# Exhibit 2.17: Excess Property Transfers and Route Relinquishments

## Table of Contents

- **Introduction** ................................................................. 1
- **Definitions** ........................................................................ 3
- **CEQA: Excess Properties and Route Relinquishment** .............. 4
- **PRC 5024: Excess Properties and Route Relinquishments** ........ 5
  - PRC 5024 Memorandum of Understanding .................................. 5
- **No State-Owned Historical Resources Affected** ...................... 8
  - Transfer/Relinquishment: Federal Agency .................................. 10
  - Transfer/Relinquishment: State Agency ...................................... 11
- **Finding of No Adverse Effect – Standard Conditions: CLG** .......... 12
  - Transfer/Relinquishment: Certified Local Government .................. 12
  - Transfer: Private/Unknown Owner: CLG-designated Historical Resource .... 14
- **Finding of No Adverse Effect Without Standard Conditions** ....... 15
  - Transfer/Relinquishment: Local Agency (not CLG) with Preservation Ordinance ................................. 17
  - Transfer/Relinquishment: Local Agency - No Preservation Ordinance ......... 19
  - Transfer: Private/Unknown Owner ............................................. 23
  - Transfer: Private/Unknown Owner: Locally Designated (not CLG) Historical Resource .................................................. 24
  - Transfer: Private/Unknown Owner: Locality with No Preservation Ordinance ........................................ 26
- **Finding of Adverse Effect: Standard Mitigation Measures for Archaeological Sites** ........................................ 28
- **Finding of Adverse Effect and Mitigation Measures** .................. 30
- **Combined Documentation** .................................................. 33
- **Public Interest or Controversy** ............................................ 33
- **Disagreements and Objections** ............................................ 34
- **Legislative Approval for NRHP Listed State-Owned Resources** ....... 35
Exhibit 2.17: Excess Property Transfers and Route Relinquishments

Completing the HRCR........................................................................................................35
Property Transfer Documents and Letters.................................................................36
Post Transfer: Completing PRC 5024 Compliance..................................................38

Sample Historical Covenant Template
Sample Assignment Assumption Agreement Template
Exhibit 2.17: Excess Property Transfers and Route Relinquishments

INTRODUCTION

*Caltrans must comply with California Public Resources Code (PRC) 5024 whenever it transfers titles to Caltrans-owned parcels out of its ownership or relinquishes a state route.* If the property to be transferred or relinquished contains resources that are listed or eligible for listing in the National Register of Historic Places (NRHP) or are registered or eligible for registration as California Historical Landmarks (CHL) Caltrans uses the Historical Resources Compliance Report (HRCR) to document compliance with PRC 5024, and when applicable, CEQA, prior to transferring property out of Caltrans ownership. In addition, for route relinquishments, the roads themselves could be historical resources, such as segments of Route 66, the Lincoln Highway, old U.S. 40, and U.S. 99.

Caltrans transfers state-owned historical resources with appropriate protections. PRC 5024 compliance must be complete and the HRCR on file before the parcel transfers or route relinquishments can be placed as agenda items for consideration by the California Transportation Commission.

Most excess parcel transfers are not subject to NEPA, Section 106 or CEQA. See the Standard Environmental Reference Volume 2 (SERv2) Chapter 2 Section 2.7.10 for a more detailed discussion of NEPA, Section 106, and CEQA as they relate to excess property and route relinquishments.

This exhibit discusses the various ways in which Caltrans identifies and provides protections for historical resources to be transferred or relinquished, in order to comply with PRC 5024, and when applicable, CEQA. The exhibit also discusses how that compliance is documented. The level of effort required for identification,

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1 Examples of transferring title to real property include excess parcel sale, donation, trade, or relinquishment. See Right-of-Way Manual Section 16.05.02.00
2 NRHP/CHL listed and eligible resources also include contributing elements/resources of NRHP/CHL listed and eligible historic districts.
3 For federal undertakings that include evaluations of state-owned historical resources or the transfer/relinquishment of state-owned historical resources as a protective or mitigation measure, complete “Section 9 Findings for State-Owned Historic Properties” in the Historic Property Survey Report and, as necessary, Finding of Effect and MOA, in place of using the HRCR.
evaluation and protection of historical resources depends on who will be the new owner of the property and whether the new owner is a public or private entity.

For excess property and route relinquishments with no cultural resources or only resources that are exempt from evaluation, the HRCR itself can be as simple as the Caltrans PQS checking the appropriate boxes on the HRCR form, obtaining the appropriate signatures, and filing the HRCR in the district, with a copy to the Headquarters Cultural Studies Office (CSO) Built Environment Preservation Services (BEPS) Branch Chief. The majority of transfers and relinquishments likely would follow this scenario. The degree of evaluation and consultation when excess property and route relinquishments involve cultural resources that are not exempt from evaluation will depend on the type of resource and to whom the resource would be transferred. The general procedures for compliance under PRC 5024 are outlined in Chapter 2 Section 2.8 and for excess parcel and route relinquishments, in Section 2.8.10.

**Coordination with Right of Way**

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

**Future owner and future use**

In order to complete the HRCR, in addition to knowing whether there are NRHP eligible/listed or CHL registered/listed resources on the parcel to be transferred or relinquished, one needs to know to whom the property will be transferred and whether there are known future plans for the property. This information directs how the HRCR is prepared and the level of documentation and consultation needed to complete cultural resources compliance. District Right-of-Way staff should provide that information as soon as it is known so that it does not delay environmental compliance.
DEFINITIONS

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

**Built Environment resources:** These are buildings, structures and objects (both individual or in groups such as districts) that have been constructed by humans and used for any human activity.

**Caltrans PQS - Preparation of cultural resources documents:** The term Caltrans PQS refers to all cultural resources specialists who meet the Caltrans Professional Qualifications Standards (PQS) as described in Attachment 1 of the [PRC 5024 Memorandum of Understanding](#) (5024 MOU) and to all consultants who meet the Secretary of the Interior's Professional Qualifications Standards, incorporated into the PQS qualifications outlined in [5024 MOU Attachment 1](#), or to consultants whose work is overseen by a consultant who meets the PQS requirements in the relevant discipline(s).

**Caltrans PQS - Review and approval of cultural resources documents:** This refers only to Caltrans cultural staff who meet the PQS standards in the 5024 MOU Attachment 1. This is because Caltrans PQS staff have specific responsibilities under the 5024 MOU.

**Master List of Historical Resources (Master List):** This is a list of state-owned historical resources (including all property types) that are listed in the NRHP or registered as CHLs, and state-owned buildings and structures that have been determined eligible for inclusion in the NRHP or eligible for registration as a CHL. The Office of Historic Preservation (OHP) maintains the Master List pursuant to Public Resources Code (PRC) 5024, and it is integrated into the OHP database. State-owned historical resources on the Master List have the OHP historical resource status code “4CM.” While nonstructural resources that have been determined eligible for the NRHP or as a CHL are still subject to PRC 5024, they are not included on the Master List.

**Non-structural resources:** These are sites that do not contain buildings, structures and objects, natural environments (whether occurring naturally or designed landscapes such as parks and tree rows), and archaeological sites.
CEQA: EXCESS PROPERTIES AND ROUTE RELINQUISHMENT

CEQA does not apply

The HRCR needs to be completed even when CEQA does not apply because Caltrans is always required to comply with PRC 5024 when state-owned property is transferred or relinquished.

Section 7 (CEQA Considerations) of the HRCR form or narrative HRCR is where one documents the finding that CEQA does not apply to the cultural resources that are being transferred or relinquished. Check the box that says "N/A" and state that the transfer/relinquishment is not considered a project under CEQA. Complete the rest of the HRCR; see Exhibit 2.14 and PRC 5024: Excess Properties and Route Relinquishments below.

CEQA applies

When CEQA does apply (see Chapter 2 Section 2.7.10), Caltrans is required to determine whether there are historical resources [as defined in PRC 15064.5(a)(4)] on the property. This may include, if necessary, evaluation for NRHP and CHL eligibility, or as a historical resource under CEQA. Follow the state-only procedures outlined in Chapter 2 Sections 2.7 and 2.9, and in Exhibit 2.14.

It is possible that state-owned resources are ineligible for listing in the NRHP/CHL but local agencies have designated them as historic under their own preservation ordinances. Some of these local agencies may be Certified Local Governments, others might not be certified but have preservation ordinances. Caltrans treats these resources as historical resources for purposes of CEQA and follows the procedures set forth below under Finding of No Adverse Effect – Standard Conditions: CLG, Finding of No Adverse Effect without Standard Conditions, Finding of Adverse Effect: Standard Mitigation Measures for Archaeological Sites, and Finding of Adverse Effect and Mitigation Measures.

The HRCR documents the presence or absence of historical resources under CEQA (Sections 1 through 6 of the HRCR), and the actions Caltrans takes in considering and protecting those historical resources (HRCR Sections 7 and, as appropriate, Section 8-Mitigation Plan). Complete the rest of the HRCR; see PRC 5024: Excess Properties and Route Relinquishments below.
PRC 5024: EXCESS PROPERTIES AND ROUTE RELINQUISHMENTS

As described Chapter 2 Section 2.8.10, prior to transferring or relinquishing state-owned historical resources, PRC 5024 requires Caltrans to assess the effects of the transfer or relinquishment on state-owned historical resources. Caltrans district PQS follow the process outlined in Chapter 2 Section 2.8.10. Either Caltrans PQS or qualified consultants may prepare the HRCR and supporting documentation, but only Caltrans PQS can approve the documentation; see Chapter 7 Section 7.3: Professional Qualification for additional information.

For all excess parcel transfers and route relinquishments the process will include:

- Conducting sufficient background research to identify previously evaluated resources, the results of those evaluations and whether they are still valid
- Completing new DPR 523 inventory forms or updating existing forms, as necessary for resources not exempt from evaluation
- Describing the results of the research and inventory, including which resources previously were identified as historical resources under CEQA and/or previously were listed or determined eligible for the NRHP or CHL
- Making conclusion(s) regarding the presence of state-owned NRHP or CHL listed/eligible resources on the Caltrans property and the potential effects of the transfer or relinquishment on state-owned historical resources.

All this research is documented in the HRCR. Depending whether there are cultural resources that need evaluation and/or their NRHP of CHL status needs to be confirmed, more work may be needed, as explained below.

PRC 5024 Memorandum of Understanding

The PRC 5024 Memorandum of Understanding (5024 MOU), which is Exhibit 1.2 of the SERv2, includes in Stipulation XVI the process by which Caltrans complies with PRC 5024 for transfers and relinquishments of state-owned resources. It includes streamlined measures for situations in which: there is an absence of cultural resources; the only cultural resources are exempt from evaluation; NRHP/CHL

4 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 became effective on January 1, 2015.
eligiible or listed resources are transferred to the federal government or to another state agency; the NRHP/CHL eligible or listed resources are or are not on the Master List of Historical Resources (Master List); Standard Mitigation Measures may be used for certain archaeological sites; and NRHP/CHL eligible or listed resources that have been designated under a Certified Local Government (CLG) preservation ordinance may be transferred without other protective measures.

According to MOU Stipulation IV.E, the Master List, which SHPO maintains, “includes state-owned historical resources; 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 listing in the NRHP pursuant to 36 CFR 800.4(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).”

This stipulation also explains what is not on the Master List, “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.”

A resource’s Master List status is the key to how NRHP/CHL eligible or listed state-owned historical resources are treated under the 5024 MOU; see also Chapter 7 Section 7.13.2 for information on the Master List. Under the 5024 MOU, Caltrans is allowed to

- Make determinations on whether state-owned historical resources not on the Master List would be adversely affected by the transfer/relinquishment without seeking SHPO’s comments under PRC 5024(f);
- Transfer state-owned historical resources on the Master List to federal agencies and other state agencies without first seeking SHPO’s comments under 5024.5;

5 NRHP/CHL listed and eligible resources also include contributing elements/resources of NRHP/CHL listed and eligible historic districts.

6 State-owned historical resources include buildings, structures, archaeological sites, objects, historic districts, as well as other non-structural sites, such as tree rows, landscapes.
- Transfer state-owned historical resources on the Master List that are designated under a CLG preservation ordinance without additional protections and without first seeking SHPO’s comments under PRC 5024.5.

**Evaluation of State-owned archaeological sites**

Prior to transfers or relinquishments Caltrans PQS follow the standard procedures outlined in Chapter 5 and Chapter 6 to identify NRHP listed/eligible or CHL registered/eligible state-owned archaeological sites. For archaeological sites that were not previously determined eligible or ineligible, Caltrans PQS needs to disclose in the HRCR what is known about any sites on the excess parcel, based on the pre-field research and field review. If possible Caltrans PQS needs to conclude, based on all the available information, whether the site(s) on the excess property potentially meets NRHP or CHL criteria, or whether it can be assumed NRHP/CHL eligible for purposes of this transfer. At a minimum, the site(s) need to be recorded on a DPR 523A Primary Record.

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

**Evaluation of State-owned non-structural resources**

If not previously evaluated and not exempt from evaluation, Caltrans PQS follow the standard procedures outlined in Chapter 2 and in Chapter 7 to identify and evaluate state-owned landscapes, tree rows, and other non-structural resources. Eligibility determinations are included in the HRCR for consultation with SHPO, pursuant to 5024 MOU Stipulation VII.C.6. However, these resources, if determined eligible, will not be placed on the Master List.

**Evaluation of State-owned built environment resources**

If not previously evaluated and not exempt from evaluation, Caltrans PQS follow the standard procedures outlined in Chapter 2 and in Chapter 7 to identify and evaluate
state-owned buildings and structures (e.g., bridges, equipment yards, maintenance stations, roads and highways). Eligibility determinations are included in the HRCR for consultation with SHPO pursuant to 5024 MOU Stipulation VIII.C.6. If determined eligible, Caltrans requests that they be placed on the Master List pursuant to PRC 5024(d).

**PRC 5024 determinations of eligibility**

Chapter 2, Section 2.8.3 of the SERv2 contains the process by which Caltrans transmits the documentation to SHPO for comment, the time frames for SHPO review and how Caltrans can move on in the absence of SHPO comments. One caveat to keep in mind is that if Caltrans and the SHPO disagree on the NRHP/CHL eligibility of a state-owned historical resource and that disagreement cannot be resolved, the SHPO’s determination is final and binding. See Chapter 2 Section 2.8.3.2 Disagreement on Eligibility and 5024 MOU Stipulation VIII.C.6.b.

**NO STATE-OWNED HISTORICAL RESOURCES AFFECTED**

While transfers of excess parcels and route relinquishments where no historical resources are present require minimal work, compliance with PRC 5024 is still necessary to document that no historical resources would be affected by the transfer, pursuant to PRC 5024(a) and (b). As mentioned above, the identification and evaluation of cultural resources still needs to be completed prior to any transfer or relinquishment. When there are no cultural resources within the Project Area Limits (PAL) or the only cultural resources within the PAL are exempt from evaluation as outlined in 5024 MOU Stipulation VI.A and Attachment 4, the District or CSO as appropriate documents these conclusions in the HRCR form or narrative format. In the HRCR, “Section 9 State-Owned Historical Resources Findings” under “HRCR to District File” include the following statements

- Not applicable; project does not involve Caltrans right-of-way or there are no Caltrans-owned cultural resources within the Project Area Limits.

- [Name], [Indicate whether person is Caltrans or consultant architectural historian or archaeologist], who meets the Professionally Qualified Staff Standards in PRC 5024 Memorandum of Understanding Attachment 1 as a(n) [Indicate applicable PQS level] and pursuant to PRC 5024 Memorandum of Understanding Stipulation VIII.C.1 and Attachment 4, has determined that there are State-owned cultural resources within the Project Area Limits that are exempt
from evaluation because they meet the criteria for Resource Types 1 and/or 2, as set forth in the PRC 5024 Memorandum of Understanding Attachment 4 (Properties Exempt from Evaluation).

- [Name], [Indicate whether person is Caltrans or consultant architectural historian or archaeologist], who meets the Professionally Qualified Staff Standards in PRC 5024 Memorandum of Understanding Attachment 1 as a(n) [Indicate applicable PQS level] and pursuant to PRC 5024 Memorandum of Understanding Stipulation VIII.C.1 and Attachment 4, has determined that there are State-owned cultural resources within the Project Area Limits that are exempt from evaluation because they meet the criteria for Resource Types 3 through 7, as set forth in the PRC 5024 Memorandum of Understanding Attachment 4 (Properties Exempt from Evaluation). The following state-owned cultural resource type(s) have been recorded pursuant to Stipulation VIII.C.1: [List each resource(s) by address and include the resource type, i.e. resource type 3, 4, 5, 6, 7 or a combination thereof.]

- Caltrans, pursuant to PRC 5024 Memorandum of Understanding Stipulation VIII.C.5, has determined that the following State-owned cultural resources previously were determined not eligible for listing in the National Register of Historic Places or for registration as California Historical Landmarks and that determination is still valid. [List the resource(s) including address or other locational information]

- Caltrans, pursuant to PRC 5024 Memorandum of Understanding Stipulations IX.A and XVI.A.1, has determined that a Finding of No State-owned Historical Resources Affected is appropriate because [include all that apply] there are no cultural resources within the Project Area Limits; only State-owned cultural resources that are exempt from evaluation pursuant to Stipulation VIII.B.1 and Attachment 4 of this MOU are within the Project Area Limits; the State-owned cultural resources within the Project Area Limits were previously determined not eligible for listing in the NRHP or for registration as a CHL.

For state-owned cultural resources evaluated as ineligible as part of the cultural resources study for transfer or relinquishment, if SHPO objects to the determination within 30 days of receipt of the Caltrans District’s request for concurrence, the HRCR to District file cannot be used.
Transfer/Relinquishment: Federal Agency

Federal agencies have responsibilities under Sections 106 and 110 of the National Historic Preservation Act (NHPA) to protect and preserve NRHP listed and eligible properties. These sections of the NHPA are roughly equivalent to Caltrans' responsibilities under PRC 5024. The level of effort needed to identify and protect these resources is commensurate. Therefore, transfers/relinquishments to federal agencies of state-owned historical resources, whether or not the resource is on the Master List, is considered to be a “No State-owned Historical Resources Affected” finding pursuant to 5024 MOU Stipulation XVI.B and PRC 5024(f) for state-owned historical resources not on the Master List, or PRC 5024.5 for resources on the Master List.

State-owned historical resources not on Master List

The “HCR to District File” section of the HRCR would include a statement that

"Caltrans has determined that the transfer of the [name of NRHP eligible/listed property] to [agency name], a federal agency, would result in no effect to State-Owned Historical Resources under PRC 5024 Memorandum of Understanding Stipulations IX.A and XVI.B, and PRC 5024(f) because the historical resource automatically would be protected under Sections 106 and 110 of the NHPA. Therefore, historical covenants or other conditions are not necessary. [Name of Caltrans PQS], who meets the Professionally Qualified Staff Standards in PRC 5024 Memorandum of Understanding Attachment 1 as a(n) [Indicate applicable Principal PQS level] and has the appropriate education and experience, has reviewed this proposed transfer and determined that the applicable federal laws are appropriate protection. A copy of this HRCR will be included as an attachment to the Caltrans transmittal letter transferring the property to the federal agency."

State-owned historical resources on Master List

The “HCR to District File” section of the HRCR would include a statement like the one above but with a different citation:

“…would result in no effect under PRC 5024.5…”

The District or CSO retains the HRCR in its files and implements the procedures in 5024 MOU Stipulation IX.A that require the district to notify any interested parties cited in 5024 MOU 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. The District provides a copy of the HRCR to File to CSO for the 5024 MOU annual report. Following satisfactory completion of these steps, no further review is required, unless the transfer does not occur. See Chapter 2 Section 2.8.10.1 No State-Owned Historical Resources Affected by Transfer/Relinquishment for additional guidance.

**California Historical Landmarks and historical resources under CEQA**

Sections 106 and 110 of the NHPA are not explicit about federal agencies’ responsibilities to protect CHL registered/eligible resources and historical resources under CEQA. In the interest of full disclosure, however, Caltrans needs to inform the federal agency that these types of resources are present on the excess parcel.

**Transfer/Relinquishment: State Agency**

Other state agencies have the same responsibilities under PRC 5024 as Caltrans. According to the SHPO, transfers to other state agencies essentially have no effect because state agencies all have the same responsibilities under PRC 5024. Therefore, transfers of state-owned historical resources to other state agencies, whether or not the state-owned historical resources are on the Master List, is considered to be a “No State-owned Historical Resources Affected” finding pursuant to 5024 MOU Stipulation XVI.B and PRC 5024(f) for state-owned historical resources not on the Master List, or PRC 5024.5 for resources on the Master List.

**State-owned historical resources not on Master List**

The “HRCR to District File” section of the HRCR would include a statement that

"Caltrans has determined that the transfer of the [name of NRHP eligible/listed CHL registered/eligible property] to [agency name], a state agency, would result in **no effect under PRC 5024(f)** because the historical resource automatically would continue to be protected by all applicable sections of this code. Therefore, historical covenants or other conditions are not necessary. [Name of Caltrans PQS], who meets the Professionally Qualified Staff Standards in PRC 5024 Memorandum of Understanding Attachment 1 as a(n) [Indicate applicable Principal PQS level] and has the appropriate education and experience, has reviewed this proposed transfer and determined that the PRC 5024 will continue to apply after the transfer. A copy of this HRCR will be included as an attachment to the Caltrans letter transferring the property to the recipient state agency."
State-owned historical resources on Master List

The “HRCR to District File” section of the HRCR would include use the same statement as the above but with a different citation:

"…would result in no effect under PRC 5024.5…”

The District or CSO retains the HRCR in its files and implements the procedures in 5024 MOU Stipulation IX.A that require the district to notify any interested parties cited in 5024 MOU 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. The District provides a copy of the HRCR to File to CSO for the annual report. Following satisfactory completion of these steps, no further review is required, unless the transfer does not occur. See Chapter 2 Section 2.8.10.1 No State-Owned Historical Resources Affected by Transfer/Relinquishment for additional guidance.

FINDING OF NO ADVERSE EFFECT – STANDARD CONDITIONS: CLG

Transfer/Relinquishment: Certified Local Government

State-owned NRHP/CHL eligible or listed resources—whether on the Master List or not on the Master List—that have been designated under a Certified Local Government (CLG) preservation ordinance may be transferred to the CLG without other protective measures. These transfers are considered to be a “No Adverse Effect with Standard Conditions: Transfer of CLG-Designated State-owned Historical Resources” (FNAE-SC: CLG) finding pursuant to 5024 MOU Stipulations X.B.1.c and XVI.C, and PRC 5024(f) for state-owned historical resources not on the Master List, or PRC 5024.5 for resources on the Master List.

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7 A CLG is a general purpose political subdivision with land-use authority, such as a city or county that has a historic preservation ordinance and commission, a system for identifying historic properties, enforceable legislation to designate and protect historic properties, and a public participation process. The National Park Service certifies the local government as meeting its CLG requirements and the SHPO oversees the CLGs to ensure they continue to meet these requirements.
State-owned historical resources not on Master List

The “HRCR to District File” section of the HRCR would include a statement that "Caltrans has determined that the transfer of the [name of NRHP eligible/listed CHL registered/eligible property] to [local agency name], a Certified Local Government, would result in a FNAE-SC: CLG pursuant to 5024 MOU Stipulations X.1.c and XVI.C.1, and under PRC 5024(f) because the historical resource automatically would continue to be protected by all applicable sections of this local agency’s preservation ordinance. Therefore, historical covenants or other conditions are not necessary. [Name of Caltrans PQS], who meets the Professionally Qualified Staff Standards in PRC 5024 Memorandum of Understanding Attachment 1 as a(n) [Indicate applicable Principal PQS level] and has the appropriate education and experience, has reviewed this proposed transfer and determined that the [local agency name] preservation ordinance provides appropriate protection for this historical resource. A copy of this HRCR will be included as an attachment to the Caltrans letter transferring the property to the recipient local agency."

State-owned historical resources on Master List

The “HRCR to District File” section of the HRCR would use the same language as above but with different citations:

"… would result in a FNAE-SC: CLG pursuant to 5024 MOU Stipulations X.1.c and XVI.C.1, and PRC 5024.5 because the historical resource, which is currently on the Master List of Historical Resources…”

The District or CSO retains the HRCR in its files and implements the procedures in 5024 MOU Stipulation IX.A that require the district to notify any interested parties cited in 5024 MOU 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. The District provides a copy of the HRCR to File to CSO for the quarterly report, as outlined in 5024 MOU Stipulation XIX.E.2. Following satisfactory completion of these steps, no further review is required, unless the transfer does not occur.

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Stipulations X.B.1.c and XVI.C of the 5024 MOU, as well as Attachment 5 Section 3 contain additional information regarding this type of finding. Chapter 2 Section 2.8.10.2 contains information on processing FNAE-SC: CLG findings.

**Transfer: Private/Unknown Owner: CLG-designated Historical Resource**

When state-owned historical resources already have been designated under a CLG preservation ordinance, the process is similar to transferring or relinquishing state-owned historical resources to CLG-certified local agencies. The CLG preservation ordinances have provisions to protect locally-designated historical resources, and require that private owners seek approval prior to making any changes or alterations that have the potential to adversely affect designated historical resources.

**State-owned historical resources not on Master List**

The “HRCR to District File” section of the HRCR would include a statement that

"Caltrans has determined that the transfer of the [name of NRHP eligible/listed CHL registered/eligible property] to [private owner name or other owner when known] would result in a FNAE-SC: CLG pursuant to 5024 MOU Stipulations X.1.c and XVI.C.1 and under PRC 5024(f) because the resource is designated as historic by [local agency name], a Certified Local Government, under its preservation ordinance. The resource would continue to be protected by all applicable sections of this ordinance. Therefore, historical covenants or other conditions are not necessary. [Name of Caltrans PQS], who meets the Professionally Qualified Staff Standards in PRC 5024 Memorandum of Understanding Attachment 1 as a(n) [Indicate applicable Principal PQS level] and has the appropriate education and experience, has reviewed this proposed transfer and determined that the [local agency name] preservation ordinance provides appropriate protection for this historical resource. A copy of this HRCR will be included as an attachment to the Caltrans letter transferring the property to the recipient private owner or other owner when known."

[Exhibit 2.17: Excess Property Transfers and Route Relinquishments]
State-owned historical resources on Master List

The “HRCR to District File” section of the HRCR would use the same language as above but with different citations:

"… would result in a FNAE-SC: CLG pursuant to 5024 MOU Stipulations X.1.c and XVI.C.1 and under PRC 5024.5 because the resource, which is currently on the Master List of Historical Resources…"

The District or CSO retains the HRCR in its files and implements the procedures in 5024 MOU Stipulation IX.A that require the district to notify any interested parties cited in 5024 MOU 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. The District provides a copy of the HRCR to File to CSO for the quarterly report, as outlined in 5024 MOU Stipulation XIX.E.2. Following satisfactory completion of these steps, no further review is required, unless the transfer does not occur.

FINDING OF NO ADVERSE EFFECT WITHOUT STANDARD CONDITIONS

Local agencies that are not CLGs do not have the responsibilities that are equivalent to state agency responsibilities under PRC 5024, even under CEQA. Not all local agency activities that have the potential for adverse effect are considered projects under CEQA. For instance, there are ministerial activities that are statutorily exempt from CEQA, but have the potential to adversely affect historical resources. If a local agency, for example, does not have a preservation ordinance that requires appropriate board review of demolitions, a demolition permit could be ministerial and statutorily exempt from CEQA. But, that same demolition could result in the destruction of a NRHP-eligible structure, which is an adverse effect. In this situation, transferring a state-owned NRHP-eligible building to a local agency without protective measures may result in an adverse effect. By way of contrast, for state agencies, that same proposed demolition must comply with PRC 5024, the SHPO must be consulted, and prudent and feasible measures to avoid or mitigate the adverse effect must be implemented.

Similarly, a local agency's process for evaluating cultural resources and protecting historical resources is not automatic and is not necessarily equivalent to PRC 5024 regulations. Therefore, prior to disposing of excess property to local agencies through...
transfer or route relinquishment, Caltrans needs to follow the procedures outlined in Chapter 2 Sections 2.8.7 and 2.8.8, including the development of protective measures if the excess parcel or route relinquishment contains NRHP listed/eligible or CHL registered/eligible resources. Caltrans is required to make a reasonable and good faith effort to protect these types of resources. If Caltrans is unable to obtain protective agreements, covenants or conservations easements, then the HRCR, or a supplemental HRCR if the failure occurred after SHPO review, needs to document those efforts, why they failed, and the proposed transfer or relinquishment would be considered an adverse effect that requires mitigation.

When Caltrans is transferring NRHP listed or eligible resources, or CHL register or eligible resources to local agencies, Caltrans PQS need to determine whether the recipient agency has existing historic preservation plan elements and protective ordinances, and needs to coordinate with other Caltrans divisions (e.g., Right of Way and Legal, as appropriate) to develop local agency commitments to protect the historical resources on the site.

The level of local agency historic preservation responsibilities can range from none to quite sophisticated; there is no statewide consistency in what or how local agencies protect historical resources. The transfer of state-owned historical resources to local agencies, under PRC 5024 is considered to have the potential for adverse effect, which can either be a FNAE without Standard Conditions or a Finding of Adverse Effect (FAE).

Therefore, it is necessary to include protective measures in the transfer. Transfers of state-owned historical resources with conservation easements or historical covenants typically are used to obtain a FNAE under PRC 5024(f) for state-owned historical resources that are not on the Master List and under PRC 5024.5 for state-owned historical resources on the Master List. (The 5024 MOU Stipulation IV.E has a definition of what is and is not on the Master List). Describe proposed protective measures in Section 8 (Mitigation Plan) of the HRCR; the draft commitments are included in the HRCR as attachments. Caltrans PQS may contact the CSO BEPS Chief for assistance with developing appropriate measures, and for sample language for resolutions or historical covenants.

For local governments, proposed mitigation may take the form of a conservation easement or a city council (or board of supervisors) adopted resolution that stipulates
the conditions for preserving, maintaining, and protecting the historical resource. In addition, if the local government has a historic preservation or landmark ordinance, the agreement may stipulate that the receiving government would officially designate the historical resource under its ordinance and provide protections for its preservation and maintenance. If the receiving government does not have an established ordinance, then the preservation agreement would need to stipulate that the municipality will pass a resolution recognizing the property as a historical resource, will preserve and maintain it in accordance with the Secretary of the Interior’s Standards for the Treatment of Historic Properties (SOIS)\(^9\) and the CHBC, will consider it a historical resource under CEQA, and, if it was determined NRHP eligible or listed, will consider the resource a historic property for Section 106 purposes.

**Transfer/Relinquishment: Local Agency (not CLG) with Preservation Ordinance**

Caltrans PQS need to provide a brief description of the recipient local agency’s preservation ordinance, e.g. official name, legal citation in the local code, in Section 8 (Mitigation Plan) of the HRCR; the preservation ordinance is included in the HRCR as an attachment, in addition to the document describing the historical resource (e.g., DPR 523 forms, Character-Defining Features form, Historical Resources Evaluation Report).

For transfers of historical resources to local agencies that are not CLGs but have preservation ordinances that are substantially equivalent to the requirements for CLGs, the finding may be a FNAE without standard conditions and would need CSO and for resources on the Master List, SHPO review. However, if Caltrans PQS cultural resources staff certified in the appropriate discipline, CSO or SHPO disagree, treat the finding as an adverse effect, develop the appropriate mitigation measures and follow the process in the Finding of Adverse Effect and Mitigation Measures section of this exhibit.

**State-owned historical resources not on Master List**

The “HRCR to CSO” section of the HRCR would include a statement that

"Caltrans has determined that the transfer of the [name of NRHP eligible/listed CHL registered/eligible property] to [local agency name] would result in a Finding of No Adverse Effect because the historical resource also is designated as historic under its preservation ordinance. The resource would continue to be protected by all applicable sections of this ordinance. Therefore, historical covenants or other conditions are not necessary. [Name of Caltrans PQS], who meets the Professionally Qualified Staff Standards in PRC 5024 Memorandum of Understanding Attachment 1 as a(n) [Indicate applicable Principal PQS level] and has the appropriate education and experience, has reviewed this proposed transfer and determined that the [local agency name] preservation ordinance provides appropriate protection for this historical resource. Pursuant to PRC 5024 Memorandum of Understanding Stipulations X.1.B.2.a and XVI.C.2 and under PRC 5024(f), Caltrans has determined a Finding of No Adverse Effect, is appropriate and is hereby notifying CSO of this finding. A copy of this HRCR will be included as an attachment to the Caltrans letter transferring the property to the recipient local agency."

For state-owned historical resources not on the Master List, if CSO does not object within 15 calendar days of receipt the project or activity is not subject to further review unless the transfer does not go through as planned. CSO reports this type of transfer finding in its quarterly report to SHPO as outlined in 5024 MOU Stipulations X.B.2.a and XIX.E.2.

**State-owned historical resources on Master List**

In addition to citing PRC 5024.5 instead of 5024(f), there is a different citation in the 5024 MOU that is used for these resources. The “HRCR to CSO” section of the HRCR would use the same language as above but state

"…would result in a Finding of No Adverse Effect because the resource, which is currently on the Master List of Historical Resources,……Pursuant to PRC 5024 Memorandum of Understanding Stipulations X.B.2.c and XVI.C.2, and under PRC 5024.5, Caltrans has determined a Finding of No Adverse Effect, is appropriate, is hereby notifying CSO and requests SHPO’s concurrence with this finding… local agency."
For state-owned historical resources on the Master List, if CSO does not object within 15 calendar days of receipt, CSO consults with and forwards the document to SHPO. If SHPO does not comment or object within 30 calendar days of receipt, 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 unless the transfer does not go through as planned.

See Chapter 2.8.10.3 No Adverse Effect: Transfer of State-owned Historical Resources for additional guidance. Stipulations X.B.2 and XVI.C.2 of the 5024 MOU contain additional information regarding this type of finding.

**Transfer/Relinquishment: Local Agency - No Preservation Ordinance**

As mentioned earlier, local agencies do not have the responsibilities that are equivalent to state agency responsibilities under PRC 5024, even under CEQA. Therefore, Caltrans must try to transfer the property with protective measures to ensure the preservation of the historical resource that is being transferred or relinquished.

The process for complying with PRC 5024, even with the 5024 MOU in place, may take longer to complete because more effort is involved in developing and obtaining protective measures. As a result, the success or failure to obtain enforceable protective measures may result in either a Finding of No Adverse Effect or a Finding of Adverse Effect for the proposed transfer or relinquishment. However, if Caltrans PQS cultural resources staff certified in the appropriate discipline, CSO or SHPO disagree that there is no adverse effect, treat the finding as an adverse effect, develop the appropriate mitigation measures and follow the process in the Finding of Adverse Effect and Mitigation Measures section of this exhibit.

**Protective measures to avoid adverse effects**

The most common measures Caltrans uses to avoid a potential adverse effect to the state-owned historical resource and comply with PRC 5024 are to transfer or relinquish the resource with:

1) An adopted city council (or board of supervisors) resolution that stipulates the conditions for preserving, maintaining, and protecting the historic property; or
2) A historical covenant or conservation easement (see Chapter 7, Section 7.12.7.8).

In both situations, the preservation agreement between Caltrans and the receiving local agency would need to stipulate that the municipality will recognize the property as a historical resource, will preserve and maintain it in accordance with the SOIS, will require use of the CHBC for code-related issues, and will require that alterations, additions and demolitions be reviewed by qualified persons who meet the Secretary of the Interior’s Professional Qualification Standards. For environmental compliance purposes, the local government resolution also should contain statements that the resource to be transferred or relinquished will be considered a historical resource under CEQA, and, for Section 106 purposes, if the resource was listed or determined eligible or listed, a historic property.

Through the use of a local government resolution or a historical covenant/conservation easement, the finding is likely to be a FNAE without standard conditions that will need to be reviewed by CSO and for resources on the Master List, by SHPO. It all depends on having adequate and enforceable provisions in the resolution, easement or covenant.

Caltrans PQS need to provide a brief description of the draft historical covenant/conservation easement or draft resolution in Section 8 (Mitigation Plan) of the HRCR; the draft document(s) is included in the HRCR as attachments, in addition to the document describing the historical resource (e.g., DPR 523 forms, Character-Defining Features form, Historical Resources Evaluation Report).

Stipulations X.B.2 and XVI.C.2 of the 5024 MOU contain additional information regarding this type of finding. See Chapter 2 2.8.10.3 No Adverse Effect: Transfer of State-owned Historical Resources for additional guidance.
Below are examples of how transfers are treated differently, based on the presence or absence of a local agency preservation ordinance.

**CITY A** is not a CLG but **has an existing preservation ordinance** that includes
- local eligibility criteria / designation process;
- design review guidelines;
- Preservation Commission and staff who meet professional historic preservation qualifications;
- use of the Secretary of the Interior’s Standards for the Treatment of Historic Properties (SOIS);
- use of the California Historical Building Code (CHBC) on code-related issues;
- public participation process; and
- enforceable penalties for non-compliance.

**Protective measures** for transferring a state-owned historic building, bridge or archaeological site to City A or recipients other than state or federal agencies might include:
- Attaching a copy of the ordinance to the FNAE, if the resource is already designated.
- Nominate the historical resource under the ordinance prior to transfer if not already designated.
- Obtain a resolution from the city that commits the city to recognize the resource as historic and designate it under City A’s preservation ordinance.
- Transfer the historical resource with a historical covenant/conservation easement.

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

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

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

**Protective measures** for transferring for a NRHP/CHL listed or eligible structure to City B or recipients other than state or federal agencies might include:
- Obtaining a city resolution committing the city to recognize the structure as a historic resource, preserve and maintain it in accordance with the SOIS, require the city to use the CHBC for code-related issues, consider it a historical resource under CEQA, and consider it as a historic property for Section 106 purposes.
- Transferring the structure with a historical covenant/conservation easement.

Finding of No Adverse Effect or Finding of Adverse Effect with Mitigation are possible under 5024 MOU Stipulations X.B.2 or X.C and XVI.D.
The protective measures for both City A and B likely would result in a Finding of No Adverse Effect without Standard Conditions, but which stipulations are cited depends on whether the state-owned historical resource is on the Master List. Pursuant to 5024 MOU Stipulation X.B.2, the District sends the HRCR to CSO for state-owned resources not on the Master List (CSO has 15 calendars from receipt to object), and to CSO to forward to SHPO for state-owned historical resources that are on the Master List (CSO has 15 calendar days from receipt to object; if no objection, CSO forwards to SHPO who has 30 calendar days from receipt to object). For state-owned historical resources, whether or not they are on the Master List, if there is high public interest or controversy, under 5024 MOU Stipulation X.E the District sends the HRCR to CSO who forwards it to SHPO, who has 30 calendar days to review the finding.

**State-owned historical resources not on Master List**

In cases where the local agency has no preservation ordinance, the “HRCR to CSO” section of the HRCR would include a statement that

"Caltrans has determined that the transfer of the [name of NRHP eligible/listed CHL registered/eligible property] to [local agency name] would result in a Finding of No Adverse Effect because the resource will be protected by [choose applicable instrument] a historical covenant, conservation easement, resolution adopted by [name of recipient local agency]. The resource would continue to be protected by [choose applicable instrument] historical covenant, conservation easement, resolution. [Name of Caltrans PQS], who meets the Professionally Qualified Staff Standards in PRC 5024 Memorandum of Understanding Attachment 1 as a(n) [Indicate applicable Principal PQS level] and has the appropriate education and experience, has reviewed this proposed transfer and determined that the [choose applicable instrument] historical covenant, conservation easement, resolution provides appropriate protection for this historical resource. Pursuant to PRC 5024 Memorandum of Understanding Stipulations X.B.2.a and Stipulation XVI.D and under PRC 5024(f), Caltrans has determined a Finding of No Adverse Effect is appropriate and is hereby notifying CSO of this finding. A copy of this HRCR will be included as an attachment to the Caltrans letter transferring the property to the recipient local government."

For state-owned historical resources not on the Master List, if CSO does not object within 15 calendar days of receipt the project or activity is not subject to further
review unless the transfer does not go through as planned. CSO reports this type of transfer finding in its quarterly report to SHPO as outlined in 5024 MOU Stipulations X.B.2.a and XIX.E.2.

**State-owned historical resources on Master List**

In addition to citing PRC 5024.5 instead of 5024(f), there is a different citation in the 5024 MOU that is used for these resources. The “HRCR to CSO” section of the HRCR would use the same language as above but state

"… Pursuant to 5024 Memorandum of Understanding Stipulations X.B.2.c and XVI.D, and under PRC 5024.5, Caltrans has determined a Finding of No Adverse Effect, is appropriate, is hereby notifying CSO and requests SHPO’s concurrence with this finding…”

For state-owned historical resources on the Master List, if CSO does not object within 15 calendar days of receipt, CSO forwards the document to SHPO. If SHPO does not object within 30 calendar days of receipt the project or activity is not subject to further review unless the transfer does not go through as planned.

After SHPO has concurred under PRC 5024(f) or 5024.5, Caltrans District PQS need to follow up with District Right of Way to ensure that the resolution has been adopted or that the conservation easement and/or historical covenant has been executed and recorded.

**Transfer: Private/Unknown Owner**

Private owners are under no obligation to comply with state or local cultural resources laws and regulations, unless their actions include public funding, permits, licenses, etc. that would trigger environmental review. There are activities (e.g. ground-disturbing activities, alterations, demolitions) that could adversely affect historical resources. Therefore, when state-owned historical resources are transferred to a private owner(s), under PRC 5024, the transfer has the potential for adverse effect. Similarly, when Caltrans does not know to whom the property will be transferred, the potential for adverse effects exists.

Prior to transfers to private owners or when the future owner is unknown, Caltrans follows the procedures outlined in Chapter 2 Sections 2.8.7 and 2.8.8, including the development of protective measures if the excess parcel or route relinquishment
contains NRHP listed/eligible or CHL registered/eligible resources. Caltrans is required to make a reasonable and good faith effort to protect these types of resources. Caltrans PQS need to develop appropriate protective measures, coordinating with other Caltrans divisions (e.g., Right of Way and Legal, as necessary), nonprofit groups that hold covenants and easements, and the private owner if known. Transfers of state-owned historical resources with conservation easements or historical covenants typically are used to obtain a finding of no adverse effect under the 5024 MOU and PRC 5024(f) for archaeological and non-structural NRHP listed/eligible or CHL registered/eligible historical resources and under PRC 5024.5 for state-owned NRHP listed/eligible or CHL registered/eligible buildings and structures.

If Caltrans is unable to obtain protective agreements, covenants or conservations easements, then the HRCR, or a supplemental HRCR if the failure occurred after SHPO review, needs to document those efforts and why they failed.

Protective measures are described in Section 8 (Mitigation Plan) of the HRCR and the draft commitments are included in the HRCR as attachments. Chapter 7 Section 7.12.7 also contains information on property transfers to private owners. Caltrans PQS may contact the CSO BEPS Chief for assistance with developing these appropriate measures, and for sample language for historical covenants.

**Transfer: Private/Unknown Owner: Locally Designated (not CLG) Historical Resource**

When Caltrans transfers state-owned historical resources to private owners or when the future owner is unknown, state-owned historical resources that are designated by local agencies that are not CLGs, but that have preservation ordinances that are substantially equivalent to the CLG requirements, the finding is likely a FNAE without standard conditions that will need to be reviewed by CSO and for resources on the Master List, by SHPO. Briefly describe the recipient local agency’s preservation ordinance, e.g. official name, legal citation in the local code, in Section 8 (Mitigation Plan) of the HRCR. The preservation ordinance is included in the HRCR as an attachment, in addition to the document describing the historical resource (e.g., DPR 523 forms, Character-Defining Features form, Historical Resources Evaluation Report).
If Caltrans PQS cultural resources staff certified in the appropriate discipline, CSO or SHPO disagree, treat the finding as an adverse effect, develop the appropriate mitigation measures and follow the process in the Finding of Adverse Effect and Mitigation Measures section of this exhibit.

**State-owned historical resources not on Master List**

The “HRCR to CSO” section of the HRCR would include a statement that

"Caltrans has determined that the transfer of the [name of NRHP eligible/listed CHL registered/eligible property] to [private owner or name when known] would result in a Finding of No Adverse Effect because the resource is designated as historic by [local agency name] under its preservation ordinance. The resource would continue to be protected by all applicable sections of this ordinance. Therefore, historical covenants or other conditions are not necessary. [Name of Caltrans PQS], who meets the Professionally Qualified Staff Standards in PRC 5024 Memorandum of Understanding Attachment 1 as a(n) [Indicate applicable Principal PQS level] and has the appropriate education and experience, has reviewed this proposed transfer and determined that the [local agency name] preservation ordinance provides appropriate protection for this historical resource. Pursuant to PRC 5024 Memorandum of Understanding Stipulations X.B.2.a and Stipulation XVI.C.2 and under PRC 5024(f), Caltrans has determined a Finding of No Adverse Effect is appropriate and is hereby notifying CSO of this finding. A copy of this HRCR will be included as an attachment to the Caltrans letter transferring the property to the recipient private or other owner."

For state-owned historical resources not on the Master List, if CSO does not object within 15 calendar days of receipt the project or activity is not subject to further review unless the transfer does not go through as planned. CSO reports this type of transfer finding in its quarterly report to SHPO as outlined in 5024 MOU Stipulations X.B.2.a and XIX.E.2.

**State-owned historical resources on Master List**

In addition to citing PRC 5024.5 instead of 5024(f), there is a different citation in the 5024 MOU that is used for these resources. The “HRCR to CSO” section of the HRCR would use the same language as above but state

"… Pursuant to 5024 Memorandum of Understanding Stipulations X.B.2.c and XVI.C.2, and under PRC 5024.5, Caltrans has determined a Finding of No
Adverse Effect, is appropriate, is hereby notifying CSO and requests SHPO’s concurrence with this finding. ...”

For state-owned historical resources on the Master List, if CSO does not object within 15 calendar days of receipt, CSO consults with and forwards the document to SHPO. If SHPO does not comment or object within 30 calendar days of receipt, 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 unless the transfer does not go through as planned.

See Chapter 2.8.10.3 No Adverse Effect: Transfer of State-owned Historical Resources for additional guidance. Stipulations X.B.2 and XVI.C.2 of the 5024 MOU contain additional information regarding this type of finding.

Transfer: Private/Unknown Owner: Locality with No Preservation Ordinance

When the state-owned historical resource is located within a local agency jurisdiction that either does not have a preservation ordinance or its ordinance does not substantially meet CLG requirements, the process for complying with PRC 5024, even with the 5024 MOU in place, may take longer to complete because more effort is involved in developing and obtaining protective measures. As a result, the success or failure to obtain enforceable protective measures may result in either a Finding of No Adverse Effect or a Finding of Adverse Effect for the proposed transfer or relinquishment. Follow the procedures set forth above in Transfer/Relinquishment: Local Agency No Preservation Ordinance, and its applicable sections, such as the use of historical covenants and conservation easements to justify a FNAE, use of standard mitigation measures for state-owned archaeological sites that are not on the Master List, and measures to mitigate adverse effects to state-owned historical resources.

Protective measures to avoid adverse effects

The most common measure Caltrans uses to avoid a potential adverse effect to state-owned historical resources when transferring to private or unknown future owners and to comply with PRC 5024 is to transfer or relinquish the resource with a historical covenant or conservation easement. In this situation, the preservation agreement between Caltrans and the receiving private or future owner would need to stipulate that all future owners will recognize the property as a historical resource,
will preserve and maintain it in accordance with the SOIS, will request use of the CHBC for code-related issues from the local building official, and will require that alterations, additions and demolitions be reviewed by qualified persons who meet the Secretary of the Interior’s Professional Qualification Standards.

Through the use of a historical covenant/conservation easement, the finding is likely to be a FNAE without standard conditions that will need to be reviewed by CSO and for resources on the Master List, by SHPO. It all depends on having adequate and enforceable provisions in the resolution, easement or covenant.

Briefly describe the draft historical covenant/conservation easement in Section 8 (Mitigation Plan) of the HRCR; the draft document(s) is included in the HRCR as an attachment(s) in addition to the document describing the historical resource (e.g., DPR 523 forms, Character-Defining Features form, Historical Resources Evaluation Report). However, if Caltrans PQS cultural resources staff certified in the appropriate discipline, CSO or SHPO disagree, treat the finding as an adverse effect, develop the appropriate mitigation measures and follow the process in the Finding of Adverse Effect and Mitigation Measures section of this exhibit.

For state-owned historical resources not on the Master List, if CSO does not object within 15 calendar days of receipt, the project or activity is not subject to further review unless the transfer does not go through as planned. CSO reports this type of transfer finding in its quarterly report to SHPO as outlined in 5024 MOU Stipulations X.B.2.a and XIX.E.2.

**State-owned historical resources not on Master List**
The “HRCR to CSO” section of the HRCR would include a statement that

"Caltrans has determined that the transfer of the [name of NRHP eligible/listed CHL registered/eligible property] to [private or future owner name when known] would result in a Finding of No Adverse Effect because the resource will be protected by [choose applicable instrument] a historical covenant, conservation easement. The resource would continue to be protected by the [choose applicable instrument] historical covenant, conservation easement. [Name of Caltrans PQS], who meets the Professionally Qualified Staff Standards in PRC 5024 Memorandum of Understanding Attachment 1 as a(n) [Indicate applicable Principal PQS level] and has the appropriate education and experience, has reviewed this proposed transfer and determined that the
[choose applicable instrument] historical covenant, conservation easement, resolution provides appropriate protection for this historical resource. Pursuant to PRC 5024 Memorandum of Understanding Stipulations X.B.2.a and Stipulation XVI.D and under PRC 5024(f), Caltrans has determined a **Finding of No Adverse Effect** is appropriate and is hereby notifying CSO of this finding. A copy of this HRCR will be included as an attachment to the Caltrans letter transferring the property to the recipient private or other owner."

**State-owned historical resources on Master List**

In addition to citing PRC 5024.5 instead of 5024(f), there is a different citation in the 5024 MOU that is used for these resources. The “HRCR to CSO” section of the HRCR would use the same language as above but state

"… Pursuant to 5024 Memorandum of Understanding Stipulations X.B.2.c and XVI.D, and under PRC 5024.5, Caltrans has determined a **Finding of No Adverse Effect**, is appropriate, is hereby notifying CSO and requests SHPO’s concurrence with this finding...”

For state-owned historical resources on the Master List, if CSO does not object within 15 calendar days of receipt, CSO forwards the document to SHPO. If SHPO does not object within 30 calendar days of receipt the project or activity is not subject to further review unless the transfer does not go through as planned.

After SHPO has concurred under PRC 5024(f) or 5024.5, Caltrans District PQS need to follow up with District Right of Way to ensure that the conservation easement and/or historical covenant has been executed and recorded.

**Stipulations X.B.2** and **XVI.C.2** of the 5024 MOU contain additional information regarding this type of finding. See **Chapter 2 2.8.10.3 No Adverse Effect: Transfer of State-owned Historical Resources** for additional guidance.

**FINDING OF ADVERSE EFFECT: STANDARD MITIGATION MEASURES FOR ARCHAEOLOGICAL SITES**

The **5024 MOU Stipulation X.C.1**, through the use of a Data Recovery Plan (DRP), streamlines the process for state-owned NRHP/CHL eligible archaeological sites and those that are considered NRHP-eligible for purposes of the project or activity only
and that are not on the Master List. In order to achieve a Finding of Adverse Effect – Standard Mitigation Measures (FAE-SMM), the data recovery plan must include at a minimum all the bullet points outlined in PRC MOU Attachment 6. As described in that attachment, SHPO wants to see “consultation with Indian tribes that ascribe religious or cultural significance to the affected historical resource, or with other interested parties, to determine whether and how the mitigation will adequately address the effects to those other values, as well as the appropriate methods for incorporating what is learned about the resource’s significance into public outreach and education.” Therefore, it is essential to incorporate the results of this consultation into the DRP.

**State-owned archaeological sites not on Master List**

The “HRCR to CSO” section of the HRCR would include a statement that

"Caltrans has determined that the transfer of the [name of NRHP/CHL eligible or considered eligible site] to [local agency name] would result in a Finding of Adverse Effect with Standard Mitigation Measures and that the adverse effect will be satisfactorily mitigated through the development of a Data Recovery Plan that contains all the elements required by the PRC 5024 Memorandum of Understanding Attachment 6. [Name of Caltrans PQS], who meets the Professionally Qualified Staff Standards in PRC 5024 Memorandum of Understanding Attachment 1 as a(n) [Indicate applicable Principal PQS level] and has the appropriate education and experience, has reviewed this proposed transfer and determined that the [name of Data Recovery Plan] provides appropriate mitigation for this historical resource. Pursuant to PRC 5024 Memorandum of Understanding Stipulations X.C.1 and XVI.D, and under PRC 5024(f), Caltrans has determined a **Finding of Adverse Effect with Standard Mitigation Measures** is appropriate and is hereby notifying CSO of this finding. A copy of this HRCR and the Data Recovery Plan will be included as an attachment to the Caltrans letter transferring the property to the recipient local government."

Briefly describe the DRP in Section 8 (Mitigation Plan) of the HRCR; the draft DRP is included in the HRCR as attachments, in addition to the document describing the NRHP/CHL eligible or considered eligible archaeological site.
For state-owned NRHP/CHL eligible or considered eligible archaeological sites not on the Master List, if CSO does not object within 30 calendar days of receipt the project or activity is not subject to further review unless the transfer does not go through as planned. CSO reports this type of transfer finding in its quarterly report to SHPO as outlined in 5024 MOU Stipulations X.C.1.b and XIX.E.2.

Stipulations X.C.1 and XVI.D of the 5024 MOU contain additional information regarding this type of finding. See Chapter 2 Section 2.8.7.3 Finding of Adverse Effect with Standard Mitigation Measures for additional guidance.

State-owned archaeological sites on Master List
Use of the FAE-SMM is not allowed under the PRC 5024 MOU for state-owned archaeological sites that are on the Master List. See State-owned Archaeological Sites on Master List below.

FINDING OF ADVERSE EFFECT AND MITIGATION MEASURES
Mitigation measures when adverse effects cannot be avoided
If Caltrans is unable to obtain historical covenants, conservation easements, or other protective agreements, then the HRCR (or a supplemental HRCR if the failure occurred after SHPO review) needs to document those efforts, why they failed, and the proposed transfer or relinquishment would be considered an adverse effect that requires mitigation. The Section 106 regulations at 36 CFR 800.6 cites use of mitigation measures to “resolve adverse effects” and CEQA at PRC 15064.5(b) uses terms like “materially impairs,” materially “alters,” and that use of the SOIS10 is “considered as mitigated to a level of less than a significant impact on the historical resource.”

PRC 5024 does not use the terms “resolving adverse effects” or “mitigated to a level of less than a significant impact on the historical resource.” As a result, for compliance with PRC 5024, one can only mitigate adverse effects, not resolve them. Under PRC 5024.5b for historical resources on the Master List, state agencies and the SHPO “shall adopt prudent and feasible measures that will eliminate or mitigate the adverse effects.” As with FNAEs, the process for compliance when there is the

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10 Caltrans uses the Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings or the Secretary of the Interior’s Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (1995), by Weeks and Grimmer, as stipulated in PRC 15064.5(b)(3).
potential for adverse effect depends on the type of state-owned historical resource that is proposed for transfer/relinquishment and whether it is on the Master List. For state-owned historical resources not on the Master List, the FAEs go to CSO for review; for state-owned historical resources on the Master List, the FAEs first go to CSO and CSO forwards the FAE to SHPO.

There is a variety of mitigation measures that can be used to mitigate adverse effects to state-owned historical resources. Chapter 7 Section 7.12 contains brief descriptions. However, for transfers and relinquishments, the feasible and prudent measures that would be most applicable incorporate public interpretation and outreach in addition to heritage documentation, which as described in Exhibit 7.6 Heritage Documentation for HABS/HAER/HALS, particularly the State-Only Projects section.

**State-owned archaeological sites on Master List**

The 5024 MOU does not allow the use of the FAE-SMM for state-owned NRHP/CHL listed/registered archaeological sites that are on the Master List. Standard Mitigation Measures are only allowed for NRHP- or CHL-eligible state-owned archaeological sites that are not on the Master List. However, a DRP that includes all the items listed in 5024 MOU Attachment 6 may be used for a Finding of Adverse Effect that does go to SHPO for review. In this case, the HRCR would refer to the DRP and its components as measures to mitigate the adverse effect of the transfer or relinquishment.

Briefly describe the DRP in Section 8 (Mitigation Plan) of the HRCR; the draft DRP is included in the HRCR as an attachment, in addition to the document describing the NRHP/CHL listed archaeological sites.

The “HRCR to CSO” section of the HRCR would include a statement that

"Caltrans has determined that the transfer of the [name of NRHP/CHL listed or registered site] to [local agency name] would result in a Finding of Adverse Effect and that the adverse effect will be satisfactorily mitigated through the development of a Data Recovery Plan. [Name of Caltrans PQS], who meets the Professionally Qualified Staff Standards in PRC 5024 Memorandum of Understanding Attachment 1 as a(n) [Indicate applicable Principal PQS level] and has the appropriate education and experience, has reviewed this proposed transfer and determined that the [name of Data Recovery Plan] provides..."
appropriate mitigation for this historical resource. Pursuant to PRC 5024 Memorandum of Understanding Stipulations X.C.2.b and XVI.D and under PRC 5024.5, Caltrans has determined a Finding of Adverse Effect is appropriate and is hereby notifying CSO and requests SHPO’s concurrence with this finding. A copy of this HRCR and the Data Recovery Plan will be included as an attachment to the Caltrans letter transferring the property to the recipient local government.

The District processes the HRCR as described in Chapter 2 Section 2.8.7.2. Stipulations X.C.2.b and XVI.D of the 5024 MOU contain additional information regarding this type of finding.

**State-owned historical resources not on Master List**

The FAE for all other state-owned historical resources that are not on the Master List will require appropriate mitigation measures that are briefly discussed in Section 8 (Mitigation Plan) of the HRCR; the draft mitigation measures are included in the HRCR as attachments, in addition to the document describing the historical resource(s) to be transferred or relinquished.

The “HRCR to CSO” section of the HRCR would include a statement that

"Caltrans has determined that the transfer of the [name of the historical resource] to [local agency name] would result in a Finding of Adverse Effect and that the adverse effect will be satisfactorily mitigated through the mitigation measures included as attachments to this HRCR. [Name of Caltrans PQS], who meets the Professionally Qualified Staff Standards in PRC 5024 Memorandum of Understanding Attachment 1 as a(n) [Indicate applicable Principal PQS level] and has the appropriate education and experience, has reviewed this proposed transfer and determined that the mitigation measures described in [name of HRCR attachment] provides appropriate mitigation for this historical resource. Pursuant to PRC 5024 Memorandum of Understanding Stipulations X.C.2.a and XVI.D and under PRC 5024(f), Caltrans has determined a Finding of Adverse Effect is appropriate and is hereby notifying CSO of this finding. A copy of this HRCR and the mitigation measures will be included as an attachment to the Caltrans letter transferring the property to the recipient local government."
State-owned historical resources on Master List

The FAE for all other state-owned historical resources that are on the Master List will require appropriate mitigation measures that are briefly discussed in Section 8 (Mitigation Plan) of the HRCR; the draft mitigation measures are included in the HRCR as attachments, in addition to the document describing the historical resource(s) to be transferred or relinquished.

In addition to citing PRC 5024.5 instead of 5024(f), there is a different citation in the 5024 MOU that is used for these resources. The “HRCR to CSO” section of the HRCR would use the same language as above but state:

"… Pursuant to PRC 5024 Memorandum of Understanding Stipulations X.C.2.b and XVI.D, and under PRC 5024(f), Caltrans has determined a Finding of Adverse Effect is appropriate and is hereby notifying CSO and requests SHPO’s concurrence with this finding…"

The District processes the HRCR as described in Chapter 2 Section 2.8.7.2. Stipulations X.C.2.a11, X.C.2.b12, and XVI.D of the 5024 MOU contain additional information regarding this type of finding.

COMBINED DOCUMENTATION

As outlined in 5024 MOU Stipulation X.D, The SHPO consultation on eligibility and the Caltrans determination of effect under PRC 5024(f) and 5024 MOU Stipulations X and XVI may be combined in one HRCR, pursuant to 5024 MOU Stipulation X.D. Keep in mind that the while review times may be concurrent, SHPO review times for eligibility, and Caltrans’ review times for findings of effect and proposed mitigation measures run sequentially.

PUBLIC INTEREST OR CONTROVERSY

When effects to state-owned historical resources—including transfers of excess parcels and route relinquishments—are highly controversial or there is substantial public interest in the effects on these resources, the District forwards the FNAE or the FAE with proposed mitigation measures to CSO for review and CSO forwards the

11 For state-owned historical resources not on the Master List.
12 For state-owned historical resources on the Master List.
finding(s) to SHPO for notification pursuant to 5024 MOU Stipulation X.E under either PRC 5024(f)\textsuperscript{13} or PRC 5024.5\textsuperscript{14} as applicable, and request SHPO’s comments. See Chapter 2 Section 2.8.7.3 and 5024 MOU Stipulation X.E for additional guidance.

The HRCR and the transmittal letter to CSO and to SHPO must clearly describe the nature of the disagreement or objection regarding the proposed transfer or relinquishment, the type of Caltrans finding, and cite that Caltrans is requesting SHPO’s comments pursuant to 5024 MOU Stipulation X.E and PRC 5024(f) or PRC 5024.5, as applicable. Attachments should include any correspondence, communications, articles, or documents or other media relating to the public interest or controversy.

**DISAGREEMENTS AND OBJECTIONS**

For state-owned historical resources that are not on the Master List, if CSO disagrees or objects to the FNAE without standard conditions or to the FAE within the times outlined in Chapter 2 Sections 2.8.6.2 and 2.8.7.2 and the issue(s) cannot be resolved, CSO must consult with SHPO under 5024 MOU Stipulation X.F for no more than 30 calendar days to come to an agreement. In this situation the SHPO’s comments are advisory. See Chapter 2 Section 2.8.7.5.

For state-owned historical resources that are on the Master List, if CSO or SHPO disagrees or objects to the FNAE without standard conditions or to the FAE within the time frames outlined in Chapter 2 Sections 2.8.6.2 and 2.8.7.2 and the issue(s) cannot be resolved, CSO must consult with SHPO under 5024 MOU Stipulation X.F for no more than 30 calendar days to come to an agreement. One caveat to keep in mind is that when Caltrans and the SHPO disagree on the effects or proposed mitigation measures for state-owned historical resources on the Master List and SHPO determines that the disagreement cannot be resolved, the SHPO shall, by law [PRC 5024.5(d)], request the Office of Planning and Research (OPR) to mediate the disagreement. OPR’s decision is final and binding. See Chapter 2 Section 2.8.7.5.

The HRCR and the transmittal letter to CSO and to SHPO must clearly describe the nature of the public interest or controversy regarding the proposed transfer or

\textsuperscript{13} For state-owned historical resources not on the Master List.

\textsuperscript{14} For state-owned historical resources on the Master List.
relinquishment, the type of Caltrans finding, and cite that Caltrans is requesting SHPO’s comments pursuant to [5024 MOU Stipulation X.F](#) and PRC 5024(f) or PRC 5024.5, as applicable. Attachments should include any correspondence, communications, articles, or documents or other media relating to the public interest or controversy.

**LEGISLATIVE APPROVAL FOR NRHP LISTED STATE-OWNED RESOURCES**

If the transfer of a Caltrans-owned NRHP listed built-environment property to another public entity would result in an adverse effect, compliance with [PRC 5027](#) is required. This entails legislative approval when state agencies transfer NRHP-listed buildings or structures to another public agency when the transfer would result in demolition, destruction or significant alteration of the NRHP-listed building or structure. *Chapter 2* of this volume contains a discussion of this section of the code. However, transfers that include “restoration to preserve or enhance” the historical values of this type of resource, would not trigger compliance with PRC 5027.

Very few Caltrans-owned buildings or structures are actually listed in the NRHP, but should this situation arise, under PRC 5024.5, Caltrans must consult with the SHPO *early* in the planning process; consultation needs to occur before the legislation is passed.

**Caltrans should be consulting with SHPO before the legislation is introduced.**

This allows time during the compliance process to determine whether there is an alternative to demolition, destruction or alteration, as well as to identify mitigation measures, should avoidance be imprudent or unfeasible.

As outlined in PRC 5024.5, Caltrans must consult with SHPO as soon as possible so that PRC 5024 compliance is complete and any mitigation measures are in place, or included in the proposed legislation.

**COMPLETING THE HRCR**

Complete Sections 1 through 4 of the HRCR, to the level appropriate for the type(s) of cultural resources that are on the excess parcel(s) or property to be transferred or relinquished.
Under Sections 5 and 6 (Exempted resources/No CEQA historical resources and CEQA historical resources identified), the most commonly checked box would be "N/A" because the majority of parcels likely will not have any cultural resources, or the resources are exempt from evaluation. If CEQA does not apply, Caltrans is not required to evaluate the resources pursuant to CEQA 15064.5(a)(4). However, if in the course of doing the required PRC 5024 background research, previously evaluated resources are identified, Caltrans discloses that fact by checking the appropriate box(es) in Section 5 (Exempt from Evaluation/No CEQA Historical Resources Identified), and listing those resources. Similarly, check the appropriate box(es) in Section 6 (CEQA Historical Resources Identified) and list those resources. If, in the course of background research, locally designated resources are identified, these also are reported in Section 6.

If there are state-owned NRHP/CHL listed or eligible resources, in Section 8 (Mitigation Plan) briefly describe Caltrans' efforts to protect them, list the measures, and refer to the appropriate attachments.

Under Section 9 (State-owned Historical Resources Findings), check all the applicable findings. Attach the appropriate documentation and obtain the appropriate signatures (Sections 10 and 11).

**PROPERTY TRANSFER DOCUMENTS AND LETTERS**

District PQS should coordinate with District Right-of-Way staff to ensure that any the documents and transmittal letters contain the appropriate language to address the historic nature of the NRHP/CHL listed or eligible resources on the property, including any environmental commitments made in compliance with PRC 5024. As with any legal document, staff should seek Caltrans legal counsel on the wording and legality of the transfer documents.

After environmental compliance is complete, Caltrans prepares a transfer transmittal letter to the new owner. The letter and protection documents (e.g., historical covenants with assignment assumption agreements, conservation easements, city resolutions, or cooperative agreements) identify by name(s) of any NRHP listed/eligible or CHL registered/eligible resources on the property. Likewise, in the interest of full disclosure, Caltrans identifies in the letter whether the property contains any historical resources under CEQA, such as locally designated, California
Register listed/eligible resources, or potentially NRHP-eligible archaeological sites. The letter also summarizes the protections that are conditions of the transfer and that are explained more fully in the transfer documents themselves; these will vary depending on who will be the new owner(s). A copy of the HRCR is attached to the transfer transmittal letter.

**Federal Agencies**

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

**State Agencies**

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

**Local Agencies**

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

**Private Owners**

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

**POST TRANSFER: COMPLETING PRC 5024 COMPLIANCE**

The Caltrans Standard Environmental Reference (SER) Volume 2 – Cultural Resources, Chapter 2 Section 2.8.10.5: Post Transfer – Completing PRC 5024 Compliance, contains guidance for follow-up notification to SHPO when Caltrans has completed the transfer of ownership for NRHP listed or eligible or CHL registered or eligible resources. The finalized protection documents mentioned in Section 2.8.10.5 that go to SHPO refer to copies of the officially recorded covenants/Assignment Assumption Agreements or conservation easements with the Office of the County Recorder’s stamp, or officially adopted resolutions with the local government officials’ signatures.
HISTORICAL COVENANT AND NOTICE OF RESTRICTIONS

Agreement No. XXXX

This HISTORICAL COVENANT AND NOTICE OF RESTRICTIONS (this “Historical Covenant”) is entered into this _______ day of ____________, 20XX, by and between New Owner’s Name, GRANTEE under Director’s Deed DD XXXXXXXXXXX (collectively, “GRANTEE”) and the STATE OF CALIFORNIA, acting by and through its Department of Transportation (“DEPARTMENT/GRANTOR”),

A. Whereas, GRANTEE is or will become the owner of a parcel of real property which is included in/determined to be eligible for inclusion on the National Register of Historic Places and is listed in the California Register of Historical Resources located at Street or other physical address, City of city name, County of County name, State of California, more particularly described below and hereinafter referred to as “the PROPERTY”:

Insert legal property description here.

B. Whereas, the PROPERTY possesses significant historical value and characteristics that are of great importance to GRANTEE, the people of County name County, and the people of the State of California; and

C. Whereas, GRANTEE and DEPARTMENT/GRANTOR desire and intend that the historical values and characteristics of the PROPERTY be preserved, protected, enhanced and retained in perpetuity.
Add historic property address here

NOW, THEREFORE, to assure the preservation, protection, enhancement and retention of the historic value and characteristics of the PROPERTY, GRANTEE hereby voluntarily covenants on behalf of itself and all successive owners of the PROPERTY to DEPARTMENT/GRANTOR and its successors and assigns, for good and valuable consideration, including of their mutual promises and covenants, the receipt and sufficiency of which is hereby acknowledged, to do or refrain from doing the following with respect to the PROPERTY:

1. GRANTEE and GRANTEE’s successors and assigns shall maintain and preserve all original exterior and interior architectural features and fixtures, hereinafter referred to as “Character Defining Features,” listed and more particularly described below:

   INTERIOR FEATURES TO BE PROTECTED:

   • [List CDFs here. It is likely there will be few or no CDFs for contributing properties to districts, but may be more for individually eligible properties.]

   •

   EXTERIOR FEATURES TO BE PROTECTED:

   • [List CDFs here.]

   •

2. In order to preserve and enhance those Character Defining Features that make the PROPERTY eligible for inclusion on the National Register of Historic Places, and listed in the California Register of Historical Resources GRANTEE and GRANTEE’s successors and assigns shall preserve and maintain the PROPERTY in accordance with the recommended approaches set forth in The Secretary of the Interior’s Standards for the Treatment of Historic Properties, found at 36 Code of Federal Regulations, Part 68, and all amendments or modifications thereto.

3. Without express prior written permission executed by a fully authorized representative of DEPARTMENT/GRANTOR or its’ assignee, or their successors or assigns, which will not be unreasonably withheld, GRANTEE or GRANTEE’s successors and assigns shall not undertake any type of construction, alteration, remodeling, relocation or demolition of the PROPERTY which would affect the Character Defining Features of the PROPERTY.

   Page _ of _ Pages
4. GRANTEE and GRANTEE’s successors and assigns shall permit DEPARTMENT/GRANTOR and/or its assignee, at time of sale or transfer, at time of any application for any building permit, or at any time chosen by DEPARTMENT/GRANTOR and/or its assignee to inspect the PROPERTY for the purpose of ascertaining that the obligations and duties set forth herein are being observed.

5. In the event of a violation of this Covenant, and in addition to any remedy now or hereafter provided by law, DEPARTMENT/GRANTOR or DEPARTMENT/GRANTOR’s assignee, may, as allowed by law and following thirty (30) days prior written notice to GRANTEE or GRANTEE’s successors and assigns, initiate legal action or proceedings to enjoin said violation and to require the remediation of any changes made to the features, spaces or spatial relationships characterizing the historic aspects of the PROPERTY.

6. This Historical Covenant shall run with the PROPERTY and be binding upon DEPARTMENT/GRANTOR and GRANTEE, and upon DEPARTMENT/GRANTOR’s and GRANTEE’s respective successors and assigns. GRANTEE and GRANTEE’s successors and assigns shall include this Historical Covenant either verbatim or by express reference thereto, in any deed or other legal instrument by which fee simple title or any other lesser estate in the PROPERTY or any part thereof is transferred or otherwise passes. Said deed or other legal instrument shall be recorded in the office of the County name County Recorder. The failure of GRANTEE or of GRANTEE’s successors and assigns to comply with this provision shall not impair the validity of this Historical Covenant or limit its enforceability in any way. Any successors in interest or assigns of GRANTEE, by acceptance of a deed, lease or other document purporting to convey an interest in the Property, shall be deemed to have consented to, reaffirmed and agreed to be bound by all of the terms, covenants, restrictions and conditions of this Historical Covenant.

7. The failure of DEPARTMENT/GRANTOR or DEPARTMENT/GRANTOR’s assignee to exercise any right or remedy granted under this instrument shall not have the effect of waiving or limiting the exercise of any other right or remedy or the use of such right of remedy at any other time.

8. GRANTEE, for itself and on behalf of its successors and assigns hereby agrees and acknowledges that neither DEPARTMENT/GRANTOR nor
Add historic property address here

DEPARTMENT/GRANTOR’s assignee shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by GRANTEE, its heirs, successors, and assigns, under or in connection with their obligations, duties or responsibilities set forth in this Covenant.

9. It is understood and acknowledged that DEPARTMENT/GRANTOR, as set forth in the Assignment and Assumption Agreement effective on date, has permanently assigned, transferred, and released all of its obligations, responsibilities, and any liabilities set forth in this Historical Covenant to [Name of organization that will be the Assignee monitoring the covenant], its successors and assigns. Further, [Name of organization that will be the Assignee monitoring the covenant] as DEPARTMENT/GRANTOR’s assignee, has agreed to and will assume and completely and timely perform, comply with and discharge, each and every obligation, covenant, representation, warranty, duty and liability of DEPARTMENT/GRANTOR as described herein.

10. Subsequent to execution of this Historical Covenant by all parties hereto, this Historical Covenant shall be recorded in the office of the County name County Recorder.

11. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

12. Execution of the Historical Covenant by GRANTEE shall constitute conclusive evidence that GRANTEE has read and understood the contents thereof, and agrees to be bound by the foregoing provisions, conditions, restrictions, and assignment, and to perform the obligations herein set forth.

13. GRANTEE acknowledges that as buyers of the PROPERTY they have also entered into a Right to Purchase Agreement (RTPA) dated date, which is incorporated herein by this reference, pursuant to Government Code 54235, et. seq. That RTPA places certain additional restrictions on the use of the PROPERTY including, but not limited to, the requirement that GRANTEE obtains written approval from the DEPARTMENT/GRANTOR prior to commencing any substantial repairs to that said property. GRANTEE hereby acknowledges and agrees that the provisions of both the RTPA and this Historical Covenant apply to PROPERTY with regard to the Character Defining Features. Furthermore, in the event that the RTPA and this Historical Covenant
conflict, the more restrictive provision of the two agreements shall apply in order to give the greatest protection to the PROPERTY.

14. The following definitions will be utilized for each of the terms listed:

   a.) The words “preserve”, “preserving”, and/or “preservation” is defined as the act or process of applying measures necessary to sustain the existing form, integrity and materials of an historic property. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials and features rather than extensive replacement and new construction. New exterior additions are not within the scope of this treatment; however, the limited and sensitive upgrading of mechanical, electrical and plumbing systems and other code-required work to make properties functional is appropriate within a preservation project as set forth in Title 36 Code of Federal Regulations (CFR) Part 68 Sec. 68.2 Definitions.

   b.) The words “rehabilitate”, “rehabilitating”, and/or “rehabilitation” are defined as the act or process of making possible an efficient compatible use for a property through repair, alterations and additions while preserving those portions or features that convey its historical, cultural or architectural values as set forth in 36 CFR Part 68.

   c.) The word “integrity” is defined as the ability of a property to convey its significance. The seven aspects that combined produce integrity are location, design, setting, materials, workmanship, feeling, and association as set forth in the U.S. Department of the Interior National Register Bulletin 15, How to Apply the National Register Criteria for Evaluation.

15. GRANTEEn shall at all times maintain insurance on the PROPERTY at a level equal to 100% of replacement cost and shall provide that such insurance policy names the STATE OF CALIFORNIA, Department of Transportation, and Name of organization that will be the Assignee monitoring the covenant, their successors and assigns, as additionally insured parties.

16. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute but one agreement.

17. This Agreement shall be deemed effective upon the last of the dates that DEPARTMENT/GRANTOR and GRANTEE sign, which is date.
Exhibit 2.17: Excess Property Transfers and Route Relinquishments

Sample Historical Covenant Template

[NAME OF NEW PROPERTY OWNER IN CAPS]  
Grantee  

[NAME OF NEW PROPERTY OWNER IN CAPS]  
Grantee  

[NAME OF DIST. DIRECTOR OR PERSON DELEGATED TO SIGN FOR DIRECTOR IN CAPS]  
[Person’s Title]  
District [number] [Appropriate Division name]  
State of California Department of Transportation  

[NAME OF RESPONSIBLE R/W MANAGER IN CAPS]  
[Title and, if appropriate, R/W Region]  
State of California Department of Transportation  
Approved as to Form and Procedure:  

[NAME OF ATTORNEY APPROVING DOCUMENT IN CAPS]  
Attorney  
State of California Department of Transportation  
Acknowledged by:  

[NAME OF PERSON, TITLE FROM ORGANIZATION IN CAPS]  
[Name of organization monitoring the covenant]  

(Notary Acknowledgments must be attached per Civil Code Section 1180 et seq)
ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this “AAA”), is entered into this ______ day of ____________, 20XX, by and between the STATE OF CALIFORNIA, acting by and through its Department of Transportation (“DEPARTMENT/ASSIGNOR”) and [Name of organization that will be the Assignee monitoring the covenant], a [State whether it is a California non-profit corporation, type of local government entity (e.g., city, county), or type of California Native American tribe (e.g., federally recognized or non-federally recognized and on Native American Heritage Commission's contact list)] (“ASSIGNEE”).

RECITALS

Whereas, New Owner’s Name are or will become the owners of a parcel of real property, which has been determined eligible for inclusion on the National Register of Historic Places, and is listed in the California Register of Historical Resources located at Street or other physical address, City of City name, County of County name, State of California, more particularly described below, and hereinafter referred to as “the PROPERTY”:

Insert legal description here

B. Whereas, New Owner’s Name and DEPARTMENT/ASSIGNOR are parties to a Historical Covenant and Notice of Restrictions Agreement, Agreement # XXXX, entered into on date, (the “Historical Covenant”), which is incorporated herein by this reference, wherein New Owner’s Name agreed to do or refrain from doing particular things to the PROPERTY, to assure the preservation, protection, enhancement and retention of the historic characteristics of said Address of Historical Resource property. Under the Historical Covenant, DEPARTMENT/ASSIGNOR has taken on certain duties, rights and obligations relative to the PROPERTY; and
C. Whereas, DEPARTMENT/ASSIGNOR, as that covenantee in the Historical Covenant, desires to now assign to ASSIGNEE all of DEPARTMENT/ASSIGNOR’s duties, rights and obligations thereunder and ASSIGNEE desires to assume DEPARTMENT/ASSIGNOR's rights duties, and obligations under the Historical Covenant; and

D. Whereas, DEPARTMENT/ASSIGNOR intends to pay a one-time service fee or endowment in the amount of Amount dollars ($XXXXX) to ASSIGNEE for ASSIGNEE assuming in perpetuity all of the DEPARTMENT/ASSIGNOR’s duties, rights and obligations under the Historical Covenant.

NOW, THEREFORE, in consideration of the foregoing recitals, which are specifically incorporated into this AAA, and other good and valuable consideration, receipt of which is hereby acknowledged, DEPARTMENT/ASSIGNOR and ASSIGNEE hereby agree as follows:

1. DEPARTMENT/ASSIGNOR hereby assigns and delegates all of DEPARTMENT/ASSIGNOR’s obligations, responsibilities, and duties in and to the Historical Covenant to ASSIGNEE. ASSIGNEE hereby assumes and agrees to completely and timely perform, comply with and discharge, each and every obligation, covenant, representation, warranty, indemnification, duty and liability of DEPARTMENT/ASSIGNOR under the Historical Covenant.

2. That New Owner’s Name, as the buyers of the PROPERTY have also entered into a Right to Purchase Agreement (RTPA) dated date, which is incorporated herein by this reference, pursuant to Government Code 54235, et. seq. That RTPA places certain additional restrictions on the use of the PROPERTY, including, but not limited to, the requirement that Buyer shall not add any substantial improvements to the PROPERTY without the prior express written consent of the DEPARTMENT/ASSIGNOR. ASSIGNEE and DEPARTMENT/ASSIGNOR hereby acknowledge and agree that the provisions of both the RTPA and the Historical Covenant apply to the PROPERTY. Furthermore, in the event that the RTPA and the Historical Covenant conflict, the more restrictive provision of the two agreements shall apply in order to give the greatest protection to the PROPERTY. Finally, DEPARTMENT/ASSIGNOR has retained all of the rights, duties and obligations described and set forth in that RTPA.

3. As a condition of ASSIGNEE’s acceptance of this AAA and all of the obligations, covenants, agreements, conditions of the Historical Covenant that will now be performed or observed by ASSIGNEE in perpetuity, DEPARTMENT/ASSIGNOR will pay ASSIGNEE a

Add historic property address here
Add historic property address here

one-time service fee or endowment in the amount of amount dollars ($XXXXXX.XX) (the “Service Fee or Endowment”).

4. In the event that ASSIGNEE is unable to satisfy its obligations, duties and responsibilities as required by this AAA and the Historical Covenant, ASSIGNEE agrees to notify the DEPARTMENT/ASSIGNOR in writing within XX calendar days of having said knowledge of its inability to satisfy those said obligations, duties and responsibilities. ASSIGNEE may then, with DEPARTMENT/ASSIGNOR’s prior written approval, assign its interest in this AAA and the Historical Covenant, as well as transfer the remainder of the Service Fee or Endowment, including any interest accrued thereon, if any, to its ASSIGNEE, along with all conditions, obligations and duties set forth in this AAA and the Historical Covenant. ASSIGNEE acknowledges that the DEPARTMENT/ASSIGNOR expressly reserves the right to approve of the new ASSIGNEE. Preference will be given to a qualified agency or organization which has a board of directors, staff, or consultants with practical knowledge of the approaches set forth in “The Secretary of the Interior’s Standards for the Treatment of Historic Properties.”

5. Neither DEPARTMENT/ASSIGNOR nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by ASSIGNEE or ASSIGNEE’s successors or assigns under or in connection with any work, authority or jurisdiction delegated to ASSIGNEE, its successors or assigns under this AAA. DEPARTMENT/ASSIGNOR reserves the right to represent itself in any litigation in which DEPARTMENT/ASSIGNOR’s interests are at stake.

6. This AAA shall be governed by and construed in accordance with the laws of the State of California. Time is of the essence of this AAA. This AAA shall be binding upon and shall inure to the benefit of the parties and their successors and assigns. This AAA constitutes the entire agreement of the parties hereto on the matters covered. The invalidity or unenforceability of any provision(s) of this AAA shall not render any other provision(s) invalid or unenforceable.

7. This AAA may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute but one agreement.

8. This AAA shall be deemed effective upon the last of the dates that DEPARTMENT/ASSIGNOR and ASSIGNEE sign, which is date.

IN WITNESS WHEREOF, DEPARTMENT/ASSIGNOR and ASSIGNEE have executed this AAA as set forth below.
Exhibit 2.17: Excess Property Transfers and Route Relinquishments

Sample Assignment and Assumption Agreement Template

Add historic property address here

[NAME OF PERSON, TITLE FROM ORGANIZATION IN CAPS]
[Name of organization monitoring the covenant]

Approved as to Form and Procedure:

[NAME OF ATTORNEY APPROVING DOCUMENT IN CAPS]
Attorney
State of California Department of Transportation

[NAME OF DIST. DIRECTOR OR PERSON DELEGATED TO SIGN FOR DIRECTOR IN CAPS]
[Person’s Title]
District [number] [Appropriate Division name]
State of California Department of Transportation

[NAME OF RESPONSIBLE R/W MANAGER IN CAPS]
[Title and, if appropriate, R/W Region]
State of California Department of Transportation

Acknowledged by:

[NAME OF NEW PROPERTY OWNER IN CAPS]
Grantee

[NAME OF NEW PROPERTY OWNER IN CAPS]
Grantee
(Notary Acknowledgements must be attached per Civil Code Section 1180 et seq)