

**PROGRAMMATIC AGREEMENT AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, THE CALIFORNIA STATE HISTORIC
PRESERVATION OFFICER, THE UNITED STATES ARMY CORPS OF ENGINEERS’ SACRAMENTO
DISTRICT, SAN FRANCISCO DISTRICT, AND LOS ANGELES DISTRICT, AND THE CALIFORNIA
DEPARTMENT OF TRANSPORTATION REGARDING COMPLIANCE WITH SECTION 106 OF THE
NATIONAL HISTORIC PRESERVATION ACT, AS IT PERTAINS TO THE ADMINISTRATION OF THE
FEDERAL-AID HIGHWAY PROGRAM IN CALIFORNIA**

WHEREAS, the Federal Highway Administration (FHWA), under the authority of 23 USC § 101, implements the Federal-aid Highway Program (Program) in the state of California by funding approved state and locally-sponsored transportation projects (Local Assistance) that are administered by the California Department of Transportation (Caltrans); and

WHEREAS, Title 23 United States Code Section 327 (23 USC § 327) allows the United States Department of Transportation (USDOT) Secretary, acting through FHWA, to assign responsibilities for compliance with the National Environmental Policy Act of 1969 (NEPA) and other federal environmental laws to a State Department of Transportation through a memorandum of understanding; and

WHEREAS, Title 23 United States Code Section 326 (23 USC § 326) allows the USDOT Secretary, acting through FHWA, to assign responsibilities for Categorical Exclusion (CE) determinations to a State Department of Transportation through a memorandum of understanding; and

WHEREAS, Caltrans and FHWA, entered into a NEPA Assignment Memorandum of Understanding and a CE Assignment Memorandum of Understanding (collectively MOUs) concerning the State of California’s participation in the Program in which FHWA assigned and Caltrans assumed FHWA’s responsibilities under NEPA and Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA) and associated implementing regulations at 36 CFR Part 800; and

WHEREAS, pursuant to the MOUs, Caltrans is deemed to be a federal agency for all Federal-aid Highway projects it has assumed, and in that capacity, Caltrans assigned the role of “agency official” to the Caltrans Division of Environmental Analysis (DEA) Chief for the purpose of compliance with 36 CFR Part 800, and to provide for effective compliance, the DEA Chief delegated day-to-day responsibilities to the Cultural Studies Office (CSO) Chief; and

WHEREAS, FHWA California Division Administrator retains responsibility for environmental review, consultation and decision-making for specific undertakings identified in the MOUs and in Appendix 8 to this Programmatic Agreement (Agreement), and therefore shall be the “agency official” for those specific undertakings; and

WHEREAS, the United States Army Corps of Engineers’ (Corps), through its Sacramento, San Francisco, and Los Angeles Districts (collectively Corps Districts and individually Corps district) may also have Section 106 of the NHPA responsibilities since it administers a permit program under the authority of Section 10 of the Rivers and Harbors Act (RHA) of 1899, as amended (33 U.S.C. § 403) and Section 404 of the Clean Water Act of 1972 as amended (33 U.S.C. § 1344) (DA Permits) and separately administers a program to process requests to alter Corps civil

works projects under Section 14 of the RHA (33 U.S.C. § 408) (Permission) to which Federal-aid Highway projects in California may be subject, and therefore has participated in this consultation and is an invited signatory to this Agreement; and

WHEREAS, FHWA and the Corps, as federal agencies, have a unique legal relationship with Indian tribes as set forth in the Constitution of the United States, treaties, statutes, executive orders, and court decisions, and while an Indian tribe may agree to work directly with Caltrans as part of the 36 CFR Part 800 compliance process, the FHWA and the Corps Districts remain legally responsible for government-to-government consultation with Indian tribes; and

WHEREAS, Caltrans, FHWA, and the Corps Districts have determined that implementation of the Program in California, including issuance of DA Permits and/or Permission for a Program undertaking, may have an effect upon properties included in or eligible for inclusion in the National Register of Historic Places (NRHP), hereafter referred to as historic properties, and have consulted with the California State Historic Preservation Officer (SHPO), and the Advisory Council on Historic Preservation (ACHP) pursuant to 36 CFR § 800.14(b); and

WHEREAS, pursuant to the consultation conducted under 36 CFR § 800.14(b), the signatories (defined below) developed this Agreement in order to establish an efficient and effective program alternative for taking into account the effects of the Program on historic properties in California and for affording the ACHP a reasonable opportunity to comment on undertakings covered by this Agreement; and

WHEREAS, FHWA and Caltrans notified 109 federally recognized Indian tribes with ancestral lands in California through mail and email about this proposed Agreement, requested their comments, and took any comments received into account; and

WHEREAS, Caltrans also notified 70 non-federally recognized tribes, groups and individuals, requested their comments, and took any comments received into account; and

WHEREAS, Caltrans also notified 219 local governments, nine historic preservation organizations, Federal agencies with jurisdiction over lands in California, and members of the California State Association of Counties, and invited their comments on the proposed Agreement and took any comments received into account; and

WHEREAS, the First Amended Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the California State Historic Preservation Officer, and California Department of Transportation regarding compliance with Section 106 of the National Historic Preservation Act as it pertains to the administration of the Federal-aid Highway Program in California (2014) is superseded by this Agreement; and

WHEREAS, the Programmatic Agreement regarding the Seismic Retrofit of Bridge Structures in California among the FHWA, ACHP, SHPO and Caltrans executed in 1995 is superseded by this Agreement;

NOW, THEREFORE, FHWA, the SHPO, the ACHP, and Caltrans (collectively signatories), as well as the Corps Districts (collectively invited signatories) agree that the Program shall be carried out in accordance with the following stipulations in order to take into account the effects of the

Program on historic properties in California and that these stipulations shall govern compliance of the Program with Section 106 of the NHPA until this Agreement expires or is terminated.

STIPULATIONS

Caltrans, either as assigned by FHWA under the MOUs or under FHWA's authority through this Agreement, shall ensure that the following stipulations are carried out. Where FHWA's responsibilities have not been assigned to and assumed by Caltrans, FHWA, in coordination with Caltrans, shall ensure that the following stipulations are carried out.

I. APPLICABILITY

A. This Agreement shall apply to all federal undertakings administered under the Program in California for which FHWA or Caltrans is the lead federal agency, including Federal-aid emergency relief projects, defined in 23 CFR Part 668 subpart A, and any DA Permits or Permissions associated with such Program undertakings.

B. The Agreement shall not apply to undertakings that occur on or affect tribal lands as defined in 36 CFR § 800.16(x) and FHWA and Caltrans shall follow the procedures in 36 CFR Part 800 unless an Indian tribe elects to become a party to this Agreement in accordance with Stipulation I.E.

C. Except as specified in the recitals above, this Agreement does not negate or supersede any agreements between FHWA or Caltrans and Indian tribes in effect at the time the Agreement is executed, nor does it negate or supersede any agreement documents executed between or among FHWA, the SHPO, the ACHP, the Corps Districts, or Caltrans pursuant to 36 CFR Part 800.

D. Other federal agencies may issue permits, licenses, and approvals and otherwise provide assistance for undertakings covered by this Agreement, including those involving federal land, and in such circumstances, Caltrans, or FHWA as appropriate, as lead federal agency may request that such agencies fulfill their NHPA Section 106 responsibilities in coordination with Caltrans or FHWA by using applicable provisions of this Agreement. Such federal agencies may designate Caltrans, or FHWA as appropriate, as lead federal agency pursuant to 36 CFR § 800.2(a)(2) to fulfill their responsibilities. Other federal agencies and Indian tribes participating in Caltrans undertakings that have not designated Caltrans or FHWA as the lead federal agency may use studies and background documentation developed by Caltrans to support their own findings and determinations under 36 CFR Part 800.

E. Should other federal agencies or Indian tribes not already party to this Agreement request in writing to participate, Caltrans will notify the signatories and invited signatories and consider the request to participate. Should the signatories agree to the request, the Agreement shall be amended following the procedures in stipulation XXIII.

F. For any Program undertaking in California that involves the need for a DA Permit(s) or Permissionis, the Corps Districts programmatically designate FHWA as lead federal agency for compliance with Section 106 of the NHPA. This designation does not apply to Program undertakings on Federal land managed by the Corps. Pursuant to its authority under 23 USC § 326 and 23 USC § 327, Caltrans is deemed to be the federal agency and, by this Agreement, the

lead agency for Federal-aid Highway projects. Caltrans will provide documentation of compliance with this Agreement to the Corps district when applying for a DA Permit or Permission. If, for any undertaking, the Corps district should become the lead federal agency under Section 106 of the NHPA in accordance with Stipulation XXIV, the Corps District shall be responsible for compliance with Section 106 of the NHPA for the Corps district's undertaking. To the extent that the Corps district deems applicable, the Corps district may use studies, findings, and determinations previously completed by Caltrans to document its own findings.

II. DEFINITIONS

For purposes of this Agreement, the definitions provided in 36 CFR § 800.16(a) through (y) inclusive shall apply. Additional definitions are provided below.

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

Cultural Resource: An umbrella term that encompasses any building, structure, object, site, district, element of a district, or other property that is of potential cultural significance to a consulting party or member of the public.

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

Emergency: Consistent with 36 C.F.R. § 800.12, a sudden or unexpected event after which an immediate undertaking is necessary to (1) protect the life, safety, or health of the public; (2) minimize the extent of damage to the highway system and facilities; (3) protect remaining highway facilities; or (4) restore essential traffic.

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

No Potential to Cause Effect: Pursuant to 36 CFR§ 800.3(a)(1), those actions that by their nature will not result in effects to historic properties, even if one were present. FHWA defines these actions as non-construction related activities.

