

**SECTION 106 PA
ANNUAL REPORT**

**IMPLEMENTATION OF THE SECTION 106
PROGRAMMATIC AGREEMENT**

JULY 1, 2013 - JUNE 30, 2014

**CULTURAL STUDIES OFFICE
DIVISION OF ENVIRONMENTAL ANALYSIS
CALIFORNIA DEPARTMENT OF TRANSPORTATION
SACRAMENTO, CALIFORNIA**

September 2014

EXECUTIVE SUMMARY

This report documents the effectiveness of, and summarizes actions carried out under the *First Amended Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the California State Historic Preservation Officer, and the California Department of Transportation* (2014 PA) during the period from January 1, 2014 through June 30, 2014, in accordance with stipulation XX.G.2 and XX.G.4 of the 2014 PA. This report also includes project data from the final six-month period of use of the 2004 PA, which expired on December 31, 2013, and summarizes previous Section 106 PA annual and biennial reports.

Consistent with Stipulation XVII.F of the 2004 PA, the California Department of Transportation, (Caltrans) and signatory parties met on April 16, 2012 to determine if the agreement should be allowed to expire or whether it should be extended for an additional term, with or without amendments. The parties unanimously agreed to revise and amend the PA for an additional 10 years. Thus, the 2014 PA will expire on December 31, 2023. Revisions in the 2014 PA include:

- Clarification of Caltrans Cultural Studies Office, (CSO), Caltrans Districts, and FHWA roles and responsibilities under NEPA assignment;
- The inclusion of the Army Corps of Engineers as an Invited Signatory;
- Strengthened references to Native American Tribes' involvement in the process;
- Addition of new time saving and quality control measures; and
- Addition of a stipulation regarding disciplinary actions in the event the PA is violated by PQS or others.

The 2014 PA incorporates Caltrans' role as National Environmental Policy Act (NEPA) Lead Agency. The Federal Highway Administration (FHWA) first delegated this responsibility to Caltrans in 2007 as a pilot program under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, (SAFETEA-LU) (Public Law 109-59). In July 2012, President Obama signed the Moving Ahead for Progress in the 21st Century Act (MAP-21) (P.L. 112-141) into law. Section 1313 of MAP-21 23, U.S.C. 327 was amended to establish a permanent Surface Transportation Project Delivery Program, which allows any state to participate, and allows states to renew its participation in the program. Through the Project Delivery Program Memorandum of Understanding (MOU), Caltrans maintains its assignment of FHWA's responsibilities under NEPA and Section 106 of the National Historic Preservation Act (Section 106). The MOU became effective October 1, 2012. The Caltrans Division of Environmental Analysis and CSO continues to perform FHWA's role and take on their responsibilities for compliance with the steps of the Section 106 process that were not previously delegated to Caltrans under the PA.

The results of this report reveal that Caltrans handled 1196 Federal-Aid Highway projects during the reporting period. Of these, 71 projects required external review by the State Historic Preservation Officer (SHPO). A total of eight projects resulted in a finding of adverse effect, and will subsequently require a Memorandum of Agreement. A summary of results of the actions completed in accordance with 2014 PA begins on page 2.

During the current reporting period, Caltrans districts reported one late discovery, two unanticipated effects to historic properties, and no ESA violations. Caltrans PQS took the appropriate actions to halt construction, assess the situation, consult with interested parties to

consider effects to the resource and mitigate any adverse effects. A discussion of these incidents begins on page 9.

Quality assurance measures for this reporting period included ongoing Professionally Qualified Staff (PQS) review of Caltrans District reports by CSO staff, delivery of PA training for statewide PQS in January 2014 in Santa Rosa, and a beginning/refresher training held in Sacramento in May 2014. Other training presented by CSO and the District PQS is tailored to the needs of Caltrans districts and regions to improve the knowledge, skills, and abilities of internal Caltrans staff as well as external agency partners, consultants and Native American Tribes. These and other quality assurance measures are presented on pages 15 - 17.

In accordance with the 2014 PA, the annual report was required after the first full fiscal year of the execution of the PA. This interim report reflects the mid-fiscal year implementation of the 2014 PA. Thus reporting data for “years” 2013 (July-December) and 2014 (January-June) is termed as such to differentiate the six month periods relevant to the use of each PA and where the 2014 PA provides new policy. Where process remains the same totals given are for the entire fiscal year.

It is Caltrans’ judgment that the use of the alternative means to comply with Section 106 provided by the 2014 PA continues to be an effective program alternative to the standard Section 106 process by streamlining project review procedures while maintaining federal standards and ensuring that effects to cultural resources are taken into account during project planning. Resource agencies have indicated that Caltrans is handling its assumption of FHWA’s responsibilities capably, and in all but a few cases, communication between agencies has improved.

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INTRODUCTION

The *First Amended Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the California State Historic Preservation Officer, and the California Department of Transportation Regarding Compliance with Section 106 of the National Historic Preservation Act, as It Pertains to the Administration of the Federal-Aid Highway Program in California* (2014 PA) went into effect on January 1, 2014. Like its predecessor, the 2014 PA streamlines Section 106 of the National Historic Preservation Act (Section 106) by delegating much of the Federal Highway Administration's (FHWA) responsibility for carrying out the routine aspects of the Section 106 process to the California Department of Transportation (Caltrans). The PA applies to Federal-Aid Highway projects on or off the State Highway System, (SHS) funded all or in part by FHWA. All cultural resources studies completed under the auspices of the PA are carried out by or under the direct supervision of individuals who meet the Secretary of the Interior's, (SOI), Professional Qualifications Standards for the relevant field of study. Use of the SOI standards ensure program quality and satisfy federal mandates associated with compliance with Section 106. Caltrans meets these standards by certifying its cultural resources staff as Professionally Qualified Staff (PQS). The Chief of the Cultural Studies Office (CSO) in the Division of Environmental Analysis (DEA) is responsible for certifying the qualifications of all PQS. Caltrans PQS are responsible for ensuring that effects to cultural resources are accounted for and that there is no loss in quality of work or consideration for resources.

In addition to streamlining the Section 106 process for Caltrans, the 2014 PA reduces the workload for the State Historic Preservation Officer (SHPO) in that Caltrans PQS internally review routine projects, or those that do not involve any cultural resources. Less than eight percent of projects required SHPO review this reporting period. Caltrans ensures that all project documentation for undertakings that are not subject to SHPO review under the 2014 PA remain on file at each Caltrans District. In addition, Caltrans PQS provides documentation to consulting parties and public in accordance with the 2014 PA and consistent with applicable confidentiality requirements. Delegation to PQS of the authority to perform many of the functions of the SHPO has enabled SHPO staff to concentrate efforts on the small number of projects that actually involve historic properties or have potential for adverse effects.

In accordance with 2014 PA Stipulations XX.G.1 and XX.G.2, this report documents the effectiveness of, and summarizes activities carried out under, the 2014 PA. It covers actions for which Section 106 consultation concluded between July 1, 2013 and June 30, 2014. In addition to annual reporting, in accordance with Stipulation XX.G.3 Caltrans is required to provide the SHPO a quarterly report on findings made relevant to Stipulation X.B.1. Those findings are included herein as well.

