and approve a Plan of Corrective Action (POCA) to be implemented by the Caltrans District, Division, Office or Branch. The POCA will describe the deficiencies, provide a corrective plan specific to the identified deficiencies, indicate the duration of probation and provide performance or reporting criteria to document improvement. Upon expiration of the probation, the CPO, in consultation with the above parties, shall determine whether the POCA has been adequately implemented and the deficiencies corrected. CSO and the SHPO may perform program reviews to ensure compliance with the POCA. Failure to correct the deficiencies or identification of additional deficiencies during the term may result in extension of the POCA with or without additional restrictions, suspension, or removal from the MOU.

B. Suspension

1. The CPO may suspend an individual Caltrans District, Division, Office or Branch at the request of the CSO Chief in consultation with the SHPO. Suspension may result from failure to successfully correct the deficiencies that resulted in placement on probation or suspension may be immediate if the CPO determines the violations were egregious, such as numerous ESA violations where cultural resources were impacted. Suspension means substantial or total loss of authority delegated under the MOU. CSO review and approval of specified compliance actions under the MOU will be required.
2. The CPO, in consultation with the CSO Chief, the SHPO, and appropriate level Caltrans District representative (Director, Deputy, Office Chief, Branch Chief), will approve a POCA to be implemented by the Caltrans District, Division, Office or Branch. The POCA will describe the deficiencies, provide a corrective plan specific to the identified deficiencies, indicate the duration of suspension and provide performance or reporting criteria to document

improvement. Upon expiration of the suspension, the CPO, in consultation with the above parties, shall determine whether the POCA has been adequately implemented and the deficiencies corrected. Failure to correct the deficiencies or identification of additional deficiencies during the term may result in extension of the POCA with or without additional restrictions, or removal from the MOU.

**C. Removed Status**

1. At the request of the CPO, in consultation with the SHPO and the Caltrans District Director, the Caltrans Director may remove an individual Caltrans District, Division, Office or Branch from the MOU based on failure to successfully comply with a POCA or for additional egregious non-compliance actions beyond the scope, but within the term of an existing POCA. Removal from the MOU will require all PRC 5024 of the CEQA compliance documents to route through CSO who will consult with the SHPO, as appropriate, under PRC 5024.
2. A POCA, to be developed in conjunction with but not necessarily prior to the removal, will specify the term of removal and a pathway to restoration. The pathway to restoration will likely proceed back through suspension and probation prior to regaining full status.

**XXI. AMENDMENT**

A. Any signatory to this MOU may at any time propose amendments to this MOU or its appendices, whereupon all signatories shall consult to consider such amendment. This MOU and its appendices may be amended only upon written concurrence of all signatories.

**XXII. TERMINATION**

A. Only the signatories may terminate this MOU. If this MOU is not amended as provided for in Stipulation XIX.C, or if either signatory proposes termination of this MOU for other reasons, the signatory proposing termination shall notify the other signatory in writing, explain the reasons for proposing termination, and consult to seek alternatives to termination.

B. Should such consultation result in an agreement on an alternative to termination, the signatories shall proceed in accordance with that agreement.

C. Should such consultation fail, the signatory proposing termination may terminate this MOU by promptly notifying the other signatory, and concurring parties in writing.

D. Beginning with the date of termination, Caltrans shall ensure that until and unless a new agreement is executed for the actions covered by this MOU, such projects and activities shall be reviewed individually in accordance with PRC 5024(a) through (h) and W-26-92.

### **XXIII. REVIEW AND REPORTING**

A. CSO shall prepare an annual written report of activities performed under this MOU for its duration, unless the signatories agree to amend the reporting schedule. The initial report shall be prepared following completion of the last six months of the first State fiscal year under this MOU and thereafter, annual reports shall be submitted after the completion of each full State fiscal year. CSO shall submit the annual reports to the SHPO no later than three (3) months following the end of the State fiscal year. At a minimum, this annual report shall include:

1. Results of all inventory activity undertaken pursuant to Stipulation VIII of this MOU.
2. A narrative that lists the actions or projects carried out on historical resources and that describes the effects of such actions or projects on historical resources.
3. An assessment indicating how well Caltrans has been able to comply with the terms of this MOU.
4. An assessment indicating how effective and useful this MOU has been in assisting Caltrans to administer its historical resource stewardship responsibilities.
5. An assessment indicating how effective and useful this MOU has been in facilitating and expediting Caltrans' project planning and implementation schedules.
6. A discussion of any problems or unexpected issues encountered during the fiscal year. This may include a recommendation that participation in this MOU by a Caltrans District or Headquarters-unit of Caltrans is continued with provisions or that such participation is suspended for a specified time period. The recommendation shall indicate the duration of provisional or suspended status. CSO may recommend to the Caltrans Director that a Caltrans District or Headquarters-unit be suspended from participation in this MOU based on review of the annual report. CSO and/or the Caltrans Director may consult the SHPO before taking any such action.
7. Recommendations, with justification, that a Caltrans District or Headquarters-unit with provisional status be restored to full participation or that a suspended Caltrans District or Headquarters-unit be restored to provisional or full participating status.
8. Recommendations for improving the effectiveness of this MOU.