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

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

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

III. PROFESSIONAL QUALIFICATION STANDARDS

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

IV. CONSULTATION WITH INDIAN TRIBES

- A. FHWA, Caltrans, the Corps, SHPO, and ACHP recognize the unique knowledge and expertise Indian tribes may possess regarding their ancestral lands and cultural resources and will consider that knowledge in making determinations and findings.
- B. FHWA shall retain responsibility for government-to-government consultation with Indian tribes for Program undertakings. FHWA and the Corps Districts shall retain responsibility for government-to-government consultation with Indian tribes for DA Permit applications or requests for Permission for Program undertakings. Caltrans recognizes the government-to-government relationship between the federal government and Indian tribes and shall conduct 36 CFR Part 800 consultations in a sensitive manner respectful of tribal sovereignty.
- C. In accordance with 36 CFR § 800.2(c)(2)(ii)(E), FHWA and Caltrans may enter into agreements with Indian tribes that specify how they will carry out their responsibilities with regard to tribal participation in 36 CFR Part 800 review.
- D. Notwithstanding any other provision of this stipulation, FHWA, and the Corps Districts shall honor the request of any Indian tribe at any time in the 36 CFR Part 800 process for government-to-government consultation regarding an undertaking covered by this Agreement. If a tribal request for government-to-government consultation with the federal government comes to Caltrans, Caltrans shall immediately inform FHWA, or the Corps district as applicable. If any Indian tribe requests government-to-government consultation with FHWA, or the Corps District, FHWA or the applicable Corps District shall conduct the government-to-government consultation, and, if the Indian tribe agrees, involve Caltrans in that consultation process. Caltrans, however, shall continue to carry out the remainder of responsibilities under this Agreement that are not the subject of government-to-government consultation.
- E. To provide for an effective and efficient consultation process, when Caltrans is deemed to be a federal agency pursuant to 23 USC § 326 and 23 USC § 327, Caltrans shall conduct 36 CFR Part 800 consultation with Indian tribes for undertakings covered by this Agreement and shall assist FHWA, and the Corps District as applicable, in project specific government-to-government

consultation, if an Indian tribe does not object. Each Caltrans District Director, and when Caltrans deems it appropriate, the Caltrans Director, shall be responsible for ensuring that any Caltrans consultation with Indian tribes complies with this stipulation. Caltrans shall consult with Indian tribes in accordance with 36 CFR Part 800 and Appendix 7 to this Agreement.

1. In accordance with 36 CFR § 800.2(c), Caltrans Districts shall consult with the representatives designated or identified by the tribal government and shall commence consultation early in the project planning process in order to identify and discuss relevant preservation issues, resolve concerns about the confidentiality of information on historic properties, and allow adequate time for consideration of such concerns.
2. Caltrans Districts have the responsibility to ensure that consultation continues with Indian tribes throughout the 36 CFR Part 800 process prescribed by this Agreement whenever such tribes express a concern about an undertaking or about historic properties that may be affected by an undertaking.
3. If FHWA determines that any project-specific tribal issues or concerns will not be satisfactorily resolved by Caltrans when Caltrans is deemed to be a federal agency, then FHWA may reassume all or part of the federal responsibilities for environmental review pursuant to the MOUs.
4. Nothing shall limit the ability of Indian tribes to consult directly with parties to this Agreement when they have a concern about an undertaking or about historic properties that may be affected by an undertaking, including properties to which they might ascribe religious or cultural significance.

V. PARTICIPATION OF OTHER CONSULTING PARTIES AND THE PUBLIC

A. Consulting Parties

Consulting parties shall be identified pursuant to, and their participation in undertakings covered under this Agreement shall be governed by, 36 CFR §§ 800.2(c)(5) and 800.3(f).

1. National Park Service

In accordance with Section 110(f) of the NHPA and 36 CFR 800.10, Caltrans must notify the National Park Service (NPS) and invite NPS to participate in the consultation when a National Historic Landmark (NHL) may be directly and adversely affected by an undertaking.

B. Public Involvement

Public involvement in planning and implementation of undertakings covered by this Agreement shall be governed by FHWA's and Caltrans' environmental compliance procedures, as set forth in the Caltrans Standard Environmental Reference (SER) Environmental Handbook, Caltrans Project Development Procedures Manual, FHWA's technical advisories, ACHP guidance, and similar and subsequent guidance documents. Public involvement and the release of information shall be consistent with 36 CFR §§ 800.2(d)(1-2), 800.3(e), and 800.11(c)(1 and 3), 5 USC § 552 as amended (Freedom of Information Act), section 304 of NHPA (54 USC § 307103, and California Government Code sections 7927.000 and 7927.0005.

The intention to conduct 36 CFR Part 800 consultation as part of a public meeting, hearing, or other opportunity for public input held for the purposes of compliance with other federal and state laws such as NEPA or the California Environmental Quality Act must be clearly advertised in any public noticing provided for the event.

VI. ROLES AND RESPONSIBILITIES

A. Caltrans

Consistent with the requirements of 36 CFR §§ 800.2(a) and 800.2(c)(4), Caltrans, when deemed to be a federal agency, is legally responsible for ensuring that the terms of this Agreement are carried out and for all findings and determinations made pursuant to this Agreement. Where Caltrans has not assumed responsibility for environmental review and compliance, FHWA remains legally responsible for ensuring that the terms of this Agreement are carried out and for all findings and determinations made pursuant to this Agreement.

1. Actions under 36 CFR §§ 800.3 through 800.5

Caltrans Districts shall carry out the following steps with respect to undertakings covered by this Agreement. Each Caltrans District Director, or where Caltrans may deem it appropriate, the Caltrans Director, shall be responsible for ensuring that PQS in the appropriate discipline carry out the following actions:

- a. Determine whether its proposed federal action is an undertaking as defined in 36 CFR § 800.16(y).
- b. Determine under 36 CFR § 800.2(a)(2) whether another federal agency is involved in the undertaking and establish lead agency.
- c. Determine under 36 CFR § 800.3(a) whether the undertaking is a type of activity that has the potential to affect historic properties.
- d. Determine under 36 CFR § 800.3(c) and (d) whether the undertaking may occur on or has the potential to affect historic properties on tribal lands as defined in 36 CFR § 800.16(x).
- e. Solicit public comment and involvement, as described in 36 CFR §§ 800.2(d), 800.3(e), and subject to confidentiality requirements of § 800.11(c).
- f. Identify additional consulting parties as described in 36 CFR § 800.3(f), including Indian tribes, and invite them to participate in the process covered by this Agreement.
- g. Request, as appropriate, expedited consultation as described in 36 CFR § 800.3(g).
- h. Determine under 36 CFR § 800.4 the undertaking's Area of Potential Effects (APE), identify and evaluate properties within the APE in order to determine their eligibility for

the NRHP, and determine whether historic properties may be affected by the undertaking.

- i. Apply the Criteria of Adverse Effect as described in 36 CFR § 800.5 and propose “No Adverse Effect with Standard Conditions” findings where imposing the standard conditions set forth in Stipulation X.B.1 will avoid adverse effects.
- j. Actions under 36 CFR §§ 800.5(b) and 800.6
 - i. When a Caltrans District proposes a finding of “No Adverse Effect without conditions” or a finding of “No Adverse Effect with conditions other than the Standard Conditions” set forth in Stipulation X.B.1, Caltrans shall proceed in accordance with Stipulation X.B.2.
 - ii. When a Caltrans District proposes a finding of “Adverse Effect,” Caltrans shall proceed in accordance with Stipulation X.C.

B. FHWA

1. FHWA shall maintain responsibility for government-to-government consultation with Indian tribes for Program undertakings.
2. FHWA will retain responsibility as the federal agency official for highway projects that cross state boundaries or any project that is adjacent to an international border. Such projects would be subject to review under 36 CFR Part 800.

C. SHPO

1. SHPO’s responsibility is to consult with federal and state agencies to determine if undertakings will affect historic properties.
2. Under this Agreement, SHPO will consult with Caltrans on federal undertakings for determinations of eligibility, assessment effects, and development of mitigation measures. SHPO will participate in consultation with other Section 106 consulting parties.
3. The SHPO will participate in other actions as identified throughout this agreement.

D. ACHP

1. The ACHP will be notified of findings of adverse effect by Caltrans in the circumstances identified in Stipulation X.C.2 and will be invited to participate in resolving the adverse effect of an undertaking.
2. The ACHP will participate in the resolution of disputes regarding assessment of effects, in accordance with Stipulation X.D.1 of this Agreement.
3. The ACHP will participate in the resolution of adverse effects that may result from undertakings when they have notified the agency official that they will do so, in accordance with Stipulation XI of this Agreement.
4. The ACHP will assist, when requested, in the development of training for Caltrans personnel relative to implementation of this Agreement and 36 CFR Part 800.

5. The ACHP will participate in the resolution of disputes that may occur through the implementation of this Agreement, in accordance with Stipulation XX.
- E. Corps Districts
 1. Corps Districts shall maintain responsibility for government-to-government consultation with Indian tribes for DA Permit applications and/or requests for Permission associated with Program undertakings.

VII. SCREENED UNDERTAKINGS EXEMPT FROM FURTHER REVIEW

In consultation with the other signatories to this Agreement, FHWA and Caltrans have identified classes of undertakings that will be addressed in accordance with Appendix 2 to this Agreement. The undertakings classified in Appendix 2 as Screened Undertakings will require no further review under this Agreement when the requirements of Appendix 2 have been satisfactorily completed and it is determined that the undertaking will not affect historic properties.

