

# Chapter 2

## Cultural Resources Procedures

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# Chapter 2:

## Cultural Resources Procedures

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### 2.1 Introduction

As part of its environmental policy, Caltrans considers historic properties and historical 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 historic properties significant in American history, archaeology, culture, architecture, and engineering. This chapter describes how Caltrans complies with those laws and regulations.

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 historic properties on projects with federal involvement (federal funding and/or approval action). Where there is no federal involvement, the California Environmental Quality Act ([CEQA](#)) and California Public Resources Code (PRC) Sections [5024](#) and [5024.5](#) are the primary regulations governing consideration of cultural resources, supported by [Executive Order W-26-92](#).

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. State law identifies “historical resources” as properties that meet the criteria for listing in the National Register or the California Register of Historical Resources (CRHR), as well as properties that are designated as historic under local ordinances and properties that have been 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. See [Chapter 4](#) for eligibility criteria.

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 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 of the National Historic Preservation Act of 1966 and its implementing regulations ([36 CFR 800](#)) and historical resources subject to consideration under the California Environmental Quality Act of 1970 will be recognized and given appropriate consideration.

Once a cultural resource is evaluated, if it is found to be significant, it then becomes a historic property under NHPA, or a historical resource under CEQA, depending on whether federal and/or state regulations apply (see sidebar).

The process for considering cultural resources on state-only projects generally parallels that which is followed on federally funded and/or approved projects. 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 (see sections 2.6 through 2.10).

This chapter focuses on the standard procedures Caltrans uses in the identification, evaluation, and treatment of historic properties and on the documents used in compliance procedures. Unusual situations may require case-by-case handling; consult the appropriate specialist in headquarters’ Cultural Studies Office (CSO) of the Division of Environmental Analysis (DEA) in such circumstances.

<p><b>Historic property</b></p>	<ul style="list-style-type: none"> <li>• Federal term</li> <li>• District, site, building, structure, or object</li> <li>• Significant in American history, architecture, engineering, archaeology, or culture</li> <li>• National, state, or local level of significance</li> <li>• Meets National Register criteria</li> <li>• Includes properties that have been listed in or determined eligible for listing in the National Register of Historic Places</li> </ul>
<p><b>Historical resource</b></p>	<ul style="list-style-type: none"> <li>• State term specific to CEQA</li> <li>• Object, building, structure, site, area, place, record, or manuscript</li> <li>• Historically or archaeologically significant, or significant in other specific aspects of California life</li> <li>• National Register &amp; California Register listed and eligible properties</li> <li>• Includes resources that have been listed in or determined eligible for listing in the California Register of Historical Resources by the State Historical Resources Commission</li> <li>• Resources designated as historic under local landmark ordinances</li> <li>• Resources identified as significant in local survey meeting Office of Historic Preservation Standards</li> </ul>

### 2.1.1 Professionally Qualified Staff

It is Caltrans policy that all persons carrying out these procedures, 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 this volume). Furthermore, any studies submitted under the Section 106 Programmatic Agreement<sup>1</sup> ([106 PA](#)), the PRC 5024 Memorandum of Understanding<sup>2</sup> ([5024 MOU](#)), both discussed below, or the California Environmental Quality Act (CEQA) must be prepared by or under the supervision of appropriate Professionally Qualified Staff (PQS) as described in [106 PA Attachment 1](#)<sup>3</sup>. Caltrans PQS are responsible for ensuring that all approvals, determinations, and findings for all Section 106 documents meet the requirements of the 106 PA. The CSO Chief is responsible for certifying Caltrans staff, and will also review consultants' qualifications on request. Questions on certification should be addressed to the Chief, Section 106 Programmatic Agreement and Coordination Branch (Section 106 Branch Chief) in CSO.

PQS are certified to work under the 106 PA in the course of their duties related to federal undertakings under Section 106 of the National Historic Preservation Act and under the 5024 MOU for their duties related to projects and activities that affect state-owned cultural resources. This certification applies only to responsibilities and activities conducted under the direction of Caltrans district or headquarters Environmental offices. It does not apply to any other work that may be conducted on behalf of any other office, agency, entity, or individual. This certification applies to Caltrans employees only, and it terminates upon leaving Caltrans employment.

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<sup>1</sup> First Amended Programmatic Agreement Among the Federal Highway Administration, the Advisory Council on Historic Preservation, the California State Historic Preservation Officer, and the California Department of Transportation Regarding Compliance with Section 106 of the National Historic Preservation Act as it Pertains to the Administration of the Federal-Aid Highway Program in California.

<sup>2</sup> 2015 Memorandum of Understanding between the California Department of Transportation and the California State Historic Preservation Officer Regarding Compliance with Public Resources Code Section 5024 and Governor's Executive Order W-26-92.

<sup>3</sup> The professional standards in Attachment 1 for the 106 PA and 5024 MOU are identical. Therefore, whenever 106 PA Attachment 1 is mentioned, it also refers to 5024 MOU Attachment 1 for projects and activities that involve state-owned cultural resources.

## 2.2 Projects with Federal Involvement

### 2.2.1 Introduction

#### ***NEPA Assignment and Section 106***

The Federal Highway Administration (FHWA) assigned to Caltrans all responsibilities for compliance under the National Environmental Policy Act (NEPA). This includes FHWA's Section 106 responsibilities. Under NEPA assignment, the CSO has assumed FHWA's Section 106 responsibilities.

Using the process outlined in this volume of the Caltrans *Standard Environmental Reference*, the appropriate Caltrans district environmental staff will continue to process Section 106 compliance documentation for Caltrans projects and for FHWA-funded local agency projects. Consultants will continue to submit their Section 106 documents to the appropriate district Heritage Resources Coordinator (HRC) for processing.

For more information on the NEPA assignment, please refer to [Chapter 38](#) of the SER. Questions regarding CSO's FHWA Section 106 responsibilities should be directed to the appropriate district HRC.

The regulations implementing Section 106 are published at [36 CFR 800](#). Those regulations allow the Advisory Council on Historic Preservation (Council) and the federal agency to negotiate a programmatic agreement ([106 PA](#)) to govern implementation of a particular program. FHWA has negotiated such an agreement with Council, the State Historic Preservation Officer (SHPO), and Caltrans to implement the Federal-Aid Highway Program in California. Under the provisions of the 106 PA, FHWA authorized Caltrans to perform many of the Section 106 steps, yet retained direct involvement for those aspects of Section 106 that are more complex, relate to other FHWA legislative responsibilities such as 4(f), and that involve financial decisions. The 106 PA specifically requires all Section 106 compliance work to be performed by or under the supervision of Caltrans PQS. A copy of the 106 PA is attached as [Exhibit 1.1](#). [Exhibit 2.1](#) contains a 106 PA flowchart that may be useful for working with the 106 PA. [Exhibit 2.2](#) contains a concordance between the 106 PA and the regulations at 36 CFR 800.

Where the undertaking occurs on or affects tribal lands, the 106 PA does not apply and FHWA shall follow the procedures at 36 CFR 800. On tribal lands where the

tribe has assumed the Section 106 responsibilities of the SHPO, FHWA consults with the Tribal Historic Preservation Officer (THPO). In the absence of a THPO, FHWA consults with the tribal representative and SHPO. [Chapter 3](#) provides details on THPO involvement and consultation with Indian tribes.

### ***Local Bridge Seismic Retrofit Program***

For projects involving seismic retrofits to local bridges under the Local Bridge Seismic Retrofit Program (LBSRP), the 106 PA [Stipulation XVII](#) and [Attachment 7](#) superseded the 1995 Seismic Retrofit Programmatic Agreement, which has been terminated. However, Attachment 7 contains that agreement's essential expedited features for Section 106 compliance for the LBSRP. Note that a project must involve work *only* on local bridges identified in the LBSRP for it to fall under the 106 PA Stipulation and Attachment.

#### **2.2.2 Overview of Section 106 under the 106 PA**

Under the 106 PA, the Section 106 process, briefly, is as follows:

The Project Development Team (PDT), defined in the Project Development Procedures Manual, identifies any federal involvement on a project and determines the existence of an undertaking subject to Section 106.

Undertaking, as defined by the 1992 amendments to NHPA, 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*. Not all undertakings are subject to Section 106. Those undertakings that may result in changes in the character or use of historic properties, regardless of whether any such properties are located in the project's Area of Potential Effects (APE), are subject to Section 106. Most Caltrans projects do have federal involvement and are thus subject to Section 106. The federal *action* defines the undertaking, not the anticipated presence or absence of historic properties.

Next, Caltrans PQS or qualified consultants determine and document the project's APE, the area within which the undertaking could cause changes in the character or use of historic properties, if any were present.

Qualified professional staff or consultants begin cultural resources studies to identify and evaluate cultural resources within the APE. They look for the findings of any previous studies, and then conduct research, consultation, and surveys as needed to identify any resources that require consideration. Caltrans applies the NRHP criteria to any properties requiring evaluation and requests SHPO's concurrence that properties are eligible or not eligible for inclusion in the NRHP, with concurrent submittal to FHWA.

If no historic properties are identified within the APE, either because:

- There are no properties present that require evaluation, or
- The properties have been evaluated and determined not eligible and SHPO concurred,

Caltrans makes a finding that no historic properties will be affected and concurrently notifies SHPO (See [Section 2.5.2](#)).

When historic properties are present and there is a potential for effect, Caltrans, in consultation with SHPO and consulting parties, applies the Criteria of Adverse Effect to determine whether the proposed undertaking could affect those properties. If an effect is found, Caltrans, in consultation with SHPO, determines whether the effect should be considered adverse.

The Army Corps of Engineers Sacramento, San Francisco and Los Angeles Districts are invited signatories under and agreed to the Section 106 PA for its Section 106 compliance for the Federal-Aid Highway Program in California.

Other federal agencies may have involvement that would constitute an undertaking with or without FHWA participation. For example, a federal agency's permit requirement, such as a Forest Service or Bureau of Land Management use permit would also trigger Section 106. At the other agency's discretion, it may fulfill its Section 106 responsibilities by using applicable provisions of the Section 106 PA.

Undertakings, unless screened and determined to be exempt from further review (see [Section 2.3.2](#)) will result in a finding of "No Historic Properties Affected, No Adverse Effect, No Adverse Effect with Standard Conditions (all of which would conclude Section 106), or a finding of Adverse Effect. To conclude Section 106 compliance on undertakings having an Adverse Effect, the headquarters Division of Environmental Analysis (DEA), and SHPO will usually enter into a Memorandum of Agreement (MOA) that specifies how the adverse effect will be taken into account. Caltrans district is routinely a concurring party to the MOA. Other parties may also be involved at Caltrans's discretion.

### **2.2.3 Identifying Federal Involvement**

The PDT determines if there will be federal involvement on a project, which will typically make it an undertaking subject to Section 106. In some cases, the decision will have been made earlier as part of developing the State Transportation Improvement Plan (STIP). The PDT makes a final decision on federal involvement as early as possible in the project development process.

An action by a federal agency, such as FHWA or the Federal Transit Administration (FTA), triggers Section 106 on Caltrans projects. Most commonly, the action would be FHWA funding. On occasion, more than one agency will be involved, and a lead agency will then be identified. When FHWA funding or approval authority is involved, other federal agencies may assume the lead on Section 106 only if FHWA has agreed to an alternate process in advance.

On 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.

Federal involvement will be found in the following cases:

- Projects modifying access to an interstate highway.
- Any project where federal aid will be used for engineering, construction, or right of way.
- Any project for which federal approvals, permits, or licenses may be required.
- Any project that relinquishes or disposes of property on right of way financed with federal funds (district right-of-way staff should ascertain whether there is a federal interest).

FHWA or other federal agencies may also be involved in a project implemented in response to an officially declared disaster.

### **2.2.4 Additional Guidance for Working with Section 106**

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. Caltrans identifies, evaluates, and treats historic properties and prepares most required documents. Caltrans, in turn, may contract some work to private consultants.

Under the NEPA assignment, Caltrans retains ultimate responsibility for Section 106 compliance on its undertakings, regardless of who prepares the documentation.

The CSO in headquarters has specialists in Section 106 processes, Native American coordination, archaeology, architectural history, history, and mitigation measures. They are available to answer questions and to help districts complete the requirements of the 106 PA. Districts are to rely upon these specialists as a first-line resource in answering project-specific questions and in developing compliance strategies for unusual or complex Section 106 compliance situations. If necessary, CSO specialists may consult with SHPO, especially for difficult or possibly precedent-setting situations.

Federal publications provide valuable assistance in working with the Section 106 process. Many are available on-line through the [Advisory Council on Historic Preservation](#) and the National Park Service [History & Culture](#), and include:

- [National Register Evaluation Criteria](#)
- [Archeology and Historic Preservation](#): *Secretary of the Interior's Standards and Guidelines* (National Park Service, September 29, 1983)
- [Section 106 Regulations Text](#) and [Section 106 Summary](#)
- [Section 106 Flow Chart](#) and [Section 106 Explanatory Material](#)
- [Section-by-Section Questions and Answers](#)
- *Protecting Historic Properties: A [Citizen's Guide](#) to Section 106 Review*
- [Indian Sacred Sites and Section 106](#) (relationship Between E.O. 13007 and Section 106)
- Consultation on [Recovery of Significant Information](#) from Archeological Sites
- [Section 106 Consultation Involving National Historic Landmarks](#)
- [Consulting with Indian Tribes in the Section 106 Review Process](#)
- Federal [Alternate Procedures](#) for Section 106

FHWA guidance on historic preservation issues includes:

- [Section 4\(f\) Policy Paper](#) (revised March 1, 2005)
- Guidance for [Preparing and Processing Environmental and Section 4\(f\) Documents](#) (also known as Technical Advisory 6640.8A)
- Section 4(f) – [23 CFR 774](#) as amended

### 2.2.5 Managing the Section 106 Process

The Project Development Team formally initiates environmental studies, including cultural resources studies, by submitting plans showing proposed project alternatives with best estimates of Right of Way requirements. The term “cultural resources studies” (formerly called historical studies) describes all research, consultation, and survey work for the full range of cultural resources.

Preliminary environmental and cultural resources studies should be started early, at the Project Initiation Document (PID) stage. Early studies involve such activities as walkovers and reconnaissance surveys, supplemented by basic information on previously recorded cultural resources and archaeological sensitivity of the project area. Obtaining this information early in the process allows environmental consequences to be included in the factors governing identification of feasible alternatives. Early surveys can reduce project development time spent on alternatives that obviously would have unacceptable environmental consequences. In particular, early identification of consulting parties is crucial to meeting project schedules.

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.

The time required for achieving Section 106 compliance varies considerably. It takes little time for projects that do not require cultural resources studies or which have no potential to affect historic properties. It can take three years or more, however, to complete the process for projects requiring extensive work. Longer time frames may also be needed if contracting for studies is involved.

Compliance time can be reduced by conducting early studies to help avoid alternatives that would affect excessive numbers of properties, by scheduling cultural resources studies as early as possible in the environmental process, by communicating closely with the PDT, and by careful delineation of APEs (neither too large nor too small) for the purpose of conducting environmental and cultural resources studies that are both efficient and in compliance with applicable laws. [Exhibit 2.3](#) provides estimates of the range of time required for certain cultural resources studies while [Exhibit 2.4](#) suggests their sequential order.

Coordination between the District Environmental Branch Chief (DEBC) and the appropriate cultural resources staff in the district environmental branch, the Caltrans Project Manager, and FHWA Transportation Engineer or other federal representative is crucial throughout the process.

### **2.2.6 Strategy Consultation**

Informal initial strategy consultation can be useful in unusual, controversial, or complex compliance situations. These discussions or meetings may be between district and CSO cultural resources specialists and managers or between district staff and FHWA and should be held before submitting formal documentation. If issues arise which cannot be resolved, the PDT can request the CSO Section 106 Branch Chief to initiate a strategy meeting with SHPO staff. On rare occasions, the Council can participate, usually by phone.

Strategy consultation may be crucial under the following circumstances:

- When a project may involve particular areas of concern to Native Americans where internal negotiations have not resolved the disagreement.
- When there is disagreement among agencies over significance, effect, or treatment of historic properties.
- When a project involves substantial local controversy.

It is recommended that the Caltrans district discuss strategy with other governmental entities, particularly tribal governments or land-managing agencies that have an interest in historic properties that Caltrans projects may affect.

Caltrans districts should make every effort to solve issues internally or in consultation with CSO without contacting SHPO, as SHPO staffing levels do not allow for frequent individual discussion of historic property issues. To reduce the volume of routine calls to SHPO, district staff is to contact the CSO Section 106 Branch Chief for advice on policy, procedures, eligibility, and effect issues or project status.

The Section 106 Branch Chief will initiate SHPO consultation when such consultation is warranted. In general, contacts should be limited to situations with complex or unusual issues, projects with high public interest, and circumstances in which appropriate application of the regulations is uncertain. District staff may contact SHPO directly in critical situations, such as a late discovery or an emergency when immediate response is essential. CSO should be notified in advance of any action for which

they are responsible under Section 106. Likewise, FHWA should be notified in advance of any non-delegated action for which it has Section 106 responsibilities.

### 2.2.7 Interstate Highway Federal Exemption

Pursuant to federal law, under 23 USC 103(c)(5)(A)-(C), the Interstate Highway System is exempt from Section 106, except for individual elements that have been determined by the Secretary of Transportation to have national or exceptional historic significance and are considered historic properties for Section 106 and Section 4(f) purposes.

The exemption releases all federal agencies from the Section 106 requirements of 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.

FHWA Headquarters, for the Secretary of Transportation, designated individual elements that still are subject to Section 106 review. Designations were made in consultation with state DOTs, FHWA Divisions, SHPOs, the Council, and the public. In California, there are six individual features of the “Federal Interstate Highway System” that FHWA designated as nationally and exceptionally significant.

The following resources are *not* exempt from Section 106 compliance:

<u>Interstate</u>	<u>Resource Name</u>	<u>Property type</u>	<u>Postmile(s)</u>
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 on why these elements are nationally and exceptionally significant, their construction dates, and the NRHP criteria under which they are eligible have been posted on the FHWA [Historic Preservation Final List of Nationally and Exceptionally Significant Features of the Federal Interstate Highway System](#) website.

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

Contact the CSO Section 106 Branch Chief for any questions concerning the applicability of the Interstate Highway Exemption.

This exemption is for federal undertakings only and does *not* exempt Caltrans from compliance with [CEQA](#), [PRC 5024](#) or other state laws and regulations. For instance, a bridge on the Interstate that is exempted from review for Section 106 undertakings still would have to be evaluated for PRC 5024 or CEQA compliance and, for the purposes of those state laws and regulations, might be found eligible for inclusion in the NRHP or as a historic resource under CEQA.

## **2.3 Section 106 Procedures under the 106 PA**

### **2.3.1 Introduction**

The Section 106 procedures explained below follow the order laid out in 36 CFR 800, with changes prescribed by the 106 PA. The steps essentially are linear, although in practice they may overlap or be compressed. It is essential to be aware of where the project is in the process.

The Section 106 process may conclude at various places in the process, when resolution is reached at any one of the following steps:

- 1) Caltrans district PQS determine that the activity is not an undertaking subject to Section 106.
- 2) Caltrans district PQS determine the undertaking meets the criteria for Screened Undertakings in accordance with 106 PA [Stipulation VII](#) and [Attachment 2](#).
- 3) Caltrans district PQS find that the project will result in No Historic Properties Affected, and notifies CSO and SHPO, when
  - o No properties of any kind are present,
  - o *None* of the properties are eligible for the NRHP and SHPO has concurred, or
  - o Historic properties are present but the undertaking will have no effect on them.
- 4) Caltrans district PQS find that the project will have No Adverse Effect on historic properties when “standard conditions” are met.
- 5) Caltrans, CSO and SHPO agree that the project will have No Adverse Effect on historic properties.

- 6) On projects with an Adverse effect, Caltrans district, CSO, and SHPO, and including Council in special circumstances, sign a Memorandum of Agreement on how to take effects into account.

On the rare occasions when no agreement is reached, CSO takes Council's written comments into account, decides whether and how to proceed with its proposed activity, and notifies Council of its decision.

### **2.3.2 Screened Undertakings**

Certain undertakings by their very nature have little potential to affect historic properties. FHWA, SHPO, and Caltrans recognize this and account for it in the 106 PA under [Stipulation VII](#) and [Attachment 2](#), in an effort to streamline cultural resource compliance. The attachment lists 30 classes of undertaking that must be screened before being exempted from Section 106 review. As with all other actions under the 106 PA, a Caltrans PQS must conduct the screening process. Only the specific actions on the list qualify for screening, but an undertaking comprised of several actions on the list can be screened.

If conditions must be imposed on the undertaking to ensure that potential historic properties would not be affected (e.g., fencing to protect an archaeological site, or pavement resurfacing on the deck of a historic bridge to be completed per the *Secretary of the Interior's Standards for Treatment of Historic Properties*) the undertaking will not qualify as exempt from further review.

Screening may involve reviewing relevant documents, such as maps, photographs, previous cultural studies, and project plans. It may involve 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. Based on the outcome of the screening process, the Caltrans PQS may determine that individual undertakings are exempt from further review because there is no potential to affect historic properties. A "Screened Undertaking" memo to the senior planner or office chief responsible for environmental documentation constitutes the documentation necessary to complete the Section 106 process for screened undertakings determined exempt from further review. The Caltrans PQS who screened the undertaking prepares a memo that includes a description of the undertaking, the screening process, and the results of screening that led to the conclusion that the undertaking qualified as exempt from further review, and keeps a copy in the district's environmental files. [Exhibit 2.5](#) contains guidance for preparing a Screened Undertaking

memo for the project planner. See [106 PA Attachment 2](#) and [Chapter 4 Section 4.2.1](#) for further guidance.

### **2.3.3 Scope of Identification Efforts**

The Section 106 process begins when the PDT identifies that an undertaking is subject to Section 106 compliance. See [Section 2.2.2](#) for the definition of an undertaking. Once it has been determined that an undertaking exists, Caltrans initiates the steps to identify any historic properties that might be affected by the project.

#### **2.3.3.1 Establishing the Area of Potential Effects**

The first step in determining the scope of identification efforts and a critical step in conducting cultural resources studies is to establish the project's APE.

As defined in [36 CFR 800.16\(d\)](#), an 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. The APE is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.” Setting an APE is a *prospective* activity and the known or suspected presence or absence of actual historic properties is irrelevant at this stage.

The APE should define the boundaries of the area within which a proposed project might affect properties. It should be just large enough to include in their entirety all properties being studied (with special consideration for long linear features) that under any reasonable circumstance could be affected by the proposed undertaking. 106 PA [Attachment 3](#) provides specific details on aspects to consider when delineating the APE and setting direct and indirect APEs.

The minimum APE for considering *direct effects* generally is the required right of way, plus areas subject to ground-disturbing activities, such as utility relocation, equipment staging areas, and designated storage, disposal, or borrow sites. If an archaeological site is identified, the APE is drawn to encompass the known or presumed boundaries of archaeological properties. If the proposed project has potential for indirect effects to archaeological sites, the APE may need to be expanded, and consultation with SHPO early in the scoping process should be considered. Consult the CSO Section 106 Branch Chief if a question arises.

It is permissible to distinguish direct APE and indirect APE on project maps, but users should note that they are Caltrans terms that have no regulatory basis. The

project's vertical and horizontal extent should always be considered in establishing both the direct and indirect APE.

Buildings and structures can be affected by land use changes and by visual, noise or atmospheric intrusions beyond the right of way. To consider these *indirect effects*, the APE for the built environment in an urban or suburban environment often includes one row of buildings beyond the proposed right of way, if warranted. The assessor's parcel may be used to define the boundaries of a property for inclusion within the APE. When warranted by the nature of the project or other factors such as topography or property size, the APE can be substantially larger or smaller. Judgment must be exercised where assessor's parcels are very large, as is often the case with rural properties. See [Chapter 4 Section 4.3](#) for additional guidance on setting the APE.

APE maps must be of a scale suitable to depict the boundaries of major project features (e.g., right of way, edge of pavement) relative to property boundaries.

The 106 PA makes Caltrans PQS and Project Managers jointly responsible for setting the APE. [Exhibit 1.6](#) outlines the Caltrans PQS levels that are allowed to set the APE and sign the map. They will sign any maps or plans that define or redefine an APE. For Local Assistance projects, the District Local Assistance Engineer (DLAE) will sign as the project manager. When the guidance in 106 PA [Attachment 3](#) is followed, specific consultation with SHPO typically will not be necessary. If consultation on the APE is deemed necessary, it should be initiated through the CSO Section 106 Branch Chief. While the 106 PA authorizes Caltrans to define the APE, SHPO and CSO may always comment on the adequacy of that delineation.

Cultural resources specialists conduct studies within the APE to identify the presence or absence of historic properties. When studies must begin prior to establishing the APE, district environmental branch PQS, in consultation with the PDT, may designate a reasonable "Study Area" for use in conducting cultural resources studies until an APE can be delineated. The Study Area should encompass all land that might possibly be included in the final APE. Project reports then would include both the final APE and the Study Area Map as appropriate.

If studies reveal a resource such as a large potential historic district or long linear feature that extends beyond the designated APE boundaries, the entire resource must be considered as a whole, even if, eventually, the APE may or may not be formally re-

vised to encompass the entire resource. See 106 PA [Attachment 3](#) for further guidance on the relationship of APE boundaries to larger historic properties.

The final APE map must be formally designated by the time the Historic Property Survey Report (HPSR) is complete because the final APE map appears as an exhibit in the HPSR, documenting this step in the Section 106 compliance process.

### **2.3.3.2 Seeking Information on Historic Properties**

The next steps in determining the scope of identification efforts include seeking information from consulting parties and others who might have knowledge of resources in the project area (preliminary research), and gathering information from Indian tribes regarding resources that might have cultural or religious significance to the tribe and thus might be eligible for the NRHP. Section 106 regulations require federal agencies to employ a “reasonable and good faith effort” to identify historic properties. In deciding what constitutes a reasonable and good faith effort, Caltrans PQS should consider the following factors for any particular undertaking:

- Past planning, research, and studies.
- Magnitude and nature of the undertaking.
- Degree of federal involvement.
- Nature and extent of potential effects on properties.
- Likely nature and location of properties within the APE.
- Applicable standards and guidelines.
- Confidentiality concerns.

#### ***Gathering Information on Historic Properties (Preliminary Research)***

Caltrans PQS and qualified consultants first look for previously evaluated properties within the APE. [Chapter 4 Section 4.4](#) discusses preliminary research in more detail. At a minimum, however, sources that are to be consulted on all projects include:

- 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.

The regulations specifically call for FHWA to consult with Indian tribes about properties that may have religious or cultural significance to them. The 106 PA authorizes Caltrans to carry out this consultation on FHWA's behalf; however, FHWA will honor the request of any Indian tribe for direct government-to-government consultation. [Chapter 3](#) discusses this process and Caltrans role in government-to-government consultation. Additional contacts for information about possible resources in the project area may include local historical societies, museums, and members of the public.

Although [36 CFR 800.4](#) calls for agencies to request information from SHPO, the California SHPO does not have staff or facilities to provide research services. By reviewing appropriate databases, consulting historical resource listings, and requesting records searches from Information Centers and other sources, as described in [Chapter 4](#) and documenting the results accordingly, Caltrans is deemed to have complied with this requirement.

### **2.3.3.3 Properties Exempt from Evaluation**

Caltrans, FHWA, and SHPO recognize that certain cultural resources categorically appear, under ordinary circumstances, to possess little or no potential for significance. Since the federal regulations require a "reasonable and good faith effort" to identify historic properties, Caltrans, SHPO, and FHWA have agreed to concentrate efforts on properties that *could* be significant. 106 PA [Attachment 4](#) contains a list of certain properties that are exempt from evaluation; however, it is important that Caltrans PQS determine which properties meet the requirements of Attachment 4. Further guidance is offered in [Chapter 4](#) on determining whether resources are exempt and documenting that determination.

### **2.3.4 Identification of Historic Properties**

Once the scope of identification efforts has been defined, and based on information that already has been gathered about cultural resources within the APE, it should be clear whether survey work is needed.

If additional survey is needed, Caltrans PQS determines the level of survey effort that is needed, as well as the need to conduct phased identification.

Phased identification may be necessary when the project has a number of alternatives, involves large land areas, or includes areas to which access is restricted. The latter often occurs when archaeological sites may be affected. When considering a phased approach, CSO must approve it and an MOA usually is required. Also, the process needs to allow for other consulting parties and the public to adequately express their views. See [Chapter 4](#) for more discussion. Consultants are strongly encouraged to seek early district PQS involvement in situations where phased identification is being considered.

#### **2.3.4.1 Historic Contexts**

In order to identify resources not previously known, cultural resources specialists undertake research to develop the historic context necessary to recognize the types of resources that may be present and the locations in which they are likely to occur as well as possible areas of significance. The results of the study are presented in a historical overview of the technical reports that the cultural resources specialists prepare. The context statement presented in the historical overview leads directly to site-specific discussions of cultural resources in the APE.

Work on the historic context usually extends through the research and survey stage and is completed prior to formal evaluation of resources. The context should be developed to the extent needed to understand the resources being studied. It should be a focused and practical synthesis, providing the information needed to evaluate and compare properties within that context. [Chapter 4](#) contains more information on historic context.

#### **2.3.4.2 Native American Consultation**

Identification of historic properties must be made in consultation with Native Americans. The 106 PA authorizes Caltrans to conduct consultation with Indian tribes; however FHWA retains ultimate responsibility for direct government-to-government consultation. [Chapter 3](#) contains guidance on consultation procedures.

#### **2.3.4.3 Field Surveys**

At the Project Study Report (PSR) stage, a walkover or a reconnaissance survey, along with preliminary research, can provide information on the likelihood of historic properties within a given corridor for comparison among project alternatives. This preliminary work should be pursued to the extent necessary to reveal the need for specific cultural resources surveys within an APE or Project Area. See [Chapter 4](#) Section 4.5.

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 APE previously has been surveyed to appropriate standards. See [Chapter 4](#) and [Chapter 5](#) for more information on when and how to conduct an archaeological survey and on how to assess the potential for buried resources.

All unevaluated buildings or structures within the APE, *regardless of date of construction*, will be considered. [106 PA Attachment 4](#) allows Caltrans PQS to exempt certain specific resources from evaluation. [Chapter 4](#) and [Chapter 7](#) contain more information on when and how to conduct an appropriate surveys and how to apply Attachment 4. All cultural resources within the APE that merit recordation and, when applicable, evaluation, will be examined, recorded, and evaluated by appropriate Caltrans PQS or qualified consultants.

### ***Survey Access and Field Safety***

Surveyors need to carry copies of any rights of entry paperwork when in the field. When a property owner or tenant objects to survey activity, or if a situation appears to present any threat, surveyors must leave the property immediately.

Permits may be required for access to certain public lands. When it is necessary to enter private property, Caltrans must obtain permission from property owners. District Right of Way (ROW) staff should handle all access requirements, but ROW may delegate to cultural resources staff notifying residents when the actual field survey will take place. A single District cultural resources staff member should be designated to coordinate with ROW to get access permission for all advance studies.

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 [Chapter 4 Section 4.6.3](#), [Chapter 5 Section 5.3.6](#), and [Chapter 6 Section 6.8.2](#) for specific information regarding survey access and field safety. Consult the Caltrans [Safety Manual](#) for additional requirements and guidance.

### **2.3.5 Evaluation of Historic Properties**

Next, Caltrans PQS and qualified consultants identify cultural resources within the APE that require evaluation. All buildings and structures within the APE and all ar-

archaeological sites that cannot be avoided must be identified, and as applicable, recorded and evaluated.

Caltrans PQS must examine buildings and structures regardless of age, ownership, or condition to determine whether they meet the criteria for exempt properties in [106 PA Attachment 4](#).

### **2.3.5.1 Research and Field Work**

Archaeologists and historical archaeologists conduct archaeological research, consult with Indian tribes and other Native Americans regarding prehistoric sites, and if necessary, conduct excavations, to evaluate archaeological resources. Architectural historians consult with local historical societies and groups, and conduct historical research and fieldwork to evaluate built-environment resources (e.g., buildings, structures, districts, objects, and complexes).

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

Caltrans PQS and qualified consultants conducting evaluations apply NRHP eligibility criteria (36 CFR 60.4) to each resource. Under the 106 PA, Caltrans district PQS make eligibility findings. Technical reports should state that Caltrans has determined that properties are eligible, or not eligible, for inclusion in the NRHP.

### **2.3.6 Documenting Identification and Evaluation Results**

Under the 106 PA, Caltrans districts must consult with SHPO and concurrently notify CSO on the results of its NRHP eligibility determinations. This is typically accomplished in the HPSR.

The HPSR may contain a number of other findings that document compliance with Section 106 requirements – findings that do not require separate or additional SHPO concurrence under the 106 PA:

- Establishment of the APE.
- Scope and summary of identification efforts: results of seeking and gathering information on historic properties, including consultation with Indian tribes, Native Americans, local governments and groups, and other interested parties.

- Summary evaluation of cultural resources that were previously listed or determined eligible for the NRHP, that were previously determined not eligible and whether these prior evaluations are still applicable, and that were determined eligible or ineligible for the NRHP as a result of the surveys attached to the HPSR, or that are considered eligible for purposes of the project only.
- No Historic Properties Affected: there are no historic properties (NRHP listed or eligible) in the APE (provided SHPO has concurred on eligibility).
- No Historic Properties Affected: there are historic properties in the APE but there will be no effects to them.

The SHPO or CSO may still comment on Caltrans identification efforts and APE delineation, but will rarely do so when all guidance has been properly followed. An Archaeological Survey Report (ASR) or a Historical Resources Evaluation Report (HRER), as applicable, is attached to the HPSR to support the above findings. If there are questions on appropriate level of effort or items not covered in the [SER Volume 2](#), consult the CSO Section 106 Branch Chief. Caltrans districts do not need to notify SHPO or CSO of a No Historic Properties Affected finding when the HPSR contains this finding and the HPSR is included in the district's files. [Exhibit 2.6](#) contains more information on HPSRs.

### 2.3.7 Transmitting National Register Eligibility Findings

The 106 PA allows Caltrans districts to submit all NRHP eligibility studies directly to SHPO with concurrent submittal to CSO. When a Caltrans district has been in consultation with an Indian tribe on the NRHP eligibility of a property, the Caltrans district may submit eligibility determinations to the Indian tribe for review prior to formal submittal to the SHPO and shall consider any comments received in the final determination. The Caltrans district shall notify the tribe of Caltrans' final eligibility determination concurrent with submittal to the SHPO and provide documentation to the tribe, unless the tribe has indicated it does not wish to receive such documentation.

Caltrans should send the documents to SHPO via certified U.S. mail, return receipt requested. Be aware, however, that there may be a lag of a few days between the time the mailroom receives the document and SHPO actually receives it and logs it in. SHPO review begins from the date SHPO staff logs it in.

Caltrans district also must notify and provide 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.

If Caltrans and SHPO agree on the determination of eligibility for a property, their joint finding constitutes a “consensus” determination of eligibility for purposes of Section 106 compliance.

If Caltrans and SHPO disagree on eligibility, the Caltrans district must promptly notify CSO. The Caltrans district, CSO, the SHPO, and any Indian tribe or other consulting party shall consult to resolve the disagreement in accordance with a mutually acceptable time frame. If the disagreement is resolved, the Caltrans district may proceed. In the rare cases that a disagreement is not resolved or if a mutually acceptable time frame to resolve the disagreement is not reached, CSO shall comply with [36 CFR 800.4\(c\)\(2\)](#). When consultation with the Secretary of the Interior is required, CSO will submit the documentation to the Keeper of the NRHP, requesting a “formal” determination of eligibility and will ensure that all concerns, including the views of the SHPO, any Indian tribe, or any other consulting party are included in the request. The Keeper’s determination is final.

### ***SHPO 30-Day Review of Eligibility Finding***

The Caltrans district transmits copies of its HPSR containing the “Determination of Eligibility” finding(s) and supporting documentation to SHPO for review and concurrently provides copies to CSO. According to the 106 PA, SHPO has 30 calendar days to respond from date of receipt at SHPO (date logged in). Date-of-receipt confirmation, which serves as the basis for determining the 30-day review period, may be provided through the SHPO database, a mail delivery receipt, or written or documented oral communication from the SHPO. SHPO’s response may be agreement with the findings in the HPSR, but also, it may be a request for additional information, in which case the 30-day time limit is no longer applicable to supplemental submittals ([Section 2.4.7](#) contains further information on the review process).

If the SHPO has not responded to the Caltrans District within 30 calendar days after receipt, the District may either extend the review period in consultation with the SHPO or proceed to the next step prescribed the 106 PA, based upon Caltrans’ determination of NRHP eligibility. Absent a mutually agreed upon extension, when the 30-day period has expired without SHPO comment, the Caltrans district shall notify the SHPO via email if the district is moving forward.

### 2.3.8 No Historic Properties Affected

Once all historic properties within the APE have been identified, the Caltrans district must determine whether the undertaking will have an effect on those properties [36 CFR 800.4(d)]. A finding of “No Historic Properties Affected” is appropriate when the undertaking will have no effect on historic properties, as defined in 36 CFR 800.16(i).

The No Historic Properties Affected finding applies when either

- The APE does not contain any historic properties at all, or
- Historic properties are present but the undertaking will not alter the characteristics that may qualify them for the NRHP.

#### ***Factors to Consider***

It is important to consider the following factors determining whether a finding of No Historic Properties Affected is appropriate for historic properties within the APE:

- An effect does not have to be negative to be an effect.
- To have an effect, the undertaking must have the *potential to alter the characteristics that qualify the property for inclusion in the NRHP*.
- The potential alteration does not have to be certain.
- Effects do not need to be direct and physical.
- Consideration should be given to changes that may occur in the reasonably foreseeable future.

#### 2.3.8.1 No Notification Required

When Caltrans has *not* consulted with SHPO or any other consulting parties on eligibility, either because

- 1) There were no cultural resources requiring evaluation in the APE (i.e., no cultural resources present or all properties qualified as exempt under [106 PA Attachment 4](#)), or
- 2) All properties in the APE were previously determined not eligible for the NRHP (e.g., Category 5 bridges),

The Caltrans district PQS documents a “No Historic Properties” finding by including the HPSR containing this finding in the district files. Checking the appropriate box on the HPSR form or adding a statement to that effect in a narrative HPSR will ac-

complete the documentation. It is not necessary to notify SHPO; see [Section 2.5.2 HPSR to District File](#) for processing information. If this finding is appropriate, Section 106 compliance is concluded.

### **2.3.8.2 Notification Required - No Historic Properties Affected**

When Caltrans has consulted with SHPO or any other consulting parties on a determination of eligibility for properties in a project's APE and finds that the project will result in

- 1) No Historic Properties Affected, either because all of the properties in the APE were determined by Caltrans to be not eligible for the NRHP or
- 2) There are historic properties in the APE but the project will not have an effect on them.

Caltrans must provide the SHPO and any other consulting parties with notification of that finding pursuant to 106 PA [Stipulation IX.A](#). Checking the appropriate box on the HPSR form or adding a statement to that effect in a narrative HPSR, and transmitting the HPSR as evidence of that finding will accomplish the notification; see [Section 2.5.2 "HPSR to SHPO"](#) for processing information.. If this finding is appropriate, Section 106 compliance is concluded.

When a Caltrans district finds there are historic properties that may be affected by the undertaking, the district shall apply the Criteria of Adverse Effect. If objections have been raised about the "No Historic Properties Affected" finding and they have not been resolved, the Caltrans district and CSO should apply the Criteria of Adverse Effect and work towards resolving the objection.

### **2.3.9 Effect Determinations**

The 106 PA requires the Caltrans district to determine whether the undertaking will have an effect on historic properties. If there will be an effect, the Caltrans district will make one of the following:

- Finding of No Adverse Effect (FNAE) either
  - with standard conditions (FNAE-SC), or
  - without Standard Conditions (FNAE-No SC),
- Finding of Adverse Effect (FAE).

[Section 2.5.3](#) contains guidance on the process for documenting these findings and consulting with SHPO.

### 2.3.9.1 Assessment of Adverse Effect

To assess effects, Caltrans district PQS apply the Criteria of Adverse Effect [36 CFR 800.5(a)(1) and (2)] to determine whether the proposed activity will adversely affect properties listed in or determined eligible for listing in the NRHP.

The FNAE applies when there will be an effect, but the effect will not alter any of the characteristics that qualify the historic property for the NRHP in a manner that would diminish any of the property's seven aspects of integrity. The FNAE-SC is appropriate when certain specific conditions are imposed on the undertaking (see below).

Aspects of Integrity	
• Location	• Workmanship
• Design	• Feeling
• Setting	• Association
• Materials	

According to the criteria, an adverse effect occurs when the integrity of the historic property may be diminished by the undertaking through alteration of the characteristics that qualify the property for the NRHP. Such alteration can be caused directly as a result of the undertaking or as an indirect consequence.

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.

### 2.3.9.2 Finding of No Adverse Effect

An FNAE is appropriate when:

- None of the undertaking's anticipated effects meet the Criteria of Adverse Effect.
- The Caltrans district and CSO, after consultation, modify the undertaking or agree to conditions that will avoid adverse effects.

#### ***Finding of No Adverse Effect with Standard Conditions***

There are two standard conditions that will avoid adverse effects under the 106 PA:

- 1) Protection of archaeological sites or built environment historic properties by designation of an Environmentally Sensitive Area (ESA); or

- 2) When the undertaking consists of maintenance, repairs, rehabilitation or alterations to historic properties and the work can be completed according to *Secretary of the Interior's Standards for Treatment of Historic Properties (SOIS)*.

When either of the standard conditions is imposed on an undertaking, the formal finding to conclude Section 106 would be a "Finding of No Adverse Effect with Standard Conditions" (FNAE-SC). Under the 106 PA, upon receipt of the FNAE-SC, CSO has 15 days SC to object to the finding. Neither SHPO nor FHWA need to review this finding, but FHWA is notified and CSO will send receive quarterly summary notification of such findings to SHPO.

While primarily used for archaeological sites, the first standard condition also may be used to protect built environment historic properties. When employing an ESA to avoid adverse effects, there are two major factors to consider:

- 1) For an archaeological site, it is permissible to assume that an archaeological site is eligible for the NRHP without conducting full evaluation studies, meaning that no excavation is needed. Where this approach is used, Caltrans states that a property is considered eligible "for the purposes of the undertaking." This avoids any unintended implications that would result in a property being automatically listed in the CRHR.
- 2) The Caltrans district PQS ensures that an ESA Action Plan is prepared. [Section 2.4.3](#), [106 PA Attachment 5](#), [Chapter 5](#), and [Exhibit 2.7](#) contain additional details on implementing ESAs and what should be included in an ESA Action Plan. [Exhibit 2.8](#) contains information on preparing an FNAE-SC-ESA.

The second standard condition is used primarily for built environment historic properties such as buildings and structures. Where adverse effects are avoided through maintenance, repairs, rehabilitation or alterations:

- 1) A Principal Architectural Historian with the requisite experience must review the proposed work items for consistency with the SOIS.
- 2) Principal Architectural Historian with the requisite experience must review the plans and specifications.
- 3) The Caltrans district PQS ensures that an SOIS action plan is prepared. [106 PA Attachment 5](#), [Chapter 7](#), and [Exhibit 7.5](#) contain additional details on use of the

SOIS and what should be included in an SOIS Action Plan. [Exhibit 2.8](#) contains information on preparing an FNAE-SC-SOIS.

- 4) The work must be monitored by a Caltrans PQS or a person who either meets the qualifications of Principal Architectural Historian outlined in the [106 PA Attachment 1](#), or meets the National Park Service Professional Qualifications Standards for Historic Architecture (36 CFR Part 61). See the guidance in [Chapter 1 Section 1.3.3](#) – Architectural History and History. The Built Environment Preservation Services (BEPS) Branch in headquarters is available for assistance and guidance when considering this approach.

The FNAE-SC and supporting documentation—whether for ESAs or SOISs—must be complete when the Caltrans district submits the proposed finding to CSO. The 15-day review period will not begin until CSO is in receipt of complete documentation. See [Exhibit 2.8](#) for more information.

### ***No Adverse Effect without Standard Conditions***

The Caltrans district may also propose an FNAE that does not employ either of the two above standard conditions. This is called a “Finding of Adverse Effect without Standard Conditions” (FNAE-No SC). As outlined in the 106 PA [Stipulation X.B.2](#), the Caltrans district submits the proposed FNAE-No SC and supporting documentation to CSO for review and concurrently provides documented notification of the finding to any consulting parties that have expressed views regarding potential effects to historic properties. The notification shall include a request that any comments be directed to CSO within 30 days of receipt of notification.

If CSO agrees with the proposed finding, CSO shall consult with the SHPO pursuant to 106 PA [Stipulation X.B.2.a](#). Caltrans has not assumed FHWA’s responsibilities for environmental review and compliance, CSO shall concurrently notify FHWA of the finding.

SHPO and consulting parties then have 30 calendar days from of receipt of the notification to object to the finding. If there is no objection within this time frame, the undertaking is not subject to further review under the 106 PA. However, SHPO’s review time may be extended beyond the 30-day time frame when SHPO and CSO or FHWA (when Caltrans has not assumed FHWA’s responsibilities for environmental review and compliance) agree to an extension. Date-of-receipt confirmation, which serves as the basis for determining the 30-day review period, may be provided

through the SHPO database, a mail delivery receipt, or written or documented oral communication from the SHPO. When the 30-day period has expired without SHPO comment, the Caltrans district shall notify the SHPO via email that the district is moving forward. Disagreements or objections to a finding of no adverse effect will be addressed in accordance with 106 PA [Stipulation X.D.](#)

### **2.3.9.3 Finding of Adverse Effect**

An undertaking is considered to have an adverse effect when *any* aspect of an undertaking meets one or more of the Criteria of Adverse Effect. Caltrans also may make a finding of Adverse Effect after a consulting party has indicated its disagreement with a NAE finding, or when SHPO objects to a finding of No Adverse Effect that employs other than standard conditions.

An undertaking may have no effect on some properties, but an adverse effect on others. In this situation, the finding for the undertaking would be “Adverse Effect.” For the undertaking as a whole, there is one finding of effect.

Under the 106 PA, the Caltrans district proposes to CSO a finding of “Adverse Effect” (FAE) and then CSO consults with SHPO. This is usually accomplished through a Finding of Adverse Effect document. Once the Caltrans district, CSO, SHPO, and consulting parties reach an agreement on the FAE, they move to the next step, resolving adverse effects. The purpose of this step is to continue consulting to reach agreement on measures that will enable the undertaking to proceed. The goal is to find measures that avoid or reduce harm to historic properties. Note that an adverse effect finding may trigger FHWA Section 4(f) policy that requires a legal sufficiency review.

### **2.3.10 Resolution of Adverse Effects**

When there is an adverse effect, CSO consults with SHPO on ways to avoid or reduce the adverse effect. The Caltrans district must invite Indian Tribes to be consulting parties under certain circumstances. Chapter 3 contains more guidance for involving Indian tribes in the resolution of adverse effects. Specifically, the regulations provide that the federal agency shall consult with Indian tribes “to develop and evaluate alternatives or modification to the undertaking that could avoid, minimize, or mitigate adverse effects on historic properties” [[36 CFR 800.6\(a\)](#)]. The Caltrans district also must invite local governments with jurisdiction over the area in which the effects of an undertaking may occur to be consulting parties [[36 CFR 800.2\(c\)\(3\)](#)].

The Caltrans district and CSO, in consultation with SHPO *may* invite other groups and individuals to join the consultation if they have a demonstrated interest in the undertaking, and have submitted a written request to Caltrans to join the consultation. Demonstrated interest may include legal or economic relation to the undertaking or affected historic properties or concern with the undertaking's effects.

In the rare situation that CSO and SHPO are unable to resolve the adverse effects, they must invite Council to participate in the process.

### **2.3.10.1 Consultation to Develop Agreement**

The consulting parties must make a good-faith effort to find acceptable ways to avoid or reduce the effects on historic properties. The Caltrans district gathers needed documentation, informs the public about the undertaking through its public involvement procedures, and works with the consulting parties to find a solution. The parties may agree to accept adverse effects when no reasonable alternatives are available and when the undertaking is in the best public interest despite the adverse effects on historic properties.

### **2.3.10.2 Memorandum of Agreement**

When CSO and SHPO have reached an agreement for avoiding, reducing, mitigating, or accepting adverse effects on historic properties, they sign a Memorandum of Agreement (MOA). The Caltrans district shall be a concurring party to the MOA whenever it is required to perform any action as part of the agreement. See [Exhibit 2.10](#) for additional guidance on MOAs.

The MOA serves three important functions in the Section 106 process:

- It completes the process for a project on which an adverse effect will occur.
- It specifies the measures that will be implemented to mitigate, avoid, or reduce adverse effects on historic properties.
- It establishes responsibility for implementing each of the measures.

In situations where the adverse effect is to an archaeological property that is significant exclusively under NRHP Criterion D, the Caltrans district may follow the Data Recovery Plan (DRP) proposal in [106 PA Attachment 6](#) in order to resolve adverse effects. DEA and the Caltrans district both must enter into an MOA with SHPO to ensure the provisions of the DRP will be carried out as specified.

For most Caltrans projects, the MOA will be a two-party agreement between DEA and SHPO, with Caltrans as a concurring party. Note that an Indian tribe, local government, or other interested individuals may be invited to be concurring parties to the MOA, if CSO so decides. Unless they are assigned specific duties under the MOA, their failure to sign the MOA does not invalidate it and does not stop the MOA from being implemented.

In rare circumstances the Council may be involved in the resolution of Adverse Effects and also would sign the MOA. This would happen when CSO, SHPO, and the Caltrans district are unable to reach agreement among them and the Council has been asked to participate. Whether or not the Council is involved, CSO must provide a copy of the MOA to the Council for inclusion in their files for documentation of the agency's implementation of Section 106.

### **2.3.11 Implementation of Agreement**

If the Section 106 process has resulted in a signed MOA, the Caltrans district proceeds with its project according to the terms of the MOA. Caltrans and any other parties with responsibilities under the MOA usually carry out the mitigation measures after the final environmental document is approved but before or during construction (See [Exhibit 2.3](#) for additional information on Caltrans WBS codes and funding sources). Within 90 days after completing all the required mitigation measures under the terms of an MOA, the Caltrans district reports to those who signed the MOA, usually DEA and SHPO, on actions completed.

### **2.3.12 Council Failure to Agree and Termination**

In the rare instances when the MOA signatories and/or consulting parties fail to agree on terms for an MOA, the consultation may be terminated. In the event of termination, CSO shall request the Council comments on the undertaking. As outlined in [36 CFR 800.7\(4\)](#), the Caltrans Director must take into account Council's comments.

The Caltrans Director's decision must be documented by:

- (i) Preparing a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's comments and providing it to the Council prior to approval of the undertaking;
- (ii) Providing a copy of the summary to all consulting parties; and
- (iii) Notifying the public and making the record available for public inspection.

[\[36 CFR 800.7\(4\)\]](#)

Upon documenting its decision, Caltrans makes the final decision about whether or how to proceed with its proposed activity, after which, CSO notifies Council.

The *Council does not have veto power over a project*. Council comments go to the Caltrans Director, however, and there can be a significant delay to final approval of projects.

## 2.4 Special Considerations

### 2.4.1 Considering Alternatives

Preliminary studies, such as walkovers and reconnaissance surveys, should be undertaken early in the planning and development process, at the Project Study Report (PSR) stage. 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.

When the draft environmental document is prepared, each alternative is presented in roughly *equal* detail, and the proposed treatment of each historic property that would be affected by each alternative is described in an appropriate level of detail. The SHPO's views on eligibility and effect should be included in the draft environmental document. A range of suitable mitigation options, rather than a precise commitment, may be presented if mitigation plans are not yet complete. Note that the above information is required to be included in the draft environmental document before Caltrans can process it (i.e., allow it to be circulated for public review).

## 2.4.2 Emergency Situations

Section 106 responsibilities are not waived in emergencies, but alternative procedures are outlined in [36 CFR 800.12](#) when the work proposed is an essential and immediate response to an officially declared disaster or state of emergency.

**Emergency work must be implemented within 30 days following declaration of the emergency.**

The Caltrans district may request an extension of the period of applicability from the SHPO prior to passage of the 30 days.

### 2.4.2.1 Declared Emergency

Under the 106 PA [Stipulation XVI.A](#), an emergency or a disaster must be officially declared by the President, California Governor, tribal government when on tribal lands, Caltrans Director or District Director in order to use these procedures. Emergency situations also occur when there is an imminent threat to public health or property; rescue and salvage operations to preserve life and property are exempt from review.

### 2.4.2.2 Emergency Procedures

First, the Caltrans district PQS determines whether the emergency undertaking has the potential to affect historic properties. If no historic properties are affected, the District PQS completes an HPSR to District File with a Finding of No Historic Properties Affected.

If historic properties are likely to be affected by the emergency undertaking:

- 1) The Caltrans district PQS requests expedited consultation with SHPO and concurrently notifies CSO, FHWA where responsibilities have not been assumed, and any Indian tribes that might attach religious or cultural significance to the affected property and afford them an opportunity to comment within *seven calendar days* of the notification. Caltrans district may furnish this information through correspondence, hard copy, electronic media, telephone, or meetings, at its discretion taking into account the capabilities of the consulting parties and must document this process for the administrative record.
- 2) The notification to shall include, to the extent such information is available:
  - a) Description of the nature and extent of the property or properties

- b) Assessment of NRHP eligibility of any properties,
  - c) Type and extent of any damage to the property(ies)
  - d) Proposed action, any prudent and feasible treatment measures that would take any effects into account
  - e) Request for comments
- 3) If the Caltrans District determines that circumstances do not permit seven days for comment, the Caltrans district PQS shall notify the parties and invite any comments within the time available.

Within six month following the notification, the Caltrans district PQS provides the SHPO, CSO, and any additional consulting parties, including the Corps if a Department of the Army Authorization (DA) permit is required, a narrative report documenting the actions taken in accordance with this decisions made in accordance with this expedited consultation process. The follow-up report may follow the applicable guidance for documenting FNAE-SCs and FNAEs without standard conditions (see [Exhibit 2.8](#)) and for FAEs (see [Exhibit 2.9](#)).

#### **2.4.2.3 Work Implemented After 30 Days of Declared Emergency**

Caltrans districts shall follow 106 PA Stipulations VII through XI for all emergency undertakings to be initiated more than 30 days following declaration of an emergency, unless SHPO approved an extension.

The Caltrans District Environmental Branch should immediately contact FHWA, or 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.

#### **2.4.3 Environmentally Sensitive Areas**

Environmentally Sensitive Areas (ESAs) are locations of identified cultural, biological, or other resources that are to be protected by avoidance during Caltrans activities. Where establishment of an ESA protects an archaeological property, Caltrans may consider such properties NRHP eligible for the purposes of the undertaking without conducting subsurface testing or surface collection. Caltrans PQS must establish the ESA according to provisions of [106 PA Attachment 5](#). In this situation Section 106 compliance would be concluded with an FNAE-SC-ESA (see [Sections 2.3.7](#) and [2.5.3](#))

for further guidance on ESAs and effect findings). If other values are attached, consultation with SHPO may be necessary to determine whether the ESA is sufficient to protect the property from adverse effects.

Careful use of ESAs is imperative:

- Failure to honor an ESA during construction *will* result in reopening the Section 106 process, causing project delays and jeopardizing continuing use of ESAs in general and/or loss of federal-aid funds.
- Effective protection of a designated ESA may require such an extensive commitment of staff time that site evaluation and treatment might be a more prudent course of action.

Generally, ESAs are designed for protection from casual, inadvertent damage, peripheral to the project. However, as designation of an ESA suggests a potential for project effects to the site, any site protected by an ESA must be included entirely within the APE.

[Exhibit 2.7](#) on ESA Action Plans contains guidelines and format instructions.

#### **2.4.4 Post-Review Discoveries**

Post-review discoveries most commonly occur when previously unidentified archaeological sites are uncovered during construction. However, other previously unknown resources could be discovered, or a project could be found to have unexpected effects on known historic properties.

If a post-review discovery occurs, work in the area of the resource must stop immediately. The Caltrans district must immediately notify SHPO, CSO, FHWA if applicable, and any Indian tribes as appropriate.
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If a project has substantial potential for post-review discoveries, Caltrans is encouraged to develop a plan to deal with them ([36 CFR 800.13\[a\]](#) and 106 PA [Stipulation XV](#)). Planning for discoveries is undertaken as part of Section 106 consultation with SHPO (see [Chapter 5](#) for more details on planning for and managing discoveries). Usually a signed MOA implements a treatment or discovery plan. Then, when discoveries are made, the Caltrans district need only proceed according to that plan.

When there is no plan in place and an undertaking affects a previously unidentified property or affects a known historic property in an unanticipated manner, the Caltrans district shall promptly stop construction activity near the property and implement all

reasonable measures needed to avoid, minimize, or mitigate further harm to the property. If the discovery involves a newly identified property, the Caltrans district may assume it to be NRHP eligible for the purposes of Section 106. [Exhibit 5.12](#) contains additional guidance.

Once a discovery is made, the 106 PA provides for the following actions:

- Caltrans district notifies CSO and SHPO within 48 hours. Caltrans district may furnish this information through correspondence, hard copy, electronic media, telephone, or meetings, at its discretion taking into account the capabilities of the consulting parties and must document this process for the administrative record. Notification shall include, to the extent such information is available:
  - Description of the nature and extent of the property or properties
  - Assessment of NRHP eligibility of any properties, the type
  - Extent of any damage to the property,
  - Proposed action, any prudent and feasible treatment measures that would take any effects into account
  - Request for comments
  - Caltrans district may furnish this information through correspondence, hard copy, electronic media, telephone, or meetings, at its discretion taking into account the capabilities of the consulting parties and must document this process for the administrative record.
- Caltrans district notifies Indian tribes and/or Native American groups that may attach religious or cultural significance to the property within 48 hours.
- Notified parties have 72 hours to respond to the Caltrans district with comments.
- Caltrans district must consider their comments in determining an appropriate course of action.
- Caltrans district then may carry out the determined course of action, with ongoing consultation as appropriate.
- If a National Historic Landmark is affected, the Caltrans district includes the Secretary of the Interior and the Council in the notification process (See 106 PA [Stipulation XV](#)).

#### **2.4.5 Protecting National Historic Landmarks**

National Historic Landmarks (NHLs) are properties of the highest level of national significance. Under Section 110(f) of the National Historic Preservation Act, federal agencies must give special protection to NHLs that may be affected by federal under-

takings. Any NHLs within a project area must receive additional consideration, as described in [36 CFR 800.10](#).

When an undertaking may adversely affect a NHL, the Caltrans district must include the Council as a consulting party to an agreement and must report the outcome of the Section 106 process to the President, Congress, and Secretary of the Interior.

#### **2.4.6 Public Participation**

The goal of public participation in the Section 106 process is to ensure that interested persons are able to learn about and voice their views on the potential effects of a project. Interested persons are defined as organizations and individuals that are concerned with the effects of an undertaking on historic properties. The Caltrans district shall document evidence of coordination with all interested persons and the results of that coordination in its Section 106 documents.

During the identification and evaluation stage, Caltrans district PQS identify and invite interested members of the public to provide information on cultural resources. Caltrans district PQS must notify all consulting parties and members of the public who express an interest in the proposed project during pre-field research of the results of the identification phase, even when no historic properties are found within the APE. When historic properties are found that may be subject to project effects, persons who have expressed an interest may want to continue participation. Consultation must protect the confidentiality or sensitivity of cultural resources.

Public participation in the Section 106 process may be achieved by using Caltrans's procedures for compliance with the National Environmental Policy Act (NEPA) and Caltrans project development process. Participation may include public meetings, hearings, or newspaper notices, although the degree of effort and timing may vary. The Caltrans district must include public comments and opinions and responses to those comments in the documentation for the public participation process. Usually this involves attaching contact letters to the HPSR and summarizing any responses in the HPSR.

##### **2.4.6.1 Consulting Parties**

Caltrans shall involve the following parties to participate as consulting parties in the consultation to resolve Adverse Effects to historic properties ([36 CFR 800.2](#)):

- SHPO [36 CFR 800.2(c)(1)].

- Tribal Historic Preservation Officer (THPO) for tribes that have assumed SHPO responsibilities when affected historic properties are on tribal lands, or representative of a federally recognized Indian tribe when an undertaking will affect Indian lands or properties of historical or cultural value to the tribe on non-Indian lands [36 CFR 800.2(c)(2)].
- Indian tribes, when the undertaking involves historic properties of religious or cultural significance to the tribe.
- Head of a local government, when the undertaking may affect historic properties within the local government's jurisdiction (its area of authority or control) [36 CFR 800.2(c)(3)].
- Applicants for federal assistance (such as Caltrans), and applicants or holders of grants, permits, or licenses that are subject to Section 106 review [36 CFR 800.2(c)(4)].

Upon request and in consultation with SHPO, Caltrans may invite others to participate as consulting parties in the consultation to resolve adverse effects to historic properties. Individuals and organizations with a demonstrated interest in the undertaking, due to their legal or economic relation to the undertaking or the affected historic properties, or their concern with the undertaking's effects on historic properties are in this category [36 CFR 800.2(c)(5)]. This may include for example owners who hold title to real property within an undertaking's APE, private historic preservation organizations, or non-federally recognized Indian tribes. Caltrans must consider all written requests of individuals or organizations to participate as consulting parties.

If a proposed project may affect federal or state lands, the Caltrans district shall contact the appropriate land-holding agencies for information regarding historic properties on their land and shall formally invite the agencies to be parties to any subsequent actions.

#### **2.4.6.2 U.S. Forest Service and National Park Service as Consulting Parties**

The U.S. Forest Service and the National Park Service have requested to be consulting parties on all projects that affect historic properties on their lands. For such projects, the Caltrans district shall:

- Request information from the appropriate National Forest or National Park to assist in the identification of historic properties

- Notify both the Forest Supervisor and the Forest Service Regional Forester or the National Park Superintendent and the National Park Service Regional Director of No Historic Properties Affected findings
- Consult with the Regional Forester and Forest Supervisor or with the National Park Superintendent and National Park Service Regional Director on Adverse or No Adverse Effect determinations
- Routinely invite the Regional Forester or the National Park Service Regional Director to be a consulting party for any project in which adverse effects will occur on historic properties in that jurisdiction

#### **2.4.7 SHPO Review Times**

Section 106 regulations (36 CFR 800) specify review times for various stages in the process, but they should not be misinterpreted or underestimated. With the 106 PA, SHPO has agreed in principle to respond to Caltrans determinations of NRHP eligibility within 30 days. Below are some circumstances that can affect review times:

- The SHPO interprets the 30-day review period as beginning when a document is received in the office, date-stamped and logged. The review period ends when SHPO signs the response letter. Allow for additional mail and handling time.
- Review time lengthens if SHPO must request additional information or questions a finding. Clear, logical, well documented, and well-justified findings help reduce delays.

It is best to start the process early, prepare adequate documents, and schedule enough time to allow for any complications or delays. It is important to remember that individual projects may be subject to higher levels of scrutiny and associated delays.

#### **2.4.8 Section 4(f) as it relates to Section 106**

##### ***“Use” of Historic Property***

Section 4(f) of the 1966 Department of Transportation Act prohibits use of land from any historic property on or eligible for the NRHP unless there is no feasible and prudent alternative to the use of land from the affected historic property *and* the project includes all possible planning to minimize harm. The implementing regulations for Section 4(f) appear in 23 CFR 774. FHWA has issued “[Guidance for Preparing and Processing Environmental and Section 4\(f\) Documents](#),” which can be downloaded but is a very large document. Prepared as part of the environmental document, a Section 4(f) evaluation may be required when there is a finding of “Adverse Effect”

under Section 106 or a “No Adverse Effect” when there is a full or partial take of the historic property or there are other indirect effects.

Caltrans determines whether Section 4(f) applies to specific projects. Section 106 mitigation measures normally will support the finding under Section 4(f) that all possible measures to minimize harm have been incorporated into the project.

Caltrans may determine that Section 4(f) does not apply to restoration, rehabilitation, or maintenance of historic transportation facilities when:

- Caltrans concludes the work will not adversely affect the historical qualities of the facility.
- SHPO and Council do not object to this finding.

Section 4(f) does not apply to archaeological sites that are determined important chiefly for their information value and have minimal value for preservation in place. This principle applies regardless of whether data recovery is undertaken. If an archaeological site is eligible for values beyond its information, Caltrans will consider whether 4(f) applies in a case-by-case basis. While disturbances to archaeological sites known or likely to have human burials would constitute an adverse effect under Section 106, such disturbance would not necessarily require a Section 4(f) evaluation. The key is whether the site merits preservation in place, not what specific values are present.

Where a project involves an archaeological site eligible for values beyond information, the Caltrans district should ask DEA as early as possible to determine whether a Section 4(f) situation exists. DEA then would decide if a Section 4(f) analysis is warranted.

The Section 4(f) evaluation usually is presented in the draft environmental document, but it may appear as a separate document. It must demonstrate why the alternatives to avoid a Section 4(f) property are not feasible and prudent, and describe the measures that will be taken to minimize harm to the Section 4(f) property.

Two nationwide programmatic Section 4(f) evaluations apply to historic properties and serve mainly to streamline the FHWA process. *These programmatic Section 4(f) evaluations do not change the substantive requirements of Section 4(f), that is, the evaluation of avoidance and all possible measures to minimize harm.* These can be downloaded from FHWA's Environment web site.

- Programmatic Section 4(f) Evaluation and Approval for FHWA Projects that Necessitate the Use of [Historic Bridges](#), which allows demolition of historic bridges if they are not National Historic Landmarks, there is no prudent and feasible way to save the bridge, and FHWA, SHPO and the Council have reached agreement on the project under Section 106.
- Nationwide Section 4(f) Evaluation and Approval for Federally-Aided Highway Projects with [Minor Involvements](#) with Historic Sites, which pertains to undertakings with only minor effects on historic properties, which result in No Historic Properties Affected or No Adverse Effect findings under Section 106, SHPO agrees in writing to the finding, and Council does not object to the finding of No Adverse Effect.

These programmatic Section 4(f) evaluations are contained in the Federal Register 48[163], August 22, 1983, pp. 38135-38140; and 52[160], August 19, 1987, pp. 31111-31119.

### ***Constructive Use***

Although its application is extremely rare, Section 4(f) also may apply when the effects are not direct impacts (or direct takes); such impacts are called a “constructive use.” Constructive use means there are proximity (or non-direct) impacts to a historic property that is so severe that the property's features or attributes are substantially impaired. Adverse effects that are proximity impacts (such as visual, audible, or atmospheric effects) may or may not be considered constructive use under Section 4(f). It would depend on the magnitude of the effect and whether the proximity impact causes substantial impairment to the qualities that make the property eligible for the NRHP.

FHWA's Washington, DC office determines whether proximity impacts constitute constructive use under Section 4(f). Such a determination requires approximately six months to process through FHWA. The DEBC consider “constructive use” findings very carefully and should allow for that extra time when scheduling preparation of the environmental document.

## 2.5 Section 106 Documents

### 2.5.1 Introduction

Three primary documents serve as compliance vehicles for the Section 106 process: the Historic Property Survey Report (HPSR), the Finding of No Adverse Effects, and the Finding of Adverse Effect (FAE). See Exhibits [2.6](#), [2.8](#) and [2.9](#), respectively. The HPSR is a summary document for reporting the scope of identification efforts and evaluation of cultural resources with the supporting technical reports containing the detailed analyses appended to it. For Caltrans projects the archaeological survey report (ASR) and occasionally the Extended Phase I Report, serve as the supporting technical reports for prehistoric archaeological resources. See [Chapter 5 Sections 5.4.5](#) and [5.5.5](#). The Historic Resources Evaluation Report (HRER) may be used as supporting documentation for historical archaeological resources and built environment resources. See [Chapter 6 Section 6.10](#) and [Chapter 7 Section 7.11](#). A finding of effect document is prepared subsequent to the HPSR and is used to present an analysis of effect determinations when a project may affect historic properties. See [Exhibit 2.11](#) for the number of report copies to distribute and [Exhibit 2.12](#) for sample transmittal letters to SHPO and CSO.

### 2.5.2 Historic Property Survey Report

Caltrans uses the HPSR as the primary document to fulfill several requirements of 36 CFR 800. In addition to being the summary cover document for its attachments, the HPSR contains Caltrans's legal findings under the 106 PA and [36 CFR 800.3](#) and [800.4](#). It documents Caltrans's efforts to identify historic properties; evaluate the NRHP eligibility of cultural resources, when there are resources that need to be evaluated; and document a finding of No Historic Properties Affected, if applicable.

In very rare instances, with prior CSO approval, it may be possible to streamline the Section 106 process for simple projects with no potential for disagreement or controversy by using the HPSR to document No Adverse or Adverse Effect findings. *In almost all cases*, however, such effect findings should be submitted in a separate finding of effect document, after the SHPO has concurred on the scope of identification efforts and adequacy of the evaluation efforts.

The HPSR serves a number of functions, in addition to being the cover document for the technical reports. The HPSR:

- Summarizes the identification efforts, which includes documenting the APE.

- Summarizes the NRHP eligibility conclusions for cultural resources described and evaluated in the attached reports and indicates that these supporting documents contain full technical details.
- Provides evidence of coordination with local Native American groups, local governments, historical societies, and other interested persons.
- Requests SHPO's comments and concurrence on the NRHP eligibility determinations contained in the HPSR.
- Analyzes and documents a finding of No Historic Properties Affected when there are no historic properties within the APE or there is no effect on historic properties.
- Analyzes and documents a finding of No Adverse Effect with Standard Conditions when an ESA is imposed on the undertaking, or historic properties are subject to alteration, maintenance, repairs or rehabilitation according to the *Secretary of the Interior's Standards for the Treatment of Historic Properties*.
- Provides evidence that Caltrans has satisfied federal and state environmental laws regarding the identification of cultural resources.

Because the majority of Caltrans projects for which HPSRs are prepared do not affect historic properties, this document, with its attachments, typically is the only document for Section 106 compliance. Because the HPSR can address multiple issues in a single document, it can consolidate and reduce the number of documents needed for SHPO review, and can thus help reduce overall preparation, transmittal, and review time.

An HPSR can vary greatly in length and complexity because the studies necessary to identify cultural resources will also vary, depending on the project and the types of resources within the APE or Study Area. For example, cultural resources studies must be conducted when there are buildings or structures present that are not exempt from evaluation as outlined in 106 PA [Stipulation VIII.C.1](#) and [Attachment 4](#). An archaeological study will be undertaken when a project would disturb the ground, but may not be required when the ground within the proposed project area is completely disturbed by prior modern construction. See [Exhibit 2.3](#) for a rough estimate of the length of time needed to complete the variety of cultural resources studies that might be necessary.

The body of the report should be very brief when summarizing attached technical reports. However, when the HPSR also is used to convey a No Historic Properties

Affected finding, it must contain all information necessary to describe and support the finding.

The HPSR's content should be carefully 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 attached technical report, duplicates can be removed before submittal to SHPO. For large or complex projects or those with a large number of cultural resources, the narrative HPSR is used and tabs may be used to guide reviewers to the various sections or attachments. The HPSR form is used only for simple, straight-forward projects, but use of the form is optional.

[Exhibit 2.6](#) provides instructions for preparing HPSRs. Templates for both the narrative HPSR and the HPSR form are available in the templates section of the Caltrans SER volume 2-Cultural Resources website.

### **2.5.2.1 HPSR Types of Findings**

There are three types of HPSR findings, depending upon the presence and type of cultural resources within the APE. The "HPSR to District File" is fairly straightforward and simple and is used only in very specific situations to report that there are no cultural resources in the APE; those situations are outlined below. The "HPSR to SHPO" is used to report the existence of cultural resources that required evaluation beyond identification, as described in the subsequent section. The "HPSR to CSO" is used to document No Adverse Effects with Standard Conditions findings when it is possible to avoid potential effects through the establishment of an ESA or by using the SOIS; see [Section 2.3.9.2](#).

Caltrans PQS or consultants prepare the HPSR and supporting technical reports. For "HPSR to File," the Caltrans district places the HPSR and supporting documentation in the district files. For "HPSR to SHPO," that is, properties are evaluated whether or not they are determined eligible, the Caltrans district concurrently transmits the "HPSR to SHPO" and supporting documentation to SHPO and provides a copy to CSO. Caltrans's memo transmitting the HPSR requests SHPO's comments on the determinations of eligibility findings for any evaluated cultural resources in the APE. For "HPSR to CSO," for FNAE-SCs, the Caltrans district transmits the HPSR and supporting documentation to CSO.

### ***HPSR to District File***

The list below contains findings that are appropriate for the “HPSR to District file” section of the HPSR and that certifies that no historic properties are located within the APE and/or that the undertaking will have no effect to historic properties within the APE.

#### ***Appropriate Uses of HPSR “Finding – HPSR to District File”***

This Finding may be used when there are:

- *No cultural resources* at all within the APE
- Archaeological sites, buildings, structures, and other non-archaeological resources within the APE, but *only*:
  - Resources meeting the criteria for Properties Exempt from Evaluation in 106 PA Attachment 4.
  - Resources previously determined not eligible for the NRHP and that determination remains valid.
- Bridges in the APE that are listed as Category 5 in the Caltrans Historic Highway Bridge Inventory and subsequent updates
- Properties within the APE were previously determined eligible for the NRHP, those determinations remain valid, but the properties will not be affected by the undertaking.
- Caltrans has determined that archaeological sites within the APE are considered eligible for the NRHP for the purposes of this project only and will be protected from potential effects by using ESAs.
- Caltrans has determined that the properties within the APE are considered eligible for the NRHP for the purposes of this project only because evaluation was not possible and CSO has approved this finding.
- Caltrans has determined a Finding of No Historic Properties Affected because Caltrans determined that all of the resources in the APE are not eligible for the NRHP *and* prior SHPO consultation is documented.
- Caltrans has determined a Finding of No Historic Properties Affected is appropriate for this undertaking and there are historic properties within the APE but the undertaking will have no effect on them; explain why they would not be affected.
- Caltrans has determined a Finding of No Adverse Effect, Local Bridge Seismic Retrofit Program, Undertakings not requiring SHPO or ACHP review is appropriate for this undertaking because the work is confined to: abutment catcher blocks,

CIDH piling, fiber wrapping, base isolation, with no ground disturbance, pre-stressing bent caps, restrainer systems, steel bracing, steel jacketing\*\*, or column replacement\*\* (\*\*Work conforms to the SOIS and has been approved by PQS staff meeting the standards in [106 PA Attachment 1](#) as a Principal Architectural Historian). If the project also includes ground disturbing activities, haul roads, utility locations, construction staging areas, or any activity other than what occurs on the bridge this finding will not be appropriate.

### *Processing the “HPSR to District File”*

District PQS or consultants prepare the document. Under the 106 PA, for projects handled under an ND/FONSI, the Caltrans PQS’s review for approval signature and the DEBC’s approval signature completes the Section 106 process. As there are no properties for which SHPO concurrence is needed, the report does not get transmitted to SHPO. The environmental document summarizes the results of the findings and includes a statement that no historic properties were identified within the APE.

The District Environmental Branch retains the signed HPSR and supporting documentation in its project files. The District HRC sends one copy of the completed HPSR with supporting documentation to any consulting parties, and one copy to the appropriate Information Center.

### *HPSR to SHPO*

When cultural resources that require evaluation are present in the APE, *whether eligible or not*, the Caltrans district PQS complete the “HPSR to SHPO” section transmits the HPSR to SHPO for concurrence on the eligibility findings. These HPSR findings are used even if the resources present will not be affected by the proposed project.

### *When to use “HPSR to SHPO”*

This section of the HPSR is completed when the APE contains:

- Any built-environment cultural resources that require evaluation.
- Any archaeological sites that require evaluation.
- Any Native American cultural site that require evaluation.

Under most circumstances, NRHP eligibility evaluations for built-environment resources (such as buildings, structures, and districts) are included in the Historic Resources Evaluation Report (HRER). Prehistoric archaeological sites are evaluated

in an Archaeological Evaluation Report (AER), while historical archaeological sites are evaluated in an HRER. These evaluation documents are attached to the HPSR.

On occasion, a “HPSR to SHPO” section also may be used when archaeological sites in the APE will require Phase II test excavations to determine their NRHP eligibility. In these circumstances, the HPSR documents the presence of potentially eligible sites within the APE and states that archaeological testing to determine eligibility will be undertaken if the selected alternative will affect the sites and the project cannot be redesigned to avoid them. After a test excavation is completed, the Caltrans district must transmit a Supplemental HPSR with the test excavation report to SHPO.

#### *Processing the “HPSR to SHPO”*

Under the 106 PA, these HPSRs and Supplemental HPSRs are processed as described below.

The District HRC transmits one copy of the “HPSR to SHPO” and attached documentation to SHPO and one copy to CSO along with a copy of the transmittal letter. The HRC should send one copy to consulting parties (such as Indian tribes or local governments) at this time so they have an opportunity to convey any comments to SHPO. The Caltrans district letter to SHPO transmitting the HPSR will request SHPO’s concurrence on Caltrans’s determinations of eligibility. If pertinent, the letter may state Caltrans has made a finding of No Historic Properties Affected or No Adverse Effect with Standard Conditions and is transmitting that finding to CSO in accordance with the 106 PA. In order to reduce paperwork, if there are state-owned historical resources within the APE, the HPSR and the transmittal letter also will request SHPO’s comments under PRC 5024(b) to add the state-owned historical buildings or structures to the Master List of Historical Resources (Master List) pursuant to [PRC 5024\(d\)](#). (See [Exhibit 2.12](#) for sample transmittal letters.)

Note that under the 106 PA, Caltrans is acting as assigned by FHWA. In addition, Caltrans is given the authority to determine the APE and scope of identification efforts, but SHPO reserves the right to comment on both. SHPO’s response may be concurrence, but also may be a request for additional information.

In the rare event that the Caltrans district, CSO and SHPO do not reach agreement on determination(s) of eligibility, CSO must obtain a formal determination of eligibility from the Keeper of the National Register, whose determination is final.

Once SHPO has concurred on Caltrans eligibility determinations and the district finalizes HPSR and the District HRC sends a copy of the HPSR and transmittal letter to the CSO Section 106 Branch Chief for filing and a copy of the HPSR to the appropriate Information Center. The District HRC notifies any consulting parties of SHPO's concurrence. If the HPSR included state-owned resources, the District HRC also notifies the BEPS Branch Chief in CSO of the finding for the state-owned resource(s), including the resource's location by county, route, and post mile and SHPO's comments on eligibility.

Note that for NEPA compliance, a copy of the SHPO letter concurring on eligibility must be included in the draft environmental document. At the conclusion of consultation, SHPO's letter is attached as an exhibit to the environmental document. A statement summarizing the consultation is also included in the environmental document. If SHPO does not comment or the SHPO's 30-day review deadline has passed, the Caltrans district will include a copy of the email message that notifies SHPO that the district is moving forward.

### ***HPSR to CSO***

#### *When to use "HPSR to CSO"*

When the HPSR contains documentation that a project will have no adverse effect by using standard conditions either: 1) through establishing ESAs to protect archaeological sites or built-environment historic properties, or 2) through the use of the SOIS, Caltrans may use the HPSR document a Finding of No Adverse Effect with Standard Conditions (FNAE-SC-ESA or FNAE-SC-SOIS). See Exhibits [2.7](#), [2.8](#) and 7.5.

#### *Processing the "HPSR to CSO"*

The Caltrans District completes the "HPSR to SHPO" section of the HPSR and the District HRC transmits one copy of the HPSR and supporting documentation to the CSO Section 106 Branch Chief. Where Caltrans has *not* assumed FHWA's responsibilities for environmental review and compliance, the District HRC provides two copies of the HPSR and supporting documentation to the CSO Section 106 Branch Chief who will send the HPSR package to FHWA.

The HRC must send one copy to consulting parties (such as Indian tribes or local governments) at this time so they have an opportunity to convey any comments to CSO. The Caltrans district memo to CSO transmitting the HPSR will state that Caltrans has made an FNAE-SC (ESA and/or SOIS) and is transmitting that finding in

accordance with the 106 PA. As outlined in the 106 PA [Stipulation X.B.1](#), if within 15 days of receipt CSO or FHWA does not object to the proposed FNAE-SC-ESA or -SOIS, the undertaking shall not be subject to further review under this Agreement. CSO will provide quarterly summary notification to SHPO of all FNAE-SC findings in accordance with 106 PA [Stipulation XX.G\(3\)](#).

The Caltrans district may send an HPSR containing both “HPSR to SHPO” and “HPSR to CSO” findings when SHPO previously has not commented on determinations of eligibility for evaluated properties and the undertaking will avoid potential effects through the use of an FNAE-SC. However, *any FNAE-SC finding is contingent upon SHPO’s concurrence with eligibility.*

In order to reduce paperwork, if there are state-owned historical resources within the APE, the Caltrans district also must concurrently transmit the HPSR and supporting documentation to CSO for review and requesting CSO’s or SHPO’s comment on Caltrans’s determination of no adverse effect to state-owned historical resources pursuant to PRC 5024(f) for historical resources not on the Master List (CSO review) and pursuant to PRC 5024.5 for historical resources on the Master List (SHPO concurrence) and requesting that CSO and SHPO use the HPSR and supporting documentation for the review. (See [Section 2.8.6.1](#) below and [Exhibit 2.12](#) for sample transmittal letters.)

### **2.5.2.2 Supplemental HPSR**

Sometimes it is necessary to prepare a Supplemental HPSR to account for project-related factors not treated in the original HPSR.

Common reasons for preparing a Supplemental HPSR include:

- A project APE has been revised or enlarged, resulting in the need to consider cultural resources not covered in the original HPSR.
- A Phase II or evaluation report on an archaeological site has been completed, providing eligibility information that was not available in the original HPSR.
- The original HPSR requires revision because the project has changed, there is a need for an environmental reevaluation, or there have been changes to a previously evaluated cultural resource.

A Supplemental HPSR follows the general format of the HPSR and includes all pertinent new or revised technical documents. It presents abbreviated information regarding the project and summarizes the findings of the original HPSR, but it will

focus upon the results of identification and evaluation efforts within an expanded APE or upon the changed conditions that led to preparation of the Supplemental HPSR. If the change involves archaeological sites that have been subjected to Phase II excavations to assess eligibility, the AER will be attached to the Supplemental HPSR.

### **2.5.2.3 Relationship of HPSR to Categorical Exemptions and Exclusions**

Projects handled as Categorical Exclusions under NEPA or Categorical Exemptions under CEQA may not require an HPSR because they are screened undertakings under 106 PA [Stipulation VII](#) and [Attachment 2](#). Others might require an HPSR and the finding would be No Historic Properties Affected.

## **2.5.3 Findings of Effect Documents**

### ***Types of Finding of Effect Documents***

Caltrans should begin to prepare the finding of effect as soon as it becomes reasonably clear that the document will be needed to support release of the draft environmental document to the public. This will result in either an FNAE without standard conditions (FNAE-No SC) or a finding of adverse effect (FAE). While the responsibility for determining effect formally lies with CSO, Caltrans districts prepare all effect documents for federally funded or approved Caltrans projects. CSO uses the Caltrans district-prepared document for its consultation with SHPO, and when applicable, the Council. [Exhibit 2.8](#) contains guidance for FNAE-No SC documents while [Exhibit 2.9](#) contains guidance for FAE documents.

Although a limited assessment of effects to historic properties may be included within an HPSR to support a finding of No Historic Properties Affected or No Adverse Effect with Standard Conditions, most often a finding of effect document is prepared when:

- A project is found to have an effect on historic properties.
- The HPSR did not discuss FNAE-SC findings.

A single Finding of Effect is prepared for the project as a whole, but the report should contain a description and analysis of the individual effects to each historic property in the APE. This information may be needed for 4(f) analysis.

It is advisable for the appropriate Caltrans PQS to coordinate with the PDT on project effects and possible mitigation measures prior to finalizing the finding of effect doc-

ument. If state-owned historical resources are within the APE, [5024 MOU Stipulation III](#) allows concurrent Section 106 and 5024 review using the Section 106 documentation for PRC 5024 compliance. Caltrans staff need to include language in the HPSR and other Section 106 documents and correspondence that Caltrans is simultaneously complying with the stipulations in the 5024 MOU when consulting with CSO and SHPO; see [Section 2.8](#).

Appropriate Caltrans PQS staff assess a project's effect on historic properties through application of the Criteria of Adverse Effect [[36 CFR 800.5\(a\)\(1\)](#) and (2)] and propose a finding to CSO. Working with Caltrans district PQS and in consultation with SHPO, CSO applies these criteria to determine if the project will have an adverse effect on historic properties. If an effect is found, CSO needs to determine which of the two kinds of effects the project would have on historic properties:

- No Adverse Effect without Standard Conditions
- Adverse Effect

If the APE contains more than one historic property, it is possible that the project may have no adverse effect on some historic properties, but an adverse effect on others. The finding, however, will be at the highest level of effect found for any *one* historic property in the APE, that is, the finding is for the undertaking as a whole.

Caltrans district PQS staff assess each alternative in the document. When the finding of effect document assesses several alternatives, CSO states in the document that it requests SHPO's concurrence on the effect of each alternative.

The process for making an effect determination is discussed above in [Section 2.3.7](#). When the project would result in effects to historic properties, depending on the type and severity of the effect, Caltrans uses the finding of effect document to

- Describe why the project effects do not meet the Criteria of Adverse Effect, in which case the document would be a Finding of No Adverse Effect without standard conditions (FNAE-No SC).
- Propose modification of the project or conditions that would avoid adverse effects in a FNAE document.

**Example:**

There are four historic properties in the APE and the project would have

- no effect on one historic property,
- no adverse effect on two historic properties
- adverse effect on one historic property.

The project, overall, would have an **adverse effect** – the highest level of effect.

- Propose measures to minimize or mitigate the adverse effects, in which case the document would be a Finding of Adverse Effect (FAE).

### **2.5.3.1 No Adverse Effect without Standard Conditions**

CSO may propose a No Adverse Effect finding that does not employ either of the two standard conditions discussed in Section [2.3.9.2](#) above and [Exhibit 2.8](#). The undertaking may include components *within* the NRHP boundaries of a historic property or new construction adjacent to the historic property, and while there is an effect, the characteristics that qualify the historic property for the NRHP are not diminished. Or, the project may be designed with conditions imposed that are no standard conditions. In these situations, CSO forwards the FNAE-SC to SHPO. If SHPO agrees to the finding and no objections are raised, Section 106 is concluded.

#### *Processing the FNAE-No SC*

The Caltrans District completes FNAE-No SC and transmits two copies of the proposed finding to CSO for review and requests CSO to forward the finding to SHPO. The Caltrans district must provide concurrent notification of the finding to any consulting parties and give them 30 days to comment to CSO.

According to the 106 PA [Stipulation X.B.2](#), SHPO has 30 days to respond to CSO's finding, either by agreeing or by asking for more information. If SHPO does not respond within 30 days after receipt of documentation, CSO may assume concurrence in the finding. However, SHPO and CSO may agree to extend that time on a project-by-project basis. Note that for NEPA compliance, a copy of the SHPO letter concurring on effect must be included in the draft environmental document. If SHPO does not comment or the SHPO's 30-day review deadline has passed, the Caltrans district will include a copy of the email message that notifies SHPO that the district is moving forward.

If there are state-owned historical resources within the APE, the Caltrans district also must concurrently transmit the FNAE-No SC and supporting documentation to CSO for review pursuant to PRC 5024(f) for historical resources not on the Master List and pursuant to PRC 5024.5 historical resources on the Master List and that CSO use the FNAE-No SC and supporting documentation for the review. See [Section 2.8.6.1](#) below and [Exhibit 2.12](#) for sample transmittal letters.

### 2.5.3.2 Adverse Effect

#### ***Archaeological Properties Significant Solely for Information Value***

When an undertaking's adverse effects are to archaeological properties significant solely for their information value (NRHP Criterion D), the 106 PA [Stipulation X.C.2](#) has special provisions. The Caltrans district concurrently notifies CSO, SHPO, and consulting parties, as appropriate, of the proposed FAE and gives these parties 30 days from receipt of documents to comment on the FAE. If the 30-day period expires without SHPO comment or agreement to extend the review period, the Caltrans district may move forward upon notification to the SHPO via e-mail or other written communication. This is an important timesaving step, as the regulations do not prescribe a response time for SHPO on adverse effect findings.

The 30-day response period is to comment on the FAE for archaeological properties significant solely for their information value (NRHP Criterion D); the response period does not apply to the adequacy of the Data Recovery Plan.

#### ***Adverse Effects to Historic Properties***

When a project will result in adverse effects to historic properties, the Caltrans district proposes to CSO an FAE. CSO then consults with SHPO on the finding. The Caltrans district concurrently notifies consulting parties. If disagreements arise on the assessment of effect, the Caltrans district, CSO and SHPO, and any consulting parties, consult for no more than 30 days to resolve the disagreement. The 106 PA [Stipulation X.D](#) specifically provides that Indian tribes who disagree with the effect determination may directly request the Council to review the disagreement and the Council will respond within 30 days. In the rare situation where CSO and SHPO cannot agree, CSO will request the Council to review the situation, and the Council will provide a response within 30 days.

CSO may submit the FAE alone, to be followed later by a Memorandum of Agreement (MOA) with proposed mitigation measures, or a draft MOA may accompany the FAE document. On routine projects with predictable MOA stipulations, it is efficient to submit an MOA with the FAE document. For controversial projects, however, it may be prudent to submit the FAE alone then continue consultation with SHPO regarding appropriate mitigation measures. The Caltrans district and CSO would write the MOA following verbal agreement among the parties on appropriate mitigation measures. When the MOA is written after the FAE is submitted, CSO's

submission of the FAE to the Council must be accompanied by information on mitigation measures and project alternatives considered but rejected and the reasons for their rejection. Since the FAE should contain these discussions, submitting a copy of the FAE along with the MOA will satisfy this requirement.

If accompanied by an MOA, the FAE discusses mitigation measures and project alternatives considered but rejected, with reasons for decisions. The FAE includes a summary of individual effect findings for all the historic properties in the APE, including any that were not affected.

### *Processing the FAE*

The Caltrans District completes FAE and transmits two copies of the proposed finding to CSO for review and requests CSO to forward the finding to SHPO. The Caltrans District must notify Indian tribes and other consulting parties and interested members of the public of the FAE. Per agreement in the 106 PA [Stipulation X.C.2](#), however, the Caltrans district may consult directly with SHPO on the effect finding when the adverse effect is to archaeological sites eligible only under Criterion D. In that case, the Caltrans district provides a copy of the FAE and transmittal letter to the CSO Section 106 Branch Chief.

The Caltrans district memo to CSO Section 106 Branch Chief requests that CSO consult with SHPO regarding the project's effects on historic properties in the APE. According to the 106 PA [Stipulation X.C.2](#), SHPO has 30 days to respond to CSO's finding, either by agreeing or by asking for more information. If SHPO does not respond within 30 days after receipt of documentation, CSO may assume concurrence in the finding. However, SHPO and CSO may agree to extend that time on a project-by-project basis. Note that for NEPA compliance, a copy of the SHPO letter concurring on effect must be included in the draft environmental document. If SHPO does not comment or the SHPO's 30-day review deadline has passed, the Caltrans district will include a copy of the email message that notifies SHPO that the district is moving forward.

If there are state-owned historical resources within the APE, the Caltrans district mentions this fact in the transmittal memo to the CSO Section 106 Branch Chief requesting SHPO's concurrence under [5024 MOU Stipulations III](#) and [X](#), using the Section 106 supporting documentation (See [Section 2.8.7](#) below and [Exhibit 2.12](#) for sample transmittal letters.)

### **2.5.3.3 Memorandum of Agreement**

The Caltrans district PQS draft the MOA. [Exhibit 2.10](#) contains guidance for MOA format and content.

At a minimum, the signatories to an MOA include DEA and SHPO. The Caltrans district is a formal concurring party to the MOA when responsibilities are assigned to the Caltrans district in the MOA stipulations. After being notified of the FAE, the Council may choose to participate in the consultation under specific conditions, or CSO or SHPO may request Council participation. Other consulting parties, such as the head of local government or the representative of a Native American tribe, must be invited to participate as consulting parties under certain circumstances and may be asked to participate as concurring parties at the discretion of CSO and SHPO.

The MOA may be rewritten several times in the course of the consultation process. Two-party MOAs are used to reach agreement between DEA and SHPO, while three-party MOAs are used to reach agreement when the Council participates along with CSO and SHPO. Whether the Council is involved, CSO must provide a copy of the MOA to the Council for inclusion in its files so it will have documentation of the agency's implementation of Section 106.

The signed MOA is also crucial to the Section 4(f) evaluation for a project involving an adverse effect to a historic property, because the MOA demonstrates that the consulting parties have completed all possible planning to minimize harm to the historic property.

### **2.5.3.4 Failure to Agree on Resolution of Adverse Effect**

If the signatory parties (SHPO and DEA) fail to agree, any party may terminate consultation following the guidance of [36 CFR 800.7](#). If SHPO terminates consultation, DEA and Council may execute an MOA. If CSO terminates consultation, the Caltrans Director must request Council's comments on the project. *Except in failure-to-agree situations, DEA will not approve the final environmental document without a signed MOA.*

### **2.5.4 Relationship of Section 106 to the Environmental Document**

The Section 106 process usually progresses to the point where SHPO has concurred in any historic property eligibility determinations and has been consulted regarding project effects on historic properties before CSO gives its approval to circulate the draft environmental document.

If archaeological sites are not a major factor in selecting a preferred alternative, eligibility and effect determination for archaeological sites may be deferred until after circulation of the draft environmental document. Any sites 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 site is important chiefly for what can be learned through data recovery or if it warrants preservation in place. For projects with multiple alternatives, the draft environmental document should explain the proposed treatment of historic properties for each alternative in appropriate detail.

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

Although the draft environmental document may be used in place of submitting a separate finding of effect document as the vehicle to afford SHPO an opportunity to comment on a project, this approach is not recommended because of potential delays, the need for unwieldy detail on historic property effects and proposed treatments, dispersal of pertinent historic property discussions throughout the document, and the potential for complicating the environmental process.

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

If the preferred alternative has an effect on historic properties, the final environmental document must provide evidence of the outcome of consultation. This usually includes copies of SHPO correspondence and a fully executed MOA. Under the 106 PA, when the finding is a No Adverse Effect with Standard Conditions, the Caltrans district is required only to notify CSO and SHPO, and consultation is then concluded, thus there may be no final response letter from SHPO to include in the environmental document. This should be explained in the text of the final environmental document.

Mitigation measures are usually carried out after the final environmental document is approved.

Discussions of historic properties in the environmental document should be clear, concise, and to the point. The environmental document should include summaries of the following:

- Results of surveys and consultation undertaken (if no survey or consultation was performed, explain why not).
- Number and type of NRHP eligible or listed historic properties in the APE.
- Number and type of historic properties to be affected by the project.
- Proposed treatment of those historic properties.

Include letters documenting SHPO concurrence in the environmental document's appendix, as appropriate. If no cultural resources were identified, a statement so indicating is included in the environmental document, but no supporting documentation is required. The environmental document, however, should identify the methods used to arrive at that conclusion, such as the preparation of an HPSR.

The Section 106 Cultural Resources Process Checklist may be helpful in guiding Caltrans district staff through a series of decisions to decide whether and what type of Section 106 finding will be required for a Categorical Exclusion/Exemption project. See [Exhibit 4.1](#) for further guidance.

All back-up reports referenced in an environmental document must be made available to the public. This may include an HPSR.

Section [6254.10](#) of the California Government Code exempts archaeological records from public disclosure requirements. If archaeological site(s) are depicted on the APE map, the map should also be removed to protect the site(s') locations.

If an ASR contains information or mapping showing the locations of archaeological sites, however, the ASR shall be removed from all copies of the HPSR before it is circulated to the public. In its place, a page should then be inserted explaining that the ASR has been deleted because archaeological records are confidential.

It is important that cultural resources specialists who prepare cultural resources summaries for Section 106 documents also prepare the historic property summaries to be included in environmental documents. See [Exhibit 2.15](#) for what goes into the summaries. District PQS should review historic property sections of environmental documents for clarity and completeness. Close cooperation will help ensure adequate and accurate summaries of Section 106 compliance in the environmental documents.

## 2.5.5 Internal Review and Approval of Cultural Resources Documents

Under the 106 PA, Caltrans is responsible for quality control of cultural resources documents. In accordance with 106 PA [Stipulation XVIII](#), Caltrans will not transmit documentation to CSO and SHPO until Caltrans PQS has reviewed and approved it. Internal review and approval applies to all Section 106 documents and technical studies and reports, and to all state-only Historical Resources Compliance Reports and technical studies and reports. See [Exhibit 2.11](#) Table C for information on the Caltrans PQS levels that required for peer reviews and reviews for Environmental Branch Chief<sup>4</sup> (EBC) approval for the various cultural resource document types.

### 2.5.5.1 Peer Reviews

All draft Caltrans-prepared and consultant-prepared reports shall be peer reviewed by one or more Caltrans PQS in the relevant discipline(s). District PQS, or upon request to the CSO Chief, CSO PQS will review these documents. CSO PQS will give such reviews the highest priority in work assignments and will complete review within 15 working days of receipt of request. Districts may arrange routine review of documents with the appropriate CSO Branch Chief.

When reviewing documents that will be submitted to comply with Section 106, it is necessary to remember the purpose of the submittal and the external agency reviews. The document must present clear, factual information about the project, supported by technical studies that are professionally competent and trustworthy. External reviewers generally know only what is presented in the document. What seems obvious to specialists who prepared the studies is not necessarily obvious to external agency reviewers. Caltrans-specific terminology and acronyms are not clear to everyone. External reviewers also may have their own needs for particular items of information, such as property addresses that need to be entered into their databases in a specific way. See [Chapters 5, 6 and 7](#) and [Exhibit 1.6](#) for PQS levels required for peer review. [Exhibit 2.13](#) for peer review standards and [Exhibit 2.15](#) for what constitutes good summaries for NRHP eligibility, project effects and consultant preparer qualifications.

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

- *What is the undertaking?*
  - Is it clearly described and justified?

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<sup>4</sup> Typically, the DEBC, but may include the appropriate CSO Branch Chief for documents that are not related to a specific district project, such as those done in conjunction with Caltrans corporate functions.

- What is the extent of ground-disturbing activities, including utility relocation, staging areas, etc.?
- Is there a potential for indirect effects?
- *Is the APE described, mapped, justified and signed by Caltrans PQS?*
  - If a Study Area was used, is it distinguished from the APE?
  - If an Area of Direct Impact is indicated, is it within the APE?
  - Are APE 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 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 of significance.
  - 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 Caltrans PQS, are their qualifications provided?
  - Do they meet appropriate PQS levels for actions taken under the 106 PA?
- *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 undertaking as a whole?
  - Any special conditions such as ESAs adequately described to understand the effect finding?

### **2.5.5.2 Approvals**

The District Director has review and approval authority for all cultural resources compliance documents but typically delegates this responsibility to DEBCs (and CSO for certain corporate functions). When requested by the district, the appropriate CSO Branch Chief and the CSO Chief shall review and approve reports in draft form that are prepared by CSO PQS or consultants. CSO then will send the draft document to the requesting DEBC for review and final approval. In the event that the DEBC disagrees with the conclusions regarding the eligibility of a resource, refer to the process for resolving disagreements and differences of opinion outlined in [Section 2.11](#).

Following peer review of a draft cultural resources document and after any necessary revisions have been made, the final document is signed by the document preparer(s), the responsible PQS (indicating review and approval), and the appropriate EBCs (indicating final review and formally approval). While one or more EBCs may approve and sign technical studies that involve more than one discipline, e.g. HRERs, combined archaeological and built environment identification and evaluation studies, only one EBC signs the cover document, i.e. the HPSR, or Finding of Effect.

*Caltrans-prepared* final documents—in addition to the author(s) signature, the following approval signatures are needed:

1. District or CSO PQS signature signifying review for EBC approval
2. EBC signature signifying review and approval

*Consultant-prepared* final documents—the following approval signatures are needed:

1. Optional Consultant author(s) signature(s), but author name(s) must appear on the document
2. District PQS signature signifying review for DEBC approval
3. EBC signature signifying review and approval

Caltrans has policies and procedures for the external distribution and publication of Caltrans-prepared and consultant-prepared reports and public presentations. Prior to distributing reports or making public presentations, consult [Exhibit 2.16](#).

### **2.5.5.3 Local Agency Studies**

In accordance with 106 PA [Stipulation XVIII.B](#), local agencies must submit to Caltrans for review and approval by Caltrans PQS all documentation prepared by local agencies or their consultants in support of findings and determinations made under the 106 PA. Caltrans will not transmit documents to outside agencies until Caltrans PQS have reviewed and approved the documents, as described above. If a district does not have PQS in the appropriate discipline, CSO PQS will review documents upon request of the DEBC to the CSO Chief. Such reviews will be completed within 15 working days of receipt of request. The process for resolving disagreements and differences of opinion regarding consultant-prepared findings and determinations is outlined in [Section 2.11](#).

### **2.5.6 Annual Reporting under the 106 PA**

The Programmatic Agreement requires that Caltrans submit a report to FHWA, SHPO, and Council on activities conducted under the terms of the 106 PA. The report will be submitted annually. It is due three months after the end of the state's fiscal year (that is, September 30). The purpose of the report is to ensure the 106 PA 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 compiling the information contained in the report, but in practice the CSO Section 106 Branch Chief will work with district staff in the compilation effort. At the end of the fiscal year, each DEBC, or District HRC as so directed, will provide the appropriate information to the CSO Section 106 Branch Chief. The CSO Section 106 Branch Chief will collate the information into one document that meets the 106 PA requirements. The CSO will oversee distribution of the report and keep copies on hand for public inspection.

### **2.5.7 Federal Compliance and Excess Property**

NEPA does not apply when Caltrans disposes of its excess parcels. According to Caltrans Internal Guidance, "...absent any requirement for federal approvals, their disposal has no federal nexus that would trigger NEPA." *Therefore, if there is no federal undertaking, Section 106 compliance does not apply.* If any portion of the disposal activity triggers the need for federal approval, then the property transfer is a federal undertaking, and the HPSR format would be used (See [Exhibit 2.6](#)) instead of the Historical Resources Compliance Report. The same principles described below apply for both types of documents.

## **2.6 State-Only Projects**

### **2.6.1 Introduction**

Caltrans projects with federal involvement are subject to both federal and state law, but when there is no federal involvement, the historical resources compliance process is subject only to state law and regulation. Under state environmental law, consideration of historical resources is primarily carried out in the context of California Environmental Quality Act ([CEQA](#)) compliance. However, there are other applicable statutes as discussed below.

Consideration and treatment of significant historical resources under state law is similar to that of federal law, but there are important substantive and procedural distinctions between CEQA and Section 106 and NEPA. There are also differences in terminology.

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 among several

environmental areas that are analyzed in a CEQA document. The type of environmental document that is prepared for a plan or project depends on the complexity of the project and the potential for significant impacts in one or more areas of environmental analysis.

The lead agency under CEQA is responsible for resource evaluation, impact analysis, and determining appropriate mitigation. For most Caltrans projects, Caltrans is also the lead agency. For purposes of this section of the handbook, the term “Caltrans” means CEQA lead agency. There is no formal process of consultation with SHPO and thus no formal concurrence in determinations of significance and effect as there is under Section 106 of NHPA. Caltrans, however, may hold informal discussions with these agencies or with other responsible agencies or members of the interested public prior to the circulation of a draft environmental document.

### **2.6.2 Statutory Protections**

The primary state environmental law that applies to Caltrans activities is CEQA ([Public Resources Code 2100](#) et seq). Other sections of the Public Resources Code establish the California Register of Historical Resources, a state listing of significant historical resources ([PRC 5024.1](#)); require state agencies to inventory state-owned resources and to formulate policies to preserve and maintain state-owned historical resources under their jurisdiction ([PRC 5024](#)); and require state agencies to consult with SHPO on projects affecting state-owned historical resources ([PRC 5024\(f\)](#) and [5024.5](#)); see [Section 2.8](#) below. The [CEQA Guidelines](#) (14 CCR 1500 et seq) provide guidance on implementing CEQA and the CRHR regulations ([14 CCR 4850](#) et seq) provide further guidance on using the CRHR eligibility and integrity criteria and special considerations. [Executive Order W-26-92](#) reinforces the requirements of [PRC 5024](#) and [5024.5](#). State regulations are summarized more fully in [Chapter 1](#), Volume 2, and are available in full in the SER [Volume 1](#).

#### ***Definition of Historical Resources under CEQA***

Under CEQA, the State Historical Resources Commission (SHRC) defines a historical resource as a resource listed in or determined eligible for listing in the CRHR. Although the criteria for listing in the CRHR are similar to those for listing in the NRHP, the CRHR encompasses a broader range than the NRHP as to *types* of resources that may meet the CRHR eligibility criteria. In addition to CRHR listed resources and those found by the SHRC to be eligible for the CRHR, *NRHP listed and eligible properties are automatically included in the CRHR and are historical*

*resources under CEQA.* This includes all properties that were determined eligible for listing in the NRHP as a result of Section 106 compliance.

Effective in 2015, under CEQA there is a new category of historical resource called a tribal cultural resource (TCR), which is defined in PRC 21074(a). The statute identifies a tribal cultural resource as a CRHR or local register eligible site, feature, place, cultural landscape or object that has cultural value to a California Native American tribe. For purposes of the guidance in the SERv2 the term “historical resource” includes tribal cultural resources that are listed in or meet the criteria for listing in the CRHR, or that are included in a local register. [Chapter 4](#), Section 4.4.2.4 contains more information on identifying TCRs in a CEQA context.

Under state law only the State Historical Resources Commission can make determinations of eligibility for the CRHR. SHPO has stated that Caltrans may not use that terminology when it evaluates resources for CEQA compliance. Caltrans documents need to state that a resource “is (or is not) a historical resource under CEQA because it meets (does not meet) the CRHR criteria, as outlined PRC 5024.1.”

Although not automatically listed in the CRHR or automatically determined eligible by the SHRC as outlined in the CRHR procedures, 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 that conform to state Office of Historic Preservation (OHP) standards.

The presence of *any* cultural resources within a project area requires that cultural resources studies be initiated to determine whether any of these resources would be historical resources under CEQA. While federal regulations do not apply to state-only projects, the procedures in 106 PA Attachments 4 and 5 may be used to be in compliance with CEQA.

The 2014 passage of Assembly Bill 52 became law when it was added to the California Public Resources Code as PRC 21074(a), creating a new category of historical resource called a Tribal Cultural Resource (TCR). While the statute clearly identifies a TCR as separate and distinct category of resource separate from historical resources, for purposes of this guidance Caltrans will use the inclusive term historical resource. [Chapter 3](#) discusses consultation with Native Americans and identifying TCRs in a CEQA context.

## 2.7 State-Only Procedures

### 2.7.1 State-Only Compliance Process Overview

When there is no federal involvement in a project, and the project does *not* meet the criteria for Screened Undertakings (see [5024 MOU Attachment 2](#) and [Exhibit 7.3](#) for historic bridges and tunnels), Caltrans prepares a Historical Resources Compliance Report (HRCR). [Exhibit 2.14](#) has guidance on HRCR format and content. The DEBC determines if cultural resources studies are necessary, based on the guidance outlined in this volume of the *SER*.

Caltrans policy is to use the instructions outlined in the [106 PA attachments](#), and for state-owned resources in the [5024 MOU](#) attachments, for determining Professionally Qualified Staff (Attachment 1), defining Screened Undertakings (Attachment 2), setting Project Area Limits (Attachment 3), defining Properties Exempt from Evaluation (Attachment 4), establishing Environmentally Sensitive Areas (Attachment 5), and developing Data Recovery Plans (Attachment 6) for state projects. For state-owned cultural resources 5024 MOU Attachments 4, 5 and 6 have similar names but slightly different requirements and streamlining measures.

The HRCR has the following functions:

- Detailing identification efforts.
- Documenting consultation with interested parties and public participation
- Describing any identified historical resources.
- Discussing why they were assessed as historically significant.
- Assessing the effect of the project on each historical resource.
- Describing the measures proposed to mitigate project or activity's effects on each historical resource.

Information from the HRCR is summarized in the draft environmental document, where a concise discussion of historical resources identification, significance, effect, and mitigation appear. The HRCR serves as the technical document that supports the conclusions contained in the environmental documentation. See [Section 2.9](#) for further details on the HRCR.

## 2.7.2 Need for Cultural resources Studies

### 2.7.2.1 Statutory Exemptions under CEQA

CEQA allows two types of exemptions, statutory and categorical. Statutory exemptions are projects specifically excluded from CEQA review by the State Legislature. These exemptions are listed in PRC [21080 et seq](#) and in the [CEQA Guidelines](#) in [15260](#). Statutory exemptions 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, unless the resources are state owned.* When state-owned resources are involved Caltrans must still comply with PRC 5024. See [Section 2.8](#).

### 2.7.2.2 Categorical Exemptions

Categorical exemptions (CEs) are classes of projects that generally are considered not to have potential impacts on the environment. The Secretary of the Resources Agency identified categorical exemptions, which are defined in the CEQA Guidelines [15300-15331](#)).

If a project has the potential to cause significant impacts to historical resources, categorical exemptions do not apply.

To determine if there are significant historical resources in the project area, and if so, whether they may be significantly impacted by the project, the District Environmental Branch staff, or upon request CSO staff, prepares an HRCR. If the HRCR concludes that no significant historical resources are present, or those resources, although present, will not be significantly impacted, the district PQS provides this information to the senior planner or DEBC responsible for the CEQA documentation.

### 2.7.2.3 Negative Declaration and the EIR

The district staff responsible for CEQA documentation determines no exemption applies, a cultural resources analysis must be included in one of the following types of documentation:

- Negative Declaration (ND).
- Mitigated Negative Declaration (Mitigated ND).
- Environmental Impact Report (EIR).

District PQS staff provide summary descriptions of historical resource significance and impacts to historical resources to the senior planner or DEBC responsible for

CEQA documentation. This information may be excerpted from the HRCR. See [Exhibit 2.15](#) for guidance on what to look for in these summaries.

### **2.7.3 Project Area**

Caltrans PQS and the Project Manager, or for local assistance project the DLAE, together establish a legally defensible project area that takes into account the potential direct and indirect impacts of the project upon historical resources. This project area is similar to an APE that is established for a federal project, however, under CEQA there is no formal APE. See [5024 MOU Attachment 3](#) for guidance in setting project area limits.

### **2.7.4 Identification of Historical Resources**

Historical resources should be identified and evaluated as early as possible in the project development process. CEQA requires early involvement so that environmental issues may be taken into consideration in the project design process. Caltrans policy also requires early involvement. Early involvement allows lead-time for project redesign, selection of alternatives, and incorporation of mitigation. It also allows time to complete historical resources compliance without jeopardizing project delivery schedules, considering such factors as seasonal limitations on surveys and archaeological excavations. A test excavation and report for an archaeological site on a state-only project, for instance, may take seven to twenty-four months to complete, depending on whether the work is done in-house or by a consultant.

#### **2.7.4.1 Research**

Before undertaking fieldwork, Caltrans PQS or appropriately qualified consultants conduct preliminary research looking for previously identified cultural resources. See [Chapter 4 Section 4.4](#) for sources of information that must be consulted in the effort to identify cultural resources within the project area.

Caltrans PQS or appropriately qualified consultants conduct research to establish the historic context for evaluating each resource. Studies should be developed to the extent needed to understand and properly evaluate properties within that context. The HRCR documents the results of this research.

#### **2.7.4.2 Cultural resources Surveys**

The same approach to surveys that Caltrans uses for federal undertakings is used for state-only projects. See [Chapter 4 Sections 4.5](#) and [4.6](#) for further guidance. Caltrans must undertake a survey whenever any buildings or structures lie within the project

area, unless those resources previously have been evaluated. In general, all buildings and structures are surveyed regardless of age, integrity, or apparent value. However, see [Chapter 4](#) Section 4.4.1.1 and [106 PA Attachment 4](#) for a discussion of properties that qualify for exemption from evaluation. For a discussion of state-owned cultural resources that qualify for exemption from evaluation but need to be recorded, see [Chapter 4](#) Section 4.4.1.2 and [5024 MOU Attachment 4](#).

Guidance on conducting preliminary archaeological and reconnaissance surveys, pre-historic archaeological surveys, historical archaeological surveys, and built-environment surveys appears in [Chapter 4 Section 4.5](#). [Chapter 3](#) contains guidance on consultation with Native Americans.

## **2.7.5 Evaluation of Cultural Resources CEQA**

### ***Historical Resources under CEQA***

If a resource meets any of the following criteria, it is already considered a historical resource under CEQA:

- Listed or determined eligible by the SHRC for the CRHR (including all NRHP listed and eligible properties).
- Listed in a local register of historical resources under local ordinance or resolution.
- Identified as significant in a local survey meeting OHP standards and the survey is less than 5 years old or the survey has been updated less than 5 years ago.

Unless there is new information or physical conditions have changed such that a re-evaluation of a historical resource is warranted, these types of resources likely will continue to be historical resources for purposes of the Caltrans project. Their existence in the project area, however, needs to be documented in the HRCR.

In addition to identifying the above-listed historical resources within a project area, Caltrans must ensure that any other cultural resources in the project area are evaluated. While federal regulations do not apply to CEQA, the procedures in 106 PA Attachments 4 and 5 may be used to meet Caltrans obligations for identifying historical resources.

## ***Evaluation Criteria under CEQA***

Caltrans evaluates the cultural resources in the project area using the criteria outlined in PRC 5024.1, as well as the relevant sections of the CRHR regulations adopted by the State Historical Resources Commission (SHRC) in the California Code of Regulations (14 CCR 4850 et seq). These regulations, however, also contain nomination procedures that do not apply to Caltrans projects.

Relevant sections of the CRHR regulations that Caltrans uses to evaluate historical resources include:

- [14 CCR 4850.1](#) – Purpose.
- [14 CCR 4851\(a\)](#) - Historical Resources Eligible for Listing in the California Register of Historical Resources (14 CCR 4851).
- [14 CCR 4852\(a\) through \(e\)](#) - Types of Historical Resources and Criteria for Listing in the California Register of Historical Resources.

Because the eligibility and integrity criteria provided in the CRHR regulations cited above are so similar to NRHP criteria, [National Register Bulletin 15](#) can provide valuable guidance in how to interpret these criteria. See [Exhibit 2.16](#) for a comparison of the CRHR regulation wording to that found in the NRHP criteria and National Register Bulletin 15.

Caltrans, as lead state agency on its projects, makes the determination as to whether a resource it evaluates is a historical resource under CEQA. It is not SHPO's determination. SHPO, however, can comment on that determination as part of the CEQA process.

Caltrans uses DPR 523 inventory forms to document evaluations. The forms are attached to the HRCR.

In addition, the HRCR provides a summary conclusion of eligibility. For each cultural resource that does not qualify as an exempted property according to [106 PA Attachment 4](#), state whether the property meets, or does not meet, the CRHR criteria as outlined in [PRC 5024.1](#). Add these conclusions to any existing CRHR listings or determinations identified earlier in the report.

If a historical resource meets the CRHR criteria, include the applicable criteria (Criteria 1, 2, 3, and/or 4), a brief description of how it meets these criteria, the level of significance, the period of significance, contributing and non-contributing elements of the resources, and a textual description of the historical resource's boundaries. The boundaries must be depicted on the appropriate DPR 523 form, as well as on the project area map.

It is Caltrans policy to apply both the NRHP criteria and the CRHR criteria simultaneously when conducting evaluations. Conclusion sections of the HRCR and the appropriate DPR 523 inventory forms will need to state whether a resource appears to be eligible for the NRHP, as well as whether it is a historical resource under CEQA because it meets CRHR criteria as outlined in [PRC 5024.1](#). The simultaneous use of NRHP and CRHR criteria is needed for compliance with PRC 5024 for state-owned resources (see [Section 2.8](#) below, and can save time and effort in having to reevaluate resources, should a state-only project become a federal undertaking.

### **2.7.6 Determination of Project Effects under CEQA**

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.

Use the HRCR to identify and analyze potential impacts to historical resources.

### 2.7.7 Determination of Appropriate Mitigation under CEQA

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

Caltrans 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. The kind of specialized experience needed to mitigation measures that directly affect built-environment historic properties is contained in [Chapter 1 Section 1.3.3](#) – Architectural History and History.

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 *Secretary of the Interior's Standards for the Treatment of Historic Properties With Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings* (SOIS)<sup>5</sup>.

If mitigation below a level of 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.

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.

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<sup>5</sup> *Secretary of the Interior's Standards for the Treatment of Historic Properties With Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings* (1995), Weeks and Grimmer

### **CEQA Class 25 Projects**

Under CEQA [Guidelines 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 and, under PRC 5024, Caltrans must consult with SHPO prior to the transfer taking place. See [Section 2.8.10](#) below, the [5024 MOU Stipulation XVI](#) and [Chapter 7 Section 7.12.7](#): Protective Covenants, Conservation Easements and Preservation Agreements. Caltrans District PQS should coordinate with the project environmental generalist regarding the applicability of this class of project as there may be other environmental considerations.

### **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, a Principal Architectural Historian. For specialized experience needed to conduct this review, see guidance in [Chapter 1 Section 1.3.3](#) - Architectural History and History. Caltrans District PQS should coordinate with the project environmental generalist regarding the applicability of this class of project as there may be other environmental considerations.

#### **2.7.7.1 Archaeological Sites**

Under CEQA, avoidance is the preferred mitigation for archaeological sites. The CEQA Guidelines [15126.4\(b\)\(3\)](#) provides discussion of archaeological mitigation. When data recovery is the only prudent and feasible alternative, prior to any excavation a DRP must be prepared that provides for recovery of scientifically consequential information.

**All DRPs that identify costs of \$500,000 and above must be sent to CSO for review and comment.**

CSO will complete its review in fifteen (15) working days from receipt of the plan. DRPs are filed with the California Historical Resources Regional Information Center.

Data recovery under CEQA is not required when Caltrans determines that already-completed studies have adequately recovered a site's important information. Mitiga-

tion cost limitations do not apply to public agencies that comply with CEQA provisions regarding mitigation of significant effects. Provisions for dealing with accidental discovery of archeological sites in the course of construction should be included among the mitigation provisions. [Section 2.9.1](#) has further guidance on state-only projects.

Include the plans for mitigating project impacts in the HRCR.

## **2.7.8 Special Considerations under State Law**

### **2.7.8.1 Late Discoveries**

CEQA encourages agencies to make provision for archeological sites accidentally discovered during construction. Caltrans should include such provisions in the HRCR and in the mitigation section of the environmental document.

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 accidental discovery, the District Construction Branch notifies the District Environmental Branch staff. The District Environmental Branch PQS staff carries out the evaluation and determines appropriate mitigation, or requests the CSO to do so. Caltrans may consult with SHPO.

If construction cannot continue in the area of the significant resource until mitigation occurs, the DEBC or District HRC notifies the Construction Branch to this effect.

### **2.7.8.2 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.

[PRC 5028](#) outlines procedures to follow when a resource listed in a national; state 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.

CEQA emergency exemptions apply to projects undertaken: 1) to prevent or mitigate an emergency; or 2) to address disaster-damaged or destroyed properties. But 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](#).

### **2.7.8.3 Emergency Procedures for State-owned Historical Resources**

The Caltrans District PQS determines whether the emergency project or activity has the potential to affect state-owned historical resources. If state-owned historical resources are likely to be affected by the emergency project or activity, as soon as possible, the Caltrans District notifies CSO, and/or SHPO, depending on whether the affected historical resource(s) are on the Master List.

#### ***State-owned Historical Resources not on the Master List***

The Caltrans District notifies CSO of the emergency as soon as possible, preferably within three (3) calendar days. Notification shall include, to the extent such information is available: that Caltrans is notifying CSO under PRC 5024.5, description of the nature and extent of the historical resource(s) affected, assessment of NRHP and California Historical Landmark (CHL) eligibility of any cultural resource(s), the type and extent of any damage to the resource(s), what emergency actions were taken, and proposed permanent actions including any prudent and feasible treatment measures that would take any effects into account. The initial contact with CSO may be via telephone and e-mail, but follow-up consultation and documentation needs to be in written format.

Caltrans may, as appropriate, notify any Indian tribes that might attach religious or cultural significance to the affected resources, or any other interested party that may have a demonstrated interest in potentially affected resources, and afford them an opportunity to comment within seven days of the notification. If the Caltrans District

determines that circumstances do not permit seven days for comment, the Caltrans District shall notify the parties and invite any comments within the time available.

### ***State-owned Historical Resources on the Master List***

The Caltrans District notifies CSO, SHPO of the emergency as soon as possible, preferably within three (3) calendar days. Notification shall include, to the extent such information is available: that Caltrans is requesting expedited consultation and concurrence under PRC 5024.5, description of the nature and extent of the historical resource(s), assessment of NRHP and CHL eligibility of any cultural resource(s), the type and extent of any damage to the resource(s), what emergency actions were taken, and proposed permanent actions including any prudent and feasible treatment measures that would take any effects into account. The initial contact with CSO and SHPO may be via telephone and e-mail, but follow-up consultation and documentation needs to be in written format.

Caltrans may, as appropriate, notify any Indian tribes that might attach religious or cultural significance to the affected resources, or any other interested party that may have a demonstrated interest in potentially affected resources, and afford them an opportunity to comment within seven days of the notification. If the Caltrans District determines that circumstances do not permit seven days for comment, the Caltrans District shall notify the parties and invite any comments within the time available.

### ***Post-Emergency Documentation***

Within six months following the initiation of expedited consultation per [Section 2.7.8.2](#) above, the Caltrans District provides the SHPO, CSO, and any additional interested parties, a narrative report documenting the actions taken in accordance with this expedited consultation process.

#### **2.7.8.4 Native American Burials**

Native American burials in California are under the purview of the Native American Heritage Commission. [PRC 5097.98](#) governs the actions that 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.

### **2.7.9 Timing with CEQA Environmental Documentation**

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.

### **2.7.10 Federal Compliance and Excess Property**

NEPA does not apply when Caltrans disposes of its excess parcels. According to Caltrans Internal Guidance, "...absent any requirement for federal approvals, their disposal has no federal nexus that would trigger NEPA." *Therefore, if there is no federal undertaking, Section 106 compliance does not apply.* If any portion of the disposal activity triggers the need for federal approval, then the property transfer is a federal undertaking, and the HPSR format would be used (See [Exhibit 2.6](#)) instead of the HRCR. The same principles described below apply for both HRCRs and HPSRs.

### **2.7.11 State Compliance and Excess Property**

Since 1991, the HRCR has been the vehicle by which Caltrans demonstrates compliance with state cultural resources laws and regulations. In 1991, the HRCR replaced the "Memo to File" for compliance on excess parcel disposals and route relinquishments. In order to complete the HRCR, in addition to knowing whether there are NRHP eligible/listed or CHL registered/listed resources on the parcel to be transferred or relinquished, one needs to know to whom the property will be transferred and whether there are known future plans for the property because this information directs how the HRCR is prepared. This also determines the level of protection, documentation and consultation that is needed to complete state cultural resources compliance.

### ***CEQA and Excess Property***

Most Caltrans excess land disposal and route relinquishment activities are not considered projects under CEQA, and CEQA would not apply. CEQA would apply in some situations. As outlined in the Internal Guidance, "...if there is a particular development plan associated with the parcel to be disposed, the action is considered a "project" and the normal CEQA process must be followed." When CEQA does apply to parcel transfers and route relinquishments, the project generally would be processed using a CEQA CE, as explained in the Caltrans Internal Guidance and in [Section V](#) of the SER Volume 1: Guidance for Compliance. There may be situations

(e.g., when the future known plans and actions might result in a substantial adverse change) when a CE is not the appropriate level of CEQA compliance. The Caltrans district PQS need to coordinate with the district staff preparing the CEQA documentation.

In situations where there is uncertainty as to whether CEQA applies, the district should talk to its Legal Department and to its headquarters Environmental Coordinator. See Caltrans' "Internal Guidance on Environmental Compliance for the Disposal of Excess Land," October 2007 (Internal Guidance) and Caltrans [Standard Environmental Reference](#) for detailed discussions on CEQA compliance. When CEQA does apply, the HRCR documents whether there are any cultural resources in the boundaries of the excess property or the route to be relinquished, whether or not cultural resources on the excess property 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 transmittal letter to the new owner(s) and the transfer documents must disclose whether there are historical resource(s) under CEQA on the property, and the measures to protect the historical resources that are conditions of the transfer. A copy of the HRCR needs to be attached to the transfer letter.

## **2.8 PRC 5024 Procedures for State-Owned Cultural Resources under the 5024 MOU**

### ***Introduction***

When there are state-owned buildings, structures, objects, archaeological resources, sites, landscapes, or districts within the project or activity's area, Caltrans uses the HRCR to comply with PRC 5024. PRC [5024\(a\)](#) states that each state agency shall formulate policies to preserve and maintain, when prudent and feasible, all state-owned historical resources under its jurisdiction. To meet this requirement, Caltrans must identify all state-owned buildings, structures, and archaeological sites within its right of way to determine whether they meet the criteria for inclusion in the NRHP or for registration as a CHL. In addition, when state-owned historical resources are on the Master List of Historical Resources (Master List), Caltrans must consult with SHPO.

The PRC 5024 procedures explained below follow the order laid out in PRC 5024(a) through (h) and PRC 5024.5, with changes as prescribed by the 5024 MOU. As with

the Section 106 process, the steps essentially are linear, although in practice they may overlap or be compressed.

The following terms are used in PRC 5024(a) through (h) and PRC 5024.5: historical resource (not historic property), adverse effect (not substantial adverse change), elimination or mitigation (not resolution) of adverse effects, and prudent and feasible alternatives.

For purposes of compliance with PRC 5024, the term *structure* means "an immovable work constructed by man having interrelated parts in a definite pattern of organization and used to shelter or promote a form of human activity and which constitutes an historical resource." [PRC 5024(h)] Examples of Caltrans-owned structures include but are not limited to buildings, bridges, roadways, substations, sheds, and retaining walls. [Stipulation IV](#) of the [5024 MOU](#) contains a list of other definitions.

