Exhibit 5.12:
Post-Review Discovery – Without Plan
Format and Content Guide

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Introduction

It is possible to conduct a reasonable and good faith effort to identify historic properties during the planning phase of a project and still encounter previously unrecorded archaeological resources during the project’s implementation. If a plan for subsequent discovery is not in place and an undertaking affects a previously unidentified property or affects a known historic property in an unanticipated manner, Caltrans shall promptly stop construction activity in the vicinity of the property and implement all reasonable measures to avoid, minimize, or mitigate further harm to the property. The regulatory context for post review archaeological discoveries is found at in the Section 106 Programmatic Agreement1 (Section 106 PA) and 36 CFR 800.13(b), and for state-owned cultural resources the Public Resources Code (PRC) 5024 Memorandum of Understanding2 (5024 MOU), PRC 5024(f) and PRC 5024.5. The following information is provided to assist with unplanned archaeological discoveries that occur during the implementation of an undertaking.

Post Review Archaeological Discovery Actions

If buried cultural materials are encountered during construction, it is Caltrans policy that work stop in that area until a qualified archaeologist can evaluate the nature and significance of the find.

If there is a Memorandum of Agreement (MOA) or other type of agreement document in place for the project, follow protocols stipulated in the document.

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1 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 High-way Program in California
2 2015 Memorandum of Understanding between the California Department of Transportation and the California State Historic Preservation Officer Regarding Compliance with Public Resources Code Section 5024 and Governor’s Executive Order W-26-92.
In accordance with Section 106 PA Stipulation XV.B, and for state-owned finds 5024 MOU Stipulation XIV.B, the finds may be assumed to be eligible for inclusion in the National Register and for state-owned cultural resources assumed eligible for registration as a California Historical Landmark. Subsequent consultations, treatments and reporting are intended to resolve adverse effects.

**Initial Response and Notifications**

When previously unknown cultural resources are identified or unplanned effects occur during the implementation of a project, the main goal is to take action that will avoid or minimize further harm to the resources and to ensure that the appropriate parties are notified of the discovery. This requires careful coordination with construction personnel and Caltrans staff. The following sequence is intended as guidance; however, it does not replace good judgment in the field, which may be necessary to appropriately respond to a particular situation:

1. Construction personnel, or the person making the discovery, *immediately stops work in the vicinity of the find* and coordinates with the Resident Engineer to ensure the find is protected from further harm.

2. A qualified archaeologist immediately conducts a field inspection to determine the nature of the find.

3. Upon determination that the find is archaeological in nature, the archaeologist notifies the following parties, as follows:

   Immediately notify:
   - Caltrans District Environmental Branch Chief (EBC)
   - District Native American Coordinator (DNAC) as appropriate
   - County coroner when human remains (or remains reasonably suspected of being human) are encountered

4. Within 48 hours the EBC then will notify, as appropriate:
   - Caltrans Cultural Studies Office (CSO)\(^3\)
   - State Historic Preservation Officer (SHPO)
   - Property owner (if other than Caltrans)
   - Indian tribes (or Native American groups that may attach religious or cultural significance to the affected property)

\(^3\) FHWA delegated its Section 106 responsibilities to Caltrans Division of Environmental Analysis CSO. See the NEPA Delegation Addenda to the Section 106 PA.
• Secretary of the Interior and the Advisory Council on Historic Preservation when unplanned effects involve a National Historic Landmark. See the Section 106 PA Stipulation XV.B.3.

• Other consulting parties

The Caltrans District EBC may delegate notification responsibility to the Caltrans project archaeologist, District Heritage Resources Coordinator (HRC), or DNAC as appropriate.

The notification must include a description of the nature and location of the find and actions that are being taken to protect the find.

These parties have 72 hours to respond to the notification. Responses from any of the parties above within the initial 72-hour period may include recommendations for further action and treatment or requests for more information, such as maps, photos, more detailed descriptions of the find, and requests for field visits or inspections by additional parties.