VIII. IDENTIFICATION AND EVALUATION OF HISTORIC PROPERTIES

A. Area of Potential Effects

Caltrans PQS shall determine and document the APE for undertakings covered by this Agreement in accordance with Appendix 3 to this Agreement. Nothing in this paragraph or in Appendix 3 shall preclude Caltrans from consulting with the SHPO, Indian tribes, or the applicable Corps district on determining and documenting an APE. Caltrans may establish a study area for use in conducting identification activities until an APE can formally be delineated.

B. Identification

Caltrans shall identify historic properties that may be located within an undertaking's APE in accordance with 36 CFR §§ 800.4(a)(2-4) and 800.4(b). Identification of historic properties should be consistent with the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 Fed. Reg. page 44716), the guidance in the SER Volume 2, SHPO guidance, FHWA guidance, ACHP guidance, and any other guidance, methodologies, agreements, or protocols that the signatories agree should be used to identify historic properties. Nothing in this paragraph precludes seeking consistency with any other pertinent guidance such as that provided by Indian tribes or other federal agencies. Caltrans Districts shall make a reasonable and good faith effort to identify and consult with any affected Indian tribes to assist in identifying properties to which they may attach religious and cultural significance that may be located within an undertaking's APE or study area.

C. Evaluation

1. Properties Exempt from Evaluation: Appendix 4 to this Agreement lists the properties that the signatories agree shall be exempt from evaluation provided the Caltrans PQS in the appropriate discipline determines all terms and conditions in Appendix 4 are satisfactorily

met. All other identified properties shall be evaluated in accordance with Stipulation VIII.C.2.

2. **Evaluating Identified Properties:** Caltrans shall evaluate the historic significance of identified properties in accordance with 36 CFR § 800.4(c)(1) following the guidance in the SER Volume 2, SHPO guidance, National Register Bulletins, FHWA guidance, or any other guidance, methodologies, agreements, or protocols that the signatories agree may be used to determine whether identified properties are historic properties. During the evaluation process, Caltrans Districts shall make a reasonable and good faith effort to identify and consult with any Indian tribe or other consulting party on the evaluation of any identified property to which they attach religious and cultural significance.
3. **Special Consideration for Certain Archaeological Properties:** If archaeological properties within an undertaking's APE are protected from any potential effects by establishment and effective enforcement of an Environmentally Sensitive Area (ESA), as described in Appendix 5 to this Agreement, the signatories agree that Caltrans may consider such properties to be NRHP eligible for the purposes of that undertaking. Caltrans shall consult with Indian tribes that may attach religious or cultural significance to the historic property to determine its significance and potential for effects. This consideration of NRHP eligibility without formal evaluation shall not extend to other undertakings whose APE includes the property, unless through consultation Caltrans and the SHPO agree otherwise.
4. **Consideration of Eligibility:** Subject to CSO approval, Caltrans Districts may consider properties NRHP eligible for the purposes of an undertaking when special circumstances preclude their complete evaluation, such as restricted access, large property size, or limited potential for effects. Caltrans shall consult with Indian tribes or other consulting parties that may attach religious or cultural significance to the historic property to determine the appropriate criteria for the consideration. This consideration of NRHP eligibility without formal evaluation shall not extend to other undertakings whose APE includes the property, unless through consultation Caltrans and the SHPO agree otherwise.
5. **Previously Evaluated Properties:** When previously evaluated properties are identified within an undertaking's APE, Caltrans PQS shall review those previous evaluations to determine whether the previous evaluations are still valid or re-evaluate as appropriate. Indian tribes and other consulting parties shall be consulted during the review and re-evaluation process when properties to which those tribes or other consulting parties may attach religious or cultural significance are involved. The passage of time, changing perceptions of significance, eligibility under previously unconsidered NRHP criteria, new information, incomplete or erroneous prior evaluation, and errors of fact warrant such review and may require Caltrans to re-evaluate the properties.
6. **Consulting the SHPO:** The Caltrans District shall submit determinations of NRHP eligibility and supporting documentation to the SHPO for comment in accordance with 36 CFR § 800.4(c)(2), with concurrent submittal to CSO. For projects where responsibilities have not been assigned to and assumed by Caltrans, the Caltrans District shall also concurrently submit the determinations and supporting documentation to FHWA.

- a. If the SHPO has not responded to Caltrans within 30-calendar days after receipt, Caltrans may either extend the review period in consultation with the SHPO or proceed to the next step prescribed by this Agreement, based upon Caltrans' determination of NRHP eligibility. Confirmation of date of receipt as the basis for determining the 30-day review period may be provided through the SHPO database, a mail delivery receipt, or written or documented oral communication from the SHPO. If the 30-day period expires without SHPO comment or agreement to extend the review period, the Caltrans District may move forward upon notification to the SHPO and CSO via e-mail or other written communication.
 - b. Agreements or disagreements regarding the NRHP eligibility of properties shall be governed by 36 CFR § 800.4(c)(2), except that in the event of a disagreement, the Caltrans District shall promptly notify CSO, and FHWA as appropriate, whereupon the Caltrans District, CSO, the SHPO, and any Indian tribe or other consulting party shall consult to resolve the disagreement in accordance with a mutually acceptable time frame. If the disagreement is resolved, Caltrans shall proceed in accordance with those requirements of this Agreement that apply to the resolution. If the disagreement is not resolved or if a mutually acceptable time frame to resolve the disagreement is not reached, CSO shall comply with 36 CFR § 800.4(c)(2). If consultation with the Secretary of the Interior is required, CSO shall ensure that all concerns, including the views of FHWA, the SHPO and any Indian tribe or any other consulting party, and the applicable Corps district as appropriate, are included.
7. Notifying Indian tribes or other consulting parties: When a Caltrans District has been in consultation with an Indian tribe or other consulting party on the NRHP eligibility of a property, the Caltrans District shall notify the Indian tribe or other consulting party of Caltrans' eligibility determination concurrent with submittal to the SHPO and provide documentation to the Indian tribe or other consulting party, unless they have indicated they do not wish to receive such documentation.

IX. FINDING OF EFFECT

- A. Finding of No Historic Properties Affected Pursuant to 36 CFR § 800.4(d)(1)
1. Where Caltrans has consulted with Indian tribes or other consulting parties concerning historic properties, Caltrans shall consult with those Indian tribes or other consulting parties on the potential effects of the undertaking. Caltrans shall take their views into account in making its findings.
 2. If the Caltrans District finds either that no historic properties are present, or that historic properties are present but the undertaking will have no effect on them, the Caltrans District shall document and retain records of that finding in accordance with Stipulation XVIII. The Caltrans District shall notify any consulting parties cited in Stipulation IX.A.1 of the finding and make documentation available to them unless they have indicated that they do not wish to receive such documentation. Following satisfactory completion of these steps, no further review pursuant to this Agreement is required.

B. Finding of Historic Properties Affected

If the Caltrans District finds there are historic properties that may be affected by the undertaking, the Caltrans District shall apply the Criteria of Adverse Effect in accordance with Stipulation X.

X. ASSESSMENT OF EFFECTS

A. Application of Criteria

The Caltrans District shall apply the Criteria of Adverse Effect set forth in 36 CFR § 800.5(a)(1) to findings made pursuant to Stipulation IX.B, taking into account views provided by any Indian tribe and other consulting parties or the public. When any Indian tribe attaches religious or cultural significance to identified historic properties, the Caltrans District shall apply the criteria in consultation with those Indian tribes. Nothing in this stipulation shall override or supersede any federally recognized Indian tribe's ability to request government-to-government consultation with FHWA or the applicable Corps district, as described in Stipulation IV.

1. When the Caltrans District finds that an NHL may be affected by an undertaking, Caltrans shall notify NPS of the potential for effect and invite NPS to participate in the consultation, as described in Stipulation V.A.1.

B. Finding of No Adverse Effect

The Caltrans District may make a finding of "No Adverse Effect with Standard Conditions" when standard conditions that will avoid adverse effects to historic properties are imposed in accordance with Appendix 5 to this Agreement. The Caltrans District may propose a finding of "No Adverse Effect" if none of the undertaking's anticipated effects meet the Criteria of Adverse Effect under 36 CFR § 800.5(a)(1), non-standard conditions are imposed to avoid adverse effects, or when the Caltrans District has developed a plan for managing any post-review discoveries, including decision thresholds and procedures for consultation with the SHPO, that would be implemented in accordance with Stipulation XV.

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

The Caltrans District shall submit its finding and supporting documentation to CSO for review. Where FHWA's responsibilities for environmental review and compliance have not been assumed by Caltrans, the Caltrans District shall provide concurrent submittal to CSO and FHWA. The Caltrans District shall concurrently provide documented notification of the finding to any consulting parties that have expressed views regarding potential effects to historic properties. If within 15 days of receipt CSO or FHWA does not object to the proposed NAE-SC finding, the undertaking shall not be subject to further review under this Agreement. CSO shall provide summary notification to the SHPO of all NAE-SC findings in accordance with Stipulation XXVI.C.

- a. Environmentally Sensitive Areas (ESAs): A finding of NAE-SC-ESA is appropriate when an undertaking's effects to historic properties, or properties considered to be eligible pursuant to Stipulation VIII.C.3 or 4, will be avoided by designation and enforcement of ESAs as described in Appendix 5 to this Agreement. Caltrans will consult with Indian tribes that attach religious or cultural significance to the property or other consulting

parties, if any, to determine whether an ESA will adequately protect those values without other conditions or mitigation. The results of that consultation will determine whether a NAE-SC-ESA applies.