In accordance with 2014 PA Stipulation, XX.G.4, Caltrans is providing notice to the public that this report is available for inspection and will ensure that potentially interested members of the public are made aware of its availability. Additionally, the public may provide comment to the PA signatory parties on the report. This report is being submitted to the FHWA, the State Historic Preservation Officer (SHPO), the Advisory Council on Historic Preservation (ACHP), the Army Corps of Engineers (ACOE), and the Caltrans Director and District Directors and is available upon request.

2014 FIRST AMENDED SECTION 106 PA

The 2004 PA expired on December 31, 2013 and the 2014 PA was executed on January 1, 2014. The bulk of the alternative procedure for compliance with traditional Section 106 process developed for the 2004 PA is carried forward in the 2014 PA. The following is a summary of changes and clarifications incorporated into the 2014 PA:

- Incorporation by reference of the assignment of FHWA’s NEPA responsibilities to Caltrans;
- Recognition of unique and expert knowledge that Native American Tribes have regarding their tribal lands;
- Provision for Native American Tribes to join the agreement where a Tribal Historic Preservation Officer has assumed the duties of the SHPO;
- Inclusion of the US Army Corps of Engineers as an Invited Signatory to the PA; this status is limited to the three ACOE Districts in the state of California and applies to permits issued pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water act of 1972;
- Incorporation of the expired 1995 Programmatic Agreement Regarding the Seismic Retrofit of Bridge Structures; guidance for processing seismic retrofit of local bridges is now located in Attachment 7;
- Provision for other Federal Agencies that wish to join the agreement, and/or where Caltrans has assumed NEPA Lead Agency status may use the PA to complete their 106 requirements for projects within their jurisdiction;
- The addition of Stipulation VIII.C.4 Assumption of Eligibility - ability for District PQS to assume properties eligible for the National Register of Historic Places, (NRHP) under certain circumstances, with CSO approval;
- Clarification of Stipulation XV Post Review Discovery – clarifies timeframes of the notifications and use Findings of No Adverse Effects for such reviews;
- The addition of Stipulation XVI Emergency Situations - provides similar guidance as traditional 106 regulations and now includes Caltrans District Director declared emergencies;
- The addition of Stipulation XIX Training Responsibilities - recognizes the importance of ongoing training for PQS, as well as internal and external partners;
- The addition of Stipulation XX.C - Caltrans DEA Chief may now authorize Probation, Suspension, or Removal of an individual District, Division, Office, or Branch for violation of the PA in consultation with Caltrans Management and the SHPO.

SUMMARY OF PA ACTIONS

According to data provided by the Districts, enumerated in Table 1, Caltrans processed 1196 Federal-Aid Highway projects during fiscal year 2013-14. The majority of these projects, 1004 (83.4 percent), were exempted from further Section 106 review after appropriate review, or “screening,” by PQS.¹ An additional 105 projects (8.7 percent) that did not qualify as screened

¹ Under the 2014, PA Stipulation VII continues to specify that the classes of undertakings identified in PA Attachment 2 as “screened undertakings” will require no further review under the PA when the steps set forth in Attachment 2 are satisfactorily completed. Caltrans PQS are responsible for “screening” individual actions that are included within the classes of screened undertakings to determine whether the undertakings require further consideration or may be exempt from further review. PQS cannot screen an Undertaking if conditions are included

undertakings were kept on file at Caltrans, as no consultation with the SHPO was required under the terms of the PA.² Caltrans Districts and CSO submitted 71 projects (6.1 percent) of the 1196 to SHPO between July 1, 2013 and June 30, 2014. Of the 71 projects submitted for SHPO review, Section 106 consultation was concluded within 30 days from the day they were received on 46 projects that resulted in a Finding of No Adverse Effect or No Historic Properties Affected. The remaining projects required additional consultation to resolve affects or additional consultation to answer questions regarding identification or evaluation efforts. Fiscal year activities are depicted in Table 1 and Figure 1; project-screening activities are represented by Caltrans District in Figure 2.

Table 1: Total Activities Completed - Fiscal Year 2013-14

Projects Completed	2013	2014	Total
Caltrans Projects	329	342	671
Local Assistance Projects	216	309	525
Number of Projects Screened – Total			
Caltrans Projects	291	286	577
Local Projects	181	246	427
Number of Projects to File			
Caltrans Projects	26	28	35
Local Project	29	22	34
HPSRs to CSO			
Caltrans Projects HPSRs to CSO	N/A	10	10
Local Projects	N/A	6	6
Number of Projects to SHPO – Total			
Caltrans Projects	21	13	34
Local Projects	16	21	37

District workload for processing Federal-Aid Highway projects remains steady but staff experienced a slight drop compared to the previous fiscal year. Figure 1, below is a graphical representation of the projects completed by each District. Workload for the fiscal year reflects the fifth highest number of projects completed since the inception of the 2004 PA. Current report findings show that over the past several years Caltrans has completed more Federal-Aid Highway projects than have their local agency partners; however, for the fiscal year SHPO reviewed more locally sponsored projects than Caltrans projects.

to ensure that a project will not affect an historic property.

²These are projects for which the proposed activities do not fall under any of the classes of screened undertakings listed in PA Attachment 2, but for which no cultural resources were identified, or properties previously determined eligible but will not be affected are located within the project limits.

Figure 1: Federal-Aid Highway Projects - Fiscal Year 2013-14

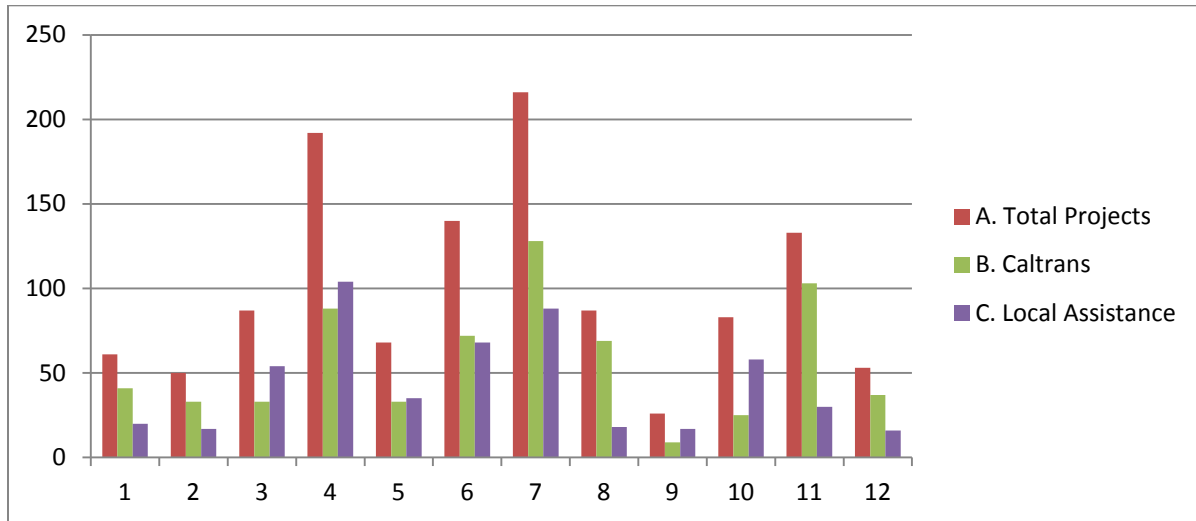
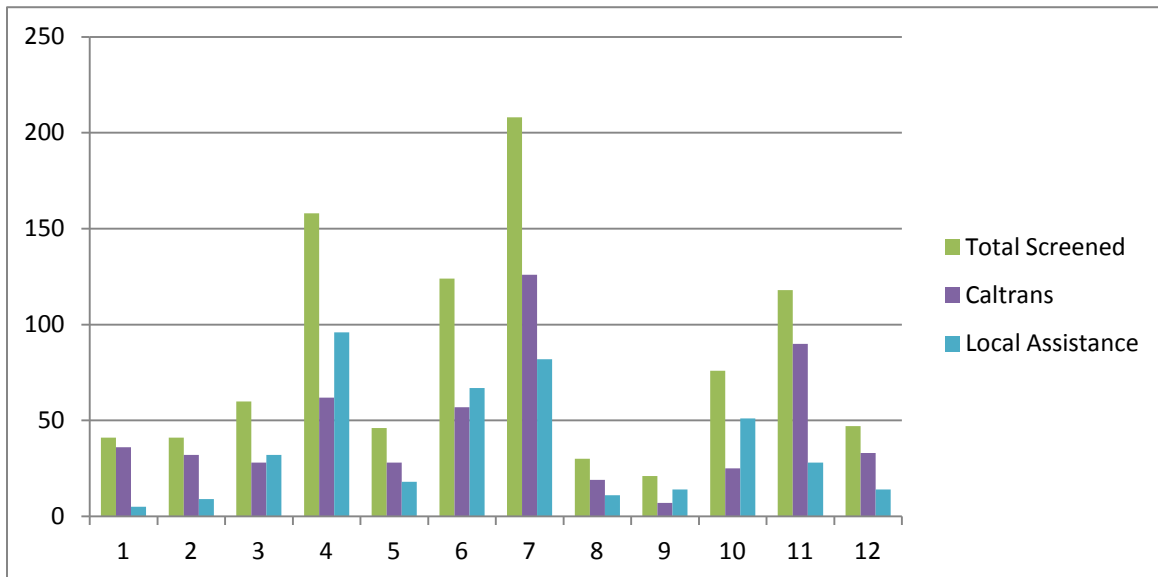