B. In accordance with Stipulation X.B.1, CSO shall provide a quarterly report to the SHPO summarizing findings of No Adverse Effect with Standard Conditions. After the first year of this MOU, the SHPO and CSO shall consult to determine if the reporting period should be modified and determine a new schedule. The reporting period may be modified without requiring amendment of the MOU.

C. CSO shall provide notice to the public that the annual report is available for public inspection and ensure that potentially interested members of the public are made aware of its availability and that the public may comment to the signatories on the report.

D. The SHPO shall have 45 days following receipt to review and comment on the annual report. To facilitate the SHPO's review, CSO, other Caltrans representatives and the SHPO may meet within the 45-day review time frame to discuss the annual report and to address issues, questions or other matters pertinent to the implementation of this MOU. Based upon such consultation, Caltrans and the SHPO will determine whether this MOU should be continued, amended or terminated or whether the participation in this MOU by a Caltrans District or Headquarters-unit of Caltrans should be continued with provisions, suspended or terminated.

#### **XXIV. CONFIDENTIALITY**

All parties to this MOU acknowledge that information about state-owned historical resources, prospective state-owned historical resources, or cultural resources considered historic for purposes of this MOU are or may be protected under PRC sections 5097.9 and 5097.993, that necessary confidentiality is afforded to those specific locations, and that information pertaining to those resources may be subject to the exemptions from the California Public Records Act pursuant to California Government Code sections 7927.000 and 7927.005 relating to the disclosure of sensitive information, and having so acknowledged, will ensure that all actions and documentation prescribed by this MOU are, where necessary, consistent with the protections under PRC sections 5097.9 and 5097.993 and California Government Code sections 7927.000 and 7927.005.

#### **XXV. DURATION OF THIS MOU**

This MOU shall remain in effect for a period of ten (10) years after the date it takes effect and shall automatically expire and have no further force or effect at the end of this ten-year period unless it is terminated prior to that time. No later than 18 months prior to the expiration date of the MOU, Caltrans shall initiate consultation to determine if the MOU should be allowed to expire automatically or whether it should be extended for an additional term, with or without amendments, as the signatories may determine. Unless the signatories unanimously agree through such consultation on an alternative to automatic expiration of this MOU, this MOU shall automatically expire and have no further force or effect in accordance with the timetable stipulated herein.



**XXVI. EFFECTIVE DATE OF THIS MOU AND OF ADDITIONAL APPENDICES AND ATTACHMENTS**

This MOU shall take effect January 1, 2024, following execution by the SHPO and Caltrans. Additional appendices or amendments to this MOU shall take effect on the dates they are fully executed by the SHPO and Caltrans.

Execution and implementation of this MOU evidence that Caltrans has taken into account the effects of its projects and activities on state-owned historical resources, and that Caltrans has complied with PRC 5024 and W-26-92 for its program and its individual projects and activities.

DRAFT

**FIRST AMENDED 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**

**SIGNATORY PARTIES:**

DEPARTMENT OF TRANSPORTATION

By:

Tony TAVARES , Director

Date:

California Office of Historic Preservation

By:

JULIANNE POLANCO  
State Historic Preservation Officer

Date:

**CONCURRING PARTIES:**

By:

JEREMY KETCHUM, Chief  
Division of Environmental Analysis  
Caltrans Preservation Officer

Date:

By:

DAVID PRICE, Chief (Acting)  
Cultural Studies Office  
Division of Environmental Analysis

Date:

**FIRST AMENDED 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**

**CONCURRING PARTIES:**

By:  
District 1 District Director

Date:

By:  
District 2 District Director

Date:

By:  
District 3 District Director

Date:

By:  
District 4 District Director

Date:

By:  
District 5 District Director

Date:

By:  
District 6 District Director

Date:

**FIRST AMENDED 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**

**CONCURRING PARTIES:**

By:  
District 7 District Director

Date:

By:  
District 8 District Director

Date:

By:  
District 9 District Director

Date:

By:  
District 10 District Director

Date:

By:  
District 11 District Director

Date:

By:  
District 12 District Director

Date: