

**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**

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**ATTACHMENTS:**

1. Caltrans Professionally Qualified Staff Standards
2. Screened Undertakings
3. Area of Potential Effects Delineation
4. Properties Exempt from Evaluation
5. Findings of No Adverse Effect with Standard Conditions
6. Standard Treatment of Archaeological Sites: Data Recovery Plan
7. Local Bridge Seismic Safety Retrofit Program

**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**

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

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

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

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

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

**WHEREAS**, FHWA California Division Administrator retains responsibility for environmental review, consultation and decision-making for specific undertakings identified in the MOUs and therefore shall be the "agency official" for those specific undertakings; and

**WHEREAS**, the United States Army Corps of Engineers' (Corps) Sacramento, San Francisco, and Los Angeles Districts (collectively Corps Districts) may also have Section 106 of the NHPA responsibilities since it administers a permit program under the authority of Section 10 of the Rivers and Harbors Act of 1899, as amended (33 USC § 403), and Section 404 of the Clean Water Act of 1972 as amended (33 USC § 1344) (DA Permits) to which Federal-aid Highway projects in California may be subject and therefore has participated in this consultation and is an invited signatory to this Programmatic Agreement (Agreement); and

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

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

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

**WHEREAS**, FHWA and Caltrans notified 114 federally recognized Indian tribes with ancestral lands in California through mail about this proposed amended Agreement, requested their comments, and took any comments received into account; and

**WHEREAS**, Caltrans also notified 131 non-federally recognized tribes, groups and individuals, 264 individuals on the California Native American Heritage Commission contact list, and 26 Tribal Historic Preservation Officers, requested their comments, and took any comments received into account; and

**WHEREAS**, Caltrans also notified 64 Certified Local Governments, 68 historic preservation organizations, Federal agencies with jurisdiction over lands in California, and members of the California State Association of Counties, and invited their comments on the proposed amended Agreement and took any comments received into account; and

**WHEREAS**, the *Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the California State Historic Preservation Officer, and California Department of Transportation regarding compliance with Section 106 of the National Historic Preservation Act as it pertains to the administration of the Federal-aid Highway Program in California* (2004) is superseded by this Agreement; and

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

**NOW, THEREFORE**, FHWA, the SHPO, the ACHP, and Caltrans (collectively signatories) agree that the Program shall be carried out in accordance with the following stipulations in order to take into account the effects of the Program on historic properties in California and that these stipulations shall govern compliance of the Program with Section 106 of the NHPA until this Agreement expires or is terminated.

## **STIPULATIONS**

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

### **I. APPLICABILITY**

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

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

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

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

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

F. For any Program undertaking in California that involves the need for a DA Permit(s), the Corps Districts programmatically designate FHWA as lead federal agency for compliance with Section 106 of the NHPA. This designation does not apply to Program undertakings on Federal land managed by the Corps or that would alter or modify a completed Corps project pursuant to 33 USC § 408. Pursuant to its authority under 23 USC § 326 and 23 USC § 327, Caltrans is deemed to be the federal agency and, by this Agreement, the lead agency for Federal-aid Highway projects. Caltrans will provide summary notification of compliance with this Agreement to the Corps District when applying for a DA Permit. If, for any undertaking, the Corps District should become the lead federal agency under Section 106 of the NHPA in accordance with Stipulation XX.D, the Corps District shall be responsible for compliance with

Section 106 of the NHPA for the permit area within their scope of analysis. To the extent that the Corps District deems applicable, the Corps District may use studies, findings, and determinations previously completed by Caltrans to document its own findings.

## **II. DEFINITIONS**

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

## **III. PROFESSIONAL QUALIFICATION STANDARDS**

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

## **IV. CONSULTATION WITH INDIAN TRIBES**

A. FHWA, Caltrans, the Corps, SHPO, and ACHP recognize the unique knowledge and expertise Indian tribes may possess regarding their ancestral lands and will consider that knowledge in making determinations and findings.

B. FHWA shall retain responsibility for government-to-government consultation with Indian tribes for Program undertakings. FHWA and the Corps Districts shall retain responsibility for government-to-government consultation with Indian tribes for DA Permit applications for Program undertakings. Caltrans recognizes the government-to-government relationship between the federal government and Indian tribes and shall conduct 36 CFR Part 800 consultations in a sensitive manner respectful of tribal sovereignty.

C. In accordance with 36 CFR § 800.2(c)(2)(ii)(E), FHWA and Caltrans may enter into agreements with Indian tribes that specify how they will carry out their responsibilities with regard to tribal participation in 36 CFR Part 800 review.

D. Notwithstanding any other provision of this stipulation, FHWA, and the Corps Districts shall honor the request of any Indian tribe at any time in the 36 CFR Part 800 process for government-to-government consultation regarding an undertaking covered by this Agreement. If a tribal request for government-to-government consultation with the federal government comes to Caltrans, Caltrans shall immediately inform FHWA, or the Corps District as applicable. If any Indian tribe requests government-to-government consultation with FHWA, or the Corps District, FHWA and the applicable Corps District shall conduct the government-to-government consultation, and, if the Indian tribe agrees, involve Caltrans in that consultation process. Caltrans, however, shall continue to carry out the remainder of responsibilities under this Agreement that are not the subject of government-to-government consultation.

E. To provide for an effective and efficient consultation process, when Caltrans is deemed to be a federal agency pursuant to 23 USC § 326 and 23 USC § 327, Caltrans shall conduct 36 CFR Part 800 consultation with Indian tribes for undertakings covered by this Agreement and shall assist FHWA, and the Corps District as applicable, in project specific government-to-government consultation, if an Indian tribe does not object. Each Caltrans District Director, and when Caltrans deems it appropriate, the Caltrans Director, shall be responsible for ensuring that any Caltrans consultation with Indian tribes complies with this stipulation.

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

## **V. PARTICIPATION OF OTHER CONSULTING PARTIES AND THE PUBLIC**

### **A. Consulting Parties**

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

### **B. Public Involvement**

Public involvement in planning and implementation of undertakings covered by this Agreement shall be governed by FHWA's and Caltrans' environmental compliance procedures, as set forth in the Caltrans Standard Environmental Reference (SER) Environmental Handbook, Caltrans Project Development Procedures Manual, FHWA's technical advisories, ACHP guidance, and similar and subsequent guidance documents. Public involvement and the release of information shall be consistent with 36 CFR §§ 800.2(d)(1-2), 800.3(e), and 800.11(c)(1 and 3), 5 USC § 552 as amended (Freedom of Information Act), section 304 of NHPA (16 USC § 470w-3(a), and California Government Code section 6254(r).

## **VI. DELEGATION OF FHWA AND CALTRANS ACTIONS UNDER THIS AGREEMENT**

### **A. Responsibility**

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

### **B. Actions under 36 CFR §§ 800.3 through 800.5**

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

1. Determine whether its proposed federal action is an undertaking as defined in 36 CFR § 800.16(y).
2. Determine under 36 CFR § 800.2(a)(2) whether another federal agency is involved in the undertaking and establish lead agency.
3. Determine under 36 CFR § 800.3(a) whether the undertaking is a type of activity that has the potential to affect historic properties.
4. Determine under 36 CFR § 800.3(c) and (d) whether the undertaking may occur on or has the potential to affect historic properties on tribal lands as defined in 36 CFR § 800.16(x).
5. Solicit public comment and involvement, as described in 36 CFR §§ 800.2(d), 800.3(e), and subject to confidentiality requirements of § 800.11(c).
6. Identify additional consulting parties, including Indian tribes, as described in 36 CFR § 800.3(f), and invite them to participate in the process covered by this Agreement.
7. Request, as appropriate, expedited consultation as described in 36 CFR § 800.3(g).
8. Determine under 36 CFR § 800.4 the undertaking's Area of Potential Effects (APE), identify and evaluate properties within the APE in order to determine their eligibility for the NRHP, and determine whether historic properties may be affected by the undertaking.
9. Apply the Criteria of Adverse Effect as described in 36 CFR § 800.5 and propose "No Adverse Effect with Standard Conditions" findings where imposing the standard conditions set forth in Stipulation X.B.1 will avoid adverse effects.

### **C. Actions under 36 CFR §§ 800.5(b) and 800.6**

1. When a Caltrans District proposes a finding of "No Adverse Effect without conditions" or a finding of "No Adverse Effect with conditions other than the Standard Conditions" set forth in Stipulation X.B.1, Caltrans shall proceed in accordance with Stipulation X.B.2.
2. When a Caltrans District proposes a finding of "Adverse Effect," Caltrans shall proceed in accordance with Stipulation X.C.

## **VII. SCREENED UNDERTAKINGS EXEMPT FROM FURTHER REVIEW**

In consultation with the other signatories to this Agreement, FHWA and Caltrans have identified classes of undertakings that will be addressed in accordance with Attachment 2 to this Agreement. The undertakings classified in Attachment 2 as Screened Undertakings will require no further review under this Agreement when the requirements of Attachment 2 have been satisfactorily completed and it is determined that no feature of the undertaking necessitates further review pursuant to this Agreement.

## **VIII. IDENTIFICATION AND EVALUATION OF POTENTIAL HISTORIC PROPERTIES**

### **A. APE**

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

### **B. Identification**

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

### **C. Evaluation**

1. Properties Exempt from Evaluation: Attachment 4 to this Agreement lists the properties that the signatories agree shall be exempt from evaluation provided the Caltrans PQS in the appropriate discipline determines all terms and conditions in Attachment 4 are satisfactorily met. All other identified properties shall be evaluated in accordance with Stipulation VIII.C.2.
2. Evaluating Identified Properties: Caltrans shall evaluate the historic significance of identified properties in accordance with 36 CFR § 800.4(c)(1) following the guidance in the SER Volume 2, SHPO guidance, National Register Bulletins, FHWA guidance, or any other guidance, methodologies, agreements, or protocols that the signatories agree may be used to determine whether identified properties are historic properties. During the evaluation process, Caltrans Districts shall make a reasonable and good faith effort to identify and consult with any Indian tribe on the evaluation of any identified property to which they attach religious and cultural significance, or other interested party.



3. **Special Consideration for Certain Archaeological Properties:** If archaeological properties within an undertaking's APE are protected from any potential effects by establishment and effective enforcement of an Environmentally Sensitive Area (ESA), as described in Attachment 5 to this Agreement, the signatories agree that Caltrans may consider such properties to be NRHP eligible for the purposes of that undertaking. Caltrans shall consult with Indian tribes that may attach religious or cultural significance to the historic property to determine if the site has values that may qualify it as NRHP eligible under Criterion A, B, or C in addition to, or instead of, Criterion D. This consideration of NRHP eligibility without formal evaluation shall not extend to other undertakings whose APE includes the archaeological property, unless through consultation Caltrans and the SHPO agree otherwise.
4. **Assumption of Eligibility:** Subject to CSO approval, Caltrans Districts may consider properties NRHP eligible for the purposes of an undertaking when special circumstances preclude their complete evaluation, such as restricted access, large property size, or limited potential for effects.
5. **Previously Evaluated Properties:** When previously evaluated properties are identified within an undertaking's APE, Caltrans PQS shall review those previous evaluations to determine whether the previous evaluations are still valid or re-evaluate as appropriate. Indian tribes shall be consulted during the review and re-evaluation process when properties to which those tribes may attach religious or cultural significance are involved. The passage of time, changing perceptions of significance, eligibility under previously unconsidered NRHP criteria, new information, incomplete or erroneous prior evaluation, and errors of fact warrant such review and may require Caltrans to re-evaluate the properties.
6. **Consulting the SHPO:** The Caltrans District shall submit determinations of NRHP eligibility and supporting documentation to the SHPO for comment in accordance with 36 CFR § 800.4(c)(2), with concurrent submittal to CSO. For projects where responsibilities have not been assigned to and assumed by Caltrans, the Caltrans District shall also concurrently submit the determinations and supporting documentation to FHWA.
  - a. If the SHPO has not responded to Caltrans within 30-calendar days after receipt, Caltrans may either extend the review period in consultation with the SHPO or proceed to the next step prescribed by this Agreement, based upon Caltrans' determination of NRHP eligibility. Confirmation of date of receipt as the basis for determining the 30-day review period may be provided through the SHPO database, a mail delivery receipt, or written or documented oral communication from the SHPO. If the 30-day period expires without SHPO comment or agreement to extend the review period, the Caltrans District may move forward upon notification to the SHPO and CSO via e-mail or other written communication.
  - b. Agreements or disagreements regarding the NRHP eligibility of properties shall be governed by 36 CFR § 800.4(c)(2), except that in the event of a disagreement, the Caltrans District shall promptly notify CSO, and FHWA as appropriate, whereupon the Caltrans District, CSO, the SHPO, and any Indian tribe or other consulting party shall consult to resolve the disagreement in accordance with a mutually acceptable time frame. If the disagreement is resolved, Caltrans shall proceed in accordance with those requirements of this Agreement that apply to the resolution. If the disagreement is not resolved or if a mutually acceptable time frame to resolve the disagreement is not

reached, CSO shall comply with 36 CFR § 800.4(c)(2). If consultation with the Secretary of the Interior is required, CSO shall ensure that all concerns, including the views of FHWA, the SHPO and any Indian tribe or any other consulting party, and the Corps as appropriate, are included.

7. Notifying Indian tribes: When a Caltrans District has been in consultation with an Indian tribe on the NRHP eligibility of a property, the Caltrans District shall notify the Indian tribe of Caltrans' eligibility determination concurrent with submittal to the SHPO and provide documentation to the Indian tribe, unless the Indian tribe has indicated it does not wish to receive such documentation.

## **IX. FINDINGS OF EFFECT**

### **A. Finding of No Historic Properties Affected Pursuant to 36 CFR § 800.4(d)(1)**

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

### **B. Finding of Historic Properties Affected**

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

## **X. ASSESSMENT OF EFFECTS**

### **A. Application of Criteria**

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

### **B. Finding of No Adverse Effect**

The Caltrans District may make a finding of "No Adverse Effect with Standard Conditions" when standard conditions that will avoid adverse effects to historic properties are imposed in accordance with Attachment 5 to this Agreement. The Caltrans District may propose a finding of "No Adverse Effect" if none of the undertaking's anticipated effects meet the Criteria of Adverse

Effect under 36 CFR § 800.5(a)(1), non-standard conditions are imposed to avoid adverse effects, or when the Caltrans District has developed a plan for managing any post-review discoveries, including decision thresholds and procedures for consultation with the SHPO, that would be implemented in accordance with Stipulation XV.

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

The Caltrans District shall submit its finding and supporting documentation to CSO for review. Where FHWA's responsibilities for environmental review and compliance have not been assumed by Caltrans, the Caltrans District shall provide concurrent submittal to CSO and FHWA. The Caltrans District shall concurrently provide documented notification of the finding to any consulting parties that have expressed views regarding potential effects to historic properties. If within 15 days of receipt CSO or FHWA does not object to the proposed NAE-SC finding, the undertaking shall not be subject to further review under this Agreement. CSO shall provide summary notification to the SHPO of all NAE-SC findings in accordance with Stipulation XX.G(3).