Figure 2, below, is a graphical representation by Caltrans District regarding the compliance of Section 106 completed through use of Stipulation VII - Screened Undertakings. Over the life of the both PAs, the majority of Federal-Aid Highway projects qualified as Screened Undertakings.

Figure 2: Screened Undertakings - Fiscal Year 2013-14



Effect Findings - Fiscal Year 2013-14

Of the 1196 projects, 124 projects resulted in a Finding of No Historic Properties Affected. Under the 2014 PA and as before under the 2004 PA, this finding requires notification to the SHPO when Caltrans has been in consultation regarding determinations of National Register eligibility. Such documentation is kept in Caltrans District files when the HPSR concluded that no cultural resources requiring evaluation were present. Another 27 projects met the criteria for

“No Adverse Effect with Standard Conditions, (NAE-SC).”³

A change in process with the 2014 PA is the review and approval by CSO for Findings of NAE-SC [NAE-SC findings, (Stipulation X.B.1)]. This finding requires only that District PQS provide adequate documentation for CSO review. If CSO does not object to the finding within 15 days, the District may proceed with the undertaking. The SHPO is not required to concur in NAE-SC findings and there is no review or “waiting” period involved. However, CSO “approval” of the NAE-SC is contingent upon any comments received by SHPO in the event an Historic Property Survey Report has been forwarded for their review in accordance with Stipulation VIII.8.C.6 or in compliance with California Public Resources Code Section 5024. In the current reporting period, CSO approved 16 NAE-SC findings. CSO is required to provide a quarterly report regarding all NAE-SC findings to the SHPO; the quarterly report is available upon request.

The remaining 15 projects resulted in findings of “No Adverse Effect *without* Standard Conditions” or “Adverse Effect”, and therefore required that the Districts consult with CSO and, subsequently, that CSO consult with the SHPO. Seven projects resulted in a “No Adverse Effect” while eight resulted in a finding of “Adverse Effect” (see Table 3). In total, projects that resulted in effect findings requiring consultation with CSO and the SHPO represent less than 2 percent of the 1196 Federal-Aid Highway projects processed during this reporting period. These above findings are represented in Table 2.

Table 2: Effect Findings

Total Effect Findings	2013	2014	FY TOTAL
No Historic Properties Affected*	65	59	124
No Adverse Effect with Standard Conditions#	11	16	27
No Adverse Effect	4	3	7
Adverse Effect	5	3	8

*Combined total for findings made by District to file and those sent to SHPO.

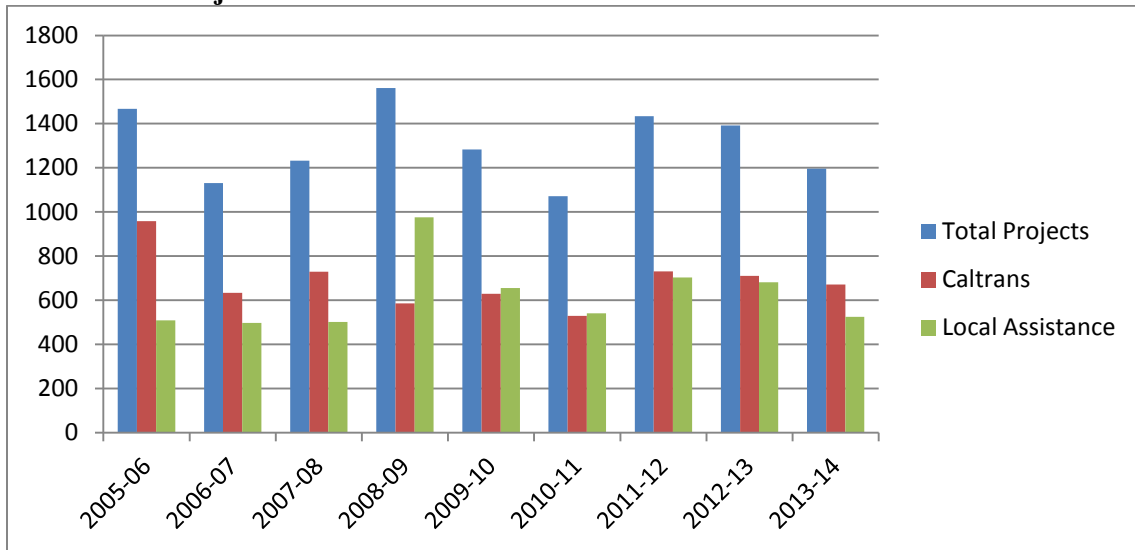
#The 2014 PA shifted responsibility for review of NAE-SC to CSO.

PA ACTIVITIES FISCAL YEARS 2005-06 TO 2013-14

Since fiscal year 2005-2006, the first year that statistics for the use of the Section 106 PA were fully tabulated, Caltrans PQS have processed 11,769 projects. Of the 11,769 projects, 6180 projects were on the State Highway System, (SHS) and the remaining 5590 projects were on local streets and roads throughout the state, (Figure 3).