### ***Public Resources Code 5024 procedures under the 5024 MOU***

Caltrans and SHPO signed and implemented a Memorandum of Understanding to set up procedures to comply with PRC 5024, as well as with the Governor's Executive Order W-26-92 (W-26-92). Called the "5024 MOU," this document became effective January 1, 2015 and is included as [Exhibit 1.2](#) to this volume of the SER. It was developed to mirror the stipulations and processes in the 106 PA as closely as possible. The 5024 MOU streamlines compliance with PRC 5024 and W-26-92 by delegating a number of SHPO's PRC 5024 responsibilities to the Caltrans districts and to CSO.

Designed primarily to streamline compliance related to projects and activities that affect state-owned cultural resources, the 5024 MOU also addresses Caltrans' property management and preservation planning responsibilities for its historical resources. In this capacity, the 5024 MOU differs from the 106 PA. It includes compliance with PRC 5024 and/or W-26-92 in planning for future evaluations of state-owned resources, developing historical resource management plans, maintenance activities that affect historical resources, as well as for transferring excess parcels or relinquishing routes.

In its structure, the stipulations in the 5024 MOU are set out in similar order, as are the six attachments, but the procedures for implementing the stipulations may differ.

### **5024 MOU Features and Streamlining Measures**

Listed below are features and streamlining measures in the 5024 MOU that differ from the regular PRC 5024 compliance process to: delegate SHPO's responsibilities to Caltrans or to clarify how PRC 5024 is implemented.

- For purposes of carrying out the 5024 MOU, the terms “state-owned cultural resources” and “state-owned historical resources” means only those resources that are under Caltrans jurisdiction.
- When there are state-owned historical resources within the APE of a federal undertaking, compliance with PRC 5024 is concurrent with Section 106. Caltrans and SHPO use 106 PA and its documentation for the PRC 5024 compliance; see [5024 MOU Stipulation III](#).
- Projects and activities may be screened when they meet the criteria in [5024 MOU Stipulation VII](#) and [Attachment 2](#) (for historic bridges and tunnels see [Exhibit 7.3](#)); see [Section 2.8.1](#).
- The 5024 MOU provides for consultation with Indian tribes that may attach religious or cultural significance to state-owned cultural resources, and with other interested parties.
- State-owned cultural resources may be exempt from evaluation when they meet the criteria outlined in [5024 MOU Stipulation VIII.C.1](#) and [Attachment 4](#). The difference between the Section 106 PA and the 5024 MOU is that Resource Types 3 through 7 in Attachment 4 need to be recorded on an abbreviated DPR 523A Primary Record that is either included in or created by the Caltrans Cultural Resources Database (CCRD). This recordation is required for Caltrans property management purposes, such as planning for future surveys and survey updates. See [Chapter 4](#) section 4.4.1.2 and [Exhibit 4.4](#) for additional guidance.
- Buildings, structures and objects determined eligible for the NRHP or as a CHL will be placed on the Master List. All other eligible non-structural resources (e.g. archaeological sites, tree rows, landscapes, sites, etc.) will *not* be placed on the Master List. Whether or not a state-owned historical resource is on the Master List is key to how findings of effect are processed. See the [5024 MOU Stipulation IV.D](#) for a definition of the Master List.

- All NRHP listed or CHL registered state-owned historical resources, regardless of property type, are on the Master List. For instance, even though the Highway 152 Tree Row in Gilroy is not a structure, it is listed in the NRHP, so it is on the Master List.
- PRC 5024(f) applies to all findings of effect and proposed mitigation measures for state-owned Historical Resources that are not on the Master List.
- The CSO—not SHPO—reviews findings of effect for state-owned historical resources not on the Master List. The exception to this is when there is public concern or controversy.
- PRC 5024.5 applies to all findings of effect and proposed mitigation measures for state-owned historical resources that are on the Master List.
- Findings of No State-owned Historical Resources Affected will be documented in the District file as described in [Section 2.8.4](#) below and in [5024 MOU Stipulation IX.A](#).
- CSO reviews all Findings of No Adverse Effect with Standard Conditions (FNAE-SC) whether or not the state-owned historical resource is on the Master List. In addition to ESAs and use of the SOIS, [5024 MOU Stipulation X.B.1](#) and [Attachment 5](#) include a standard condition that allows for the transfer or relinquishment of a state-owned historical resource that is designated and protected under an ordinance adopted by a Certified Local Government (CLG); see [Section 2.8.6.1](#) below.
- Findings of No Adverse Effect that do not have standard conditions are reviewed either by CSO or SHPO as follows (see [Section 2.8.6.2](#) and [5024 MOU Stipulation X.B.2](#)):
  - CSO reviews the FNAE for state-owned historical resources that are not on the Master List.
  - CSO reviews and forwards to SHPO for concurrence the FNAE for state-owned historical resources that are on the Master List.
- Findings of Adverse Effects with Standard Mitigation Measures (FNAE-SMM) may be used for adverse effects to state-owned archaeological sites if they meet the requirements of [5024 MOU Stipulation X.C.1](#) and [Attachment 6](#); see [Section 2.8.7.1](#). The findings are reviewed as follows:

- CSO reviews the FNAE-SC for NRHP/CHL eligible state-owned archaeological resources that are not on the Master List.
- CSO reviews and forwards to SHPO for concurrence the FNAE-SC for NRHP/CHL listed state-owned archaeological resources that are on the Master List.
- Findings of Adverse Effects (FAE) and proposed mitigation measures may be combined into HRCR per [5024 MOU Stipulation X.C.2](#); see [Section 2.8.7.2](#).
  - CSO reviews the FAE for NRHP/CHL-eligible state-owned historical resources that are not on the Master List.
  - CSO reviews and forwards to SHPO for concurrence the FAEs for NRHP/CHL listed state-owned historical resources that are on the Master List.
- For transfers and relinquishments of state-owned historical resources the findings of effect and the process for complying with PRC 5024 depend upon who will be the future owner:
  - A finding of No State-owned Historical Resources Affected applies to transfers and relinquishments of ineligible state-owned cultural resources (see [5024 MOU Stipulation XVI.A](#)) and to state-owned historical resources transferred or relinquished to other state or federal agencies (see [5024 MOU Stipulation XVI.B](#)).
  - An FNAE-SC applies to transfers and relinquishments of state-owned historical resources that are designated under a CLG preservation ordinance and are transferred to local agencies, private owners or when future owners are unknown (see [5024 MOU Stipulations X.B.1.c](#) and [XVI.C.1](#)).
  - A FNAE without standard conditions applies to state-owned historical resources that are designated under a preservation ordinance adopted by a local agency other than a CLG and are transferred to local agencies, private owners or when future owners are unknown. CSO reviews for historical resources not on the Master List; and SHPO reviews and concurs for historical resources on the Master List (see [5024 MOU Stipulations X.B.2](#) and [XVI.C.2](#).)
  - State-owned historical resources that are not designated under local preservation ordinances and are transferred to local agencies, private owners or when future owners are unknown may or may not be an adverse

effect, depending on whether and how the historical resources can be protected. See [5024 MOU Stipulations X.B.2, X.C](#) and [XVI.D](#) in Exhibit 1.2.

Similar to the 106 PA, the 5024 MOU requires that all actions under the 5024 MOU be carried out by or subject to the approval of Caltrans PQS ([Stipulation V](#)). It mirrors 106 PA in the methodology used for identification and evaluation of state-owned cultural resources ([Stipulation VIII](#)); phased approaches to identification, evaluation and assessment of effects ([Stipulation XI](#)); treatment of Native American remains and cultural items ([Stipulation XII](#)); Curation ([Stipulation XIII](#)); post-review discoveries ([Stipulation XIV](#)); emergency situations ([Stipulation XV](#)); documentation ([Stipulation XVII](#)); training requirements ([Stipulation XVIII](#)); exclusionary provisions ([Stipulation XIX.B](#)); and review and report ([Stipulation XIX.E](#)).

### **2.8.1 Screened Projects and Activities Exempt from Further Review**

The [5024 MOU](#), in [Stipulation VII](#) and [Attachment 2](#), streamlines cultural resource compliance. Attachment 2 lists projects and activities that must be screened before being exempted from PRC 5024 review. [Exhibit 7.3](#) contains additional guidance for screening activities involving historic bridges and tunnels. As with all other actions under the 5024 MOU, a Caltrans PQS must conduct the screening process. Only the specific actions on the list qualify for screening, but a project or activity comprised of several actions on the list may be screened. Because the process is similar for screening federal undertakings, follow the guidance in [Section 2.3.2](#) Screened Undertakings for additional guidance on screening. However, the Screened Undertaking Memo would be either a “Screened Project Memo” or a “Screened Activity Memo.” [Exhibit 2.5](#) contains guidance for preparing a Screened Undertaking memo for the project planner; it also may be used for documenting screened projects and activities that involve state-owned cultural resources. See [5024 MOU Attachment 2](#) and [Chapter 4 Section 4.2.1](#) for further guidance.

### **2.8.2 Project Area Limits Delineation**

The Project Area Limits (PAL) is defined 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. See [5024 MOU Attachment 3: Project Area Limits Delineation](#) for additional guidance on establishing PALs. In addition, please refer to [Section 2.3.3.1](#) Establishing APEs, as the process is similar. Consult the CSO BEPS Branch Chief if a question arises.

### **2.8.3 Identification and Evaluation of State-Owned Historical Resources**

As with CEQA, compliance with PRC 5024 entails identification and evaluation of the state-owned cultural resources within the project area to determine whether the resources meet the NRHP criteria or [CHL criteria](#).

In order to comply with PRC 5024, Caltrans needs to use NRHP and CHL criteria to evaluate its state-owned resources to determine whether the resources meet the criteria for inclusion in NRHP or meet the criteria for registration as CHLs [PRC 5024(a) – (d)].

The process for identifying and evaluating state-owned historical resources is essentially the same under the 5024 MOU as it is under Section 106. Please refer to Section [2.3.3.3](#) above. However, for state-owned cultural resources that are exempt from evaluation pursuant to [5024 MOU Stipulation VIII.C.1](#) and [Attachment 4](#), there is an extra recordation step for Resource Types 3 through 7. Please refer to [Chapter 4](#), Section 4.4.1.2 and [Exhibit 4.4](#) for additional guidance.

#### **2.8.3.1 Documenting Identification and Evaluation Results for State-owned Cultural Resources**

Under the 5024 MOU, Caltrans districts must consult with SHPO and concurrently notify CSO on the results of its NRHP eligibility determinations for state-owned cultural resources. This is accomplished in the HRCR.

The HRCR may contain a number of other findings that document compliance with PRC 5024 requirements – findings that do not require separate or additional SHPO concurrence under the 5024 MOU:

- Delineation of the PAL.
- Summary of identification efforts: results of seeking and gathering information on historical resources including consultation with Indian tribes and other interested parties.
- Summary evaluation of state-owned cultural resources that were previously listed or determined eligible for the NRHP or for registration as a CHL, that were previously determined not eligible and whether these prior evaluations are still applicable, and that were determined eligible or ineligible for the NRHP or CHL as a result of the surveys attached to the HRCR, or that are assumed eligible for purposes of the project only.

- No State-owned Historical Resources Affected: there are no state-owned historical resources (NRHP/CHL listed or eligible) in the PAL (provided SHPO has concurred on eligibility).
- No State-owned Historical Resources Affected: there are state-owned historical resources in the HRCR but there will be no effects to them.

The SHPO or CSO may still comment on Caltrans identification efforts and PAL delineation, but will rarely do so when all guidance has been properly followed. An Archaeological Survey Report (ASR), Archaeological Evaluation Report (AER), and/or a Historical Resources Evaluation Report (HRER), as applicable, is attached to the HRCR to support the above findings. If there are questions on the appropriate level of effort or items not covered in the [SER Volume 2](#), consult the CSO. Caltrans districts do not need to notify SHPO or CSO of a No State-Owned Historical Resources Affected finding when the HRCR contains this finding and the HRCR is included in the district's files because this information will be captured in annual reporting as described in [Section 28.14](#). [Exhibit 2.14](#) contains more information on HRCRs.

### **2.8.3.2 Transmitting National Register/CHL Findings for State-owned Cultural Resources**

The 5024 MOU allows Caltrans districts to submit all NRHP and CHL eligibility studies directly to SHPO with concurrent submittal to CSO. When a Caltrans District has been in consultation with an Indian tribe or interested parties on the NRHP and CHL eligibility of a resource concurrent with submittal to the SHPO, the Caltrans District shall notify and provide documentation to the Indian tribe or interested parties of Caltrans' eligibility conclusion, unless they have indicated they do not wish to receive such documentation.

As part of the Caltrans consultation with SHPO on eligibility and pursuant to [PRC 5024\(d\)](#), Caltrans requests that SHPO add the NRHP/CHL-eligible state-owned buildings and structures to the Master List.

#### ***SHPO 30-Day Review of Eligibility Finding***

If the SHPO has not responded to Caltrans within 30 calendar days of receipt of the request for concurrence on eligibility, Caltrans may either extend the review period in consultation with the SHPO or proceed to the next step prescribed by 5024 MOU, based upon Caltrans' conclusion of NRHP and/or CHL eligibility. Confirmation of date of receipt as the basis for determining the start of the 30-day review period may

be provided through the SHPO database, a mail delivery receipt, or written or documented oral communication from the SHPO.

If the 30-day period expires without SHPO comment or agreement to extend the review period, the Caltrans District may proceed to the next step prescribed by the 5024 MOU upon notification to the SHPO and CSO via e-mail or other written communication.

If Caltrans and SHPO agree on the determination of eligibility for a property, their joint finding constitutes a “consensus” determination of eligibility for purposes of 5024 MOU compliance.

Determinations of eligibility made under PRC 5024 do not automatically constitute a determination of eligibility under Section 106. Caltrans transmittal letters requesting SHPO concurrence on eligibility under PRC 5024 should include the following sentence:

*In the event of federal involvement in this project or in another federal undertaking that includes in its APE the state-owned cultural resources evaluated for this project, then the lead agency for the federal undertaking will be required to consult with SHPO on their NRHP eligibility under 36 CFR 800.4, in order to comply with Section 106.*

### ***Disagreement on Eligibility***

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

### **2.8.4 No State-owned Historical Resources Affected**

Once all the state-owned historical resources within the PAL have been identified, the Caltrans District must determine whether the project or activity will have an effect on those resources using the List of Adverse Effects outlined in [5024 MOU Stipulation IV.D](#). A finding of “No State-owned Historical Resources Affected” is appropriate

when the project or activity will have no effect on the state-owned historical resources.

Where Caltrans has consulted with Indian tribes or interested parties concerning the NRHP or CHL eligibility of state-owned historical resources, Caltrans shall consult with those Indian tribes or other interested parties on the potential effects of the project or activity. Caltrans shall take their views into account in making its findings.

The No State-owned Historical Resources Affected applies when either

- The PAL does not contain any state-owned historical resources at all, or
- State-owned historical resources are present but the project or activity, transfer, relocation or demolition will not adversely alter the original or significant historical features or fabric of such resources.

It is important to consider certain factors in determining whether a finding of No State-owned Historical Resources Affected is appropriate. Please refer to [Section 2.3.8](#) under Factors to Consider for a list of what to consider.

#### **2.8.4.1 No Notification Required**

No notification is required when:

- 1) There are no state-owned cultural resources requiring evaluation in the PAL (i.e., no cultural resources present or all state-owned resources qualified as exempt under [5024 MOU Attachment 4](#)), or
- 2) All the state-owned cultural resources in the PAL were previously determined not eligible for the NRHP/CHL.

The Caltrans district PQS documents a “No State-owned Historical Resources Affected” finding by including the HRCR containing this finding in the district files. Checking the appropriate box on the HRCR form or adding a statement to that effect in a narrative HRCR will accomplish the documentation. It is not necessary to notify SHPO; see [Section 2.9.2.1](#) HRCR to District File for processing information. If this finding is appropriate, PRC 5024 compliance is concluded.

#### **2.8.4.2 Notification Required - No State-owned Historical Resources Affected**

When Caltrans has consulted with Indian tribes or any other interested parties on a determination of eligibility and finds that the project will result in

- 1) No State-owned Historical Resources Affected, either because all of the state-owned cultural resources in the PAL were determined by Caltrans to be not eligible for the NRHP or the CHL or
- 2) There are state-owned historical resources in the PAL but the project or activity will not have an effect on them.

Caltrans must provide the any Indian tribes or other interested parties with notification of that finding pursuant to [5024 MOU Stipulation IX.A.2](#), and make documentation available to them unless they have indicated that they do not wish to receive such documentation. Checking the appropriate box on the HRCR form or adding a statement to that effect in a narrative HRCR, and transmitting the HRCR as evidence of that finding will accomplish the notification; see [Section 2.9.2.1](#) HRCR to District File for processing information. If this finding is appropriate, PRC 5024 compliance is concluded.

If objections have been raised about the “No State-owned Historical Resources Affected” finding and they have not been resolved, the Caltrans district and CSO should apply the List of Adverse Effect and work towards resolving the objection.

#### **2.8.5 Assessment of Effects to State-owned Historical Resources**

The 5024 MOU requires the Caltrans district to determine whether the project or activity will have an effect on state-owned historical resources. If there will be an effect, the Caltrans district will make one of the following:

- Finding of No Adverse Effect (FNAE) either
  - with standard conditions (FNAE-SC), or
  - without standard conditions (FNAE),
- Finding of Adverse Effect with standard mitigation measures(FAE-SMM)
- Finding of Adverse Effect (FAE)

[Section 2.9](#) contains guidance on the process for documenting these findings and consulting with either CSO or SHPO.

## 2.8.6 Finding of No Adverse Effect

An FNAE is appropriate when:

- None of the project or activity’s anticipated effects constitute an adverse effect identified in the List of Adverse Effects,
- Non-standard conditions are imposed to avoid adverse effects,
- The Caltrans District has developed a plan for managing any post-review discoveries that includes decision thresholds and procedures that would be implemented in accordance with [5024 MOU Stipulation XIV](#), or
- The appropriate “Standard Conditions” stipulated in [Attachment 5](#) of the 5024 MOU are imposed on the project or activity.

### 2.8.6.1 Finding of No Adverse Effect with Standard Conditions

Under the [5024 MOU Stipulation X.B.1](#) and [Attachment 5](#), there are three standard conditions that will avoid adverse effects to state-owned historical resources whether or not they are on the Master List:

- 1) Protection of archaeological sites or built environment state-owned historical resources by designation of an Environmentally Sensitive Area (ESA); or
- 2) When the project or activity consists of maintenance, repairs, rehabilitation or alterations to state-owned historical resources and the work can be completed according to *Secretary of the Interior’s Standards for Treatment of Historic Properties (SOIS)*. For this standard condition, Caltrans uses the 1995 version by Weeks and Grimmer as prescribed by PRC 15064.5(b)(3) and the [5024 MOU Stipulation X.B.1.b](#).
- 3) When Caltrans transfers or relinquishes a state-owned historical resource that has been designated under a Certified Local Government under its preservation ordinance (CLG Designation)—whether the resource is individually designated or is a contributing element of a district—and that ordinance provides protection of the resource’s character-defining features.

When one of these standard conditions is imposed on a project or activity, the formal finding to conclude PRC 5024 would be a “Finding of No Adverse Effect with Standard Conditions” (FNAE-SC). The Caltrans District submits the FNAE-SC to CSO and concurrently provides notification of the proposed finding to any Indian tribe or interested party that has expressed views regarding potential effects to state-owned historical resources. Under the 5024 MOU, upon receipt of the FNAE-SC, CSO has 15 days to object to the FNAE-SC. If within this time frame CSO does not object,

compliance under 5024 is complete. See [Section 2.9.2.3](#) HRCR to CSO for processing information.

The SHPO does not review these findings, but CSO will provide summary notifications of these findings to SHPO on a quarterly basis, as outlined in [5024 MOU Stipulation XIX.E.2](#).

The FNAE-SC and supporting documentation—whether for ESAs, SOISs or Transfers of CLG-Designated Resources—must be complete when the Caltrans district submits the proposed finding to CSO. The 15-day review period will not begin until CSO is in receipt of complete documentation. See [Exhibit 2.8](#) for more information.

#### *Environmentally Sensitive Areas (ESAs)*

While primarily used for archaeological sites, the first standard condition also may be used to protect built environment state-owned historical resources. See [5024 MOU Attachment 5](#) for additional details.

#### *Use of Secretary of the Interior's Standards for the Treatment of Historic Properties (SOIS)*

The second standard condition is used primarily for built environment state-owned historical resources such as buildings and structures when adverse effects are avoided through maintenance, repairs, rehabilitation or alterations. See [5024 MOU Attachment 5](#) for additional details.

#### *Transfer of CLG-Designated State-owned Historical Resources*

The third standard condition is used for the transfer or relinquishment of a state-owned historical resource to a local agency or private owner when a state-owned resource has been designated by a CLG under its ordinance.<sup>6</sup> This may be considered a standard condition to avoid adverse effect when such designation has been completed prior to the transfer or relinquishment of that resource:

- 1) Because proposals to transfer or relinquish state-owned historical resources designated by a CLG are used mainly to avoid adverse effects to historic state-owned built-environment resources, these proposals must be reviewed and approved by a Caltrans Principal Architectural Historian.
- 2) Proposals to transfer or relinquish state-owned archaeological historical resources designated by a CLG may be used only when reviewed and approved by a Princi-

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<sup>6</sup> This may be either an individual designation, or designation as a contributing element of a district under by CLG under its ordinance.

pal Investigator in Prehistoric or Historical Archaeology. However, this situation is rare.

- 3) The Caltrans District may initiate the nomination of a state-owned historical resource under a CLG's preservation ordinance. The nomination may be initiated at any time prior to the transfer, but 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. Should the CLG deny the designation, then this standard condition may not be used; see [5024 MOU Attachment 5](#) for details.

### **2.8.6.2 No Adverse Effect without Standard Conditions**

The Caltrans district may propose an FNAE that does not employ any of the three above standard conditions. This is called a "Finding of No Adverse Effect" (FNAE). As outlined in the [5024 MOU Stipulation X.B.2](#). Under this stipulation there are two separate processes for

- State-owned historical resources *not* on the Master List, and
- State-owned historical resources *on* the Master List.

#### *FNAE for State-owned Historical Resources not on Master List*

When the Caltrans District proposes a finding of No Adverse Effect (FNAE) other than an FNAE-SC discussed above, the Caltrans District submits the HRCR containing its proposed finding and supporting documentation to CSO for review and concurrently provides notification of the proposed finding to any Indian tribe or interested party that has expressed views regarding potential effects to state-owned historical resources. If within 15 calendar days of receipt CSO does not object to the proposed FNAE, PRC 5024 compliance for the project or activity is complete. CSO provides provide summary notification to the SHPO of these findings in accordance with the [5024 MOU Stipulation XIX.E.2](#).

When there are disagreements between the Caltrans District and CSO regarding an FNAE, the CSO shall promptly notify SHPO to resolve the disagreement within 30 days. If the disagreement is resolved, the agreed-upon finding stands and Caltrans proceeds to the next step in accordance with the requirements in the 5024 MOU. If the disagreement is not resolved, the finding is considered adverse and the Caltrans District follows the process for findings of adverse effect; see [Section 2.8.7.2](#) below and [5024 MOU Stipulation X.C](#).

### *FNAE for State-owned Historical Resources on Master List*

For state-owned historical resources on the Master List, when the Caltrans District proposes a FNAE other than an FNAE-SC discussed above, the Caltrans District submits the HRCR containing its proposed finding and supporting documentation to CSO for review and concurrently provides notification of the proposed finding to any Indian tribe or interested party that has expressed views regarding potential effects to state-owned historical resources.. If within 15 calendar days of receipt CSO does not object to the proposed FNAE, CSO consults with the SHPO pursuant to PRC 5024.5.

If within 30-calendar days of receipt, SHPO does not object to the “No Adverse Effect” finding, 5024 compliance for the project or activity is complete. CSO and the SHPO, however, may agree to extend the 30-day time frame for SHPO review. Confirmation of date of receipt as the basis for determining the start of the 30-day review period may be obtained through the SHPO database, a mail delivery receipt, or written or documented oral communication from the SHPO. If the 30-day period expires without SHPO comment or agreement to extend the review period, Caltrans may move forward upon notification to the SHPO via e-mail or other written communication, and the 5024 compliance for the project or activity is complete. Disagreements or objections to a finding of “No Adverse Effect” will be addressed in accordance with [5024 MOU Stipulation X.F.](#)

### *Re-assessment of Effects*

If a project or activity will not be implemented as proposed in relation to any state-owned historical resource, Caltrans must re-open consultation as prescribed in [5024 MOU Stipulation X.](#)

## **2.8.7 Finding of Adverse Effect and Proposed Mitigation Measures**

When adverse effects to state-owned historical resources cannot be avoided, the Caltrans District may propose a finding of “Adverse Effect” (FAE).

### **2.8.7.1 Finding of Adverse Effect with Standard Mitigation Measures (FAE-SMM)**

The Adverse Effect with Standard Mitigation Measures” (FAE-SMM) may only be used for state-owned archaeological sites that are not on the Master List (i.e. assumed eligible, determined eligible for listing in the NRHP or eligible for registration as a CHL).