- a. Environmentally Sensitive Areas (ESAs): A finding of NAE-SC-ESA is appropriate when an undertaking's effects to historic properties, or properties considered to be eligible pursuant to Stipulation VIII.C.3 or 4, will be avoided by designation and enforcement of ESAs as described in Attachment 5 to this Agreement. Caltrans will consult with Indian tribes that attach religious or cultural significance to the property or other interested parties, if any, to determine whether an ESA will adequately protect those values without other conditions or mitigation. The results of that consultation will determine whether a NAE-SC-ESA applies.
- b. Secretary of the Interior's Standards for the Treatment of Historic Properties (SOIS): A finding of NAE-SC-SOIS is appropriate when an undertaking's effects to historic properties may be considered to be not adverse if the work is consistent with the SOIS (36 CFR Part 68) and carried out in accordance with Attachment 5 to this Agreement.
- c. Additional Standard Conditions: CSO may propose the adoption of additional standard conditions that have proven effective in avoiding adverse effects to historic properties. CSO shall provide documentation supporting the proven effectiveness to the SHPO for review. Attachment 5 may be revised to include any new standard condition in accordance with Stipulation XX.D(2).

2. Finding of No Adverse Effect

- a. When Caltrans proposes a No Adverse Effect finding other than a finding of NAE-SC specified in Stipulation X.B.1, the Caltrans District shall submit its proposed finding and supporting documentation to CSO for review. If CSO agrees with the proposed finding, CSO shall consult with the SHPO pursuant to 36 CFR § 800.5(c). Where FHWA's responsibilities for environmental review and compliance have not been assumed by Caltrans, CSO shall concurrently notify FHWA of the finding. The Caltrans District shall concurrently provide documented notification of the finding to any consulting parties that have expressed views regarding potential effects to historic properties, including a request that any comments be directed to CSO, or FHWA as appropriate, within 30 days of receipt of notification.

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

### 3. Re-assessment of Effects

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

### **C. Finding of Adverse Effect**

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

3. Caltrans CSO shall notify the ACHP of an adverse effect finding and invite its participation in accordance with 36 CFR § 800.6(a) under any of following conditions:
  - a. When the undertaking affects a National Historic Landmark. Under this condition, the CSO shall also notify the Secretary of the Interior.
  - b. When the effects to historic properties are highly controversial or there is substantial public interest in the undertaking's effects on historic properties.
  - c. When Caltrans, FHWA, as appropriate, and the SHPO are unable to reach agreement on the resolution of adverse effects.
  - d. When the SHPO or another consulting party requests that the ACHP be invited to participate in consultation.
4. Caltrans shall file any Memorandum of Agreement (MOA) executed for any undertaking with the ACHP prior to proceeding with the undertaking.

#### **D. Resolving Disagreements Regarding Assessment of Effects**

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

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

2. Should the ACHP not exercise one of the foregoing options within 30-calendar days after receipt of all pertinent documentation, the agency official's responsibilities under Section 106 of the NHPA are fulfilled upon implementation of the proposed response to the disagreement.
3. CSO, or FHWA as appropriate, shall take into account any ACHP recommendation or comment and any comments from the SHPO or any consulting party in reaching a final decision regarding the disagreement.
4. CSO, or FHWA as appropriate, shall provide the SHPO, ACHP, and any consulting parties with a written copy of its final decision regarding resolution of any disagreement addressed hereunder. Thereafter, CSO, or FHWA as appropriate, may proceed in accordance with the terms of its resolution.
5. CSO's, or FHWA's as appropriate, resolution of any disagreement addressed hereunder shall be conclusive.

## **XI. RESOLUTION OF ADVERSE EFFECTS**

- A. CSO, or FHWA where Caltrans has not assumed responsibility for environmental review and compliance, with the cooperation and assistance of the Caltrans District, shall consult pursuant to 36 CFR §§ 800.6(a) and 800.6(b)(1) to resolve adverse effects that may result from undertakings covered by this Agreement. The Caltrans District shall consult with the Indian tribes that ascribe religious or cultural significance to affected historic properties and other consulting parties in determining appropriate measures to resolve adverse effects. Caltrans, or FHWA as appropriate, shall also include the ACHP as part of the consultation when the ACHP has notified the agency official that it will participate in the consultation.
- B. When resolution of adverse effects includes proposals to conduct data recovery on historic properties, a data recovery proposal shall be developed in accordance with Attachment 6 to this Agreement.
- C. Nothing in this Agreement shall override or supersede an Indian tribe's ability to request government-to-government consultation with FHWA or the Corps District related to possible issuance of a DA Permit for a Program undertaking as described in Stipulation IV.
- D. Where FHWA's responsibilities for environmental review and compliance have not been assumed by Caltrans, FHWA retains the right to reverse at any time for reasonable cause any decision allowing Caltrans certain actions prescribed in 36 CFR § 800.6.
- E. If DEA, FHWA where Caltrans has not assumed responsibilities for environmental review and compliance, the SHPO, and the Caltrans District are unable to agree on measures to resolve the adverse effects of an undertaking pursuant to this stipulation, they shall invite the ACHP to participate in the resolution process pursuant to 36 CFR § 800.6(b)(1)(v). If the involved parties agree to a resolution, they shall execute an MOA. If the involved parties fail to agree to measures to resolve the adverse effects, DEA, the SHPO, FHWA as appropriate, or the ACHP may terminate consultation pursuant to 36 CFR § 800.7(a). Upon termination, the signatories shall comply with the remaining requirements of 36 CFR § 800.7.

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

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

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

## **XIII. NATIVE AMERICAN HUMAN REMAINS AND RELATED CULTURAL ITEMS**

### **A. Treatment on Federal Lands**

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

### **B. Treatment on Non-Federal Lands**

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

## **XIV. CURATION**

### **A. Collections from Federal Lands**

Where the federal land managing agency has designated Caltrans lead pursuant to 36 CFR § 800.2(a)(2), the Caltrans District shall comply with the federal land-managing agency’s curation

policies and make every reasonable effort to ensure that cultural materials and records resulting from excavation or surface collection pursuant to this Agreement conducted on federal lands are curated in accordance with Curation of Federally-owned and Administered Archaeological Collections (36 CFR Part 79), or as may be stipulated in any agreement document pertaining to an undertaking covered by this Agreement. Native American human remains and cultural items determined in consultation with Indian tribe(s) to be associated funerary objects, sacred objects and objects of cultural patrimony, as defined by NAGPRA, shall be prepared for disposition pursuant to NAGPRA POA and any other requirements agreed to by the federal land managing agency.

#### **B. Collections from Non-Federal Lands**

The Caltrans District shall ensure that cultural materials and records resulting from excavations or surface collections on non-federal 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), or as outlined in an agreement document pertaining to the undertaking covered by this Agreement. Native American human remains and associated items shall not be curated but addressed in consultation with the most likely descendent(s) designated by California's NAHC pursuant to California Public Resources Code section 5097.98. Sacred objects and objects of cultural patrimony, as defined by NAGPRA, shall not be curated but addressed in consultation with Indian tribe(s), consistent with 43 CFR § 10.3.

### **XV. POST-REVIEW DISCOVERIES**

#### **A. Planning for Subsequent Discoveries**

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

#### **B. Discoveries Without Prior Planning**

1. If a plan for subsequent discoveries is not in place and an undertaking affects a previously unidentified property or affects a known historic property in an unanticipated manner, the Caltrans District shall promptly stop construction activity in the vicinity of the property and implement all reasonable measures needed to avoid, minimize, or mitigate further harm to the property.
2. Within 48 hours of the discovery, the Caltrans District shall assess the discovery and, if determined to be potentially eligible, provide initial notification to CSO, the SHPO, FHWA where responsibility for environmental review has not been assigned, any Indian tribe that might attach religious or cultural significance to the affected property, the federal agency if federal lands are involved and the federal agency has designated Caltrans lead pursuant to 36 CFR § 800.2(a)(2), the Corps District if within a DA Permit area, or any other consulting



party that may have a demonstrated interest in potentially affected properties. Notification shall include, to the extent such information is available: description of the nature and extent of the property or properties, assessment of NRHP eligibility of any properties, the type and extent of any damage to the property, the proposed action, any prudent and feasible treatment measures that would take any effects into account, and a request for comments. Caltrans may furnish this information through correspondence, hard copy, electronic media, telephone, or meetings, at its discretion taking into account the capabilities of the consulting parties and must document this process for the administrative record. Caltrans may assume eligibility of any potentially affected property and proceed with the provisions of this sub-part.