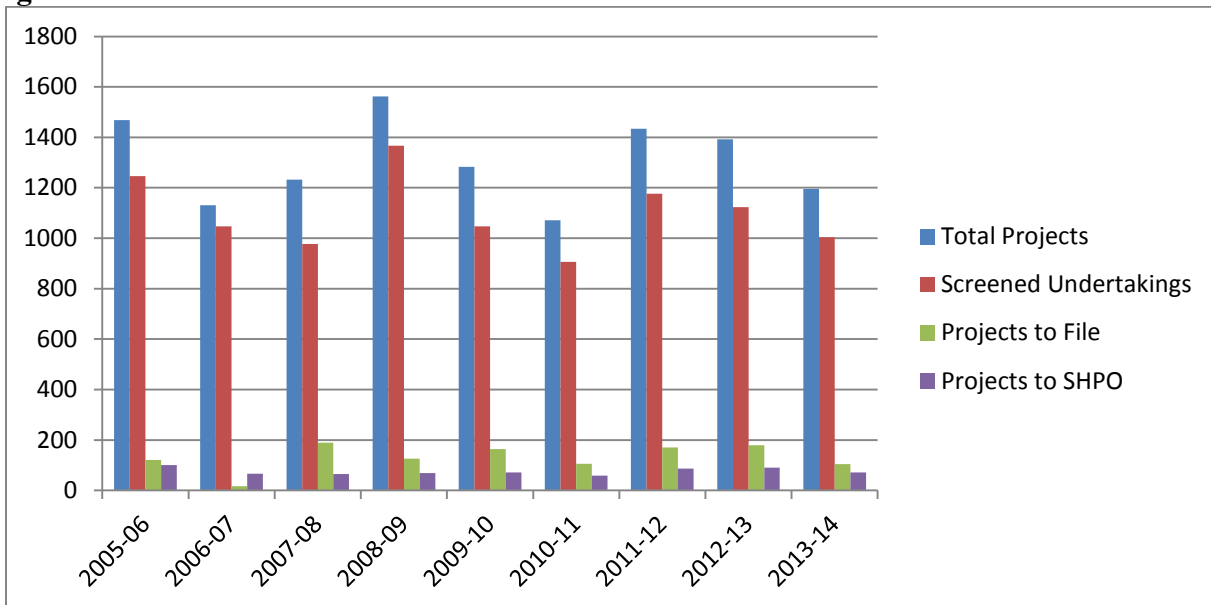
³The Standard Conditions, described in PA stipulation X.B.1, are as follows: (i) Historic properties will be rehabilitated in accordance with the Secretary of the Interior’s Standards for Treatment of Historic Properties (36 CFR Part 68); or (ii) Properties will be protected by designation of ESAs, as described in Attachment 5 to this Agreement.

Figure 3: Total Projects - Fiscal Years 2005-06 to 2013-14



The majority of the projects, (9893), completed between fiscal years 2005-06 to 2013-14 were classed as Screened Undertakings and only 681 of the projects (5.9%) were submitted to SHPO for review. The remaining 1195 projects were kept in Caltrans files because they were projects not classed as Screened Undertakings but found to have no effect on historic properties. These totals are represented in Figure 4. The percentage of Screened Undertakings averages 84% over the life of both PAs, but it has fluctuated from a low of 78% in 2012-13 to a high of 93% in 2006-07. The use of the Screen Undertaking process continues to be a primary and important time saving tool.

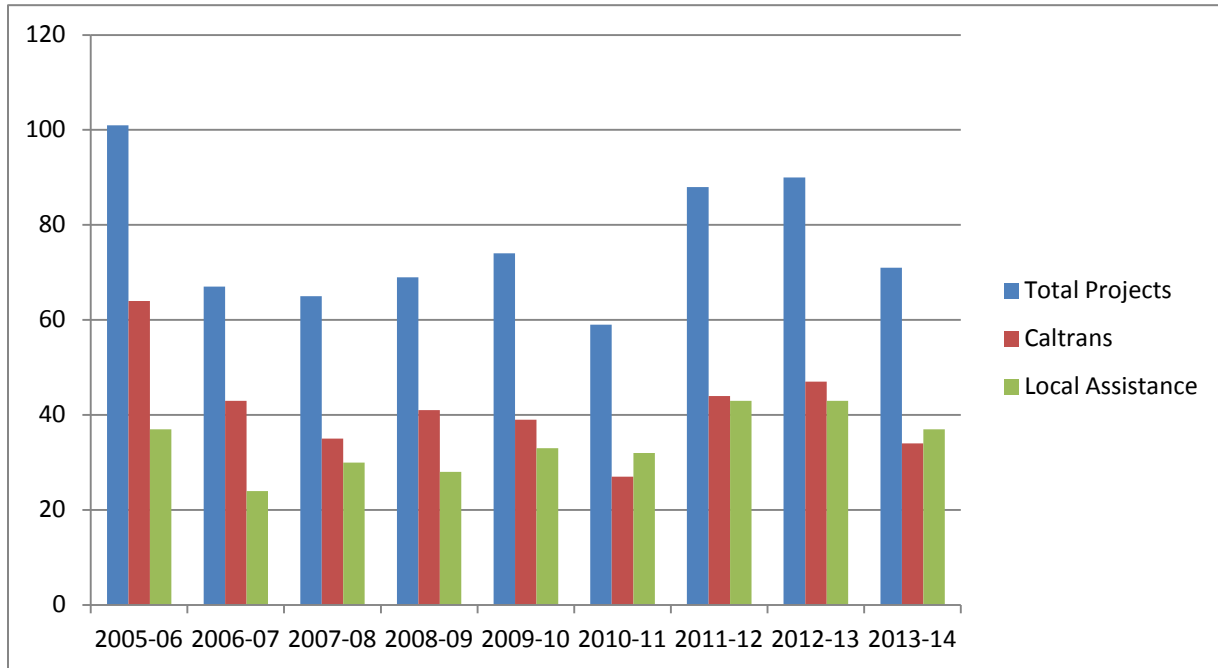
Figure 4: PA Activities - Fiscal Years 2005-06 to 2013-14



Of the 681 projects submitted to the SHPO between fiscal years 2005-06 to 2013-14, 374 projects were completed for Caltrans SHS and 307 Local Streets and Roads projects were submitted to SHPO on behalf of local agencies, (Figure 5). In all but two years, Caltrans projects

represented a larger portion of the total.

Figure 5: Projects Submitted to SHPO – Fiscal Years 2005-06 to 2013-14



EFFECTIVENESS OF THE PA - ESTIMATED TIME SAVINGS

Prior to the 2004 PA, all Federal-Aid Highway projects were subject to Section 106 consultation between FHWA and the SHPO. The 2004 PA delegated many of the steps involved in the Section 106 process to Caltrans PQS. Table 3, below, shows a comparison of timeframes under the PA and those of the standard Section 106 process.

Table 3: Section 106 Review Timeframes

Action	36 CFR Part 800 Process	PA Process
Setting Area of Potential Effects (APE)	30 day review by SHPO	0
Adequacy of Identification/Survey effort	30 day review by SHPO	0
Evaluation of cultural resources (if present)	30 day review by SHPO	30 day review by SHPO

Projects Exempt from SHPO Review

PQS archaeologists and historians determine whether undertakings have potential to affect historic properties through the aforementioned “screen undertaking” process, which is the primary time saving feature of the PA. Projects are exempted from further Section 106 review when PQS determine an undertaking has no potential to affect historic properties. The findings typically are documented in a memo along with any supporting documentation, such as project plans, records search results, or correspondence with consulting parties.

CSO and District PQS measure the timesavings of this PA provision by estimating the amount of time that would otherwise have been spent conducting Section 106 studies and preparing

consultation documents for SHPO. In addition, the amount of time saved by not having to wait for a determination saves, at a minimum, up to 90 days that it would otherwise take under the traditional process. Some Districts tracked the hours saved by screening projects and provided the information to CSO for this Annual Report. CSO estimates timesavings per project are based on an average of approximately 43 hours across the Caltrans Cultural Studies Program. This represents a considerable savings of labor hours among Caltrans, FHWA, and SHPO. In addition, the ability to screen projects saves an unknown amount of valuable tax dollars

For the reporting period, 1004 projects (80.6 percent) qualified as “screened undertakings” and were exempt from further review. Time savings are best viewed as a measure of more efficient project delivery, in that the screening process has allowed Caltrans to move projects to completion more quickly than could be accomplished without the PA. The projects that were screened moved through the Section 106 compliance process promptly (in some cases with a one-day turnaround), whereas without the PA there would have been a backlog of projects for the same period.

Projects Requiring SHPO Review

Pursuant to 36 CFR Part 800, a typical undertaking includes consultation with the SHPO for the area of potential effects, identification efforts, and evaluation of cultural resources could require up to 90 days. Since January 1, 2004, Caltrans has used a PA as an alternate to traditional 36 CFR Part 800 for most Federal-Aid Highway projects.⁴ For projects that require formal evaluation of properties under the PA, the review time has been reduced to 30 days, resulting in a time savings of up to 60 days per project. For the reporting period, 71 Federal-Aid Highway projects out of the 1196 were submitted to the SHPO. Of the 71 projects, SHPO provided concurrence on findings presented for 46 projects within the 30-day review period.

Time Savings for Effect Findings

Section 106 requires that a federal agency take into account the effect of its undertakings on historic properties (archaeological sites, buildings, structures, or objects listed in or determined eligible for the NRHP). Table 4 below compares the timeframes for review of effect findings under the PA to those of 36 CFR Part 800.

Table 4: Review Timeframes for Effect Findings

Action	36 CFR Part 800 Process	PA Process
Finding of No Historic Properties Affected	30-day review by SHPO	0
Finding of No Adverse Effect with Standard Conditions	30-day review by SHPO	15-day review by CSO ⁵
Finding of No Adverse Effect without Standard Conditions	30-day review by SHPO	30-day review by SHPO
Adverse Effect	30-day review by SHPO	30-day review by SHPO

Under the PA, projects that Caltrans PQS determine result in a finding of “No Historic Properties

⁴ The PA does not apply to projects that are located on or affecting tribal land; for projects on or affecting tribal land, Caltrans uses 36 CFR Part 800.

⁵ CSO responsibility and review period per Stipulation X.B.1

Affected” are documented to Caltrans files (if no historic properties requiring evaluation are present and no historic properties will be affected) or are sent to the SHPO for notification purposes only, resulting in a time savings of 30 days per project.

Prior to 2014, NAE-SC findings were provided to the SHPO for notification only. The SHPO does not concur in the finding, thus there is no “review” period. The SHPO does however reserve its right to comment if it chooses. These provisions of the PA result in an additional time savings of 30 days per project. An update in the 2014 PA requires that CSO review all NAE-SC findings. PQS will notify SHPO regarding Findings of NAE-SC if there is consultation under Stipulation VII.C.6 or for state requirements. The CSO review time is not more than 15 days. If CSO does not respond within 15 days, the district can move forward. During the reporting period, PQS submitted 16 projects with findings of NAE-SC to CSO for review.

Properties That Do Not Require Evaluation

Stipulation VIII.C.1 and Attachment 4 of the PA Properties Exempt from Evaluation.

PA Stipulation VIII.C.1 and Attachment 4 require a reasonable level of effort to identify and evaluate historic properties. However, the PA recognizes that not all properties possess potential for historical significance. PQS and qualified consultants are entrusted with the responsibility of determining whether cultural resources property types meet the terms of PA Attachment 4 and may therefore be exempt from Section 106 evaluation. It is difficult to measure the time savings of this PA provision but by roughly estimating the amount of time PQS or qualified consultants would have had to spend evaluating the properties, Caltrans saves from 20 to 60 hours per resource. CSO review is not required for exemptions of properties under this stipulation. CSO does provide guidance and review when requested.

Stipulation VIII.C.3: Special Consideration for Certain Archaeological Properties.

PA Stipulation VIII.C.3 allows archaeological sites to be considered eligible for the National Register without conducting subsurface test excavations to determine their historic significance when qualified PQS determine that the site can be protected from all project effects by designating it an environmentally sensitive area (ESA). Prior to the 2004 PA, FHWA and Caltrans required evaluation of *all* sites within an APE for historic significance through testing. The time saved is approximately 3-12 months per site by not having to conduct test excavations. In addition to the time savings benefit, this provision of the PA advances Caltrans’ environmental stewardship of archaeological sites by providing incentives to avoid rather than excavate them whenever possible; reducing excavations and protecting sites from construction protects the full range of their potential values as scientific data and as cultural heritage. Foregoing archaeological excavations, where possible, has saved time, public funds, and heritage resources.

Stipulation VIII.C.4: Assumption of Eligibility.

PA Stipulation VIII.C.4 allows PQS to assume properties eligible for inclusion in the National Register when special circumstances preclude their complete evaluation. Such special circumstances include restricted access, large property size, or limited potential for effects. PQS are required to receive written approval from CSO prior to completing a Project Historic Property Survey Report. Properties treated under this stipulation may require consultation with SHPO at a later date.

Examples of the Use of the Stipulation VIII.C.4

- District 2, State Route 44, EA02-4F290 Big Springs Curve Improvement CA-SHA-4014/H and CA-SHA-3608/H Shasta County. The project Area of Potential Effects, (APE), included trailheads of several hiking trails listed or eligible for inclusion in the National Register. The trailheads had not been previously evaluated.
- District 4, Local Assistance, BHLS-5213 (039), Fair Oaks Ave. Overhead Bridge Rehab Project CA-SCL-830 Napa County. The project APE included a potential National Register eligible industrial park that covered several hundred acres adjacent to the bridge replacement.
- District 4, State Route 29, EA 3G640 Napa River Bridge Replacement Project, CA-NAP-1128/H, Napa County. The project APE included an historic property adjacent to the Area of Direct Impact and the project would have a limited potential for effect.
- District 8 Local Assistance, BRLS-5954(094), Dola/Lanzit Bridge Replacement Project. Desert Training Center (DTC), San Bernardino County. The DTC is a World War II training center that covers 28,000 square miles and is listed as a California State Historic Landmark. The DTC has not been previously evaluated for the National Register.

FHWA Reviews and Approvals

Prior to Caltrans' NEPA assignment, all Section 106 documents were subject to FHWA review in addition to SHPO review. The PA saved 30 to 60 days per project by delegating approval of APE maps from FHWA engineers to Caltrans PQS and a minimum of 30 to 90 days by eliminating FHWA review of certain Section 106 reports. Caltrans continues to realize these time savings on the FHWA projects that are exempt from the NEPA assignment, as the PA remains applicable for projects where FHWA is NEPA Lead Agency.