- b. Vegetation Management ESA (VMESA): A finding of NAE-SC-VMESA is appropriate when an undertaking is limited to vegetation management for fire prevention, and adverse effects to historic properties or properties considered to be eligible pursuant to Stipulation VIII.C.4 will be avoided by designation and enforcement of VMESAs as described in Appendix 5 to this Agreement. Caltrans will consult with Indian tribes that attach religious or cultural significance to the property or other consulting parties, if any, to determine whether a VMESA will adequately protect those values without other conditions or mitigation. The results of that consultation will determine whether a NAE-SC-VMESA applies.
 - c. Secretary of the Interior's Standards for the Treatment of Historic Properties (SOIS): A finding of NAE-SC-SOIS is appropriate when an undertaking's work is limited to the rehabilitation, maintenance, repair, stabilization or alteration of the historic property(ies) and is completed in a manner consistent with the SOIS (36 CFR Part 68), as described in Appendix 5 to this Agreement.
 - i If the Caltrans District proposes to apply this provision to an NHL, the Caltrans District shall notify the Secretary of the Interior through the NPS Regional NHL Program, per 36 CFR § 800.10(c), and invite them to consult on the proposed treatment and finding of effect. The Caltrans District shall provide NPS at least 30 days to respond to the initial invitation. If NPS objects to the use of this Standard Condition, Caltrans shall continue consultation with NPS and proceed according to Stipulation X.B.2.
 - d. Additional Standard Conditions: CSO may propose the adoption of additional standard conditions that have proven effective in avoiding adverse effects to historic properties. CSO shall provide documentation supporting the proven effectiveness to the SHPO for review. Appendix 5 may be revised to include any new standard condition in accordance with Stipulation XXIII.
2. Finding of No Adverse Effect
- a. When Caltrans proposes a No Adverse Effect finding other than a finding of NAE-SC specified in Stipulation X.B.1, the Caltrans District shall submit its proposed finding and supporting documentation to CSO for review. If CSO agrees with the proposed finding, CSO shall consult with the SHPO pursuant to 36 CFR § 800.5(c). Where FHWA's responsibilities for environmental review and compliance have not been assumed by Caltrans, CSO shall concurrently notify FHWA of the finding. The Caltrans District shall concurrently provide documented notification of the finding to any consulting parties that have expressed views regarding potential effects to historic properties, including a

request that any comments be directed to CSO, or FHWA as appropriate, within 30 days of receipt of notification.

- b. If within 30-calendar days of receipt, neither SHPO nor any consulting party objects to the “No Adverse Effect” finding, the undertaking shall not be subject to further review under this Agreement. CSO, or FHWA where FHWA’s responsibilities for environmental review and compliance have not been assumed by Caltrans, and the SHPO may agree to extend the 30-day time frame for SHPO review specified in 36 CFR § 800.5(c). Confirmation of date of receipt as the basis for determining the 30-day review period may be provided through the SHPO database, a mail delivery receipt, or written or documented oral communication from the SHPO. If the 30-day period expires without SHPO comment or agreement to extend the review period, Caltrans may move forward upon notification to the SHPO via e-mail or other written communication. Disagreements or objections to a finding of “No Adverse Effect” will be addressed in accordance with Stipulation X.D.

3. Re-assessment of Effects

If the undertaking will not be implemented as proposed in relation to any historic property, Caltrans will re-open consultation under Stipulation X of this Agreement.

C. Finding of Adverse Effect

1. Where adverse effects cannot be avoided pursuant to Stipulation X.B, or for any other reason, the Caltrans District shall propose to CSO a finding of “Adverse Effect” and shall submit to CSO documentation supporting the proposed finding in accordance with Stipulation XVIII.
 - a. Upon CSO’s agreement with the finding, CSO shall forward the finding of “Adverse Effect” to the SHPO. Where Caltrans has not assumed responsibility for environmental review and compliance, CSO shall concurrently provide FHWA with the finding of “Adverse Effect” and supporting documentation. The Caltrans District shall provide notice of the finding to Indian tribes, and other consulting parties and interested members of the public, as appropriate, and shall assist CSO with the resolution of adverse effects pursuant to Stipulation XI.
 - b. If the SHPO has not responded to Caltrans within 30-calendar days after receipt, Caltrans, or FHWA where FHWA’s responsibilities for environmental review and compliance have not been assumed by Caltrans, may either extend the review period in consultation with the SHPO or proceed to the next step prescribed by this Agreement. Documentation of date of receipt as the basis for determining the 30-day review period may be provided through the SHPO database, a mail delivery receipt, or other documented communication from the SHPO. If the 30-day period expires without SHPO comment or agreement to extend the review period, Caltrans may move forward upon notification to the SHPO via e-mail or other written communication.
2. Caltrans CSO shall notify the ACHP of an adverse effect finding and invite its participation in accordance with 36 CFR § 800.6(a) under any of following conditions:

- a. When the undertaking affects a NHL. Under this condition, the CSO shall also notify the Secretary of the Interior through the NPS Regional NHL Program, per 36 CFR § 800.10(c).
 - b. When the effects to historic properties are highly controversial or there is substantial public interest in the undertaking's effects on historic properties.
 - c. When Caltrans, FHWA, as appropriate, and the SHPO are unable to reach agreement on the resolution of adverse effects.
 - d. When the SHPO or another consulting party requests that the ACHP be invited to participate in consultation.
3. Caltrans shall file any Memorandum of Agreement (MOA) executed for any undertaking with the ACHP prior to proceeding with the undertaking.

D. Resolving Disagreements Regarding Assessment of Effects

Disagreements that may arise within the review periods established under the terms of Stipulation X shall be addressed in accordance with the process described below.

1. CSO, or FHWA where Caltrans has not assumed responsibility for environmental review and compliance, shall consult with the SHPO and/or any Indian tribe or other consulting party for no more than 30-calendar days to resolve the disagreement. If at any time during this consultation period, CSO, or FHWA as appropriate, determines that the disagreement cannot be resolved through such consultation, CSO, or FHWA as appropriate, shall request the ACHP to review the disagreement and CSO's, or FHWA's as appropriate, proposed resolution. In addition, an Indian tribe that attaches religious or cultural significance to an identified historic property may specify the reason for its disagreement within the 30-day consultation period and directly request the ACHP to review the disagreement. Within 30-calendar days following receipt of CSO's, or FHWA's as appropriate, or an Indian tribe's request and receipt of supporting documentation, the ACHP will exercise one of the following options:
 - a. Advise CSO, or FHWA as appropriate, that the ACHP concurs in the proposed response to the disagreement whereupon CSO, or FHWA as appropriate, may proceed accordingly; or
 - b. Provide CSO, or FHWA as appropriate, with recommendations, that will be taken into account in reaching a final decision regarding its response to the disagreement; or
 - c. Notify CSO, or FHWA as appropriate, that the disagreement will be referred for comment pursuant to 36 CFR § 800.7(c)(4) and proceed to refer the disagreement for comment. In this event, the Caltrans Director, or FHWA where Caltrans has not assumed responsibility for environmental review and compliance, shall take the resulting comment into account in accordance with 36 CFR § 800.7(c)(4) and Section 110(1) of the NHPA. Responsibilities under this Agreement that are not the subject of the disagreement shall remain unchanged.
2. Should the ACHP not exercise one of the foregoing options within 30-calendar days after receipt of all pertinent documentation, the agency official's responsibilities under Section

106 of the NHPA are fulfilled upon implementation of the proposed response to the disagreement.

3. CSO, or FHWA as appropriate, shall take into account any ACHP recommendation or comment and any comments from the SHPO or any consulting party in reaching a final decision regarding the disagreement.
4. CSO, or FHWA as appropriate, shall provide the SHPO, ACHP, and any consulting parties with a written copy of its final decision regarding resolution of any disagreement addressed hereunder. Thereafter, CSO, or FHWA as appropriate, may proceed in accordance with the terms of its resolution.
5. CSO's, or FHWA's as appropriate, resolution of any disagreement addressed hereunder shall be conclusive.

XI. RESOLUTION OF ADVERSE EFFECTS

A. CSO, or FHWA where Caltrans has not assumed responsibility for environmental review and compliance, with the cooperation and assistance of the Caltrans District, shall consult pursuant to 36 CFR §§ 800.6(a) and 800.6(b)(1) to resolve adverse effects that may result from undertakings covered by this Agreement. The Caltrans District shall consult with the Indian tribes that ascribe religious or cultural significance to affected historic properties and other consulting parties that may have a demonstrated interest in potentially affected historic properties in determining appropriate measures to resolve adverse effects. Caltrans, or FHWA as appropriate, shall also include the ACHP as part of the consultation when the ACHP has notified the agency official that it will participate in the consultation.

B. Nothing in this Agreement shall override or supersede an Indian tribe's ability to request government-to-government consultation with FHWA or the Corps District related to possible issuance of a DA Permit and/or Permission for a Program undertaking as described in Stipulation IV.

C. Where FHWA's responsibilities for environmental review and compliance have not been assumed by Caltrans, FHWA retains the right to reverse at any time for reasonable cause any decision allowing Caltrans certain actions prescribed in 36 CFR § 800.6.

D. If DEA, FHWA where Caltrans has not assumed responsibilities for environmental review and compliance, the SHPO, and the Caltrans District are unable to agree on measures to resolve the adverse effects of an undertaking pursuant to this stipulation, they shall invite the ACHP to participate in the resolution process pursuant to 36 CFR § 800.6(b)(1)(v). If the involved parties agree to a resolution, they shall execute an MOA. If the involved parties fail to agree to measures to resolve the adverse effects, DEA, the SHPO, FHWA as appropriate, or the ACHP may terminate consultation pursuant to 36 CFR § 800.7(a). Upon termination, the signatories shall comply with the remaining requirements of 36 CFR § 800.7.

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

A. Consistent with 36 CFR §§ 800.4(b)(2) and 800.5(a)(3), and subject to CSO approval, the Caltrans District may approve the phasing of identification, evaluation, and application of the Criteria of Adverse Effect for undertakings covered by this Agreement. As specific aspects or locations of an alternative are refined or access gained, the Caltrans District shall proceed with the identification and evaluation of historic properties and with application of the Criteria of Adverse Effect in accordance with applicable provisions of this Agreement.