3. Should any of the notified parties respond with comments within 72 hours of the initial notification of the discovery or indicate that they wish to be involved in resolving the situation, the Caltrans District shall take into account their comments or continue consultation with any commenting parties. Caltrans shall provide any remaining information specified in subpart 2, above, as it becomes available. The Caltrans District shall determine the time frame for any further consultation, taking into account the qualities of the property, consequences of construction delays, and interests of consulting parties. Following the conclusion of any further consultation, Caltrans shall take all comments received into account and may carry out actions to resolve any effects. Failure of any notified party to respond within 72 hours of the notification shall not preclude Caltrans from proceeding with their proposed actions.
4. If a National Historic Landmark is affected, the Caltrans District shall include the Secretary of the Interior and the ACHP in the notification process.

## **XVI. EMERGENCY SITUATIONS**

- A. Pursuant to 36 CFR § 800.12(d), this stipulation applies only to undertakings that will be implemented within 30-calendar days after the disaster or emergency has been formally declared. The President, California Governor, Caltrans Director or District Director may declare an emergency situation exists. Caltrans may request an extension of the period of applicability from the SHPO prior to the 30-days. Caltrans shall follow Stipulations VII through XI for all undertakings to be initiated more than 30-days following declaration of an emergency, unless an extension has been approved by SHPO.
- B. The Caltrans District PQS shall determine whether the emergency undertaking has the potential to affect historic properties. If historic properties are likely to be affected by the emergency undertaking, the Caltrans District shall notify CSO, the SHPO, FHWA where responsibilities have not been assumed, and any Indian tribes that might attach religious or cultural significance to the affected property and afford them an opportunity to comment within seven calendar days of the notification. Notification shall include, to the extent such information is available: description of the nature and extent of the property or properties, assessment of NRHP eligibility of any properties, the type and extent of any damage to the property, the proposed action, any prudent and feasible treatment measures that would take any effects into account, and a request for comments. If the Caltrans District determines that circumstances do not permit seven days for comment, the Caltrans District shall notify the parties and invite any comments within the time available.

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

## **XVII. LOCAL BRIDGE SEISMIC SAFETY RETROFIT PROGRAM**

In 1995, FHWA, Caltrans, SHPO and ACHP entered into a Programmatic Agreement to programmatically implement compliance with Section 106 of the NHPA under the California Seismic Retrofit of Bridge Structures Program, which is considered an emergency program. Since the implementation of the Seismic Retrofit Programmatic Agreement, the State-owned bridges and toll bridges have been retrofitted, but the Local Bridge Seismic Safety Retrofit Program is still in effect. In that the federal regulations at 36 CFR Part 800 have changed since 1995, the Seismic Retrofit Programmatic Agreement is superseded by this Agreement and the relevant provisions that provide for expedited compliance are updated to comply with the current regulations in 36 CFR Part 800 and incorporated as Attachment 7 to this Agreement. Caltrans shall follow applicable stipulations in this Agreement to determine the seismic retrofit project's potential to affect historic properties. This stipulation will remain in effect until CSO notifies the SHPO, the ACHP and other consulting parties that all actions under the Local Bridge Seismic Safety Retrofit Program have been completed or this Agreement is terminated.

## **XVIII. DOCUMENTATION**

- A. All documentation that supports findings and determinations made under this Agreement shall be consistent with 36 CFR § 800.11 and attachments to this Agreement, shall be peer-reviewed by Caltrans PQS in the appropriate discipline, and shall be in accordance with the SER Volume 2 and its subsequent revisions or editions.
- B. Documentation prepared by local agencies or their consultants in support of such findings shall be submitted to the Caltrans District for review and approval by Caltrans PQS in the appropriate discipline. The Caltrans District shall transmit all documentation cited herein to CSO, FHWA, and/or the SHPO as stipulated by this Agreement. The Caltrans District shall not transmit to CSO, FHWA, the SHPO, and/or any consulting party any documentation that has not been reviewed and approved by Caltrans PQS in the appropriate discipline.
- C. All documentation prepared under this Agreement shall be kept on file at Caltrans District offices and made available to consulting parties and the public as stipulated by this Agreement, consistent with applicable confidentiality requirements.

## **XIX. TRAINING REQUIREMENTS**

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

performance under this Agreement and CSO shall work with the Caltrans Districts to make such training available, subject to funding availability. CSO and Caltrans Districts, in consultation with the SHPO, shall identify needs and provide training to project management responsible for undertakings under this program.

## **XX. ADMINISTRATIVE STIPULATIONS**

### **A. Resolving Objections**

1. Should any signatory object in writing to Caltrans, or FHWA when it is the agency official, regarding the manner in which the terms of this Agreement are carried out, Caltrans or FHWA will immediately notify the other signatories and invited signatories of the objection and proceed to consult with the objecting party to resolve the objection. Caltrans or FHWA will honor the request of any other signatory to participate in the consultation and will take any comments provided by such parties into account. Caltrans or FHWA as appropriate shall establish a reasonable time frame for such consultation.
2. If the objection is resolved through consultation, Caltrans or FHWA may authorize the disputed action to proceed in accordance with the terms of such resolution.
3. If after initiating such consultation, Caltrans or FHWA determines that the objection cannot be resolved through consultation, Caltrans, or FHWA shall forward all documentation relevant to the objection to the ACHP, including Caltrans' or FHWA's proposed response to the objection. Within 30-calendar days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:
  - a. Advise Caltrans or FHWA that the ACHP concurs in Caltrans' or FHWA's proposed response to the objection, whereupon Caltrans or FHWA will respond to the objection accordingly; or
  - b. Provide Caltrans or FHWA with recommendations, which Caltrans or FHWA shall take into account in reaching a final decision regarding its response to the objection; or
  - c. Notify Caltrans or FHWA that the objection will be referred for comment consistent with 36 CFR § 800.7(a)(4) and proceed to refer the objection for comment. In this event, Caltrans or FHWA shall take the resulting comments into account consistent with 36 CFR § 800.7(c)(4). Caltrans responsibilities under this Agreement that are not the subject of the disagreement shall remain unchanged.
4. Should the ACHP not exercise one of the foregoing options within 30 days after receipt of submitted pertinent documentation, the agency official's responsibilities under Section 106 of the NHPA are fulfilled upon implementation of the proposed response to the objection.
5. Caltrans or FHWA shall take into account any ACHP recommendation or comment and any comments from the other signatories and invited signatories to this Agreement in reaching a final decision- regarding the objection. Caltrans' or FHWA's responsibility to carry out all actions under this Agreement that are not the subjects of the objection shall remain unchanged.

6. Caltrans or FHWA shall provide all other signatories and invited signatories to this Agreement with a written copy of its final decision regarding any objection addressed pursuant to Stipulation XX.A.
7. Caltrans or FHWA may authorize any action subject to objection under items 1-6 of Stipulation XX.A to proceed, provided the objection has been resolved in accordance with the terms of items 1-6 of Stipulation XX.A.

## **B. Public Objection**

At any time during implementation of the terms of this Agreement, should any member of the public raise an objection in writing pertaining to such implementation to any signatory to this Agreement, that party shall immediately notify Caltrans. Caltrans shall immediately notify the other signatory parties in writing of the objection. Any signatory may choose to comment on the objection to Caltrans. Caltrans shall establish a reasonable time frame for this comment period. Caltrans shall consider the objection, and in reaching its decision, Caltrans will take all comments from the other parties into account. Within 15-calendar days following closure of the comment period, Caltrans will render a decision regarding the objection and respond to the objecting party. Caltrans will promptly notify the other parties of its decision in writing, including a copy of the response to the objecting party. Caltrans' decision regarding resolution of the objection will be final. Following issuance of its final decision, Caltrans may authorize the action subject to dispute hereunder to proceed in accordance with the terms of that decision.