Pursuant to the MOU for NEPA Assignment, FHWA and Caltrans may at times agree that a project may be retained by FHWA. In these limited cases, FHWA relies on Caltrans staff to continue working on projects on their behalf due to the staffing and limited resources of FHWA. Projects currently retained by FHWA include:

- District 4, Sonoma Co. Sonoma Narrows Monitoring
- District 8, Riverside Co. Mid-County Parkway
- District 9, Inyo Co. US 395 Olancho-Cartago Four-Lane Widening
- District 11, San Diego Co. San Diego I-5 Monitoring

POST REVIEW DISCOVERIES, UNANTICIPATED EFFECTS, AND ESA VIOLATIONS

The following is a summary of events that occurred during the reporting period. From Caltrans' perspective, it is important to note that the outcome of the events would likely have been no different without the alternate procedures of the PA. Caltrans has always emphasized thorough identification efforts be employed during the Section 106 process to avoid these kinds of post-review discoveries. Caltrans actively works to avoid such events through ongoing training of PQS and working with our partners in the Section 106 process.

Willits Bypass Project, EA 01-26200, Mendocino Co, District 1

As reported in the 2011-2013 PA Biennial Report, in June 2013 a prehistoric archaeological deposit was identified during construction of the Willits Bypass Project, (WPB) Caltrans initiated consultation with the tribes and SHPO on this undertaking under 36 CFR 800.13. Construction continued and four prehistoric archaeological sites were discovered during the 2013 construction season. Caltrans consulted extensively with the Sherwood Valley Band of Pomo Indians (SVBP), as well as with the Coyote Valley Band of Pomo Indians and Round Valley Indian Tribe, on means to avoid and minimize effects to the properties. Given the complexity of the undertaking and the consultation process, ACHP is participating in the effort. CSO is working with the Tribe, ACHP and SHPO on a project-specific Programmatic Agreement that will provide for consideration of historic properties as the undertaking is further implemented.

Briefly, the sites' status are as follows:

- Site PRD-1 (reported in the 2011-2013 PA Report), located in Work Area 5, and consists of a dispersed lithic scatter, which includes flakes and unmodified chert shatter, and a Gunther Barbed projectile point. It was assumed NRHP-eligible, a data recovery plan was prepared and approved by the SHPO; and data recovery has been completed.
- Site PRD-2, located in Work Area 10, is a lithic scatter with three projectile points and one biface. It was assumed NRHP-eligible, a data recovery plan was prepared and approved by the SHPO; and data recovery has been completed.
- Site PRD-3, located at the southern end of the alignment in Work Area 2, consisted of a corner-notched dart point, biface fragments, and lithic scatter in a redeposited context. It was determined ineligible for listing in the NRHP and the SHPO concurred.
- Site PRD-4, also located in Work Area 10, is a lithic scatter exposed in a stream cut. It was assumed NRHP-eligible and data recovery excavations will occur at this location once construction impacts are finalized. The SVBP has stated the site may represent the ethnographic village of *Yami*.

In addition, site CA-MEN-3571 was subject to effects due to the installation of wick drains and the placement of fill over the site. The site, identified in a geoprobe core during Extended Phase I testing for buried sites, is characterized by organic sediments, charcoal, an unidentified carbonized seed, several geophyte fragments and the charcoal is described as very fine and greasy, which suggests the presence of a cultural midden.

In 2012, Caltrans' consultants had identified CA-MEN-3571 as being located within the WBP Area of Potential Effect (APE), and recommended CA-MEN-3571 for Phase II evaluation to determine whether it would be eligible for listing in the NRHP. Subsequent to the 2012 report, Caltrans PQS determined CA-MEN-3571 was outside the vertical Area of Direct Impact, (ADI), and did not require further study. Subsequent to the site being removed from further study, consultant staff incorrectly identified CA-MEN-3571 as being outside the APE and ADI. Finally, on September 12, 2013 Caltrans PQS confirmed CA-MEN-3571 was inside the WBP APE and ADI. Upon discovering the site was within the ADI, Caltrans halted construction at that location and placed an ESA buffer around the UTM locations of CA-MEN-3571. Caltrans continued consultation with the tribes on the situation. During the 2014 construction season, Caltrans continued placement of fill at the location of CA-MEN-3571, effectively burying the site.

Caltrans will continue consultation with the SHPO, ACHP, and tribes on the project specific PA aforementioned. The PA will provide for managing historic properties during project

implementation as well as resolve effects through archaeological excavation and interpretation and outreach efforts.

San Gabriel Trench/Alameda Corridor Project, Los Angeles Co., District 7

On February 3, 2014, contractors working on San Gabriel Trench/Alameda Corridor Project in Los Angeles County, (District 7), encountered Native American remains during construction activities. Pursuant to the terms of the project Memorandum of Agreement, (MOA), the project team, comprised of District PQS, Consultant Archaeological Monitors, Native American Monitors, (MLD), and Alameda Corridor-East Construction Authority (ACE) management stopped construction activities in the immediate area until archaeologists determined what the discovery entailed and notified the State Historic Preservation Officer. Construction activities continued outside of a 60-foot buffer previously agreed to between the parties. The project team developed a plan to continue work and consulted with SHPO. All parties agreed to enhance the measures provided in the project MOA in order to handle the human remains within the original project area. Ongoing consultation between the project team and SHPO occurred during the months of March and April.

Despite the agreed upon terms, in May 2014 the MLD filed a complaint against the ACE regarding treatment of Native American remains with the Native American Heritage Commission, (NAHC). The ACHP was informed by a third party that the ACE was not complying with terms of the project MOA. The ACHP declined to take an active role in the discovery process but asked to be kept informed of the ongoing consultation effort.

On May 21, 2014, in consultation with the SHPO and NAHC, ACE submitted an updated work plan to the parties for consideration, stipulations included:

- If over 50% of a fully articulated burial is exposed in work plan area then ACE would agree to recover the human remains;
- If less than 50% is exposed in the work plan area then the human remains would remain in place and be protected per the means and methods agreed upon by all parties;
- Additional enhancement of existing means and methods to preserve human remains in place within the original work area.

The MLD did not agree to the updated plan.

On June 16, 2014, the parties met with an arbitrator to mediate the dispute between the MLD and the ACE. The NAHC and SHPO agreed with the terms developed by the project team on May 21, 2014 as a compromise. The MLD continued to disagree with the terms of any proposed work plan that would limit excavation to the original project area. The MLD asserted that further excavation would be necessary to exhume all human remains in the overall vicinity outside of the project area. Upon review of the project proceedings, the SHPO and NAHC found that measures developed during and prior to arbitration to be adequate and far beyond the requirements of Section 106 and other relevant federal and state laws.

On July 18, 2014, the NAHC determined that the complaint made by the MLD was without merit, and full construction activities resumed. The ACHP did not attend the arbitration meeting but considered all comments it had received and agreed with the SHPO that the measures undertaken by the ACE Management team proposed on May 21, 2014 and confirmed in the June 16, 2014 arbitration were adequate and offered no additional comments.

As of August 8, 2014, ACE had repatriated to the MLD all human remains encountered from February 3, 2014 discovery. Caltrans has scheduled a final Repatriation Ceremony for October 2014.

I-15/I-215 Devore Interchange Project, EA 08-0K710; San Bernardino Co., District 8

On October 21, 2013, Caltrans District 8 PQS became aware that contractors for the Devore Interchange Project, (DIP), were working outside the approved project APE. An existing access road was used to access the former alignment of the previously recorded, but not evaluated National Old Trails Road, (NOTR, identified as historic site CA-SBR-2910H). The NOTR is a component of the larger historic US Route 66 with contributing and non-contributing elements located throughout San Bernardino County. During a field review, PQS found that contractors constructed a pump and pump house to pump water up-slope to a storage tank located alongside the NOTR. PQS informed the contractor that this area was outside the existing APE and ordered the work stopped in the vicinity. PQS then notified CSO and SHPO regarding the inadvertent impact. On the advice of CSO, PQS directed the contractors and their consultant to provide Caltrans with an identification and evaluation effort documenting portions of the NOTR outside of but adjacent to the APE.

While consultants were preparing the above documentation, during a field review on April 23, 2014, PQS encountered remnants of an additional segment of the NOTR that was uncovered within the project area during a rain event and subsequently capped with road base. The covered segment of NOTR had no pavement remaining, but PQS identified its location via cleared brush and wheel ruts in the dirt roadway. Caltrans issued a Stop Work order for this area until PQS evaluated the area and determined the extent of damages to the area. PQS found that the subsequent activities affected a 500-foot long segment of NOTR uncovered in the rain event and subsequently filled in by contractors for use as a haul road during construction. The haul road fill is to be included within the construction of the extension of Cajon Blvd/US Route 66 that will connect to existing Cajon Blvd. located south of the interchange; this was part of the originally approved undertaking, which resulted in a Finding of No Adverse Effect with Non-Standard Conditions. The segment retains less integrity than the remainder of the segment further north, but was unknown during the original study. Contractors have since capped the segment with fill, which now protects the property in place. Design and construction personnel confirmed that no further excavation will occur at this location and that the deposited fill toe of slope will be the final condition, with the exception of grooming the slope and placement of stormwater run-off protection on the surface.

In accordance with direction from SHPO and CSO, the PQS directed the project consultant to continue to identify and evaluate any remaining adjacent segments of the NOTR and apply the criteria of adverse effect to the NOTR. District PQS determined that the affected segment of NOTR is eligible for the NRHP under Criteria A and C. An adjacent segment of the 1930-1954 US Route 66/Cajon Boulevard has previously been determined eligible for the NRHP under Criteria A and C (note that both NOTR and US Route 66 have the same trinomial CA-SBR-2910H).

In June 2014, Caltrans submitted a revised Finding of Effect to SHPO requesting concurrence that the inadvertent effects do not constitute an Adverse Effect. On July 1, 2014, SHPO concurred that the impacts discussed above resulted in a No Adverse Effect on Historic Properties. Therefore, the original Finding of No Adverse Effect with Non-Standard Conditions

for the undertaking as whole remains valid. Caltrans PQS developed the following additional non-standard conditions for the undertaking:

- Future design plans and release for construction (RFC) plans will note that any remaining segments of NOTR/US Route 66 in proximity to the construction limits will be protected in place regardless of whether they are inside or outside the APE.
- An existing ROW and Biological ESA fence already in use will be used as a Cultural ESA and labeled as such on project plans. If monitors encounter additional areas during the course of the project, an updated ESA Action Plan prepared.
- District PQS is monitoring the site regularly in an effort to keep additional construction from effecting segments of NOTR/US Route 66. A cultural resources monitor is required when work occurs near the NOTR/US Route 66.
- Caltrans will develop and initiate a monitoring agreement to ensure that the Contractor retain a qualified cultural resources monitor who meets Caltrans PQS qualification standards as either a Co-Principal Investigator or Principal Architectural Historian.
- An initial pre-monitoring field meeting will be held to clarify monitoring goals, objectives, and communication plan. The monitor will report directly to Caltrans.
- The monitor will be included in the project plan review QA/QC process to provide adequate review and notification when work adjacent to NOTR/U.S. Highway 66 will occur.
- The monitor will be required to submit daily or weekly monitoring logs at Caltrans discretion dependant on the nature and extent of work.
- District PQS will inform the Caltrans Resident Engineer and Inspectors of the monitoring requirements of the project.

On July 16, 2014, District 8 developed a monitoring plan and provided it to the contractor. District PQS monitored the site through August 13, 2014. On August 20, 2014, PQS held a field meeting with the Contractor, Caltrans Project Manager and Design Manager, and contractor-provided cultural resources monitor to clarify the monitoring plan. As of August 20, 2014, consultant monitors provide the contractor with a weekly monitoring report. Caltrans will also continue to monitor the project.

The DIP is a complex project in the Cajon Pass, which reconnects portions of the NOTR separated by facility's original construction. The DIP is being constructed as part of a Design - Build Demonstration Program, which results in a compressed design schedule and incorporation of the construction phase of the project. Caltrans has identified the need to discuss implementation of the Design-Build Process to avoid future occurrences of this nature.

There were no other reported post-review discoveries or ESA failures associated with PA actions during the reporting period, nor were there any foreclosures. Caltrans responds to these events appropriately and continues to develop improved processes for establishing and enforcing ESAs and responding to post-review discoveries.

STATUS OF AGREEMENT DOCUMENTS AND ONGOING CONSULTATION

During fiscal year 2013-14, Caltrans and its partners executed the following agreement documents. Unless otherwise noted, consultation between Caltrans, acting as FHWA, and SHPO

regarding the development of the agreement documents was without issue.

- District 7 - Memorandum of Agreement Between the California Department of Transportation and the California State Historic Preservation Officer Regarding the Riverside Drive Bridge Rehabilitation and Widening Project City of Los Angeles, Los Angeles County, California, July 16, 2013.
- District 7 - Memorandum of Agreement Between the California Department of Transportation and the California State Historic Preservation Officer Regarding the 1st Street Viaduct over Glendale Boulevard Retrofit and Rehabilitation Project City Of Los Angeles, Los Angeles County, California, July 30, 2013.
- District 8 - Memorandum of Agreement Between the California Department Of Transportation and the California State Historic Preservation Officer Regarding Construction of the State Route 58 Hinkley Expressway Near Hinkley, San Bernardino County, California, September 9, 2013.
- District 4 - Memorandum of Agreement Between the California State Historic Preservation Officer and the California Department of Transportation Regarding the 1-680 Freeway Performance Initiative Project in Alameda County, California, February 14, 2014.
- District 6 - Memorandum of Agreement Between the California Department of Transportation, California State Historic Preservation Officer and the Advisory Council on Historic Preservation Regarding the Fulton Mall Reconstruction Project, City of Fresno, Fresno County, California, May 16, 2014.

The Fulton Mall, a pedestrian mall in the city of Fresno, was determined to be eligible for inclusion in the NRHP at the national level of significance. The City of Fresno applied for and received funding for a reconstruction project through the FHWA Transportation Investment Generating Economic Recovery Discretionary Grant program (TIGER Grant). The project, which replaces the pedestrian mall with a street, was the first TIGER Grant funded project in the state to include an adverse affect on an historic property. Due to the complexity of the project and attention generated in the community by local consulting parties, the ACHP was invited to participate in consultation in accordance with the 2014 Section 106 PA Stipulation X.C.3.b⁶.

Over a six-week period CSO, District PQS and consulting parties developed an MOA that adequately and effectively mitigates for adverse effects. However the project raised serious questions among Caltrans and its partners regarding the use of TIGER Grant funds for projects with adverse effects, as well as the interchange between Section 106 and Section 4(f) of the US Department of Transportation Act of 1966 (codified at 49 U.S.C. Section 303 and 23 CFR 774). CSO staff is working with internal and external partners to develop policy procedures that adequately address concerns that developed during the consultation process.

