

Chapter 2: Cultural Resources Procedures

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2.1 Introduction

As part of its environmental policy, Caltrans considers the effects of its projects on cultural resources during the project development process. The treatment of these resources is an important part of the planning, development, and maintenance of transportation facilities. Chapter 1 of this handbook describes federal and state laws and regulations concerning the treatment of cultural resources significant in American history, archaeology, culture, architecture, and engineering. This chapter describes how Caltrans complies with those laws and regulations.

Chapter 2 focuses on the standard procedures Caltrans uses in the identification, evaluation, and treatment of cultural resources and the documents used in cultural compliance during project delivery. While the protocols contained in this chapter are applicable to all Caltrans' projects, unusual situations may require a unique approach. The headquarters Cultural Studies Office (CSO) of the Division of Environmental Analysis (DEA) has specialists in Section 106 and PRC 5024 processes, Native American coordination, archaeology, architectural history, history, NAGPRA and CalNAGPRA, and the Caltrans Cultural Resources Database (CCRD) who are available as a first-line resource to Districts in answering project-specific questions and helping developing compliance strategies for unusual or complex Section 106 and PRC 5024 situations. If necessary, CSO specialists may consult with OHP staff, especially for difficult or possibly precedent-setting situations.

Section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations, [36 CFR 800](#), provide the regulatory mechanism for considering the effects to cultural resources on projects with federal involvement (federal funding and/or approval action). The California Environmental Quality Act (CEQA) and California Public Resources Code (PRC) [Section 5024](#) are the primary regulations governing consideration of cultural resources under state law, supported by Executive Order W-26-92. Caltrans has a Section 106 Programmatic Agreement¹ (106 PA) and a PRC 5024 Memorandum of Understanding²

¹ 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 (2024).

² Memorandum of Understanding between the California Department of Transportation and the California State Historic Preservation Officer Regarding Compliance with Public Resources Code Section 5024 and Governor's Executive Order W-26-92 (2024).

(5024 MOU) that implement alternate procedures for how Caltrans complies with Section 106 and PRC 5024.

Under Section 106, the term “historic properties” means any cultural resources, including archaeological properties, which have been listed in or determined eligible for listing in the National Register of Historic Places (NRHP), the regulations of which are found at 36 CFR 60. CEQA identifies “historical resources” as properties that meet the criteria for listing in the NRHP or the California Register of Historical Resources (CRHR), as well as properties designated as historic under local ordinances and properties identified as significant in a local survey that meets the state Office of Historic Preservation (OHP) standards. Properties that are determined not eligible for the NRHP still might meet the state criteria and require consideration under state law. The 2014 Assembly Bill 52 added consideration of “tribal cultural resources” (TCR) to CEQA, which are a related but distinct category of resource from historical resources. CEQA may require additional consultation and mitigation for impacts to TCRs, depending on the project context and level of environmental document. Under PRC 5024, “historical resources” refers to state-owned cultural resources that are listed on or eligible for the NRHP and/or are listed as or eligible for nomination as California Historical Landmarks. TCRs are treated as historical resources for the purposes of PRC 5024.

Cultural resources are usually formally evaluated for eligibility for listing on the NRHP or CRHR, depending on regulatory context of the project. In certain circumstances, the 106 PA and PRC 5024 allow Caltrans to consider a cultural resource to be eligible for listing on the NRHP without formal evaluation. Caltrans-owned historical resources formally determined eligible for the NRHP or that qualify for nomination as California Historical Landmarks (CHL) are added to the Master List of Historical Resources (Master List), maintained by the California State Historic Preservation Officer (SHPO).

The process for identifying and considering effects to cultural resources on state-only projects generally parallels that which is followed for federal undertakings. Caltrans policy is to treat resources in the same manner regardless of the funding source. The treatment of historical resources on state-only projects follows the federal standard although regulatory procedures differ slightly. Exhibit 2.5, the Cultural Resources Process Checklist, is intended to help cultural resource professionals identify the required steps in the federal and state cultural resources compliance processes.

Cultural Resource Types

For Caltrans purposes, the term “cultural resources” means any tangible or observable evidence of past human activity, regardless of significance, found in direct association with a geographic location, including tangible properties possessing intangible traditional cultural values, such as sacred or ceremonial sites, traditional plant-gathering areas, artifacts, archaeological sites, buildings, bridges and other structures. This broad definition is meant to ensure that all potential historic properties subject to consideration under Section 106 and historical resources subject to consideration under CEQA will be recognized and given appropriate consideration.

Cultural resources may be divided into three broad categories:

- Built environment resources
- Archaeological resources
- Cultural sites

Built Environment Resources

Built environment resources are intact buildings, structures, objects, and associated features; non-archaeological sites; and districts composed of these resources.

Archaeological Resources

The locations of a significant event, occupation, activity, or a ruined or vanished structure, with the presence of archaeological deposits, features, or other material remains, regardless of the presence any existing standing building or structure. Archaeological resources can be further divided into pre-contact and post-contact eras. Archaeological sites are typically distinguished from isolated finds by criteria such as the density of cultural materials present. Sites generally have concentrations of material that can be distinguished from isolates and extensive very low-density deposits. Archaeological resources of all types may have cultural values ascribed to them by Native Americans or other descendent communities, in which case they would also meet the definition of a cultural site.

Pre-contact archaeological resources are typically sites, activity areas, cultural landscapes, and ruins either predating or concurrent with non-Native American entry into the region. They are characterized by material remains of substantially Native American origin. They may be in the form of deposits of cultural material or features found in ground or on its surface, or they may be districts composed of groups of pre-contact archaeological resources.

Post-contact archaeological resources are sites, activity areas, cultural landscapes, and ruins³ of buildings and structures that post-date the incursion of non-Native Americans into the area. Post-contact sites are often characterized by material remains of Euro-American and other settler-colonial origins; however, Native Americans remained present and active throughout post-contact California and their material culture is present in post-contact archaeological sites.

Cultural Sites are cultural resources with historic or cultural and religious value independent of, or in addition to, other constituents. While archaeological sites may meet the definition of a cultural site, a cultural site is **not** dependent on the presence of archaeological materials or anthropogenic alteration of the landscape. Common examples of cultural sites include traditional cultural properties that encompass the location of a significant traditional event or practice.

Traditional Cultural Properties (TCPs) are associated with the traditional cultural practices or beliefs of a living community. They may consist of buildings, structures, objects, sites, or districts that are rooted in a traditional community's history and are important in maintaining the continuing cultural identity of that community. TCPs may have archaeological component, but may also be the locations of important events that contain no physical remains or landscape alterations, such as a location associated with the traditional beliefs of a Native American group about its origins, cultural history, or the nature of the world.

Tribal Cultural Resource Disambiguation

TCRs are “sites, features, places, cultural landscapes or objects that have cultural value to a California Native American tribe and are either listed in or eligible for the CRHR or are included on a local register.”⁴ They are not a specific type of cultural resource; rather if any cultural resource meets the definition of a TCR, they may be subject to specific additional processes and consultation under CEQA. Both archaeological resources and cultural sites can be TCRs.

³ Examples of ruins include a building without a roof and with two or more collapsed or missing walls, an abandoned ditch system that can no longer convey water, and the foundations of a gold mining and milling operation.

⁴ PRC Section 21074(a)(1) and (2)

2.1.1 Professionally Qualified Staff

It is Caltrans policy that all persons carrying out cultural resources studies, whether Caltrans staff or consultants, must meet the appropriate federal and state professional qualifications standards, as established by the Secretary of the Interior, the State Personnel Board, and Caltrans (see Chapter 1 Section 1.3.4 of SERv2).

Furthermore, work performed under the 106 PA, the 5024 MOU, or CEQA, when Caltrans is the CEQA lead, must be carried out by or under the supervision of Caltrans staff who meet the Professionally Qualified Standards in the appropriate discipline. Appendix 1 the 106 PA and 5024 MOU outlines the minimum qualifications needed for cultural resources staff conducting various tasks. Caltrans staff who meet the qualifications are certified as Professionally Qualified Staff (PQS). The CSO Chief is responsible for certifying PQS. Only Caltrans staff can be certified as PQS under the 106 PA and 5024 MOU. Consultants who meet the Professional Qualifications Standards may perform certain tasks as long as their activities are overseen and approved by PQS in the appropriate discipline. Exhibit 1.6 outlines the expertise levels required to perform specific tasks under the 106 PA and 5024 MOU.

PQS certification applies only to responsibilities and activities conducted under the direction of Headquarter and District Environmental, Maintenance or Local Assistance offices by their staff whose primary duty is to conduct cultural resources studies. It is typically suspended when an individual transfers to a position that does not regularly involve cultural resource studies. Additional training may be required to ensure knowledge of current practices in order to regain PQS status upon returning to a cultural resource studies position. PQS certification terminates upon leaving Caltrans employment. It does not apply to any other work that may be conducted on behalf of any other office, agency, entity, or individual. See Exhibit 1.7 for information on applying for PQS certification. Questions on certification should be addressed to the Chief, Section 106 Coordination Branch (Section 106 Branch Chief) in CSO.

2.1.2 Caltrans Cultural Resources Database

The CCRD is an electronic database and GIS application that contains an incomplete inventory of archeological and architectural cultural resources in the Caltrans right of way. Incomplete means it is not a final inventory and does not replace necessary identification efforts. The database stores libraries of related digital documents on cultural resources

investigations (reports, site records, correspondence, collections, etc.) in PDF format. The GIS component contains shape files for cultural resources. The CCRD is an important scoping tool for cultural staff for Maintenance, Encroachment Permits, Local Assistance, and Project Delivery projects.

The CCRD is managed by the Statewide Data Manager in the Cultural Studies Office (CSO). It is only available within the Caltrans network.

The CCRD stores confidential information including a significant amount of data from the California Historical Resources Information System ([CHRIS](#)). CCRD users must meet the qualifications of the CHRIS confidential use agreement and be PQS-certified Caltrans cultural resource staff. In limited situations GIS staff working under the direction of cultural staff may have access to the GIS application to assist with mapping.

The CCRD and Caltrans ArcGIS spatial data (CCRDGIS) are the property of the California Department of Transportation, and they may be accessed and used only by authorized users. Access and use are subject to the terms of use established by the California Department of Transportation. Unauthorized or illegal access or use of the database or the data is prohibited, and it is subject to punitive action. Access and use of the database and the data, and any data inputted or submitted, including without limitation any information stored locally on the hard drive or other media, is not entitled to any right of privacy or non-disclosure.

2.2 Projects with Federal Involvement

2.2.1 Introduction

When a project has a federal nexus, the historical resources compliance process is subject to federal law and regulations. Under federal environmental law, consideration of historical resources is primarily carried out under Section 106 of the NHPA. Section 4(f) of the 1966 Department of Transportation Act may also apply (see Section 2.5.5). Both of these laws come under the umbrella of the National Environmental Policy Act (NEPA). Federal agencies bear the responsibility for compliance with Section 106 for their undertakings, although they may authorize others to perform a portion of the actual work. The Federal Highway Administration (FHWA) has assigned to Caltrans all responsibilities for compliance under NEPA and Caltrans assigned the role of “agency official” to the DEA Chief for purposes of compliance with Section 106. To provide for effective compliance, the DEA Chief delegated

day-to-day responsibilities to the CSO Chief. The 106 PA also delegates FHWA's Section 106 responsibilities to Caltrans. For more information on the NEPA assignment, please refer to Chapter 38 of SER Volume 1 (SERv1). Questions regarding CSO's assumption of FHWA's Section 106 responsibilities should be directed to the Section 106 Branch Chief.

2.2.2 Identifying Federal Involvement

If identifying federal involvement has not already been accomplished as part of developing the State Transportation Improvement Plan (STIP), the Project Development Team (PDT) will identify whether a project is a federal undertaking early as possible in the project development process.

As defined by 36 CFR 800.16(y), an undertaking means any project, program, or activity with federal funding or under the direct or indirect jurisdiction of a federal agency, including federal license, permit, or approval, or administered pursuant to federal agency delegation or approval.

On occasion, more than one federal agency will be involved, and a lead agency will then be identified. See Section 2.3.3 below.

The PDT formally initiates environmental studies, including cultural resources studies (all research, consultation, and survey work for the full range of cultural resources) by submitting plans showing proposed project alternatives with best estimates of Right of Way requirements. PQS will determine whether the project is the type of undertaking that has the potential to affect historic properties, regardless of whether any such properties are present. The federal action defines the undertaking, not the anticipated presence or absence of historic properties.

2.2.3 Early Coordination

Preliminary cultural resources studies should be started early, at the Project Initiation Document (PID) stage. Early identification of consulting parties is crucial to meeting project schedules. Preliminary research can identify previously recorded cultural resources and archaeological sensitivity of the project area. A walkover or reconnaissance survey, when feasible, can reduce project development time spent on alternatives that obviously would have unacceptable environmental consequences.

For projects involving a permit from the U.S. Coast Guard and a historic bridge, early coordination is essential. Such projects may require preparation of an Environmental Impact Statement (EIS), regardless of other environmental documentation needs, based on a 1985 agreement between FHWA and the U.S. Coast Guard.

If a National Historic Landmarks (NHL) may be directly and adversely affected by an undertaking, Section 110(f) of the NHPA requires that federal agencies undertake such planning and actions as may be necessary to minimize harm to the NHL. The Advisory Council on Historic Preservation (Council) and the Secretary of the Interior, through the National Park Service (NPS) Regional NHL Program, must be invited to participate in the consultation. For additional guidance, see the [Council's Section 106 Consultation](#) Involving National Historic Landmarks and 36 CFR 800.10(c).

If information available at the PID stage indicates that historic properties could be involved, every effort should be made to develop realistic project schedules. Scheduling decisions should acknowledge the time required to complete the Section 106 process. Exhibit 2.3 provides estimates of the range of time required for certain cultural resources studies while Exhibit 2.4 suggests their sequential order.

2.2.4 Considering Alternatives

Preliminary studies, such as reconnaissance surveys, can be undertaken early in the planning and development process, at the Project Study Report (PSR) stage, when possible. In some situations, these preliminary studies will be sufficient to indicate that the environmental consequences of some alternatives warrant dropping them from further consideration without expending additional effort.

Complete cultural resources surveys, Native American consultation, and any other necessary identification studies are undertaken for each project alternative formally considered in the environmental document. Each alternative should be studied to a roughly equal degree and in comparable detail.

Studies that are destructive by nature (e.g., archaeological test excavations) may be postponed until a preferred alternative has been selected, unless all proposed alternatives would affect a particular resource. Postponing test excavations pending selection of a preferred alternative avoids unnecessary damage to the resources, in accordance with

Caltrans and FHWA policy. See Section 2.4, Phased Identification, Evaluation and Assessment of Effects.

Selection of the preferred alternative is always required before the Final Environmental Document is Complete. If identification and evaluation efforts for the preferred alternative cannot be concluded by PAED (e.g., because there are numerous alternatives being considered, there is a large area covered by the preferred alternative, and/or there are access issues) and the project schedule requires that cultural resource studies be completed before selection of a preferred alternative, an agreement document may be required. See Section 2.3.11 below.

2.2.5 Relationship of Section 106 to the Environmental Document

Summaries of Section 106 findings and conclusions are included in the environmental document with references to appended technical studies for detailed information. Exhibit 2.18 has additional guidance on what cultural resources information should be included in the environmental document. It is advisable to have cultural resources staff draft or review the summaries for clarity and completeness. Close cooperation will help ensure adequate and accurate summaries of Section 106 compliance in the environmental documents.

While all technical studies referenced in an environmental document must be made available to the public, [Section 6254.10](#) of the California Government Code exempts archaeological records from public disclosure requirements. If archaeological sites are depicted on the area of potential effects (APE) map, the map should be removed from publicly-circulated documents to protect the sites' locations. Likewise archaeological studies that contain information or mapping showing the locations of archaeological sites must be removed before the document is circulated to the public and a page inserted in its place explaining that the study is not included because archaeological records are confidential under the California Government Code.

2.2.5.1 NEPA and CEQA Joint Compliance

Caltrans projects that have federal involvement also must comply with state environmental law and regulations. In general, this joint compliance is integrated at the time the joint NEPA/CEQA documents are prepared. See Section 2.7.11 below.

2.2.5.2 Draft Environmental Document

The draft environmental document reports the results of the cultural resources identification and evaluation effort (see Sections 2.3.7 and 2.3.8) and a discussion of the potential effects to any historic properties (see Section 2.3.9), if known.

If no cultural resources were identified, a statement so indicating is included. If cultural resources requiring evaluation were identified, consultation with the SHPO regarding Caltrans' determinations of eligibility will typically have been initiated. Relevant correspondence from the SHPO is referenced and appended.

If the undertaking's effect on cultural resources is not yet known, a statement so indicating is included and the draft environmental document would state that Caltrans will be continuing consultation with SHPO (or CSO). If effects are known but consultation with SHPO (or CSO) has not yet been initiated, the draft environmental document would describe the anticipated effect and state that Caltrans will be consulting SHPO (or CSO) on the effects. If consultation has been initiated but the SHPO (or CSO) has not yet concurred with or approved the effect finding, the draft document would indicate the date the consultation was initiated.

For projects with multiple alternatives, the draft environmental document should explain the proposed treatment of historic properties for each alternative in appropriate detail. Any cultural resources that are on common alignment, however, must be evaluated prior to the draft document. Because of concern for identifying potential Section 4(f) properties, sufficient information must be available to evaluate whether each resource is a historic property; therefore they must be evaluated for eligibility to the NRHP.

Some flexibility does exist, but CSO must approve any deviations from the standard Section 106 milestones in the draft environmental document.

2.2.5.3 Final Environmental Document

The final environmental document must demonstrate that all requirements of Section 106 have been met.

By the final environmental document, consultation with SHPO on effects to any historic properties should be concluded and the relevant correspondence appended. Under the 106 PA, certain effect findings do not require consultation with the SHPO. This should be

explained in the final environmental document. If the preferred alternative has an adverse effect on historic properties, the final environmental document must include a summary of the consultation effort to resolve adverse effect and describe the agreed upon treatment or mitigation measures. There should be a fully executed agreement document in place (see Section 2.4.4), and a copy included with the final environmental document.

2.3 Section 106 Procedures under the 106 PA

2.3.1 Introduction

The 106 PA is a legally-binding alternate process to 36 CFR 800 for compliance with Section 106 for Federal-Aid Highway Program undertakings in California. It streamlines the Section 106 process and delegates many of its steps to Caltrans. As noted in Section 2.1.1, work under the 106 PA must be performed by or under the supervision of Caltrans PQS. Each of the individual Caltrans Districts (Districts) are concurring parties to the 106 PA. A copy of the 106 PA can be found as Exhibit 1.1.

In addition to the 106 PA itself and SERv2, the following federal regulations and guidance may be useful in understanding the Section 106 compliance process:

- [Section 106 Regulations Text](#)
- [Section 106 Regulations Section-by-Section Questions and Answers](#)
- [The Relationship Between Executive Order 13007 Regarding Indian Sacred Sites and Section 106](#)

2.3.2 Applicability

The 106 PA applies to all Federal-Aid Highway project undertakings in California for which Caltrans, as assigned by FHWA, is the federal lead agency, including those that occur on or affect land owned by another federal agency.

Unless a tribe has elected to become a party to the 106 PA, where the undertaking occurs on or affects tribal lands⁵, the 106 PA does not apply, and Caltrans follows the regular 36 CFR 800 regulations. See Exhibit 2.2 for concordance between the 106 PA and 36 CFR 800.

⁵ Tribal lands, as defined in Section 301(14) of the NHPA, means “(a) all lands within the exterior boundaries of any reservation and (b) all dependent Indian communities,” including lands outside of an existing reservation in which the federal government holds the title (i.e., in trust) for the benefit of a tribe or has set aside for the tribe.

2.3.3 Working with Other Federal Agencies

Other federal agencies may issue permits or otherwise provide assistance for Federal-Aid Highway Program undertakings. In such circumstances, Caltrans, as federal lead agency, may request that other federal agencies fulfill their Section 106 responsibilities in coordination with Caltrans by using the provisions of the 106 PA. Such federal agencies may designate Caltrans as federal lead agency pursuant to 36 CFR 800.2(2)(2) to fulfill their responsibilities. This delegation should be in writing, though email is sufficient. Delegation of federal lead agency under NEPA does not automatically extend to federal lead for Section 106, so a separate written delegation is required. If the federal agency does not designate Caltrans as federal lead and elects to fulfill its Section 106 responsibility separately, the federal agency may use studies and background information developed by Caltrans to support their own findings and determinations under 36 CFR 800 and/or require Caltrans to produce additional information.

Alternately, the federal agencies may request that Caltrans use the 36 CFR 800 regulations instead of the 106 PA to fulfill Caltrans' Section 106 responsibilities for the undertaking. If Caltrans needs a permit or approval from the federal agency and the agency is likely to require Caltrans to prepare extensive documentation beyond what Caltrans would otherwise prepare for Section 106 compliance under the 106 PA, it may be prudent to use 36 CFR 800.

2.3.3.1 Army Corps of Engineers Sacramento, San Francisco and Los Angeles Districts

The Army Corps of Engineers Sacramento, San Francisco and Los Angeles districts are invited signatories to the 106 PA. As such, they have programmatically delegated FHWA as lead federal agency for any Federal-Aid Highway Program undertakings covered by the 106 PA that requires a DA Permit(s) or Permissions, and under NEPA assignment, Caltrans has assumed that role. See 106 PA Stipulation I.F.

2.3.3.2 U.S. Forest Service, National Park Service and the Bureau of Land Management as Consulting Parties

The U.S. Forest Service, the National Park Service (NPS) and the Bureau of Land Management (BLM) have requested to be consulting parties on all projects that affect historic properties on their lands. For such projects, the District must:

- Request information from the appropriate National Forest, National Park or BLM District and/or Field Office to assist in the identification of historic properties.

- Determine whether Caltrans will use the 106 PA the 36 CFR 800 regulations for compliance with Section 106.
- Notify both the Forest Supervisor and the Forest Service Regional Forester; the National Park Superintendent and the NPS Regional Director; or the BLM District Manager and the BLM Field Manager of No Historic Properties Affected findings.
- Consult with the Forest Supervisor and Regional Forester; the National Park Superintendent and NPS Regional Director; or the BLM District Manager and the BLM Field Manager on Adverse or No Adverse Effect determinations.
- Routinely invite the Regional Forester, the NPS Regional Director or the BLM Field Manager to be a consulting party for any project in which adverse effects will occur on historic properties in that jurisdiction.

2.3.4 Native American Consultation

Section 106 requires consultation with Native Americans throughout all steps of the process. The 106 PA authorizes Caltrans to conduct consultation with Indian tribes; however, FHWA retains ultimate responsibility for government-to-government consultation. Caltrans recognizes the government-to-government relationship between the federal government and tribes and conducts its 36 CFR 800 consultations in a sensitive manner respectful of tribal sovereignty. Exhibit 3.1 provides definitions of consultation.

The District project PQS or District Native American Coordinator (DNAC) initiates contact with potentially interested Native American groups and the Native American Heritage Commission (NAHC). A good faith effort to contact Native American groups may entail telephone, in person, or written contacts, depending on the complexity of a project and the rapport established with particular groups. The NAHC must be contacted for information about any resources listed in their Sacred Lands files. See 106 PA Appendix 7 and Chapter 3 for guidance on consultation procedures.

2.3.5 Participation of Other Consulting Parties and the Public

The goal of public participation in the Section 106 process is to ensure that interested persons are informed about the potential effects of a project on historic properties and given the opportunity to comment. Interested persons are defined as organizations and individuals that are concerned with the effects of an undertaking on historic properties. PQS identify and invite interested members of the public to provide information on cultural resources during the identification and evaluation stage and must notify all consulting parties and members of the public who expressed an interest in the proposed project of the results, even when no historic properties are found. When historic properties are found that

may be subject to project effects, persons who have expressed an interest may want to continue participation.

Public participation in the Section 106 process may be achieved by using Caltrans's procedures for compliance with NEPA and the Caltrans project development process. Participation can include public meetings, hearings, or newspaper notices, although the degree of effort and timing may vary.

The District must document evidence of coordination with all interested persons and include public comments and opinions, as well as a summary of Caltrans' responses to the comments, in its Section 106 documents.

2.3.6 Screened Undertakings

Not all projects and activities have the same potential to affect historic properties. Stipulation VII of the 106 PA is intended to streamline cultural resource compliance for projects that by their nature have limited potential for effect, and if appropriate, determine them exempt from further review under Section 106. Appendix 2 of the 106 PA lists classes of actions that may be screened by PQS, and if appropriate, exempted from further review under Section 106. Screened projects are limited to only those actions listed in Appendix 2, but a project may consist of more than one action and still be screened.

The following conditions apply to screened projects:

- Only PQS may conduct the screening process.
- The screening process must be done in accordance with the terms of 106 PA Appendix 2.
- Only the projects consisting wholly of one or a combination the listed screening classes in Appendix 2 may be screened.
- If a project includes any elements other than those listed, it will not qualify for screening.
- All features of the project must be identified prior to screening.
- Projects must be screened as a whole; certain "activities" or "areas" of a project cannot be screened.
- If conditions must be imposed on a project to ensure that potential historic properties would not be affected (e.g., fencing to protect an archaeological site), it does not qualify as a screened project.
- At the screening stage, PQS look for potential to affect, not whether there will be an effect.

- Subsequent changes to the project may require that it be re-screened to determine if it still meets the requirements of Appendix 2.

PQS begin by examining a project's features to determine if it meets one or more of the classes of screened projects. The screening process may involve reviewing relevant documents, such as maps, photographs, previous cultural studies, and project plans, a field review of the project location, or consultation with Native Americans or other knowledgeable individuals. Personal knowledge of the project location may be important and should be included where relevant. The extent of the effort should be in proportion to the complexity, scale, and location of the project and the potential for historic properties to be affected. PQS exercise their professional judgment in conducting the screening process and must not allow either external or internal pressures to influence their decisions. The outcome must be defensible, as conclusions will be included in the 106 PA's Annual Report and are subject to audit. Failure to comply with the standards set in Appendix 2 could jeopardize Caltrans' or a specific District's continued use of the 106 PA.

If the project meets the requirements of 106 PA Appendix 2, and PQS determine after appropriate screening that there is no potential for Caltrans-owned historical resources to be affected, the project may be exempted from further review. A screening memo constitutes the only documentation necessary for screened projects and completes the Section 106 process. See Exhibit 2.7 for guidance on preparing the memo.

If the project does not meet the requirements of Appendix 2 of the 106 PA or if PQS determine that there is potential for historic to be affected, the project is subject to further review and may require cultural resources studies.

2.3.6.1 Bridge Activities That Do Not Need Environmental Review

Exhibit 6.3 lists routine maintenance-type activities specific to historic bridges and tunnels that meet the classes of screened undertakings in Appendix 2, and which Caltrans considers to have no potential to affect the character defining features or historic fabric of historic bridges or tunnels. The activities listed in Exhibit 6.3, therefore, do not require environmental review under Section 106, PRC 5024, CEQA, or Executive Order W-26-92.

2.3.6.2 Processing Screened Undertakings

A “Screened Undertaking” memo prepared by PQS constitutes the documentation necessary to complete the Section 106 process for screened undertakings. Exhibit 2.7 contains guidance for preparing a Screened Undertaking memo.

2.3.7 Scope of Identification Efforts

When PQS determine that an undertaking has the potential to affect historic properties, should any be present, the relevant information is forwarded to the District Environmental Branch Chief (DEBC). PQS then proceed to identify cultural resources that may be affected.

2.3.7.1 Establishing the Area of Potential Effects

As defined in 36 CFR 800.16(d), an Area of Potential Effect (APE) is “the geographical 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.” For 106 PA undertakings, the project PQS and the Project Manager [or District Local Assistance Engineer (DLAE) for Local Assistance projects], are jointly responsible for setting the APE. Exhibit 1.6 outlines the PQS levels required for approving the APE.

Establishing the APE is the first step in determining the scope of identification efforts, and a prelude to initiating cultural resources surveys. It is a prospective activity; the known or suspected presence or absence of historic properties is irrelevant at this stage. Under the 106 PA, Caltrans has been delegated the authority to set APEs, and when the guidelines set forth in Appendix 3 are followed, project-specific consultation with the SHPO regarding the APE and level of effort is not required. However, the SHPO may always comment on the adequacy of that delineation. For particularly complex projects, consultation with CSO and/or SHPO early in the scoping process may be advisable. Any consultation with SHPO should be initiated through the CSO Section 106 Coordinator. Appendix 3 of the 106 PA contains further guidance on setting an APE.

The APE should be commensurate with, and provide for, an appropriate level of effort to take into account a project’s potential for effects on historic properties. The APE must include all areas that may be subject to direct physical effects, direct non-physical effects, and indirect effects. Examples of direct physical effects include ground disturbance or building/structure alterations. The APE includes the horizontal and vertical extents of direct effects, and so should be delineated vertically to the depth of any ground disturbance that

may result from a project. Examples of direct non-physical effects include audible, visual or atmospheric intrusions, and shadow effects or vibrations. Indirect effects are caused by a project but occur later in time, such as erosion resulting from changes in drainage patterns due to the undertaking, potential looting resulting from increased access, or destruction of a building due to changes in ownership or neglect.

An APE should include the entirety of current or future right of way that will be accessible and available for use during the project, but may extend well beyond the right of way due to the project scope or non-physical effects such as new visual elements. Any exclusion of accessible right of way from an APE should be justified in the written descriptions included in relevant technical documentation. If any portion of an historic property extends into the project area and is subject to potential effects, the APE will usually be extended to encompass the entire resource. However, large districts or other large properties with disperse contributing elements do not need to be included in their entirety beyond the areas that can be affected by the undertaking. Assessor's parcels may be used to define the boundaries of a built environment property, though it is not a requirement. Assessor's parcels can be substantially larger or smaller than an historic property's true boundary. Judgment must be exercised, particularly where assessor's parcels are very large, as is often the case with rural properties.

In addition to APEs, Caltrans PQS may establish Areas of Direct Impact (ADI) or other similar areas within the APE to delineate locations of specific kinds of effects. These effect-specific delineations have no regulatory standing or definition, so they should always be clearly defined and described on both the mapping and in written descriptions in project reporting. ADIs are the most common form of effect-specific delineation and identify locations in an APE that are subject to direct physical effects. This is often necessary to support testing approaches or effect analyses when archaeological sites are included in their entirety in an APE but will only be subjected to physical impacts in certain areas.

Because the APE is established prior to completed field studies and historic property identification, it may be necessary to revise the map at certain stages throughout the undertaking. These changes are warranted by changes in the project's scope, design (e.g., design changes, utility relocation, or additional off-site mitigation areas), or the discovery of previously unknown historic properties. PQS determine whether the changes require modifying the APE, commensurate with the nature and scope of the changed potential effects.

The final APE map must be included in Section 106 compliance documents upon submittal to the SHPO or CSO as part of formal consultation. It should be of a scale suitable to depict the boundaries of major project features (e.g., right of way, edge of pavement) relative to the historic property boundaries. Any changes to an APE that occur after initial consultation with the SHPO begins must be documented in supplemental mapping and studies, as appropriate.

2.3.7.2 Preliminary Research

PQS should begin resource identification as early as possible in the planning process. The goal of this initial phase is to:

- Determine whether there are previously identified historic properties within the APE.
- Identify what times of properties are likely to be located in the APE.
- Determine the kinds of technical studies needed, if any.
- Determine the kinds and levels of expertise needed to conduct any needed technical studies.

2.3.7.3 Identification of Historic Properties

Section 106 requires a “reasonable and good faith effort” to identify historic properties within the APE. The identification effort should concentrate on resources that do have potential to be historic properties. See Section 2.3.8.1 below for information on resource types that do not normally require further study.

The identification effort takes into account previous research and studies; the scope and nature of the project; the degree of federal or state involvement; the nature and extent of potential effects on historic properties; and the likely nature and location of potential historic properties. A typical effort will include:

- Background research
- Consultation with Native Americans or other potential consulting parties
- Consultation with other knowledgeable individuals
- Field survey

Project areas that have been previously surveyed may require resurveying under certain circumstances, such as when conditions have changed, earlier studies do not appear adequate for the current project, or previously surveyed properties have since turned 50

years old. The passage of time, changing perceptions of significance, past errors of judgment, or reduction in the number of similar resources may be reasons for resurveying.

Background research also involves seeking information from parties who may have knowledge of resources in the APE, including Indian tribes and other consulting parties.

Exhibit 2.6 includes a list of standard sources of information. At a minimum, the following sources should be consulted on all projects:

- National Register of Historic Places.
- California Register of Historical Resources.
- California Historical Landmarks.
- Points of Historical Interest.
- State and local inventories of historical resources.
- Caltrans Cultural Resources Database (CCRD)
- Caltrans Historic Highway Bridge Inventory, if applicable.
- The appropriate regional Information Center of the California Historical Resources Information System (CHRIS).
- Sacred Lands Inventory File, Native American Heritage Commission.

Background research is conducted prior to reconnaissance or windshield surveys as a means to guide identification efforts within the APE. It includes reviewing previous survey efforts, existing information on known historic properties, and any data concerning possible historic properties not yet identified. The scope of the background research will depend on:

- The magnitude of the project.
- The extent of potential effects to historic properties.
- The relevance of previous cultural studies in the vicinity.
- The availability of documentary or oral information.
- The number and types of properties that can be reasonably anticipated.

A minimum level of background research must be carried out for all projects where cultural resources identification efforts are required, and more detailed research is conducted as necessary. The results of the research are documented and used to identify the potential for cultural resources in the APE and to determine what additional identification measures may be required.

2.3.7.4 Historic Contexts

Cultural resources specialists undertake research to develop the appropriate historic context for the types of resources that may be present in the APE as well as possible areas

of significance. Development of the historic context usually extends through the survey stage and is completed prior to any formal evaluation of resources. The context statement should relate directly to site-specific discussions of cultural resources identified in the APE.

Caltrans has developed a number of broad historic contexts, available on the SER-Other Guidance webpage, that can be used as applicable. Relevant portions of historic contexts from earlier Caltrans-prepared technical reports covering the same geographical area may also be excerpted for current studies. In such cases, the earlier report should be appropriately cited (e.g., “The following discussion is excerpted [verbatim or with minor editing for purposes of the current project] from [cite report]”). Often the previous study established the significant themes for an area; unless those themes have changed, or additional themes must be addressed, additional research is not required. This allows cultural resources specialists to more efficiently use their time researching additional pertinent themes and pursuing site-specific research.

2.3.7.5 Field Surveys

PQS and qualified consultants conduct field surveys to inventory and/or record cultural resources in the APE. In general, all buildings and structures are surveyed regardless of age, integrity, or apparent value, and an archaeological survey is always conducted unless it can be shown that natural or modern processes have destroyed any potential resources, or unless the APE has been previously surveyed to appropriate standards.

Reconnaissance Surveys

Reconnaissance (or windshield) surveys are a visual inspection, typically a first walk-through or drive-through, of a project’s APE. They are typically used as part of built-environment identification efforts to verify the presence of resources identified through background research and to identify any additional properties that may require consideration.

Reconnaissance surveys, along with preliminary research, can provide information on the likelihood of cultural resources requiring study within a given corridor for comparison among project alternatives. PQS should convey the results of the reconnaissance survey and any relevant background research to the DEBC in a memo and recommend any additional work that will be required.

Field Surveys

PQS or qualified consultants conduct field surveys to inventory and record cultural resources in the APE. In general, all buildings and structures are surveyed regardless of age, integrity, or apparent value, and an archaeological survey is always conducted unless it can be shown that natural or modern processes have destroyed any potential resources, or unless the APE has been previously surveyed to appropriate standards.

If a field survey is not necessary for a particular project, the reason must be documented in a memo or a summary report.

Intensive Pedestrian Survey

The purpose of intensive pedestrian (Phase I) survey is to identify and record all cultural resources in the APE that are visible at or above ground level and may meet the NRHP definition of an historic property. PQS or qualified consultants in the appropriate discipline conduct careful inspection of the APE in regular transects, usually spaced at 10 meters. These surveys should include the entire APE regardless of previous disturbance, excluding areas only due to severely limited visibility (e.g., dense impermeable vegetation or existing pavement) or safety concerns (e.g., steep cliffs or unstable ground). Where no original ground surface is exposed, such as highly-developed urban areas, PQS should conduct background research to determine whether previously recorded sites are present, and to identify the potential for buried sites that may require identification measures other than a pedestrian survey (e.g. geo-archaeological survey, Extended Phase I or remote sensing).

Archaeological resources discovered during pedestrian survey are reported in an Archaeological Survey Report (ASR).

Historical archaeological resources needing evaluation are typically reported with the evaluation of identified built environment resources in a Historic Resource Evaluation Report (HRER). See Chapter 5 for more information on when and how to conduct an archaeological survey and assessing the potential for buried resources.

Built Environment Surveys

The purpose of a built environment survey is to identify, record and evaluate all built environment resources within the APE that have the potential to meet the relevant federal and/or state eligibility criteria. Evaluation is an integral component of built environment surveys, concurrent with the identification and recordation processes, and the results are reported in an HRER. See Section 2.3.8 below for more information on evaluating built

environment resources and Chapter 6 for further details on built environment survey methods.

Survey Access

Permits may be required for access to certain public lands. When it is necessary to enter private property, Caltrans must first obtain permission from property owners or tenants. Permits may be required for survey access to certain public lands.

Under Caltrans policy, District Right of Way (ROW) staff handle all access requirements involving private lands. The DEBC should designate a single District cultural resources staff member for each project to coordinate with ROW staff regarding access permission for all advance studies. Dependent on the permit to enter letter and the instructions from the property owner, ROW may delegate to cultural resources staff notifying residents when the actual field survey will take place. Staff must carry copies of any permit to enter paperwork when in the field. If a property owner or tenant objects to survey activity, or if a situation appears to present a threat, leave the property immediately.

Not all surveys require access onto the property. Built environment surveys can often be conducted from the public right of way without entering private property or restricted areas, and neither residential back yards nor building interiors need be entered or examined in the normal course of a survey. On occasion, such as when surveying large parcels or complex properties, it may be necessary to enter private property or restricted public property to survey the area adequately. At such times, a permit to enter the property must first be obtained by ROW. Any access restrictions that limit a surveyor's ability to conduct a full survey may be explained, and their location documented, in the technical study. See chapter 5 for more information on survey access.

Field Safety

All surveys and other fieldwork must be conducted in keeping with the Caltrans Code of Safe Surveying Practices. Caltrans staff or consultants conducting field surveys need to be familiar with Caltrans safety policies and procedures for field trips, visiting construction and maintenance sites, and field surveys, which can be found in the:

- Caltrans Safety Manual, particularly Chapter 5 Section 5.08 and Section 5.13 and the Code of Safe Practices for Field Trips (Appendix A).
- Caltrans Construction Manual, Chapter 2, sections on Safety and Traffic.

- Caltrans Surveys Manual, Chapter 2 (Safety), and the Caltrans Code of Safe Surveying Practices.

Caltrans office staff visiting projects in the field must be familiar with the Caltrans Safety Manual, Chapter 5 Section 5.08 and Section 5.13 and the Code of Safe Practices for Field Trips (Appendix A). They must provide this information to others visiting in the field, such as staff from partner agencies or consulting parties.

The “buddy system” is strongly encouraged for fieldwork, and staff should always ensure they know how to get help promptly in an emergency. In some areas, it is advisable to check in with the local law enforcement agency before beginning work. The staff supervisor should also be aware of the work location and plans and also have a contact number for the staff.

A first aid kit, cell phone, and drinking water should always be kept on hand, and other safety equipment may be in order if special hazards exist. When working with heavy equipment or along the roadside, all staff must wear OSHA-approved hard hats, sturdy shoes, and safety vests.

The Caltrans Safety and Surveys Manuals cover most potential hazards encountered during surveys, but hazardous materials and other unsafe physical conditions may also be encountered at some built environment properties or historical archaeological sites or along the right of way.

Properties associated with industrial activities may contain chemical contamination or toxic waste, and dangerous substances used in industrial processes may remain at a site or in the soil. The possible presence of such substances is not always revealed in background research, so it is best to consider soils at any industrial processing area as potentially contaminated and to avoid substances in containers or leaching from the soil. Suspected toxic materials must be reported to the District Hazardous Materials Coordinator. Care must also be taken when working in agricultural areas, as herbicides and pesticides sprayed on farm fields may leave toxic residues for several days after spraying.

Wells, mineshafts, and other depressions can pose considerable risk during surveys. Mineshafts can be hundreds of feet deep and are often obscured by brush or debris. They may contain contaminated air, gases, or unstable structural members or walls. Staff should avoid walking over piled debris or into dense stands of vegetation that may obscure such

deep depressions. Entry into dilapidated buildings should also be avoided, as they may contain deteriorated and weakened structural members and unsafe wooden floors or stairs.

If a property owner or tenant objects to survey activity, or if a situation appears to present any threat, staff must leave the property immediately. Any safety factors that limit a surveyor's ability to conduct a full survey may be explained, and their location documented, in the technical study.

Safety of employees and good relationships with the public are both prime considerations while conducting surveys or other fieldwork. All surveys and fieldwork shall be conducted in keeping with the Code of Safe Field Practices. See Chapter 5 for more information regarding field safety. Consult the Caltrans Safety Manual for additional requirements and guidance.

2.3.8 Evaluation of Historic Properties

If cultural resources are identified within the APE, PQS and qualified consultants evaluate them for historic significance using the NRHP criteria (36 CFR 60.4), unless they qualify as exempt from evaluation in accordance with Stipulation VIII.C.1 and Appendix 4 of the 106 PA. In special circumstances, properties may be considered eligible for purposes of a specific undertaking only.

A historic property is defined in the NHPA as any "prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on, the NRHP, including artifacts, records, and material remains related to such a property or resource." The significance of a property refers to its ability to meet one of the four NRHP criteria.

2.3.8.1 Properties Exempt from Evaluation

Appendix 4 of the 106 PA identifies certain specific classes of properties as typically not requiring recording, evaluation, or further review. These are cultural resources that categorically possess little or no potential for significance and therefore may be exempt from evaluation. Cultural resources laws and regulations do not require expending time and money recording and evaluating such resources, nor is there demonstrable public benefit in doing so. PQS or qualified consultants in the appropriate discipline determine if resources meet the requirements of Appendix 4.

There are qualifications and exceptions to the resources listed in Appendix 4. If PQS or qualified consultants can reasonably determine that a resource has potential to possess

significance or if it could potentially contribute to the significance of a larger property such as a historic district or landscape, it is not exempt, nor are cultural resource professionals required to exempt a resource even if it meets the criteria of Appendix 4. Professional judgement must be used.

The Exemption Process

The process for determining whether properties qualify as exempt typically involves minimal effort, such as a quick review of existing documentation and/or a reconnaissance survey as discussed in Section 2.3.7.5 above. However, it may require additional research, detailed investigation, and/or consultation with other cultural resource specialists.

Once PQS or qualified consultants have exempted properties in accordance with 106 PA Appendix 4, the resources can be dismissed without further review or consideration. The decision does not require explanation, only the professional judgment of appropriately qualified PQS or consultants.

There is no requirement to record or document most exempt properties. Checking the appropriate box on the HPSR form or stating that “consistent with 106 PA Appendix 4, all properties/all other properties are exempt from evaluation” in a narrative HPSR is sufficient to address exempted resources.⁶

If PQS or qualified consultants determine that individual recordation of an exempt resource is warranted, the level of documentation should be commensurate with the nature of the property. In some situations, there may be a professional or ethical responsibility to record a resource that is exempt under the 106 PA, such as when it is required by an Information Center. Documentation may also be appropriate in other instances, such as to avoid the later “discovery” of an exempted archaeological feature during construction. In that case, archaeological site record forms (e.g., DPR 523 Primary Record Form and Location Map), a memo, or inclusion in the CCRD may constitute an adequate record.

Contact the Section 106 Branch Chief with any questions concerning the applicability of Appendix 4 to specific resources.

⁶ Certain Caltrans-owned resources require minimal recordation for exemptions. See Section 2.8.8 below and Exhibit 6.7.

2.3.8.2 Interstate Highway Federal Exemption

In 2005, the Council determined that the Dwight D. Eisenhower National System of Interstate and Defense Highways (Interstate System) is historically important, but only particularly important elements of the system warrant consideration, therefore the Interstate System is exempt from Section 106 except for individual elements that were determined to have national or exceptional historic significance and are considered historic properties for Section 106 and Section 4(f) purposes.

The exemption releases federal agencies from having to take into account the effects of their undertakings on the Interstate System, except for a limited number of individual elements associated with the system designated by FHWA Headquarters, for the Secretary of Transportation, that still are subject to Section 106 review.

In California, six individual features of the Interstate System were designated as nationally and exceptionally significant and are not exempt from Section 106:

Interstate	Resource Name	Property type	Postmile(s)
I-80	San Francisco-Oakland Bay Bridge	Bridge	SF PM 4.8/8.9, ALA PM 0.0/1.2
I-80	Truckee River Canyon	Highway Segment	NEV PM 0/10
I-105	Glenn Anderson (Century) Freeway	Highway Segment	LA PM 5/18
I-5	Chicano Park	Park	SD PM 14/14.1
I-8	Pine Valley Creek Bridge	Bridge	SD PM 41.7
I-5	Pit River Bridge	Bridge	SHA PM 28.1

Details about these elements, their construction dates, and the NRHP criteria under which they are eligible are posted on the [FHWA Historic Preservation](#) Significant Features of the Federal Interstate Highway System website.

Federal agencies must take into account effects of undertakings in other historic properties that are not components of the Interstate System, such as adjacent historic sites or archaeological sites within the right of way.

This exemption is for federal undertakings only and does not apply to Caltrans' responsibility for compliance with CEQA, PRC 5024 or other state laws and regulations, as applicable. For instance, a bridge on the Interstate System that is exempt from evaluation for Section 106 undertakings still would have to be evaluated for PRC 5024 and/or CEQA

compliance and, could be found eligible for inclusion in the NRHP or as a historic resource under CEQA.

2.3.8.3 Rail Rights-of-Way Exemption

In 2018, Council, in coordination with the U.S. Department of Transportation (USDOT), issued a Section 106 Program Comment to Exempt Consideration of Effects to Rail Properties Within Rail Rights-of-Way (Program Comment). The Program Comment applies to undertakings that may affect rail properties within rail right-of-way (ROW) and relieves federal agencies from having to conduct reviews in accordance with Section 106 for certain activities affecting rail properties located within railroad and rail transit ROW. It is comprised of two approaches: an activities-based approach and a property-based approach. The activities-based approach details specific activities that are exempt from Section 106 review which should have minimal or no adverse effects on historic properties. The property-based approach provides an optional process for identifying excluded historic rail properties that will continue to be subject to Section 106 review while exempting consideration of effects to other rail properties.

[Appendix A](#) of the Program Comment provides a list of exempted activities that can be completed without Section 106 review as long as the conditions listed in Appendix A: Section 1, A-G are met.

This exemption does not apply to undertakings within rail ROW that:

- Are located within or would affect tribal lands.
- Consist of activities not included in Appendix A and that may affect an excluded historic rail property designated by USDOT under the property-based approach.
- Could affect historic buildings, structures, sites, objects, or districts that do not have a demonstrable relationship to the function and operation of a railroad or rail transit system.
- Could affect archaeological sites located in undisturbed portions of rail ROW, regardless of whether the sites are associated with railroads or rail transit systems.
- Could affect historic properties of religious and cultural significance to federally recognized Indian tribes.
- Are not within rail ROW.

Under the property-based approach, a Project Sponsor⁷ may opt to collaborate with a USDOT Operating Administration (OA) to designate excluded rail properties within a defined study area for which the federal agency must comply with Section 106 for undertakings that have the potential to affect those properties. Once a USDOT OA formally excludes historic rail properties within a study area, consideration of effects to all other evaluated rail properties within that study area are exempt from Section 106 for any undertaking by any federal agency. See the [Final Guidelines](#) for Implementing the Optional Property-Based Approach to Exempting Consideration of Effects to Rail Properties within Rail Rights of Way Under Section 106 of the National Historic Preservation Act.

Caltrans is still responsible for Section 106 compliance for the remainder of the project area outside of the rail ROW. The exemption is for federal undertakings only and does not apply to Caltrans' responsibility for compliance with CEQA or other state laws and regulations, as applicable.

2.3.8.4 Eligibility Determinations

Properties identified within the APE that are not exempted must be evaluated in accordance with PA Stipulation VIII.C.2 and 36 CFR 800.4(c)(1). PQS and qualified consultants apply the NRHP eligibility criteria (36 CFR 60.4) to each resource and make a determination of eligibility. See [How to Apply the National Register Criteria for Evaluation](#). The evaluation process will typically require property-specific research and fieldwork. Evaluation of archaeological sites may include excavation. PQS should make a good faith effort to consult with any Indian tribes or other Native Americans who may attach religious and cultural significance to properties within the APE, as well as local historical societies and groups and other interested parties, and consider any comments received in making a determination of eligibility.

When resources have the potential for multiple property types (such as a mining complex with buildings, structures and archaeological sites), cultural resource specialists from more than one discipline work together as a team to ensure that all pertinent resource values are adequately considered.

⁷ An entity such as a state or local government or transit agency. that is eligible to receive federal financial assistance or that requires a federal permit, license or approval to carry out an activity in a rail ROW.

See Chapter 5 for guidance on evaluating archaeological sites and Chapter 6 for built environment resources.

Consideration of Eligibility

Special consideration for certain archaeological properties: When archaeological sites will be protected from all effects of an undertaking by establishment of an Environmentally Sensitive Area (ESA) in accordance with 106 PA Stipulation VIII.C.3 and Appendix 5, PQS may consider such sites eligible for the NRHP for the purposes of the undertaking without conducting subsurface testing or surface collection. Built environment properties must be evaluated for NRHP eligibility regardless of ESA protection, unless approved by CSO.

Under Stipulation VIII.C.4, other properties may be considered eligible for purposes of a specific undertaking when certain circumstances prevent their complete evaluation, such as access issues, very large properties, and/or there is limited potential for effect, or when an undertaking's work is limited to vegetation management actions in support of fire prevention and adverse effects to archaeological properties will be avoided by establishment of a Vegetation Management ESA in accordance with 106 PA Appendix 5 . Such consideration of eligibility must be approved in advance by CSO. Requests should be directed to the Section 106 Branch Chief with the reason for proposing to assume eligibility and information about the prospective eligibility, including the applicable NRHP and any other evaluation criteria; the level, area and period of significance; the known or prospective property boundaries, and any other supporting documentation necessary.

Unlike determinations of eligibility, the SHPO does not concur with considerations of eligibility. The eligibility consideration does not extend to future undertakings unless Caltrans and the SHPO agree otherwise.

Previously Evaluated Properties

If previously evaluated properties are identified within the APE, PQS and qualified consultants assess whether the evaluation remains valid or may reevaluate the property, as appropriate. Reevaluation is not always required. 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 are some of the reasons a reevaluation may be warranted. Indian tribes should be consulted when properties to which those tribes may attach religious or cultural significance are involved.

2.3.8.5 Processing Eligibility Determinations

NRHP eligibility determinations are documented on [Department of Parks and Recreation](#) (DPR) 523 forms, which are attached to a Historic Property Survey Report (HPSR). In addition, the HPSR provides a summary conclusion of eligibility. See Section 2.4.2 below for information on HPSRs.

Under the 106 PA, Districts submit eligibility determinations and supporting documentation directly to SHPO, with concurrent notification to CSO. SHPO consultation is required for all Caltrans' determinations of eligibility, including when Caltrans finds that a property is not eligible.

When a District has been in consultation with an Indian tribe about the NRHP eligibility of a property, the District must notify the tribe of Caltrans' eligibility determination prior to submittal to the SHPO and provide documentation to the tribe, unless tribe has indicated it does not wish to receive such documentation. The District also notifies and provides documentation to local governments in whose jurisdiction the project is located, unless the local government has indicated it does not wish to receive such documentation.

For any Caltrans-owned buildings, structures or objects found eligible for the NRHP, Caltrans requests that the SHPO add these properties to the Master List of Historical Resources pursuant to PRC 5024(d). If previously evaluated listed or eligible Caltrans-owned resources are determined to no longer be eligible, Caltrans asks SHPO to remove them from the Master List pursuant to PRC 5024(d) and (f).

When SHPO concurs with Caltrans on the determination of eligibility for a property, this joint agreement constitutes a "consensus" determination of eligibility for purposes of Section 106 compliance.

See Section 2.3.12.1 for information on SHPO letters and review timeframes.

Disagreements

If Caltrans and SHPO disagree on an eligibility determination, the District must promptly notify CSO. The District, CSO, SHPO, and any Indian tribe or other consulting party consult to resolve the disagreement in accordance with a mutually acceptable timeframe. If the disagreement is resolved, the District may proceed. In the rare cases that a disagreement on eligibility is not resolved, CSO seeks the opinion of the Keeper of the NRHP in accordance

with 36 CFR 800.4(c)(2) and will ensure that all concerns, including the views of the SHPO, any Indian tribe or other consulting party, are included in the request. The Keeper's determination is final.

2.3.9 Effect Findings

When identification and evaluation efforts are complete, PQS and qualified consultants assess whether historic properties will be affected by the undertaking and, if so, apply the Criteria of Adverse Effect (36 CFR 800.5(a)(1)) to determine whether they may be adversely affected.

Adverse effects include, but are not limited to:

- Physical destruction, damage, or alteration, including moving the property from its historic location.
- Isolation from or alteration of the setting.
- Introduction of intrusive elements.
- Neglect leading to deterioration or destruction.
- Transfer, sale, or lease from federal ownership.

Factors to consider when assessing effects on historic properties:

- An effect does not have to be negative to be an effect.
- The potential alteration does not have to be certain.
- Effects do not have to be direct and physical.
- Consideration should be given to changes that may occur in the reasonably foreseeable future.

The possible effect finding are:

- No Historic Properties Affected
- Finding of No Adverse Effect with Standard Conditions
- Finding of No Adverse Effect
- Finding of Adverse Effect

When Caltrans has been consulting with Indian tribes or other consulting parties regarding historic properties, Caltrans continues consultation on the potential effects of the undertaking and considers any comments received when making its finding.

While PQS assess effects to each historic property within the APE, under Section 106, an effect finding is made for the undertaking as a whole. For example, if one property will be

adversely affected and one will not be affected, the finding for the undertaking would be “Adverse Effect.”

2.3.9.1 Finding of No Historic Properties Affected

A finding of No Historic Properties Affected applies when:

- 1) There are no historic properties in the APE, either because no cultural resources are present, all resources present were exempt from evaluation in accordance with 106 PA Appendix 4, or the only properties present are not eligible for the NRHP; or
- 2) There are historic properties in the APE, but the undertaking has no potential to affect them, either directly or indirectly.

If any conditions must be imposed to ensure that historic properties are not affected, a finding of No Historic Properties Affected is not applicable.

Processing the No Historic Properties Affected Finding

No Historic Properties Affected determinations may be documented in an HPSR. See Section 2.5.2 below.

Under the 106 PA, Caltrans does not request SHPO concurrence in a finding of No Historic Properties Affected. If Caltrans has consulted with the SHPO or any other consulting parties regarding determinations of eligibility, Caltrans must provide notification of the No Historic Properties Affected finding pursuant to Stipulation IX.A.1 of the 106 PA. This can be done concurrently with consultation on eligibility. If Caltrans has not consulted on eligibility (because there were no properties requiring evaluation present in the APE or all properties in the APE were previously evaluated), the District retains documentation of the finding in its files.

2.3.9.2 No Adverse Effect

A Finding of No Adverse Effect (FNAE) applies when there will be an effect to a historic property but the effect will not alter, directly or indirectly, characteristics that qualify it for inclusion in the NRHP or in a manner that would diminish the integrity of its location, design, setting, materials, workmanship, feeling, or association.

It may also be feasible to impose conditions to avoid adverse effects. The 106 PA has specific standard conditions that, when applied appropriately, avoid adverse effects as described below.

Finding of No Adverse Effect with Standard Conditions

Under 106 PA Stipulation X.B.1, there are three standard conditions to avoid adverse effects:

- 1) Protection of historic properties from all adverse effects by designation of an Environmentally Sensitive Area (ESA).
- 2) The undertaking is limited to vegetation management for fire prevention and adverse effects to historic properties or properties considered eligible pursuant to 106 PA Stipulation VIII.C.3 can be avoided by designation of a Vegetation Management ESA.
- 3) The undertaking is limited to the rehabilitation, maintenance, repair, stabilization or alteration of historic properties and the work can be completed according to the Secretary of the Interior's [Standards for Treatment of Historic Properties](#). (SOIS).

For a standard condition to be applicable, there must be adequate information available to delineate property boundaries in relation to anticipated project impacts and to identify contributing features of the property. The scope and design of the undertaking must also be sufficiently developed and detailed to ensure that the property will be protected from all adverse effects.

Finding of No Adverse Effect with Standard Conditions-ESA

A Finding of No Adverse Effect with Standard Conditions-ESA (FNAE-SC-ESA) is appropriate when all project effects to historic properties will be avoided by designation and enforcement of an ESA in accordance with Appendix 5 of the 106 PA. An ESA Action Plan must be developed to ensure that provisions for protection are carried out. Exhibit 2.14 contains a format guide and more information on what to include in an ESA Action Plan.

Archaeological sites that can be protected from all project effects by an ESA may be considered eligible for purposes of the undertaking in accordance with 106 PA Stipulation VIII.C.3. See Chapter 5 for guidance on ESAs for archaeological sites.

ESAs may be used to protect built environment properties for a FNAE-SC-ESA. Built environment properties must be evaluated for NRHP eligibility, regardless of ESA protection unless approved in consultation with CSO in accordance with 106 PA Stipulation VIII.C.4.

ESAs protect historic properties from direct project effects only. If the undertaking has potential to cause indirect adverse effects to a historic property, a FNAE-SC-ESA is not applicable.

Finding of No Adverse Effect with Standard Conditions- VMESA

A Finding of No Adverse Effect with Standard Conditions- Vegetation Management ESA (VMESA) is appropriate when the undertaking is limited to vegetation management activities for fire prevention, and adverse effects to historic properties or properties considered eligible will be avoided by designation and enforcement of a VMESA in accordance with Appendix 5 of the 106 PA. The VMESA allows certain project activities to take place within the ESA, as long as PQS have determined that those activities will not result in adverse effects. An ESA Action Plan must be developed to ensure that provisions for protection are carried out. Exhibit 2.14 contains a format guide and more information on what to include in an ESA Action Plan.

Consideration of eligibility in conjunction with VMESAs require CSO approval, pursuant to 106 PA Stipulation VIII.C.4.

VMESAs 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.

Finding of No Adverse Effect with Standard Conditions-SOIS

A Finding of No Adverse Effect with Standard Conditions- SOIS (FNAE-SC-SOIS) is appropriate when the undertaking's activities are limited to rehabilitation, maintenance, repair, stabilization, or alteration of historic properties and will be completed in a manner consistent with the SOIS, in accordance with Appendix 5 of the 106 PA. An SOIS Action Plan must be developed to ensure that provisions for protection are carried out. Exhibit 2.15 contains guidance on what to include in the SOIS Action Plan. Exhibit 6.4 identifies activities and undertakings specific to historic bridges and tunnels for which a FNAE-SC-SOIS is appropriate.

If Caltrans proposes to apply this provision to an NHL, the Secretary of the Interior must be notified through the NPS Regional NHL Program, per 36 CFR § 800.10(c), and invited to consult on the proposed treatment and finding of effect. NPS has at least 30 days to respond to the initial invitation. If NPS objects to the use of the FNAE-SC-SOIS, Caltrans continues consultation with NPS and proceeds according to 106 PA Stipulation X.B.2.

Processing the FNAE-SC

A FNAE-SC is typically documented in an HPSR, with the ESA Action Plan or SOIS Action Plan as an attachment. See Section 2.4.2 below.

Under the 106 PA, Caltrans does not request SHPO concurrence in a FNAE-SC. The District submits the FNAE-SC and supporting documentation to CSO for approval. The District provides concurrent documented notification of the proposed finding to any consulting parties that have expressed views regarding potential effects to historic properties.

If CSO does not object, Section 106 compliance is complete. See Section 2.3.12 for review timeframes.

Finding of No Adverse Effect

Under 106 PA Stipulation X.B.2, a Finding of No Adverse Effect (FNAE) is appropriate when standard conditions are not applicable, but the undertaking will not adversely affect historic properties with or without conditions, or when Caltrans has developed a plan for managing any post-review discoveries, including decision thresholds and procedures for consultation with the SHPO. ESAs and use of the SOIS may be proposed as conditions to avoid adverse effects in accordance with 106 PA Stipulation X.B.2 when the undertaking doesn't meet the terms of Stipulation X.B.1, but in such cases they are not considered "standard" conditions.

Processing the FNAE

A FNAE is documented in a Finding of Effect (FOE) report. See Section 2.4.3 below.

Under the 106 PA, the District submits a proposed FNAE and supporting documentation to CSO for review. The District provides concurrent documented notification to any consulting parties that have expressed views regarding potential effects to historic properties and includes a request that any comments be directed to CSO within 30 days of receipt of notification.

If CSO does not object to the proposed finding, CSO sends the documentation to SHPO for consultation pursuant to 106 PA Stipulation X.B.2.a.

See Section 2.3.12.1 for information on review timeframes.

Disagreements or objections to a FNAE are addressed in accordance with 106 PA Stipulation X.D.

2.3.9.3 Finding of Adverse Effect

A finding of Adverse Effect (FAE) is appropriate when any aspect of an undertaking meets one or more of the Criteria of Adverse Effect and the adverse effect cannot be avoided. Caltrans may also make a FAE if a consulting party has indicated its disagreement with a FNAE, or when SHPO objects to a FNAE.

Processing the FAE

The FAE is documented in a Finding of Effect (FOE) report. See Section 2.4.3 below.

For FAE, the District submits the proposed finding and supporting documentation to CSO with concurrent documented notification to any consulting parties that have expressed views regarding potential effects to historic properties. This notification includes a request that any comments be directed to CSO within 30 days of receipt of notification.

If CSO does not object to the proposed finding, CSO sends the documentation to SHPO for consultation pursuant to Stipulation X.C.1.a of the 106 PA.

CSO notifies the Council of the finding and invites the Council to participate in the consultation if the following circumstances apply:

- When the undertaking adversely affects a National Historic Landmark, as coordination with Section 110(f) of the NHPA is required. Under this condition, CSO also notifies the Secretary of the Interior.
- When the effects to historic properties are highly controversial or there is substantial public interest in the undertaking's effects on historic properties.
- When the SHPO or another consulting party requests the Council be invited to participate in the consultation.

See Section 2.3.12.1 for information on review timeframes.

Disagreements or objections to a FAE are addressed in accordance with 106 PA Stipulation X.D.

2.3.10 Resolution of Adverse Effects

When the SHPO and CSO agree that an undertaking will have an adverse effect, Caltrans continues consultation with SHPO on ways to resolve the adverse effect. Council would also be included if it has notified CSO that it will participate in the consultation for the undertaking.

Consultation will also include, as appropriate:

- Indian tribes, when the undertaking involves historic properties of religious or cultural significance to the tribe.
- Other consulting parties.
- Federal or state land-holding agencies, when the undertaking may affect historic properties under their jurisdiction.
- Head of a local government, when the undertaking may affect historic properties within its area of authority or control.
- Applicants or holders of grants, permits or licenses that are subject to Section 106 review.

Consultation usually results in a Memorandum of Agreement (MOA), which outlines agreed-upon measures Caltrans will take to avoid, minimize, or mitigate the adverse effects.

2.3.10.1 Headquarters Review of Mitigation Measures Over \$500,000

Caltrans policy is that all proposed measures that identify potential mitigation costs of \$500,000 and above for the undertaking as a whole must be reviewed by the CSO Chief, as delegated by the DEA Chief, per memo of January 28, 2005. This review is intended to confirm that the mitigation is cost effective and that it is commensurate to the scope of the project and the type and significance of the historic properties involved.

Documentation should include:

- Basic project information
- Affected resources
- Project effects
- Proposed mitigation
- Alternatives considered
- Likely costs
- Issues impacting mitigation decisions

The CSO Chief will complete the review within 15 working days from receipt of the mitigation documentation. The DEBC will take the CSO Chief's comments into consideration prior to approving mitigation expected to cost \$500,000 or more.

2.3.10.2 Failure to Agree on Resolution of Adverse Effect

In rare instances when SHPO and CSO are unable to reach agreement on the resolution of adverse effects, if the Council is not already participating, CSO must invite Council to

participate in the consultation. If the involved parties fail to agree to measures that will resolve the adverse effects, the SHPO, Council or Caltrans may terminate consultation pursuant to Stipulation X.D.1 of the 106 PA.

2.3.10.3 Memorandum of Agreement

A MOA reflects the outcome of the consultation to resolve adverse effects and incorporates the measures that Caltrans, in consultation with the SHPO and the Council, if participating, agree will mitigate adverse effects to historic properties. It also identifies who is responsible for carrying out the specified measures. While specific tasks may be delegated to others under the MOA, Caltrans is ultimately responsible for ensuring that the terms of the MOA are implemented. See Section 2.4.4.1 for information on drafting the MOA.

Parties may participate in a MOA as signatories, invited signatories, or concurring parties. Caltrans decides who should be an invited signatory or concurring party.

Signatories

For most Caltrans projects, the signatories to the MOA will be Caltrans and SHPO. If the Council has been involved in the resolution of the adverse effect, the Council would also be a signatory. Signatories have the sole authority to execute, amend or terminate the MOA. Once all signatories have signed the MOA, it is considered “executed” and goes into effect.

Invited Signatories

The District is an invited signatory to the MOA. Other parties, such as tribal governments, local governments or non-lead federal agency, may participate as invited signatories if they have a responsibility to perform any action as part of the MOA. Invited signatories have the authority to amend and terminate the MOA. The refusal of an invited signatory to sign MOA does not prevent it from being executed; however, the MOA cannot impose a duty or responsibility on a party that has not signed it.

Concurring Parties

A concurring party is a consulting party invited to concur in the MOA but who does not have the authority to amend or terminate it. A concurring party signature is not required to execute the agreement; therefore the refusal of a concurring party to sign the MOA does not prevent it from being executed.

If an Indian tribe that has participated in the consultation to resolve adverse effects and invited to be a concurring party declines to sign the MOA, it should be afforded the opportunity to continue participation in the implementation of the MOA.

2.3.10.4 Implementation of the MOA

Once the MOA has been signed, Section 106 is completed. CSO provides a copy of the fully executed MOA to the Council whether or not the Council has participated in the consultation. See Section 2.4.4.3 below. The District proceeds with the undertaking according to the terms of the MOA.

2.3.11 Phased Identification, Evaluation and Assessment of Effects

A phased approach to identification, evaluation and assessment of effects may be necessary when these steps of the Section 106 process cannot be concluded in the usual manner due to factors such as the undertaking has a number of alternatives, involves large land areas, or includes areas to which access is restricted. Districts must request CSO approval for use of a phased approach.

The process must also allow for other consulting parties and the public to adequately express their views.

As specific aspects or locations of an alternative are refined, or access is gained, the identification, evaluation and assessment of effects must be completed. If Section 106 cannot be concluded before the final approval of the undertaking due to minor access restrictions, and the outcome of Section 106 consultation is likely to be No Historic Properties Affected or No Adverse Effect based on all available background research, CSO may approve the use of a phased approach. The District must prepare a plan for completion of identification and evaluation that includes a schedule and provisions for notification for consultation with CSO and SHPO.

For more complicated situations, a project-specific programmatic agreement document will likely be required to conclude the Section 106 process. See Section 2.4.4.2 below.

Consultants are strongly encouraged to seek assistance from PQS early when phased identification is being considered, and PQS should contact the Section 106 Branch Chief.

2.3.12 Consultation with SHPO and CSO

2.3.12.1 Review Timeframes

The 106 PA delegates to Caltrans many steps of the Section 106 process that require SHPO review under 36 CFR 800. CSO is authorized to perform certain reviews for which SHPO review is not required. CSO provides summary notifications to SHPO on a quarterly basis.

CSO Review

CSO has 15 calendar days from receipt to review findings of No Adverse Effect with Standard Conditions and approve or object to the finding. Where no time frame is specified (such as CSO review of findings of No Adverse Effect and Adverse Effect prior to forwarding to SHPO), it is CSO policy that the review will be completed within 15 calendar days from receipt.

SHPO Review

The SHPO has 30 calendar days to review determinations of eligibility, 30 calendar days to review findings of No Adverse Effect, and 30 calendar days to review findings of Adverse Effect.

In certain circumstances, Caltrans may request expedited consultation, but all possible planning should be taken to avoid expedited review situations. It is advisable to start the consultation process as early as possible and schedule enough time to allow for complications. Clear, logical, well documented, and well-justified conclusions help reduce delays.

The 30-day review period begins when SHPO receives the consultation package (Caltrans' transmittal letter and all supporting documentation). Confirmation of date of receipt may be provided through the SHPO database or written or documented oral communication from the SHPO. Coordinate any effort to establish the log-in date with the Section 106 Branch Chief.

The 30-day timeframe may be extended when the SHPO and the District or CSO agree to an extension.

Absent a mutually agreed upon extension, if the SHPO has not responded within 30 calendar days after receipt, the District or CSO may notify the SHPO via email that Caltrans is moving forward.

The SHPO's response may be concurrence with Caltrans' findings or determinations, but it may also be a question or a request for additional information, in which case, the 30-day clock starts over from the date SHPO receives Caltrans' response.

There is no specified time-frame for SHPO's review of agreement documents, due to the open-ended nature of the consultation process for resolution of adverse effects.

2.3.12.2 Transmittal Letters and Memos

Submittals of Section 106 documents to CSO should be accompanied by a memo, which makes it clear this is the final, approved document from the District. Though memos are addressed to the CSO Chief, the submittal can be sent directly to the Section 106 Branch Chief.

A clear, concise letter to the SHPO initiating or continuing Section 106 consultation is critical. The transmittal letter summarizes the results of identification and evaluation efforts, referring to any technical studies enclosed to support Caltrans decision making. It iterates Caltrans' findings and determinations for the undertaking and requests the SHPO's concurrence in these conclusions. When applicable, the transmittal letter also serves to notify the SHPO of other matters where notification is required, such as concurrent compliance with the 5024 MOU or a Section 4(f) finding.

Exhibit 2.21 contains guidance for drafting memos to CSO and letters to the SHPO.

2.4 Section 106 Documents

2.4.1 Introduction

Documentation supporting Caltrans' findings and determination made under the 106 PA must be consistent with 36 CFR 800.11 and the 106 PA appendices. A copy of all documentation is retained by the District and made available to consulting parties and the public, consistent with applicable confidentiality requirements.

The most common documents Caltrans uses to record its compliance with Section 106 are described below. Section 2.12 describes Caltrans procedures for peer review of documents and the document approval processes. See Exhibit 2.17 for the number of report copies to distribute.

2.4.2 Historic Property Survey Report

The Historic Property Survey Report (HPSR) is a summary report that documents the scope of Caltrans's efforts to identify and evaluate historic properties, including delineation of the APE and consultation with Indian tribes, local governments, historical societies, and other interested persons. The HPSR may report the finding of effect, if known, or indicate that Caltrans will continue consultation with the SHPO on assessment of effects. The HPSR can also include the results of the CEQA identification and evaluation effort as well as compliance with PRC 5024, as applicable. CEQA conclusions regarding impacts to historical resources are not discussed in the HPSR.

The APE map is appended to the HPSR along with any applicable technical studies supporting the findings or determinations summarized in the document, such as an archaeological survey report (ASR) or Extended Phase I Report for prehistoric archaeological resources, and a Historic Resources Evaluation Report (HRER) for historical archaeological resources and built environment resources.

The HPSR's content should be constructed to ensure that it adequately serves necessary functions while limiting redundancies and simplifying the review process. For example, if voluminous sets of identical maps accompany each appended technical report, duplicates can be removed before submittal to SHPO.

When the HPSR is used to convey notification of a No Historic Properties Affected finding, it must contain all information necessary to describe and support the finding.

If the HPSR is reporting a FNAE-SC, the ESA Action Plan or SOIS Action Plan must be attached. A Finding of Effect (FOE) is attached for a FNAE or FAE.

Exhibit 2.9 provides instructions for preparing HPSRs. The HPSR templates also contain instructions, which should be removed before the report is finalized.

2.4.2.1 Supplemental HPSR

A Supplemental HPSR is prepared when necessary to account for project-related factors not treated in the original HPSR, such as when the project APE is revised or enlarged and resulted in additional properties requiring evaluation, or there have been changes to the undertaking or previously evaluated cultural resources.

A Supplemental HPSR follows the general format of the HPSR and includes all pertinent new or revised technical studies. For example, if the changes involve archaeological sites that have been subjected to Phase II excavations to assess eligibility, an Archaeological Evaluation Report (AER) would be attached. The supplemental HPSR includes abbreviated information regarding the project and summarizes the findings of the original HPSR. It should, however, focus upon the results of identification and evaluation efforts within an expanded APE or the changed conditions that led to preparation of the Supplemental HPSR.

2.4.3 Finding of Effect Reports

A Finding of Effect (FOE) report is prepared for FNAE and FAE findings, or when the HPSR did not include documentation of a FNAE-SC.

Caltrans uses the FOE document to describe why an undertaking's effects do or do not meet the Criteria of Adverse Effect. The FOE discusses how each of the criteria applies or does not apply to all the historic properties in the APE, including any that will not be affected. The conclusion, however, must state Caltrans' effect finding for the undertaking as a whole.

The FOE for a FNAE might propose modification of the project or conditions that would avoid adverse effects. Exhibit 2.11 contains format and content guidance for documenting a FNAE. If an ESA or use of the SOIS are being proposed as non-standard conditions, an ESA Action Plan or SOIS Action plan must be attached.

The FOE for a FAE may be submitted alone or with a draft Memorandum of Agreement (MOA). The FOE should include a discussion of project alternatives considered but rejected and the reasons for the decisions. If accompanied by a draft MOA, the FAE would also include measures proposed to minimize or mitigate adverse effects. Exhibit 2.12 contains format and content guidance for preparing FAE reports.

It is advisable for PQS to coordinate with the PDT on project effects and possible mitigation measures prior to finalizing the FOE document. Note that proposed mitigation measures that identify costs of \$5000,000 and above for the undertaking as a whole must be reviewed by the CSO Chief, under delegation by the DEA Chief, as described in Section 2.3.10.1 above.

2.4.4 Agreement Documents

An agreement document is prepared when an undertaking will or may adversely affect historic properties. It is legally binding and sets forth the measures Caltrans will implement to resolve the adverse effects, whether through avoidance, minimization, or mitigation. There are two main types of agreement documents that Caltrans uses: Memorandum of Agreements (MOAs) and project-specific Programmatic Agreements (Project PAs). Exhibit 2.13 contains Caltrans' basic agreement format and content guidance. Other useful resources include the [Council's guidance](#) on agreement documents and its [Section 106 agreement document checklist](#).

PQS or qualified consultants draft the agreement document. The District then transmits the draft to CSO for review. After CSO reviews the initial draft, consulting parties should have an opportunity to review the draft agreement, and any comments received taken into account by the District. The District then transmits a draft to CSO for review. CSO submits a final draft to the SHPO. The agreement may be rewritten several times in the course of the consultation process as different parties review the document. Once the final draft is approved, CSO will circulate it to the signatories for signature.

PQS are encouraged to contact the Section 106 Branch Chief for examples of the most recently approved project-specific PAs or MOAs.

2.4.4.1 MOAs

A MOA is prepared when Caltrans, in consultation with the SHPO (and Council, if participating) and other consulting parties as appropriate have agreed to measures to resolve the known adverse effects for a specific undertaking.

2.4.4.2 Project PAs

A Project PA is appropriate when completing the Section 106 process prior to making a final decision on a particular undertaking is not feasible, for example because there are multiple alternatives under consideration and Caltrans cannot complete its identification, evaluation or assessment of effects effort for the preferred alternative in advance of the Final Environmental Document due to restricted access.

The Project PA will contain the alternate procedures Caltrans will use to conclude the steps of the 106 process.

2.4.4.3 Filing the Agreement Document with Council

Whether or not the Council has participated in the consultation, CSO must provide a copy of the fully executed MOA or Project PA to the Council for inclusion in their files for purposes of Section 110(l) of the NHPA and as documentation that Caltrans has afforded the Council an opportunity to comment on the undertaking and its effect on historic properties.

2.4.4.4 Timing of the Agreement Document to the Environmental Document

It is not appropriate to include a fully executed agreement document in the draft environmental document. The agreement document must be included in the final environmental document, however, except in very rare circumstances.

2.5 Special Considerations under Section 106

2.5.1 Federal Undertakings with Caltrans-Owned Historical Resources

In accordance with the 5024 MOU, when a federal undertaking includes Caltrans-owned historical resources within the APE and the documentation is sent to SHPO pursuant to the 106 PA or 36 CFR 800, Caltrans may follow the applicable Section 106 process and notify SHPO that Caltrans is concurrently complying with PRC 5024.

2.5.2 Post-Review Discoveries

Post-review discoveries occur when, despite a reasonable and good faith effort to identify and assess effects to historic properties, previously unknown cultural resources are identified or there is an unanticipated effect on known historic properties during implementation of an undertaking.

If PQS find during the identification effort that historic properties are likely to be discovered during construction, Caltrans must develop procedures for post-review discoveries as a part of the regular Section 106 consultation process. The 106 PA also includes procedures for addressing post-review discoveries that were not foreseen.

Chapter 5 contains more information on post-review discoveries involving prehistoric and historical archaeological sites.

With or without planning, if a post-review discovery occurs, work in the area of the potential historic properties must stop immediately and all reasonable measures should be taken to avoid, minimize, or mitigate further harm to the properties.

2.5.2.1 Discoveries with Prior Planning

In accordance with Stipulation XV.A of the 106 PA, when Caltrans' identification efforts indicate that cultural resources are likely to be discovered during implementation of an undertaking, PQS develop a treatment or discovery plan that outlines the procedures Caltrans will implement if a post-review discovery occurs. If there is a MOA for the undertaking, the treatment or discovery plan would be included as an attachment. When no historic properties are identified prior to construction, the plan would remain in the District's files unless needed. Exhibit 5.11 provides more information on preparing a discovery plan.

2.5.2.2 Discoveries without Prior Planning and Unanticipated Effects

In accordance with Stipulation XV.B of the 106 PA, when there is no plan for post-review discovery in place and an undertaking affects previously unidentified properties or affects known historic properties in an unanticipated manner, such as breach of an ESA, the District must promptly stop construction activity in the vicinity and implement all reasonable measures needed to avoid, minimize, or mitigate further harm to the properties.

PQS must assess the discovery and notify the appropriate parties within 48 hours of the incident. Newly identified properties may be assumed eligible for the NRHP. The District must notify SHPO, CSO, any Indian tribes that attach religious or cultural significance to potentially affected properties, 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 Army Corps of Engineers Sacramento, San Francisco and Los Angeles districts if a Department of the Army Authorization (DA) permit is required, and any other consulting party that may have a demonstrated interest in potentially affected properties. If a National Historic Landmark is affected, the Secretary of the Interior and the Council would be included in the notification process. The notification is typically initiated by phone call or email, with formal correspondence on Caltrans letterhead sent as an email attachment.

The notification must include, to the extent such information is available:

- 1) Description of the nature and extent of the properties (previously unidentified properties only).
- 2) Assessment of NRHP eligibility of any properties (previously unidentified properties only).
- 3) Description of the type and extent of any damage to the properties.
- 4) Description of any immediate actions taken to avoid further harm to the properties.
- 5) Description of any prudent and feasible treatment measures Caltrans proposes to take any effects into account.
- 6) Relevant photos.
- 7) Request for comments.

The notified parties have 72 hours to respond to the District with comments. The District must consider any comments received in determining an appropriate course of action and then carry out that action, continuing consultation as appropriate. Additionally, the district must document the consultation and post-review discovery process for the administrative record.

Exhibit 5.12 contains additional guidance on procedures when there is no discovery plan in place.

2.5.3 Emergency Situations

Stipulation XVI of the 106 PA, pursuant to 36 CFR 800.12(d), includes an expedited procedure for complying with Section 106 in emergency or disaster situations. These expedited procedures only apply to formally declared disasters or emergencies as described in Section 2.5.3.1, and when the undertaking will be implemented within 30 calendar days following formal declaration of an emergency or disaster.

2.5.3.1 Declared Emergency

An emergency or disaster must be officially declared by the President, California Governor, Caltrans Director or District Director in order to use these procedures.

2.5.3.2 Emergency Procedures

PQS determine whether the emergency undertaking has the potential to affect historic properties. If the undertaking meets the qualifications of a screened undertaking, a screening memo is sufficient to document compliance with Section 106. If the work cannot be screened but PQS find no historic properties will be affected, an HPSR would be appropriate to document a finding of No Historic Properties Affected.

In some cases, emergency work to preserve life or property, to avoid an immediate threat to public health, or to perform rescue or salvage operations, has already occurred before PQS are notified of the undertaking. In such situations, PQS assess whether historic properties have been affected and implement all reasonable measures needed to avoid, minimize or mitigate further harm to the properties.

Consultation with Indian tribes that attach religious or cultural significance to the affected properties should be initiated as soon as possible so that the tribe's views can be taken into account.

If historic properties have been or are likely to be affected by the emergency undertaking, the District must provide concurrent notification to the SHPO and CSO; tribes that may attach religious or cultural significance to the affected properties and other consulting parties that may have a demonstrated interest in potentially affected properties, as applicable and, if a Department of the Army Authorization (DA) permit is required, the Army Corps of Engineers Sacramento, San Francisco and Los Angeles districts, that Caltrans is using the emergency provisions of 106 PA Stipulation XVI.A. If the emergency undertaking may affect an NHL, Caltrans also notifies the Secretary of the Interior through the NPS Regional NHL Program.

When a disaster or emergency situation exists across multiple Caltrans Districts, counties, or local agency jurisdictions, CSO may 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 references the applicable emergency declaration and identifies the affected counties and Caltrans Districts. CSO may request an extension of the period of applicability from the SHPO prior to the 30 days and concurrently notify the ACHP. In consultation with the SHPO, CSO may establish alternate methods of SHPO notification for individual emergency undertakings covered under the blanket notification.

Unless determined otherwise through consultation with the SHPO, the District responsible for individual emergency undertakings under the blanket notification informs 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. In these circumstances, the district should reference the blanket emergency in their individual emergency notification when they do so.

The notification is typically initiated by phone call or email, with formal correspondence on Caltrans letterhead to follow. The notification must include, to the extent such information is available:

- 1) Map and/or description of the project area.
- 2) Description of the work performed or to be performed in response to the emergency or disaster.
- 3) Assessment of NRHP eligibility of any properties.
- 4) Description of any damage to the properties.
- 5) Description of any immediate actions taken to avoid harm to the properties.
- 6) Description of proposed measures to take any effects of the emergency undertaking into account.
- 7) Relevant photos of the properties.
- 8) Request for comments.

The parties are afforded seven calendar days from the date of notification to respond. If the District determines that circumstances do not permit seven days for comment, PQS must still notify the parties and invite any comments within the time available.

The District may ask the SHPO for an extension of the 30-day implementation period. Such requests must be made prior to expiration of the 30 days. If SHPO does not approve an extension of time, the regular 106 PA process for identifying, evaluating and assessing affects to historic properties must be followed.

Within six months following the emergency notification, the District provides SHPO, CSO, and any additional consulting parties with a narrative report documenting the decisions and actions made in accordance with the emergency consultation process. The follow-up report may follow the applicable guidance for documenting FNAE-SCs, FNAEs and FAEs. Contact the Section 106 Branch Chief for example narrative reports.

2.5.3.3 Emergency Undertakings Involving Caltrans-Owned Resources

While Section 106 procedures may be used to complete concurrent compliance with PRC 5024 for emergency undertakings when the 106 PA applies, if the funding source is unknown or if it is likely there may also be state-only funded undertakings that affect Caltrans-owned historic resources, separate notification is required for PRC 5024 compliance. The 5024 MOU includes similar expedited procedures for emergency situations. See Section 2.11.2 below.

2.5.3.4 Emergency Undertakings Involving Other Federal Agencies

If federal lands are involved, the District should immediately contact the federal agency involved to determine appropriate procedures and initiate action. Some federal agencies may be able to make exceptions to their regular permitting process in a declared emergency. For example, permit requirements could be waived for repairs or replacement in kind, or a permit could be issued after the fact.

2.5.4 Federal Compliance and Excess Property

Section 106 rarely applies to Caltrans' disposal of its excess parcels. In accordance with Caltrans' "Internal Guidance on Environmental Compliance for the Disposal of Excess Land" (October 2007), "...absent any requirement for federal approvals, their disposal has no federal nexus that would trigger NEPA." If any portion of the disposal activity triggers the need for federal approval, then the property transfer would be a federal undertaking and Section 106 would apply.⁸

2.5.5 Local Bridge Seismic Retrofit Program

Stipulation XVII of the 106 PA includes provisions for projects involving seismic retrofits to local bridges under the Local Bridge Seismic Retrofit Program (LBSRP), superseding the 1995 Seismic Retrofit Programmatic Agreement (Seismic Retrofit PA), which has been terminated. Appendix 6 of the 106 PA retains the expedited features of the Seismic Retrofit PA. These provisions are applicable only to work on local bridges identified in the LBSRP.

2.5.6 Section 4(f) as it relates to Section 106

Caltrans uses SHPO concurrence with Section 106 effect findings as the basis for its subsequent determinations under Section 4(f) of the 1966 Department of Transportation Act.

Caltrans may make a "de minimis" determination under Section 4(f) for a minor use of a historic property (such as a sliver take) when the outcome of the Section 106 process resulted in a finding of No Historic Properties Affected, No Adverse Effect with Standard Conditions or No Adverse Effect. Caltrans notifies the SHPO in the Section 106 consultation letter when Section 4(f) properties have been identified and Caltrans may make a de

⁸ Examples of transferring title to real property include excess parcel sale, donation, trade, or relinquishment. See Right-of-Way Manual Section 16.05.02.00.

minimis determination under Section 4(f) based on SHPO's concurrence with the Section 106 finding. In accordance with a 2014 letter agreement with SHPO, Caltrans may treat the SHPO's non-response to No Adverse Effect findings as written concurrence for purposes of making a de minimis determination for Section 4(f).

A Section 4(f) evaluation may be required when there is a Section 106 finding of "Adverse Effect" or a "No Adverse Effect" when there is a full or partial take of the historic property or there are other indirect effects. Section 106 mitigation measures typically support a finding under Section 4(f) that all possible measures to minimize harm have been incorporated into the project.

See Exhibit 1.5 for more information on Section 4(f) and cultural resources.

2.5.7 Annual Reporting under the 106 PA

The 106 PA requires that Caltrans submit an annual report to FHWA, SHPO, and Council on activities conducted under the terms of the 106 PA to ensure that it is being properly implemented, to see if it is improving efficiency in delivering the Federal Highway-Aid Program, and to see if there are ways the 106 PA may be improved through amendment.

The CSO Chief is responsible for producing in the annual report, which is due three months from the end of the fiscal year. The Section 106 Branch Chief works with District PQS in compiling the information needed and collates the information into one document. CSO oversees distribution of the report and ensures that it is made available to the public.

2.6 Projects with State Involvement

2.6.1 Introduction

Caltrans projects that have federal involvement must comply with both federal and state laws. When a project has no federal nexus, the historical resources compliance process may still be subject to state law and regulation. Under state environmental law, consideration of historical resources is primarily carried out under CEQA ([Public Resources Code 2100](#) et seq). Caltrans is responsible for CEQA compliance when it is the lead agency. See Section 2.7 for CEQA procedures. If projects or activities may affect Caltrans-owned historical resources, Caltrans must also comply with PRC 5024. When applicable, PRC 5024 compliance is required regardless of whether Caltrans is the CEQA lead agency or if a project qualifies as a CEQA exemption. Executive Order W-26-92 (Stewardship of Historical

Properties) reinforces the requirements of PRC 5024. Caltrans has a Memorandum of Understanding with SHPO for compliance with PRC 5024 and Executive Order W-26-92. See Section 2.8 below.

2.7 CEQA Procedures

2.7.1 Introduction

CEQA requires state and local agencies to prepare multidisciplinary environmental impact analyses and to make decisions regarding the environmental effects of proposed actions based on those analyses. Cultural resources are one of the environmental areas analyzed in the CEQA document.

The lead agency under CEQA is responsible for historical resource evaluation, impact analysis, and determining appropriate mitigation. For most Caltrans projects, Caltrans is the lead agency. For purposes of this section, the term “Caltrans” means CEQA lead agency.

Chapter 2 of SERv1 contains Caltrans’ main guidance for CEQA compliance. The CEQA Guidelines are located at 14 CCR 1500 et seq.

2.7.2 Need for Cultural Studies

When Caltrans is the CEQA lead agency, the PDT determines whether the proposed activity is a project for purposes of CEQA and if so, whether it qualifies as a CEQA statutory or categorical exemption.

Statutory exemptions, listed in PRC [21080 et seq](#) and in Section 15620 of the CEQA Guidelines, are projects specifically excluded from CEQA review by the State Legislature. They apply to any project that falls under its definition regardless of the project's potential impact to the environment. If a project is statutorily exempt, no cultural resources studies are required under CEQA. Caltrans must still comply with PRC 5024, however, if state-owned resources are involved.

Categorical exemptions (CEs), defined in the CEQA Guidelines 15300-15331, are classes of projects identified by the Secretary of the Resources Agency as generally not considered to have potential impacts on the environment. If a project has potential to cause significant impacts to historical resources, however, CEs do not apply.

As defined by Section 15378 of the CEQA Guidelines, a CEQA project exists when an activity is carried out, approved or funded by public agency and has the potential to result in an adverse physical change in the environment, either directly or indirectly. According to PRC 21084.1, “[a] project that may cause substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment.”

PQS determine whether the project has the potential to effect historical resources. The presence of any cultural resources within a project area requires that cultural resources studies be initiated to determine whether any of these resources are historical resources under CEQA. Based on information provided by the PQS, the District Environmental Branch Chief (DEBC) determines if cultural resources studies are necessary.

2.7.3 Early Coordination

Cultural resources studies should be started as early as possible so that environmental issues may be taken into consideration in the project design process. Early coordination allows time to complete historical resources compliance without jeopardizing project delivery schedules, considering such factors as seasonal limitations on surveys and archaeological excavations.

Conducting consultation early in the CEQA process allows tribal governments, lead agencies, and project proponents to discuss the level of environmental review, identify and address potential adverse impacts to historical resources and tribal cultural resources, and reduce the potential for delay and conflict in the environmental review process.

2.7.4 Consultation

2.7.4.1 Native American Consultation

In accordance with PRC Section 21080.3.1, Caltrans, as CEQA lead agency, is required to consult with any California Native American tribes that request consultation and is traditionally and culturally affiliated with the geographic area of a proposed project prior to the release of a negative declaration, mitigated negative declaration or environmental impact report. AB 52 amendments to CEQA define “California Native American Tribe” for purposes of tribal consultation under CEQA as a “Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission (NAHC) for the purposes of Chapter 905 of the Statutes of 2004” (SB 18). The tribe must have requested in writing to be informed through formal notification of proposed projects in the

geographic area that is traditionally and culturally affiliated with the tribe and respond in writing within 30 days of receipt of the formal notification to requests the consultation. Caltrans has 14 days after the “Begin Environmental” milestone for a project to notify these tribes of the project, and the tribe must respond in writing within 30 days of receipt of this formal notification to request consultation. Caltrans must begin the consultation process within 30 days of receiving a tribe’s written request for consultation. See Chapter 3 for more information on Native American consultation under CEQA.

2.7.4.2 Participation of Other Consulting Parties and the Public

While Caltrans does not formally consult with the SHPO or request concurrence with findings or determinations made under CEQA, Caltrans may hold informal discussions with SHPO or other responsible agencies or interested members of the public prior to the circulation of a draft environmental document.

2.7.5 Using the 106 PA or 5024 MOU Appendices for CEQA Compliance

While the 106 PA and the 5024 MOU are not applicable to CEQA, guidance contained in the 106 PA and 5024 MOU appendices may be used as best practices to complete similar steps as required for CEQA cultural resources compliance. The CEQA cultural resources study would reference the applicable appendix as guidance along with the relevant SERv2 section. If no Caltrans-owned resources are involved, the 106 PA appendices would be cited. If Caltrans-owned resources are involved, cite the 5024 MOU appendices.

2.7.6 Screened Undertakings

Similar to CEs, Appendix 2 of the 106 PA and 5024 MOU lists classes of projects that by their nature have little potential to affect historical resources and after appropriate screening by PQS may be exempted from further review. The screening process may involve reviewing relevant documents, such as maps, photographs, previous cultural studies, and project plans, a field review of the project location, or consultation with knowledgeable individuals. Personal knowledge of the project location may be important and should be included where relevant. If any conditions must be imposed on the undertaking to ensure that historic resources will not be affected, the project cannot be screened.

2.7.6.1 Bridge Activities That Do Not Need Environmental Review

Exhibit 6.3 lists specific routine maintenance-type activities specific to historic bridges and tunnels that meet the classes of screened undertakings in Appendix 2 of the 106 PA and 5024 MOU and which Caltrans considers have no potential to affect the character defining features or historic fabric of historic bridges or tunnels. These activities, therefore, do not require environmental review under Section 106, PRC 5024, CEQA or EO W-26-92.

2.7.6.2 Processing Screened Projects

A “screening” memo prepared by PQS constitutes the documentation necessary for a screened project. The memo would state that the project was screened using Appendix 2 of the 106 PA or 5024 MOU, as applicable, as guidance. The SERv2 may also be cited as guidance. Exhibit 2.7 contains more information on preparing screening memos.

2.7.7 Scope of Identification Effort

2.7.7.1 Project Area

PQS and the Project Manager or DLAE for local assistance projects establish an appropriate project area that takes into account the potential direct and indirect impacts of the project upon historical resources. The considerations for setting a project area are similar to those used to set the APE for federal projects, and the Project Area Limits (PAL) used in state-only projects involving Caltrans-owned resources. See Appendix 3 of the 106 PA or 5024 MOU for guidance on setting project area limits.

2.7.7.2 Identification of Historical Resources

PQS conduct a “reasonable and good faith effort” to identify historic properties for CEQA projects, which typically involves background research and field surveys. PQS and qualified consultants usually begin by conducting preliminary research to determine whether there are previously evaluated properties within the project area and what types of properties are likely to be located in the project area. Historic contexts are developed as necessary to recognize the types of resources that may be present in the project area as well as possible areas of significance. PQS also seek information from knowledgeable parties such as Native Americans pursuant to PRC Section 21080.3.1, historical organizations, or interested members of the public.

Exhibit 2.6 includes a list of standard sources of information that must be consulted in the effort to identify cultural resources within the project area.

Chapter 3 contains additional guidance on consultation with Native Americans.

2.7.7.3 Field Surveys

Caltrans uses the same approach to surveys for CEQA compliance as for federal undertakings. PQS and qualified consultants conduct field surveys to inventory and/or record cultural resources in the project. In general, all buildings and structures are surveyed regardless of age, integrity, or apparent value unless they qualify as exempt from evaluation under Appendix 4 of the 106 PA or the 5024 MOU. In practice, an archaeological survey is always conducted unless it can be shown that natural or modern processes have destroyed any potential resources, or unless the project area previously has been surveyed to appropriate standards.

2.7.8 Evaluation of CEQA Historical Resources

If cultural resources are identified within the project area, PQS and qualified consultants evaluate them to determine whether they are historical resources for the purposes of CEQA.

The CEQA Guidelines Section 15064.5 define a “historical resource” as a resource listed in or determined eligible for listing in the CRHR.

Properties listed or eligible for the NRHP are automatically included in the CRHR and are historical resources under CEQA. This includes properties that were determined eligible for listing in the NRHP as a result of a Section 106 consensus determination. Historical resources under CEQA also include resources listed in a local register of historical resources and resources that are identified as significant in local surveys less than 5 years old that conform to OHP standards.

The lead agency, at its discretion, may choose to treat a resource as a historical resource even if it is not listed or eligible for listing.

Tribal Cultural Resources (TCRs) are separate and distinct category of resource separate from historical resources. PRC Section 21074(a)(1) and (2) defines TCRs as “sites, features, places, cultural landscapes or objects that have cultural value to a California Native American tribe and are either listed in or eligible for the CRHR or are included on a local register.” For purposes of this guidance, Caltrans use the inclusive term “historical resource” to include TCRs. Chapter 3 discusses consultation with Native Americans and identifying TCRs in a CEQA context. See also the Governor’s Office of Planning and Research Technical Advisory [AB52 and Tribal Cultural Resources in CEQA](#).

2.7.8.1 Resources Exempt from Evaluation

PQS and qualified consultants may use the procedures for exempting resources from evaluation in Appendix 4 of the 106 PA or 5024 MOU, as applicable, in compliance with CEQA.

Interstate Highway Federal Exemption

For federal undertakings, the Interstate System is exempt from evaluation for purposes of Section 106 except for a limited number of individual elements associated with the system that have national or exceptional historic significance, as designated by FHWA Headquarters. The exemption does not apply to Caltrans’ responsibility for compliance with CEQA, PRC 5024 or other state laws and regulations, as applicable. See Section 2.3.8.2 above for more information.

Rail Rights-of-Way Federal Exemption

In 2018, Council, in coordination with the USDOT, issued a Program Comment to Exempt Consideration of Effects to Rail Properties Within Rail Rights-of-Way (ROW) which applies to federal undertakings that may affect rail properties within rail ROW and relieves federal agencies from having to conduct reviews in accordance with Section 106. The exemption does not apply to Caltrans’ responsibility for compliance with CEQA or other state laws and regulations, as applicable. See Section 2.3.8.3 above for more information.

2.7.8.3 Eligibility Findings

Identified properties that are not treated as exempt must be evaluated for historical significance. It is Caltrans policy to apply the NRHP and CRHR criteria simultaneously when conducting evaluations as this can save time and effort in having to reevaluate resources should a state-only project become a federal undertaking. See the California Code of

Regulations Title 14, [Section 4851\(a\)](#), Historical Resources Eligible for Listing in the CRHR and [Section 4852\(a\) through \(e\)](#), Types of Historical Resources and Criteria for Listing in the California Register of Historical Resources.

Although the criteria are similar, what is considered a historical resource under CEQA is broader and more encompassing than the NRHP criteria. The CRHR criteria, for example, includes special considerations for types of cultural resources that normally are not considered eligible for listing in the NRHP, such as:

- Moved buildings, structures, or objects.
- Historical resources achieving significance within the last 50 years.
- Reconstructed buildings.
- Properties identified in historical resources surveys.
- Tribal Cultural Resources (TCRs)

See Exhibit 2.8 for information on the conditions under which these resources would meet the CRHR criteria and therefore be considered historical resources under CEQA.

PQS also seek information from knowledgeable parties such as Native Americans pursuant to PRC Section 21080.3.1, historical organizations, or interested members of the public.

The evaluation should state whether and why a resource is or is not eligible for the NRHP and whether it is or is not a historical resource for purposes of CEQA.

See Chapter 5 for guidance on evaluating archaeological sites and Chapter 6 for built environment resources.

Consideration of Eligibility

While there is no provision for considering resources to be eligible under CEQA, the lead agency, at its discretion, may choose to treat a resource as a historical resource even if it is not listed or eligible for listing in the CRHR.

Previously Evaluated Resources

If previously evaluated properties are identified within the project area, PQS and qualified consultants assess whether the evaluation remains valid or may reevaluate the property as appropriate. Reevaluation is not always required. The passage of time, changing perceptions of significance, eligibility under previously unconsidered NRHP or CRHR criteria, new information, incomplete or erroneous prior evaluation and errors of fact are some of

the reasons a reevaluation may be warranted. Native American tribes and representative should be consulted pursuant to PRC Section 21080.3.1.

2.7.8.4 Processing CEQA Eligibility Findings

Caltrans documents NRHP and CRHR evaluations using DPR 523 forms, which are attached to the HPSR for projects with federal involvement, or the Historic Resources Compliance Report (HRCR) for state-only projects. See Section 2.7.11.2 below.

When a District has been in consultation with California Native American tribes pursuant to PRC Section 21080.3.1, eligibility conclusions should be submitted to the tribe for review prior to the release of a negative declaration, mitigated negative declaration or environmental impact report.

Under CEQA, the SHPO does not concur in eligibility conclusions. If an HPSR or HRCR is being submitted to SHPO for Section 106 or PRC 5024 compliance, the SHPO may review the CEQA eligibility conclusions but will typically not comment.

2.7.9 Determination of Project Impacts

Caltrans determines the impact of the project on each historical resource by applying the criteria of significant effect set forth in state law and regulation. PRC 5020.1(q) defines "substantial adverse change" in a historical resource to mean:

- Demolition
- Destruction
- Relocation
- Alteration such that the significance of the resource would be impaired

California law is explicit that a substantial adverse change in the significance of an historical resource is a significant impact on the environment.

Any activity that would result in the destruction of a historical resource's characteristics would be a significant impact under CEQA when those characteristics justify the historical resource for:

- Inclusion in, or eligibility for, the CRHR.
- Inclusion in a local register (if designated under local ordinance or resolution).
- Identification as significant in a local survey that meets OHP standards.

Be aware that the word “adverse” is used differently in federal and state terminology. The federal “Adverse Effect” defines a class of actions regardless of mitigation; CEQA guidance, on the other hand, specifies that a project that adversely impacts a historical resource has a significant effect on the environment, but mitigation can reduce that effect.

Under California law, demolition or destruction of a historical resource is a significant impact and cannot be mitigated to less than significant impact by heritage recordation. See [Section 15054.5](#) of the CEQA Guidelines for more information on determining the significance of impacts to archaeological and historical resources.

CEQA Class 31 Projects

If the only activity under consideration is maintenance, repair, stabilization, rehabilitation, restoration, or preservation of a historical resource, and the work is done according to the SOIS cited above, the project is considered a [Class 31](#) project and is a CEQA CE. To ensure these activities are consistent with these standards, they must be reviewed by, or under the direct supervision of an appropriately qualified PQS.

PQS and qualified consultants may use the relevant procedures for applying the SOIS standards in 106 PA Appendix 5, or 5024 MOU Appendix 5 for state-only projects that involve Caltrans-owned resources, in compliance with CEQA. Exhibit 2.15 contains format and content guidelines for SOIS action plans.

PQS should coordinate with the project environmental generalist regarding the applicability of this class of project as there may be other environmental considerations.

2.7.10 Determination of Appropriate Mitigation

CEQA requires that state and local agencies avoid or minimize significant adverse environmental impacts whenever feasible.

PQS and appropriately qualified consultants may develop mitigation measures. For built environment historical resources, when mitigation measures involve plans, specifications or are developed to minimize effects that physically affect these resources, the measures need to be developed or reviewed by, or under the direct supervision of, a Principal Architectural Historian. Proposed mitigation measures that identify costs of \$5000,000 and above for the undertaking as a whole must be reviewed by the CSO Chief, under delegation by the DEA Chief, as described in Section 2.3.10.1 above.

Mitigation measures should avoid, minimize, rectify, reduce, or compensate for physical impacts to resources. CEQA encourages the use of measurable performance standards that facilitate mitigation monitoring. In considering historical resource mitigation, remember that maintenance, repair, stabilization, rehabilitation, restoration, or preservation are considered to mitigate below a level of significant impact only when the work is consistent with the SOIS.

If mitigation below a significant impact can be accomplished by changes in project design and can be incorporated into the project, a Negative Declaration (ND) may be appropriate, assuming there are no other environmental issues. To be feasible, a measure must be capable of being accomplished in a successful manner in a reasonable period of time.

Mitigation cost limitations do not apply to public agencies that comply with CEQA provisions regarding mitigation of significant effects.

2.7.10.1 Archaeological Sites

Archaeological mitigation is in [Section 15126.4\(b\)\(3\)](#) of the CEQA Guidelines. Under CEQA, avoidance is the preferred mitigation for archaeological sites. When data recovery is the only or part of a prudent and feasible mitigation, a DRP must be prepared prior to any excavation that provides for recovery of scientifically consequential information. Data recovery under CEQA is not required when Caltrans determines that already-completed studies have adequately recovered a site's important information.

The DRP should be completed prior to the circulation of a draft environmental document. However, in some cases test excavations and DRP preparation may require more time than is available before circulation of the draft environmental document. When a DRP cannot be completed prior to draft circulation, the plan must be completed by the time the final environmental document is certified.

Exhibit 5.6 contains format and content guidelines for DRPs.

DRPs are filed with the California Historical Resources Regional Information Center.

2.7.10.2 Built Environment

Because CEQA requires that physical impacts must be avoided or lessened by mitigation, heritage documentation (Historic American Building Survey [(HABS), Historic American

Engineering Record [HAER] or Historic Landscape Survey [HALS]) recordation does not mitigate below a level of significance in the case of demolition or destruction, but they may lessen impact in cases of alteration.

2.7.11 NEPA and CEQA Joint Compliance

In general, cultural resource studies that require both state and federal compliance are integrated at the time the documents are prepared. Documents prepared for compliance with Section 106 may include Caltrans' findings and conclusions under CEQA.

2.7.12 Special Considerations under CEQA

2.7.12.1 Late Discoveries

Provisions for addressing accidental discovery of archaeological sites in the course of construction should be included among the CEQA mitigation provisions.

Standard provisions include:

- 1) Work in the area of the resource must stop immediately; and
- 2) An appropriately qualified cultural resources specialist must evaluate the discovery. If the resource is assessed as significant, Caltrans ensures that plans for mitigating project effects are immediately developed.

In the case of an accidental discovery, the District Construction Branch notifies the District Environmental Branch staff. The PQS carries out the evaluation and determines appropriate mitigation. CSO will assist upon request and may consult with SHPO.

If construction cannot continue in the area of the significant resource until mitigation occurs, the District Environmental Branch staff notifies the Construction Branch.

2.7.12.2 Emergency Procedures

An emergency is a situation of clear and imminent danger that threatens the loss of or damage to life, health, property, or essential public services. CEQA emergency exemptions apply to projects undertaken to prevent or mitigate an emergency or to address disaster-damaged or destroyed properties.

The emergency exemptions do not apply to projects that alter a significant historical resource unless the condition of the resource itself constitutes an emergency, as defined by [PRC 21060.3](#).

[PRC 5028](#) outlines procedures to follow when a resource listed in the NRHP, CRHR, or local register of historic places is damaged during a natural disaster. In declared emergencies, a structure cannot be demolished, destroyed, or significantly altered (except for restoring its historical value), unless the structure presents an imminent threat to the public or to adjacent property, or unless SHPO determines those actions may be taken.

SHPO's determination is based on relevant factors, including the historical significance of the structure, the extent of the damage, and the costs involved. SHPO also considers recommendations provided by a team of local historic preservation experts. SHPO's determination must be made within 30 days after the receipt of the application from any local government agency requesting the determination.

Post-Emergency Documentation

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

2.7.12.3 Native American Burials

Native American burials in California are under the purview of the Native American Heritage Commission. [PRC 5097.98](#) governs the actions Caltrans must take when burials are identified in a project area, or when they are accidentally discovered. Although the treatment of burials is exempt from CEQA, the CEQA Guidelines at [CCR 15064.5\(d\) and \(e\)](#) provide assistance in complying with the applicable statutes. Chapter 3 discusses the requirements for treating Native American burials.

2.7.12.4 CEQA Compliance and Excess Property

Most Caltrans excess land disposal and route relinquishment activities are not considered "projects" under CEQA. In accordance with Caltrans' "Internal Guidance on Environmental Compliance for the Disposal of Excess Land" (October 2007), CEQA would apply "...if there is a particular development plan associated with the parcel to be disposed. Transferring property out of Caltrans' ownership would be subject to compliance with PRC 5024 regardless of CEQA applicability.⁹

⁹ Examples of transferring title to real property include excess parcel sale, donation, trade, or relinquishment. See Right-of-Way Manual Section 16.05.02.00.

When CEQA is found to apply to parcel transfers and route relinquishments, the normal CEQA process must be followed. Generally, such projects would be processed using a CEQA CE. In certain situations, however, a CE is not the appropriate level of CEQA compliance, such as when the future known plans and actions might result in a substantial adverse change. Where there is uncertainty as to whether CEQA applies, PQS should coordinate with the project environmental generalist preparing the CEQA document. The district should talk to its Legal Department and to its headquarters Environmental Coordinator. SERv1 Section V contains additional guidance.

When CEQA does apply, the HRCR documents whether there are any cultural resources in the boundaries of the property or the route to be relinquished, whether or not they are considered historical resources under CEQA, and the actions Caltrans takes in considering and protecting historical resources in disposing of the excess parcel disposal or relinquishing the route. The HRCR is attached to the transfer letter to the new owner and the transfer documents must disclose whether there are historical resources under CEQA on the property, and the measures to protect the historical resources that are conditions of the transfer.

CEQA Class 25 Projects

Under CEQA Guidelines [Section 15325\(e\)](#), transferring a property in order to preserve historical resources is considered a CEQA CE. Under this classification, Caltrans would need to ensure that the historical resource is protected and preserved. If the property being transferred is owned by Caltrans, Caltrans must also comply with PRC 5024. See Section 2.10 below. Exhibit 2.20 contains guidance on protective covenants, conservation easements and preservation agreements.

PQS should coordinate with the project environmental generalist regarding the applicability of this class of project as there may be other environmental considerations.

2.8 PRC 5024 Procedures Under the 5024 MOU

2.8.1 Introduction

When a project or activity involves Caltrans-owned buildings, structures, objects, archaeological resources, sites, landscapes, or districts, Caltrans has a requirement to comply with PRC 5024 et seq. as well as Executive Order W-26-92. The 5024 MOU between Caltrans and the SHPO is a legally-binding alternate process for compliance with PRC 5024

developed to mirror the stipulations and processes in the 106 PA as closely as possible. In addition to streamlining the process and delegating many of its steps to Caltrans, the PRC 5024 allows Caltrans to use the Section 106 process to concurrently comply with PRC 5024 when applicable rather than complete two separate processes. As noted in Section 2.1.1, work under the 5024 MOU must be performed by or under the supervision of Caltrans PQS. The Districts are concurring parties to the 5024 MOU. A copy of the 5024 MOU can be found as Exhibit 1.2.

2.8.2 Applicability

The 5024 MOU applies to all projects, activities and permits that affect state-owned cultural resources under Caltrans' jurisdiction. Caltrans ownership of property is the nexus, not the funding source. When Caltrans-owned cultural resources may be affected, PRC 5024 compliance is required regardless of whether Caltrans is the CEQA lead agency and/or whether the project is exempt from CEQA, and in addition to any federal undertaking.

Where the project occurs on or affects properties outside of Caltrans' jurisdiction, the PRC MOU does not apply. Caltrans may still have CEQA responsibilities, however.

2.8.4 Native American Consultation

PRC 5024 does not specifically address consultation with Native Americans. By policy and in accordance with Governor's Executive Order B-10-11, Caltrans includes communication and consultation with California Indian Tribes in its state-only procedures. The PRC MOU requires that Caltrans make a reasonable and good faith effort to consultation with California Indian tribes throughout all steps of the process. For purposes of the MOU, this means all Indian tribes located in California that is on the contact list maintained by the Native American Heritage Commission (NAHC) for the purposes of Chapter 905 of the Statutes of 2004 (SB 18 list). Exhibit 3.1 provides definitions of consultation.

Following the procedures described in Chapter 3 and 5024 MOU Appendix 6, the prehistoric archaeologist or District Native American Coordinator (DNAC) initiates contact with potentially interested Native American groups and the NAHC. A good faith effort to contact Native American groups may entail telephone, in person, or written contacts, depending on the complexity of a project and the rapport established with particular groups. The NAHC must be contacted for information about any resources listed in their Sacred Lands files.

2.8.3 Projects with Federal Involvement

When federal undertakings involve Caltrans-owned resources, Caltrans is responsible for compliance with PRC 5024 separate from or in addition to any Section 106 responsibilities that the federal agency may have. In accordance with Stipulation III of the 5024 MOU, if the federal undertaking includes Caltrans-owned historical resources within the APE, Caltrans may use the Section 106 process and documentation to concurrently complete its PRC 5024 compliance. For Caltrans projects where the 106 PA is applicable, Caltrans uses the 106 PA in its entirety and consultation with SHPO includes notification that Caltrans is concurrently complying with the PRC 5024 MOU.

2.8.5 Participation of Other Interested Parties and the Public

The PRC 5024 MOU requires PQS to make a reasonable and good faith effort to consult with any interested parties throughout the steps of the compliance process. Interested persons are defined as organizations and individuals that are concerned with the effects of an action on historical resources. PQS identify and invite interested parties to provide information on cultural resources during the identification and evaluation stage and must notify parties who expressed an interest in the proposed project of the results, even when no historical resources are found. When Caltrans-owned historical resources are found that may be subject to project effects, persons who have expressed an interest may want to continue participation.

The District should document evidence of coordination with all interested persons and include their comments and opinions, as well as a summary of Caltrans' responses to the comments, in its PRC 5024 documents.

2.8.6 Screened Projects

Not all projects and activities have potential to affect Caltrans-owned historical resources. Stipulation VII of the 5024 MOU is intended to streamline cultural resource compliance for projects that by their nature have limited potential for effect, and if appropriate, determine them exempt from further review under PRC 5024. Appendix 2 of the 5024 MOU lists classes of actions that may be screened by PQS, and if appropriate, exempted from further review under PRC 5024. Screened projects are limited to only those actions listed in Appendix 2, but a project may consist of more than one action and still be screened.

The following conditions apply to screened projects:

- Only PQS may conduct the screening process.
- The screening process must be done in accordance with the terms of 5024 MOU Appendix 2.
- Only the listed projects, or a combination thereof, may be screened.
- If a project includes any elements other than those listed, it will not qualify for screening.
- All features of the project must be identified prior to screening.
- Projects must be screened as a whole; certain “activities” or “areas” of a project cannot be screened.
- If conditions must be imposed on a project to ensure that potential Caltrans-owned historical resources would not be affected (e.g., fencing to protect an archaeological site), it does not qualify as a screened project.
- At the screening stage, PQS look for potential to affect, not whether there will be an effect.
- Subsequent changes to the project may require that it be re-screened to determine if it still meets the requirements of Appendix 2.

PQS begin by examining a project’s features to determine if it meets one or more of the classes of screened projects.

The screening process may involve reviewing relevant documents, such as maps, photographs, previous cultural studies, and project plans, a field review of the project location, or consultation with Native Americans or other knowledgeable individuals. Personal knowledge of the project location may be important and should be included where relevant. The extent of the effort should be in proportion to the complexity, scale, and location of the project and the potential for Caltrans-owned historical resources to be affected. PQS exercise their professional judgment in conducting the screening process and must not allow either external or internal pressures to influence their decisions. The outcome must be objective and defensible, as conclusions will be included in the 5024 MOU’s Annual Report and are subject to audit. Failure to comply with the standards set in Appendix 2 could jeopardize Caltrans’ or a specific District’s continued use of the 5024 MOU.

If the project meets the requirements of 5024 MOU Appendix 2, and PQS determine after appropriate screening that there is no potential for Caltrans-owned historical resources to be affected, the project may be exempted from further review. A screening memo

constitutes the only documentation necessary for screened projects and completes the PRC 5024 process. See Exhibit 2.7 for guidance on preparing the memo.

If the project does not meet the requirements of Appendix 2 of the 5024 MOU or if PQS determine that there is potential for Caltrans-owned historical resources to be affected, the project is subject to further review and may require cultural resources studies.

2.8.6.1 Bridge Activities That Do Not Need Environmental Review

Exhibit 6.3 lists specific routine maintenance-type activities specific to historic bridges and tunnels that meet the classes of screened undertakings in Appendix 2, and which that Caltrans considers have no potential to affect the character defining features or historic fabric of historic bridges or tunnels. The activities listed in Exhibit 6.3, therefore, do not require environmental review under PRC 5024, Section 106, CEQA, or EO W-26-92.

2.8.6.2 Processing Screened Projects

A “Screened Project” or “Screened Activity” memo prepared by PQS constitutes the documentation necessary to complete the PRC 5024 process for screened projects. Exhibit 2.6 contains guidance for preparing a memo for screened projects.

2.8.7 Scope of Identification Effort

When PQS determine that a project or activity has the potential to affect Caltrans-owned historical resources, should any be present, the relevant information is forwarded to the District Environmental Branch Chief (DEBC). PQS then proceed to identify cultural resources that may be affected.

2.8.7.1 Project Area Limits Delineation

The Project Area Limits (PAL) is defined in the 5024 MOU Stipulation II as the “area, or areas, within which a state project or activity may cause changes in the character or use of historical resources, should any be present. When a project or activity subject to compliance with PRC 5024 is concurrently a federal undertaking under Section 106, the APE should be considered the PAL.

Under the 5024 MOU, PQS and the Project Manager, or DLAE for Local Assistance projects that affect Caltrans-owned properties, are jointly responsible for setting the PAL. Exhibit 1.6 outlines the PQS levels required for approving the PAL.

Establishing the PAL is the first step in determining the scope of identification efforts, and a prelude to initiating cultural resources surveys. It is a prospective activity; the known or suspected presence or absence of Caltrans-owned historical resources is irrelevant at this stage. Under the 5024 MOU, Caltrans has been delegated the authority to set PALs, and when the guidelines set forth in Appendix 3 are followed, project-specific consultation with the SHPO regarding the PAL and level of effort is not required. However, the SHPO may always comment on the adequacy of that delineation. For particularly complex projects, consultation with CSO and/or SHPO early in the scoping process may be advisable. Any consultation with SHPO should be initiated through the CSO PRC 5024 Coordination (PRC 5024 Branch) Branch Chief. Appendix 3 of the 5024 MOU contains further guidance on setting the PAL.

The PAL must include all areas of Caltrans right of way that may be subject to direct physical effects, direct non-physical effects, and indirect effects. Examples of direct physical effects include ground disturbance or building/structure alterations. The PAL includes the horizontal and vertical extents of direct effects within Caltrans' jurisdiction, and so should be delineated vertically to the depth of any ground disturbance within Caltrans right of way that may result from a project. Examples of direct non-physical effects include audible, visual or atmospheric intrusions, and shadow effects or vibrations. Indirect effects are caused by a project but occur later in time, such as erosion resulting from changes in drainage patterns due to the project, potential looting resulting from increased access, or destruction of a Caltrans-owned building due to changes in ownership or neglect.

In addition to the PAL, Caltrans PQS may establish Areas of Direct Impact (ADI) or other similar areas within the PAL to delineate locations of specific kinds of effects. These effect-specific delineations have no regulatory standing or definition, so they should always be clearly defined and described on both the mapping and in written descriptions in project reporting. ADIs are the most common form of effect-specific delineation and identify locations in the PAL that are subject to direct physical effects. This is often necessary to support testing approaches or effect analyses when archaeological sites located within Caltrans right-of-way will only be subjected to physical impacts in certain areas.

Because the PAL is established prior to completed field studies and Caltrans-owned historical resource identification, it may be necessary to revise the map at certain stages throughout the project. These changes are warranted by changes in the project's scope, design, or the discovery of previously unknown Caltrans-owned historical resources. PQS

determine whether the changes require modifying the PAL, commensurate with the nature and scope of the changed potential effects.

The final PAL map must be included in PRC 5024 compliance documents upon submittal to the SHPO or CSO as part of formal consultation. It should be of a scale suitable to depict the boundaries of major project features (e.g., right of way, edge of pavement) relative to the Caltrans-owned historical resource boundaries. Any changes to the PAL that occur after initial consultation with the SHPO begins must be documented in supplemental mapping and studies, as appropriate.

2.8.7.2 Preliminary Research

PQS usually begin identification efforts by conducting preliminary research to determine whether there are previously evaluated Caltrans-owned resources within the PAL, and what types of resources are likely to be located in the PAL.

Background research also involves seeking information from interested persons and Indian tribes who may have knowledge of resources in the APE.

Exhibit 2.6 includes a list of standard sources of information. At a minimum, the following sources should be consulted on all projects:

- National Register of Historic Places.
- California Register of Historical Resources.
- California Historical Landmarks.
- Points of Historical Interest.
- State and local inventories of historical resources.
- Caltrans Cultural Resources Database (CCRD)
- Caltrans Historic Highway Bridge Inventory, if applicable.
- The appropriate regional Information Center of the California Historical Resources Information System (CHRIS).
- Sacred Lands Inventory File, Native American Heritage Commission.

2.8.7.3 Identification of Caltrans-Owned Historical Resources

Under the PRC 5024 MOU, Caltrans makes a “reasonable and good faith effort” to identify Caltrans-owned historical resources within the PAL. A typical effort involves background research and field surveys, as well as consultation with interested parties and any Indian tribes who may attach religious and cultural significance to historical resources that may be located within the PAL.

2.8.7.4 Historic Contexts

Cultural resources specialists undertake research to develop the historic context necessary to recognize the types of resources that may be present in the PAL as well as possible areas of significance.

Work on the historic context usually extends through the research and survey stage and is completed prior to formal evaluation of resources. The results of the study are presented in the technical reports prepared to support Caltrans' PRC 5024 conclusions. The context statement should relate directly to site-specific discussions of cultural resources in the PAL.

Caltrans has developed a number of broad historic contexts, available on the SER-Other Guidance webpage, that can be used as applicable.

2.8.7.5 Field Surveys

PQS and qualified consultants conduct field surveys to inventory and/or record cultural resources in the PAL. In general, all Caltrans-owned buildings and structures are surveyed regardless of age, integrity, or apparent value unless they qualify as exempt from evaluation in accordance with Appendix 4 of the 5024 MOU. In practice, an archaeological survey is always conducted unless it can be shown that natural or modern processes have destroyed any potential resources, or unless the PAL has been previously surveyed to appropriate standards.

See Section 2.3.7.5 above for more information about the various types of surveys. See Chapter 5 for more information on when and how to conduct an archaeological survey and assessing the potential for buried prehistoric and historical archaeological resources. Chapter 6 contains more information on when and how to conduct appropriate built environment surveys.

Field Safety

Safety of employees and good relationships with the public are both prime considerations while conducting surveys or other fieldwork. All surveys and other fieldwork shall be conducted in keeping with the Code of Safe Field Practices. See Section 2.3.7.5 above for more information about safety in the field. Chapter 5 contains more information regarding survey access and safety during archaeological fieldwork, and Chapter 6 describes built environment field safety best practices. Consult the Caltrans Safety Manual for additional requirements and guidance.

2.8.8 Evaluating Caltrans-Owned Historical Resources

If Caltrans-owned resources are identified within the PAL, PQS and qualified consultants evaluate them for historic significance using the NRHP (36 CFR 60.4) and the California Historic Landmark (CHL) eligibility criteria unless they qualify as exempt from evaluation in accordance with Stipulation VIII.C.1 and Appendix 4 of the 5024 MOU. In special circumstances, resources may be considered eligible for purposes of a specific project only.

Caltrans-owned historical resources are defined in 5024 MOU Stipulation III as “any building, structure, landscape, archaeological site, are or other non-structural resource under Caltrans’ jurisdiction that is eligible for listing in the NRHP or is registered in or eligible for registration as a CHL that are under Caltrans’ jurisdiction.” Caltrans-owned historical buildings, structures and objects that are listed in or determined eligible for the NRHP and/or are registered in or eligible for registration as CHLs are included on the Master List of Historical Resources (Master List) maintained by the SHPO pursuant to PRC 5024. Determining eligibility, and therefore Master List status, is a crucial step in the 5024 MOU process as it determines how resources are processed.

The Master List includes any state-owned historical resources that are listed in the NRHP or registered as a CHL, and state-owned buildings, structures and objects that were determined eligible for the NRHP or eligible for registration as a CHL. The Master List does not include archaeological sites or non-structural resources and sites that were determined eligible for the NRHP or for registration as a CHL, nor does it include resources that are considered eligible for purposes of a project only.

2.8.8.1 Caltrans-Owned Resources Exempt from Evaluation

The 5024 MOU Appendix 4 identifies Caltrans-owned cultural resources that categorically possess little or no potential for significance and therefore may be exempt from evaluation. PQS or qualified consultants in the appropriate discipline determine if resources meet the requirements of Appendix 4.

There are qualifications and exceptions to the resources listed in Appendix 4. If PQS or qualified consultants can reasonably determine that a Caltrans-owned resource has potential to possess significance or if it could potentially contribute to the significance of a larger resource such as a historic district or landscape, it is not exempt, nor are cultural

resource professionals required to exempt a resource even if it meets the criteria of Appendix 4. Professional judgement must be used.

The Exemption Process

The process for determining whether properties qualify as exempt typically involves minimal effort, such as a quick review of existing documentation and/or a reconnaissance survey as discussed in Section 2.3.7.5 above. However, it may require additional research, detailed investigation, and/or consultation with other cultural resource specialists.

Once PQS or qualified consultants have exempted properties in accordance with 5024 MOU Appendix 4, the resources can be dismissed without further review or consideration. The decision does not require explanation, only the professional judgment of appropriately qualified PQS or consultants.

There is no requirement to record or document most exempt properties. Checking the appropriate box on the HRCR form or stating that “consistent with 5024 MOU Appendix 4, all properties/all other properties are exempt from evaluation” in a narrative HRCR is sufficient to address exempted resources.¹⁰

If PQS or qualified consultants determine that individual recordation of an exempt resource is warranted, the level of documentation should be commensurate with the nature of the property. In some situations, there may be a professional or ethical responsibility to record a resource that is exempt under the 5024 MOU, such as when it is required by an Information Center. Documentation may also be appropriate in other instances, such as to avoid the later “discovery” of an exempted archaeological feature during construction. In that case, archaeological site record forms (e.g., DPR 523 Primary Record Form and Location Map), a memo, or inclusion in the CCRD may constitute an adequate record. Caltrans-owned Resource Types 3 through 7 that are exempted from evaluation under the 5024 MOU require minimal recordation. See Exhibit 6.7 for guidance.

Contact the PRC 5024 Branch Chief with any questions concerning the applicability of Appendix 4 to specific resources.

¹⁰ Certain Caltrans-owned resources require minimal recordation for exemptions. See Section 2.8.8 below and Exhibit 6.7.

Interstate Highway Federal Exemption

For federal undertakings, the Interstate System is exempt from evaluation for purposes of Section 106 except for a limited number of individual elements associated with the system that have national or exceptional historic significance, as designated by FHWA Headquarters. The exemption does not apply to Caltrans' responsibility for compliance with PRC 5024. See Section 2.3.8.2 above for more information.

Rail Rights-of-Way Federal Exemption

In 2018, Council, in coordination with the USDOT, issued a Program Comment to exempt consideration of effects to rail properties within rail rights-of-way (ROW), which applies to federal undertakings that may affect rail properties within rail ROW and relieves federal agencies from having to conduct reviews in accordance with Section 106. If there is rail ROW adjacent to Caltrans ROW that may be affected by a state-only project, while PRC 5024 does apply to the rail ROW, Caltrans may need to consider the rail property under CEQA, if applicable. See Section 2.3.8.3 and 2.7.8.1 above for more information.

2.8.8.3 Eligibility Conclusions

Caltrans-owned resources identified within the PAL that are not exempted must be evaluated by PQS and qualified consultants applying the NRHP and the CHL eligibility criteria to each resource and make a conclusion regarding its eligibility. See [How to Apply the National Register Criteria for Evaluation](#) and the CHL [Criteria for Designation](#). The evaluation process will typically require property-specific research and fieldwork. Evaluation of archaeological sites may include excavation. PQS should make a good faith effort to consult with any Indian tribes or other Native Americans who may attach religious and cultural significance to properties within the PAL, as well as other interested parties such as local historical societies and groups, and consider any comments received in making a conclusion.