## **C. Exclusionary Provision**

1. Probation
  - a. The DEA Chief may place an individual Caltrans District, Division, Office or Branch on probation at the request of the CSO Chief in consultation with the Office of Historic Preservation (OHP) Review and Compliance Unit Supervisor. Probation means loss of specific authority delegated under the Agreement, as determined by the CSO Chief in consultation with the OHP Review and Compliance Unit Supervisor. Probation may result from a pattern of compliance deficiencies identified during CSO and OHP project review or an Agreement review or annual report, or failing to maintain the PQS necessary to implement the provisions of the Agreement. Examples of deficient compliance actions that may be cause for probation include, but are not limited to, inappropriate APE delineation, inappropriate application of the screening process, insufficient identification efforts resulting in post-review discovery, ESA violations and inadequate consultation efforts.
  - b. The DEA Chief shall provide written notice of probationary action to the administrative unit losing authority and the SHPO. The DEA Chief, in consultation with the CSO Chief, the OHP Review and Compliance Unit Supervisor, and appropriate level Caltrans District representative (Director, Deputy, Office Chief or Branch Chief), will develop and approve a Plan of Corrective Action (POCA) to be implemented by the Caltrans District, Division, Office or Branch. The POCA will describe the deficiencies, provide a corrective plan specific to the identified deficiencies, indicate the duration of probation and provide performance or reporting criteria to document improvement. Upon expiration of the probation, the DEA Chief, in consultation with the above parties, shall determine whether the POCA has been adequately implemented and the deficiencies corrected. CSO

and the OHP Review and Compliance Unit may perform program reviews to ensure compliance with the POCA. Failure to correct the deficiencies or identification of additional deficiencies during the term may result in extension of the POCA with or without additional restrictions, suspension, or removal from the Agreement.

**2. Suspension**

- a. The DEA Chief may suspend an individual Caltrans District, Division, Office or Branch at the request of the CSO Chief in consultation with the OHP Review and Compliance Unit Supervisor. Suspension may result from failure to successfully correct the deficiencies that resulted in placement on probation or suspension may be immediate if the DEA Chief determines the violations were egregious, such as numerous ESA violations where cultural resources were impacted. Suspension means substantial or total loss of authority delegated under the Agreement. CSO review and approval of specified compliance actions under the Agreement will be required.
- b. The DEA Chief, in consultation with the CSO Chief, the OHP Review and Compliance Unit Supervisor, and appropriate level Caltrans District representative ( Director, Deputy, Office Chief, Branch Chief), will approve a POCA to be implemented by the Caltrans District, Division, Office or Branch. The POCA will describe the deficiencies, provide a corrective plan specific to the identified deficiencies, indicate the duration of suspension and provide performance or reporting criteria to document improvement. Upon expiration of the suspension, the DEA Chief, in consultation with the above parties, shall determine whether the POCA has been adequately implemented and the deficiencies corrected. Failure to correct the deficiencies or identification of additional deficiencies during the term may result in extension of the POCA with or without additional restrictions, or removal from the Agreement.

**3. Removed Status**

- a. At the request of the DEA Chief, in consultation with the SHPO and the Caltrans District Director, the Caltrans Director may remove an individual Caltrans District, Division, Office or Branch from the Agreement based on failure to successfully comply with a POCA or for additional egregious non-compliance actions beyond the scope, but within the term of an existing POCA. Removal from the Agreement will require all Section 106 of the NHPA compliance documents to route through CSO who will consult with the SHPO, as appropriate, under 36 CFR Part 800.
- b. A POCA, to be developed in conjunction with but not necessarily prior to the removal, will specify the term of removal and a pathway to restoration. The pathway to restoration will likely proceed back through suspension and probation prior to regaining full status.

**D. Amendment**

1. Any signatory and/or invited signatory to this Agreement may at any time propose amendments, whereupon all signatories and invited signatories shall consult to consider such amendment. This Agreement may be amended only upon written concurrence of all signatories.
2. Each attachment to this Agreement may be individually revised or updated through consultation and agreement in writing of the signatories without requiring amendment of the

Agreement, unless the signatories through such consultation decide otherwise. Upon revising any attachment or appendix, Caltrans shall append any revised document to this Agreement and share the final revised document to the other parties to this Agreement.

**E. Corps District Withdrawal from this Agreement**

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

**F. Termination**

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

**G. Review and Reporting**

1. DEA, FHWA, SHPO, the Corps Districts, and ACHP may review activities carried out pursuant to this Agreement. Caltrans Districts shall facilitate this review by compiling specific categories of information to document the effectiveness of the Agreement and by making this information available to DEA, FHWA, SHPO, Corps Districts, and ACHP in the form of a written report. Categories of information shall include, but are not limited to, a summary of actions taken under the Agreement, including all findings and determinations, accomplishments, public objections, any corrective actions implemented under Stipulation XX.C, ESA violations, inadvertent effects, or foreclosures. The range and type of information included by Caltrans Districts in the written report and the manner in which this information is organized and presented must be such that it facilitates the ability of the reviewing parties to assess accurately the degree to which this Agreement and its manner of implementation constitute an efficient and effective program alternative under 36 CFR § 800.14, and to determine whether this Agreement should remain in effect, and if so, whether and how it should be improved through appropriate amendment.

2. CSO shall prepare an annual written report of activities performed under this Agreement for its duration, unless the signatories agree to amend the reporting schedule. The initial report shall be prepared following completion of the first full State fiscal year under this Agreement. CSO shall submit the annual reports to the SHPO, FHWA, Corps Districts, and the ACHP no later than three (3) months following the end of the State fiscal year.
3. In accordance with Stipulation X.B.1, CSO shall provide a quarterly report to the SHPO summarizing findings of No Adverse Effect with Standard Conditions, and include FHWA for undertakings where FHWA has retained responsibility for environmental review and compliance. After the first year of this Agreement, the SHPO and CSO shall consult to determine if the reporting period should be modified and determine a new schedule. The reporting period may be modified without requiring amendment of the Agreement.
4. CSO shall provide notice to the public that the annual report is available for public inspection and ensure that potentially interested members of the public are made aware of its availability and that the public may comment to the signatories on the report.
5. At the request of any other signatory to this Agreement, CSO shall ensure that one or more meetings are held to facilitate review of, and comment on, the report to address questions, issues, or adverse comments.
6. In conjunction with the review of the reports prepared by Caltrans pursuant to this stipulation, the signatories and invited signatories may consult to review the overall effectiveness and benefits of the Agreement, determine if its requirements are being met, decide if amendments to the Agreement are warranted, review the reporting format and categories for adequacy, and identify any other actions that may be needed in order to take into account the effects of the Program on historic properties in California.

## **H. Confidentiality**

All parties to this Agreement acknowledge that information about historic properties, prospective historic properties, or properties considered historic for purposes of this Agreement are or may be subject to the provisions of NHPA section 304, 36 CFR § 800.11(c), and California Government Code section 6254.10 and 6254(r) (Public Records Act), relating to the disclosure of sensitive information, and having so acknowledged, will ensure that all actions and documentation prescribed by this Agreement are, where necessary, consistent with the requirements of NHPA section 304, 36 CFR § 800.11(c), 5 USC § 552 as amended (Freedom of Information Act), and California Government Code section 6254.10 and 6254(r).

## **I. Duration of this Agreement**

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

**J. Effective Date of this Agreement and of Additional Attachments and Amendments**

This Agreement shall take effect January 1, 2014, following execution by FHWA, the SHPO, the ACHP, and Caltrans. Additional attachments or amendments to this Agreement shall take effect on the dates they are fully executed by FHWA, the SHPO, the ACHP, and Caltrans.