⁶ Stipulation X.C.3.b requires notification to the Advisory Council on Historic Preservation regarding Adverse Effects and invitation to consult under any one of the following conditions; when undertakings affect a National Historic Landmark, when effects to historic properties are highly controversial, when Caltrans, FHWA, SHPO and/or consulting parties are unable to reach agreement on resolution of effects, or when SHPO or another consulting party request ACHP be invited.

During fiscal year 2013-14, Caltrans terminated the following agreement documents upon satisfactory completion of all mitigation requirements:

- District 10 - Memorandum of Agreement Between the Federal Highway Administration and the California State Historic Preservation Officer Submitted to the Advisory Council on Historic Preservation Pursuant To 36 CFR 800.5(E)(4) Regarding Replacement of the Amador City Bridge in Amador City, California May 6, 2014
- District 2 - Memorandum of Agreement Between the California Department of Transportation and the California State Historic Preservation Officer Regarding Replacement of the Spanish Creek Bridge in Plumas County, California, May 13, 2014

During fiscal year 2013-14, PQS reported 21 additional projects with existing executed agreement documents in place for projects in various stages of the project development process: in the design phase, construction, or awaiting final reports. Three agreement documents are currently in development, department wide. A list of these projects is available upon request.

QUALITY ASSURANCE MEASURES

Under the 2014 PA, Caltrans PQS have taken on much of the responsibility for ensuring that effects to cultural resources are taken into account and that there is no loss in quality of work. CSO's commitment to ensure that PQS are trained to work within the terms of the PA is embodied in Stipulation XIX. The stipulation was developed to ensure that Caltrans makes training a priority and that Caltrans Districts and PQS work with their partners to identify training needs accordingly. As the results of this report indicate, this responsibility is being handled competently but with recognition that ongoing communication and training are keys to continued success. To ensure that this level of quality continues, the following quality assurance measures occurred:

- The Caltrans Cultural Resources Manual in Volume II of the Caltrans Standard Environmental Reference (SER) and located on the World Wide Web at <http://www.dot.ca.gov/ser/vol2/vol2.htm> underwent a major update to reflect the 2014 PA. The Cultural Resources Manual is maintained by dedicated CSO staff who updates its content regularly.
- CSO held a multi day Section 106 PA Functional Meeting in January 2014. The primary focus of this training was to introduce the 2014 PA. Plenary and breakout sessions included targeted training for PQS and information sharing for various internal and external partners within cultural resource community. Topics included developing ESAs, identification and evaluation of Post-World War II Housing Tracts, current issues and trends in cultural resources management, and working with Tribes. Presenters included staff from FHWA, OHP, the Caltrans' Biology Program, and the Native American Tribes.
- CSO presented one session of the *Decision to Monitor* training in Visalia, CA in March 2014. Topics of this class include consideration of monitoring during project development, when to monitor, how to fund monitoring.
- CSO Staff attended the Caltrans Native American Advisory Committee meetings in March and June 2014 to present the new PA and answer questions from members of the committee regarding Section 106 compliance.

- CSO delivered one PA training session for PQS in Sacramento in May 2014. This is an annual presentation primarily aimed at new staff. Caltrans PQS often attend this class as a refresher course. Staff members from the Office of Historic Preservation Project Review Unit were in attendance for this session.
- Caltrans District 3 Local Assistance Staff, with assistance from CSO, prepared and presented a Workshop entitled “*What’s New in the PA?*” in June 2014. The workshop was directed at consultants working for Local Agencies and included content from the Caltrans PQS trainings. Future delivery of this workshop will occur in FY 2014-2015.
- On-the-job training for PQS in geophysical methods continued with CSO Archaeologist, Billy Silva. In addition, the CSO has rolled out an updated version of the Caltrans Cultural Resources Database. Mr. Silva has provided individualized training to each district.
- To insure quality and consistency in evaluations of historic properties, a context for identification and evaluation of Historic Roads and Trails is currently under preparation by CSO Historian, Dana Supernowicz.
- CSO and OHP Project Review staff meets monthly to discuss district submittals and issues that may arise relating to Caltrans compliance with Section 106.
- CSO, Districts, and OHP Project Review staff hold a quarterly statewide video teleconference to discuss policy, procedures, and workload issues.
- CSO periodically issues a Section 106 Bulletin to the districts, which discuss implementation and interpretation of policy and dissemination of information relevant to all of Caltrans staff. CSO released the latest edition in April 2014.
- CSO reviews and approves all No Adverse Effects, “Adverse Effect” reports, Memoranda of Agreements, and MOA attachments prior to transmittal to SHPO.
- CSO staff peer reviews cultural resource studies as requested by the Districts.
- CSO staff routinely reviews documents submitted directly to SHPO in accordance with Stipulation VIII.C.6. CSO works with OHP, District PQS and managers as needed to correct deficiencies when encountered.

Stipulation XX.C

Pursuant to the Exclusionary Provision (Stipulation XX.C) of the 2014 PA on the advice of and in consultation with CSO Chief and the OHP Review and Compliance Unit Supervisor, the Caltrans Division of Environmental Analysis Chief can place individual Caltrans Districts, Divisions, Offices, or Branches on Probation, Suspension, or Removal. Each level of Exclusion includes a process to return to full status under the terms of the PA. There were no instances of the application of this provision during the reporting period.

CONCLUSION

The information contained in this report demonstrates a steady and consistent program of compliance with the terms of the 2014 PA and its predecessor. It is apparent that transportation undertakings, while perhaps decreasing in numbers, have become more and more complex. The consultation process has become more rigorous and concerns about identification of, and impacts to, diminishing resources have heightened.

During fiscal year 2013-2014, Caltrans District and CSO PQS processed 1196 Federal-Aid Highway projects. One Thousand-Four projects qualified as Screened Undertakings and were exempted from further Section 106 review. One Hundred-Five projects that did not qualify as screened undertakings were kept on file at Caltrans, as no consultation with the SHPO was required under the terms of the Section 106 PA. Caltrans submitted 71 projects to SHPO for review. Of these 71 projects SHPO concurred with the findings presented on 46 projects within 30 days from the day they were received. The remaining projects required additional consultation to answer questions regarding identification or evaluation efforts or to resolve effects.

Throughout the fiscal year concerns have been raised by Caltrans staff and its partners regarding the Caltrans Section 106 process and potential conflicts with internal Caltrans programs such as the Design-Build process; external agency laws, regulations, like Section 4(f) of the Transportation Act of 1966; as well as grant funding programs like TIGER and how they interact with 106. CSO, with its many internal and external partners, continues to work in partnership to develop policy procedures that adequately address concerns that develop during project development.

Since 2004, the Caltrans use of the Section 106 PA has been widely recognized as a model for an alternative program for transportation projects. Through its innovative features, the 2014 PA continues to save Caltrans and its partners limited valuable taxpayers resources. Caltrans believes the 2014 PA keeps pace with the changing perceptions of resource values and maintains consultation standards, while streamlining bureaucratic processes for undertakings with little or no potential for affecting historic properties. Caltrans is committed to maintaining its high standards of compliance, resource consideration, and stewardship through retention and continued training of highly qualified staff, clear communication with our partners, quality documentation of compliance with the terms of the PA, and the best practices in the field of historic preservation.