When resources have the potential for multiple property types (such as a mining complex with buildings, structures, and archaeological sites), cultural resource specialists from more than one discipline work together as a team to ensure that all pertinent resource values are adequately considered.

See Chapter 5 for guidance on evaluating archaeological sites and Chapter 6 for built environment resources.

Consideration of Eligibility

In accordance with 5024 MOU Stipulation VIII.C.3 and Appendix 5, when archaeological sites will be protected from all effects of an undertaking by establishment of an Environmentally Sensitive Area (ESA), PQS may consider such sites to be NRHP and/or CHL eligible for the purposes of the project without conducting subsurface testing or surface collection. Built environment properties must be evaluated for NRHP and CHL eligibility regardless of ESA protection, unless approved by CSO.

Under Stipulation VIII.C.4, subject to CSO approval, Caltrans-owned resources may be considered eligible for purposes of a specific project when certain circumstances prevent their complete evaluation, such as if it is a very large property, and/or there is limited potential for effect, or when a project's activities are limited to vegetation management actions in support of fire prevention and adverse effects to Caltrans-owned archaeological resources will be avoided by establishment of a Vegetation Management ESA in accordance with 5024 MOU Appendix 5. Since Caltrans is the property owner, access onto a property is rarely a factor, but there could be other types of access issues associated with archaeological sites. Requests should be directed to the PRC 5024 Branch Chief with the reason for proposing to assume eligibility and information about the prospective eligibility, including the applicable NRHP and any other evaluation criteria; the level, area and period of significance; the known or prospective property boundaries, and any other supporting documentation necessary.

Unlike determinations of eligibility, the SHPO does not concur with considerations of eligibility and resources considered eligible are not included on the Master List. The consideration of eligibility does not extend to future projects unless Caltrans and the SHPO agree otherwise.

Previously Evaluated Resources

If previously evaluated Caltrans-owned resources are identified within the PAL, PQS and qualified consultants assess whether the evaluation remains valid or may reevaluate the resources as appropriate. Reevaluation is not always required. The passage of time, changing perceptions of significance, eligibility under previously unconsidered NRHP or CHL criteria, new information, incomplete or erroneous prior evaluation and errors of fact are some of the reasons a reevaluation may be warranted. Indian tribes should be consulted when resources to which those tribes may attach religious or cultural significance are involved.

2.8.8.4 Processing Evaluations

NRHP and CHL eligibility conclusions are documented on DPR 523 forms, which are attached to a Historic Resource Compliance Report (HRCR). In addition, the HRCR provides a summary conclusion of eligibility. For federal undertakings that involve Caltrans-owned historical resources, the HPSR includes provisions for documenting PRC 5024 eligibility conclusions. See Section 2.9.2 below for more information on HRCRs.

Under the 5024 MOU, Districts submit eligibility conclusions and supporting documentation for Caltrans-owned resources directly to SHPO, with concurrent notification to CSO. SHPO consultation is required for all Caltrans' eligibility conclusions, including when Caltrans finds that a resource is not eligible.

When a District has been in consultation with an Indian tribe or interested parties on the NRHP and CHL eligibility of a Caltrans-owned resource, the District must notify and provide documentation to the tribe or interested party of Caltrans eligibility conclusion concurrent with the submittal to the SHPO unless the tribes or interested parties have indicated they do not wish to receive such documentation. The District also notifies and provides documentation to local governments in whose jurisdiction the project is located, unless the local government has indicated it does not wish to receive such documentation.

As part of the consultation with SHPO on eligibility for a PRC 5024 project or Section 106 undertaking, if any Caltrans-owned buildings, structures or objects are found eligible for the NRHP and/or eligible for registration as a CHL, Caltrans requests that SHPO add them to the Master List pursuant to PRC 5024(d). If previously evaluated listed or eligible Caltrans-owned resources are determined to no longer be eligible, Caltrans asks SHPO to remove them from the Master List pursuant to PRC 5024(d) and (f).

See Section 2.8.11 for information on SHPO letters and review timeframes.

Disagreements

If SHPO disagrees with Caltrans' eligibility conclusion, the District must promptly notify CSO; the CSO and the District consult with SHPO to resolve the disagreement within 30 days. If the disagreement is resolved, the agreed-upon finding stands, and Caltrans may proceed to the next step in the process prescribed by the 5024 MOU. If the disagreement is not resolved, the SHPO's determination is final.

2.8.9 Effect Findings

When identification and evaluation efforts are complete, PQS and qualified consultants assess whether Caltrans-owned historical resources will be affected by the project and, if so, apply the List of Adverse Effects pursuant to Stipulation IV.D of the 5024 MOU to determine whether they will be adversely affected.

As cited in PRC 5024(b) and PRC 5024.5, adverse effects include, but are not limited to:

- Alteration of original or significant historical features or fabric.
- Demolition of historical resources on the Master List.
- Moving a historical resource on the Master List from its historic location.
- Transfer or sale of historical resources on the Master List out of state ownership.

The possible effect finding are:

- No State-Owned Historical Resources Affected
- Finding of No Adverse Effect with Standard Conditions
- Finding of No Adverse Effect
- Finding of Adverse Effect

Section 2.10.2 includes additional information specific to effects for transfer or relinquishment of Caltrans-owned properties.

When Caltrans has been consulting with Indian tribes or other interested parties regarding Caltrans-owned historical resources, Caltrans continues consultation on the potential effects of the projects and takes and considers any comments received when making its finding.

While PQS assess effects to each Caltrans-owned historical resource within the PAL, under the 5024 MOU there should be one effect finding made for the project as a whole. For example, if one Caltrans-owned historical resource will be adversely affected and one will not be affected, the finding for purposes of PRC 5024 compliance would be “Adverse Effect.”

Disagreements or objections to findings of effect are addressed in accordance with 5024 MOU Stipulation X.F.

2.8.9.1 Finding of No State-Owned Historical Resources Affected

A finding of No State-owned Historical Resources Affected is appropriate when:

- There are no Caltrans-owned historical resources in the PAL, either because no cultural resources are present, all resources present were exempt from evaluation in accordance with 5024 MOU Appendix 4, or the only resources present were determined to be not eligible for the NRHP and/or for registration as CHLs; or
- Caltrans-owned historical resources in the PAL are present, but the project will not affect them.

If any conditions must be imposed to ensure that historical resources are not affected, a finding of No State-Owned Historical Resources Affected is not applicable.

Processing No State-Owned Historical Resources Effected Findings

No State-Owned Historical Resources Affected determinations may be documented in an HRCR. See Section 2.9.2 below.

Under the 5024 MOU, Caltrans does not request SHPO concurrence in a finding of No State-Owned Historical Resources Affected. If Caltrans has consulted with the SHPO or any other parties regarding determinations of eligibility, Caltrans must provide notification of the No State-Owned Historical Resources Affected finding pursuant to Stipulation IX.A.1 of the 5024 MOU. This is usually done concurrently with consultation on eligibility. If Caltrans has not consulted on eligibility (because there were no Caltrans-owned resources requiring evaluation present in the PAL or all Caltrans-owned resources in the PAL were previously evaluated), the Districts retains documentation of the finding in its files.

2.8.9.2 No Adverse Effect

A Finding of No Adverse Effect (FNAE) applies when there will be an effect to a Caltrans-owned historical resource, but none of the project's anticipated effects constitute an adverse effect as identified in the List of Adverse Effects.

It may also be feasible to impose conditions to avoid adverse effects. The 5024 MOU has specific standard conditions that, when applied appropriately, avoid adverse effects as described below.

Finding of No Adverse Effect with Standard Conditions

Under 5024 MOU Stipulation X.B.1, there are four standard conditions to avoid adverse effects:

- 1) Protection of Caltrans-owned historical resources from all adverse effects by designation of an ESA.
- 2) When the project is limited to vegetation management for fire prevention and adverse effects to historic properties or properties considered eligible pursuant to 5024 MOU Stipulation VIII.C.3 can be avoided by designation of a Vegetation Management ESA.
- 3) When the project is limited to the rehabilitation, maintenance, repair, stabilization or alterations to Caltrans-owned historical resources and the work can be completed according to the SOIS.
- 4) Designation of a Caltrans-owned historical resource under a certified local government ordinance for the transfer or relinquishment of a Caltrans-owned property.

For a standard condition to be applicable, there must be adequate information available to delineate property boundaries in relation to anticipated project impacts and to identify contributing features of the resource. The scope and design of the project must also be sufficiently developed and detailed to ensure that the resource will be protected from all adverse effects.

Finding of No Adverse Effect with Standard Conditions-ESA

A FNAE-ESA is appropriate when all project effects to Caltrans-owned historical resources will be avoided by designation and enforcement of an ESA in accordance with Appendix 5 of the 5024 MOU. An ESA Action Plan must be developed to ensure that provisions for protection are carried out. Exhibit 2.14 contains guidance on what to include in an ESA Action Plan.

Archaeological sites that can be protected by ESAs may be considered eligible for purposes of the undertaking in accordance with 5024 MOU Stipulation VIII.C.3. See Chapter 5 for guidance on ESAs for archaeological sites.

ESAs may be used to protect built environment properties for a FNAE-SC-ESA. Built environment properties must be evaluated for NRHP eligibility, regardless of ESA protection unless approved in consultation with CSO in accordance with 106 PA Stipulation VIII.C.4.

ESAs protect historical resources from direct project effects only. If the project has potential to cause indirect adverse effects to a Caltrans-owned historical resource, a FNAE-SC-ESA is not applicable.

Finding of No Adverse Effect with Standard Conditions- VMESA

A Finding of No Adverse Effect with Standard Conditions- Vegetation Management ESA (VMESA) is appropriate when the project is limited to vegetation management for fire prevention, and adverse effects to Caltrans-owned historical resources or Caltrans-owned resources considered eligible will be avoided by designation and enforcement of a VMESA in accordance with Appendix 5 of the 5024 MOU. The VMESA allows certain project activities to take place within the ESA, as long as PQS have determined that those activities will not result in adverse effects. historic properties. An ESA Action Plan must be developed to ensure that provisions for protection are carried out. Exhibit 2.14 contains a format guide and more information on what to include in an ESA Action Plan.

Consideration of eligibility in conjunction with VMESAs require CSO approval, pursuant to 5024 MOU Stipulation VIII.C.4.

Finding of No Adverse Effect with Standard Condition-SOIS

A FNAE-SC-SOIS is appropriate when the project's activities are limited to stabilization, maintenance, repairs, rehabilitation, or alterations and will be completed in a manner consistent with the SOIS, in accordance with Appendix 5 of the 5024 MOU. An SOIS Action Plan must be developed to ensure that provisions for protection are carried out. Exhibit 2.15 contains guidance on what to include in the SOIS Action Plan. Exhibit 6.4 identifies activities and undertakings specific to historic bridges and tunnels for which a FNAE-SC-SOIS is appropriate.

Finding of No Adverse Effect with Standard Condition-CLG

A FNAE-SC-CLG is applicable specifically to projects that involve the transfer or relinquishment a property out of Caltrans' ownership and historical resources involved are designated under a Certified Local Government (CLG) preservation ordinance. See Section 2.10.2.2 below.

Processing the FNAE-SC

A FNAE-SC is typically documented in an HRCR, with the ESA Action Plan, SOIS Action Plan, or CLG designation as an attachment. See Section 2.10 below.

Under the 5024 MOU, Caltrans does not request SHPO concurrence in a FNAE-SC. The District submits a FNAE-SC and supporting documentation to CSO for approval. The District provides concurrent documented notification of the proposed finding to any Indian Tribe or other interested parties that have expressed views regarding potential effects to Caltrans-owned historical resources.

If CSO does not object, PRC 5024 compliance is complete. See Section 2.8.11 for review timeframes.

Finding of No Adverse Effect

Under 5024 MOU Stipulation X.B.2, a FNAE is appropriate when standard conditions are not applicable, but the project will not adversely affect Caltrans-owned historical resources with or without conditions, or when Caltrans has developed a plan for managing any post-review, including decision thresholds and procedures for consultation with the SHPO. ESAs and use of the SOIS can be proposed as conditions to avoid adverse effects in accordance with 5024 MOU Stipulation X.B.2 when the undertaking doesn't meet the terms of Stipulation X.B.1, but in this case they are not considered "standard" conditions.

Processing the FNAE

A FNAE is documented in the HRCR with any supporting documentation attached. See Section 2.10 below. How the FNAE is processed depends on whether it involves Caltrans-owned historical resources not on the Master List or Caltrans-owned historical resources on the Master List, and whether the effects are highly controversial or there is substantial public interest in the project's effects on the resources, regardless of Master List status.

When the FNAE concerns Caltrans-owned historical resources not on the Master List, the District submits the FNAE to CSO for approval with concurrent notification to any Indian tribe or interested party that has expressed views regarding potential effects to state-owned historical resources. If CSO does not object, PRC 5024 compliance is complete. If the effects are highly controversial or there is substantial public interest in the project's effects on the resources, CSO forwards the documentation to SHPO for notification under PRC 5024(f) or for concurrence under PRC 5024.5, as applicable, and requests SHPO's comments.

When the FNAE concerns Caltrans-owned historical resources on the Master List, CSO consults with the SHPO pursuant to PRC 5024.5.

See Section 2.8.11.1 below for review timeframes.

2.8.9.3 Finding of Adverse Effect and Proposed Mitigation Measures

Under 5024 MOU Stipulation X.C, a Finding of Adverse Effect (FAE) is appropriate when any aspect of a project meets one or more of the items on the Adverse Effect list in 5024 MOU Stipulation IV.D and the adverse effect cannot be avoided. Caltrans may also make a FAE if a consulting party has indicated its disagreement with a FNAE, or when SHPO objects to a FNAE for a Caltrans-owned historical resource on the Master List.

Adverse effects under PRC 5024 are mitigated rather than “resolved” with a MOA as they are under Section 106. Consultation about mitigation measures for PRC 5024 compliance is concurrent with the FAE consultation; proposed mitigation measures are typically included with the FAE documentation. Proposed mitigation measures that identify costs of \$5000,000 and above for the undertaking as a whole must be reviewed by the CSO Chief, under delegation by the DEA Chief, as described in Section 2.3.10.1 above.

Chapter 6 Section 6.12.3 contains examples of mitigation measures applicable for the Caltrans-owned built environment resources on the Master List (typically building or structures)

Other mitigation measures may be proposed for Caltrans resources not on the Master List (such as non-structural resources). The District may, as appropriate, consult with Indian tribes that ascribe religious or cultural significance to affected Caltrans-owned historical resources or other interested parties in determining whether the proposed mitigation would adequately address effects to the resource.

Processing the FAE and Proposed Mitigation Measures

The FAE is documented in the HRCR with proposed mitigation measures and any supporting documentation attached. See Section 2.10.3 below. How the FAE is processed depends on whether it involves Caltrans-owned historical resources not on the Master List or Caltrans-owned historical resources on the Master List, and whether the effects are highly controversial or there is substantial public interest in the project’s effects on the resources, regardless of Master List status.

When the FAE concerns Caltrans-owned historical resources not on the Master List, the District submits the FAE to CSO for approval with concurrent notification to any Indian tribe

or interested party that has expressed views regarding potential effects to state-owned historical resources. If CSO does not object, PRC 5024 compliance is complete. If the effects are highly controversial or there is substantial public interest in the project's effects on the resources, CSO forwards the documentation to SHPO for notification and comment under PRC 5024(f) for historical resources that are not on the Master List, or for concurrence under PRC 5024.5 for historical resources that are on the Master List, as applicable.

When the FAE concerns Caltrans-owned historical resources on the Master List, CSO consults with the SHPO pursuant to PRC 5024.5.

In rare instances when Caltrans and the SHPO are unable to reach agreement on mitigation measures involving Caltrans-owned historical resources on the Master List through consultation, the SHPO, pursuant to PRC 5024.5(d) would request the Governor's Office of Planning and Research mediate the disagreement.

See Section 2.8.11.1 below for review timeframes.

Caltrans must document all agreed-upon mitigation measures in the Environmental Commitments Record (ERC) of the final Environmental Document, regardless of whether the affected resources are on or not on the Master List.

Documentation of mitigation measures in the ECR serves three important functions in the PRC 5024 process:

- It concludes the process for projects with an adverse effect.
- It specifies the measures that will be implemented to mitigate, avoid, or reduce adverse effects on Caltrans-owned historical resources.
- It establishes responsibility for implementing each of the measures.

2.8.10 Phased Identification, Evaluation and Assessment of Effects

A phased approach to identification, evaluation and assessment of effects may be necessary when these steps of the PRC 5024 process cannot be concluded in the usual manner due to factors such as when the project has a number of alternatives. CSO must approve the use of a phased approach. As specific aspects or locations of an alternative are refined, the identification, evaluation and assessment of effects must be completed. If compliance with PRC 5024 cannot be concluded before a CEQA decision-making document is signed and the outcome of PRC 5024 consultation is likely to be No State-Owned Historical Resources

Affected or No Adverse Effect based on all available background research, CSO may approve the use of a phased approach. The District must prepare a plan for completion of identification and evaluation that includes a schedule and provisions for notification for consultation with CSO and SHPO.

2.8.11 Consultation with SHPO and CSO

2.8.11.1 Review Timeframes

The 5024 MOU delegates to Caltrans many steps of the PRC 5024 process that require SHPO review under PRC 5024 and PRC 5024.5 and sets timeframes for reviews that are unspecified under the statute. CSO is authorized to perform certain reviews for which no external review by the SHPO is required and provides summary notifications to SHPO on a quarterly basis. Review procedures under the MOU are largely determined by whether a state-owned historical resource is on the Master List or not.

CSO Review

CSO has 15 calendar days to object to findings of No Adverse Effect with Standard Conditions, and 15 calendar days to review findings of No Adverse for Caltrans-owned historical resources not on the Master List.

CSO has 30 calendar days to review findings of Adverse Effect with Standard Mitigation Measures and findings of Adverse Effect for Caltrans-owned resources not on the Master List. The 30-day review period begins when CSO receives the consultation package (the District's transmittal memo and all supporting documentation), not the date it is mailed. Confirmation of date of receipt may be provided through a mail delivery receipt or other documented communication from CSO. If CSO has not responded within 30 calendar days after receipt, the District may notify CSO via email that the District is moving forward.

Where no time frame is specified (such as CSO review of findings of No Adverse Effect for Caltrans-owned historical resources on the Master List and Adverse Effect for Caltrans' resources on the Master List prior to forwarding to SHPO), the review will be completed within 15 calendar days from receipt.

SHPO Review

The SHPO has 30 calendar days to review determinations of eligibility, 30 calendar days to review findings of No Adverse Effect, 30 calendar days to review findings of Adverse Effect, and 30-days to review any effect findings submitted pursuant to PRC 5024(f) or PRC 5024.5.

In certain circumstances, Caltrans may request expedited consultation, but all possible planning should be taken to avoid expedited review situations. It is advisable to start the consultation process as early as possible and schedule enough time to allow for complications. Clear, logical, well documented, and well-justified conclusions help reduce delays.

The 30-day review period begins when SHPO receives the consultation package (Caltrans' transmittal letter and all supporting documentation), not the date it is mailed. Confirmation of date of receipt may be provided through the SHPO database, a mail delivery receipt, or written or documented oral communication from the SHPO. Coordinate any effort to establish the log-in date with the PRC 5024 Branch Chief.

The 30-day timeframe may be extended when the SHPO and the District or CSO, as applicable, agree to an extension.

Absent a mutually agreed upon extension, if the SHPO has not responded within 30 calendar days after receipt, the District or CSO, as applicable, may notify the SHPO via email that Caltrans is moving forward.

A SHPO response may be concurrence with Caltrans' findings or determinations, but it may also be a question or a request for additional information, in which case, the 30-day clock starts over from the date SHPO receives Caltrans' response.

Note that there is no specified time-frame for SHPO's review of mitigation measures. This is due to the open-ended nature of such consultation.

2.8.11.2 Transmittal Letters and Memos

Submittals of PRC 5024 documents to CSO should be accompanied by a memo, which makes it clear this is the final, approved document from the District. Though memos are addressed to the CSO Chief, the submittal can be sent directly to the Section PRC 5024 Branch Chief.

A clear, concise letter to the SHPO initiating or continuing PRC 5024 consultation is critical. The transmittal letter summarizes the results of identification and evaluation efforts, referring to any technical studies enclosed to support Caltrans decision making. It iterates Caltrans' findings and determinations for the project and requests the SHPO's concurrence in these conclusions. When applicable, the transmittal letter is also used to request that the

SHPO add or remove Caltrans-owned historical resources to the Master List and serves to notify the SHPO of other matters where notification is required, such as a change in ownership of a Caltrans property.

Exhibit 2.21 contains guidance for drafting memos to CSO and letters to the SHPO.

2.9 PRC 5024 Documents

2.9.1 Introduction

Documentation supporting Caltrans' conclusion made under the 5024 MOU must be prepared by PQS or qualified consultants in the appropriate discipline. A copy of all documentation is retained by the District and made available to interested parties and the public, consistent with applicable confidentiality requirements. Section 2.12 describes Caltrans procedures for peer review of documents and the document approval processes. See Exhibit 2.17 for the number of report copies to distribute.

The most common document Caltrans uses to record its compliance with PRC 5024 is the HRCR.

2.9.3 Finding of Effect Reports

A Finding of Effect (FOE) report is prepared for FNAE and FAE findings, or when the HRCR did not include documentation of a FNAE-SC.