Note that when making initial contact (within 48 hours of the find) every effort should be made to insure a personal contact is made. For example, do not rely solely on a fax or single e-mail message. Follow up faxes or emails up with phone calls or additional e-mails to ensure the notification was received.

If human remains (or remains reasonably suspected of being human) are encountered, Health and Safety Code 7050.5 requires that construction or excavation be stopped in the vicinity of the discovery and the county coroner be notified. The coroner will determine if the remains are Native American. In compliance with Public Resources Code 5097, if the remains are determined to be Native American, the coroner notifies the Native American Heritage Commission (NAHC). The NAHC then must notify the person designated by them to be the Most Likely Descendent (MLD). The Caltrans DNAC also directly notifies the NAHC and contacts the designated MLD in order to ensure that lines of communication are quickly established.

**Subsequent Actions and Reporting**

To minimize construction delays and facilitate appropriate consultation regarding treatment of the affected resource, it is critical to follow-up on any requests for additional information, maintain communication with appropriate parties, and check in with progress updates and documentation as work is completed.
Initial documentation should be completed, including maps, photos, GPS data, and field drawings, as appropriate. This documentation may be required before the other consulting parties can be expected to provide informed comment.

Subsequent actions such as protective measures and data recovery efforts must be developed in consideration of the comments of parties identified above.

Note that while considerable time may pass before reports of work undertaken may be available, it is critical to maintain communication with consulting parties and follow through on commitments.

**Required Reporting**

**Federal Undertakings**

- Complete a Department of Parks and Recreation (DPR form 523) form(s) ([Caltrans DPR form templates](#) are available online) and submit the form(s) to the appropriate regional Information Center to obtain a Primary Number. The DPR 523 form(s) may need to be included with any information that is sent to consulting parties immediately following the initial notification, in order to obtain meaningful comments and input towards resolution of effects.
- Complete any agreed-upon reports that are part of the consultation to resolve adverse effects. Typically this will include a Phase III Report (see Exhibit 5.8) if data recovery is required.
- Provide a Report of Construction Impacts to the Headquarters Division of Construction and to the CSO Chief, as outlined in Exhibit 5.13.
- Coordinate with the CSO Section 106 Branch Chief to include information on the post review discovery and actions taken in the Section 106 PA and 5024 MOU Annual Reports.

**CEQA**

When there is a post-review discovery on a state-only project, follow the guidance outlined above, but the SHPO, FHWA, ACHP and Secretary of the Interior (for National Historic Landmarks) do not need to be notified. Use the Historical Resources Compliance Report (HRCR) to document the steps taken under the Reporting Required section above. Chapter 2 Section 2-8.1 Late Discoveries also contains information.

**PRC 5024 Memorandum of Understanding**

When there is a post-review discovery that involves a state-owned resource, follow the guidance outlined above, but FHWA, ACHP and Secretary of the Interior (for National Historic Landmarks) do not need to be notified. If the post-review discovery involves an unrecorded archaeological site, and Caltrans Professionally Qualified
Staff (PQS) determine that the site meets National Register or California Historical Landmark (CHL) criteria, SHPO must be notified pursuant to 5024 MOU Stipulation XIV.B. Use the Historical Resources Compliance Report (HRCR) to document the steps taken under the Reporting Required section above.

**Peer Review and Approval**

As with all actions carried out under the Section 106 PA, the 5024 MOU and other state-only projects, including responses and reporting of actions taken in regard to post review discoveries, all work is carried out by or under the direct supervision of a person or persons who meet the Secretary of the Interior’s Professional Qualifications Standards as set forth in Attachment 1 of both the Section 106 PA and 5024 MOU. Caltrans PQS certified at the Principal Investigator level in Pre-historic Archaeology and/or Historical Archaeology, as appropriate, peer review the Post Review Discovery documentation following the guidelines in Exhibit 2.13: Guidelines for Peer Review of Cultural Resources Reports. Peer reviewers’ names should be kept on record and comments retained in the project files. Chapter 2 Section 2-5.5 and Exhibit 2.11 Table C contain additional guidance on peer reviews and reviews for approvals.