When adverse effects to state-owned archaeological sites that are not on the Master List cannot be avoided, the Caltrans District proposes an FAE-SMM. This finding may be used:

- When the appropriate SMMs described in [5024 MOU Attachment 6](#) are imposed, or
- When the Caltrans District has developed a plan for managing any post-review discoveries that includes decision thresholds and procedures that would be implemented in accordance with [5024 MOU Stipulation XV](#).

The Caltrans District may, as appropriate, consult with the Indian tribes that ascribe religious or cultural significance to affected state-owned historical resources or other interested parties in determining appropriate measures to mitigate adverse effects.

When the Caltrans District proposes a FAE-SMM, the Caltrans District submits the HRCR containing its proposed finding and supporting documentation to CSO for review and concurrently provides notification of the proposed finding to any Indian tribe or interested party that has expressed views regarding potential effects to state-owned historical resources. If within 30 calendar days of receipt CSO does not object to the proposed FAE-SMM, PRC 5024 compliance for the project or activity is complete. CSO notifies the SHPO of these findings in the Annual Report in accordance with the [5024 MOU Stipulation XIX.E.1](#).

### **2.8.7.2 Finding of Adverse Effect**

When adverse effects to a state-owned historical resource cannot be avoided or do not qualify as an FNAE-SMM, the Caltrans District proposes a finding of “Adverse Effect” (FAE) and submits to CSO an HRCR containing the FAE and documentation supporting the proposed finding. Proposed mitigation measures may be combined with the FAE in the same document. How it gets reviewed depends on whether the state-owned historical resource is on the Master List.

#### *FAE for State-owned Historical Resources not on Master List*

When the Caltrans District proposes a finding of Adverse Effect (FAE) other than an FAE-SMM discussed above, the Caltrans District submits the HRCR containing its proposed finding and supporting documentation to CSO for review and concurrently provides notification of the proposed finding to any Indian tribe or interested party that has expressed views regarding potential effects to state-owned historical resources. If within 30 days of receipt CSO does not object to the proposed FAE, PRC

5024 compliance for the project or activity is complete. CSO provides provide summary notification to the SHPO of these findings in accordance with the [5024 MOU Stipulation XIX.E.2](#).

If the CSO has not responded to the District within 30 days after receipt, the District may either extend the review period in consultation with CSO or move forward with the project or activity. Documentation of date of receipt as the basis for determining the start of the 30-day review period may be obtained through a mail delivery receipt or other documented communication from CSO. If the 30-day period expires without CSO comment or agreement to extend the review period, the District may move forward upon notification to CSO via e-mail or other written communication, and the PRC 5024 compliance for the project or activity is complete.

#### *FAE for State-owned Historical Resources on Master List*

When the Caltrans District proposes a finding of Adverse Effect (FAE), the Caltrans District submits the HRCR containing its proposed finding and supporting documentation to CSO for review. Upon CSO's agreement with the finding, CSO forwards the FAE and supporting documentation to the SHPO, and the Caltrans District provides notice of the finding to Indian tribes or other interested parties, as appropriate. The Caltrans District and CSO work together on the mitigation of adverse effects.

The SHPO has 30 days to review the FAE. If the SHPO has not responded to Caltrans within 30 days after receipt, Caltrans may either extend the review period in consultation with the SHPO or move forward with the project or activity. Documentation of date of receipt as the basis for determining the start of the 30-day review period may be obtained through the SHPO database, a mail delivery receipt, or other documented communication from the SHPO. If the 30-day period expires without SHPO comment or agreement to extend the review period, Caltrans may move forward upon notification to the SHPO via e-mail or other written communication, and the PRC 5024 compliance for the project or activity is complete.

#### **2.8.7.3 Public Interest or Controversy**

When the effects to state-owned historical resources are highly controversial or there is substantial public interest in the project or activity's effects on these resources—whether or not they are on the Master List—CSO forwards the finding of no adverse effect or adverse effect with proposed mitigation to SHPO with an explanation regarding the nature of the public interest or controversy:

- Under PRC 5024(f), CSO notifies SHPO and requests comments for historical resources that are not on the Master List and
- Under PRC 5024.5, CSO notifies SHPO and requests concurrence for historical resources that are on the Master List

The SHPO has 30 days to review the finding. If the SHPO has not responded to Caltrans within 30 days after receipt, Caltrans may either extend the review period in consultation with the SHPO or move forward with the project or activity. Documentation of date of receipt as the basis for determining the start of the 30-day review period may be obtained through the SHPO database, a mail delivery receipt, or other documented communication from the SHPO. If the 30-day period expires without SHPO comment or agreement to extend the review period, Caltrans may move forward upon notification to the SHPO via e-mail or other written communication, and the PRC 50234 compliance for the project or activity is complete.

#### **2.8.7.4 Concurrent Documentation and Consultation**

Determinations of eligibility, assessments of effect and consultation on mitigating adverse effects may be combined into one HRCR. However, while CSO and SHPO review times may be concurrent, SHPO review times for eligibility, findings of effect and proposed mitigation measures are sequential; these review times are outlined in [5024 MOU Stipulation VIII.C.6](#), [X.B.2](#) and [X.C](#).

#### **2.8.7.5 Resolving Disagreements on Findings of Effect**

When there are disagreements on the findings of effect outlined in [Sections 2.8.6](#), or [2.8.7](#) above Caltrans shall proceed in accordance with Stipulation X.F and consult with SHPO for no more than 30 days to resolve the disagreement, as prescribed in this stipulation. However, for state-owned historical resources not on the Master List, SHPO's comments are advisory.

For state-owned resources on the Master List, if at any time during this consultation period, SHPO determines that the disagreement cannot be resolved through consultation, the SHPO, pursuant to PRC 5024.5(d) shall request the Office of Planning and Research (OPR) to mediate the disagreement. OPR's decision is final and binding.

#### **2.8.8 Mitigation of Adverse Effect Commitments**

Unlike compliance with Section 106 or the Section 106 PA, there is no agreement that is the equivalent of an MOA. Regardless of whether historical resources are on the Master List, when consultation under 5024 MOU has resulted in agreement on

methods of protection or mitigation measures, Caltrans must document those methods or measures in the Environmental Commitments Record. The Caltrans district is responsible for ensuring that the measures are carried out.

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

- It completes the process for a project or activity for which an adverse effect will occur.
- It specifies the measures that will be implemented to mitigate, avoid, or reduce adverse effects on state-owned historical resources.
- It establishes responsibility for implementing each of the measures.

## **2.8.9 Special Considerations for State-owned Historical Resources**

### **2.8.9.1 Emergency Situations**

Pursuant to 5024 MOU Stipulation XV Emergency Situations, 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. The procedures outlined here apply only to emergency situations apply in which the project and activity will be implemented within 30 days after the disaster or emergency has been formally declared. The President, California Governor, Caltrans Director or District Director may declare an emergency situation exists.

Caltrans may request an extension of the period of applicability from the SHPO prior to the 30 calendar days. Caltrans shall follow regular procedures as outlined in this volume of the SER and in the [5024 MOU Stipulations VII](#) through [X](#) for all projects and activities to be initiated more than 30 calendar days following declaration of an emergency unless SHPO approves an extension.

Caltrans follows the procedures as described in [Section 2.7.8.3](#).

### **2.8.9.2 Native American Human Remains and Related Cultural Items**

If human remains or associated items are encountered within the Caltrans Right-of-Way or on property under Caltrans jurisdiction during archaeological surveys or excavations or during construction activities, Caltrans follows California Health and Safety Code Section 7050.5 and PRC 5097.98. The Caltrans District shall consult with the most likely descendant(s), as identified by the California Native American Heritage Commission (NAHC), on the sensitive and dignified treatment and disposition of Native American human remains and associated items.

See [Chapter 3](#) Section 3.6 and 3.7 for additional guidance.

### **2.8.9.3 Curation**

The Caltrans District ensures that cultural materials and records resulting from excavations or surface collections on Caltrans land are curated in accordance with the *Secretary of the Interior's Standards for Archaeological Documentation and the California Guidelines for the Curation of Archaeological Collections* (1993). The Caltrans District addresses the disposition of Native American human remains and associated items during consultation with the most likely descendent(s) designated by California's NAHC as outlined in PRC 5097.98. The disposition of sacred objects and objects of cultural patrimony, as defined by the Native American Graves Protection and Repatriation Act (NAGPRA), shall be addressed in consultation with Indian tribe(s), consistent with 43 CFR 10 Subpart B.

### **2.8.9.4 Late Discoveries and State-owned Cultural Resources**

#### ***Planning for Subsequent Discoveries***

Pursuant to the 5024 MOU, when Caltrans' identification efforts indicate that state-owned historical resources are likely to be discovered during implementation of a project or activity, in the finding of FNAE or HRCR, and in the ECR, the Caltrans District includes a plan for treatment of those historical resources, should they be discovered; see [Chapters 5](#) and [6](#) for additional information. The Caltrans District notifies any Indian tribe that may attach religious or cultural significance to potentially affected properties, or any other interested party that may have a demonstrated interest in potentially affected cultural resources, and takes their concerns into account in developing, modifying, and implementing the plan. The plan will be implemented as originally proposed, or modified as necessary as a result of the occurrences and the nature and extent of the properties discovered.

#### ***Discoveries without Prior Planning***

- 1) If a plan for subsequent discoveries is not in place and a project or activity affects a previously unidentified state-owned cultural resource or affects a known state-owned historical resource in an unanticipated manner, the Caltrans District promptly stops construction activity in the vicinity of the property and implements all reasonable measures needed to avoid, minimize, or mitigate further harm to the resource.

- 2) Within 48 hours of the discovery, the Caltrans District must assess the discovery and, if determined to be potentially eligible, provide initial notification to CSO and SHPO, and may, as appropriate, notify any Indian tribe that might attach religious or cultural significance to the affected property, or any other interested party that may have a demonstrated interest in potentially affected properties. Along with a request for comment, include in the notification, to the extent such information is available:
- A description of the nature and extent of the cultural resource(s)
  - An assessment of NRHP and CHL eligibility of any resources
  - The type and extent of any damage to the resource(s)
  - The proposed action, any prudent and feasible treatment measures that would take any effects into account

Caltrans, at its discretion, may furnish this information through correspondence, hard copy, electronic media, telephone, or meetings, taking into account the capabilities of the interested parties and must document this process for the administrative record. The Caltrans District may assume eligibility, for purposes of the project or activity, of any potentially affected cultural resource(s); see [5024 MOU Stipulation VIII.C.3 and 4](#) regarding state-owned cultural resources that are assumed to be NRHP/CHL eligible for purposes of the project or activity only.

Should any of the notified parties respond with comments within 72 hours of the initial notification of the discovery or indicate that they wish to be involved in resolving the situation; the Caltrans District takes into account their comments or continues consultation with any commenting parties. The Caltrans District: provides any remaining information described above, as it becomes available; determines the time frame for any further consultation, and take into account the qualities of the property, consequences of construction delays, and comments by interested parties. Following the conclusion of any further consultation, the Caltrans District takes all comments received into account and may carry out actions to resolve any effects. Failure of any notified party to respond within 72 hours of the notification shall not preclude Caltrans from proceeding with its proposed actions.

### 2.8.10 Excess Parcel and Route Relinquishments

*Caltrans must comply with PRC 5024 whenever it transfers state-owned parcels<sup>7</sup> out of its ownership or relinquishes a state route.*

Prior to transferring or relinquishing state-owned property, Caltrans needs to know whether there are any historical resources on that property. If there are state-owned cultural resources that were not previously exempted from evaluation, exempted from evaluation as result of the transfer or relinquishment activity, or were not previously evaluated and determined eligible or not eligible, Caltrans must consult with SHPO on whether the evaluated state-owned resources are eligible for inclusion in the NRHP or for registration as a CHL.

PRC 5024(b) is even more specific about state-owned structures in freeway rights-of-way, “State-owned structures in freeway rights-of-way *shall be inventoried* before approval of any undertaking which would alter their original or significant features or fabric, or *transfer*, relocate or demolish those structures.” And, PRC 5024.5(f) states, “Until such time as a structure is evaluated for possible inclusion in the inventory pursuant to subdivisions (b) and (c) of Section 5024, state agencies shall assure that any structure which might qualify for listing is *not inadvertently transferred* or unnecessarily altered.” [Emphasis added]

The level of effort to identify state-owned historical resources and what is needed to transfer them can vary, depending on whether the future owner is a federal agency, another state agency, a local agency or a private owner. [Exhibit 2.19](#) provides information on the level of effort and protection that is needed.

The [5024 MOU](#), in [Stipulation XVI](#), addresses what is required in order to transfer or relinquish state-owned historical resources, and provides streamlining measures transferring or relinquishing state-owned historical resources to federal agencies, other state agencies, and when transferring state-owned historical resources that have been designated under a CLG preservation ordinance. However, when future owners are unknown or when state-owned historical resource are not designated under a CLG preservation ordinance, the procedure for complying with PRC 5024 is more rigorous in order to protect against adverse effects. This requires review and approval, either by CSO for state-owned historical resources not on the Master List, or SHPO for those resources that are on the Master List, and will require other protective measures

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<sup>7</sup> 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](#).

such as conservation easements, local agency protective resolutions or protective covenants. [Chapter 7](#) contains more detailed information on these other measures.

When all efforts to transfer or relinquish state-owned historical resources with protections have been exhausted, the Caltrans District treats the transfer as an adverse effect under PRC 5024, and follows the procedures outlined in [Sections 2.8.7](#) and [2.8.8](#), and as prescribed by [5024 MOU Stipulation X.C](#).

If the transfer or relinquishment of a state-owned historical resource is not implemented as proposed, the Caltrans District concurrently notifies CSO and SHPO and Caltrans will re-open consultation with SHPO as prescribed by [5024 MOU Stipulation X](#).

#### **2.8.10.1 No State-owned Historical Resources Affected by Transfer/Relinquishment**

Under [5024 MOU Stipulation XVI.A](#), a No State-owned Historical Resources Affected finding is appropriate when excess parcel(s) to be transferred or routes to be relinquished contain the following within the parcel boundaries or right of way limits (ROW):

- 1) Absence of any cultural resources
- 2) State-owned cultural resources that are exempt from evaluation pursuant to [5024 MOU Stipulation VIII.C.1](#) and [Attachment 4](#)
- 3) State-owned cultural resources that were previously determined not eligible for listing in the NRHP or for registration as a CHL

The HRCR shall note the absence of cultural resources, the property type(s) that are exempt from evaluation, and a list of the ineligible resources, if any are present. The Caltrans District retains the HRCR in its file, and provides a copy to CSO.

However, for state-owned cultural resources evaluated as ineligible as part of the cultural resources study for transfer or relinquishment, if SHPO objects to the eligibility determination within 30 days of receipt of the Caltrans District's request for concurrence, the HRCR to file cannot be used.

#### ***State-owned Historical Resources Transferred to Federal Agencies or Other State Agencies***

Under [5024 MOU Stipulation XVI.B](#), A No State-owned Historical Resources Affected finding also is appropriate when state-owned historical resources will be

transferred to federal agencies or to other state agencies. The HRCR must note the location and/or name of the historical resource(s) in the State-Owned Historical Resources Findings section of the HRCR, and provide the name of the federal or state agency to which the historical resource(s) will be transferred. The District retains the HRCR in its file and provides a copy to CSO. See [Exhibit 2.17](#) for additional information.

### **2.8.10.2 No Adverse Effect with Standard Conditions: Transfer of CLG-designated State-owned Historical Resources**

An FNAE-SC-CLG for the proposed transfer or relinquishment of a CLG-designated state-owned historical resource is appropriate when the standard condition set forth in [5024 MOU Attachment 5 Section 3](#) (Transfers of Locally Designated State-owned Historical Resources CLG Designation) has been met, as prescribed by the [5024 MOU Stipulations IX.B.1.c](#), and [XVI.C](#).

This finding applies to:

- 1) Individual CLG designation or designation as a contributing element of a CLG-designated historic district;
- 2) CLG-designated state-owned historical resources not on the Master List;
- 3) CLG-designated state-owned historical resources on the Master List;
- 4) Transfers to the CLG that designated the historical resource, to other non-federal or non-state public agencies, private owners or when the future owner is unknown.

The HRCR must note the location and/or name of the historical resource(s) in the State-Owned Historical Resources Findings section of the HRCR, and provide the name of the CLG, and a copy of the applicable city or county resolution that officially designated the historical resource. The Caltrans District submits the HRCR containing the FNAE-SC-CLG and supporting documentation to CSO for review, and concurrently provides documented notification of the proposed finding to any Indian Tribe or other interested parties that have expressed views regarding potential effects to state-owned historical resources. If within 15 days of receipt CSO does not object to the proposed FNAE-SC finding, the PRC 5024 compliance is complete.

### **2.8.10.3 No Adverse Effect: Transfer of State-owned Historical Resources**

An FNAE finding for the transfer or relinquishment of a state-owned historical resource may be appropriate when a non-CLG local agency has been either individually designated that resource under its preservation ordinance or designated as a contributing element of a locally-designated historic district.

The HRCR must note the location and/or name of the historical resource(s) in the State-Owned Historical Resources Findings section of the HRCR, and provide the name of the local agency, a copy of the preservation ordinance, and a copy of the applicable city or county resolution that officially designated the historical resource. Refer to [Exhibit 2.17](#) and [Chapter 7](#) Section 7.12.7 for additional guidance on this type of mitigation option.

#### ***State-owned Historical Resources not on Master List***

The Caltrans District submits the HRCR containing the FNAE and supporting documentation to CSO for review, and concurrently provides documented notification of the proposed finding to any Indian Tribe or other interested parties that have expressed views regarding potential effects to state-owned historical resources. If within 15 days of receipt CSO does not object to the proposed FNAE finding, the PRC 5024 compliance is complete.

#### ***State-owned Historical Resources on Master List***

For state-owned historical resources on the Master List, when the Caltrans District proposes a FNAE and submits the HRCR containing its proposed finding and supporting documentation to CSO for review and concurrently provides notification of the proposed finding to any Indian tribe or interested party that has expressed views regarding potential effects to state-owned historical resources. If within 15 days of receipt CSO does not object to the proposed FNAE, CSO consults with the SHPO pursuant to PRC 5024.5.

If within 30-calendar days of receipt, SHPO does not object to the FNAE, PRC 5024 compliance for the project or activity is complete. CSO and the SHPO, however, may agree to extend the 30-day time frame for SHPO review. Confirmation of date of receipt as the basis for determining the start of the 30-day review period may be obtained through the SHPO database, a mail delivery receipt, or written or documented oral communication from the SHPO. If the 30-day period expires without SHPO

comment or agreement to extend the review period, Caltrans may move forward upon notification to the SHPO via e-mail or other written communication, and the 5024 compliance for the project or activity is complete. Disagreements or objections to a finding of “No Adverse Effect” will be addressed in accordance with [5024 MOU Stipulation X.F.](#)

#### **2.8.10.4 Finding of Effect: Transfer of State-owned Historical Resources**

When state-owned historical resources that are not locally designated, as described in [Sections 2.8.10.2](#) or [2.8.10.3](#) above and [5024 MOU Stipulation XVI.C.1 and 2](#), are transferred or relinquished to non-federal or non-state public agencies, private owners, or when the future owner(s) is not yet identified, the Caltrans District, with CSO’s assistance as appropriate, shall explore appropriate measures to protect the historical resource.

##### ***State-owned Historical Resources not on Master List***

Finding of No Adverse Effect: The Caltrans District submits the HRCR containing the FNAE and supporting documentation to CSO for review as outlined in [Section 2.8.6.2](#) FNAE for State-owned Historical Resources not on Master List.

Finding of Adverse Effect: The Caltrans District submits the HRCR containing the FAE and supporting documentation to CSO for review and forwarding to SHPO as outlined in [Section 2.8.7.2](#) FAE for State-owned Historical Resources not on Master List.

##### ***State-owned Historical Resources on Master List***

Finding of No Adverse Effect: The Caltrans District submits the HRCR containing the FNAE and supporting documentation to CSO for review as outlined in [Section 2.8.6.2](#) FNAE for State-owned Historical Resources on Master List.

Finding of Adverse Effect: The Caltrans District submits the HRCR containing the FAE and supporting documentation to CSO for review and forwarding to SHPO as outlined in [Section 2.8.7.2](#) FAE for State-owned Historical Resources on Master List.

#### **2.8.10.5 Post Transfer – Completing PRC 5024 Compliance**

Once the historical resource has been transferred and the protections are in place (e.g., protective covenants/easements filed with the County Recorder, approved city or

county preservation resolutions; signed and accepted relinquishment or other preservation agreements), Caltrans district PQS forwards copies of the finalized protection documents to SHPO, with a copy to the CSO BEPS 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). For properties transferred to federal or state agencies, the abbreviated DPR 523A Primary Record form, as described above, CSO will submit the abbreviated DPR 523A Primary Record form and summary notification to SHPO as outlined in [5024 MOU Stipulation XIX.E.1](#).

The SHPO transmittal letter, with a copy to the BEPS Branch Chief, 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. In this example, historic district contributors were sold to private owners: *The National Register-eligible historic properties have been sold. Enclosed with this letter are copies of the fully executed and recorded covenants, along with updated Primary Records (DPR 523A forms) that reflect the change in ownership from state to private. We request that you change their California Historical Resources Status Code from 4CM to 2D.*

### **2.8.11 PRC 5027 and National Register 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 that 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; most are determined eligible either by the Keeper of the National Register or through federal agency and SHPO consensus.

While PRC 5027 does not require consultation with SHPO, compliance with PRC 5024.5 and [5024 MOU Stipulation XVI.G](#) for the transfer will be necessary 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*

### **2.8.12 Use of HRCR to Document PRC 5024 Compliance**

Use the HRCR to summarize efforts to identify state-owned historic resources, to provide descriptions of the evaluated state-owned historic resources, and to describe potential effects to the state-owned historical resources as described in this section of the chapter.

[Section 2.9](#) of this chapter provides guidance in completing the HRCR when state-owned cultural resources are within a project or activity's PAL. Be sure to include in the HRCR proposed measures that are prudent and feasible and that would avoid or mitigate adverse effects to the state-owned historical resources. In addition, for state-owned historical buildings and structures, the HRCR needs to provide evidence that Caltrans has consulted with the [State Historical Building Safety Board](#), as appropriate.

### **2.8.13 Timing of CSO and SHPO Review and Comment**

Caltrans uses the HRCR as a combined evaluation and effect document when notifying and providing documentation under the 5024 MOU. For situations in which the proposed actions are not yet known, or will be phased, the HRCR may be used to request SHPO's comments first on whether a state-owned resource meets the NRHP or CHL criteria and, for historic state-owned buildings and structures requesting SHPO to add them to the Master List. Later, when activities or actions are known, a Supplemental HRCR may be used to provide notice and summary documentation, as outlined in the 5024 MOU, on effects to state-owned historical resources in the PAL. For example, when planning for future maintenance, repairs, or rehabilitation of a Caltrans building or structure, it may be necessary first to identify whether the resource is historic in order to guide the type and scope of future repairs, maintenance, or rehabilitation.

The District Environmental Branch maintains SHPO's written comments in its files, and forwards a copy of the comments to the CSO BEPS Branch Chief for filing.

If Caltrans "refuses to propose, to consider, or to adopt prudent and feasible alternatives to eliminate or mitigate adverse effects on state-owned historical resources on the master list," SHPO is required by law to report Caltrans to the Office of Planning and Research for mediation, pursuant to [PRC 5024.5\(d\)](#).

#### **2.8.14. Annual Reporting under PRC 5024**

The 5024 MOU requires that Caltrans submit a report to SHPO on activities conducted under the terms of the MOU. The report will be submitted annually. It is due three months after the end of the state's fiscal year (that is, September 30). The purpose of the report is to ensure the 5024 MOU is being properly implemented, to see if it is improving efficiency in delivering state projects and activities, and to see whether there are ways the 5024 MOU may be improved through amendment.

The CSO Chief is responsible for compiling the information contained in the report, but in practice the CSO BEPS Branch Chief will work with district staff in the compilation effort. At the end of the fiscal year, each DEBC, or District HRC as so directed, will provide the appropriate information to the CSO BEPS Branch Chief. The CSO BEPS Branch Chief will collate the information into one document that meets the 5024 MOU requirements. The CSO will oversee distribution of the report and keep copies on hand for public inspection.

### **2.9 State-Only Documents: Historical Resources Compliance Report (HRCR)**

Caltrans prepares a single document, the Historical Resources Compliance Report (HRCR), to document Caltrans' historical resources consideration and compliance efforts under California law, including requirements under CEQA and PRC 5024. The HRCR contains Caltrans's the technical studies for CEQA environmental documentation and contains the legal findings under the [5024 MOU](#) and PRC 5024. It is similar in content and format to the HPSR in that it documents: efforts to identify historical resources; evaluation of cultural resources for CRHR eligibility, and for PRC 5024, evaluation of state-owned cultural resources for the NRHP and CHL eligibility; impact findings under CEQA, and under the 5024 MOU, findings of effect.

An HRCR form may be used for project or activities with few cultural resources or simple projects or activities that require little discussion. For large, complex or controversial projects or projects with a large number of cultural resources, use the narrative text HRCR. [Exhibit 2.14](#) provides an outline of the format and instructions for preparing HRCRs.