Caltrans uses the FOE document to describe why an undertaking's effects do or do not meet the List of Adverse Effects. The FOE discusses how each of the criteria applies or does not apply to all the Caltrans-owned historical resources in the PAL, including any that will not be affected. The conclusion, however, must state Caltrans' effect finding for the project as a whole.

The FOE for a FNAE might propose modification of the project or conditions that would avoid adverse effects. Exhibit 2.11 contains format and content guidance for documenting a FNAE. If an ESA or use of the SOIS are being proposed as non-standard conditions, an ESA Action Plan or SOIS Action plan must be attached.

The FOE for the FAE may be submitted alone or with proposed mitigation measures. The FOE should include a discussion of project alternatives considered but rejected and the reasons for the decisions.

2.10 Transfers and Relinquishments of Caltrans-Owned Resources

2.10.1 Introduction

The transfer or relinquishment of Caltrans-owned historical resources is a project that requires compliance with PRC 5024.¹¹ Prior to a transfer or relinquishment, PQS follow the 5024 MOU process as outlined above in Section 2.8 to identify, evaluate and assess effects to any historical resources that may be present, and take steps to protect historical resources from adverse effects as applicable. Caltrans provides notification to the SHPO when there is a change in ownership.

Pursuant to Caltrans' "Internal Guidance on Environmental Compliance for the Disposal of Excess Land" (October 2007), transfer and relinquishment projects rarely have a federal involvement. See Section 2.5.4 above.

Exhibit 2.20 and Chapter 6 Section 6.15 contain guidance on transfer and relinquishment procedures. See also Stipulation XI of the 5024 MOU.

2.10.2 Effect Findings for Transfer or Relinquishment Projects

The transfer or relinquishment of a Caltrans-owned historical resource is a potential Adverse Effect pursuant to 5024 MOU Stipulation III, as described in Section 2.8.9 above, but it can also have no effect if the future owner is another state agency or a federal agency. Protective measures, such as a historical covenant, may be required to avoid an adverse effect. The 5024 MOU includes a "standard condition" to avoid an adverse effect for transfer and relinquishment projects, when the historical resource is officially designated under a local agency preservation ordinance. When an adverse effect cannot be avoided, Caltrans must consult to develop measures to mitigate the adverse effect before the transfer or relinquishment can occur.

2.10.2.1 No State-Owned Historical Resources Affected

A finding of No State-owned Historical Resources Affected is appropriate for a transfer or relinquishment project when:

- there are no Caltrans-owned historical resources within the property boundary, either because no cultural resources are present, all resources present were exempt

¹¹ Examples of transferring title to real property include excess parcel sale, donation, trade, or relinquishment. See Caltrans Right-of-Way Manual Section 16.05.02.00.

- from evaluation in accordance with 5024 MOU Appendix 4, or the only properties present were determined to be not eligible for the NRHP/CHL; or
- there are Caltrans-owned historical resources within the property boundary, but the resources will be transferred to a federal agency or another state agency.

The procedures for documenting and processing a finding of No Caltrans-Owned Resources Affected are described in Section 2.8.9.1 above and in Stipulation X.VI.A and B of the 5024 MOU. If the resource is being transferred to a federal agency or another state agency, the name of the agency should be noted in the HRCR.

2.10.2.2 No Adverse Effect with Standard Conditions CLG

A finding of No Adverse Effect with Standard Conditions- Certified Local Government (FNAE-SC-CLG) is appropriate for a transfer or relinquishment project when:

- the historical resource is being transferred to a local agency, private or unknown owner; and
- the Caltrans-owned historical resource to be transferred or relinquished has been designated by a CLG under its historic preservation ordinance or is a contributing element of a district designated under a CLG ordinance.

The District may initiate the nomination of a Caltrans-owned historical resource to be designated under a CLG's preservation ordinance at any time prior to the transfer or relinquishment. A resource does not have to be on the Master List to be nominated for designation. The nominated historical resource must be successfully designated by the CLG prior to the transfer or relinquishment, and the designation recorded by the county recorder. See 5024 MOU Appendix 5.

The procedures for documenting and processing a FNAE-SC-CLG are described in Section 2.8.9.2 above and in Stipulation X.VI.C of the 5024 MOU. The HRCR should provide the name of the CLG. Include a copy of the applicable city or county resolution that officially designated the historical resource as an attachment.

2.10.2.3 No Adverse Effect

When a transfer or relinquishment project involves Caltrans-owned historical resources that are not locally designated by a CLG or the future owner is not a federal or state agency, PQS apply the List of Adverse Effects found in Stipulation III of the 5024 MOU. A FNAE is appropriate for a transfer or relinquishment project if PQS find the effect will not be adverse, or if protective measures can be imposed that will avoid the adverse effect. Known

or reasonably foreseeable future use of the historical resources should be considered to determine whether the proposed protective measures will effectively avoid adverse effects. Examples of protective measures include conservation easements and historical resource covenants. Contact the PRC 5024 Branch Chief for sample historical resource covenants.

The procedures for documenting and processing a FNAE is described in Section 2.8.9.2 above and in stipulation X.VI.C.2 of the 5024 MOU.

2.10.2.4 Adverse Effect

When all efforts to transfer or relinquish state-owned historical resources with protections have been exhausted, Caltrans treats the transfer as an adverse effect under PRC 5024. If the resources to be transferred or relinquished are on the Master List, Caltrans consults with SHPO to develop agreed-on measures to mitigate the adverse effect in accordance with Stipulation X.C.2 of the 5024 MOU. For Caltrans-owned resources not on the Master List, or where the standard mitigation measures do not apply, the District consults with CSO under Stipulation X.C.1 of the 5024 MOU. See Section 2.8.9.3 above, which also addresses procedures for documenting and processing adverse effect findings.

The procedures for documenting and processing a FAE and proposed mitigation measures is described in Section 2.8.9.3 above and in Stipulation X.C of the 5024 MOU.

Note that if Caltrans-owned resources listed on the NRHP are to be transferred to a public agency with the intent to demolish, destroy or significantly alter them, PRC 5027 may apply. See Section 2.10.3 below.

2.10.3 PRC 5027 and Transfer of NRHP-Listed Buildings and Structures

[PRC 5027](#) requires statutory approval by the Legislature prior to the demolition, destruction or significant alteration (except for restoration to preserve or enhance its historical values) of any state-owned building or structure that is listed in the NRHP and is transferred from state ownership to another public agency. This law does not apply to archaeological sites, landscapes or other non-structural property types. Very few Caltrans-owned historic buildings or structures are actually listed in the NRHP.

While PRC 5027 does not require consultation with SHPO, compliance with PRC 5024.5 and 5024 MOU Stipulation XVI.G for the transfer would be required prior to the legislative

approval. Given this stepped process, it is critical to build sufficient time into the schedule.

The key points to remember are:

- The law applies only to NRHP listed buildings or structures
- There is a substantial adverse change/adverse effect through demolition, destruction or significant alteration
- Transfer is to another public agency

2.10.4 Post-Transfer Procedures

After a historical resource has been transferred out of Caltrans' ownership and the protections are in place (e.g., protective covenants/easements filed with the county recorder, approved city or county preservation resolutions are in place; signed and accepted relinquishment or other preservation agreements are finalized), PQS submit a copy of the finalized protection documents to SHPO with concurrent submittal to the PRC 5024 Branch Chief.

Along with the documents, Caltrans provides SHPO with an abbreviated DPR 523A Primary Record form, completing the following sections: resource name, locational information, showing the ownership change, the name of the new owner, and the updated Status Code (change the status from "4CM" to the underlying eligibility code). as outlined in 5024 MOU Stipulation XI.D.

The SHPO transmittal letter for a post-transfer should include the following:

- Subject line: Notification of Sold Parcels/Relinquished Route, PRC 5024 Compliance.
- Brief background description of prior SHPO consultation on the transfer/relinquishment and effect finding, including date of SHPO's comments and/or concurrence.
- A request that SHPO change the ownership status and Historical Resource Status Code. For example, if historic district contributors were sold to private owners the letter would request that SHPO change their California Historical Resources Status Code from 4CM to 2D.

If the transfer or relinquishment is not implemented as proposed, the District concurrently notifies SHPO and CSO and Caltrans will re-open consultation with SHPO as prescribed by 5024 MOU Stipulation X.

2.11 Special Considerations Under PRC 5024

2.11.1 Post-Review Discoveries

Post-review discoveries occur when, despite a reasonable and good faith effort to identify and assess effects to historic properties, previously unknown cultural resources are identified or there is an unanticipated effect on known Caltrans-owned historical resources during implementation of a project.

If PQS find during the identification effort that Caltrans-owned historical resources are likely to be discovered during construction, Caltrans must develop procedures for post-review discoveries as part of the regular PRC 5024 consultation process, as appropriate.

The 5024 MOU also includes procedures for addressing post-review discoveries that were not foreseen.

Chapter 5 contains more information on post-review discoveries involving prehistoric and historical archaeological sites.

With or without planning, if a post-review discovery occurs, work in the area of the potential Caltrans-owned historical resources must stop immediately and all reasonable measures should be taken to avoid, minimize, or mitigate further harm to the resources.

2.11.1.1 Discoveries with Prior Planning

In accordance with Stipulation XV.A of the 5024 MOU, when Caltrans' identification efforts indicate that cultural resources are likely to be discovered during implementation of a project/action, the District develops a treatment or discovery plan that outlines the procedures Caltrans will implement if a post-review discovery occurs. The plan is included in the ECR. Exhibit 5.11 provides more information on preparing a discovery plan.

2.11.1.2 Discoveries without Prior Planning

In accordance with Stipulation XV.B of the 5024 MOU, when there is no plan for post-review discovery in place and a project affects previously unidentified Caltrans-owned historical resources or affects known Caltrans-owned historical resources in an unanticipated manner, such as breach of an ESA, the District must promptly stop construction activity in the vicinity and implement all reasonable measures needed to avoid, minimize, or mitigate further harm to the resources.

PQS must assess the discovery within 48 hours. Newly identified Caltrans-owned resources may be assumed eligible for the NRHP/CHL. If known Caltrans-owned historical resources or Caltrans-owned historical resources assumed to be eligible are involved, the District must notify SHPO, CSO, any Indian tribes that attach religious or cultural significance to potentially affected resources, and any other interested party that may have a demonstrated interest in potentially affected properties.

The notification is typically initiated by phone call or email, with formal correspondence on Caltrans letterhead to follow. The notification must include, to the extent such information is available:

- 1) Description of the nature and extent of the resources.
- 2) Assessment of NRHP/CHL eligibility of any resources.
- 3) Description of the type and extent of any damage to the resources.
- 4) Description of any immediate actions taken to avoid further harm to the resources.
- 5) Description of any prudent and feasible treatment measures Caltrans proposes to take any effects into account.
- 6) Relevant photos.
- 7) Request for comments.

The notified parties have 72 hours to respond to the District with comments. The District must consider any comments received in determining an appropriate course of action and then carry out that action, continuing consultation as appropriate.

Exhibit 5.12 contains additional guidance on procedures when there is no discovery plan in place.

2.11.2 Emergency Situations

Stipulation XVI of the 5024 MOU includes an expedited procedure for complying with PRC 5024 in emergency or disaster situations. These expedited procedures only apply to formally declared disasters or emergencies as described in Section 2.11.2.1, and when the project will be implemented within 30 calendar days following formal declaration of an emergency or disaster.

2.11.2.1 Declared Emergency

An emergency or disaster must be officially declared by the President, California Governor, Caltrans Director or District Director in order to use these procedures.

2.11.2.2 Emergency Procedures

PQS determine whether the emergency project has the potential to affect Caltrans-owned historical resources. If the project meets the qualifications of a screened project, a screening memo is sufficient to document compliance with PRC 5024. If the work cannot be screened but PQS find no Caltrans-owned historical resources will be affected, an HRCR would be appropriate to document a finding of No State-Owned Historical Resources Affected.

In some cases, emergency work to preserve life or property, to avoid an immediate threat to public health, or to perform rescue or salvage operations has already occurred before PQS are notified of the project. In such situations, PQS assess whether Caltrans-owned historical resources have been affected and implement all reasonable measures needed to avoid, minimize or mitigate further harm to the resources.

Consultation with Indian tribes that attach religious or cultural significance to the affected resources should be initiated as soon as possible so that the tribe's views can be taken into account.

If Caltrans-owned historical resources have been or are likely to be affected by the emergency project, the District must provide concurrent notification to the SHPO and CSO; Indian Tribes that might attach religious or cultural significance to the affected resources or any other consulting party that may have a demonstrated interest in potentially affected resources, as applicable, that Caltrans intends to use the emergency provisions of 5024 MOU stipulation XVI.

When a disaster or emergency situation exists across multiple Caltrans Districts, counties, or local agency jurisdictions, CSO may provide a blanket emergency procedures notification to the SHPO for work that will begin within 30 days of the formal emergency declaration. The blanket notification references the applicable emergency declaration and identifies the affected counties and Caltrans Districts. CSO may request an extension of the period of applicability from the SHPO prior to the 30 days. In consultation with the SHPO, CSO may establish alternate methods of SHPO notification for individual emergency undertakings covered under the blanket notification.

Unless determined otherwise through consultation with the SHPO, the District responsible for individual emergency projects under the blanket notification informs CSO, the SHPO, any

Indian tribes that might attach religious or cultural significance to the affected Caltrans-owned resources, and any other consulting parties and afford them an opportunity to comment.

The notification is typically initiated by phone call or email, with formal correspondence on Caltrans letterhead to follow. The notification must include, to the extent such information is available:

- 1) Map and/or description of the project area.
- 2) Description of the work performed or to be performed in response to the emergency or disaster.
- 3) Assessment of NRHP/CHL eligibility of any Caltrans-owned historical resources.
- 4) Description of any damage to the Caltrans-owned historical resources.
- 5) Description of any immediate actions taken to avoid harm to Caltrans-owned historical resources.
- 6) Description of proposed measures to take any effects of the emergency project into account.
- 7) Relevant photos of the resources.
- 8) Request for comments.

The parties are afforded seven calendar days from the date of notification to respond. If the District determines that circumstances do not permit seven days for comment, PQS must still notify the parties and invite any comments within the time available.

The District may ask the SHPO for an extension of the 30-day implementation period. Such requests must be made prior to expiration of the 30 days. If SHPO does not approve an extension of time, the regular 5024 MOU process for identifying, evaluating and assessing affects to Caltrans-owned historical resources must be followed.

Within six months following the emergency notification, the District provides SHPO, CSO, and any additional interested parties with a narrative report documenting the decisions and actions made in accordance with the emergency consultation process. The follow-up report may follow the applicable guidance for documenting FNAE-SCs, FNAEs and FAEs.

2.11.3 Annual Reporting under the 5024 MOU

The 5024 MOU requires that Caltrans submit an annual report to the SHPO on activities conducted under the terms of the 5024 MOU to ensure that it is being properly implemented, to see if it is improving efficiency in compliance with PRC 5024, and to see if there are ways the 5024 MOU may be improved through amendment.

The CSO Chief is responsible for producing in the annual report, which is due three months from the end of the fiscal year. The PRC 5024 Branch Chief works with District PQS in compiling the information needed and collates the information into one document. CSO oversees distribution of the report and ensures that it is made available to the public.

2.12 Review and Approval of Cultural Resources Documents

2.12.1 Introduction

Under the 106 PA and the 5024 MOU, Caltrans is responsible for quality control of cultural resources documents. All documents prepared in accordance with the 106 PA or the 5024 MOU must be approved by certified PQS in the appropriate discipline. In accordance with Stipulation XVIII of the 106 PA and Stipulation XVII of the 5024 MOU, Caltrans will not transmit documentation to CSO or SHPO until the PQS has reviewed and approved it. The District Environmental Branch Chief (DEBC) formally approves the final document.

See Exhibit 2.19 Table C for PQS levels needed for document reviews and approval. Caltrans policies and procedures making public presentations and for the external distribution and publication of both Caltrans- and consultant-prepared reports can be found in Exhibit 2.19.

2.12.2 Peer Review

All draft cultural resource studies written by Caltrans or consultants for compliance with Section 106, PRC 5024 or CEQA must be peer reviewed by PQS certified at the appropriate level(s) in the relevant discipline(s) who is someone other than the author. See Exhibit 1.6 for PQS level and expertise required for peer review in the various cultural resource specialty areas.

The DEBC may request peer reviews by another District or CSO PQS. Such peer review requests are sent to the appropriate DEBC or CSO Branch Chief. The peer reviews are given the highest priority in work assignments and will be completed within 15 working days of receipt of request. However, longer peer reviews may be allowed at the discretion of the DEBC.

Exhibit 2.16 contains Caltrans' peer review standards. See Chapter 5 for information on peer reviews specific to prehistoric and historical archaeological studies and Chapter 6 for built environment studies.

In general, peer reviewers should keep the following questions in mind:

- What is the project/undertaking?
- Is it clearly described and justified?
- What is the extent of ground-disturbing activities, including utility relocation, staging areas, etc.?
- Is there potential for indirect effects?
- Is the APE/PAL described, mapped, justified and signed by the PQS?
- If a Study Area was used, is it distinguished from the APE/PAL?
- If an Area of Direct Impact is indicated, is it within the APE/PAL?
- Are APE/PAL maps legible with properties appropriately labeled?
- Are identification and survey efforts adequate?
- Are identification methods described?
- For properties being evaluated, are historic contexts adequately developed?
- Are addresses (or similar locational information) listed for all properties?
- Are properties shown on APE/PAL maps?
- Are photos provided for built resources, such as buildings and structures?
- For each NRHP-eligible historic property, are all the following included?
 - Criteria under which found eligible.
 - Reasons for eligibility.
 - Level and period of significance.
 - Contributing and non-contributing elements.
 - Spatial limits of the historic property (and NRHP boundaries if different) shown on maps and described in the text.
- Who did the survey and evaluations?
- If not PQS, are their qualifications provided?
- Do they meet appropriate PQS levels for actions taken under the 106 PA/5024 MOU?
- For effect finding documents, are the following included?
 - Historic properties adequately described to understand the effect?
 - Project effects described for each property?
 - One effect finding for the project/undertaking as a whole?
 - Any conditions such as ESAs adequately described to understand the effect finding?

2.12.3 PQS Review and Approval

Following peer review of draft cultural resource studies and after any necessary revisions have been made, the final document is signed by the document preparer(s), indicating their discipline and PQS level or PQS level-equivalent for consultants. If the preparer is not a certified PQS or not certified at the appropriate PQS level, the document is reviewed for approval by an appropriately qualified PQS.

If the District does not have PQS in the appropriate discipline, the DEBC should request another District to provide a PQS review, first. If no other District is able to help, the DEBC may request reviews by CSO PQS. Such review requests are sent to the appropriate CSO Branch Chief. The reviews are given the highest priority in work assignments and will be completed within 15 working days of receipt of request.

2.12.4 DEBC and CSO Approval

CSO, as assigned by FHWA, has final review and approval authority for Section 106 documents supporting a FNAE-SC, FNAE, FAEs, and all agreement documents. Under the 5024 MOU, CSO has final review and approval authority for documents supporting a FNAE-SC, FNAE and FAE with proposed mitigation measures.

The District Director has final review and approval authority for all other cultural resources compliance documents but typically delegates this responsibility to the DEBC. In the event that the DEBC disagrees with the conclusions, refer to the process for resolving disagreements and differences of opinion outlined in 2.12.5 below.

While one or more DEBC may approve and sign technical studies that involve multiple disciplines (e.g. HRERs, combined archaeological and built environment identification and evaluation studies) only one DEBC signs the cover document (i.e. HPSR or HRCR).

2.12.5 Disagreements and Differences of Opinion

The following process is used to handle disagreements and differences of opinion on conclusions in cultural resources documents for both federal and state-only projects and projects for which Caltrans is the lead agency under CEQA.

If management at the DEBC level or higher disagrees with the conclusions of a cultural resource study, such as an HPSR, HRCR, HRER, ASR, Bridge Evaluation, Finding of Effect, differences of opinion should be discussed with the author. If there is still disagreement, the process outlined in Section 2.12.5.2 below is followed.

2.12.5.1 Consultant-prepared documents

If there is disagreement between PQS and a consultant that has not been resolved, Caltrans PQS prepares an abbreviated, separate document that explains the disagreement. It may refer to relevant sections of the consultant-prepared report for which there is no

disagreement rather than repeating the section(s) wholesale (e.g. Historical Overview, Research Methods, maps, etc.). However, the Caltrans-prepared document is the primary document and includes:

- Brief discussion of disagreement that documents both opinions.
- CSO/Caltrans opinion as the first one set forth in the document.
- Consultant's opinion as secondary opinion.
- If correspondence is included, it should be as an attachment and not included in the document; be sure documentation represents both sides of disagreement.
- Caltrans opinion is the first one set forth in the document.
- Consultant's opinion as secondary opinion.
- If correspondence is included, it should be as an attachment and not included in the document; be sure documentation represents both sides of disagreement.

The Caltrans-prepared documents are followed by the consultant-prepared documents. Caltrans sends the report to CSO and SHPO, documenting the difference of opinion and presenting both views for review.

2.12.5.2 Caltrans-prepared documents

If there is a disagreement between PQS or between PQS and management, the District follows the applicable procedures in Section 2.12.5.1. The author's name is removed from the title page, or the report is revised to clearly indicate the author's text or conclusions versus management's text or conclusions. In situations where there are professional disagreements between management and PQS on cultural resource issues, it is strongly advised that the CSO Chief be notified.