B. CSO may approve phasing when minor access restrictions preclude completion of identification efforts, evaluation of a potential historic property, and/or effects determination until after a NEPA decision document is signed but prior to implementation of the undertaking. The Caltrans District shall establish that a “No Historic Properties Affected” or “No Adverse Effect” finding is likely based on documentation of identification and evaluation efforts within the accessible portion(s) of the APE and background research on the inaccessible portion(s). In addition to the above documentation, the Caltrans District shall submit a plan for completion of identification and evaluation that includes a schedule and provisions for notification or consultation with CSO and SHPO. Consultation with SHPO on the finding shall follow the process established in Stipulation X.B.2.

XIII. NATIVE AMERICAN HUMAN REMAINS AND RELATED CULTURAL ITEMS

A. Treatment on Federal Lands

On federal land where the federal land managing agency has designated Caltrans lead pursuant to 36 CFR § 800.2(a)(2), if human remains and/or cultural items as defined by the Native American Graves Protection and Repatriation Act of 1979 (NAGPRA) are anticipated to be found during identification, evaluation, or construction, the Caltrans District shall assist the federal land managing agency, in consultation with the appropriate Indian tribes to develop, in accordance with NAGPRA regulations 43 CFR § 10.3, the NAGPRA Plan of Action (NAGPRA POA). The NAGPRA POA outlines the consultation process and the treatment of any human remains and cultural items upon discovery.

B. Treatment on Non-Federal Lands

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

XIV. CURATION

A. Collections from Federal Lands

Where the federal land managing agency has designated Caltrans lead pursuant to 36 CFR § 800.2(a)(2), Caltrans shall comply with the federal land-managing agency's curation policies, the regulations at 36 CFR Part 79 (Curation of Federally-owned and Administered Archaeological Collections), or as may be stipulated in any license, permit, or agreement document pertaining to an undertaking covered by this Agreement.

1. Prior to applying for a federal license or permit from a Federal Land Manager for work on a cultural site that may result in the generation of a new collection, Caltrans shall consult with any Indian tribe or other consulting party that may ascribe cultural or religious significance to that property regarding appropriate curation protocols and the ultimate disposition of the collection. Caltrans shall communicate the results of this consultation to the Federal Land Manager for consideration in the issuance of the license or permit.
2. The Caltrans District shall ensure that CSO is notified of the curation agreement or any other agreement regarding the final disposition of the collection.
3. Native American human remains and cultural items determined in consultation with Indian tribes to be associated funerary objects, sacred objects and objects of cultural patrimony, as defined by NAGPRA, shall be prepared for disposition pursuant to NAGPRA POA and any other requirements agreed to by the federal land managing agency.

B. Collections from Non-Federal Lands

Prior to conducting work that may result in the generation of a new collection from a site on non-federal public or privately-owned land, Caltrans shall consult with the landowner and any Indian tribes or additional consulting parties that may ascribe religious or cultural significance to the site on protocols and the final disposition of the collection. When an Indian tribe and an additional consulting party ascribe religious or cultural significance to the same property, Caltrans shall follow ACHP guidance and consult with the SHPO/THPO, Indian tribe(s), additional consulting parties, and other agencies responsible for Section 106 on the undertaking to seek an acceptable outcome. Caltrans shall make a reasonable and good faith effort to reach agreement with consulting parties regarding collection protocols and the ultimate disposition of collections.

1. If the decision has been made to curate, Caltrans shall ensure that cultural materials and records resulting from excavations or surface collections are curated in accordance with the Secretary of the Interior's Standards for Archaeological Documentation and the California Guidelines for the Curation of Archaeological Collections (1993), or as outlined in an agreement document based on consultation pertaining to the undertaking covered by this Agreement.
2. The Caltrans District shall ensure that CSO is notified of the curation agreement or any other agreement regarding the final disposition of the collection. The Caltrans District shall immediately notify CSO upon transfer of the collection to the recipient.

3. Native American human remains and associated items shall not be curated but addressed in consultation with the most likely descendent(s) designated by California's NAHC pursuant to California Public Resources Code section 5097.98. Sacred objects and objects of cultural patrimony, as defined by NAGPRA, shall not be curated but addressed in consultation with Indian tribes, consistent with 43 CFR § 10.3.

XV. POST-REVIEW DISCOVERIES

A. Planning for Subsequent Discoveries

When Caltrans' identification efforts in accordance with Stipulation VIII.B indicate that historic properties are likely to be discovered during implementation of an undertaking, the Caltrans District shall include in any finding of No Adverse Effect or MOA a plan for treatment of such properties, should they be discovered. The Caltrans District shall consult with any Indian tribe that may attach religious or cultural significance to potentially affected properties, or any other consulting party that may have a demonstrated interest in potentially affected properties, and take their concerns into account in developing, modifying, and implementing the plan. The plan will be implemented as originally proposed, or modified as necessary as a result of the occurrences and the nature and extent of the properties discovered.

B. Discoveries Without Prior Planning and Unanticipated Effects

1. If a plan for subsequent discoveries is not in place and an undertaking affects a previously unidentified property or affects a known historic property in an unanticipated manner, the Caltrans District shall promptly stop construction activity in the vicinity of the property and implement all reasonable measures needed to avoid, minimize, or mitigate further harm to the property. For previously unidentified properties, the Caltrans District shall follow the process in sub-part 2 below. For unanticipated effects to a known historic property, the Caltrans District shall follow the process in sub-part 3 below.
2. Within 48 hours of a post-review discovery, the Caltrans District shall assess the discovery and, if determined to be potentially eligible, provide initial notification to CSO, the SHPO, FHWA where responsibility for environmental review has not been assigned, any Indian tribe that might attach religious or cultural significance to the affected property, the federal agency if federal lands are involved and the federal agency has designated Caltrans lead pursuant to 36 CFR § 800.2(a)(2), the Corps district if within a DA Permit area, or any other consulting party that may have a demonstrated interest in potentially affected properties. Notification shall include, to the extent such information is available: description of the nature and extent of the property or properties, assessment of NRHP eligibility of any properties, the type and extent of any damage to the property, the proposed action, any prudent and feasible treatment measures that would take any effects into account, and a request for comments. Caltrans may furnish this information through correspondence, hard copy, electronic media, telephone, or meetings, at its discretion taking into account the capabilities of the consulting parties and must document this process for the administrative record. Caltrans may assume eligibility of any potentially affected property and proceed with the provisions of this sub-part.

3. Within 48 hours of the discovery of an unanticipated effect or ESA breach, the Caltrans District shall assess the effect and provide initial notification to CSO, the SHPO, FHWA where responsibility for environmental review has not been assigned, any Indian tribe that might attach religious or cultural significance to the affected property, the federal agency if federal lands are involved and the federal agency has designated Caltrans lead pursuant to 36 CFR § 800.2(a)(2), the applicable Corps district if within a DA Permit area, or any other consulting party that may have a demonstrated interest in potentially affected properties. Notification shall include, to the extent such information is available: the type and extent of any damage to the property, the proposed action, any prudent and feasible treatment measures that would take any effects into account, and a request for comments. Caltrans may furnish this information through correspondence, hard copy, electronic media, telephone, or meetings, at its discretion taking into account the capabilities of the consulting parties and must document this process for the administrative record.
4. Should any of the notified parties respond with comments within 72 hours of the initial notification of the discovery or indicate that they wish to be involved in resolving the situation, the Caltrans District shall take into account their comments or continue consultation with any commenting parties. Caltrans shall provide any remaining information specified in subpart 2, above, as it becomes available. The Caltrans District shall determine the time frame for any further consultation, taking into account the qualities of the property, consequences of construction delays, and interests of consulting parties. Following the conclusion of any further consultation, Caltrans shall take all comments received into account and may carry out actions to resolve any effects. Failure of any notified party to respond within 72 hours of the notification shall not preclude Caltrans from proceeding with their proposed actions.
5. If a NHL is affected, the Caltrans District shall include the Secretary of the Interior and the ACHP in the notification process.

XVI. EMERGENCY SITUATIONS

- A. Pursuant to 36 CFR § 800.12(d), this stipulation applies only to undertakings that will be implemented within 30-calendar days after the disaster or emergency, as defined in Stipulation II, has been formally declared. The President, California Governor, Caltrans Director or District Director may declare an emergency situation exists. Caltrans may request an extension of the period of applicability from the SHPO prior to the 30-days. Caltrans shall follow Stipulations VII through XI for all undertakings to be initiated more than 30-days following declaration of an emergency unless an extension has been approved by SHPO.
- B. The Caltrans District PQS shall determine whether the emergency undertaking has the potential to affect historic properties. If historic properties are likely to be affected by the emergency undertaking, the Caltrans District shall notify as soon as is feasible CSO, the SHPO, FHWA where responsibilities have not been assumed, and any Indian tribes that might attach religious or cultural significance to the affected property and afford them an opportunity to comment within seven calendar days of the notification. If the emergency undertaking may affect a NHL, the Caltrans District PQS shall also notify the Secretary of the Interior through the

NPS Regional NHL Program. Notification shall include, to the extent such information is available: description of the nature and extent of the property or properties, assessment of NRHP eligibility of any properties, the type and extent of any damage to the property, the proposed action, any prudent and feasible treatment measures that would take any effects into account, and a request for comments. If the Caltrans District determines that circumstances do not permit seven days for comment, the Caltrans District shall notify the parties and invite any comments within the time available.

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

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

D. The Caltrans District shall provide the SHPO, CSO, and any additional consulting parties, including the applicable Corps district if a DA Permit and/or permission is required, a narrative report documenting the actions taken in accordance with this expedited consultation process within six (6) months following the initiation of expedited consultation.

XVII. LOCAL BRIDGE SEISMIC SAFETY RETROFIT PROGRAM

In 1995, FHWA, Caltrans, SHPO and ACHP entered into a Programmatic Agreement to programmatically implement compliance with Section 106 of the NHPA under the California Seismic Retrofit of Bridge Structures Program, which is considered an emergency program. Since the implementation of the Seismic Retrofit Programmatic Agreement, the State-owned bridges and toll bridges have been retrofitted, but the Local Bridge Seismic Safety Retrofit Program is still in effect. In that the federal regulations at 36 CFR Part 800 have changed since 1995, the Seismic Retrofit Programmatic Agreement is superseded by this Agreement and the relevant provisions that provide for expedited compliance are updated to comply with the

current regulations in 36 CFR Part 800 and incorporated as Appendix 6 to this Agreement. Caltrans shall follow applicable stipulations in this Agreement to determine the seismic retrofit project's potential to affect historic properties. This stipulation will remain in effect until CSO notifies the SHPO, the ACHP and other consulting parties that all actions under the Local Bridge Seismic Safety Retrofit Program have been completed or this Agreement is terminated.

XVIII. DOCUMENTATION

A. All documentation that supports findings and determinations made under this Agreement shall be consistent with 36 CFR § 800.11 and Appendices to this Agreement, shall be peer-reviewed by Caltrans PQS in the appropriate discipline, and shall be in accordance with the SER Volume 2 and its subsequent revisions or editions.

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

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

XIX. TRAINING REQUIREMENTS

CSO shall, with the assistance of FHWA, the ACHP, and the SHPO, provide training for Caltrans personnel relative to implementation of this Agreement and 36 CFR Part 800. Caltrans PQS responsible for making, reviewing, or approving findings and determinations made under this Agreement and 36 CFR Part 800 shall receive such training prior to being certified as PQS in the appropriate discipline and prior to implementing activities under this Agreement, and shall receive periodic refresher training as determined by CSO and SHPO. Caltrans Districts shall work with their consultants and local governments to identify areas where training can improve performance under this Agreement and CSO shall work with the Caltrans Districts to make such training available, subject to funding availability. CSO and Caltrans Districts, in consultation with the SHPO, shall identify needs and provide training to project management responsible for undertakings under this program.

XX. RESOLVING OBJECTIONS

A. Should any signatory object in writing to Caltrans, or FHWA when it is the agency official, regarding the manner in which the terms of this Agreement are carried out, Caltrans or FHWA will immediately notify the other signatories and invited signatories of the objection and proceed to consult with the objecting party to resolve the objection. Caltrans or FHWA will

honor the request of any other signatory or invited signatory to participate in the consultation and will take any comments provided by such parties into account. Caltrans or FHWA as appropriate shall establish a reasonable time frame for such consultation.

B. If the objection is resolved through consultation, Caltrans or FHWA may authorize the disputed action to proceed in accordance with the terms of such resolution.

C. If after initiating such consultation, Caltrans or FHWA determines that the objection cannot be resolved through consultation, Caltrans, or FHWA shall forward all documentation relevant to the objection to the ACHP, including Caltrans' or FHWA's proposed response to the objection. Within 30-calendar days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:

1. Advise Caltrans or FHWA that the ACHP concurs in Caltrans' or FHWA's proposed response to the objection, whereupon Caltrans or FHWA will respond to the objection accordingly; or
2. Provide Caltrans or FHWA with recommendations, which Caltrans or FHWA shall take into account in reaching a final decision regarding its response to the objection; or
3. Notify Caltrans or FHWA that the objection will be referred for comment consistent with 36 CFR § 800.7(a)(4) and proceed to refer the objection for comment. In this event, Caltrans or FHWA shall take the resulting comments into account consistent with 36 CFR § 800.7(c)(4). Caltrans responsibilities under this Agreement that are not the subject of the disagreement shall remain unchanged.

D. Should the ACHP not exercise one of the foregoing options within 30 days after receipt of submitted pertinent documentation, the agency official's responsibilities under Section 106 of the NHPA are fulfilled upon implementation of the proposed response to the objection.

E. Caltrans or FHWA shall take into account any ACHP recommendation or comment and any comments from the other signatories and invited signatories to this Agreement in reaching a final decision- regarding the objection. Caltrans' or FHWA's responsibility to carry out all actions under this Agreement that are not the subjects of the objection shall remain unchanged.

F. Caltrans or FHWA shall provide all other signatories and invited signatories to this Agreement with a written copy of its final decision regarding any objection addressed pursuant to Stipulation XX.A.

G. Caltrans or FHWA may authorize any action subject to objection under items 1-6 of Stipulation XX.A to proceed, provided the objection has been resolved in accordance with the terms of items 1-6 of Stipulation XX.A.

XXI. PUBLIC OBJECTION

At any time during implementation of the terms of this Agreement, should any member of the public raise an objection in writing pertaining to such implementation to any signatory to this Agreement, that party shall immediately notify Caltrans. Caltrans shall immediately notify the other signatory parties in writing of the objection. Any signatory may choose to comment on the objection to Caltrans. Caltrans shall establish a reasonable time frame for this comment

period. Caltrans shall consider the objection, and in reaching its decision, Caltrans will take all comments from the other parties into account. Within 15-calendar days following closure of the comment period, Caltrans will render a decision regarding the objection and respond to the objecting party. Caltrans will promptly notify the other parties of its decision in writing, including a copy of the response to the objecting party. Caltrans' decision regarding resolution of the objection will be final. Following issuance of its final decision, Caltrans may authorize the action subject to dispute hereunder to proceed in accordance with the terms of that decision.

XXII. EXCLUSIONARY PROVISION

A. Probation

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

B. Suspension

1. The DEA Chief may suspend an individual Caltrans District, Division, Office, or Branch at the request of the CSO Chief in consultation with the OHP Review and Compliance Unit Supervisor. Suspension may result from failure to successfully correct the deficiencies that resulted in placement on probation or suspension may be immediate if the DEA Chief determines the violations were egregious, such as numerous ESA violations where historic properties were impacted. Suspension means substantial or total loss of authority

delegated under the Agreement. CSO review and approval of specified compliance actions under the Agreement will be required.

2. The DEA Chief, in consultation with the CSO Chief, the OHP Review and Compliance Unit Supervisor, and appropriate level Caltrans District representative (Director, Deputy, Office Chief, Branch Chief), will approve a POCA to be implemented by the Caltrans District, Division, Office or Branch. The POCA will describe the deficiencies, provide a corrective plan specific to the identified deficiencies, indicate the duration of suspension and provide performance or reporting criteria to document improvement. Upon expiration of the suspension, the DEA Chief, in consultation with the above parties, shall determine whether the POCA has been adequately implemented and the deficiencies corrected. Failure to correct the deficiencies or identification of additional deficiencies during the term may result in extension of the POCA with or without additional restrictions, or removal from the Agreement.
- C. Removed Status
1. At the request of the DEA Chief, in consultation with the SHPO and the Caltrans District Director, the Caltrans Director may remove an individual Caltrans District, Division, Office or Branch from the Agreement based on failure to successfully comply with a POCA or for additional egregious non-compliance actions beyond the scope, but within the term of an existing POCA. Removal from the Agreement will require all Section 106 of the NHPA compliance documents to route through CSO who will consult with the SHPO, as appropriate, under 36 CFR Part 800.
 2. A POCA, to be developed in conjunction with but not necessarily prior to the removal, will specify the term of removal and a pathway to restoration. The pathway to restoration will likely proceed back through suspension and probation prior to regaining full status.

XXIII. AMENDMENT

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

XXIV. CORPS DISTRICT WITHDRAWAL FROM THIS AGREEMENT

If at any time a Corps district disagrees with the manner in which the terms of an individual undertaking or the terms of this Agreement are carried out, the Corps district may object in writing to DEA. DEA shall follow Stipulation XX in resolving the objection. Caltrans responsibility to carry out all actions under this Agreement not the subject of objection shall remain unchanged. If the Corps district and Caltrans are unable to come to agreement, the Corps district may withdraw from participation in an individual undertaking or from this Agreement entirely upon 30-days written notification to all other signatories, leaving the Agreement in full force and effect for Program undertakings.

XXV. TERMINATION

- A. Only the signatories and invited signatories may terminate this Agreement. If this Agreement is not amended as provided for in Stipulation XXIII, or if any signatory or invited signatory proposes termination of this Agreement for other reasons, the signatory or invited signatory proposing termination shall notify the other signatories and invited signatories in writing, explain the reasons for proposing termination, and consult with the other parties to seek alternatives to termination.
- B. Should such consultation result in an agreement on an alternative to termination, the signatories or invited signatory shall proceed in accordance with that agreement.
- C. Should such consultation fail, the signatory or invited signatory proposing termination may terminate this Agreement by promptly notifying the other signatories, invited signatories, and concurring parties in writing.
- D. Beginning with the date of termination, Caltrans or FHWA shall ensure that until and unless a new agreement is executed for the actions covered by this Agreement, such undertakings shall be reviewed individually in accordance with 36 CFR §§ 800.4-800.6.