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



**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**

**SIGNATORY PARTIES**

Federal Highway Administration

By:  Date: 12/18/13  
Vincent Mammano, California Division Administrator

California State Historic Preservation Officer

By:  Date: 12-19-13  
Carol Roland-Nawi, State Historic Preservation Officer

Advisory Council on Historic Preservation

By:  Date: 12/23/13  
John M. Fowler, Executive Director

California Department of Transportation

By:  Date: 12/19/2013  
Malcolm Dougherty, Director

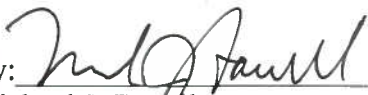
**FIRST AMENDED**

**PROGRAMMATIC AGREEMENT AMONG THE FEDERAL HIGHWAY  
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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**


**INVITED SIGNATORY PARTIES:**

**UNITED STATES ARMY CORPS OF ENGINEERS**


United States Army Corps of Engineers, Sacramento District

By:  Date: 1/22/14  
Michael J. Farrell  
Colonel, U.S. Army  
District Commander

United States Army Corps of Engineers, Los Angeles District

By:  Date: 1/22/14  
Kimberly M. Colloton, PMP  
Colonel, US Army  
Commander and District Engineer

United States Army Corps of Engineers, San Francisco District

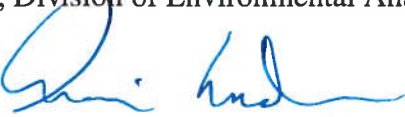
By:  Date: 22 Jan 2014  
John K. Baker, P.E.  
Lieutenant Colonel, US Army  
District Engineer

**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**

**CONCURRING PARTIES:**

By:  Date: 12/19/13  
Chief, Division of Environmental Analysis


By:  Date: 12-19-2013  
Chief, Cultural Studies Office

By:  Date: 12/19/2013  
District 1 District Director

By:  Date: 12/19/13  
District 2 District Director

By:  Date: 12/19/13  
District 3 District Director

By:  Date: 12/19/13  
District 4 District Director

By:  Date: 12/19/13  
District 5 District Director

By:  Date: 12-19-2013  
District 6 District Director

FIRST AMENDED

PROGRAMMATIC AGREEMENT AMONG THE FEDERAL HIGHWAY  
ADMINISTRATION, THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
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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

By: Cami A. Sewer Date: 12/19/13  
Acting District 7 District Director

By: [Signature] Date: 12/19/13  
District 8 District Director

By: [Signature] Date: 12/19/13  
District 9 District Director

By: [Signature] Date: 12/19/13  
District 10 District Director

By: [Signature] Date: 12/19/13  
District 11 District Director

By: [Signature] Date: 12/19/13  
District 12 District Director

**ATTACHMENT 1**  
**CALTRANS PROFESSIONALLY QUALIFIED STAFF STANDARDS**

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

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

**ARCHAEOLOGICAL QUALIFICATIONS STANDARDS**

**Archaeological Crew Member**

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

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

*and*

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

**Lead Archaeological Surveyor**

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

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

*and*

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

*and*

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

**Co-Principal Investigator—Prehistoric Archaeology**

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

- Qualification as a Lead Archaeological Surveyor for Caltrans  
*and*
- At least 12 months of professional experience or specialized training in prehistoric archaeology, including: 1) at least 10 weeks of California or Great Basin excavation experience under the supervision of a Prehistoric Archaeology PI; 2) at least four weeks of supervised laboratory experience on collections from prehistoric California or Great Basin sites; and 3) at least four weeks of excavation experience in a supervisory capacity on prehistoric California or Great Basin sites  
*and*
- Demonstrated ability to carry archaeological research to completion, as evidenced by the timely completion of an excavation report or comparable study involving a prehistoric site or sites  
*and*
- Understanding of the Section 106 process and familiarity with cultural resources policies, procedures, and goals, as demonstrated in reports and/or past performance.

**Co-Principal Investigator—Historical Archaeology**

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

- Qualification as a Lead Archaeological Surveyor for Caltrans  
*and*
- At least 12 months of professional archaeological experience or specialized training dealing with historic-period resources including: 1) at least 10 weeks of excavation experience under the supervision of a Historical Archaeology PI; 2) at least four weeks of

supervised laboratory experience on collections from historic sites; and 3) at least four weeks of excavation experience in a supervisory capacity on historic sites

*and*

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

*and*

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

*and*

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

### **Principal Investigator—Prehistoric Archaeology**

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

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

*and*

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

*and*

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

*and*

- Ability to carry out the more complex and difficult aspects of the Section 106 process  
*and*
- Understanding of Caltrans cultural resources policies, procedures and goals, as demonstrated in reports and/or past performance  
*and*
- Familiarity with Caltrans cultural resources contracting policies and procedures.

**Principal Investigator—Historical Archaeology**

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

- Graduate degree in anthropology, archaeology, cultural resources management, or a closely related field with an emphasis in historical archaeology, as evidenced by a minimum of 12 upper division semester units (or equivalent) in history and the theory and methods of historical archaeology, or equivalent knowledge as shown in a thesis or dissertation or major report evaluating historical archaeological properties  
*and*
- At least 16 months of professional archaeological experience involving historical sites, including a minimum of one year of field experience, as follows: 1) at least 12 weeks of fieldwork under the supervision of a Historical Archaeology PI, of which at least 6 weeks must be excavation work; 2) at least 4 weeks of laboratory experience on collections from California sites, supervised by a Historical Archaeology PI; and 3) at least 20 weeks of field work in a supervisory capacity, of which at least eight weeks must be on California sites  
*and*
- Demonstrated familiarity with California or Western U.S. history, documentary research, and oral history techniques, as evidenced by upper division course work or a major research report or publication based on original research  
*and*
- Demonstrated ability to carry out archaeological research to completion, as evidenced by the completion of a thesis, dissertation, or other comparable major study focusing on a historic-period site or sites  
*and*
- Ability to carry out the more complex and difficult aspects of the Section 106 process  
*and*



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

*and*

- Familiarity with Caltrans cultural resources contracting policies and procedures.

## **ARCHITECTURAL HISTORIAN QUALIFICATIONS STANDARDS**

### **Architectural Historian**

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

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

*and*

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

*and*

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

*and*

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

### **Principal Architectural Historian**

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

- A graduate degree in architectural history, art history, architecture, or a closely related field, with a concentration in American architecture; or a graduate degree in American history, public history, historic preservation, American studies, or a closely related field, and at least 24 months of full-time related professional experience in research, writing, teaching, interpretation, or other related professional activity;

*and*

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

*and*

- Demonstrated ability to carry historical research to completion, as evidenced by the timely completion of a thesis, dissertation, or other comparable major study consisting of the design and execution of a historical study concerning a historic-period property or properties

*and*

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

*and*

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

*and*

- Familiarity with Caltrans cultural resources contracting policies and procedures.

## **ATTACHMENT 2 SCREENED UNDERTAKINGS**

Screened undertakings are classes of undertakings that have the potential to affect historic properties, but following appropriate screening, may be determined exempt from further Section 106 review under this Agreement.

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

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

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

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

### **THE SCREENING PROCESS**

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

- Literature/records review to determine potential for involvement of historic properties.
- Contacting Indian tribes who may have concerns within the project area.
- Field review of project area.
- Reviewing detailed project plans.
- Contacting non-federally recognized Native American organizations and individuals, local historical societies, or other potential consulting parties who may have concerns.
- Reviewing aerial photographs, Caltrans photologs, historic maps, or as-built records.
- Reviewing right-of-way, assessment parcel, or ownership data.
- Reviewing character-defining features of historic bridges and tunnels.