### 2.9.1 HRCR Functions

The HRCR serves a number of functions, in addition to being the cover document for the technical reports. The HRCR:

- Summarizes the identification efforts, which includes documenting the PAL.
- Summarizes the CRHR (and for state-owned resources the NRHP/CHL) eligibility conclusions for cultural resources described and evaluated in the attached reports and indicates that these supporting documents contain full technical details.
- Provides evidence of coordination with local Native American groups, local governments, historical societies, and other interested persons.
- Requests SHPO's comments and concurrence on the NRHP/CHL eligibility determinations for state-owned cultural resources contained in the HRCR.
- Analyzes and documents the impact findings to historical resources, e.g. a finding of No Historical Resources Affected when there are no historical resources within the PAL or there is no effect on historical resources; a finding of No Substantial Adverse Change; or a finding of Substantial Adverse Change.
- Analyzes and documents a finding of No Substantial Adverse Change when using standard conditions in the [Section 106 PA/5024 MOU Attachment 5](#) (when an ESA is imposed, Caltrans requires the use of the *Secretary of the Interior's Standards for the Treatment of Historic Properties*, Weeks and Grimmer's 1995 version, for alterations, maintenance, repairs or rehabilitation; or transfers state-owned historical resources). As required by the 5024 MOU, analyzes and documents the findings to state-owned historical resources, e.g. findings of No State-owned Historical Resources Affected, No Adverse Effect with Standard Conditions, No Adverse Effect, Adverse Effect with Standard Mitigation Measures; or Adverse Effect.
- Provides evidence that Caltrans has satisfied state environmental laws regarding the identification of cultural resources.

Because the HRCR can address multiple issues in a single document, it can consolidate and reduce the number of documents needed for review, and can thus help reduce overall preparation, transmittal, and review time.

Like HPSRs, HRCRs can vary greatly in length and complexity because the studies necessary to identify cultural resources will also vary, depending on the project or activity and the types of resources within the PAL. See Exhibit 2.3 for a rough estimate of the length of time needed to complete the variety of cultural resources studies that might be necessary.

The body of the report should be *very brief* when summarizing attached technical reports and the content should be carefully 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 attached technical report, duplicates can be removed before submittal to CSO or SHPO, as applicable.

For large or complex projects or those with a large number of cultural resources, the narrative HPSR is used and tabs may be used to guide reviewers to the various sections or attachments. The HPSR form is used only for simple, straight-forward projects, and use of the form is optional.

[Exhibit 2.14](#) provides instructions for preparing HRCRs. Templates for both the narrative HRCR and the HRCR form are available in the templates section of the Caltrans [SER volume 2](#)-Cultural Resources website.

### **2.9.1.1 HRCR Contents**

The HRCR discusses all aspects of historical resources compliance: resource identification, significance, effect, and mitigation. District PQS typically prepare the HRCR. See [Exhibit 2.14](#) for format and content. Attach copies of all historical resources technical reports to the HRCR.

After a brief project description and summary of findings, describe all cultural resources identified within the Project Area, and refer to attached individual cultural resources reports. Next, assess the significance of each resource, providing adequate information to understand any importance, without excessive detail. Identify any state-owned resources that are subject to PRC 5024.

When a resource, such as an archaeological site, is important for the information it contains, present a concise statement on the research issues that could be addressed by studying the resource, and describe how the data it contains can address these issues.

The HRCR effect statement describes how the project would physically affect historical resources. Include any indirect effects, such as increased noise or introduction of elements out of character with a resource that could affect the resource's significance.

Finally, discuss mitigation efforts to be undertaken to offset project effects. The report should indicate whether the proposed mitigation would reduce project impacts below a level of significance. Note that preservation in place is the preferred option.

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, for cultural resources purposes, the project is considered to be mitigated to a level of less than significant impact to the historical resource.

When proposing data recovery as mitigation, summarize the DRP in the HRCR. Archaeological proposals for data recovery or test excavations are prepared as separate documents. The data recovery proposal fulfills the CEQA requirement for a DRP. District PQS typically write the DRP.

## **2.9.2 HRCR Types of Findings**

There are three types of findings, depending upon the presence and type of cultural resources within the PAL. The "HRCR to District File" is fairly straightforward and simple and is used in the situations outlined below. The "HRCR to SHPO" is used to report the existence of cultural resources that required evaluation beyond identification, as described in the subsequent section. For state-owned historical resources on the Master List, a Supplemental HRCR may be used to request SHPO's concurrence on a Finding of No Adverse Effect other than use of the Standard Conditions, and a Finding of Adverse Effect. When state-owned historical resources are within the PAL, the "HRCR to CSO" is used to document a Finding of No Adverse Effects with Standard Conditions as outlined in [5024 MOU Stipulation X.B.1](#) and [Attachment 5](#), and for state-owned historical resources not on the Master List to document a Finding of No Adverse Effect when standard conditions are not used, and a Finding of Adverse Effect; see [Sections 2.8.6.1](#) (FNAEs with Standard Conditions), [2.8.6.2](#) (FNAEs), [2.8.7.1](#) (FAE with Standard Mitigation Measures and [2.8.7.2](#) (FAEs).

Caltrans PQS or consultants prepare the HRCR and supporting technical reports. For "HRCR to File," the Caltrans district places the HRCR and supporting documentation in the district files. For "HRCR to SHPO," that is, resources are evaluated whether or not they are determined eligible, the Caltrans district concurrently transmits the

“HRCR to SHPO” and supporting documentation to SHPO and provides a copy to CSO. For Findings of No Adverse Effect or Adverse Effect to state-owned historical resources on the Master List, the Caltrans district transmits the “HRCR to SHPO” to CSO for review and CSO forwards the documentation to SHPO. Caltrans’s letter transmitting the HRCR requests SHPO’s comments on the determinations of eligibility findings for any evaluated cultural resources in the PAL; . For “HRCR to CSO,” for FNAE-SCs, Findings of No Adverse Effect or Adverse Effect to state-owned historical resources that are not on the Master List, the Caltrans district transmits the HRCR and supporting documentation to CSO.

### **2.9.2.1 HRCR to District File**

The list below contains findings that are appropriate for the “HRCR to District file” section of the HRCR and that certifies that no historical resources are located within the PAL and/or that the project or activity will have no effect to historical resources within the PAL.

#### ***Appropriate Uses of HRCR “Finding – HRCR to District File”***

This Finding may be used when there are:

- *No cultural resources* at all within the PAL
- Archaeological sites, buildings, structures, and other non-archaeological resources within the PAL, but *only*:
  - Resources meeting the criteria for Properties Exempt from Evaluation in [106 PA/5024 MOU Attachment 4](#).
  - Resources previously determined not eligible for the NRHP, CRHR (and for state-owned cultural resources not eligible for the CHL) and that determination remains valid.
- Bridges in the PAL that are listed as Category 5 in the Caltrans Historic Highway Bridge Inventory and subsequent updates.
- Properties within the PAL were previously determined eligible for the NRHP, CRHR (or CHL for state-owned historical resources), and those determinations remain valid, but the historical resources will not be affected by the project or activity.
- Caltrans has determined that state-owned archaeological sites within the PAL are considered eligible for the NRHP/CHL for the purposes of this project or activity

only, per [5024 MOU Stipulation VIII.C.3](#), and will be protected from potential effects by using ESAs.

- Caltrans has determined that the state-owned resources within the APE are considered eligible for the NRHP/CHL for the purposes of this project or activity only because evaluation was not possible and CSO has approved this finding, per [5024 MOU Stipulation VIII.C.4](#).
- Caltrans has determined “no impact to historical resources” is an appropriate conclusion because Caltrans determined that all of the resources in the PAL are not CRHR eligible or for state-owned resources not NRHP/CHL eligible *and* prior SHPO Section 106 or PRC 5024 consultation is documented.
- Caltrans has determined “no impact to historical resources” is an appropriate conclusion and there are historical resources within the PAL, but the project or activity will have no effect on them; explain why they would not be affected.
- For state-owned historical resources, Caltrans has determined that a conclusion of “No State-owned Historical Resources are Affected” is appropriate either because there are no state-owned historical resources within the PAL or the project or activity would have no effect on such resources, per [5024 MOU Stipulation IX.A](#).
- Caltrans has determined “No Substantial Adverse Change-Standard Conditions” is an appropriate conclusion because the historical resources (not owned by Caltrans) within the PAL the Standard Conditions of either ESAs or use of the *Secretary of the Interior’s Standards for the Treatment of Historic Properties* will be imposed as outlined in [106 PA/5024 MOU Attachment 5](#). Note that this finding cannot be used for state-owned historical resources; see “HRCR to CSO.”
- Caltrans has determined a “Substantial Adverse Change” conclusion is appropriate finding because the project will cause adverse change to historical resource (not owned by Caltrans) within the PAL; explain how they would be affected and refer to the Mitigation Plan section of the HRCR for additional information. Note that this finding cannot be used for state-owned historical resources; see “HRCR to CSO” for state-owned historical resources not on the Master List and “HRCR to SHPO” for state-owned historical resources on the Master List.

### ***Processing the “HRCR to District File”***

District PQS or consultants prepare the document and the Caltrans PQS’s review for approval signature and the DEBC’s approval signature completes the CEQA and/or PRC 5024 process. As there are no cultural resources for which SHPO concurrence

is needed, the HRCR does not get transmitted to SHPO, but when state-owned cultural resources are within the PAL, Caltrans provides information on these actions in its annual report to SHPO, per [5024 MOU Stipulation XIX.E](#); see also [Section 2.8.14](#). The environmental document summarizes the results of the findings and includes the appropriate “finding” statement(s) for cultural resources identified within the PAL.

The District Environmental Branch retains the signed HRCR and supporting documentation in its project files. The District HRC sends one copy of the completed HRCR with supporting documentation to any consulting parties, and one copy to the appropriate Information Center.

### **2.9.2.2 HRCR to SHPO**

Pursuant to PRC 5024 and the [5024 MOU Stipulation VIII.C](#), when state-owned cultural resources requiring evaluation (whether eligible or not) are present in the PAL for a project or activity, the Caltrans district PQS completes the “HRCR to SHPO” section and transmits the HRCR to SHPO for concurrence on the eligibility findings. These HRCR findings are required even if the resources within the PAL will not be affected by the proposed project or activity.

#### ***When to use “HRCR to SHPO”***

This section of the HRCR is completed when the HRCR contains any of the following types of state-owned resources that require evaluation:

- Built-environment cultural resources.
- Archaeological sites.
- Non-structural cultural resources and sites (e.g., landscapes, tree rows, sites of significant events, etc.) that require evaluation
- Native American cultural site that require evaluation.

Under most circumstances, NRHP/CHL eligibility evaluations for built-environment resources (such as buildings, structures, and districts) and historical archaeological sites are included in a Historic Resources Evaluation Report (HRER), while prehistoric archaeological sites are evaluated in an Archaeological Evaluation Report (AER). These evaluation documents are attached to the HRCR.

On occasion, a “HRCR to SHPO” section also may be used when archaeological sites in the PAL will require Phase II test excavations to determine their NRHP/CHL eligibility. In these circumstances, the HRCR documents the presence of potentially

eligible sites within the PAL and states that archaeological testing to determine eligibility will be undertaken if the selected alternative will affect the sites and the project or activity cannot be redesigned to avoid them. After a test excavation is completed, the Caltrans district must transmit a Supplemental HRCR with the test excavation report to SHPO.

### ***Processing the “HRCR to SHPO”***

Under the 5024 MOU, these HRCRs and Supplemental HRCRs to SHPO are used only for determinations of eligibility and are processed as described below.

The District HRC transmits one copy of the “HRCR to SHPO” and attached documentation to SHPO and one copy to CSO along with a copy of the transmittal letter. The HRC should send one copy to consulting parties (such as Indian tribes or other interested parties) at this time so they have an opportunity to convey any comments to CSO. The Caltrans district letter to SHPO transmitting the HRCR will request SHPO’s concurrence on Caltrans’s determinations of eligibility. If pertinent, the letter may state Caltrans has made a finding of No State-owned Historical Resources Affected or finding of No Adverse Effect with Standard Conditions and is transmitting that finding to CSO in accordance with the 5024 MOU. For any NRHP/CHL eligible state-owned built-environment resources, such as buildings, bridges, roads, or other structures, the transmittal letter also will request SHPO’s comments under PRC 5024(b) and a request to add the state-owned historical buildings or structures to the Master List pursuant to PRC 5024(d). (See Exhibit 2.12 for sample transmittal letters.)

Under the 5024 MOU, Caltrans determines the PAL and scope of identification efforts, but SHPO may comment on both. SHPO’s response may be concurrence, but also may be a request for additional information.

In the rare event that the Caltrans district, CSO and SHPO do not reach agreement on determination(s) of eligibility, pursuant to [5024 MOU Stipulation VIII.C.6.b](#) and for purposes of PRC 5024 and 5024.5 only, the SHPO’s determination is final and binding.

Once SHPO has concurred on Caltrans eligibility determinations and the district finalizes HRCR and the District HRC sends a copy of the HRCR and transmittal letter to the CSO BEPS Branch Chief for filing and a copy of the HRCR to the appropriate

Information Center. The District HRC notifies any Indian tribes or interested parties of SHPO's concurrence.

If the project or activity is also a CEQA project, the SHPO's letter is attached as an exhibit to the environmental document. A statement summarizing the consultation is also included in the environmental document. If SHPO does not comment or the SHPO's 30-day review deadline has passed, the Caltrans district will include a copy of the email message that notifies SHPO that the district is moving forward.

### **2.9.2.3 HRCR to CSO**

#### ***When to use "HRCR to CSO"***

This section of the HRCR is completed when the HRCR contains any of the following findings.

- Finding of No Adverse Effect with Standard Condition through the use of the following: 1) through establishing ESAs to protect archaeological sites or built-environment historic properties, 2) through the use of the SOIS, or 3) transfer of Certified Local Government (CLG) designated state-owned historical resources.. See [5024 MOU Stipulation X.B.1](#) and [Attachment 5](#) and Exhibits [2.7](#), [2.14](#), and [7.5](#).
- Finding of No Adverse Effect other than the standard conditions as outlined in [5024 MOU Stipulation X.B.2](#).
- Finding of Adverse Effect with Standard Mitigation Measures; this is used only for NRHP/CHL eligible or listed/registered state-owned archaeological sites as outlined in [5024 MOU Stipulation X.C.1](#) and [Attachment 6](#), and Exhibits [2.7](#) and [2.14](#).
- Finding of Adverse Effect as outlined in [5024 MOU Stipulation X.C.2](#) and Exhibits [2.7](#) and [2.14](#).

#### ***Processing the "HRCR to CSO"***

The Caltrans District completes the "HRCR to CSO" section of the HRCR and the District HRC transmits one copy of the HRCR and supporting documentation to the CSO BEPS Branch Chief. When the affected state-owned historical resources are on the Master List, for Findings of No Adverse Effect (without standard conditions) and

for Findings of Adverse Effect, the District HRC provides two copies of the HRCR and supporting documentation to the CSO BEPS Branch Chief who will send the HRCR package to SHPO. If the Caltrans District has previously consulted with an Indian tribe or other interested party, the HRC sends one copy to them at this time so they have an opportunity to convey any comments to CSO.

The Caltrans district memo to CSO transmitting the HRCR will state that Caltrans has proposed an: FNAE-SC (ESA, SOIS, or CLG Designation), FNAE, FAE-SMM (Standard Mitigation Measures) or FAE, and is transmitting that finding in accordance with the 5024 MOU.

FNAE-SCs, as outlined in 5024 MOU Stipulation X.B.1 for state-owned historical resources whether or not they are on the Master List: For an FNAE-SC, if within 15 days of receipt CSO does not object to the proposed FNAE-SC-ESA, -SOIS, or -CLG Designation, the project or activity is not be subject to further review under this MOU. CSO will provide a quarterly summary notification to SHPO of all FNAE-SC findings in accordance with [5024 MOU](#) Stipulation XIX.E.2.

FNAE for historical resources not on Master List, as outlined in 5024 MOU Stipulation X.B.2 and pursuant to PRC 5024(f): For this kind of FNAE, if within 15 days of receipt CSO does not object to the proposed FNAE, the project or activity is not be subject to further review under this MOU. CSO will provide a summary notification to SHPO of all FNAE-SC findings in accordance with [5024 MOU](#) Stipulation XIX.E.

FNAE for historical resources on Master List, as outlined in 5024 MOU Stipulation X.B.2 and pursuant to PRC 5024.5: For this kind of FNAE, when if within 15 days of receipt CSO does not object, CSO will forward the FNAE to SHPO for concurrence. If within 30 days of receipt SHPO does not object to the proposed FNAE, the project or activity is not be subject to further review under this MOU.

FAE-SMM for eligible state-owned archaeological resources not on Master List, as outlined in 5024 MOU Stipulation X.C.1 and Attachment 6 and pursuant to PRC 5024(f): For this kind of FAE-SMM, if within 30 days of receipt CSO does not object to the proposed FAE, the project or activity is not be subject to further review under this MOU. CSO will provide a summary notification to SHPO of all FAE-SMM findings in accordance with [5024 MOU](#) Stipulation XIX.E.

FAE for state-owned historical resources not on Master List, as outlined in 5024 MOU Stipulation X.C.2 and Attachment 6 and pursuant to PRC 5024(f): For this kind

of F, if within 30 days of receipt CSO does not object to the proposed FAE, the project or activity is not be subject to further review under this MOU. CSO will provide a quarterly summary notification to SHPO of all FNAE-SC findings in accordance with [5024 MOU Stipulation XIX.E.2](#).

FAE for historical resources on Master List, as outlined in 5024 MOU Stipulation X.B.2 and pursuant to PRC 5024.5: For this kind of FAE involving state-owned historical resources that are on the Master List, when if within 15 days of receipt CSO does not object, CSO will forward the FAE to SHPO for concurrence. If within 30 days of receipt SHPO does not object to the proposed FAE, the project or activity is not be subject to further review under this MOU.

### ***Combined HRCR***

The Caltrans district may send an HRCR containing both “HRCR to SHPO” and “HRCR to CSO” findings when SHPO previously has not commented on determinations of eligibility for evaluated resources and the undertaking will avoid potential effects through the use of an FNAE-SC. However, any FNAE-SC finding is contingent upon SHPO’s concurrence with eligibility.

### **2.9.3 Supplemental HRCR**

Sometimes it is necessary to prepare a Supplemental HRCR to account for project-or activity-related factors not treated in the original HPSR.

Common reasons for preparing a Supplemental HPSR include:

- A project or activity PAL has been revised or enlarged, resulting in the need to consider cultural resources not covered in the original HRCR.
- A Phase II or evaluation report on an archaeological site has been completed, providing eligibility information that was not available in the original HRCR.
- The original HRCR requires revision because the project or activity has changed, there is a need for an environmental reevaluation, or there have been changes to a previously evaluated cultural resource.

A Supplemental HRCR follows the general format of the HRCR and includes all pertinent new or revised technical documents. It presents abbreviated information regarding the project and summarizes the findings of the original HRCR, but it will focus upon the results of identification and evaluation efforts within an expanded HRCR or upon the changed conditions that led to preparation of the Supplemental

HRCR. If the change involves archaeological sites that have been subjected to Phase II excavations to assess eligibility, the AER will be attached to the Supplemental HRCR.

#### **2.9.4 Internal Review of Documents for State-Only Projects**

The District Director has review and approval authority for all CEQA-related historical resources compliance documents, but normally delegates this responsibility to the DEBC. All cultural resources documents must be peer reviewed by Caltrans PQS. Peer reviews of state-only documents are the same as for Section 106 documents. While one or more EBCs may approve and sign technical studies that involve more than one discipline, e.g. HRERs, combined archaeological and built environment identification and evaluation studies or effect findings, only one EBC signs the cover document, i.e. the HRCR. See [Section 2.5.5](#) and [Exhibit 2.11](#) Table C for details regarding peer reviews, keeping in mind that the appropriate state laws and regulations must be cited and addressed.

##### **2.9.4.1 HRCR Peer Review**

District PQS, appropriately qualified consultants, or upon request CSO PQS, prepare the HRCR. Following peer review of the draft HRCR and any necessary revisions, the preparer signs the title page in the narrative format or the appropriate signature block on the short form of the HRCR. The appropriate Caltrans PQS must review and approve consultant-prepared HRCRs and indicates the review and approval has been completed by signing the title page in the narrative format or the appropriate signature block on the short form. Caltrans PQS-prepared HRCRs also must be peer reviewed. Following peer review of the draft document and after any necessary revisions have been made, the appropriate PQS conducting the review and approval signs the HRCR as stated above for reviews of consultant-prepared HRCRs.

The DEBC indicates review and formal approval of the HRCR by signing the title page in the narrative text format or the approval signature block of the short form HRCR. The document then is filed in the district files. The DEBC forwards the project's mitigation measures and commitments to the appropriate project manager for inclusion in the project and construction files. The District HRC sends one copy of the HRCR to CSO for filing; the copy may be a hard copy, but electronic format is preferred.

When state-owned cultural resources are evaluated and documented in the HRCR, the DEBC, or upon request the CSO BEPS Branch Chief, forwards the HRCR to SHPO for review and comment under the provisions of the 5024 MOU.

Caltrans has policies and procedures for the external distribution and publication of Caltrans-prepared and consultant-prepared reports and public presentations that apply to HRCRs and their attachments. Prior to distributing reports or making public presentations, consult [Exhibit 2.16](#).

The historical resources sections of the draft environmental document summarize the information contained in the HRCR. The draft environmental document states that the HRCR is on file at the District office for public review. If an ASR contains information or mapping showing the locations of archaeological sites is attached to the HRCR, however, the ASR shall be removed from all copies of the HRCR before it is made available for public review. In its place, a page should then be inserted explaining that the ASR has been deleted because archaeological records are confidential. Likewise, if archaeological site(s) are depicted on the Project Area Limits map, the map should also be removed to protect the site(s') locations.

Any comments that Caltrans receives from SHPO, other public agencies, or the interested public, as well as any additional information that has become available, must be taken into consideration and discussed in the final environmental document.

### **2.9.5 Relationship to CEQA Environmental Documents**

The HRCR must be complete by the time the environmental document is circulated to the public. When PRC 5024(f) or 5024.5 reviews are involved for state-owned historical resources, send the HRCR to CSO and/or SHPO *before* circulating the draft environmental document, so that CSO and/or SHPO comments can be incorporated. Allow SHPO at least 45 days before circulating the draft environmental document to comfortably accommodate their 30-day review period.

Because PRC 5024.5 consultation with SHPO must be complete by final environmental document approval, initiate SHPO review as early as possible.

As a state agency with jurisdiction by law under CEQA, SHPO has the opportunity to review and comment on effects to historical resources during the draft environmental document public review period. SHPO receives a copy of all state agency environmental documents filed through the State Clearinghouse. However, districts also

should include SHPO on their mailing list for any draft environmental documents that include historical resources analysis.

The historical resource compliance process is complete upon approval of the final environmental document. Caltrans will carry out mitigation after final environmental document approval but before construction begins.

## 2.10 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. While NEPA and CEQA are similar in concept, they differ in terminology, procedures, and substantive mandates to protect the environment. In general, when preparing joint compliance documents, agencies apply whichever standard, state or federal, is the more stringent. In preparing cultural studies, apply the federal standard when preparing preliminary studies and Section 106 compliance documents.

Surveys and evaluations that meet the federal standards generally satisfy CEQA and PRC 5024 requirements.

The criteria for listing in the CRHR are similar to the criteria for listing in the NRHP. However, there are some areas in which the state requirements differ from federal standards.

What is considered a historical resource under CEQA is broader and more encompassing than what are considered historic properties that meet the criteria for listing in the NRHP. Under CEQA Guidelines, at [CCR 15064.5](#), the following are historical resources:

- *Resources designated under a local ordinance or resolution.* These same locally designated resources, however, might not be eligible for listing in the NRHP.
- *Resources identified as significant in locally adopted surveys that conform to Office of Historic Preservation standards.* However, they might not meet NRHP criteria.

Likewise, the CRHR criteria, as outlined in the CRHR regulations at [CCR 4852\(d\)](#), include 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.

See [Exhibit 4.3](#) for more detailed information on the conditions under which these resources would meet the CRHR criteria, and would be considered historical resources under CEQA.

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 2.7.7](#) of this chapter.

## **2.11. Disagreements and Differences of Opinion**

Disagreements and differences of opinion on conclusions in cultural resources documents may happen, and there is an established procedure for handling them. This procedure is applicable whether CSO (as assigned by FHWA for federal undertakings), or Caltrans (under CEQA) is the lead agency.

If DEBC or higher management disagrees with the conclusions in a staff-prepared cultural resources document(s), such as an HPSR, HRCR, HRER, ASR, Bridge Evaluation, Finding of Effect, it may be rewritten.

Differences of opinion with technical reports (ASR, HRER) should be discussed with the author. If there is still disagreement, the process outlined below is followed.

### **2.11.1 Caltrans-prepared documents**

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. The Caltrans district sends the report to CSO and SHPO documenting the difference of opinion and presenting both views for review. In situations where there are professional disagreements between management and staff on cultural resources issues, it is strongly advised that the CSO Chief be notified.

### 2.11.2 Consultant-prepared documents

If there is disagreement between Caltrans 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 instead of repeating the section(s) wholesale (e.g. Historical Overview, Research Methods, maps, etc.)

The Caltrans-prepared document is the *primary* document (HPSRs, HRERs, ASRs, Bridge Evaluations, or findings of effect) 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.

Caltrans technical reports are not supplementary documents but primary documents, followed by consultant-prepared documents. This process applies to reports prepared by district staff, CSO staff, and consultants.

For state-only documents, such as HRCRs, the same procedure is followed; except they are not sent to CSO (as assigned by FHWA for federal undertakings) and the prevailing opinion is Caltrans.