XXVI. REVIEW AND REPORTING

- A. DEA, FHWA, SHPO, the Corps Districts, and ACHP may review activities carried out pursuant to this Agreement. Caltrans Districts shall facilitate this review by compiling specific categories of information to document the effectiveness of the Agreement and by making this information available to DEA, FHWA, SHPO, Corps Districts, and ACHP in the form of a written report. Categories of information shall include, but are not limited to, a summary of actions taken under the Agreement, including all findings and determinations, accomplishments, public objections, any corrective actions implemented under Stipulation XXII, ESA violations, inadvertent effects, or foreclosures. The range and type of information included by Caltrans Districts in the written report and the manner in which this information is organized and presented must be such that it facilitates the ability of the reviewing parties to assess accurately the degree to which this Agreement and its manner of implementation constitute an efficient and effective program alternative under 36 CFR § 800.14, and to determine whether this Agreement should remain in effect, and if so, whether and how it should be improved through appropriate amendment.
- B. CSO shall prepare an annual written report of activities performed under this Agreement for its duration, unless the signatories agree to amend the reporting schedule. The initial report shall be prepared following completion of the first full State fiscal year under this Agreement. CSO shall submit the annual reports to the SHPO, FHWA, Corps Districts, and the ACHP no later than three (3) months following the end of the State fiscal year.
- C. In accordance with Stipulation X.B.1, CSO shall provide a quarterly report to the SHPO summarizing findings of No Adverse Effect with Standard Conditions, and include FHWA for undertakings where FHWA has retained responsibility for environmental review and compliance. After the first year of this Agreement, the SHPO and CSO shall consult to determine

if the reporting period should be modified and determine a new schedule. The reporting period may be modified without requiring amendment of the Agreement.

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

E. At the request of any other signatory to this Agreement, CSO shall ensure that one or more meetings are held to facilitate review of, and comment on, the report to address questions, issues, or adverse comments.

F. In conjunction with the review of the reports prepared by Caltrans pursuant to this stipulation, the signatories and invited signatories may consult to review the overall effectiveness and benefits of the Agreement, determine if its requirements are being met, decide if amendments to the Agreement are warranted, review the reporting format and categories for adequacy, and identify any other actions that may be needed in order to take into account the effects of the Program on historic properties in California.

XXVII. CONFIDENTIALITY

All parties to this Agreement acknowledge that information about historic properties, prospective historic properties, or properties considered historic for purposes of this Agreement are or may be subject to the provisions of NHPA section 304, 36 CFR § 800.11(c), and California Government Code section 7927.000 and 7927.005 (California Public Records Act), relating to the disclosure of sensitive information, and having so acknowledged, will ensure that all actions and documentation prescribed by this Agreement are, where necessary, consistent with the requirements of NHPA section 304, 36 CFR § 800.11(c), 5 USC § 552 as amended (Freedom of Information Act), and California Government Code section 7927.000 and 7927.005.

XXVIII. DURATION OF THIS AGREEMENT

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

XXIX. EFFECTIVE DATE OF THIS AGREEMENT AND OF ADDITIONAL APPENDICES AND AMENDMENTS


This Agreement shall take effect on December 6, 2024. Additional Appendices or amendments to this Agreement shall take effect on the dates they are fully executed by the signatories and invited signatories.

Execution and implementation of this Agreement evidence that FHWA, Caltrans, when it is deemed to be a federal agency, and the Corps Districts have afforded the ACHP a reasonable opportunity to comment on the Program and its individual undertakings in California, that FHWA, Caltrans and the Corps Districts have taken into account the effects of the Program and its individual undertakings on historic properties, and that FHWA, Caltrans and the Corps Districts have complied with Section 106 of the NHPA and 36 CFR Part 800 for the Program and its individual undertakings.

**PROGRAMMATIC AGREEMENT AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, THE CALIFORNIA STATE HISTORIC
PRESERVATION OFFICER, THE UNITED STATES ARMY CORPS OF ENGINEERS' SACRAMENTO
DISTRICT, SAN FRANCISCO DISTRICT, AND LOS ANGELES DISTRICT, AND THE CALIFORNIA
DEPARTMENT OF TRANSPORTATION REGARDING COMPLIANCE WITH SECTION 106 OF THE
NATIONAL HISTORIC PRESERVATION ACT, AS IT PERTAINS TO THE ADMINISTRATION OF THE
FEDERAL-AID HIGHWAY PROGRAM IN CALIFORNIA**

SIGNATORY PARTIES

Federal Highway Administration

Elissa K. Konove
By: Konove  Digitally signed by Elissa K. Konove
Date: 2024.10.24 16:20:35 -07'00' Date: _____

Elissa K. Konove, California Division Administrator

California State Historic Preservation Officer


By: _____ Date: 11/07/2024

Julianne Polanco, State Historic Preservation Officer

Advisorv Council on Historic Preservation


By: _____ Date: 12/05/2024

Reid Nelson, Executive Director

California Department of Transportation


By: _____ Date: 10/04/2024

Tony Tavares, Director

**PROGRAMMATIC AGREEMENT AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, THE CALIFORNIA STATE HISTORIC
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FEDERAL-AID HIGHWAY PROGRAM IN CALIFORNIA**

INVITED SIGNATORY PARTY:

United States Army Corps of Engineers

United States Army Corps of Engineers, Sacramento District

By: 39 CALDWELL.CHAD. Digitally signed by
WARNER.10730490 CALDWELL.CHAD.WARNER.10
73049039
Date: 2024.10.13 14:15:18 -07'00' Date: 13-Oct-24

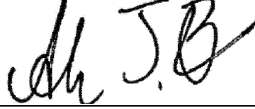
Chad W. Caldwell, P.E.
Colonel, US Army
Commander and District Engineer

**PROGRAMMATIC AGREEMENT AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
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NATIONAL HISTORIC PRESERVATION ACT, AS IT PERTAINS TO THE ADMINISTRATION OF THE
FEDERAL-AID HIGHWAY PROGRAM IN CALIFORNIA**

INVITED SIGNATORY PARTY:

United States Army Corps of Engineers

United States Army Corps of Engineers, Los Angeles District

By: 

Date: 14 NOV 2024

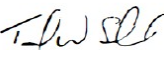
Andrew J. Baker
Colonel, U.S. Army
Commanding

**PROGRAMMATIC AGREEMENT AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
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DISTRICT, SAN FRANCISCO DISTRICT, AND LOS ANGELES DISTRICT, AND THE CALIFORNIA
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NATIONAL HISTORIC PRESERVATION ACT, AS IT PERTAINS TO THE ADMINISTRATION OF THE
FEDERAL-AID HIGHWAY PROGRAM IN CALIFORNIA**

INVITED SIGNATORY PARTY:

United States Army Corps of Engineers

United States Army Corps of Engineers, San Francisco District

By:  2024.11.07
14:56:31 -08'00' Date: _____

Timothy W. Shebesta
Lieutenant Colonel, U.S. Army
Commanding

**PROGRAMMATIC AGREEMENT AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, THE CALIFORNIA STATE HISTORIC
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FEDERAL-AID HIGHWAY PROGRAM IN CALIFORNIA**

CONCURRING PARTIES:

By: *Jeremy Ketchum* Date: 12/05/2024
Chief, Division of Environmental Analysis

By: *[Signature]* Date: 12/5/2024
Chief, Cultural Studies Office

By: *Brandon Larsen* Date: 12/20/2024
District 1 District Director

By: *Dave Moore* Date: 12/27/2024
District 2 District Director

By: *Sergio Aceves* Date: 12/20/2024
District 3 District Director


By: *Dina B-Tawansy* Date: 12/20/2024
District 4 District Director

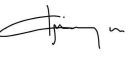
By: *[Signature]* Date: 01/02/2025
District 5 District Director


By: *[Signature]* Date: 12/19/2024
District 6 District Director


**PROGRAMMATIC AGREEMENT AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, THE CALIFORNIA STATE HISTORIC
PRESERVATION OFFICER, THE UNITED STATES ARMY CORPS OF ENGINEERS' SACRAMENTO
DISTRICT, SAN FRANCISCO DISTRICT, AND LOS ANGELES DISTRICT, AND THE CALIFORNIA
DEPARTMENT OF TRANSPORTATION REGARDING COMPLIANCE WITH SECTION 106 OF THE
NATIONAL HISTORIC PRESERVATION ACT, AS IT PERTAINS TO THE ADMINISTRATION OF THE
FEDERAL-AID HIGHWAY PROGRAM IN CALIFORNIA**

CONCURRING PARTIES:


By:  Date: 12/20/2024
District 7 District Director

By:  Date: 12/27/2024
District 8 District Director

By:  Date: 12/20/2024
District 9 District Director

By:  Date: 12/20/2024
District 10 District Director

By: *Ann M. Fox* Date: 12/19/2024
District 11 District Director

By:  Date: 12/21/2024
District 12 District Director

APPENDICES

APPENDIX 1
CALTRANS PROFESSIONALLY QUALIFIED STAFF STANDARDS

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

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

ARCHAEOLOGICAL QUALIFICATIONS STANDARDS

Archaeological Crew Member

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

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

and

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

Lead Archaeological Surveyor

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

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

and

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

and

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

Co-Principal Investigator—Prehistoric Archaeology

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

- Qualification as a Lead Archaeological Surveyor for Caltrans

and

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

and

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

and

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

Co-Principal Investigator—Historical Archaeology

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

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- Qualification as a Lead Archaeological Surveyor for Caltrans

and

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

and

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

and

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

and

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

Principal Investigator—Prehistoric Archaeology

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

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

and

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

and

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

and

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

and

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

and

- Familiarity with Caltrans cultural resources contracting policies and procedures.

Principal Investigator—Historical Archaeology

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

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

and

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

and

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

and

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

and

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

and

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

and

- Familiarity with Caltrans cultural resources contracting policies and procedures.