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

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

### **CLASSES OF SCREENED UNDERTAKINGS**

1. Pavement reconstruction, resurfacing, shoulder backing, or placement of seal coats.
2. Minor widening of less than one-half-lane width, adding lanes in the median, or adding paved shoulders.
3. Channelization of intersections or addition of auxiliary lanes.
4. Establishment of chain control areas, park-and-ride lots, or maintenance pullouts.
5. Minor modification of interchanges and realignments of on/off ramps.
6. Minor utility installation or relocation.
7. Installation of noise barriers or retaining walls.
8. Addition of bicycle lanes or pedestrian walkways.
9. Storm damage repairs, such as culvert clearing or repair, disposal or stockpile locations, shoulder reconstruction, or slide or debris removal.
10. Repair of the highway and its facilities.
11. Modification of existing features, such as slopes, ditches, curbs, sidewalks, driveways, dikes, or headwalls, within or adjacent to the right of way.
12. Minor operational improvements, such as culvert replacements and median or side-ditch paving.
13. Addition or replacement of devices, such as glare screens, median barriers, fencing, guardrails, safety barriers, energy attenuators, guide posts, markers, safety cables, ladders, lighting, hoists, or signs.
14. Installation, removal or replacement of roadway markings, such as painted stripes, raised pavement markers, thermoplastic tape, or raised bars, or installation of sensors in existing pavements.
15. Abandonment, removal, reconstruction, or alteration of railroad grade crossings or separations or grade crossing protection.
16. Minor alteration or widening of existing grade separations where the primary function and utility remain unaltered.
17. Additions or alterations to existing buildings, such as work on or in office or equipment buildings, maintenance stations, warehouses, roadside rests, vista points, minor transit facilities, weigh and inspection stations, toll facilities, or state-owned rentals.
18. Restoration or rehabilitation of deteriorated or damaged structures, facilities, or mechanical equipment to meet current standards of public health and safety.

19. Any work on Category 5 bridges, including rehabilitation or reconstruction.
20. Modification of traffic control systems or devices utilizing existing infrastructure, including installation, removal, or modification of regulatory, warning, or informational signs or signals.
21. Installation of freeway surveillance or ramp metering equipment.
22. Replacement of existing highway signs.
23. Removal or control of outdoor advertising.
24. Projects that eliminate non-fixed hazards, such as removal of objects on roadway, traffic accident cleanup, hazardous waste removal, or fire control.
25. Establishment, replacement, or removal of landscaping, vegetation, or irrigation systems on state or local public property, including highway and local roads rights of way and building sites.
26. Construction or repair of fish screens or ladders, springs, waterholes, or stream channels (e.g., clearing of debris from streams, ditches, or culverts).
27. Right-of-way activities such as hardship acquisition or acquisition of scenic or conservation easements.
28. Joint or multiple use permits with other agencies or encroachment permits.
29. Preliminary engineering tests, such as seismic, geologic, or hazardous materials testing that involve buildings or structures or require trenching or ground boring.
30. Minor maintenance on historic bridges and tunnels.

### **ATTACHMENT 3 AREA OF POTENTIAL EFFECTS DELINEATION**

In accordance with the Stipulations VI.B.8 and VIII.A of this Agreement, Caltrans will establish the Area of Potential Effects (APE) for undertakings covered by this Agreement. The Caltrans PQS and project manager are jointly responsible for describing and establishing an APE and will sign any maps or plans that define or redefine an APE.

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

#### **APE DEFINITION**

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

#### **APE BOUNDARIES**

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

An APE may extend well beyond the right of way. It must include all construction easements, such as slope and drainage easements, stormwater detention basins, off-site biological mitigation sites requiring ground disturbance, and mandatory or designated borrow and disposal sites. It may include project-related activity areas such as utility relocations, access roads, equipment storage or staging areas, or conservation or scenic easements. Consideration should be given for other jurisdictional areas, such as the U.S. Army Corps of Engineers (Corps) permit area. The Corps permit area consists of those areas comprising the waters of the United States that will be affected by the proposed work and structures and uplands directly affected as a result of authorizing the work or structure.

## **INDIRECT EFFECTS AND BOUNDARIES**

An APE addresses indirect effects when warranted. Indirect effects may extend beyond the right of way to encompass visual, audible, or atmospheric intrusions; shadow effects; vibrations from construction activities; or change in access or use. Delineation of an indirect APE must be considered carefully, particularly for potential audible and visual effects, taking into account proximity and use of adjoining properties, the surrounding topography, and other aspects of a property's setting.

1. **Noise:** When considering potential noise effects, there must be a reasonable basis for predicting an effect based on an increase over existing noise level. Noise effects should be considered when a project would result in a new through lane or a substantial change in vertical or horizontal alignment.
2. **Visual:** Highways on new alignments, multi-level structures, or elevated roadways are considered to have potential for visual effects if they could be out of character with or intrude upon a historic property or isolate it from its setting. Projects for improvement or expansion of existing transportation facilities that will not substantially deviate from existing alignment or profile are not expected to involve visual impacts.

## **APES AND PROPERTY TYPES**

Different APEs may be established for archaeological, cultural and built-environment properties:

1. For archaeological properties, an APE is typically established based on an undertaking's potential for direct effects from ground-disturbing activities. On occasion, archaeological sites may also have qualities that could be affected indirectly.
2. Buildings, structures, objects, districts, cultural sites as well as sites of religious or cultural significance are more likely to be subject to indirect, as well as direct effects, thus an APE for the built and cultural environment is usually broader than an archaeological APE in order to include the potential for such effects. For instance, the first row of potential properties beyond the right of way may be subject to such effects and thus included in an indirect APE when warranted.

In delineating the APE, consideration must always be given to the undertaking's potential effects on a historic property as a whole. If any part of a property may be affected, the APE will generally encompass the entire property, including the reasonably anticipated or known boundaries of archaeological sites. However, it is rarely necessary to extend an APE to include entire large districts or landscapes, large rural parcels, extensive functional systems, or long linear features if potential effects on the whole would clearly be negligible.

The guiding principle on delineating an APE is that it should be commensurate with, and provide for, an appropriate level of effort to take into account an undertaking's potential for effects on historic properties.

While an APE will generally encompass an entire property, physical intrusion such as testing of archaeological sites should be focused on areas subject to reasonably foreseeable effects of the undertaking and must be guided by a project- or site-specific research design. Areas of an archaeological site that are unlikely to be affected by an undertaking should not be tested unless compelling reasons to conduct such testing are provided in the research design.

## **STUDY AREAS**

In order to encourage consideration of historic properties early in the planning and design of an undertaking, Caltrans PQS may designate a study area for use in conducting historical studies until an APE can be delineated. A study area should encompass all land that could potentially be included in the final APE. Establishing a study area is especially pertinent to those undertakings subject to a phased identification and evaluation process.

## **PROJECT CHANGES AND APE REVISIONS**

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



## **ATTACHMENT 4 PROPERTIES EXEMPT FROM EVALUATION**

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

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

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

### **ARCHAEOLOGICAL PROPERTIES (PREHISTORIC AND HISTORICAL)**

Only Caltrans PQS or consultants who meet the Caltrans Archaeological Qualification Standards (Attachment 1) for Co-Principal Investigator and above are authorized to determine that the archaeological property types or features listed below may be exempted from evaluation. Professional judgment should be used as to the level of identification and recordation. This exemption process does not include archaeological sites or other cultural remains or features that may qualify as contributing elements of districts.

#### **Archaeological Property Types and Features Exempt from Evaluation:**

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

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

## **ARCHITECTURAL AND HISTORICAL PROPERTIES**

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

### **Architectural and Historical Property Types Exempt from Evaluation:**

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

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

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

#### Water Conveyance and Control Features:

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

#### Recent Transportation or Pedestrian Facilities:

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

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

#### Highway and Roadside Features:

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

#### Adjacent Features:

- fences, walls, gates, and gateposts
- isolated rock walls and stone fences
- telephone booths, call boxes, mailboxes, and newspaper receptacles

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

Movable or Minor Objects:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **ATTACHMENT 5 FINDINGS OF NO ADVERSE EFFECT WITH STANDARD CONDITIONS**

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

### **1. ENVIRONMENTALLY SENSITIVE AREAS AS A STANDARD CONDITION**

Environmentally Sensitive Areas (ESAs) are locations of archaeological sites, cultural sites or built-environment properties within the APE that are to be protected by avoidance or restrictions on Program activities. ESAs typically use fencing, flagging, signing, or monitoring to protect properties from direct physical damage by project activities.

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

Archaeological sites that can be protected by ESA’s may be considered eligible for the purposes of the undertaking without subsurface excavation and/or surface collection in accordance with Stipulation VIII.C.3. Cultural sites that can be protected by ESA’s may be considered eligible for the purposes of the undertaking in accordance with Stipulation VIII.C.4.

Archaeological and cultural sites may have values other than information potential under Criterion D. ESAs may be applied to sites with cultural values that may qualify them as eligible under Criteria A, B, or C in addition to, or instead of, Criterion D only where the ESA protects those values from all adverse effects. That determination must be made by a Principal Investigator in the applicable discipline (Prehistoric or Historical Archaeology), and as appropriate, after consultation with Indian tribes that may attach religious or cultural values to the property or other consulting parties.

Built-environment properties, regardless of ESA protection, must be evaluated for National Register eligibility unless approved in consultation with CSO pursuant to Stipulation VIII.C.4. As ESA’s are designed to protect properties from direct effects, they may only be applied to built-environment properties when a PQS Principal Architectural Historian determines that the undertaking will not indirectly affect the built-environment property. If there is potential for indirect effects, the Caltrans District shall proceed in accordance with Stipulation X.B.2.

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

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

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

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

## **2. SECRETARY OF THE INTERIOR'S STANDARDS FOR THE TREATMENT OF HISTORIC PROPERTIES AS A STANDARD CONDITION**

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

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

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

- A. Adequate information is available to identify the character-defining features of the historic property and accurately determine the scope of construction activities and their

impacts on the property. Information on the historic property's character defining or essential physical features may be obtained from the NRHP nomination form for a listed property, the NRHP determination of eligibility documentation, including the property's DPR 523 form(s), or character defining features summary form, if one has been prepared.

- B. The scope and design of the undertaking are sufficiently developed and detailed to ensure that the proposed work can meet the SOIS, and an analysis of the proposed work and how it meets the specific SOIS is reviewed and approved by a Caltrans PQS Principal Architectural Historian.
- C. All appropriate protection and avoidance measures are defined, including whether any materials testing is necessary, in sufficient detail in the plans and specifications provided, or to be provided for PQS review, and this information included in the final construction plans, contract provisions, Environmental Commitment Record and RE's Pending File. For Local Assistance projects, Caltrans PQS shall ensure the local agency complies with all ESA requirements.
- D. A clear chain of command is established identifying specific tasks, responsibilities and contact information for each Caltrans or local agency staff, consultant or other party in the chain.
- E. A SOIS Action Plan is developed to ensure that provisions for protection are carried out and will be documented in accordance with Stipulation XVIII. This SOIS Action Plan shall be attached to the "No Adverse Effect with Standard Conditions– SOIS" finding.

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



**ATTACHMENT 6**  
**STANDARD TREATMENT OF ARCHAEOLOGICAL SITES:**  
**DATA RECOVERY PLAN**

In accordance with Stipulation XI.B of this Agreement, potential adverse effects to an archaeological property may be resolved through data recovery to recover important information that would have been otherwise lost as a result of an undertaking. A Caltrans Principal Investigator in the appropriate discipline shall determine applicability of data recovery, and as applicable, the appropriate level of documentation for a data recovery plan.

A data recovery plan shall, at a minimum, include the following:

- Discussion of the National Register significance of a property.
- Research questions that are directly pertinent to those data sets that qualify the property for inclusion in the National Register under Criterion D.
- A discussion that explains why it is in the public interest to pursue answers to these research questions. The discussion should indicate whether, why, and how the public may benefit from the scope and nature of the information developed through data recovery, and demonstrate that the costs of proceeding with the data recovery are prudent and reasonable.
- Results of previous research relevant to the property type.
- Proposed investigations (data needed to address research questions and the proposed methods and techniques to acquire that data, including any special studies).
- Field methods and techniques that will clearly and cost-effectively address the property's structure and content in the context of the defined research questions and the property's stratigraphic and geomorphic context.
- Laboratory processing and analyses, with justification of their cost-effectiveness and of their relevance to the property and its research values.
- Methods and techniques used in artifact, data, and other record management.
- Provisions for ongoing Native American consultation, monitoring, and coordination, if Native American values or concerns are present or are likely to be present.
- Qualifications of key personnel.
- Disposition, including curation, of recovered materials and records resulting from implementation of the data recovery plan.
- Cost proposal.
- All required permits
- Report preparation schedule, including the names of parties to whom reports will be distributed upon completion.
- Monitoring provisions and procedures for evaluating and treating discoveries of unexpected finds during the course of the project, which may include consultation with other parties.
- Explicit provisions for disseminating research findings to professional peers in a timely manner.
- Plan for public involvement and educational or interpretive programs, focusing particularly on the community or communities that may have interest in the results.

**ATTACHMENT 7**  
**CALTRANS LOCAL BRIDGE SEISMIC SAFETY RETROFIT PROGRAM**

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

**APPLICABILITY**

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

**UNDERTAKINGS NOT REQUIRING SHPO OR ACHP REVIEW**

The Caltrans District may approve the undertaking without further review by SHPO when the Caltrans District PQS determines that an undertaking under the Seismic Retrofit Program meets the below criteria. The Caltrans District PQS will document these determinations in writing and retain them in the files. CSO will include a record of such determinations in annual reports to SHPO pursuant to Stipulation XX.F.2.

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

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

#### **DETERMINATION OF ELIGIBILITY: EXPEDITED RESOLUTION WITH SHPO**

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

#### **FINDING OF NO ADVERSE EFFECT**

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

undertaking without further review. If CSO or SHPO cannot agree that an adverse effect can be avoided, CSO shall initiate consultation pursuant to Stipulation X.D.

#### **FINDING OF ADVERSE EFFECT-EXPEDITED DISAGREEMENT RESOLUTION**

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

#### **RESOLUTION OF ADVERSE EFFECT-STANDARD MITIGATION MEASURES**

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

1. SHPO objects to the use of Standard Mitigations Measures identified below to resolve adverse effects.
2. SHPO withdraws from consultation.
3. The undertaking has known public opposition.
4. The undertaking’s APE includes archaeological properties that will be adversely affected.
5. The undertaking will adversely affect a National Historic Landmark.

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

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

#### **A. Recordation**

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

A recordation plan will not be required if the Caltrans District records the historic property using the procedures set forth in the Standard Environmental Reference Volume 2-Cultural Resources and Exhibit 7.6: Heritage Documentation, Caltrans District shall keep the original archivally-safe documentation and provide electronic copies on CD/DVD to SHPO, the Caltrans Headquarters Transportation Library and History Center, the California History Room of the California State

Library, and the appropriate local historical society or local repository as determined by the Caltrans District.

Otherwise, the Caltrans District will complete the following:

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

## **B. Marketing Plan**

If the proposed undertaking requires the demolition or replacement of a NRHP eligible or listed bridge, building, structure, or object, the Caltrans District shall consult with CSO and SHPO, and if appropriate, the property owner for a period not to exceed ten (10) days to determine if that property can be relocated and a marketing plan implemented. If the parties determine that a marketing plan is feasible, CSO, the Caltrans District and SHPO will review the advertising schedule to ensure that notice is provided in appropriate publications and that the property is offered for no less than forty-five (45) days after its initial advertisement. CSO, in consultation with the Caltrans District and SHPO, shall evaluate all relocation and reuse offers prior to acceptance. If no acceptable offers are received that conform to the requirements for rehabilitation and maintenance as set forth in *SOIS Standards* and relevant SOIS guidance, the historic property, or portions of it, may be transferred without preservation covenants or restrictions, or the Caltrans District may authorize its demolition following recordation and salvage, if appropriate. The Caltrans District shall document this determination in its files and provide CSO and SHPO with written notification.

## **C. Salvage**

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

#### **D. National Register Reevaluation**

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