ARCHITECTURAL HISTORIAN QUALIFICATIONS STANDARDS

Architectural Historian

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

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

and

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

and

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

and

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

Principal Architectural Historian

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

- A graduate degree in architectural history, art history, architecture, or a closely related field, with a concentration in American architecture; or a graduate degree in American history, public history, historic preservation, American studies, or a closely related field, and at least 24 months of full-time related professional experience in research, writing, teaching, interpretation, or other related professional activity;
and
- Demonstrated ability to apply the practices of history or architectural history in the identification, evaluation, and documentation of historic properties in California or the United States; or demonstrated familiarity with U.S. history, documentary research, and oral history techniques, as evidenced by upper division course work or a major research report or publication based on original research
and
- Demonstrated ability to carry historical research to completion, as evidenced by the timely completion of a thesis, dissertation, or other comparable major study consisting of the design and execution of a historical study concerning a historic-period property or properties
and
- Ability to carry out the more complex and difficult aspects of the Section 106 process
and
- Understanding of Caltrans cultural resources policies, procedures, and goals, as demonstrated in reports and/or past performance
and
- Familiarity with Caltrans cultural resources contracting policies and procedures.

APPENDIX 2 SCREENED UNDERTAKINGS

Screened undertakings are classes of undertakings that have the potential to affect historic properties, but following appropriate screening, may be determined exempt from further Section 106 review under this Agreement. Caltrans PQS may only determine the undertaking to be exempt if, after screening, they determine that the undertaking will not affect historic properties.

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

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

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

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

THE SCREENING PROCESS

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

- Literature/records review to determine potential for involvement of historic properties.
- Desktop geoarchaeological analysis or buried site sensitivity analysis.
- Contacting California Native American Tribes who are traditionally affiliated with the undertaking area and inviting them to consult on the undertaking.
- Field review of undertaking area.
- Reviewing detailed project plans.

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

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

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

CLASSES OF SCREENED UNDERTAKINGS

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

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

APPENDIX 3

AREA OF POTENTIAL EFFECTS DELINEATION

In accordance with the Stipulations VI.A.1.h and VIII.A of this Agreement, Caltrans will establish the Area of Potential Effects (APE) for undertakings covered by this Agreement. The Caltrans PQS and project manager are jointly responsible for describing and establishing an APE and will sign any maps or plans that define or redefine an APE.

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

APE DEFINITION

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

APE BOUNDARIES

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

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

EFFECT TYPES

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

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

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

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

UNDERTAKING CHANGES AND APE REVISIONS

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

APPENDIX 4 PROPERTIES EXEMPT FROM EVALUATION

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

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

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

ARCHAEOLOGICAL PROPERTIES (PREHISTORIC AND HISTORICAL)

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

Archaeological Property Types and Features Exempt from Evaluation:

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

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

ARCHITECTURAL AND HISTORICAL PROPERTIES

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

Architectural and Historical Property Types Exempt from Evaluation:

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

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

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

Water Conveyance and Control Features:

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

Recent Transportation or Pedestrian Facilities:

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

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

Highway and Roadside Features:

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

Adjacent Features:

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

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

Movable or Minor Objects:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPENDIX 5 FINDINGS OF NO ADVERSE EFFECT WITH STANDARD CONDITIONS

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

ENVIRONMENTALLY SENSITIVE AREAS AS A STANDARD CONDITION

Environmentally Sensitive Areas (ESA) are locations of certain archaeological sites, cultural sites or built-environment properties within the APE that are to be protected through avoidance of Program activities. They typically use fencing, flagging, signing, or monitoring to protect properties from direct physical damage by undertaking activities. Environmentally Sensitive Areas protect historic properties from direct physical effects only. They may only be used in support of a No Adverse Effect with Standard Conditions finding when the undertaking will not cause indirect or non-physical effects to the historic property. That determination must be made by a Principal Investigator in the applicable discipline, and as appropriate, after consultation with Indian tribes that may attach religious or cultural values to the property, or other consulting parties. If the undertaking will cause indirect or non-physical effects to any historic property in the APE, the Caltrans District shall proceed in accordance Stipulation X.B.2.

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

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

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

Built-environment properties, regardless of ESA protection, must be evaluated for National Register eligibility unless approved in consultation with CSO pursuant to Stipulation VIII.C.4.

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

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

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

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

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

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

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

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

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

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

APPENDIX 6 CALTRANS LOCAL BRIDGE SEISMIC SAFETY RETROFIT PROGRAM

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

APPLICABILITY

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

UNDERTAKINGS NOT REQUIRING SHPO OR ACHP REVIEW

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

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

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

DETERMINATION OF ELIGIBILITY: EXPEDITED RESOLUTION WITH SHPO

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

FINDING OF NO ADVERSE EFFECT

- A. The Caltrans District shall submit a finding of “No Adverse Effect with Standard Conditions” to CSO for review pursuant to Stipulation X.B.1.
- B. The Caltrans District shall submit a finding of “No Adverse Effect” pursuant to Stipulation X.B.2.
- C. If SHPO objects within 30 days following receipt of the finding, CSO will notify the Caltrans District and any consulting parties and consult further with SHPO, as necessary, for a period not to exceed 15 days to determine whether there are feasible alternatives that may avoid

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

FINDING OF ADVERSE EFFECT-EXPEDITED DISAGREEMENT RESOLUTION

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

RESOLUTION OF ADVERSE EFFECT-STANDARD MITIGATION MEASURES

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

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

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

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

A. Recordation

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

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

Otherwise, the Caltrans District will complete the following:

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

B. Marketing Plan

If the proposed undertaking requires the demolition or replacement of a NRHP eligible or listed bridge, building, structure, or object, the Caltrans District shall consult with CSO and SHPO, and if appropriate, the property owner for a period not to exceed ten (10) days to determine if that property can be relocated and a marketing plan implemented. If the parties determine that a marketing plan is feasible, CSO, the Caltrans District and SHPO will review the advertising schedule to ensure that notice is provided in appropriate publications and that the property is offered for no less than forty-five (45) days after its initial advertisement. CSO, in consultation with the Caltrans District and SHPO, shall evaluate all relocation and reuse offers prior to acceptance. If no acceptable offers are received that conform to the requirements for rehabilitation and maintenance as set forth in SOIS Standards and relevant SOIS guidance, the

historic property, or portions of it, may be transferred without preservation covenants or restrictions, or the Caltrans District may authorize its demolition following recordation and salvage, if appropriate. The Caltrans District shall document this determination in its files and provide CSO and SHPO with written notification.

C. Salvage

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

D. National Register Reevaluation

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

APPENDIX 7 NATIVE AMERICAN CONSULTATION

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

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

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

The consultation requirements set forth in this Agreement are triggered when an undertaking is programmed and funded. Within Caltrans this milestone is termed Begin Environmental and marks the point at which cultural resource investigations are authorized to begin for the specific undertaking. As it is Caltrans' policy to conduct early and effective Native American consultation, Caltrans PQS are expected to initiate undertaking-specific outreach to tribal governments and their cultural or environmental leaders regarding their potential concerns pursuant to this Agreement as soon as the need is identified after initiation of the Begin Environmental milestone. For locally sponsored undertakings, Local agencies should initiate outreach and consultation, in coordination with Caltrans, upon identifying Section 106 requirements.

PROJECT SCREENING

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

BASIC STEPS OF CONSULTATION

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

1. Identify Potential Tribal Consulting Parties

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

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

Tribal organizations or persons who are not on the NAHC's tribal contact list may participate in the environmental review process as members of the public and may provide input and comments as part of the public review and comment periods associated with the undertaking.

As indicated in Stipulation V of this Agreement, certain individuals and organizations with a demonstrated interest in the undertaking may also participate as consulting parties due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties. In such cases, in consultation with the SHPO and the FHWA, Caltrans may identify other consulting parties, not listed on the NAHC's tribal contact list if they have a demonstrated interest in an undertaking or a cultural resource.

2. Initiate Consultation

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

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

- A statement indicating that the requirements for Section 106 review for the undertaking are being done in accordance with Caltrans' Section 106 Programmatic Agreement;
- A statement identifying Caltrans as the Section 106 lead for the undertaking;
 - If the undertaking is an oversight or Local Assistance project, the statement should also identify the project proponent.
- A brief undertaking scope and description;
- A description of known cultural resources and/or areas of sensitivity in the Area of Potential Effects (APE) that may be of interest to the tribe, including the results of a SLF search when being sent to the culturally affiliated tribes provided by the NAHC;
- A request for comments and concerns and a response period (usually 30 days); and
- A project vicinity and APE map.
- At a minimum, District PQS must make at least one attempt to follow-up on the initial outreach if no response is received from the tribal contact. It is preferable that the follow-up be done via a different medium than the initial outreach, such as a phone call or email. Depending on the nature of the undertaking, its potential to affect historic properties, and known interest or concerns of tribes in the vicinity of the undertaking, additional follow-up attempts may be necessary.

3. Conduct Ongoing Consultation

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

Minimally, attempts at such consultation should occur in the following circumstances:

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

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

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

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

SECTION 106 VERSUS GOVERNMENT-TO-GOVERNMENT CONSULTATION

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

LOCAL ASSISTANCE AND OVERSIGHT UNDERTAKINGS

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

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

Caltrans PQS may at any time, at their discretion, decide to take responsibility for conducting 36 CFR 800 consultation on local assistance undertakings. In such cases, Caltrans' decisions and

determinations under this Agreement are binding and must be implemented by the local agency.

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

DOCUMENTATION OF CONSULTATION

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

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

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

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

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

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

APPENDIX 8
FHWA RETAINED UNDERTAKINGS

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District	Project
1, 3	Middle Mile Broadband Program (NEPA EA projects only)
3	US 50 South Lake Tahoe Bypass
5	Highway 1 Congestion Management Study— Santa Cruz HOV Lanes
7, 8	Brightline West
8	I-40 Colorado River Bridge
11	SR11-Otay Mesa Port of Entry